

2025CV206

CASE NO. 130,839

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC., *et al.*,
Appellees,

v.

SCOTT SCHWAB, In His Official Capacity
as the Kansas Secretary of State,
Appellant,

and

JAMIE SHEW, In His Official Capacity
as Douglas County Clerk,
Defendant.

Order Denying Request for Emergency Stay

Before Warner, C.J., Hill and Schroeder, JJ.:

This appeal concerns K.S.A. 25-1132, which defines the method and timeframe in Kansas for submitting advance-voting ballots (commonly known as mail-in ballots). For about 40 years, K.S.A. 25-1132 stated that advance-voting ballots must be received by a county election office by Election Day to be counted. In 2017, the Kansas Legislature amended the statute, requiring election offices to count all advance-voting ballots postmarked before the close of the polls on Election Day so long as they were received within three days after the election. In 2025, the legislature eliminated that three-day window, setting the "deadline for receipt by mail" of advance-voting ballots as "7:00 p.m. on the date of the election." K.S.A. 2026 Supp. 25-1132(b).

The most recent change (eliminating the three-day window for mail-in ballots) was scheduled to go into effect on January 1, 2026. In May 2025, the plaintiffs filed this lawsuit against the Secretary of State and the Douglas County Clerk (the county election officer in Douglas County), challenging the constitutionality of that impending change. In December 2025, the plaintiffs sought a temporary injunction to prevent the defendants from enforcing the changed law—seeking, in essence, a ruling that would allow the three-day window to remain open while the suit was pending. The district court held a hearing on the plaintiffs' motion in January 2026. On July 16, 2026—after most advance-voting ballots requested by voters were already mailed out—the district court granted the temporary injunction. The Secretary docketed this appeal the same day.

On July 20, after advance voting in the 2026 Kansas primary election had begun, the Secretary sought an emergency stay of the temporary injunction during this appeal. The Secretary indicates that his office has conducted a campaign throughout 2026 to educate voters about the elimination of the previous three-day window. He also notes that the advance-voting ballots that were mailed to voters earlier this month state that those ballots must be received by Election Day (not within a window of three days after Election Day). He argues that the district court's temporary injunction will confuse voters about the correct deadline and asks this court to enter the fray to clarify that issue.

The plaintiffs oppose this request, pointing to the district court's conclusion that the recent change likely violates the Kansas Constitution's protections relating to equal protection of the law, due process, and voting. The plaintiffs also note that an emergency stay of the temporary injunction would have the effect of potentially rejecting advance-voting ballots that would otherwise be counted if the injunction remains in effect.

The Secretary has asked this court to issue an expedited ruling on his requested emergency stay to provide clarity before Election Day on August 4, 2026. We grant the

request for expedited review but deny the Secretary's request to stay the temporary injunction.

As the parties recognize in their briefing, appellate courts have considerable discretion to stay a district court's ruling while an appeal is pending. While a stay on appeal has some similarities to a temporary injunction and implicates many of the same considerations, there are notable differences. In particular, "a stay operates upon the judicial proceeding itself." *Nken v. Holder*, 556 U.S. 418, 428 (2009). Appellate courts are thus mindful of the competing interests a stay may implicate—recognition, on the one hand, that an appellate court cannot always act "quickly enough to afford relief to the party aggrieved by the order under review" and, on the other hand, that a stay "is an 'intrusion into the ordinary processes of administration and judicial review.'" 556 U.S. at 427. Noting this tension, the Supreme Court of the United States has explained that the primary goal of a stay during an appeal is "to prevent irreparable injury to the parties or the public resulting from the premature enforcement" of a district court's ruling. *Scripps-Howard Radio v. F.C.C.*, 316 U.S. 4, 9 (1942).

In seeking a stay, the Secretary points to decisions from federal courts and from the Maryland Supreme Court that observe those courts' reticence to change voting requirements in the weeks and months leading up to an election. There is certainly some wisdom in these courts' caution before an election takes place. But this appeal and the accompanying request for stay were filed *while an election is ongoing*. The court recognizes that this timing cannot be laid at the feet of the parties to this lawsuit. But the caution that might warrant staying a change in procedure *before* an election—and thus allowing officials to prepare for an upcoming election—is different from the practical considerations present *when an election is actively taking place*.

This court finds that the potential for irreparable harm of voter confusion weighs against the requested stay. Kansas voters who have requested advance-voting ballots may

choose to follow the 2026 amendments to K.S.A. 25-1132 and return their ballots by the close of voting on Election Day; if they do, their votes will be counted. But those voters also may have learned about the district court's temporary injunction (indeed, that injunction is described on the Secretary of State's website) and rely on that information; these voters may mail their advance-voting ballots by Election Day, expecting their votes to be counted if received within the three-day window. If we were to grant the requested stay, those votes would be void. This very real and irreparable harm—that the votes of well-meaning Kansans, acting in good faith based on a judicial decision, would not be counted—outweighs the administrative burden of counting the mail-in ballots received within three days after Election Day.

In reaching this conclusion, this court renders no judgment on the merits of the district court's ruling regarding the constitutionality of K.S.A. 2026 Supp. 25-1132(b). Instead, this court's determination is guided by the irreparable harm from voter confusion and potential disenfranchisement during the ongoing 2026 election and the Secretary's need for an immediate decision on his requested stay.

The Secretary's motion for expedited review of his requested relief is granted. The request for an emergency stay of the temporary injunction pending appeal is denied.

DATED: July 27, 2026.

FOR THE PANEL:



SARAH E. WARNER
CHIEF JUDGE