

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

VOTEAMERICA AND VOTER)
PARTICIPATION CENTER,)
)
 Plaintiffs,)
)
 vs.)
)
 SCOTT SCHWAB, in his official capacity as)
 Secretary of State of the State of Kansas;)
 DEREK SCHMIDT, in his official capacity as)
 Attorney General of the State of Kansas; and)
 STEPHEN M. HOWE, in his official capacity)
 as District Attorney of Johnson County,)
)
 Defendants.)
)
 _____)

Case No. 2:21-cv-2253-KHV-GEB

**UNOPPOSED MOTION TO CLARIFY THE COURT’S MEMORANDUM AND ORDER
GRANTING PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

Defendants respectfully move this Court pursuant to Fed. R. Civ. P. 60(a) to clarify and/or correct one sentence in the Court’s Memorandum and Order (Doc. #50) granting Plaintiffs’ motion for a preliminary injunction.

As the Court correctly noted on the first page of its opinion, Plaintiffs sought a preliminary injunction against the enforcement of two provisions in H.B. 2332, which is codified at K.S.A. § 25-1122. Specifically, they challenged: (i) Section 3(l)(1), which prohibits persons and entities that are not residents of, or domiciled in, Kansas from mailing or causing to be mailed advance mail ballot applications to Kansas voters; and (ii) Section 3(k)(2), which prohibits the mailing of certain personalized advance ballot applications.

Despite the specific nature of the relief sought, on the last page of the Memorandum and Order, the Court stated that it was enjoining the enforcement of H.B. 2332 altogether, and not just the two provisions at issue in this case. *See* Doc. #50 at 46 (“The Court hereby enjoins enforcement of HB 2332.”). But H.B. 2332 covers many topics other than the two provisions that Plaintiffs

challenged in their preliminary injunction motion, and those other topics are not at issue in this case.

Section 1(e) of HB 2332 includes a severability clause that makes clear that “[i]f any provision of this section of the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the section that can be given effect without the invalid provision or application, and, to this end, the provisions of this section are severable.” Moreover, the Kansas Supreme Court has held that, “[i]f from examination of a statute it can be said that (1) the act would have been passed without the objectionable portion and (2) if the statute would operate effectively to carry out the intention of the legislature with such portion stricken, the remainder of the valid law will stand. This court will assume severability if the unconstitutional part can be severed without doing violence to legislative intent.” *Gannon v. Kansas*, 304 Kan. 490, Syl. ¶ 8, 372 P.3d 1181, 1182 (2016).

Accordingly, we respectfully move that the Court modify its Memorandum and Order – *nunc pro tunc* – to clarify that it was only enjoining the enforcement of Sections 3(k)(2) and 3(l)(1) of H.B. 2332, which were the only two provisions that Plaintiffs challenged in their motion for a preliminary injunction.¹

Respectfully Submitted,

By: /s/ Bradley J. Schlozman
 Bradley J. Schlozman (KS Bar #17621)
 Scott R. Schillings (Bar # 16150)
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¹ Plaintiffs have authorized Defendants to represent to the Court that Plaintiffs do not oppose this motion.

CERTIFICATE OF SERVICE

I certify that on December 13, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the e-mail addresses on the electronic mail notice list, including counsel for the Plaintiff.

By: /s/ Bradley J. Schlozman

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