IN THE STATE COURT OF KANSAS
DISTRICT COURT OF DOUGLAS COUNTY

KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC., LOUD LIGHT, DISABILITY RIGHTS CENTER OF KANSAS, DOROTHY NARY, MARTHA HODGESMITH, and ROBERT MIKESIC, Plaintiffs, v. SCOTT SCHWAB, in his official capacity as the Kansas Secretary of State, and JAMIE SHEW, in his official capacity as Douglas County Clerk, Defendants.	Original Action No. DG-2025-CV-000206

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR A TEMPORARY INJUNCTION

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INTRODUCTION

If enforced, SB 4 will require the rejection of timely-voted ballots that arrive after election day for reasons that the Secretary has repeatedly recognized are generally outside of voters' control, causing arbitrary disenfranchisement in violation of multiple provisions of the Kansas Constitution. Plaintiffs seek to protect against this unconstitutional result until this matter can be adjudicated to final judgment. In opposition, the Secretary ignores the reality on the ground, and repeatedly invites the Court to apply the wrong legal standards. Plaintiffs have more than met their burden and the Court should grant the motion. Indeed, the evidence is so overwhelming (and unrebutted) that Plaintiffs are entitled to relief under any possibly applicable standard.

ARGUMENT

I. The Secretary repeatedly misstates the applicable legal standards.

First, Plaintiffs do not seek a mandatory injunction. *See* Sec'y's Opp'n to Mot. for TI ("Opp.") 2. They ask the Court to enjoin Defendants from "from doing an act"—here, enforcing the newly-enacted SB 4—a quintessential preventive injunction. *Mid-Am. Pipeline Co. v. Wietharn*, 246 Kan. 238, 242, 787 P.2d 716, 719 (1990). It is not clear why the Secretary argues otherwise. The relevant "status quo" is "the last actual, peaceable, noncontested position of the parties which preceded the pending controversy," *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 227, 689 P.2d 860, 865 (1984), which was before SB 4 went into effect on January 1.[1] That said, even if the requested injunction were "mandatory," the Secretary admits the "same rules" apply, with the only difference being whether the movant is "substantially likely" to succeed or "clearly entitled" to relief. Opp. 1-2. Plaintiffs *are* clearly entitled to relief here: The overwhelming (and uncontradicted) evidence shows that thousands of voters will be

[1] Notably, the Secretary previously assured the Court that "that date is largely meaningless," and there was no need for an opinion to issue before it. Sec'y's Resp. to Mot. for Sched. Order 2.

disenfranchised if SB 4 goes into effect, an irreparable harm that would violate the Kansas Constitution three times over.[2]

Second, the Secretary's assertion that the Court must presume SB 4 to be constitutional and resolve all doubts in its favor, Opp. 3, is also wrong. No presumption of constitutionality applies where fundamental rights are implicated. *See Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 668-69, 440 P.3d 461, 496 (2019). In such cases, "the courts peel away the protective presumption of constitutionality and adopt an attitude of active and critical analysis." *Id*. at 672-73 (citation omitted). SB 4 threatens Plaintiffs' fundamental rights. *See League of Women Voters of Kan. v. Schwab*, 318 Kan. 777, 793-94, 549 P.3d 363, 376 (2024) ("*LWV*") (citation omitted).

Lastly, the Secretary suggests that because Plaintiffs' challenges are facial, the Court should apply the "no set of circumstances" test, Opp. 3-4, but the Tenth Circuit has rejected that argument as "a fiction, readily dispelled by a plethora of" authority. *Doe v. City of Albuquerque*, 667 F.3d 1111, 1124 (10th Cir. 2012). Courts regularly consider facial challenges "simply by applying the relevant constitutional test to the challenged statute without attempting to conjure up whether or not there is a hypothetical situation in which application of the statute might be valid." *Id*. It also "has not been established" that the no-set-of-circumstances test "applies to facial challenges *not based on overbreadth*." *Id.* at 1123; *see also State v. Ryce*, 303 Kan. 899, 915, 368 P.3d 342, 354 (2016) (rejecting State argument to apply test in way similar to what the State presses here), *adhered to on reh'g*, 306 Kan. 682, 396 P.3d 711 (2017). Here, the proper tests to apply to Plaintiffs' Kansas constitutional claims are the tests that the Kansas Supreme Court has applied to

[2] The Secretary misreads language in *Steffes*, stating that a temporary injunction is not proper "to accomplish the whole object of the suit without bringing the cause or claim to trial." Opp. 2 (citing *Steffes v. City of Lawrence*, 284 Kan. 380, 394, 160 P.3d 843, 853 (2007)). The court was merely explaining the difference between a *temporary* injunction—which "prevent[s] injury . . . pending a final determination of the . . . merits," and a *permanent* one. *Steffes*, 284 Kan. at 394 (citation omitted). Here, "the whole object of the suit," *id.*, is to obtain a *permanent* injunction of SB 4.

these claims. Full stop. If SB 4 fails any one of them, it is unconstitutional in all its applications.

II. Plaintiffs are likely to prevail on their equal protection claim.

The Secretary's erroneous claim that the Court must look to federal law in adjudicating Plaintiffs' equal protection claim relies on *Rivera v. Schwab*, 315 Kan. 877, 512 P.3d 168 (2022). *Rivera* applied federal equal protection jurisprudence to a partisan gerrymandering claim where the injury was vote dilution. In doing so, the Court said that, while a redistricting plan may affect the relative value of an individual's vote, it "does not infringe on the stand-alone right to vote." *Id.* at 892. SB 4, however, *does* directly infringe on that right, so Plaintiffs' challenge is governed by the Court's *more recent* decision in *LWV*, which considered an equal protection challenge under the Kansas Constitution to a voting law based on arbitrary risks of disenfranchisement.

The Secretary does not engage with *LWV* at all, instead pointing almost exclusively to federal and out-of-state cases. None (of course) ask whether Kansas may, consistent with *its* Constitution, impose a law that it knows will arbitrarily disenfranchise voters.[3] *LWV* is clear: to comply with equal protection under the Kansas Constitution, voting laws "must be capable of being applied with reasonable uniformity upon objective standards *so that no voter is subject to arbitrary and disparate treatment*." 318 Kan. at 805 (emphasis added). Thus, the question is if the law actually "achieve[s] reasonable uniformity on objective standards." *Id*. at 807; *see also id*. at

[3] The Secretary's claim that a Michigan decision is "particularly illuminating," Opp. 11, ignores several critical points, including that the court was interpreting a provision that specifies that officials receiving absentee ballots must be available during their "regularly scheduled business hours and for at least eight (8) hours during the Saturday and/or Sunday immediately prior to the election." Mich. Const. 1963, art. II, § 4(1)(h). The court found this language suggests "that election officials are only obligated to be available during regular business hours, plus some additional hours on the weekend immediately preceding the election." *League of Women Voters of Mich. v. Sec'y of State*, 333 Mich. App. 1, 17-18, 959 N.W.2d 1 (2020). The Kansas Constitution contains nothing similar. The Michigan court also applied the *Anderson-Burdick* test, *id.* at 29, but Kansas has rejected that test. *See* MTD Opp. at 35-36. Lastly, the relevant provision of the Michigan Constitution provides Michigan voters a *40*-day window to receive and return absentee ballots, Mich. Const. 1963, art. II, § 4(1)(h). This, too, shaped that court's decision. *Id*. at 14.

834 (explaining this requires that "the likelihood of having a ballot discarded . . . must be the same in Wyandotte County as in Gove County") (Biles, J., concurring in part and dissenting in part).

The evidence is overwhelming that enforcing SB 4 will arbitrarily and disparately disenfranchise voters. This follows from several unique features of the Kansas mail service and Kansas elections. Indeed, issues with the mail in the early 2010s that were causing voters to have their ballots rejected led to the near-unanimous enactment of the three-day grace period—to avoid that existential threat to the integrity of the state's elections and the right to vote. Exs. 10-12, 26. Those issues have only gotten worse, and it is a certainty that if SB 4 is implemented, many Kansans' right to vote will "hinge on random chance." *Gallagher v. N.Y. State Bd. of Elections*, 477 F. Supp. 3d 19, 48 (S.D.N.Y. 2020); Pls.' Mem. in Supp. of Mot. for TI ("Mem.") 10-12.

The Secretary does not refute any of this evidence. Instead, he blames the voters, claiming that, "with a modicum of diligence, all voters can ensure that their ballots are counted." Opp. 10 (asserting voters who "know[] it can take as much as a week or ten days" for mail to travel one way should simply "send it in early"). This is not only unsupported, it is contrary to the record. First, if SB 4 is enforced, Kansas will have the tightest window for mail voting in the country. K.S.A. 25-1123; *id.* 25-1132; *see also id.* 25-1122(f)(1) (voters may request a mail ballot up to seven days before most elections).[4] Second, mail performance in Kansas is among the worst in the country. Ex. 15, at 3. In 2024, the ballots of more than 12% of voters in Douglas County spent *ten or more* days in the mail going in just one direction, with more than 5% traveling one way for *15 days or longer*. Ex. 1, Herron Decl. at 72, tbl. 20. Even with the grace period, Douglas County had to reject more than 200 ballots *that arrived after August 9*, despite being *postmarked in July*. Ex. 16. Third, the Secretary's dismissive litigation position is also at odds with his own dire warnings

[4] Only one other state (Iowa) has a 20-day window, but even its timeframe is broader: ballots can arrive up to 8 p.m. on election day. K.S.A. 25-1123(a); Iowa Code Ann. § 53.8(1).

about the risks of mail voting in Kansas. *See, e.g.*, Ex. 9 (stating "*even when voters have mailed them timely*," "ballots were received . . . days, if not weeks, after" mailing); *see also* Exs.19-20.[5]

As for the Secretary's speculation that voters will save themselves by "adapt[ing] their conduct," Opp. 9, it is not clear what he would have them do. Assuming a voter knows she will need a mail ballot and requests it on the earliest possible date, even if she is lucky and receives it within a week of it being sent, she still may encounter delays in the return. The only way to avoid disenfranchisement is to forgo voting by mail entirely, but for many, this is not a realistic or safe option. *See* Ex. 5, ¶ 9; Ex. 6, ¶¶ 9-11; Ex. 7, ¶ 10. Moreover, when a state allows voting by mail—as Kansas long has—it must abide by equal protection in its administration. *See, e.g.*, *Idaho Coal. United for Bears v. Cenarrusa*, 342 F.3d 1073, 1077 n.7 (9th Cir. 2003).[6] Thus, even federal courts have rejected the suggestion that equal protection does not apply if a state need not allow mail voting at all, Opp. 6, because it would allow a state to "induce its citizens to vote by mail, yet proceed to discard countless ballots . . . ." *Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 308 (3d Cir. 2025). And several federal courts have found the *U.S.* Constitution violated by laws regulating voting by mail that created "arbitrary disparities" in mail ballot rejection and made it "less likely that absentee voters in certain areas will cast votes that count," even though the underlying cause was "due in substantial part to failures in" postal delivery. *Jones v. USPS*, 488 F. Supp. 3d 103, 130 (S.D.N.Y. 2020); *see also DCCC v. Kosinski*, 614 F. Supp. 3d 20, 56-58 (S.D.N.Y. 2022); *Vote Forward v. DeJoy*, 490 F. Supp. 3d 110, 125-27 (D.D.C. 2020); *Gallagher*

[5] The Secretary also ignores the affidavits of the Plaintiffs and a witness who have experienced lengthy mail delays, including in receiving their ballots. Ex. 5, ¶ 10; Ex. 7, ¶ 11; *see* Ex. 8, ¶ 5.

[6] Kansas has an unusually long history of inviting voters to vote by advance ballot. It first permitted advance voting in the Civil War, Mem. 2, and nearly 60 years ago, it extended it to "any elector who would be absent from the county" K.S.A. 25-1117 (1967). In 1995, it extended it to all voters. K.S.A. 25-1119(a). Notably, *as early as 1923, it had a 10-day grace period for military voters*. *See* Kans. Rev. Stat. § 25-1106 (Chester I. Long, et al., eds. 1923).

v. N.Y. State Bd. of Elections, 477 F. Supp. 3d 19, 47-49 (S.D.N.Y.2020).

Plaintiffs' motion is based on a wide variety of evidence, but the Secretary responds to almost none of it. He offers a weak attempt to undermine Dr. Michael Herron's analyses, but his critiques are not supported by contrary expert opinion—or *any* evidence at all. They are also wrong. *See* Ex. 30, Michael Herron Supp. Decl. (responding to same). First, the Secretary makes much of what he calls "tiny sample sizes" in the county-to-county comparisons, *see* Opp. 11, but the data are not "samples"—they are the *sum totals* of ballots received in those counties *as reported by the Secretary's Office*. Herron Supp. Decl. ¶¶ 30-34. And there remains significant disparate impact even excluding counties with relatively low numbers of ballots. *Id.* ¶¶ 17-20; *see also id.* ¶¶ 21-29. Nor did Dr. Herron "concede" that the differences found in his regression analysis are not statistically significant. *Id.* ¶¶ 36-42.[7] And far from "guessing" as to what Douglas County data tracking mail ballots means, Opp. 13, Dr. Herron analyzed those files based on their plain meaning and his decades of experience analyzing similar data. Herron Supp. Decl. ¶¶ 43-53; *see also* Herron Decl. ¶¶ 11-18.[8] The Secretary provides no actual reason to doubt Dr. Herron's understanding or the veracity of that data, which are corroborated by the experiences of voters, *see, e.g.*, Ex. 7, ¶¶ 5-6 (ballot took 21 days to arrive), Douglas County's own reports, Ex. 16, and the Secretary's own repeated observations about the dismal state of Kansas mail, *see* Exs. 9, 19-20. The same is true of Dr. Herron's central finding—based on data from the Secretary's office—that ballot rejections under SB 4 will vary substantially based on where a voter lives.[9] Herron Decl. ¶¶ 49-51 (showing

[7] Here, too, the Secretary seems to misunderstand the analysis—which differentially weighted counties with less mail ballots and those with more. Herron Supp. Decl. ¶¶ 25-29.
[8] The Secretary suggests the data should be discounted because Plaintiffs did not "disclose" it, Opp. 13—but discovery has not begun and *the State and counties were the source of the data*.
[9] Nor does the Secretary even attempt to rebut Dr. Herron's finding that Kansans temporarily out of state will be disproportionately likely to have their ballots rejected under SB 4. Herron Decl. ¶¶ 98, 109, 117; *see also* Ex. 14. This, itself, is a serious equal protection problem.

in some counties over 10% of mail ballots arrived during grace period in 2024 general election, while in others 1% or fewer did). That highly variable risk of disenfranchisement is the definition of "arbitrary and disparate" treatment. *See LWV*, 318 Kan. at 834 (Biles, J., concurring in part and dissenting in part).

III. Plaintiffs are likely to prevail on their procedural due process claim.

The Secretary's discussion of how this Court should evaluate Plaintiffs' due process claim is exceedingly muddled. He recognizes that *LWV* governs "due process challenges involving electoral mechanics," but argues that the Court should ignore it because SB 4 is "distinguishable" from the signature-matching law at issue in *LWV*. Opp. 16. His reasoning is not clear. SB 4 obviously regulates "electoral mechanics"; thus, it should apply here.

But, if not *LWV*, what test does the Secretary think the Court *should* apply? This is also not clear. First, the Secretary asserts that a ballot receipt deadline satisfies due process if the legislature publicizes the deadline and affords a "fair opportunity" for voters to comply. Opp. 16. But he cites no case in support, and the assertion does not comport with the well-recognized test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), which has been used repeatedly by the Kansas Supreme Court as the framework for analyzing procedural due process claims under the Kansas Constitution, *see State v. Wilkinson*, 269 Kan. 603, 609, 9 P.3d 1, 5 (2000). The Secretary argues that *LWV* "rejected" that test, Opp. 16, but here, too, he does not cite anything that supports this claim. Nor does he identify any newly expressed test in *LWV*, or anything in it that contradicts *Mathews*.

Writing in concurrence, Justice Rosen seems to have understood *LWV* to be applying *Mathews'* and *Wilkinson*'s framework—citing the latter and noting that "[t]he majority appears to agree [the law at issue in *LWV*] denies a liberty interest" and "focuses only on whether the plaintiffs set forth facts sufficient to show the statute does not offer due process." *LWV*, 318 Kan. at 828. To the extent *LWV* asserts a different test, Justice Rosen understands it to ask if "the legislation

provides 'reasonable notice of defects and an opportunity to cure.'" *Id*. But the Secretary does not apply that test either. Plaintiffs read *LWV* to apply *Mathews*, but even under the slightly modified test described by Justice Rosen, SB 4 cannot survive, because it provides *no* opportunity to cure.

In the end, the Secretary seems to settle on advocating for the federal *Anderson-Burdick* test—or "something along the lines of" it. Opp. 16. But the Kansas courts *did actually reject* this test in the *LWV* case. *See, e.g*., MTD Opp. 35-36. Moreover, the Secretary does not attempt to apply anything remotely recognizable to *Anderson-Burdick*—a highly factual inquiry that balances the burdens on voters from the law against the state's interests in imposing those burdens, with the level of scrutiny depending on the severity of the burden. *See Eakin*, 149 F.4th at 298 (finding law failed test after "balanc[ing] the State's constitutionally mandated duty against its citizens' constitutionally protected right" to vote). The evidence shows that the burden on voters here is significant, *see, e.g*., Ex. 4, ¶¶ 6-9; Ex. 5, ¶¶ 8-9; Ex. 6, ¶¶ 7-11; Ex. 7, ¶¶ 9-10, and besides an oblique and non-specific reference to a state's generalized "regulatory interests," Opp. 17, the Secretary offers no explanation as to any specific interest that Kansas has that would counterbalance a citizen's right to vote. His opposition is completely silent on this point—or, indeed, on *any* application of the test that he asks this Court to use and find in his favor. In sum, under any applicable test, Plaintiffs are likely to succeed on this claim.

IV. Plaintiffs are likely to prevail on their right to vote claim.

The Secretary does not dispute that SB 4 is a restriction on the right to vote, or that if strict scrutiny applies, the law must be struck down. Opp. 4-8. Instead, he argues only that *LWV* held that strict scrutiny does not apply to a law like SB 4 and that therefore Plaintiffs cannot succeed on their right-to-vote claim. *Id.* at 4-5. The Secretary is wrong.

Plaintiffs' right-to-vote claim is expressly supported by *LWV* and other Kansas Supreme Court precedent. *See* Mem. 14-15 & n.6. In *LWV*, the Court was explicit that it was *not* overruling

any prior precedent. 318 Kan. at 799. Instead, it was applying a different test *only* to laws involving the "proper proofs" of a voter's eligibility. *Id*. at 800-01. Plaintiffs canvass the cases *reaffirmed* in *LWV* that applied strict scrutiny to laws restricting fundamental rights, which include voting. Mem. at 14-15. Nothing the Secretary offers, *see* Opp. 4-5, contradicts Plaintiffs' reading or undermines this straightforward operation of precedent, all of which mandates the conclusion that SB 4 is subject to strict scrutiny—a standard that the Secretary concedes it cannot survive.

Even if the Court were to find that the claim must be analyzed under *State v. Butts*, 31 Kan. 537, 2 P. 617 (1884), Plaintiffs are still likely to prevail, because SB 4 is an impermissible, extra-constitutional qualification on the right to vote, *see LWV*, 318 Kan. at 801; Mem. 16; Am. Pet. ¶¶ 124-25. The Secretary argues that a receipt deadline cannot "be deemed an 'additional de facto qualification' on the right to vote," Opp. 6, but he ignores that *LWV* found that a law that "unreasonably burden[s] the right to suffrage" *is* an "extra-constitutional qualification." *LWV*, 318 Kan. at 801. SB 4 does just that. Plaintiffs do not argue that Kansas can never change the law, or that earlier election day receipt deadlines were necessarily unconstitutional. *See* Opp. 6. But the overwhelming evidence shows that imposing a strict election day receipt deadline *now* will unduly burden voters' fundamental right to vote. The Legislature enacted the grace period to *remedy* the disenfranchising effect of an election day receipt deadline, and that remedy proved vital to protecting tens of thousands of votes. *See* Mem. 2-3. Yet it repealed it in the face of *worsened* mail service, ostensibly because of "election integrity" concerns for which the Secretary can identify no evidence. *See* Mem. 2-6; MTD Opp. 45. The choice to knowingly make voting unduly harder, without any reasonable justification, violates the Constitution under *LWV* and its predecessors.

V. The remaining elements support entering a temporary injunction.

First, Plaintiffs' showing of irreparable harm is *not* premised on the allegations of a "few voters," "isolated incidents," or "anecdotes." Opp. 17-18 The evidence shows that *tens of*

thousands of voters would have had their ballots rejected with an election day receipt deadline. *See* Mem. 5. *Second*, SB 4 will also cause significant harm to the *organizational plaintiffs*, *see* Mem. 18-19, independent from harms to voters. *Third*, any time a voter's ballot is arbitrarily rejected and their right to vote denied, that is irreparable harm. *See, e.g.*, *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016). *Fourth*, Plaintiffs did not delay in seeking relief. The case was delayed, first, by the Secretary's baseless removal and, then, his opposition to Plaintiffs' attempt to expedite this motion, in which the Secretary assured the Court that there was no reason to hear it any earlier than it will be hearing it. *See* Sec'y's Resp. to Mot. for Scheduling Order at 4. *Finally*, the Secretary does not dispute that if Plaintiffs have suffered an injury, there is no other adequate legal remedy.

Plaintiffs also satisfy the remaining temporary injunction factors. The Secretary's principal argument to the contrary is that the State is harmed whenever any of its laws are enjoined. Opp. 19. But that is not true when the law is unconstitutional. *Wing v. City of Edwardsville*, 51 Kan. App. 2d 58, 66, 341 P.36 607, 614 (2014); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). As for the Secretary's cross-reference to the unsubstantiated state interests identified in its motion to dismiss, Opp. 20, Plaintiffs have refuted them, *see* MTD Opp. 45-46. Nor does the Secretary have any answer to the Tenth Circuit's correct conclusion that "[t]here is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by . . . state and local offices involved in elections." *Fish*, 840 F.3d at 755.

CONCLUSION

The Court should grant Plaintiffs' motion for a temporary injunction.

Respectfully submitted, this 16th day of January, 2026.

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**Appearing Pro Hac Vice*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 16, 2026, a true and correct copy of the above document was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send notice of electronic filing to all counsel of record.

/s/ Nicole Revenaugh
Nicole Revenaugh

Exhibit 30

IN THE STATE COURT OF KANSAS
DISTRICT COURT OF DOUGLAS COUNTY

KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC., LOUD LIGHT, DISABILITY RIGHTS CENTER OF KANSAS, DOROTHY NARY, MARTHA HODGESMITH, and ROBERT MIKESIC,

Plaintiffs,

v.

SCOTT SCHWAB, in his official capacity as the Kansas Secretary of State, and JAMIE SHEW, in his official capacity as Douglas County Clerk,

Defendants.

Original Action No.

DG-2025-CV-000206

SUPPLEMENTAL DECLARATION OF MICHAEL C. HERRON

1 Introduction

1 In the matter of *Kansas Appleseed Center for Law and Justice, Inc., et al. v. Scott Schwab, et al.* (DG-2025-CV-000206), I filed a declaration, dated December 9, 2025, for the purpose of a motion for temporary injunction. This supplemental declaration responds to three critiques made about my December 9, 2025, declaration in Defendant Schwab's January 6, 2026, response to Plaintiffs' motion for a temporary injunction.

2 Two of these critiques relate to what I describe in my December 9, 2025, declaration as advance ballot grace period rates in the 2024 general election. A Kansas county's grace period rate in an election is the rate at which advance ballots cast in the county during said election arrived in the election's grace period (¶ 45). For example, according to data prepared by the Kansas Secretary of State's office, there were 205 advance ballots cast in Seward County in the 2024 general election. Of these, 23 arrived in the election's grace period, and this corresponds to an advance ballot grace period rate of roughly 11.22 percent.[1]

3 Now turning to Defendant's three critiques that I address here, they are as follows: (1) that my analysis of advance ballot grace period rates in Kansas counties in the 2024 general election relies on "tiny sample sizes that... reveal nothing useful in terms of a county-to-county comparison;" (2) that my interpretation of a regression analysis of the relationship between grace period rates in the 2024 general election and county rurality includes a "glaring concession"

[1] These figures appear in Table 4 of my December 9, 2025, declaration.

about a lack of statistical significance on account of the fact that my regression's p-value is 0.055, slightly more than the standard cutoff of 0.05; and (3) that my interpretation of Douglas County's Ballot Scout data from the 2024 primary and general elections relies on guesswork.

4 Notwithstanding multiple levels of ambiguity as to what Defendant means in his first critique (that associated with the above "nothing useful" claim), each of Defendant's three critiques is misguided at best and simply incorrect at worst: (1) my analysis of Kansas counties' grace period rates in the 2024 general election does not in fact rely on "tiny sample sizes" and reliably reveals systematic differences in these rates across counties, differences that are robust to "[t]he tiniest fluctuations" in counts of grace period advance ballots that Defendant incorrectly asserts could lead my analysis astray; (2) given the number of Kansas counties (95) that I use in my regression analysis of county advance ballot grace period rates in the 2024 general election, the p-value that I find is meaningful and suggestive of a substantial relationship between a Kansas county's rurality and its advance ballot grace period rate in this election; and (3) there is no guesswork in my interpretation of Douglas County's Ballot Scout data from the 2024 primary and general elections in Kansas.

2 Defendant mischaracterizes my county-level analysis of advance ballots returned in the 2024 general election's grace period

5 Defendant claims that my analysis of advance ballot grace period rates in the 2024 general election, which appears in Section 5 of my December 9, 2025,

declaration, is based on "tiny sample sizes" and accordingly reveals "*nothing useful* in terms of a county-to-county comparison" (emphasis added). Moreover, in the course of making this critique, Defendant claims that, "The tiniest fluctuations can completely change the numbers."[2]

6 Defendant's "nothing useful" critique references Table 4, part of ¶ 49 of my December 9, 2025, declaration. This table lists ten Kansas counties and reports for each one (1) the number of returned advance ballots cast in the 2024 general election, (2) the number of these ballots that arrived in the election's three-day grace period, and (3) the corresponding grace period rate.[3]

2.1 Defendant's "nothing useful" critique suffers from multiple levels of ambiguity

7 Defendant's "nothing useful" critique of my analysis of grace period rates in Kansas counties in the 2024 general election is ambiguous on several levels.

8 Defendant does not specify whether its claim about "tiny sample sizes" refers to (1) a "tiny" number of advance ballots cast in a county that arrived in the 2024 general election's *grace period* or (2) a "tiny" *total* number of advance ballots cast in a county in the 2024 general election. I deal with both of these possibilities below.

9 In writing that, "The tiniest fluctuations can completely change the numbers," Defendant is not clear about what "the numbers" refers to. I believe that "the

[2]Defendant's Response, p. 11.

[3]See ¶¶ 36-37 of my December 9, 2025, declaration for details on the advance ballot data prepared by the Kansas Secretary of State's office and used in Table 4 of the declaration.

numbers" as invoked by Defendant means the county-level grace period rates from the 2024 general election I calculated based on data prepared by the Kansas Secretary of State's office, ten values of which appear in Table 4.

10 Defendant does not define "tiny" in the sense of "tiny sample sizes." I assume here that "tiny" means a number very close to zero, e.g., one, two, or three.

11 Defendant does not explain what he means by a "county-to-county comparison." In claiming that my analysis of grace period rates reveals "nothing useful in terms of a county-to-county comparison," I assume that Defendant is claiming that my analysis has no ability to determine whether grace period rates in a set of Kansas counties in the 2024 general election are greater than (or lesser than) grace period rates in a different set of Kansas counties in the 2024 general election.

2.2 Considering Defendant's ambiguity in the matter of "tiny sample sizes"

12 As I wrote above, Defendant is not clear in its "nothing useful" critique about whether its use of "tiny sample sizes" refers to (1) a "tiny" number of advance ballots cast in a county that arrived in the 2024 general election's *grace period* or (2) a "tiny" *total* number of advance ballots cast in a county in the 2024 general election.

13 Suppose that "tiny sample sizes" as used by Defendant refers to "tiny" counts of grace period ballots cast in the 2024 general election. In this case, the critique is misguided: what is important in any Kansas county is not the raw number of grace

period ballots cast in it in the 2024 general election but rather the percentage of such ballots that arrived in the election's grace period. Indeed, one can learn a lot about a Kansas county and its usage of the grace period even if only a "tiny" number of advance ballots cast in it arrive during a given election's grace period.

14 To see why this is true, suppose that a hypothetical Kansas county had one advance ballot arrive in the 2024 general election grace period. A sample size of one must be "tiny" according to Defendant. Defendant might claim that the number one here is too small to facilitate learning anything about the extent to which advance ballots cast in the hypothetical county arrive in the election's grace period, but that claim would be wrong. If, say, there were 100 total advance ballots cast in the county, the county's grace period rate would be one percent. If, though, there were 10,000 total advance ballots cast in the county, the county's grace period rate would be 0.01 percent. These two percentages (one versus 0.01) are quite different. This shows that, even with tiny numbers of grace period ballots, counties can be usefully compared as to the extent to which advance ballots cast in them arrive in a given election's grace period.

15 Having established that the interpretation of Defendant's use of "tiny sample sizes" as referring to numbers of grace period ballots returned in the 2024 general election is misguided, henceforth I conservatively assume that "tiny sample sizes" as invoked by Defendant in his "nothing useful" critique refers to "tiny" total numbers of advance ballots cast in counties in the 2024 general election.

2.3 Defendant's "nothing useful" critique fails in three contexts

16 Drawing on ten counties' grace period rates from the 2024 general election listed in Table 4 and in addition on the grace period rates of the complementary 85 counties not listed in this table, I offer in my December 9, 2025, declaration three comparisons that fit what I understand Defendant to mean by "county-to-county" comparisons. I now review these comparisons, showing that each of them is robust to "[t]he tiniest fluctuations" in counts of advance ballots cast in the 2024 general election. This shows that Defendant's "nothing useful" critique is wrong.

2.3.1 Some Kansas counties had high grace period rates in the 2024 general election while other counties had low rates

17 I state in my December 9, 2025, declaration following Table 4 that there are some Kansas counties with relatively high grace period rates and other counties with relatively low grace period rates: "Table 4 shows that there are three Kansas counties—Seward, Nemaha, and Graham—in which the 2024 general election grace period rate was greater than ten percent" (¶ 50). I write as well in my December 9, 2025, declaration that, "In contrast, there are some Kansas counties in which, according to the Kansas Secretary of State's office, the advance ballot grace period rate in the 2024 general election was literally zero" (¶ 51).

18 For the moment, I conservatively drop Graham County from the list of three aforementioned counties with grace period rates greater than ten percent insofar as this county had 29 advance ballots returned in the 2024 general election. Although

Defendant is not clear as to what he means by "tiny," I conservatively assume here that 29 is tiny as Defendant uses this term.

19 Table 4 in my December 9, 2025, declaration shows that Seward County and Nemaha County had 205 and 311 advance ballots cast in the 2024 general election, respectively. Among the 16 Kansas counties that, according to data prepared by the Kansas Secretary of State's office, had grace period rates of zero in the 2024 general election, there were 4,073 total returned advance ballots. Four counties in the set of 16 had more than 500 returned advance ballots each; these counties are Labette, Finney, Geary, and Ford, listed in increasing order of advance ballots returned in the 2024 general election.

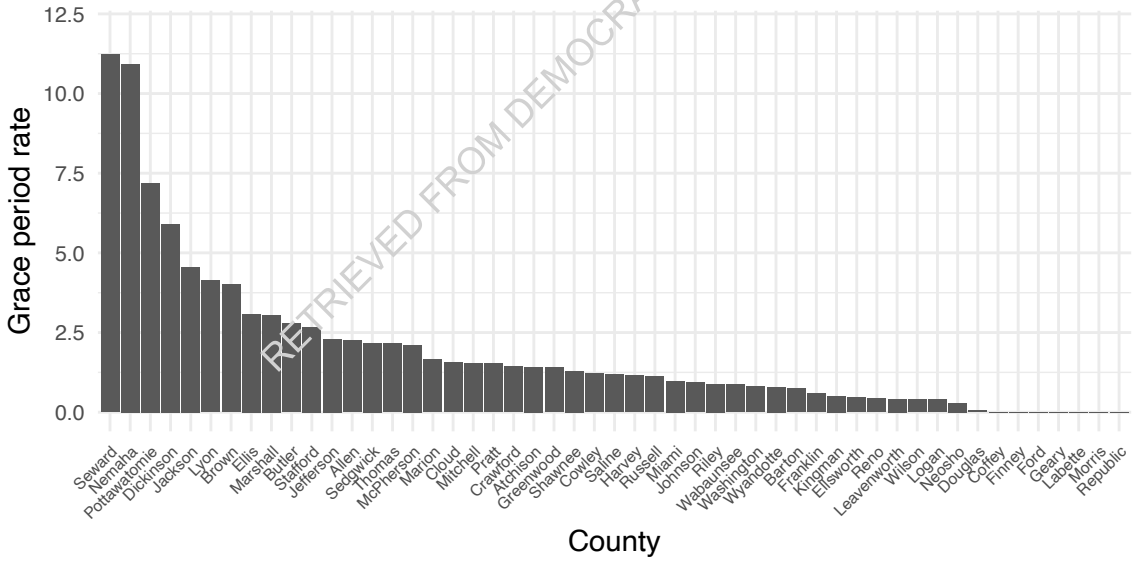
20 Therefore, the qualitative conclusion stated in my December 9, 2025, declaration that in the 2024 general election some Kansas counties had relatively high grace period rates (high defined here as greater than ten percent) and some Kansas counties had relatively low grace period rates (low defined here as a grace period rate of zero or close to zero) is robust to excluding counties that Defendant might characterize as having "tiny sample sizes" and is robust to "[t]he tiniest fluctuations" in counts of advance ballots cast. The conclusion is also robust to "[t]he tiniest fluctuations" in counts of grace period ballots insofar as my distinguishing counties with high grace period rates and counties with low grace period rates is grounded in percentages of advance ballots that arrived in the 2024 general election grace period, not in raw numbers of such ballots.

2.3.2 There is geographical variance across Kansas counties in grace period rates from the 2024 general election

21 Figure 3 in my December 9, 2025, declaration displays a map of Kansas where counties are shaded based on 2024 general election grace period rates. As the legend for the figure shows, these rates range from zero to 11.2 percent.

22 Of the 95 counties shown in Figure 3, there are 51 that had at least 200 advance ballots returned in the 2024 general election. The grace period rates of these 51 counties are shown in Figure 1, which is analogous to Figure 2 in my December 9, 2025, declaration (¶ 47).

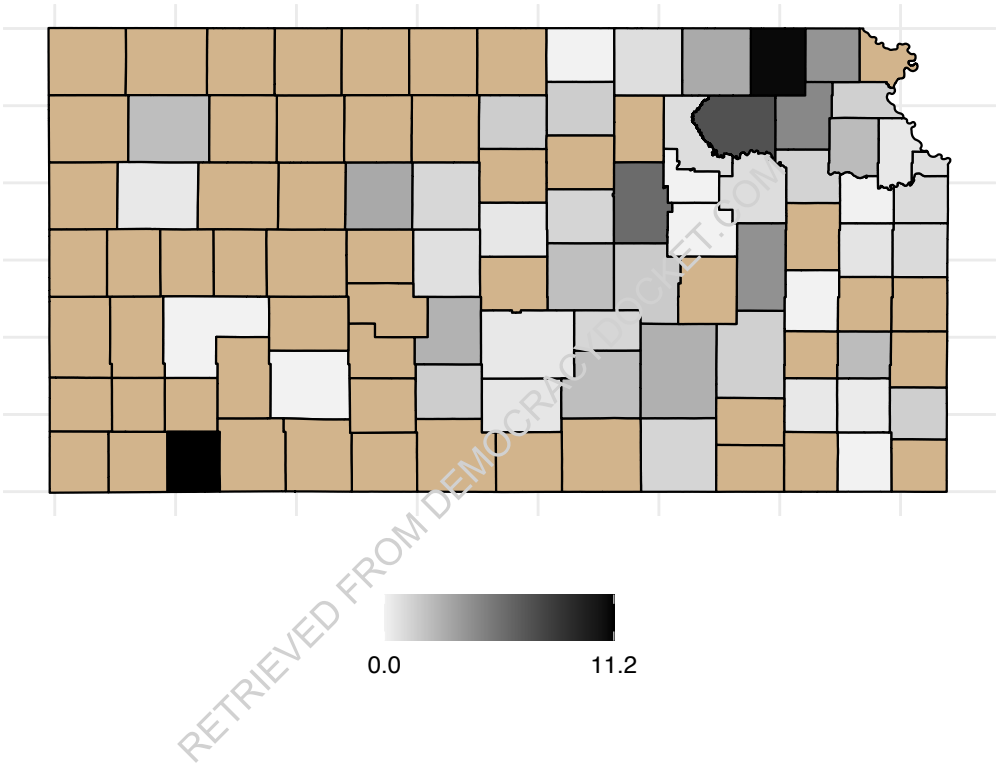
Figure 1: Grace period rates in Kansas counties with at least 200 advance ballots, 2024 general election



Source: data prepared by Kansas Secretary of State's office.

23 The locations of the 51 counties across Kansas that had at least 200 advance ballots returned in the 2024 general election are shown in Figure 2, which is analogous to Figure 3 in my December 9, 2025, declaration (¶ 52).

Figure 2: Grace period advance ballot rates across Kansas counties with at least 200 returned advance ballots, 2024 general election



Note: based on data prepared by the Kansas Secretary of State's office; counties in tan are missing data or had fewer than 200 advance ballots submitted in the 2024 general election.

24 Because the counties whose grace period rates in the 2024 general election are shown in Figure 2 had at least 200 advance ballots returned in this election, I know

that these rates are robust to "tiny" fluctuations in counts of advance ballots cast. Therefore, the conclusion I drew in my December 9, 2025, declaration, that there was geographical variance across Kansas in grace period rates in the 2024 general election is itself robust to excluding counties that Defendant might characterize as having "tiny sample sizes" and robust to "[t]he tiniest fluctuations" in counts of advance ballots cast. The conclusion is also robust to "[t]he tiniest fluctuations" in counts of grace period ballots insofar as it is grounded in percentages of advance ballots that arrived in the 2024 general election grace period, not in raw numbers of such ballots.

2.3.3 My county-level regression analysis of grace period rates in the 2024 general election controls for counts of cast advance ballots

25 Section 5.3 of my December 9, 2025, declaration uses grace periods rates shown in Table 4 and grace period rates from 85 complementary counties in a statistical analysis of the relationship between Kansas county grace period rate from the 2024 general election and county rurality. In particular, this analysis includes a regression model in which county rurality (the regression's independent variable) is used to explain county grace period rates (the regression's dependent variable).

26 In preparing my regression analysis of county grace period rates in the 2024 general election, I was aware that there are some counties in Kansas that are more informative than others about the relationship between county rurality and advance ballot grace period rate. These are the counties that had relatively more advance

ballots cast in them. In a regression in which county grace period rates from the 2024 general election are regressed on a measure of county rurality, the appropriate way to incorporate the fact that there is variance across Kansas counties in advance ballots cast in this election is to weight each county by the number of advance ballots cast in it. This is precisely what my regression does, as summarized in Table 6 in my December 9, 2025, declaration (p. 27).

27 In other words, my weighted regression in Section 5.4 of my December 9, 2025, declaration explicitly incorporates the number of advance ballots cast in each Kansas county in the 2024 general election. Kansas counties with more advance ballots cast in them in this election are relatively up-weighted, and Kansas counties with fewer advance ballots cast in them in the 2024 general election are relatively down-weighted. To the extent that Defendant critiques my regression because it includes some Kansas counties with what Defendant considers to be tiny numbers of observations, my implementation of weighting ensures that counties with few advance ballots are not unduly influential in the regression.

28 I made all of this clear in ¶¶ 54-63 of my December 9, 2025, declaration, where I write that, "The regression line [which analyzes the relationship between county rurality and grace period rates] is *weighted by number of advance ballots submitted by voters*" (¶ 60, emphasis added). On account of this weighting, the number of advance ballots cast in each Kansas county in the 2024 general election is incorporated in the regression analysis.

29 Overall, what Defendant implies is a limitation in my regression analysis of grace period rates in the 2024 general election (vulnerability to "[t]he tiniest fluctuation" in counts of advance ballots) is in fact not a limitation and is a part of the analysis. Moreover, to the extent that Defendant claims that my regression analysis is limited on account of "[t]he tiniest fluctuation" in counts of grace period ballots, this claim does not hold because my regression analysis is grounded in percentages of advance ballots that arrived in the 2024 general election grace period, not in raw numbers of such ballots.

2.4 My analysis of county grace period rates does not rely on sampling in the sense implied by Defendant

30 As part of its "nothing useful" critique of my analysis of county-level grace period rates in the 2024 general election, Defendant discusses sample sizes in a way that implies, incorrectly, that my analysis relies on sampling. In particular, it is wrong for Defendant to use the term "sample size" when referring to the totality of advance ballots cast in a Kansas county in the 2024 general election.

31 The county listed in the top row of Table 4 is Seward. According to data prepared by the Kansas Secretary of State's office, this county had 205 returned advance ballots in the 2024 general election, of which 23 (roughly 11 percent) were returned in the grace period. The aforementioned 205 ballots are *not* a sample drawn from a larger set of advance ballots cast in Seward County in the 2024 general election. Rather, and according to data prepared by the Kansas Secretary of State's office, there were literally 205 advance ballots returned in Seward County in this

election. Since the 205 advance ballots are not a sample drawn from a larger set of advance ballots, it does not make sense for Defendant to treat 205 as a sample size ("tiny" or not) when calculating the grace period rate in Seward County in the 2024 general election.

32 As shown in Table 4, this rate is roughly 11.22 percent, and here I use the word "roughly" because I am rounding. Table 4 does not contain a confidence interval for the rate of 11.22, and this is because I did not engage in a sampling exercise when calculating it. Rather, 11.22 percent is Seward County's advance ballot grace period rate in the 2024 general election.

33 Notwithstanding the fact that the aforementioned 205 advance ballots returned in Seward County is not a sample drawn from a larger set of advance ballots cast in this county, I have never heard an applied statistician refer to a sample size of 205 as tiny.[4] Therefore, Defendant's critique that 205 is a "tiny" sample size would not hold even if the 205 advance ballots from Seward County described in Table 4 of my December 9, 2025, declaration were sampled from a larger set of such ballots.

34 The logic I have invoked regarding Seward County applies to every row in Table 4 of my December 9, 2025, declaration. In particular, each row of this table shows the totality of advance ballots returned in a Kansas county in the 2024 general

[4]Here I am drawing on the fact that 205 advance ballots cast in Seward County represent 205 independent Bernoulli trials. In each trial, an advance ballot from Seward County is either returned in the grace period or not.

election, according to data prepared by the Kansas Secretary of State's office, and does not involve any sampling.

2.5 Conclusion regarding Defendant's "nothing useful" critique

35 Defendant's "nothing useful" critique of my analysis of county grace period rates from the 2024 general election has no qualitative implications for any of the conclusions in my December 9, 2025, declaration. I wrote in this declaration that, "This shows that an advance voter's county is correlated with the risk of the voter's advance ballot arriving during the grace period" ¶ 50. This statement is (obviously) true based on data described in the declaration and produced by the Kansas Secretary of State's office. In particular, these data show that some Kansas counties had grace period rates in the 2024 general election that were high (i.e., greater than ten percent), and other counties had grace period rates that were low (i.e., very close to zero and in some cases literally zero). In other words, in the 2024 general election, an advance voter's grace period rate depended on the county in which the voter resided. This result is based on a county-to-county comparison, and by itself it shows that Defendant's "nothing useful" critique is wrong.

3 Defendant's claim about statistical significance in my regression analysis is wrong

36 Defendant claims that my December 9, 2025, declaration contains a "glaring concession" of statistical insignificance in a regression analysis insofar as the key p-value in the analysis is 0.055. The standard cutoff for statistical significance is

0.05, and indeed 0.055 is slightly greater than 0.05. However, my pointing this out is not a "glaring concession." Rather, this reflects the importance I place on transparency. Moreover, and as is well known, a standard of 0.05 is arbitrary and no more scientifically meaningful than a standard of 0.045 or 0.055.

37 The p-value critiqued by Defendant comes from a statistical analysis in which county grace period rates from the 2024 general election are regressed on a measure of county rurality. The estimated slope coefficient on rurality is roughly 0.11, and the associated p-value of 0.055 can be found in the second row ("RUCC") of Table 6 in ¶ 61 of my December 9, 2025, declaration.

38 In general, a p-value is a continuous measure of how compatible a set of observed data are with a null hypothesis, given a particular model. In my analysis, in which county grace period rates are regressed on a measure of county rurality, the key null hypothesis is that county rurality is unrelated to grace period rate. In the regression analysis, rurality is measured on a nine-point scale developed by the United States Department of Agriculture where the greater a county's value on the rurality scale, the more rural it is. I describe this in my December 9, 2025, declaration (¶ 55).

39 As noted above, my regression's point estimate of the rurality effect on county grace period rate is roughly 0.11. This is the estimated marginal effect on a county's grace period rate in the 2024 general election given an increase in county rurality. For example, if a county becomes one unit more rural on the RUCC scale, my regression

implies that its grace period rate will be 0.11 percentage points greater.

40 Consider the most urban Kansas counties (rurality level of one) and the most rural urban counties (rural level of nine). According to my regression analysis, the difference in grace period rates between these two counties is estimated at roughly 0.88 percentage points, all things equal. This is a substantial amount: the average grace period rate among the 95 Kansas counties I analyze in my regression is 1.35 percent (this average is weighted by number of advance ballots returned).

41 Defendant claims that this result should be ignored because its associated p-value is slightly more than 0.05. However, p-values should not be thought of as "pass versus fail" tests. The conventional 0.05 cutoff remains an arbitrary convention and is not the product of a law that is grounded in science.

42 In a regression analysis, the less data available, the harder it is for the analysis to uncover statistically significant effects.[5] In the case at hand, my regression of grace periods rates on county rurality uses 95 county observations. To the extent that Defendant contends that 95 is small, the fact that my regression nonetheless returns a p-value extremely close to 0.05 is meaningful.

[5]Formally, holding fixed a relationship between a regression's dependent variable and one of its independent variables, the lower the regression's sample size, the lower the power the regression has over the relationship.

4 There is no guesswork involved in my understanding of Douglas County timestamps

43 Defendant claims that my understanding of the timestamps in Douglas County's Ballot Scout data reflects "guessing" ("In fact, it appears clear from the declaration of Plaintiffs' expert that he does not even fully understand what the various timestamps in the software mean…He is just guessing").[6] This claim references ¶¶ 125-131 of my December 9, 2025, declaration, and in these paragraphs I (1) characterize what is meant by an event in Douglas County's Ballot Scout data (¶ 125), (2) characterize five types of such events (¶¶ 126-130), and (3) characterize what I mean by advance ballot transit times (¶ 131).

44 There is no guesswork involved in ¶¶ 125-131 of my December 9, 2025, declaration.

45 In ¶ 125, I describe Douglas County Ballot Scout data from the 2024 primary and 2024 general elections. I state that these data consist of events and that each event is associated with a city, state, and zip code. All of these statements are true, and none involves guessing.

46 In ¶ 126, I describe a specific event called, "Created." I know the plain meaning of the word "Created," and this knowledge is not based on guesswork. In my December 9, 2025, declaration I write that, "To the best of my understanding, the timestamp associated with a 'Created' event refers to the moment when

[6] Defendant's Response, p. 13.

Douglas County elections officials started tracking a particular advance ballot." There is no guesswork in this statement, which includes the caveat, "To the best of my understanding," because I do not have a sworn statement from a Douglas County official that describes the county's Ballot Scout data. In the absence of sworn statements, I regularly include caveats like "To the best of my understanding" when writing expert reports, but this does not imply that I am guessing about anything.

47 As a side note, the analysis of Douglas County data in my December 9, 2025, declaration does not rely on any "Created" events.

48 In ¶ 127, I describe an event called, "Mailed To Voter." I rely on plain language, not guesswork, when interpreting what "Mailed To Voter" means. When describing "Mailed To Voter" events in my December 9, 2025, declaration, I include the caveat, "To the best of my understanding." As above, this is because I do not have a sworn statement from a Douglas County official that describes the county's Ballot Scout data.

49 In ¶ 128, I describe an event called, "Mailed To Office." I rely on plain language, not guesswork, when interpreting what "Mailed To Office" means. When describing "Mailed To Office" events in my December 9, 2025, declaration, I include the caveat, "To the best of my understanding." As above, this is because I do not have a sworn statement from a Douglas County official that describes the county's Ballot Scout data.

50 In ¶ 129, I describe events called, "Delivered To Voter" and "Accepted By Office." I rely on plain language, not guesswork, when interpreting what "Delivered To Voter" and "Accepted By Office" means. When describing "Delivered To Voter" and "Accepted By Office" events in my December 9, 2025, declaration, I include the caveat, "To the best of my understanding." As above, this is because I do not have a sworn statement from a Douglas County official that describes the county's Ballot Scout data.

51 In ¶ 130, I describe how I handle records of advance ballots that have multiple "Mailed To Voter" and "Mailed To Office" events. There is no guesswork involved in this paragraph.

52 In ¶ 131, I describe how I calculate advance ballot transit times. There is no guesswork involved in this paragraph.

53 In short, there is no guesswork involved in ¶¶ 125-131 of my December 9, 2025, declaration. Defendant's claim to the contrary is false.

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct.

Michael C. Herron

1/16/2026

Date