

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

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

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. 130,839

District Court Case
No. DG-2025-CV-000206

**SECRETARY SCHWAB’S REPLY IN SUPPORT OF EMERGENCY MOTION TO
EXPEDITE DECISION ON THE SECRETARY’S MOTION TO
STAY OR SUSPEND TEMPORARY INJUNCTION PENDING APPEAL**

Under Supreme Court Rule 5.01 and K.S.A. 60-262(f), Defendant/Appellant Scott Schwab (“the Secretary”) respectfully files this Reply in Support of the Secretary’s Motion to Expedite Decision on the Secretary’s Emergency Motion to Stay or Suspend Temporary Injunction Pending Appeal. A reply is necessary for three reasons.

First, Plaintiffs incorrectly blame the Secretary for the district court’s decision to issue a decision the day after tens of thousands of advance ballots were mailed. Plaintiffs’ citation to the district court’s order stating that the Secretary did not advise the district court of a specific deadline by which it must reach a decision on the Motion for Temporary Injunction ignores the actual discussion at the January 27, 2026, hearing on that motion. *See* Dkt. Index # 11, p. 2 (citing Dkt. Index # 8, Ex. A, p. 5, n.2.) At the hearing, held nearly *seven months* before the district court issued its decision, the district court stated, “I understand time is of the essence[.]” Dkt. Index # 8, Ex. B,

p. 101. The court then asked the Secretary's counsel when a decision was needed, to which counsel stated "certainly, you know, this would be a dramatic change to the procedures for elections," and discussed the need to have a decision in time to review the ballots before they were mailed to voters for the August primary. *Id.* at Ex. B, p. 101. The Secretary's counsel explained that ballots would go out in July. The court closed the hearing by stating, "I will try to make a decision as soon as I can" and "I understand . . . that time is of the essence on this issue." *Id.* at Ex. B, p. 105.

The same is true of Plaintiffs' discussion of the Secretary's *October 25, 2025*, response to Plaintiffs' Motion for Entry of Scheduling Order. Dkt. Index # 11, p. 7. There, the Secretary objected to a schedule where Plaintiffs would file their Motion for Temporary Injunction on November 19, 2025, or more than *six months* after filing their lawsuit, and the Secretary would then be required to respond just over *two weeks* later, when one of those weeks included the Thanksgiving holiday. Dkt. Index # 11, Ex. A, p. 3. The Secretary explained a decision on the temporary injunction was not necessary by January 1, 2026, when there were no statewide elections until the August 2026 primary. Dkt. Index # 11, Ex. A, p. 2.

The Secretary has not waived a *Purcell*¹-type argument that a district court should not alter the election rules after an election already has commenced because the Secretary did not offer an express deadline when the district court held a hearing on the Motion for Temporary Injunction in *January* and promised to issue a decision soon after receiving proposed orders. See Dkt. Index # 8, pp. 2-3. As the Seventh Circuit recognized in rejecting an argument that the State waived a *Purcell*-type claim, "what counsel may have said in July was *about* July. That the state defendants' lawyers may have thought action in July was proper does not imply agreement to a three-month

¹ *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

delay into late September.” *Common Cause Indiana v. Lawson*, 978 F.3d 1036, 1042 (7th Cir. 2020).

Second, while Supreme Court Rule 5.01 generally allows seven days to respond to a motion, Plaintiffs overlook that nothing in K.S.A. 60-262(f) requires this Court, or one of its jurists, to await a response before ruling on an emergency motion for a stay. In adopting K.S.A. 60-262(f), the Legislature clearly envisioned scenarios where swift action from the appellate courts is necessary. Plaintiffs’ response to the motion to expedite demonstrates that they are capable of responding quickly, and they have already briefed the relevant questions in their district court stay response and on the merits. This Court should proceed to decide the Secretary’s stay motion without delay.

Third, Plaintiffs improperly use their response to the Secretary’s Motion to Expedite to preview their Response to the Secretary’s Emergency Motion to Stay. This reply is not the proper forum for rebutting those contentions. Instead, the Secretary points this Court to his pending Emergency Motion to Stay. Dkt. Index # 8.²

REQUESTED RELIEF

Due to the rapidly approaching August 4, 2026, primary election, and that fact that county election officers began transmitting advanced mail ballots on July 15, 2026, comporting with S.B. 4, the Secretary respectfully requests this Court expedite its consideration of the Secretary’s Motion to Stay.

² Docket index numbers in this Motion reference the Court of Appeals’ docket.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on July 21, 2026, I authorized the electronic filing of the foregoing with the Clerk of the Appellate Courts using the eFlex filing system which will send notifications of such filing to the e-mail addresses on the electronic mail notice list.

By: /s/ Dwight Carswell

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