

**IN THE STATE COURT OF KANSAS
DISTRICT COURT OF SHAWNEE COUNTY**

LEAGUE OF WOMEN VOTERS OF KANSAS,
LOUD LIGHT, KANSAS APPLESEED
CENTER FOR LAW AND JUSTICE, INC.,
TOPEKA INDEPENDENT LIVING RESOURCE
CENTER,

Plaintiffs,

v.

SCOTT SCHWAB, in his official capacity as
Kansas Secretary of State, and KRIS KOBACH, in
his official capacity as Kansas Attorney General,

Defendants.

Original Action No. 2021-CV-000299

PLAINTIFFS' MOTION FOR ENTRY OF A CASE MANAGEMENT ORDER

Plaintiffs League of Women Voters of Kansas, Loud Light, Kansas Appleseed Center for Law and Justice, Inc., and Topeka Independent Living Resource Center respectfully move this Court to enter the Case Management Order attached as Exhibit 1 to this motion. Plaintiffs' counsel has attempted to confer with Defendants' counsel, who has taken the position that a case management order is premature and thus has declined to confer regarding a case management order and opposes this motion.

As this Court is aware, this case was originally filed shortly after the Signature Verification Requirement, K.S.A. 25-1124(h), and False Representation Provision, K.S.A. 25-2438(a)(2)–(3), were enacted into law in the Spring of 2021. After the Court denied Plaintiffs' motion for a temporary injunction as to the False Representation Provision and granted Defendants' motion to dismiss as to Plaintiffs' other challenges, Plaintiffs appealed. On May 31, 2024, the Supreme Court issued an opinion reversing the Court's order on Plaintiffs' motion for a preliminary injunction of

the False Representation Provision and reversing the order on the motion to dismiss in part, insofar as it relates to Plaintiffs' claims against the Signature Verification Requirement brought under the Kansas Constitution's guarantees of due process and equal protection. *League of Women Voters of Kansas v. Schwab*, 549 P.3d 363 (2024). The Court's mandate issued on July 17, 2024. Defendants subsequently moved to dismiss the Signature Verification Requirement claims (but not the False Representation Provision claims) and this Court entered an order allowing Defendants to file their Answer 21 days after the resolution of the motion to dismiss.

Plaintiffs recognize that this Court must balance this case against many others before it on its docket. Nevertheless, there is a great need to move this case forward and not allow for any further delays, particularly in light of the importance of the issues at stake and the fact that more than three years have now passed since the matter was first filed. The Supreme Court issued its mandate four months ago returning the case to this Court for resolution on the merits. Defendants have not sought a stay of discovery and none is appropriate. Not only is Defendants' challenge to Plaintiffs' standing to pursue their challenges to the Signature Verification Requirement inappropriate for the reasons set forth in Plaintiffs' opposition, Defendants have not challenged Plaintiffs' standing to pursue their claims against the False Representation Provision. And while the Court has issued a temporary injunction of the latter, Defendants have indicated their intention to continue to litigate Plaintiffs' claims related to that provision on the merits, as well.

Thus, justice requires that Plaintiffs be permitted to move ahead with discovery to ensure that the parties and the Court are in a position to have this matter decided at a trial in the coming year, before more consequential elections pass. The importance of the issues in this litigation are undisputed and cannot be understated. The challenged provisions have made significant changes to Kansas law, including by substantially revising the signature matching process for absentee

ballot envelopes and severely hampering third-party voter registration, education, and outreach efforts by broadly criminalizing any conduct that could give the impression that one is an election official.

Unless this litigation is quickly advanced and resolved—and the challenged provisions are construed upon a full record that addresses their practical impact on Kansas voters, advocates, and elections officials—they will continue to threaten core political speech and arbitrarily disenfranchise voters, undermining public faith in the electoral system. Likewise, unless discovery commences soon, there is a significant risk that there will not be sufficient time to create a full evidentiary record related to the challenged provisions and their respective harms and resolve this matter in time to provide clarity and guidance to Kansas voters and election officials in advance of future elections.

Plaintiffs therefore respectfully request that the Court enter the attached Case Management Order, which establishes a schedule intended to allow for resolution of this case (and any subsequent appeals) before the next major election cycle.

Respectfully submitted, this 4th day of December, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 4, 2024, 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 registered participants.

/s/ Jason A. Zavadil
Jason A. Zavadil

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**[PROPOSED] CASE MANAGEMENT
ORDER**

After consultation with the parties, the Court enters the following Case Management Order for *League of Women Voters of Kansas, et al. v. Scott Schwab, et al.*, 2021-CV-0299, currently pending before this Court.

1. The parties will exchange lists of proposed non-expert witnesses (“fact witnesses”). These lists of fact witnesses shall set contact information for each witness, as well as the subject matter, and a brief synopsis of the substance of the facts to which each witness is expected to testify. The parties’ initial lists of proposed fact witnesses shall be served by **Friday, January 17, 2025**. The parties shall supplement this list to add any additional witnesses identified in advance of trial and before the close of discovery and, in any case, by no later than **Friday, May 2, 2025**.

- a. Whether K.S.A. 25-1124(h) and its implementing rules and regulations (the “Signature Verification Requirement”) violates equal protection under Section 2 of the Kansas Constitution Bill of Rights
- b. Whether the Signature Verification Requirement violates due process under Section 18 of the Kansas Constitution Bill of Rights

- c. Whether K.S.A. 25-2438(a)(2)–(3) (the “Conduct of an Election Official” provision) violates free speech and associational rights under Section 11 of the Kansas Constitution Bill of Rights
- d. Whether the Conduct of an Election Official provision is void for vagueness under the Kansas Constitution
- e. Whether the Conduct of an Election Official provision is unconstitutionally overbroad under the Kansas Constitution

2. The parties will confer as to whether they may be able to agree to any stipulations.

They agree to exchange drafts of proposed stipulated facts by no later than **Friday, May 23, 2025**, and finalize the parties’ agreed-to stipulated facts before summary judgment by no later than **Monday, June 2, 2025**. The parties will submit these and any later-agreed to stipulated facts to the Court no later than **one week before trial**.

3. Alternative dispute resolution is not appropriate for this case.

4. The Plaintiffs shall provide their disclosures pertaining to expert witnesses required by K.S.A. 60-226(b)(6), DCR 3.211, and this Court’s standard interrogatories and requests for production no later than **Friday, April 11, 2025**. The Defendants will provide the same information pertaining to expert witnesses by **Friday, May 9, 2025**. For the avoidance of doubt, the parties shall disclose the following information regarding experts:

- a. A copy of the expert’s current and up-to-date CV setting forth the qualifications of the expert and identifying all published and unpublished writings of the expert pertaining to the expert’s opinions in the case. [DCR 3.211(3)]
- b. A written report signed by the expert that contains a complete statement of all opinions to be expressed and the bases and reasons therefore. If the expert’s opinions are based on calculations, and/or mathematic statistic, economic, or other assumptions, the expert’s report shall disclose in the report all calculations and assumptions the expert made or relied upon in forming opinions. The source of each assumption and/or the manner in which each assumption was derived shall be specifically explained. Any calculations shall be completely shown, except when done using a specific computer program, in which case the specific program must be identified and each input made by

the expert into the computer calculation shall be specifically set forth. [DCR 3.211(3), (4)]

- c. Identify and provide copies of all other data, writings or exhibits upon which the expert relies upon to support his or her opinions in the case.¹ [DCR 3.211 (3)]
 - d. The hourly rate the expert is being paid for their work in the case. [DCR 3.211(4)]
 - e. All billing statements or documents evidencing the amount of money billed and the amount of time the expert has spent providing services in the case prior to the disclosure. [DCR 3.211(4)]
 - f. A copy of each deposition given by each expert retained relating to the subject matter of this litigation. [Court's standard Requests for Production]
5. Discovery can commence starting on the day this case management order is signed.

This case is subject to the deposition-related limits set forth in DCR 3.201, except that depositions of party-designated experts shall be allowed beyond the four-depositions-per-party limit, and depositions of any non-party election officials shall be subject to a four-hour limit, rather than the two-hour limit ordinarily applicable to non-party depositions. The parties will work together to schedule depositions to be taken up until the close of discovery and need not schedule the depositions of the parties within 90 days of this scheduling order, to guard against having to call a party back for a deposition if more information is learned during the course of discovery that could be relevant to their deposition.

6. All discovery shall close on or before **Friday, May 30, 2025**.

7. The following procedure shall be used by the parties in the disclosure or discovery of electronically stored information, including the form or forms in which it is to be produced:

BATES NUMBERING: All documents are to be sequentially Bates numbered. Multi-page

¹ Published writing may be identified by citation and need not be physically produced. Copies of the expert's unpublished writings shall be timely furnished upon request.

documents must bear a sequential Bates number on every page. Bates numbers should be placed in the lower right corner of the pages. To the extent practicable, the Bates number must not obliterate, conceal, or interfere with any information from the source document. Confidentiality designations, if any, will be located on the bottom left of each page.

PRODUCTION FORMAT: Wherever practicable, documents that contain any color should be imaged and produced in a full-color PDF format with a corresponding load file with related searchable text, metadata, and bibliographic information. Wherever practicable, bitonal documents should be imaged and produced in a PDF format, with a corresponding load file containing related searchable text, metadata, and bibliographic information.

NATIVE FILES: If a native file type is not conducive to imaging because of file type (e.g., .xlsx), those files should be produced in their native format, along with a PDF “placeholder” indicating and assigning a Bates number, and the Bates number should be included in the file name to the native file.

PASSWORD PROTECTED DOCUMENTS: Wherever possible, passwords and encryption must be removed from electronic documents before production.

HIDDEN DATA: If a document contains track changes, redlines, comments, presentation notes, or hidden fields, such information must be viewable in the imaged document. If preserving such information in an imaged document is impossible, it must be produced in its native format.

UNITIZATION: Whenever practicable, each imaged PDF must be unitized by file (rather than page).

PARENT-CHILD RELATIONSHIPS: Parent-child or family relationships (i.e., the association between an attachment and its parent document) should be preserved to the extent they exist in the way the documents are maintained in the ordinary course of business. Parent emails and any

attachments should be produced as separate, sequential documents. Parent-child relationships must be preserved, all families must be provided in sequential order of the parent document followed by all child documents, and the accompanying load file must indicate and memorialize the “parent” and “child” relationship between such documents.

METADATA: Produced documents should be provided with Concordance-compatible image and data load files (i.e., .OPT and .DAT files) using standard Concordance delimiters. Concordance-compatible image and data load files (i.e., .OPT and .DAT files) should be provided in a self-identified “Data” folder. The database load file should contain, at minimum, the following fields: “BEGNO,” “ENDNO,” “BEGATTACH,” “ENDATTACH,” “CUSTODIAN,” and “CONFIDENTIALITY.” The load file should also contain any other fields and metadata stored in the ordinary course of business and otherwise available. To the extent available and otherwise practicable, the metadata and coding fields set forth in Appendix A (attached) that can be extracted from an electronic document shall be produced for that document within the load file. Audio-visual files should be produced in their native format and should be provided with metadata files that should contain, at minimum, the following fields: “BEGNO,” “ENDNO,” “BEGATTACH,” “ENDATTACH,” “CUSTODIAN,” and “CONFIDENTIALITY.”

DE-DUPLICATION: The producing Party will de-duplicate responsive ESI using MD5 or SHA-1 hash values at the parent level. “Near duplicate” documents shall be produced rather than removed. The producing Party need only produce a single copy of a particular ESI. However, (1) attachments to emails shall not be eliminated from their parent emails, and (2) hard-copy documents shall not be eliminated as duplicates of responsive ESI. In addition, each Party shall make reasonable efforts to remove duplicate data across custodians for each produced document and to produce searchable metadata in the “All Custodians” and “Duplicate File Path” fields for

each produced document sufficient for the receiving party to identify all custodians and file paths of a particular document that were eliminated from review or production through de-duplication.

COMPRESSED FILES: Compressed file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual files.

PRODUCTION METHOD: Documents shall be exchanged electronically through secure file transfer protocols (“sFTP”). The production media shall be labeled with the Volume Number along with the Bates Number range(s) of the materials, and where not practicable to do so, may be provided in an accompanying letter. If a Producing Party encrypts or “locks” the production, the Producing Party shall send, under separate cover, an explanation of how to decrypt the files.

8. Any dispositive motions and supporting memoranda shall be filed on or before **Monday, June 9, 2025**. The deadline to file responses is **Monday, June 30, 2025**. The deadline to file replies is **Monday, July 14, 2025**.

9. A final pretrial conference is scheduled for _____. The parties shall exchange and file pretrial questionnaires as required by DCR 3.201.

10. The bench trial is scheduled for five days and shall commence at _____.

11. Every pleading, motion, response or reply, shall be filed with the Clerk of the District Court and a copy shall be delivered to chambers pursuant to DCR 3.202(e).

12. The parties shall comply with the terms of the Kansas Code of Civil Procedure and the Third Judicial District Court Rules unless otherwise mutually agreed to in writing and/or excused by the Court.

IT IS SO ORDERED this [] day of December, 2024.

Hon. Teresa Watson
Shawnee County District Court Judge

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