IN THE COURT OF APPEALS
OF THE STATE OF KANSAS

KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC., LOUD LIGHT, DISABILITY RIGHTS CENTER OF KANSAS, DOROTHY NARY, MARTHA HODGESMITH, and ROBERT MIKESIC, *Plaintiffs-Appellees*, v. SCOTT SCHWAB, in his official capacity as the Kansas Secretary of State, *Defendant-Appellant*, and JAMIE SHEW, in his official capacity as the Douglas County Clerk, *Defendant*.	Appellate Case No. 130839 District Court Case DG-2025-CV-000206

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PLAINTIFFS-APPELLEES' RESPONSE TO THE SECRETARY'S NOTICE OF ADDITIONAL AUTHORITY

VoteAmerica v. Schwab, No. 25-3138, 2026 WL 3070873 (10th Cir. Oct. 14, 2026), evaluated a federal First Amendment challenge to a law prohibiting third parties from pre-filling information on mail ballot applications. It discusses: (1) whether the Legislature enacted the law with the improper purpose of suppressing speech, which would trigger strict scrutiny, and (2) if not, whether it survives intermediate scrutiny. *Id.* at *5, 8. This appeal challenges SB4, which is not a restriction on speech, and Plaintiffs' claims arise exclusively under the Kansas Constitution. The Tenth Circuit's decision has no application here.

First, *VoteAmerica* was a federal *First Amendment* case; it thus did not "reaffirm[] traditional equal protection principles requiring challengers to overcome a presumption of legislative good faith and establish discriminatory intent," as the Secretary claims. Dkt. 59 at 1. *Second*, the question of whether the Legislature was acting in "good faith" or with "discriminatory intent" is not part of the tests that govern Plaintiffs' claims against SB4 under *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 801-02, 805-06 (2024), or other Kansas precedent. *Third*, the district court did not "impute" the Secretary's statements to divine why the Legislature enacted SB 4; it cited them as *evidence* that there is "no meaningful voter fraud" in Kansas. (R. V, 110).

That evidence is relevant to Plaintiffs' claim that SB4 will impose an unreasonable burden on Kansans' right to suffrage in violation of the Kansas Constitution. *See* Appellees' Br. 36-41. The question is not whether the Legislature can act "prophylactically," *see* Dkt. 59 at 2, but whether it can constitutionally regulate elections in such a way that voters who do everything they are told to do under the law will have their ballots arbitrarily rejected. Not only was there *no* evidence that fraud prevention was why the Legislature enacted SB4, it knew—because the Secretary emphatically said so—there was no such problem to solve. (R. V, 110) (Secretary telling Legislature, there has "*never*" been an instance of a fraudulent grace-period ballot). Thus, the law violates the Kansas Constitution's right-to-vote protections. *See* Appellees' Br. 36-41.

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October 26, 2026

Respectfully submitted,

/s/ *Nicole Revenaugh*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 26, 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*
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