IN THE SUPREME COURT OF KANSAS

GOVERNOR LAURA KELLY, in her official capacity, Petitioner, v. KANSAS ATTORNEY GENERAL KRIS KOBACH, in his official capacity, Respondent.	)	Case No.

ORIGINAL ACTION
PETITION IN QUO WARRANTO

Petitioner, Governor Laura Kelly, through her undersigned counsel, respectfully brings this action in quo warranto. As required by Rule 9.01(a) (2025 Kan. Sup. R. at 63-64), Governor Kelly concurrently files her Memorandum of Law in Support and Motion to Expedite the proceedings.

Parties

1. Laura Kelly is the Governor of Kansas.

2. Kris Kobach is the Attorney General of Kansas.

Jurisdiction

3. This is an original action in quo warranto pursuant to K.S.A. 60-1201, *et seq*.

4. The Kansas Constitution Art. 3, § 3 vests original jurisdiction for such actions in this court. K.S.A. 60-1202 also vests original jurisdiction in this court.

5. Because adequate relief is not available in the district courts, this court should exercise original jurisdiction. *See* Rule 9.01(b) (2025 Kan. Sup. R. at 64). Only this court can finally resolve the important constitutional dispute presented here.

The Dispute

6. On September 8, 2025, Kansas Attorney General Kobach filed a petition for mandamus and injunctive relief in Shawnee County District Court, SN-2025-CV-000695, seeking an order directing Governor Kelly and Secretary for the Department for Children and Families (DCF) Laura Howard to turn over sensitive state-maintained personal data to the federal government, specifically to the United States Department of Agriculture (USDA).

7. On September 29, the district court dismissed the Attorney General's suit as both unripe and inappropriate for mandamus relief. *See* Exhibit 1.

8. But the dispute between the Attorney General and the Governor over power to direct and control litigation on behalf of Kansas and Kansans is not over and will not be resolved without a ruling from this Court. Since the dismissal of his lawsuit, the Attorney General has refused the Governor's requests and direction to participate in or initiate litigation on behalf of Kansas. He recently made clear that his view is that he alone has the constitutional authority over all litigation involving Kansas and that he will refuse to pursue all requests the Governor has made and may make in the future. *See* Exhibits 2, 3.

9. The Attorney General also has actively sought to remove the Governor from litigation she has joined on behalf of Kansas. *See* Exhibit 4.

10. As explained in the memorandum of law supporting this petition, the Kansas Attorney General's position is wrong both as a matter of the Kansas Constitution and Kansas statutes. He does not have the sole authority with respect to all litigation involving Kansas. Thus, on multiple fronts the Attorney General is unlawfully interfering with and denying the Governor's authority to make litigation decisions for the benefit of Kansas. This is a dispute only this court can resolve.

11. Further, the extraordinary issues presented involve—at this time, but more situations are likely to arise—the privacy interests of tens of thousands of Kansans whose sensitive data the federal government is unlawfully seeking and the potential loss to Kansas of millions of dollars of federal grants to which Kansas is legally entitled. Given the stakes, speedy resolution of the legal disputes between the Governor and the Attorney General is necessary, justifying the motion to expedite filed simultaneously with this petition and the memorandum of law.

12. Respectfully, this court should grant review, expedite consideration of the dispute, and resolve the questions presented by ruling in the Governor's favor. The material facts are not in dispute and there is a compelling need for an expeditious and authoritative ruling on the important constitutional and statutory issues presented. *See* Rule 9.01(b) (2025 Kan. Sup. R. at 64).

Count I - Quo Warranto

(Unconstitutional and unlawful usurpation and intrusion)

There are two areas of active dispute between the Governor and the Attorney General. One involves whether the state must turn over sensitive, protected personal data of thousands of Kansans to the federal government in violation of federal law. (The SNAP [Supplemental Nutrition Assistance Program] data dispute). The other involves whether the federal government has unlawfully terminated certain federal grants to Kansas. (The Grants dispute). Both disputes necessarily raise questions about whether the Governor, the Attorney General, or perhaps both, has authority to direct and participate in litigation over these matters.

13. SNAP is designed to alleviate hunger and malnutrition by supplementing the food budgets of low-income households. 7 U.S.C. § 2011. The United States Department of Agriculture (USDA) administers the program through the Food Nutrition Service (FNS), which

distributes funds to participating states. 7 U.S.C. § 2013(a); 7 C.F.R. § 271.3; 7 C.F.R. § 271.4. State agencies must "keep such records as may be necessary to determine whether the program is being conducted in compliance with [the program requirements]." 7 U.S.C. § 2020(a)(3)(A).

The SNAP Dispute

14. "Use or disclosure of information obtained from SNAP applicant or recipient households" is limited to "[p]ersons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act of 2008 or regulations, [and] other Federal assistance programs." 7 C.F.R. § 272.1(c).

15. FNS may withhold SNAP funding only as allowed by law, subject to a state's right to administrative and judicial review. 7 U.S.C. § 2020(g). FNS regulations allow for the suspension and disallowance of a state's administrative expenses reimbursement, 7 C.F.R. § 276.4(b) and (c), when FNS determines that a state's administration of SNAP is "inefficient or ineffective," such as when a state "fails to comply with the SNAP requirements established by the Food and Nutrition Act of 2008, the regulations pursuant to the Act, or the FNS-approved State Plan of Operation." 7 C.F.R. § 276.4(a)(2).

16. Kansas regulations require DCF to inform each SNAP applicant and recipient that, unless prohibited by other local, state, or federal law, his or her "confidential information shall be released" only if the release is directly related to, among other things, "the administration of the public assistance program" or if the "release of confidential information concerning applicants and recipients [is] authorized by state or federal law." K.A.R. 30-4-40(b)(3)(A) and (E).

17. On March 20, 2025, President Trump issued Executive Order 14243, titled "Stopping Waste, Fraud, and Abuse by Eliminating Information Silos." 90 Fed. Reg. 13,681.

That order directed federal agencies to: "take all necessary steps, to the maximum extent consistent with law, to ensure the Federal Government has unfettered access to comprehensive data from all State programs that receive Federal funding, including, as appropriate, data generated by those programs but maintained in third-party databases." 90 Fed. Reg. 13,681, sec. 3(c).

18. On May 6, 2025, FNS sent a letter to all state agency SNAP directors, titled "FNS Data Sharing Guidance." The letter asked states for the following data (covering the period January 1, 2020, to the present): "1. Records sufficient to identify individuals as applicants for, or recipients of, SNAP benefits, including but not limited to personally identifiable information in the form of names, dates of birth, personal addresses used, and Social Security numbers. 2. Records sufficient to calculate the total dollar value of SNAP benefits received by participants over time, with the ability to filter benefits received by date ranges." FNS warned that "[f]ailure to . . . take the steps necessary to provide SNAP data to [FNS] may trigger noncompliance procedures codified at 7 USC 2020(g)." *See* Exhibit 5; *see also* Exhibits 6-8.

19. On June 23, 2025, FNS published a System of Records Notice (SORN) in the Federal Register announcing FNS's intention to create a new system of records known as the National Supplemental Nutrition Assistance Program Database. That notice said FNS would: "work with all State agencies and their designated vendors and/or contractors to transmit data on SNAP participants and transactions for the purposes listed below. This system is consistent with and effectuates multiple executive orders, including but not limited to [EO 14243 and EO 14218]." 90 Fed. Reg. 26,521.

20. The SORN states FNS would seek the following records from "53 State agencies and their designated vendors and/or contractors": records containing "personally identifying

information, including but not limited to SNAP participant name, Social Security Number (SSN), date of birth (DOB), residential address, Electronic Benefit Transaction (EBT) card number, and case record identifier number or other identifiers or data elements maintained by States, vendors, or contractors to identify SNAP recipients . . . [and] information derived from and associated with EBT transactions, including but not limited to records sufficient to calculate the total dollar value of SNAP benefits received by participants over time, such as applied amounts and benefit available dates." 90 Fed. Reg. 26,521.

21. The SORN also explained how the requested data could be used by the federal government, listing 11 different "routine uses." 90 Fed. Reg. 26,521. One such "routine use" is to use personal SNAP data that "indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order . . . to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order. . . ." 90 Fed. Reg. 26,521.

22. The SORN further indicated that USDA may disclose SNAP data to any other agency in the federal government: "To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency) that administers . . . a Federal benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by USDA to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs." 90 Fed. Reg. 26,521.

23. DCF Secretary Laura Howard replied in a letter on July 30. She acknowledged DCF's receipt of the FNS July letters and her awareness of the June 23, 2025, SORN. Her response also noted that several states, led by California, sued FNS in federal district court in the Northern District of California, alleging that FNS's requests for personal, sensitive data for general law enforcement purposes are unlawful and unconstitutional. *See California et al. v. U.S. Dep't of Agriculture et al.*, No. 3:25-6310 (N.D. Cal.) (*California v. USDA*). *See* Exhibit 9; *see also* Exhibits 10-12.

24. Secretary Howard stated that, in light of the important and substantial federal litigation in California, Kansas would "deny the USDA's demand for data at this time. Doing the opposite will place KDCF in a position of potential liability in the event a court finds that the USDA's demand violates federal law."

25. On August 20, 2025, FNS issued Kansas a formal warning letter stating that "[u]nless Department of Children and Families can demonstrate compliance by transmitting the SNAP enrollment data for Kansas, FNS will initiate a disallowance of Federal funding." *See* 7 C.F.R. § 276.4(d)(2). FNS said that, based on its calculations of Kansas' 2024 SNAP Quality Control payment error rate of 9.98%, it would disallow up to $10,439,386.49 in each calendar quarter in which Kansas remained noncompliant with the unlawful data request *See* Exhibit 13.

26. On September 9, 2025, the Attorney General, Respondent here, filed a mandamus action and request for temporary injunction, asking the state district court to order Governor Kelly and Secretary Howard to produce the requested data to the federal agency by the September 19, 2025, deadline. Governor Kelly and Secretary Howard filed a motion to dismiss on September 15, 2025.

27. On September 16, 2025, Attorney General Kobach filed a reply that both

recognized the timeline for Kansas to appeal an adverse federal agency action here, and emphatically declared he solely controls judicial review of any such federal action. In the reply, he stated: "Pursuant to 7 C.F.R. § 276.7, a state has 10 days from the date of the disallowance decision to file an appeal (§ 267.7(c)), and 30 days from that request to provide FNS with information and briefing concerning that appeal (§ 267.7(g)). FNS must then schedule and complete the hearing within 60 days, with a minimum of 10 days' notice of the hearing date and location (§ 267.7(h)). FNS must reach a decision within 30 days of a hearing, which takes effect 30 days from the date of decision (§ 267.7(i)). *Although Kansas could seek judicial review of an adverse decision, whether to do so falls within the Attorney General's exclusive discretion based on applicable law at issue. See K.S.A. § 75-702(a)*." (emphasis added). *See* Exhibit 14.

28. On September 18, 2025, the federal district court in *California v. USDA* granted a temporary restraining order prohibiting USDA from acting upon formal warning letters issued to the Plaintiff States regarding the refusal to provide the requested SNAP enrollment data, "including by disallowing SNAP funding." *California v. USDA*, Case No. 3:25-cv-6310, Doc. No. 83, p. 17-18. The federal district court ordered supplemental briefing and set a preliminary injunction hearing for October 9, 2025. After the hearing, the federal district court ordered a preliminary injunction enjoining USDA from disallowing SNAP funding, in part, based on USDA's SORN which states the agency intends on disclosing the data to "numerous entities that are not assistance programs, and for purposes other than the administration or enforcement of the programs references in § 2020(e)(8)(A)(ii)." *California v. USDA*, Case No. 3:25-cv-6310, Doc. No. 106, p. 18, 25. *See* Exhibit 12.

29. On Friday, September 19, 2025, Governor Kelly and Secretary Howard submitted a "corrective action proposal" by letter to FNS. In the letter, Governor Kelly and Secretary

Howard proposed to submit the data by February 2026, along with a "Data Sharing Agreement" consistent with state and federal law. Governor Kelly and Secretary Howard stated that the contents of the Data Sharing Agreement may be affected by the outcome of the California litigation. USDA responded the same day, stating: "As written with the proposed timeline, this corrective action plan is unacceptable." *See* Exhibits 15, 16.

30. The following day, on Saturday, September 20, 2025, FNS issued a notice of disallowance of SNAP funds under 7 C.F.R. § 276.4(e) based on DCF's failure to comply with the federal agency's demand for SNAP enrollment data. The notice said: "FNS is disallowing $10,439,386.49 for the Department for Children and Families' SNAP administrative expenses for each quarter in which it is out of compliance." *See* Exhibit 17.

31. On Monday, September 22, 2025, Governor Kelly and Secretary Howard appealed, seeking administrative review of the notice of disallowance and a hearing. Under federal law the timely filing of such an appeal automatically stays any action by the federal agency. 7 C.F.R. § 276.7(e). *See* Exhibit 18.

32. On September 29, 2025, the district court granted Governor Kelly and Secretary Howard's motion to dismiss. The court found the dispute was not ripe and that mandamus relief was not an appropriate remedy. *See* Exhibit 1.

The Grants Dispute

33. On April 8, 2025, Governor Kelly's Office reached out to Attorney General Kobach requesting a discussion on the possibility of the Attorney General's Office filing a motion to intervene to join Kansas in *State of Colorado, et al. v. U.S. Dep't of Health and Human Services, et al.*, No. 1:25-cv-00121 (D. R.I. filed April 1, 2025), a case which challenges the United States Department of Health and Human Services (HHS) abruptly and arbitrarily

terminating $11 billion of critical public health funding. HHS' grant and funding terminations affected two Kansas agencies, the Kansas Department for Aging and Disability Services (KDADS) and the Kansas Department of Health and Environment (KDHE). The terminations impacted millions in KDADS grants for housing, community behavioral health services, diversion funding, and prevention services and millions in KDHE grants for frontline health workers, vaccination and immunization programs, and disease detection, response, and prevention activities. *See* Exhibit 19.

34. The following day the Attorney General sent Governor Kelly a letter stating that he "retain[s] sole authority to control the legal position of the State." He further informed her that if she "request[s] me to appear for the State in the above-referenced case, I intend to advocate for the position that I believe to be legally correct, which is on the side of the Defendants." And the Attorney General threatened that if the Governor "attempt[s] to join or intervene in litigation in [her] own name and purport to represent that position of the State of Kansas contrary to the legal position as determined by the Attorney General, my office will take whatever measures are necessary to ensure that the State's legal position and legal interests are represented." *See* Exhibit 20.

35. On June 30, 2025, the Governor requested the Attorney General join a lawsuit with other Plaintiff States against various federal departments in *State of New Jersey, et al. v. U.S. Office of Management and Budget, et al.*, No. 1:25-cv-11816-IT (Mass.) (*NJ v. OMB*). The lawsuit alleged, among other things, that the Administration was unlawfully terminating federal grants under C.F.R. § 200.340(a)(4), which provides that federal agencies may terminate grants "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." *See* Exhibit 21.

36. The Attorney General responded that he would not comply with the Governor's request because she does not have the authority to direct the Attorney General to join ongoing multi-state litigation in federal court or initiate any litigation in federal court. *See* Exhibit 21.

37. The Attorney General also indicated he would not honor Governor Kelly's request because of ethical obligations, telling the Legislative Coordinating Council he declined to join the suit "because we believe that the lawsuit does not have merit. In other words, we believe that the plaintiff states will lose on their claim." Legislative Coordinating Council Meeting, August 14, 2025, https://www.youtube.com/live/GzSBVc98lpg?si=_nvHw6B9EtQR-pl4. Obviously, the lawyers who filed the suit believe they are behaving ethically.

38. Governor Kelly then joined *NJ v. OMB* in her official capacity to protect Kansas executive branch agencies, including, the Kansas Department of Agriculture (KDA) and the Kansas Department of Health and Environment (KDHE), both of which had grants terminated by the federal defendants in *NJ v. OMB* under 2 C.F.R. § 200.340(a)(4).

39. The Environmental Protection Agency terminated a $1,000.000.00 grant award to KDHE under 2 C.F.R. § 200.340(a)(4). The activities contemplated by the cancelled project fell within three primary categories: (1) health promotion and education; (2) community-driven strategies to address environmental justice and food equity; and (3) communications and evaluation. KDHE has other grants that are at risk of termination under the (a)(4) clause. *See* Exhibit 22.

40. USDA terminated a $2,643,574.00 grant award to KDA under 2 C.F.R. § 200.340(a)(4). The grant's purpose was to "support, maintain, and improve food and agricultural supply chain resiliency through the procurement of local, domestic, and unprocessed or minimally processed agriculture commodities." KDA has other grants that are at risk of

termination under the (a)(4) clause. *See* Exhibit 23.

41. Attorney General Kobach then filed an amicus curiae brief in support of the *NJ v. OMB* defendants, arguing federal grants to Kansas should be terminated. He stated that "[o]nly the Attorney General can sue on behalf of Kansas." He stated that his office: "has the requisite full autonomy to initiate and control the State's litigation in the Kansas appellate courts and federal courts, forums where it is critical for the State to speak in one unified voice." *See* Exhibit 4.

This Dispute and Efforts to Resolve It

42. On October 3, 2025, Governor Kelly, relying on her Kansas Constitutional authority as the supreme executive of the state, Kan. Const. art. I, § 3, and her statutory authority to direct the Attorney General, K.S.A. 75-108, directed the Attorney General to take three actions. *See* Exhibit 2.

43. First, she requested Attorney General Kobach to: "File for emergency injunctive relief against the United States Department of Agriculture (USDA) related to their unlawful request for the personal information of hundreds of thousands of Kansans and the disallowance of $10.4 million in federal funds. The state is interested in this matter and is likely to be successful in receiving relief as evidenced by a recent court decision finding it likely that USDA's request is "contrary to law." *State of California, et al. v. United States Department of Agriculture, et al.*, Case No. 3:25-cv-6310, Doc. No. 83, p. 12, 14 (N.D. Ca., filed July 28, 2025) ("Plaintiff States are likely to show the SNAP Act prohibits them from disclosing to USDA the information demanded in the formal warnings and, consequently, that they have shown a likelihood of success on their claim that USDA, in making such demand, acted in a manner contrary to law."). Further, not only does USDA's unlawful actions imperil over $10 million in

federal funds to the state needed for administration of the SNAP program, but it also risks compromising the personal information of hundreds of thousands of Kansans in violation of state and federal law."

44. Second, she requested Attorney General Kobach to: "Pursue legal action in the Court of Federal Claims against the United States Department of Health and Human Services, Robert F. Kennedy, Jr. in his official capacity as Secretary of Health and Human Services, and Human Services and the Substance Abuse and Mental Health Services Administration for breach of contract related to two unlawfully terminated grants we made your office aware of in April, resulting in a loss of $13-$14 million to the Kansas Department of Health and Environment and $6.1 million to Kansas Department for Aging and Disability Services. This is consistent with your statutory duties under K.S.A. 75-703 to prosecute any breach of contract in which the state is interested."

45. Third, she requested Attorney General Kobach to: "Assist all other executive branch agencies in identifying unlawfully terminated grants for possible litigation in the Court of Federal Claims."

46. Governor Kelly informed the Attorney General that if he would not act, she would "bring suit in my official capacity as Governor of the State of Kansas to protect Kansans."

47. On October 6, 2025, Attorney General Kobach responded, by declining Governor Kelly's request to pursue the litigation described in her October 3, 2025, letter. He stated that: "You, as governor, lack the legal authority to compel the attorney general to do what you command." In particular, Attorney General Kobach refused join the *California v. USDA* case where there has been a "favorable preliminary ruling" because he believed "that the case was forum shopped to a hand-picked jurisdiction in order to land an activist judge. The barebones

‘analysis’ in that ruling offers no reason to believe that it will survive appellate review.” He made a broad claim it is “meritless” to contend that “federal agencies have unlawfully terminated grants with the State of Kansas.” *See* Exhibit 3.

48. The October 6, 2025, letter also stated that any request from the Governor or the Legislature asking the Attorney General to appear in court on a matter, “the attorney general is free to reject, based on the legal merits of the claims asserted.” He proclaimed that he would “not entangle the State in meritless, costly litigation.”

49. His letter further proclaimed that “should [the Governor] proceed with another attempt to imprudently and unlawfully sue on behalf of the State, I will take all necessary actions in response to such a violation of Kansas law.”

50. The Attorney General has unlawfully interfered with, obstructed, and denied the Governor’s constitutional and statutory power to engage in legal actions or participate in legal proceedings to protect the interests of Kansans.

51. An action in quo warranto lies, therefore, against Respondent. *See* K.S.A. 60-1202(1) (providing that an action in quo warranto may be brought when "any person shall usurp, intrude into or unlawfully hold or exercise any public office, or shall claim any franchise within this state, or any office in any corporation created by authority of this state.").

RELIEF SOUGHT

Petitioner seeks the following relief:

52. An order granting expedition of this proceeding to provide a resolution of this dispute prior to Petitioner's SNAP administrative appeal becoming final, at which point the decision whether to seek judicial review of such decision must be made;

53. A declaration that the Governor has constitutional authority to sue, join, participate in, and litigate actions or proceedings on behalf of her office and the interests of Kansas and that she may retain counsel to pursue and assist in such litigation;

54. A declaration that the Governor has the statutory authority, under K.S.A. 75-108, to direct the Attorney General to sue, join, participate in, and litigate actions or proceedings in the interests of Kansas, except for solely frivolous actions;

55. A declaration that, if the Attorney General makes himself absent by declining or refusing the Governor's request, she may retain counsel under K.S.A. 75-108 to sue and litigate actions on behalf of Kansas;

56. Such other and further relief as this court deems just and proper.

RESPECTFULLY SUBMITTED

GOVERNOR LAURA KELLY

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CERTIFICATE OF SERVICE

I certify that on October 31, 2025, a true and correct copy of the above filing was served in accordance with Kansas Supreme Court Rule 9.01 and K.S.A. 60-205, on Respondent by e-mail with an additional courtesy copy to be made by personal service at the address of Respondent's state office listed below:

Attorney General Kris Kobach
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/s/ Justin H. Whitten
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Attorney for Petitioner
Governor Laura Kelly

Exhibit 1

ELECTRONICALLY FILED
2025 Sep 29 PM 4:40
CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: SN-2025-CV-000695
PII COMPLIANT

Court:	Shawnee County District Court
Case Number:	SN-2025-CV-000695
Case Title:	State of Kansas ex rel Kris W Kobach vs. Laura Howard Secretary of Department of Children and Families, et al
Type:	ORD: Order Originated by Judge MEMORANDUM DECISION AND ORDER

SO ORDERED,

/s/ Honorable Teresa L Watson, District Court Judge

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION THREE

STATE OF KANSAS EX REL
KRIS W. KOBACH,

Petitioner

Case No. SN-2025-CV-695

vs.

LAURA HOWARD SECRETARY
OF DEPARTMENT OF CHILDREN
AND FAMILIES, ET AL.,

Respondents

MEMORANDUM DECISION AND ORDER

The Supplemental Nutrition Assistance Program ("SNAP") is a federal program administered by the State of Kansas. Its purpose is to help Kansans buy food for themselves and their families. The Kansas Department of Children and Families ("DCF") is required to share information with the federal government about the program on a regular basis, and it routinely does so. But in this case, when the Food, Nutrition, and Consumer Services ("FNS") bureau of the United States Department of Agriculture ("USDA") directed DCF to provide certain personal data about Kansas SNAP participants, DCF declined.

Petitioner Kris Kobach, the attorney general of the State of Kansas, filed this mandamus action and a request for temporary injunction against Respondents Laura Howard, the secretary of DCF, and Laura Kelly, the governor of the State of Kansas. Petitioner asks this Court to order

Respondents to immediately produce the SNAP participant data requested by USDA. Respondents moved to dismiss the mandamus action and request for injunctive relief. The matter is fully briefed. The parties asked the Court to decide the motion to dismiss without argument to expedite a decision. After careful consideration of the submissions of the parties, the Court is ready to rule.

STATEMENT OF FACTS

Because this matter is before the Court on a motion to dismiss, the facts are taken from the allegations in the petition. The parties provided written updates to the Court following a status hearing. To the extent the updates contain pertinent and undisputed information, it will be noted below.

SNAP is designed to alleviate hunger and malnutrition by supplementing the food budgets of low-income households. 7 U.S.C. §2011. The program is administered by USDA through FNS, which distributes funds to participating states. 7 U.S.C. §2013(a); 7 C.F.R. §271.3 and 271.4.

Participating states must submit a plan of operation to FNS, under which they agree to administer enrollment of eligible households and individuals, and to the direct distribution of benefits. See 7 U.S.C. §2020(d) and (e). The state distributes benefits to eligible households through Electronic Benefit Transfer ("EBT") cards. 7 U.S.C. §2016.

Household eligibility is limited, with some exceptions, to those with a net income below the federal poverty line. 7 U.S.C. §2014(c). Individuals, with some exceptions, must meet certain work requirements. 7 U.S.C. §2015(d). No individual is eligible unless he or she is a United States citizen or a lawfully admitted permanent resident. 7 U.S.C. §2015(f).

The federal government reimburses states for SNAP payments in accordance with a payment error rate schedule. The error rate is the percentage of overpayments, underpayments, and payments issued to ineligible households relative to total payments. 7 U.S.C. §2025(c)(2). If a state’s error rate is less than six percent, the federal reimbursement rate is 100%. 7 U.S.C. §2013(a)(2)(b)(i). As the error rate increases, reimbursement rates decrease to as low as 85% for states with error rates greater than 10%. *Id*.

State agencies must “keep such records as may be necessary to determine whether the program is being conducted in compliance with [the program requirements].” 7 U.S.C. §2020(a)(3)(A). “Use or disclosure of information obtained from SNAP applicant or recipient households” is limited to “[p]ersons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act of 2008 or regulations, [and] other Federal assistance programs.” 7 C.F.R. §272.1(c); see also 7 U.S.C. §2020(e)(8)(A). States must “retain all Program records in an orderly fashion for audit and review purposes.” 7 C.F.R. §272.1(f); see also 7 U.S.C. §2020(a)(3)(B) (“All records… shall… be made available for inspection and audit by the Secretary”).

Once FNS has determined that “there is a failure by a State agency without good cause to comply” with the law, regulations, or an approved state plan, it must notify the state and allow the state to correct its failure. 7 U.S.C. §2020(g). If the state remains noncompliant, FNS may refer the matter to the United States attorney general and request that she seek injunctive relief in a federal district court. *Id.*

Whether or not FNS refers a state to the attorney general, FNS shall withhold SNAP funding as allowed by law, subject to a state’s right to administrative and judicial review under federal law. *Id.* FNS regulations allow for the suspension and disallowance of a state’s administrative expenses reimbursement, 7 C.F.R. §276.4(b) and (c), when FNS determines that a state’s administration of SNAP is “inefficient or ineffective,” such as when a state “fails to comply with the SNAP requirements [in statute], the regulations pursuant to the Act, or the FNS-approved State Plan of Operation." 7 C.F.R. §276.4(a)(2).

Pursuant to FNS regulations, a suspension or disallowance of funds is preceded by a written "advance notification that such action is being considered." 7 C.F.R. §276.4(d)(1). If a state fails to correct its deficient administration of the program, FNS "shall issue a formal warning." 7 C.F.R. §276.4(d)(2). The state then has 30 days to correct the deficiency. *Id.* FNS may proceed to suspension or disallowance of funds if a state "fails to respond to the deficiencies cited in a formal warning within 30 days" or if the state's response to the noted deficiencies is "unsatisfactory to FNS." 7 C.F.R. §276.4(e).

Under Kansas law, the secretary of DCF

> "shall develop state plans, as provided by the federal social security act, whereby the state cooperates with the federal government in its program of assisting the states financially in furnishing assistance and services to eligible individuals. The secretary shall undertake to cooperate with the federal government on any other federal program providing federal financial assistance and services in the field of social welfare not inconsistent with this act." K.S.A. 39-708c(a).

These programs include federally funded food assistance programs. K.S.A. 39-709(c). DCF regulations identify the food assistance program as SNAP. K.A.R. 30-4-34(d). DCF develops the state plan to participate in SNAP, subject to the eligibility requirements in state law. K.S.A. 39-708c(a); K.S.A. 39-709(c). The secretary may determine, through regulation, the general policies for Kansas's participation in SNAP. K.S.A. 39-708c(b).

Approximately 188,000 Kansas residents receive monthly SNAP benefits. FNS reimburses 90% of benefit costs based on Kansas' error rate of 9.98%. In fiscal year 2025, Kansas residents received approximately $402 million in SNAP benefits, averaging approximately $33.5 million per month. In June 2025, SNAP beneficiaries in Kansas received approximately $30.4 million. In July 2025, they received approximately $36.2 million.

FNS reimburses 50% of a state's administrative costs. 7 U.S.C. §2025(a). According to the most recent USDA data from fiscal year 2023, DCF spent $29.2 million on administrative costs for the state SNAP program, while the federal share was $27.8 million.

The secretary of DCF may "do and perform all things and acts that may be required by the federal laws or rules and regulations not inconsistent with the act." K.S.A. 39-708c(h). Furthermore, the secretary may "assist other departments, agencies and institutions of the state and federal government." K.S.A. 39-708c(i). The language in these subsections is permissive, not mandatory.

When DCF participates in a federally funded assistance program such as SNAP, the secretary "shall make any reports required by federal agencies." K.S.A. 39-708c(f). Further, "information concerning applicants for and recipients of assistance from the secretary shall be confidential and privileged" and may be disclosed to an "outside source" only under certain conditions. K.S.A. 39-709b(a). These conditions include when the disclosure is "directly connected to the administration of the secretary's program" or when it is "directly connected to an investigation… in connection with the administration of the secretary's program." K.S.A. 39-709b(a)(3)(B) and (C).

Kansas regulations require DCF to inform each SNAP applicant and recipient that, unless prohibited by other local, state, or federal law, his or her "confidential information shall be released" if the release is directly related to, among other things, "the administration of the public assistance program" or if the "release of confidential information concerning applicants and recipients [is] authorized by state or federal law." K.A.R. 30-4-40(b)(3)(A) and (E).

On February 19, 2025, President Donald J. Trump issued Executive Order 14218, "Ending Taxpayer Subsidization of Open Borders." 90 Fed. Reg. 10581. EO 14218 declared, among other things, that the policy of the United States was "to ensure, to the maximum extent permitted by law, that no taxpayer-funded benefits go to unqualified aliens." *Id*., sec. 2.

On March 20, 2025, President Trump issued Executive Order 14243, "Stopping Waste, Fraud, and Abuse by Eliminating Information Silos." 90 Fed. Reg. 13681. EO 14243 asked federal agency heads to:

> take all necessary steps, to the maximum extent consistent with law, to ensure the Federal Government has unfettered access to comprehensive data from all State programs that receive Federal funding, including, as appropriate, data generated by those programs but maintained in third-party databases. *Id*., sec. 3(c).

On May 6, 2025, FNS sent a letter to all state agency SNAP directors, titled "FNS Data Sharing Guidance." The letter asked states for the following data, covering the period beginning January 1, 2020, to the present:

> 1. Records sufficient to identify individuals as applicants for, or recipients of, SNAP benefits, including but not limited to personally identifiable information in the form of names, dates of birth, personal addresses used, and Social Security numbers.
>
> 2. Records sufficient to calculate the total dollar value of SNAP benefits received by participants over time, with the ability to filter benefits received by date ranges.

FNS warned that "[f]ailure to… take the steps necessary to provide SNAP data to [FNS] may trigger noncompliance procedures codified at 7 USC 2020(g)."

On June 23, 2025, FNS published a System of Records Notice (SORN) in the Federal Register. It announced FNS'S intention to create a new system of records known as the National Supplemental Nutrition Assistance Program Database. It said FNS would:

> work with all State agencies and their designated vendors and/or contractors to transmit data on SNAP participants and transactions for the purposes listed below. This system is consistent with and effectuates multiple executive orders, including but not limited to [EO 14243 and EO 14218]. "National Supplemental Nutrition Assistance Program (SNAP) Information Database.'' 90 Fed. Reg. 26521 (June 23, 2025).

The SORN states that FNS would seek the following records from "53 State agencies and their designated vendors and/or contractors":

> records containing personally identifying information, including but not limited to SNAP participant name, Social Security Number (SSN), date of birth (DOB), residential address, Electronic Benefit Transaction (EBT) card number, and case record identifier number or other identifiers or data elements maintained by States, vendors, or contractors to identify SNAP recipients . . . [and] information derived from and associated with EBT transactions, including but not limited to records sufficient to calculate the total dollar value of SNAP benefits received by participants over time, such as applied amounts and benefit available dates. *Id*. at 26522.

These categories of information will be collected for all "individuals who have received, are currently receiving, or have applied to receive SNAP benefits." *Id*. The stated purpose of the new database is to help USDA "ensure the integrity of Government programs, including by verifying SNAP recipient eligibility against federally maintained databases. This is consistent with USDA's statutory authority and will ensure Americans in need receive assistance, while at the same time safeguarding taxpayer dollars from abuse." *Id.* at 26521.

The SORN explained how the requested data may be used, listing 11 different "routine uses." *Id.* The SORN stated in Routine Use 8 that USDA may disclose data that:

> indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order . . . to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order. . . . *Id*. at 26522.

The SORN stated in Routine Use 11 that USDA may disclose data:

> To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency) that administers . . . a Federal benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by USDA to prevent, deter, discover, detect, investigate, examine,

> prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs. *Id.* at 26533.

On July 9, 2025, FNS sent state agency directors a second letter, requesting the same data described in the SORN. State agencies were required to submit the requested data to FNS by July 30, 2025. A third letter was sent on July 23, 2025, once again detailing the data that states were required to submit by July 30, 2025, and describing how states should submit it.

On July 25, 2025, FNS sent state agency directors a fourth letter, reminding them of the July 9 demand and the July 30 deadline to comply. This letter again warned that "[f]ailure to take the steps necessary to provide the relevant data to FNS may trigger noncompliance procedures codified in 7 U.S.C. 2020(g)."

Secretary Howard replied to FNS'S request in a one-page letter on July 30, 2025. In the reply, Secretary Howard acknowledged DCF's receipt of the July 9, July 23, and July 25 letters, and her awareness of the June 23, 2025, SORN. Secretary Howard's response noted that several states, led by California, sued FNS in federal district court in the Northern District of California, alleging that FNS'S requests are unlawful and unconstitutional. The lawsuit was filed on July 28, 2025, only two days before FNS'S July 30 deadline for submitting the requested data. According to Secretary Howard, based on the existence of the California litigation, Kansas is "forced to deny the USDA's demand for data at this time. Doing the opposite will place KDCF in a position of potential liability in the event a court finds that the USDA's demand violates federal law." The State of Kansas is not a party to the California litigation.

In addition, Secretary Howard noted that "[p]roducing the amount of data being requested will require significant time, manpower, and expense." Thus, according to Secretary Howard, FNS'S July 30 deadline "presents an unreasonable burden that simply cannot be met."

On August 12, 2025, FNS Deputy Under Secretary Patrick A. Penn responded to Secretary Howard's letter with a letter to Governor Kelly. FNS warned Kansas that it "could be subject to suspension or disallowance of Federal funding for State SNAP administrative expenses." *Id*. FNS said that, in order to determine that Kansas has made adequate progress towards meeting the data collection requirements, by August 13, 2025, FNS must receive a description of the actions Kansas will undertake to submit the requested data to FNS no later than close of business Friday, August 15, 2025.

On August 14, 2025, Secretary Howard responded to FNS. In this letter, Secretary Howard did not give any description of Kansas's efforts or plan to submit the requested data. Secretary Howard repeated her claim that complying with FNS'S request may "open KDCF to significant liability depending on the outcome of pending litigation [i.e. in Northern California district court]." Secretary Howard again said that FNS'S timeline was not feasible due to the "significant burden on KDCF and its contractors in both man hours and monetary cost." Therefore, "KDCF is unable to comply with the USDA FNS request at this time."

Finally, Secretary Howard requested that FNS "withdraw this threat" of suspension or disallowance of funds "[u]ntil this demand has been determined to be lawful by the pending litigation [in California district court]." And she represented that "KDCF is positioned to take steps to respond to a future clearly lawful request on a timeline that is feasible."

On August 20, 2025, FNS issued Kansas a formal warning that its funding would be suspended or disallowed, pursuant to 7 C.F.R. §276.4(d)(2). The letter said that "[u]nless Department of Children and Families can demonstrate compliance by transmitting the SNAP enrollment data for Kansas, FNS will initiate a disallowance of Federal funding." FNS said that, based on its calculations of Kansas' 2024 SNAP Quality Control payment error rate of 9.98%, it would disallow up to $10,439,386.49 in each calendar quarter in which Kansas remained noncompliant.

The letter said that, pursuant to FNS regulations, DCF has 30 days from its receipt of the formal warning, or until September 19, 2025, to demonstrate compliance. The letter said that "FNS stands ready to assist Department of Children and Families with resolving the deficiencies through continued technical assistance to ensure its data is transmitted in compliance with Federal requirements."

On September 9, 2025, Petitioner filed this mandamus action and request for temporary injunction, asking this Court to order Respondents to produce the requested data to the federal agency in order to meet the September 19, 2025, deadline. Respondents filed a motion to dismiss on September 15, 2025. The Court held a status hearing on September 18, 2025, to discuss the parties' views of the necessary timeline for decision on Respondents' motion to dismiss and Petitioner's request for a temporary injunction. The Court directed the parties to conclude expedited briefing of the motion to dismiss by September 26, 2025. The parties waived argument on the motion.

On September 19, 2025, the parties informed this Court of a decision by the federal district court in the Northern District of California in *State of California, et al., v. United States Dept. of Agriculture,* case no. 3:25-cv-06310-MMC. There, as to all Plaintiff States except one, the court granted the equivalent of a temporary restraining order prohibiting USDA from acting upon formal warning letters issued to the Plaintiff States regarding the refusal to provide the requested SNAP enrollment data, "including by disallowing SNAP funding." The federal district court ordered supplemental briefing and set a preliminary injunction hearing for October 9, 2025.

The parties further informed the Court that on September 19, 2025, Respondents here did not provide the data but instead submitted a "corrective action proposal" by letter to FNS. In the letter, Respondents proposed to submit the data by February 2026, along with a "Data Sharing Agreement" consistent with state and federal law. Respondents stated that the contents of the Data Sharing Agreement may be affected by the outcome of the California litigation. USDA responded the same day by letter, stating: "As written with the proposed timeline, this corrective action plan is unacceptable."

Finally, the parties informed the Court that on September 20, 2025, FNS issued a notice of disallowance of SNAP funds under 7 C.F.R. §276.4(e) based on DCF's failure to comply with the federal agency's demand for SNAP enrollment data. The notice said: "FNS is disallowing $10,439,386.49 for the Department of Children and Families' SNAP administrative expenses for each quarter in which it is out of compliance." On September 22, 2025, Respondents appealed, seeking administrative review of the notice of disallowance and a hearing. In the letter of appeal, Respondents noted that its timely filing automatically stayed any action by the federal agency under 7 C.F.R. §276.7(e).

CONCLUSIONS OF LAW

STANDARD FOR MOTIONS TO DISMISS.

This matter is before the Court on Respondent's motion to dismiss the petition for writ of mandamus and request for injunctive relief. "A district court deciding a motion to dismiss considers the well-pleaded factual allegations, resolving factual disputes in the plaintiff's favor, to determine whether the petition states any valid claim for relief." *Matter of Spangler,* 318 Kan. 697, 701, 547 P.3d 516 (2024) (internal quotation omitted). "Although the consideration of a motion to dismiss requires accepting the factual allegations contained in a petition as true, there is nothing which requires a court to treat the legal conclusions contained within the petition as also being true." *Duckworth v. City of Kansas City,* 243 Kan. 386, 391, 758 P.2d 201 (1988).

THE ARGUMENTS FOR DISMISSAL.

Respondents move to dismiss this action under K.S.A. 60-212(b)(1) for lack of subject matter jurisdiction because: 1) the claims are not ripe; and 2) Petitioner lacks standing to bring any claim attempting to enforce federal law. Respondents also move to dismiss under K.S.A. 60-212(b)(6) for failure to state a claim because: 1) there is no state statute imposing a clear legal duty upon Respondents to provide the requested information to USDA; 2) there is a substantial dispute about whether the intended use of the data by USDA is unconstitutional or violates federal law; 3) Respondents have no clear legal duty under the Kansas Constitution to provide the requested information to USDA, nor have they violated principles of separation of powers; and 4) Article 2, §24 of the Kansas Constitution does not give rise to a legal duty and does not apply to these facts.

RIPENESS AND STANDING.

Ripeness is a threshold issue. Ripeness "is an element of subject matter jurisdiction. The ripeness requirement is designed to prevent courts from becoming entangled in abstract disagreements. It prevents courts from being asked to decide ill-defined controversies over constitutional issues or hypothetical or abstract cases. To be ripe, an issue must have taken shape and must be concrete. A claim is ripe when no additional facts need to arise or be developed in the record." *Kansas Nat'l Educ. Ass'n v. State,* 305 Kan. 739, 748, 387 P.3d 795 (2017).

Standing is also a threshold issue because, like ripeness, it is an element of subject matter jurisdiction. *Id.* Respondents argue that Petitioner has no standing to enforce federal law through a state law mandamus action. Petitioner explains that he is pursuing relief in mandamus based on state law, but that the duties of Respondents are more fully informed by reference to federal law.

Petitioner denies that this action an attempt to enforce federal law. He recognizes that 7 U.S.C. §2020(g) allows the USDA to refer instances of a state agency's noncompliance with statutory requirements to the attorney general of the United States. But as Petitioner also points out, 7 U.S.C. §2020(g) does not necessarily prevent a state mandamus action based on the same events.

THE NATURE OF A MANDAMUS ACTION.

"Mandamus is a proceeding to compel some inferior court, tribunal, board, or some corporation or person to perform a specified duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of law." K.S.A. 60-801. It is a remedy to compel a public official to perform a clearly defined duty imposed by law and not involving the exercise of discretion. *State ex rel. Morrison v. Sebelius,* 285 Kan. 875, 907, 179 P.3d 366 (2008).

"Mandamus lies only to enforce a right in a clear-cut case." *Schwab v. Klapper,* 315 Kan. 150, 153, 505 P.3d 345 (2022) (internal quotations and citations omitted). Mandamus cannot be employed to enforce a right in substantial dispute. *Ambrosier v. Brownback,* 304 Kan. 907, 911, 375 P.3d 1007 (2016). "The only acts of public officials that the courts can control by mandamus are those strictly ministerial, meaning the public officer or agent is required to perform based upon a given set of facts, in a prescribed manner, in obedience to the mandate of legal authority, and without regard to his own judgment or opinion about the propriety or impropriety of the act to be performed." *State ex rel. Stephan v. Kansas Racing Com'n,* 246 Kan. 708, 717, 792 P.2d 971 (1990).

THE ALLEGED CLEARLY DEFINED DUTY.

Petitioner bases the claim for relief in mandamus by alleging the following sources of Respondents' clearly defined duty: 1) K.S.A. 39-708c(a) and (f); 2) 7 U.S.C. §2020(e)(8)(A)(i)-

(ii); 3) separation of powers; and 4) Article 2, §24 of the Kansas Constitution. Because ripeness is intertwined with the existence of a clear legal duty in this case, the two issues will be addressed together.

STATE AND FEDERAL STATUTES.

K.S.A. 39-708c sets out the powers and duties of the secretary of DCF, including to:

- "develop state plans, as provided under the federal social security act, whereby the state cooperates with the federal government in its program of assisting the states financially in furnishing assistance and services to eligible individuals." K.S.A. 39-708c(a);
- "determine the general policies relating to all forms of social welfare which are administered of supervised by the secretary and to adopt the rules and regulations therefor." K.S.A. 39-708c(b); and
- "establish an adequate system of financial records" and "make annual reports to the governor and shall make any reports required by federal agencies." K.S.A. 39-708c(f).

7 U.S.C. §2020(d) says a state agency desiring to participate in the SNAP program "shall submit for approval a plan of operation specifying the manner in which such program will be conducted within the State." 7 U.S.C. §2020(e)(8)(A)(i)-(ii) says the plan shall include "safeguards which prohibit the use or disclosure of information obtained from applicant households," with a number of exceptions, including:

> (A) the safeguards shall permit—
>
> (i) the disclosure of such information to persons directly connected with the administration or enforcement of the provisions of this chapter, regulations issued pursuant to this chapter, Federal assistance programs, or federally-assisted State programs; and
>
> (ii) the subsequent use of the information by persons described in clause (i) only for such administration or enforcement.

In essence, K.S.A. 39-708c requires the secretary of DCF to develop a state plan whereby the state cooperates with the federal government in its program and "shall make any reports required by federal agencies." Respondents dispute that the SNAP data request from FNS is a "report," but even if it is, a state plan shall include safeguards "which prohibit the use or disclosure of information obtained from applicant households," 7 U.S.C. §2020(e)(8), such as personal data. But there are exceptions to the safeguards, allowing disclosure to persons directly connected to administration or enforcement of SNAP or other federal assistance programs. 7 U.S.C. §2020(e)(8)(A)(i) and (ii).

K.S.A. 39-708c on its own does not dictate a specified or clearly defined legal duty on the part of Governor Kelly or Secretary Howard to comply, without exercise of judgment or discretion, to the FNS request for SNAP participant data. Relief in mandamus cannot be based on K.S.A. 39-708c alone.

Petitioner suggests that the K.S.A. 39-708c duties are further informed by the provisions of 7 U.S.C. §2020(e)(8), which allows for disclosure to certain persons. Respondents deny that 7 U.S.C. §2020(e)(8) articulates a clearly defined legal duty, and they point out that the constitutionality of the FNS request for SNAP participant data, notably in light of the SORN's Routine Uses 8 and 11, is at issue in the California litigation. The federal court in California found enough merit to the challenge to grant a temporary restraining order against USDA. This Court is not bound by that temporary order, and the merits of that question are not directly at issue on this motion to dismiss.

The bottom line here is that even K.S.A. 39-708c and 7 U.S.C. §2020(e)(8) read together do not define a duty that is "strictly ministerial." Reading the two together does not give rise to a requirement that Respondents perform in a prescribed manner without regard to the exercise of judgment. The provision of a multi-step administrative process involving FNS and a state agency prior to a disallowance, and the comprehensive administrative review available for the disallowance itself, suggest that the state agency has some discretion in deciding how to respond to the request for SNAP participant data – or at least gives rise to the possibility of a "substantial dispute" about how to respond. Mandamus cannot be used to compel action under such circumstances.

Even so, ripeness is a problem. Respondents argue that if 7 U.S.C. §2020(e)(8) contributes to the definition of their duty under state law, any argument for mandamus on that basis is not ripe. Respondents assert that because they filed an administrative appeal of the Notice of Disallowance, the Notice is not a final decision, and the threatened action cannot be taken against the State of Kansas because the decision is stayed pending appeal.

Federal law provides an administrative appeal process to challenge the Notice of Disallowance. 7 C.F.R. §276.7(a)(1). The state agency must file the appeal within 10 days of the date of delivery of the Notice of Disallowance. 7 C.F.R. §276.7(c). The state agency is then given an acknowledgement of the appeal and statement regarding whether it was timely filed and accepted for review. 7 C.F.R. §276.7(f). Appeals from disallowance of federal funds are heard by an appeals board whose members were not involved in the original decision. 7 C.F.R. §276.7(a)(2). The filing of a timely appeal and request for administrative review automatically stays the disallowance until the appeals board makes a final determination. 7 C.F.R. §276.7(e).

If the appeal is acknowledged as timely, the state agency has 30 days from the date it filed the appeal to submit information specified by the regulation to the appeals board. 7 C.F.R. §276.7(g). The appeals board may grant extensions of any deadline for good cause shown, except for the initial deadline to file an appeal. 7 C.F.R. §276.7(k). A state agency may request a hearing in addition to an administrative review of the record. 7 C.F.R. §276.7(a)(2). If a hearing is granted, the appeals board has up to 60 days from the date it received the state agency's required supplemental information to schedule and hold a hearing. 7 C.F.R. §276.7(a)(2). The appeals board convenes an evidentiary hearing on the record, but it is not bound by rules of civil procedure or the federal administrative procedures act. 7 C.F.R. §276.7(h)(1)-(3). The appeals board must make its determination within 30 days of the hearing, and the decision takes effect 30 days later. 7 C.F.R. §276.7(i)(1). The appeals board may affirm the disallowance, reverse it, or adjust any disallowed amount downward. 7 C.F.R. §276.7(i)(2).

A state agency may seek judicial review of the appeals board decision by filing suit in federal court within 30 days of the date of delivery of the appeals board decision. 7 C.F.R. §276.7(j). The appeals board decision remains in effect unless the state agency obtains a stay from the federal court, upon a showing of irreparable injury and likelihood of success on the merits. 7 C.F.R. §276.7(j).

On September 22, 2025, Respondents appealed the Notice of Disallowance dated September 20, 2025. This is within the 10-day period for appeal. Assuming the appeal is acknowledged as timely and accepted by the appeals board, the disallowance is automatically stayed pending a final decision of the appeals board. Under 7 C.F.R. §276.7, the minimum time for a final decision by the appeals board is at least four months from now, more if the appeals board extends any of the various deadlines. The appeals board may affirm the disallowance, reverse it, or adjust any disallowed amount downward. Respondents assert that the appeals board could reverse the disallowance. Or if not, Respondents could seek judicial review of the appeals board decision, obtain a stay of the disallowance from a federal court, and perhaps prevail on judicial review.

This Court concluded above that K.S.A. 39-708c and 7 U.S.C. §2020(e)(8) read together do not articulate a clear legal duty sufficient to support a remedy in mandamus. But even if it did, the final decision on the propriety of Respondent's actions under federal law, and the resulting disallowance decision, have yet to be determined through the federal administrative review process. This Court declines to order Respondents to provide the SNAP enrollment data to USDA before the federal agency's own appeals board determines whether it must be provided. Petitioner's request for a writ of mandamus, to the extent it requires a finding that Respondents have a clear legal duty under 7 U.S.C. §2020(e)(8), is not ripe.

SEPARATION OF POWERS.

Petitioner next points to separation of powers principles as part of Respondents' clearly defined duty in this situation. Petitioner asserts that Respondents' failure to provide the SNAP participant data is "tantamount to withdrawing from SNAP," which interferes with the legislative branch's decision to participate in the SNAP program. Petitioner frames the issue as follows: "The question for the Court is not whether the Constitution imposes a clear duty to cooperate with the federal government and supply requested data to FNS. It is whether the Constitution imposes a clear duty to not violate the separation of powers."

"The separation of powers doctrine is not expressly stated in either the United States or Kansas Constitutions." *State ex rel. Morrison v. Sebelius,* 285 Kan. 875, 882, 179 P.3d 366 (2008). Yet "the basic contours of the separation of powers doctrine are easily stated. Each of the three branches of our government—the legislative, judicial, and executive branches—is given the powers and functions appropriate to it." *Id.* at 883. Kansas law provides a four-factor analysis to determine whether one branch of government has intruded upon the powers of another. One of the factors is whether there has been a "significant interference" by one branch to another under the particular facts and circumstances of a case. This factor has its own four-factor analysis. *Id.* at 884. When the Court is presented with multiple layers of four-factor tests based on the particular facts and circumstances, it becomes apparent that whatever duty is at stake is not of the ministerial, non-discretionary variety.

Further, Respondents failed to provide the SNAP participant data by the September 19, 2025, deadline, but this is not "tantamount to withdrawing from SNAP." FNS issued a Notice of Disallowance. While this is significant and potentially impactful in terms of the loss of federal funds, FNS has not terminated the State of Kansas from participation in the SNAP program. Respondents have not withdrawn from the SNAP program. Rather, Respondents have availed themselves of an administrative appeal of the disallowance, which may include federal judicial review of the administrative decision.

This raises the issue of ripeness. Respondents' actions to this point have not resulted in termination from the SNAP program. While this may or may not occur in the future, it has not happened. The disallowance may yet be affirmed, reversed, or adjusted downward by the federal appeals board or a federal court. Respondents may yet reach some sort of agreement with FNS for disclosure of the data. Thus, "additional facts [would] need to arise or be developed in the record" before this Court could determine whether Respondents' actions have violated the separation of powers doctrine in the manner suggested by Petitioner.

ARTICLE 2, §24 OF THE KANSAS CONSTITUTION.

Finally, Petitioner invokes Article 2, §24 of the Kansas Constitution as part of Respondents' alleged violation of a clearly defined duty. It says: "No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law." Petitioner argues that USDA's disallowance of $10.4 million per quarter for DCF's noncompliance will require unappropriated money from the State General Fund to cover the shortfall.

Respondents have appealed the disallowance. It is stayed pending the "final determination" of the federal administrative appeal, with the possibility of obtaining an extension of the stay during judicial review. No money has yet been withheld from the State of Kansas. No money has been drawn from the state treasury in anticipation of the loss. There is no violation of Article 2, §24 on existing facts. There is a ripeness problem. This Court cannot predict the loss of funds, or an unauthorized appropriation to cover them. The Court cannot determine whether there will be a violation of Article 2, §24 at some point in the future, and cannot order Respondents to act to prevent a loss that may never occur.

OTHER ARGUMENTS/MOTIONS.

Given the conclusions above, there is no need to address other arguments made by the parties in their briefs. Further, Respondents' motion to stay the proceedings filed September 26, 2025, is denied as moot.

CONCLUSION

For the reasons set forth above, the Respondents' motion to dismiss is granted. The petition for mandamus and request for injunctive relief is dismissed.

This order is effective on the date and time shown on the electronic file stamp.

IT IS SO ORDERED.

HON. TERESA L. WATSON
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically providing notice to counsel of record.

/s Angela Cox
Administrative Assistant

Exhibit 2

STATE OF KANSAS

CAPITOL BUILDING, ROOM 241 SOUTH
TOPEKA, KS 66612

PHONE: (785) 296-3232
GOVERNOR.KANSAS.GOV

GOVERNOR LAURA KELLY

October 3, 2025

The Honorable Kris Kobach
Kansas Attorney General
120 SW 10th Ave #2
Topeka, KS 66612

Dear Attorney General Kris Kobach:

Pursuant to my authority vested by the Kansas Constitution as the supreme executive of the State of Kansas, K.S.A. 75-108, K.S.A. 75-702, and K.S.A. 75-703, I am directing you to act to protect the interest of Kansas as follows:

1) File for emergency injunctive relief against the United States Department of Agriculture (USDA) related to their unlawful request for the personal information of hundreds of thousands of Kansans and the disallowance of $10.4 million in federal funds. The state is interested in this matter and is likely to be successful in receiving relief as evidenced by a recent court decision finding it likely that USDA's request is "contrary to law." *State of California, et al. v. United States Department of Agriculture, et al.*, Case No. 3:25-cv-6310, Doc. No. 83, p. 12, 14 (N.D. Ca., filed July 28, 2025) ("Plaintiff States are likely to show the SNAP Act prohibits them from disclosing to USDA the information demanded in the formal warnings and, consequently, that they have shown a likelihood of success on their claim that USDA, in making such demand, acted in a manner contrary to law."). Further, not only does USDA's unlawful actions imperil over $10 million in federal funds to the state needed for administration of the SNAP program, but it also risks compromising the personal information of hundreds of thousands of Kansans in violation of state and federal law.

2) Pursue legal action in the Court of Federal Claims against the United States Department of Health and Human Services, Robert F. Kennedy, Jr. in his official capacity as Secretary of Health and Human Services, and Human Services and the Substance Abuse and Mental Health Services Administration for breach of contract related to unlawfully terminated grants we made your office aware of in April, resulting in a loss of $13-$14 million to the Kansas Department of Health and Environment and $6.1 million to Kansas Department for Aging and Disability Services. This is consistent with your statutory duties under K.S.A. 75-703 to prosecute any breach of contract in which the state is interested.

3) Assist all other executive branch agencies in identifying unlawfully terminated grants for possible litigation in the Court of Federal Claims.

Kansas cannot afford to lose congressionally-mandated federal funding because of unlawful federal action. You must act and fight against this federal government overreach. If you do not, then pursuant to my constitutional and statutory authority, I will bring suit in my official capacity as Governor of the State of Kansas to protect Kansans.

Respectfully,

Laura Kelly
Governor of Kansas

Exhibit 3

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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October 6, 2025

Via Email and U.S. Mail

The Honorable Laura Kelly
Governor of Kansas
Capitol Building, Room 241 South
Topeka, KS 66612

Re: October 3, 2025 Correspondence

Dear Governor Kelly:

I have received and reviewed your letter dated October 3, 2025. In it, you describe yourself as "the supreme executive officer" of Kansas and demand that I, as attorney general, file certain legal claims in federal courts.

You, as governor, lack the legal authority to compel the attorney general to do what you command. Kansas statutes and case law, cited herein, make this abundantly clear. Like the vast majority of states, Kansas has a separately elected governor and attorney general, both constitutional officers.[1] While the governor exercises certain executive functions, the governor does not control Kansas's legal affairs, including litigation in federal court. As Kansas's chief legal officer, I oversee and control the State's legal affairs.[2] My oversight includes the exclusive authority to litigate in federal courts on behalf of Kansas.[3]

Kansas law is unequivocal on this point. "[I]n all federal courts," the attorney general "shall ... control the state's prosecution or defense." K.S.A. §75-702. You refer to the same statute (without quoting its text) and seem to be under the misimpression that

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[1] Kan. Const. art. 1, § 1.

[2] *See Mem'l Hosp. Ass'n, Inc. v. Knutson*, 239 Kan. 663, 667 (1986); *State v. Finch*, 128 Kan. 665, 668 (1929).

[3] *See generally Br. of Amicus Curiae The State of Kansas, New Jersey v. U.S. Off. of Mgmt. and Budget*, No. 1:25-cv-11816-IT (D. Mass. Aug. 14, 2025); *see also* K.S.A. 75-702(a).

the governor may compel the attorney general to file any case in federal court. While it is true that the governor or either house of the legislature may direct the attorney general to appear in court in a matter, that provision only applies to "any other court," referring to state district courts. *Id.* This limitation to state district courts is further underscored by the text's statement that the attorney general "when so directed shall seek final resolution of such issue in the supreme court of the state of Kansas." *Id.* Thus, you cannot compel the attorney general to file anything in federal court.

Moreover, even if your power to make such requests extended to federal courts (which it does not), the Kansas Supreme Court has repeatedly concluded that, even in state district courts, such a request does not override my legal judgment.[4] As noted above, the attorney general "control[s]" the legal position taken by the State of Kansas. *Id.* Indeed, "If, ... the attorney general considered [an] action unmeritorious, he not only had the authority, but he also had a duty to move for dismissal."[5] "[T]he governor d[oes] not have the power to prevent the attorney general from pursuing the motion to dismiss."[6] Therefore, under Kansas law, all such requests are ones that the attorney general is free to reject, based on the legal merits of the claims asserted.

With respect to the two specific legal actions that you ask me to take, the attorneys in my office and I have reviewed them, and we find that they lack legal merit. Your first request is especially strange in light of your contradictory prior assertions publicly and recently in state court, when I sought to compel your compliance with state law directing you to produce program-related data that would have alleviated any question about the state receiving $10.4 million in federal SNAP funding.[7] A few weeks ago, your attorneys dismissed my efforts as a "manufactured emergency" motivated by a "fabricated sense of urgency."[8] Now, you demand that I seek "emergency injunctive relief" in the same matter.

If you had wanted to avoid Kansas losing $10.4 million in SNAP funding, you should have obeyed Kansas and federal law, as I urged you to do at the time. Had you done so, the USDA would not have disallowed the $10.4 million. Regardless, we have concluded that the USDA is fully within its legal authority to require states to produce the basic information that they have specified.

Although you cite a favorable preliminary ruling in a distant California case against the USDA as some indication that your requested litigation is worthwhile, it is apparent that the case was forum shopped to a hand-picked jurisdiction in order to

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[4] *State ex rel. Foster v. City of Kansas City*, 186 Kan. 190, 197 (Kan. 1960); *see also State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 887 (2008).
[5] *Foster,* 186 Kan. at 197,
[6] *Morrison*, 285 Kan. at 886-887.
[7] *State ex rel. Kobach v. Howard*, No. SN-2025-CV-000695 (Shawnee Cnty., Kan., Dist. Ct. Sept. 15, 2025).
[8] *Joint Mot. to Dismiss* at 5, *State ex rel. Kobach v. Howard.*

land an activist judge. The barebones "analysis" in the ruling offers no reason to believe that it will survive appellate review.

With respect to your second specific request, I do not find any merit in your contention that the relevant federal agencies have unlawfully terminated grants with the State of Kansas. Accordingly, the breach of contract claim that you suggest has no merit and likely would fail in court.

Pursuant to my constitutional, statutory, and common law authority as the attorney general of the State of Kansas, I will not entangle the State in meritless, costly litigation. Accordingly, I decline your requests to pursue the litigation described in your letter.

Finally, with respect to your closing threat to bring suit in your official capacity as governor, only the attorney general is authorized to engage the State in litigation, whether it be in state court or federal court. Should you proceed with another attempt to imprudently and unlawfully sue on behalf of the State, I will take all necessary actions in response to such a violation of Kansas law.

Sincerely,

Kris W. Kobach
Attorney General

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al., Plaintiffs, v. U.S. OFFICE OF MANAGEMENT AND BUDGET, et al., Defendants.	No. 1:25-cv-11816-IT

[PROPOSED]
BRIEF OF *AMICUS CURIAE*
THE STATE OF KANSAS
IN SUPPORT OF THE DEFENDANTS

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

The State of Kansas has a paramount interest in the outcome of this litigation, where Kansas Governor Laura Kelly ostensibly sued to protect the constitutional authority of her office. To be clear: The Kansas Constitution does not make the Governor's authority turn on access to federal grants. As Governor Kelly has admitted, and as is apparent from the complaint, Governor Kelly is not suing to narrowly defend her constitutional authority; she is suing "on behalf of Kansas."[1] Indeed, most of her co-plaintiffs are states, and she has made no meaningful effort to distinguish her injuries from their injuries, or her requested relief from their requested relief. Kansas law, however, vests the Attorney General—not the Governor—with the authority to direct the State's litigation in federal court, vindicate the State's legal interests, and otherwise sue on behalf of the State. Governor Kelly's involvement in this suit is an unlawful end-run around the Kansas Constitution, Kansas statutes, and Kansas Supreme Court precedent.

To the extent that Governor Kelly has any limited power to narrowly sue over injuries to her constitutional office, she has not invoked it in this suit. Nor could she. Rather than alleging any actual, particularized, and concrete injuries to her constitutional authority, she has invoked only grievances related to certain state agency activities. In other words, she has pled attenuated and indirect harms to her office that, at most, are alleged harms to the State itself. But she cannot represent the State in this Court. Governor Kelly's allegations are insufficient to support her unilateral suit, and they do not provide the standing necessary for this Court to exercise Article III jurisdiction over her claims. Accordingly, this Court should dismiss her claims.

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[1] Off. of the Kan. Governor, *Governor Kelly Joins Multistate Lawsuit Challenging Trump Administration's Illegal Attempts to Terminate Critical Federal Funding to States* (Aug. 1, 2025), https://www.governor.ks.gov/Home/Components/News/News/734/55 [https://perma.cc/9ZS8-N6N8].

ARGUMENT

The States are known as the laboratories of democracy for good reason. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). In contrast to the federal Constitution, which vests all executive power in the President, *see* U.S. Const. art. II, state constitutions may—and often do—divide up executive authority among separately elected or appointed officers. A leading example is the division of executive power between the general administrative function (the governor) and the legal function (the attorney general). *See, e.g.*, Jeffrey S. Sutton, *Who Decides: States as Laboratories of Constitutional Experimentation* 149 (2022) ("The approach to [the selection of] state attorneys general illustrates how removed the state experience is from the federal one.").

Like the vast majority of states, *see id.*, Kansas has a separately elected Governor and Attorney General, *see* Kan. Const. art. 1, § 1. While the Governor exercises certain executive functions, she does not control Kansas's legal affairs, including its litigation in federal court. Rather, that authority lies *solely* with the Attorney General, *see* Kan. Stat. Ann. § 75-702(a), who declined to entangle Kansas as a plaintiff in this litigation—which he believes will ultimately be unsuccessful. He neither joined the suit nor delegated the authority to do so to Governor Kelly. Governor Kelly's executive functions do not create an implied authority to sue in federal court. Indeed, litigation involving state officers and agencies in federal court is expressly placed under the Attorney General's purview by Kansas law. *Id.*

But even assuming that Governor Kelly had some limited authority to seek redress for injuries to her role as a constitutional officer, this suit would necessitate broad authorization that she lacks. *Cf. Off. of the People's Couns. for the District of Columbia v. D.C. Water & Sewer Auth.*, 313 A.3d 579, 587 (D.C. 2024) (contrasting an agency's "limited" litigation authority "with the D.C. Attorney General's plenary authority to litigate"). Rather than alleging specific and concrete injuries to her constitutional office, she has pled attenuated harms from state agencies losing (and continuing to lose) federal grants. Creative captioning aside, Governor Kelly is attempting to sue on behalf of the State; her public statements give away the game. This reality is cemented through the face of the complaint, where her alleged injuries are not specific to her office but instead are materially the same as those asserted by her state co-plaintiffs.

Because Governor Kelly has not alleged sufficient injuries to pursue this action, she lacks standing and is not entitled to any relief.

I. Only the Attorney General can sue on behalf of Kansas.

Under Kansas law, "the Attorney General is the chief law officer of the state." *State v. Finch*, 280 P. 910, 911 (Kan. 1929); *see also State ex rel. Miller v. Rohleder*, 490 P.2d 374, 375 (Kan. 1971) (recognizing that "[t]he Attorney General, a constitutional officer, is the chief law enforcement officer of the state" (citation omitted)). And "unless restricted or modified by statute," his "powers are as broad as the common law," where "the attorney general was entrusted with the management of all legal affairs." *Kobach v. U.S. Election Assistance Comm'n*, No. 13-CV-4095-EFM-TJJ, 2014 WL 494801, at *2 (D. Kan. Feb. 6, 2014); *cf. Knight v. Kansas, Bd. of Regents, Univ. of Kan. Med. Ctr.*, No. CIV. A. 89-2392-0, 1990 WL 154206, at *2 (D. Kan. Sept. 6, 1990) (recognizing the Attorney General's role in coordinating and supervising the State's legal defense).

The Kansas Legislature has codified the Attorney General's broad authority to control the State's legal affairs, providing that he

> shall appear for the state, and prosecute and defend any and all actions and proceedings, civil or criminal, in the Kansas supreme court, the Kansas court of appeals *and in all federal courts*, in which the state shall be interested or a party, and shall, when so appearing, control the state's prosecution or defense.

Kan. Stat. Ann. § 75-702(a) (emphasis added). The Attorney General thus has the requisite full autonomy to initiate and control the State's litigation in the Kansas appellate courts and federal courts, forums where it is critical for the State to speak in one unified voice. In the Kansas appellate courts, the potential for binding precedent necessitates the Attorney General's oversight; in federal courts, the State is one entity with one advocate. *See Mountain States Legal Found. v. Costle*, 630 F.2d 754, 771 (10th Cir. 1980) (recognizing the "general rule" that "the state attorney general . . . alone has the right to represent the state as to litigation involving a subject matter of statewide interest"); *cf. Nash Cnty. Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484, 496 (4th Cir. 1981) (recognizing value in a state litigating through one advocate).

To be sure, the Kansas Legislature has permitted itself and the Governor to have some role in the State's legal affairs:

> The attorney general shall *also*, when required by the governor or either branch of the legislature, appear for the state and prosecute or defend, in any *other court* or before any officer, in any cause or matter, civil or criminal, in which this state may be a party or interested or when the constitutionality of any law of this state is at issue and when so directed shall seek final resolution of such issue in the supreme court of the state of Kansas.

Kan. Stat. Ann. § 75-702(b) (emphases added). Reading subsections (a) and (b) together, the Attorney General has the absolute authority over the State's litigation in the Kansas appellate courts and federal courts.[2] *See United States v. Winczuk*, 67 F.4th 11, 17 (1st Cir. 2023) ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" (quoting *King v. Burwell*, 576 U.S. 473, 492 (2015)). Because state agencies and officers who act in their official capacities are part of the State, their federal litigation falls under the Attorney General's

[2] Indeed, before 2023, subsections (a) and (b) of Kan. Stat. Ann. § 75-702 were a single paragraph, further emphasizing that the reference to "any other court" in what is now subsection (b) does not extend to federal courts. *See* 2023 Kan. Sess. Laws ch. 94, § 7.

direction. *Cf. Hafer v. Melo*, 502 U.S. 21, 25 (1991) ("Suits against state officials in their official capacity . . . should be treated as suits against the State."); *Copeland v. Robinson*, 970 P.2d 69, 74 (Kan. Ct. App. 1998) (recognizing that "[o]fficial capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent" and that serving the Attorney General is appropriate means for suing Kansas executive officers); *Knight*, 1990 WL 154206, at *2 (recognizing the Attorney General's legal oversight of state agencies).

The Governor's and the Legislature's narrow role in requesting the Attorney General to act is limited to "other" forums—namely, state trial courts, where the State principally litigates through a network of district and county attorneys. The Legislature wanted to ensure "the authority of the government [was] felt, through its chief law officer, in every part of its territory" in case "local authorities" (*i.e.*, district and county attorneys) were "indifferent, incapable, or even antagonistic" when it came to protecting and advancing the public interest. *State v. Bowles*, 79 P. 726, 728 (Kan. 1905). In other words, this provision helps ensure the State may involve itself in litigation if local authorities cannot or will not vindicate the State's interest. But it does not authorize the Governor to initiate or join federal litigation on behalf of the State.

And even when the Governor or the Legislature tries to direct the Attorney General to litigate in state trial court, the Attorney General *still has the final say*. In previously considering a disagreement between the Attorney General and the Governor over litigation, the Kansas Supreme Court affirmed that because the Attorney General has a unique role as both a constitutional officer *and* as an officer of the court, the Attorney General need not (indeed, cannot) advance litigation he believes is "unmeritorious," even if the Governor disagrees. *State ex rel. Foster v. City of Kansas City*, 350 P.2d 37, 42 (Kan. 1960); *see also State ex rel. Morrison v. Sebelius*, 179 P.3d 366, 377 (Kan. 2008) (affirming that "the legislature, like the governor, lacks constitutional authority to intrude into the attorney general's duties as an officer of the court").

Thus, the Governor's ability to request the Attorney General to litigate is limited to state trial courts. And even in that context, Kansas law does not require the Attorney General to indiscriminately follow legal directives from the Governor. Nor does Kansas law give the Governor carte blanche to sue after the Attorney General has declined her request to do so. There is no "exhaustion of remedies" whereby the Governor may sue if the Attorney General does not. And although the Attorney General may, in the appropriate case, delegate the authority to sue on behalf of the State in federal court, he has not done so for this suit, and any delegation cannot be implied. *See Kobach*, 2014 WL 494801, at *2–3 (finding a letter from the Attorney General was "sufficient" to authorize the Secretary of State to sue on behalf of the State in federal court).

Kansas law and precedent vest the Attorney General with exclusive "authority to manage all legal affairs of the State of Kansas"—both in and out of federal court. *See id.* at *3. And this includes the authority to direct the federal litigation of state agencies and officers, like the Governor.

II. Because Governor Kelly is trying to sue on behalf of Kansas, she lacks standing.

In joining this suit, Governor Kelly seeks to usurp the role of the Attorney General by suing on behalf of the State. Cognizant of the structural limitations imposed on her office, she mischaracterizes a dispute over grants as an injury to her constitutional authority to "enforce[] the laws of [Kansas]." Kan. Const. art. 1, § 3; Dkt. 64, ¶ 26. As support, she refers to instances where certain federal grants have been, or could be, terminated for the Kansas Department of Agriculture, Dkt. 64, ¶¶ 118, 169, and the Kansas Department of Health and Environment, *id.*, ¶¶ 159, 179, 190, 225, 229, 230. And she notes a couple pending federal grant applications from the

State. *Id.*, ¶ 234. Even assuming that a constitutional injury to her office *could* entitle her to sue in her official capacity as distinct from the State itself, Governor Kelly has not alleged a sufficient injury in this suit. Rather, she has alleged general harms to state agencies, effectively (and improperly) seeking to represent the State in this Court.

To come within this Court's jurisdiction, Governor Kelly must "clearly . . . allege facts demonstrating that [s]he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Renne v. Geary*, 501 U.S. 312, 316 (1991) (quotation marks omitted); *see also* U.S. Const. art. III. She "must have standing to bring each and every claim that she asserts." *Katz v. Pershing, LLC*, 672 F.3d 64, 71 (1st Cir. 2012). Accordingly, Governor Kelly must demonstrate a concrete, particularized, and direct injury to the only thing she has sought to vindicate: her constitutional authority. *See City of Bangor v. Citizens Commc'ns Co.*, 532 F.3d 70, 92 (1st Cir. 2008). But she has not; instead, she has only alleged injuries to the State that are insufficient for her to maintain her claims.[3]

To start, the constitutional authority Governor Kelly invokes—enforcing Kansas's laws—is not contingent on federal grants. The Kansas Constitution does not make receipt of temporary disbursements of money from federal agencies an integral component of the State's governance.[4] Tellingly, Governor Kelly cites no Kansas constitutional provisions or statutes that have been, are, or will be rendered wholly unenforceable due to the cancellation of federal

[3] The Attorney General expects that the defendants will challenge this Court's subject-matter jurisdiction. But if the defendants advance other arguments, this Court may—and should—consider Governor Kelly's standing as a matter of its Article III jurisdiction, which this Court is "independently obligated" to consider "regardless of whether the parties raise the issue." *See Weaver's Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council*, 589 F.3d 458, 467 (1st Cir. 2009) (considering standing argument raised by Massachusetts in *amicus* brief); *see also Orion Wine Imports, LLC v. Applesmith*, 440 F. Supp. 3d 1139, 1146 (E.D. Cal. 2020) ("A court may consider an issue raised by an amicus *sua sponte* if it touches on fundamental issues of the court's jurisdiction.").

[4] The Kansas Constitution expressly references federal funds only in the context of internal improvements, providing that the State "*may* expend funds received from the federal government for any public purpose in accordance with the federal law authorizing the same." Kan. Const. art. 11, § 9 (emphasis added).

grants. And without any such citation, she has facially failed to plead an injury to her constitutional office. There is no indication that she cannot enforce state law without relief from this Court.

Certainly, the Governor oversees state executive agencies such as the departments of agriculture and health and environment, *see* Kan. Const. art. 1, § 6, and the termination (like the expiration) of federal grants may disrupt or alter the work of these agencies. But this disruption does not (and cannot) rise to the level of an injury to the Governor's constitutional authority. Otherwise, the Governor could sue whenever an agency under her purview is allegedly wronged by the federal government or by anyone else, an outcome that infringes upon the Attorney General's constitutional and statutory authority to direct the State's legal affairs in federal court. *See* Kan. Stat. Ann. § 75-702(a). Similarly, she could "delegate" her authority to sue to the heads of executive agencies, allowing unelected agency leaders to wholly undermine the Attorney General. *See id.*

Governor Kelly has alleged injuries to the general operation of state agencies, *i.e.*, the State of Kansas. She attempts to represent the State under the guise of representing herself. Indeed, she has acknowledged as much, candidly and publicly stating that she "joined this lawsuit on behalf of Kansas."[5] Her confession bolsters a fact apparent on the face of the complaint: that Governor Kelly is trying to sue on behalf of Kansas, not herself or her office. Erasing any doubts, Governor Kelly did not even attempt to materially distinguish her injuries from those asserted by her state co-plaintiffs who are represented by state attorneys general. And

[5] Off. of the Kan. Governor, *supra*; *see also, e.g.*, Brayden Day, *Gov. Kelly Speaks on Decision to Sue President Trump*, KSNT (Aug. 7, 2025, 10:52 A.M.), https://www.ksnt.com/capitol-bureau/gov-kelly-speaks-on-decision-to-sue-president-trump/ [https://perma.cc/3LHY-BM9D] ("I . . . used my constitutional power to represent the state, and that's what I'm doing."); *Piper v. Talbots, Inc.*, 507 F. Supp. 3d 339, 343 (D. Mass. 2020) (recognizing that this Court may judicially notice facts whose accuracy is not reasonably subject to dispute and may consider them at the motion-to-dismiss stage).

she requests the identical relief, in her capacity as Governor, that the properly-represented state plaintiffs request.

Governor Kelly cannot have her cake and eat it too. Either (1) she is suing only in her role as a constitutional officer, in which case she has not pled sufficient injuries to her constitutional authority, or (2) she is attempting to sue on behalf of the State, in which case any alleged injuries are neither to her nor hers to pursue. Both roads lead to the same conclusion: she lacks the ability to bring the State of Kansas into this litigation.

Governor Kelly's asserted injuries are really alleged harms to state agencies, not direct, concrete, and particularized harms to her constitutional authority. She has no constitutional or statutory power to pursue this suit on behalf of the State of Kansas and its agencies. And the lack of any injury to her constitutional authority—the only capacity in which she has sued and the only thing she might possibly be able to vindicate—is fatal to her standing.

CONCLUSION

For the foregoing reasons, this Court should dismiss Governor Kelly's claims.

Dated: August 14, 2025

Respectfully submitted,

KRIS W. KOBACH
Attorney General of Kansas

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* *Pro Hac Vice application forthcoming*

Attorneys for the State of Kansas

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record who have entered an appearance.

/s/ Nathaniel M. Lindzen
Nathaniel M. Lindzen

Exhibit 5

United States Department of Agriculture
Washington, D.C. 20250
May 6, 2025

Dear State Agency Directors,

On March 20, 2025, President Trump issued Executive Order 14243, *Stopping Waste, Fraud, and Abuse by Eliminating Information Silos*. Among myriad important directives, this Executive Order required agency heads to "take all necessary steps, to the maximum extent consistent with law, to ensure the Federal Government has unfettered access to comprehensive data from all State programs that receive Federal funding, including, as appropriate, data generated by those programs but maintained in third-party databases." The Department of Agriculture (USDA) is committed to effectuating this Executive Order with respect to all programs in its purview.

The Food and Nutrition Service (FNS) at USDA plays a key role in providing nutrition services to Americans in need through the Supplemental Nutrition Assistance Program (SNAP or the Program). SNAP, which is Federally funded, is administered by the States, districts, and territories through partnerships with FNS and several payment processors.

This distributed administration takes advantage of our federal system to enable States to meet the needs of their residents. However, as explained in the President's Executive Order, USDA must retain "unfettered access to comprehensive data" from federally funded programs like SNAP even if such data is "maintained in third-party databases." This is the only way to eliminate "bureaucratic duplication and inefficiency" and enhance "the Government's ability to detect overpayments and fraud."

At present, each State, district, territory, and payment processor is a SNAP information silo. These various entities maintain discrete collections of SNAP application, enrollment, recipient, and transaction data, each of which is necessary in ensuring the integrity of the Program. Thus, pursuant to the President's Executive Order and to confirm that SNAP is being administered appropriately and lawfully, USDA and FNS are working to eliminate these information silos.

7 U.S.C. 2020(a)(3) and (e)(8)(A) and 7 C.F.R. 272.1(c)(1) and (e) authorize USDA and FNS to obtain SNAP data from State agencies and, by extension, their contractors. FNS is therefore working with several SNAP payment processors to consolidate SNAP data. If they have not yet done so, your processors may reach out to you to provide notice of this partnership and data sharing.

FNS will use the data it receives from processors to ensure Program integrity, including by verifying the eligibility of benefit recipients. This is consistent with FNS's statutory authority and the President's Executive Order and will ensure Americans in need receive assistance, while at the same time safeguarding taxpayer dollars from abuse. Upon completion of its analysis, and to the extent necessary, FNS will follow up with State agencies regarding next steps.

Additionally, pursuant to, among other authorities, the President's Executive Order, 5 U.S.C. 553(a)(2), 7 U.S.C. 2020(a)(3), and 7 C.F.R. 272.1(e), USDA is taking steps to require all States to work through their processors to submit at least the following data to FNS, as applicable:

1. Records sufficient to identify individuals as applicants for, or recipients of, SNAP benefits, including but not limited to personally identifiable information in the form of names, dates of birth, personal addresses used, and Social Security numbers.
2. Records sufficient to calculate the total dollar value of SNAP benefits received by participants over time, with the ability to filter benefits received by date ranges.

Requested data will cover the period beginning January 1, 2020, through present. Please contact me at gina.brand@usda.gov with any questions related to this data sharing request.

Failure to grant processor authorizations or to take the steps necessary to provide SNAP data to FNS may trigger noncompliance procedures codified at 7 U.S.C. 2020(g).

Thank you for your continued work to help address the needs of vulnerable Americans and safeguard taxpayer dollars.

Sincerely,

Digitally signed by
GINA BRAND
Date: 2025.05.06
15:53:29 -04'00'

Gina Brand
Senior Policy Advisor for Integrity
United States Department of Agriculture
Food, Nutrition, and Consumer Services

Exhibit 6

Secretary Brooke L. Rollins

July 9, 2025

Dear SNAP State Agencies,

On March 20, 2025, President Trump issued Executive Order 14243, Stopping Waste, Fraud, and Abuse by Eliminating Information Silos. This Executive Order required agency heads to "take all necessary steps, to the maximum extent consistent with law, to ensure the Federal Government has unfettered access to comprehensive data from all state programs that receive federal funding, including, as appropriate, data generated by those programs but maintained in third-party databases." The Department of Agriculture (USDA) is committed to effectuating this Executive Order with respect to all programs in its purview.

The Food and Nutrition Service (FNS) at USDA works in partnership with State agencies to provide nutrition assistance to Americans in need through the Supplemental Nutrition Assistance Program (SNAP). It is imperative that USDA eliminates bureaucratic duplication and inefficiency and enhances the Government's ability not only to have point-in-time information but also to detect overpayments and fraud. As noted in the May 6, 2025, announcement of the Department's plan to request these data from EBT processors, USDA is committed to ensuring appropriate and lawful participation in SNAP.

On June 23, 2025, pursuant to the provisions of the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A-108, USDA published a notice in the Federal Register that the department proposes to create a new system of records (SOR) entitled USDA/FNS-15, "National Supplemental Nutrition Assistance Program (SNAP) Information Database." This system is owned, administered, and secured by FNS, and the system's primary purpose is to strengthen SNAP and government program integrity.

In accordance with 5 USC 552a(e)(4) and (11), this system of records notice becomes effective upon publication in the Federal Register, except for the routine uses, which will become effective on July 23, 2025. To ensure efficient implementation of this system, and to ensure USDA has a complete and accurate database, we are requiring collection of SNAP data from EBT processors or State agencies beginning on July 24, 2025, with submissions to USDA no later than the close of business on July 30, 2025. The required data are listed in the notice section, "Categories of Records in the System."

Thank you for your continued work to help address the needs of vulnerable Americans and safeguard taxpayer dollars. If you or your staff have any questions, please have your staff contact the FNS Governmental Affairs Team at fnsgovaffairs@usda.gov.

Sincerely,

Brooke Rollins

Brooke L. Rollins
Secretary
U.S. Department of Agriculture

Exhibit 7

United States Department of Agriculture
Washington, D.C. 20250
July 23, 2025

Dear State agency Directors,

On May 6, 2025, State agencies were advised of the United States Department of Agriculture's (USDA) intent to implement President Trump's March 20, 2025, Executive Order 14243, *Stopping Waste, Fraud, and Abuse by Eliminating Information Silos* through State data sharing to the Food and Nutrition Service (FNS). In the May 6, 2025, memo, States were advised that the USDA/FNS was working with Supplemental Nutrition Assistance Program (SNAP) payment processors to assist with data collection. As requested by State agencies, States are welcome to determine the most appropriate and feasible method to share the requested data with FNS. State agencies can work through their payment processor, a vendor of their own choosing, or with their State Information Technology team.

Data Elements

The requested data elements are for individuals who have received, are currently receiving, or have applied to receive SNAP benefits from January 1, 2020, through present date. Requested data elements shall include records sufficient to identify individuals as applicants for, or recipients of, SNAP benefits, including but not limited to all household group members names, dates of birth, social security numbers, residential and mailing addresses used or provided, as well as all data records used to determine eligibility or ineligibility. It is understood that these data records will vary household to household, and may include earned and unearned income, absent parent(s), and other data used in the determination process. Please do not include supporting documents or case comments.

Additionally, transactional records from each household are also requested, and must be sufficient to calculate the total dollar value of SNAP received by recipients over time, with the ability to filter benefits received by date ranges, as well as SNAP usage and retailer data.

Data Transmission

Each State agency shall transmit data to FNS via the platform called Box. Once you identify the individual who will be responsible for transmitting the data for your State agency, please send their name, title, and email address to SNAPDatabase@usda.gov. The State agency identified contact will then receive an email for account creation and access for data transmission.

Box is a secure platform which employs various security measures, including encryption, access controls, and compliance features to handle the sensitive data that States will be transmitting.

Data shall be transmitted to FNS no later than Wednesday, July 30, 2025.

Follow-Up Steps

Upon completion of data analysis, FNS will follow up with State agencies in respect to any applicable next steps of reconciliation.

For questions related to the required data elements and/or assistance with the transmission of data, please send inquiries to SNAPDatabase@usda.gov.

We look forward to expanding this partnership with our State partners to ensure and enhance Program integrity.

Sincerely,

Digitally signed by GINA BRAND
Date: 2025.07.23 18:15:04 -04'00'

Gina Brand
Senior Policy Advisor for Integrity
United States Department of Agriculture
Food, Nutrition, and Consumer Services

Exhibit 8

U.S. DEPARTMENT OF AGRICULTURE

July 25, 2025

Dear State Agency Directors,

The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA, Department) plays a key role, in conjunction with our State agency partners, providing Federally funded nutrition services to Americans in need through the Supplemental Nutrition Assistance Program (SNAP). The Department is dedicated to upholding the commitments of both President Trump and Secretary Rollins to strengthening government program integrity, as directed by Executive Order 14243, Stopping Waste, Fraud, and Abuse by Eliminating Information Silos.

To that end, USDA has established the SNAP Information Database. In accordance with Secretary Rollins' July 9, 2025, letter, and in order to ensure a complete and accurate database, State agencies must be compliant with the requirement of transmitting SNAP participant data to FNS no later than July 30, 2025. As a reminder, 7 U.S.C. 2020(e)(8)(A) provides that State data protections must allow for this disclosure.

State agencies should refer to the SNAP Data Sharing Guidance letter, published on July 23, 2025, to confirm the steps each State agency shall follow to transmit the data. Departmental staff stand ready to assist State partners with any technology challenges and/or provide clarifications as necessary to ensure State agency partners are compliant, and meet the July 30, 2025, deadline.

Failure to take the steps necessary to provide the relevant data to FNS may trigger noncompliance procedures codified in 7 U.S.C. 2020(g).

The Food and Nutrition Service thanks you for your dedication to improved program integrity and transparency in not only addressing the needs of vulnerable Americans, but safeguarding taxpayer dollars.

Sincerely,

Patrick A. Penn
Deputy Under Secretary
Food, Nutrition, and Consumer Services

Exhibit 9

Office of the Secretary
555 S. Kansas Ave., 6th Floor
Topeka, KS 66603

Kansas
Department for Children and Families

Phone: (785) 296-3271
Fax: (785) 296-4985
www.dcf.ks.gov

Laura Howard, Secretary

Laura Kelly, Governor

July 30, 2025

Gina Brand
Senior Policy Advisor for Integrity
United States Department of Agriculture
Food, Nutrition, and Consumer Services

Re: ***Response to Correspondence from the USDA***

Dear Ms. Brand,

The Kansas Department for Children and Families ("KDCF") has received correspondence dated July 9, 2025, July 23, 2025, and July 25, 2025, from the United States Department of Agriculture Food and Nutrition Service ("USDA") concerning the production of certain data from the Supplemental Nutrition Assistance Program ("SNAP"). Specifically, the letters demand that KDCF produce a significant amount of personally identifiable information of SNAP recipients and related households by July 30, 2025. The data is to be used as part of a large federal database of SNAP participant information.

Per the June 23, 2025, Notice in the Federal Register, the USDA intends to disclose the data to other federal, state, and local agencies to investigate and prosecute alleged violations of the law. Due, in part, to this stated use, several States have filed suit to stop the forced production of said data. The suit argues that the demands for state-held SNAP data is contrary to statute and the Constitution. *See California et al. v. U.S. Dep't of Agriculture et al.*, Civ. Action No. 3:25-6310 (N.D. Cal.). Due to the pending litigation, we are forced to deny the USDA's demand for data at this time. Doing the opposite will place KDCF in a position of potential liability in the event a court finds that the USDA's demand violates federal law.

Moreover, as a practical matter, KDCF is unable to comply with the timing of the USDA's demand. Producing the amount of data being requested will require significant time, manpower, and expense. Requiring the production to occur no later than July 30, 2025, presents an unreasonable burden that simply cannot be met.

Please be advised that we will monitor the pending litigation and may re-evaluate our position in conjunction therewith. In the meantime, we will continue to administer and enforce SNAP in accordance with federal and state law. Please feel free to contact the undersigned with any questions or comments regarding the above.

Very truly yours,

Laura Howard

Laura Howard, Secretary

Exhibit 10

U.S. DEPARTMENT OF AGRICULTURE

August 12, 2025

Governor Laura Kelly
Office of the Governor
300 SW 10th Ave. Ste. 241S
Topeka, Kansas 66612

Dear Governor Kelly,

On May 6, 2025, you were notified that the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) would be collecting Supplemental Nutrition Assistance Program (SNAP) participant data from January 1, 2020, to present date and that failure to take the steps necessary to provide SNAP data to FNS may trigger noncompliance procedures codified at 7 USC 2020(g). On July 9, 2025, in a letter from Secretary Brooke Rollins, you were reminded of this collection, pursued in accordance with section 11(e)(8)(A) of the Food and Nutrition Act of 2008 (the Act), and informed that you were required to submit this data no later than the close of business July 30, 2025. Again, on July 25, 2025, in a letter from Deputy Under Secretary Patrick Penn, you were reminded of this data collection, of the July 30, 2025 deadline, and that failure to take the steps necessary to provide the relevant data to FNS may trigger noncompliance procedures codified in 7 U.S.C. 2020(g). As of the date of this letter, FNS has not received this participant data and, as a result, the State of Kansas is out of compliance with SNAP requirements.

As provided by 7 CFR 276.4, this letter serves as an advance notice that Kansas could be subject to suspension or disallowance of Federal funding for State SNAP administrative expenses if it does not submit to FNS the requested SNAP participant data. Section 11(e)(8)(A) of the Act requires that Kansas permits disclosure of this data "to persons directly connected with the administration or enforcement of the provisions of [the Act], [and] regulations issued pursuant to" the Act. The July 9th letter directed that the requested data to be submitted using a system owned, administered, and secured by FNS.

In order for FNS to determine that Kansas has made adequate progress towards meeting the data collection requirements, by August 13, 2025, FNS must receive a description of the actions Kansas will undertake in order to ensure that it will submit the requested data to FNS **no later than close of business Friday, August 15, 2025.**

If Kansas fails to comply with the requirements outlined in this advance notification, the USDA may proceed with issuing a formal warning to pursue the suspension or disallowance of Federal funding for State SNAP Administrative expenses and may take any other available legal action.

As always, the USDA stands ready to provide technical assistance to you so that Kansas may come into compliance with this requirement. You may request this assistance by contacting:

FNS Tech Team at SNAPdatabase@usda.gov.

Sincerely,

Patrick A. Penn
Deputy Under Secretary
Food, Nutrition, and Consumer Services

Exhibit 11

Office of the Secretary
555 S. Kansas Ave., 6th Floor
Topeka, KS 66603

Kansas Department for Children and Families

Phone: (785) 296-3271
Fax: (785) 296-4985
www.dcf.ks.gov

Laura Howard, Secretary

Laura Kelly, Governor

August 14, 2025

Patrick A. Penn
Deputy Under Secretary
Food, Nutrition, and Consumer Services
U.S. Department of Agriculture

Re: ***<u>Response to August 12, 2025 USDA Demand</u>***

Dear Deputy Under Secretary Penn,

Please be advised that the Kansas Department for Children and Families ("KDCF") is in receipt of a copy of the August 12, 2025, correspondence you submitted to Governor Kelly demanding a description of what Kansas had done to comply with requests to collect and produce to the USDA FNS a significant amount of SNAP data. This data includes "personally identifying information" of both SNAP recipients and household members. As we previously advised, we have evaluated the request and have determined that providing the data requested at this time may open KDCF to significant liability depending upon the outcome of pending litigation.

In addition, the sheer size of the data request makes compliance an impossibility given the deadlines involved. Moreover, producing the requested information will result in a significant burden on KDCF and its contractors in both man hours and monetary cost. Given these practical considerations, along with the legal uncertainty addressed above and in prior correspondence, KDCF is unable to comply with the USDA FNS request at this time. Please be advised that we will continue to evaluate this matter and will continue to administer the SNAP program as required by Federal law.

In your August 12, 2025 letter, you threaten suspension or other administrative actions unless data is provided by August 15, 2025. Under this three-day timeline, even if the request were clearly legal, it would not be possible for KDCF to produce the requested years of data. Until this demand has been determined to be lawful by the pending litigation we ask that you withdraw this threat. KDCF is positioned to take steps to respond to a potential future clearly lawful request on a timeline that is feasible.

Please do not hesitate to contact the undersigned in the event you have any questions or comments regarding the above.

Respectfully,

Laura Howard

Laura Howard
Secretary
Kansas Department for Children and Families

Exhibit 12

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, et al.,

Defendants.

Case No. 25-cv-06310-MMC

ORDER GRANTING PLAINTIFF STATES' MOTION FOR PRELIMINARY INJUNCTION

The Supplemental Nutrition Assistance Program ("SNAP") provides to eligible households monthly benefits that can be used to purchase food. Under the provisions of the SNAP Act, see 7 U.S.C. §§ 2011-2036, the program is overseen by the Food and Nutrition Service ("FNS"), a division within the Department of Agriculture ("USDA"). Each participating State determines eligibility, however, and retains all SNAP applications as well as other information regarding persons who qualify.

As explained in greater detail below, USDA has demanded that all States provide to USDA information from their SNAP records, including personal information about applicants and recipients, and has given notice that it will withhold a significant amount of SNAP funding from any State failing to comply with such demand.

Plaintiffs, consisting of twenty-two States and the District of Columbia ("hereinafter, Plaintiff States"),[1] seek an order preliminarily enjoining USDA from making

[1] Plaintiff States, in the order set forth in the caption of the Amended Complaint, are the State of California, the State of New York, the State of Arizona, the State of Colorado, the State of Connecticut, the State of Delaware, the District of Columbia, the State of Hawai'i, the State of Illinois, the Office of the Governor ex rel. Andy Beshear, in his official capacity as Governor of the Commonwealth of Kentucky, the State of Maine, the State of Maryland, the Commonwealth of Massachusetts, the State of Michigan, the

such demand and from instituting or continuing noncompliance proceedings against them.

On August 18, 2025, Plaintiff States filed their "Motion for Stay or Preliminary Injunction." On September 16, 2025, the Court conducted a hearing on the motion, at which time certain issues were raised for the first time. In light of the new issues, the Court, on September 18, 2025, granted a Temporary Restraining Order, afforded the parties leave to address the new issues, and continued the matter for hearing on the question of whether a preliminary injunction should be issued.[2]

On October 9, 2025, after the parties had filed supplemental briefing to address the new issues, the Court conducted the hearing. Maria F. Buxton, Paul Stein, and Sebastian Brady of the Office of the Attorney General of California appeared on behalf of Plaintiff States. Benjamin S. Kurland and Elizabeth J. Shapiro of the United States Department of Justice, accompanied by Sarah Merrill of USDA's Office of the General Counsel, appeared on behalf of USDA. Having read and considered the parties' respective written submissions, and having considered the arguments of counsel made at both the hearing conducted September 16, 2025, and the hearing conducted October 9, 2025, the Court rules as follows.

BACKGROUND

"Congress created SNAP—formerly known as the food stamp program—to alleviate hunger and malnutrition by increasing the food purchasing power of low-income households." Hall v. U.S. Dep't of Agriculture, 984 F.3d 825, 831 (9th Cir. 2020) (internal

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State of Minnesota, the State of Nevada, the State of New Jersey, the State of New Mexico, the State of Oregon, plaintiff the Office of the Governor ex rel. Josh Shapiro, in his official capacity as Governor of the Commonwealth of Pennsylvania, the State of Rhode Island, the State of Washington, and the State of Wisconsin.

[2] In the same order, the Court denied the motion to the extent brought on behalf of the State of Nevada, undisputed evidence having been submitted that the State of Nevada "had fully complied with USDA's request for SNAP data" (see Corley Decl. ¶ 29), with the result that no showing was made that USDA would withhold any SNAP funding from said State. All further references to "Plaintiff States" in the instant Order refer to all Plaintiffs States other than the State of Nevada.

quotation, citation, and alterations omitted). As noted, each participating State determines eligibility and retains all SNAP applications, see 7 U.S.C. § 2020(a)(1) (providing "[t]he state agency of each participating State shall have responsibility for certifying applicant households and issuing EBT [Electronic Benefit Transfer] cards"), and the USDA, through FNS, oversees the States' compliance with SNAP requirements, see 7 C.F.R. § 276.4(a) (providing "FNS shall make determinations of the efficiency and effectiveness of State agencies' administration of SNAP").[3]

On March 20, 2025, President Donald J. Trump issued Executive Order 14243, titled "Stopping Waste, Fraud, and Abuse by Eliminating Information Silos," wherein "Agency Heads," e.g., the Secretary of Agriculture Brooke L. Rollins ("Secretary Rollins"), are directed to "ensure the Federal Government has unfettered access to comprehensive data from all State programs that receive Federal funding, including, as appropriate, data generated by those programs but maintained in third-party databases." See 90 FR 13681 § 3(c) (March 20, 2025). The Executive Order states that "all necessary steps" are to be taken "for the purposes of pursuing Administration priorities related to the identification and elimination of waste, fraud, and abuse," and that such priorities "include[ ] authorizing and facilitating both the intra- and inter- agency sharing and consolidation of unclassified agency records." See id. § 3(a).

In light thereof, USDA is requiring each State agency to provide certain of its SNAP records to USDA. In particular, on May 6, 2025, FNS wrote to the State agencies to inform them USDA was "taking steps to require all States to work through their processors to submit to the USDA the following data," for "the period beginning January 1, 2020, through present":

> 1. Records sufficient to identify individuals as applicants for, or recipients of, SNAP benefits, including but not limited to personally identifiable [sic] information in the form of names, dates of birth, personal addresses used,

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[3] The Court acknowledges that a number of the sections in the instant Order include essentially the same language as set forth in its Temporary Restraining Order, but, for ease of reference, finds it preferable to repeat that material herein.

and Social Security numbers.

2. Records sufficient to calculate the total dollar value of SNAP benefits received by participants over time, with the ability to filter benefits received by date ranges.

(See Gillette Decl. Ex. B ("May 6 letter").) As support for such request, FNS cited to two provisions in the SNAP Act, namely, 7 U.S.C. § 2020(a)(3) and § 2020(e)(8)(A). (See id.)[4] Although the letter did not include a deadline, it stated "[f]ailure to grant processor authorizations or to take the steps necessary to provide SNAP data to FNS may trigger noncompliance procedures codified at 7 U.S.C. § 2020(g)." (See id.)

Next, on June 23, 2025, USDA published in the Federal Register a "System of Records Notice" ("SORN"), in which USDA gave notice it would "create a new system of records," which system would be used "to validate the accuracy of eligibility determinations and strengthen SNAP and government program integrity," see 90 FR 26521-01, at 26521 (June 23, 2025), and that the "[i]nformation in this system" would be "provided by the 53 State agencies that administer SNAP and their designated vendors and/or contractors," see id. at 26522.[5] As in the May 6 letter, the SORN asserts that the legal authority for requiring the State agencies to provide such information is 7 U.S.C. § 2020(a)(3) and § 2020(e)(8)(A). See id. at 26521.

On July 9, 2025, Secretary Rollins wrote to all State agencies, citing Executive Order 14243 and the SORN, to inform them USDA was "requiring" them to submit to USDA, no later than the close of business on July 30, 2025, the "SNAP data" identified in

[4] Sections 2020(a)(3) and 2020(e)(8)(A) are discussed below. The letter also cited 7 C.F.R. § 272.1(c)(1), which regulation, in essence, restates provisions set forth in § 2020(e)(8)(A) in more specific detail.

[5] The SORN describes the information to be provided as "records containing personally identifying information, including but not limited to SNAP participant name, Social Security Number (SSN), date of birth (DOB), residential address, [EBT] card number, and case record identifier number or other identifiers or data elements maintained by States, vendors, or contractors to identify SNAP recipients," as well as "information derived from and associated with EBT transactions, including but not limited to records sufficient to calculate the total dollar value of SNAP benefits received by participants over time, such as applied amounts and benefit available dates." See id.

the SORN. (See Gillette Decl. Ex. C.) Thereafter, on July 23, 2025, FNS sent a letter to all State agencies, citing the May 6 letter and again requiring the agencies to transmit the SNAP data no later than July 30, 2025 (see id. Ex. D), after which, on July 25, 2025, FNS sent an additional letter reminding State agencies of the July 30 deadline and reiterating that a failure to comply "may trigger noncompliance procedures codified in 7 U.S.C. § 2020(g)" (see id. Ex. E).

On July 28, 2025, Plaintiff States filed the instant action, alleging "the federal government's unprecedented demands are unlawful" (see Compl. ¶ 21), and asserting claims under the Administrative Procedure Act ("APA"), as well as under a claim titled "Ultra Vires" and a claim brought under the Spending Clause of the United States Constitution.

On August 18, 2025, as noted, Plaintiff States filed the instant motion, seeking an order "preliminarily enjoining both: (1) USDA's demand for SNAP applicant and recipient data from Plaintiffs; and (2) the institution of noncompliance procedures against Plaintiffs, which USDA has threatened could lead to significant funding cuts for States that refuse to comply with the data demand." (See Pls.' Mot. at 1:17-20.)

Shortly thereafter, on August 20, 2025, FNS sent a "formal warning" to the Governor of each Plaintiff State, in which FNS asserted it "will initiate a disallowance of Federal funding" if such Plaintiff State did not "transmit SNAP enrollment data" to USDA within 30 days, i.e., by September 19, 2025. (See Brady Decl. Exs. A-P.)[6] [7] The formal warning cites to 7 U.S.C. § 2020(e)(8)(A) as support for the demand. The formal warning also sets forth the amount FNS will disallow, which amount varies from Plaintiff State to Plaintiff State, e.g., "up to $338,326,748.10" in funding to California for each quarter of noncompliance and "up to $133,800,507.01" in funding to Illinois for each said quarter.

[6] The letter states that,"[i]n response to State requests," the July 30 deadline had been extended to August 19, 2025 (See id.)

[7] On August 26, 2025, the same formal warning was sent to the Mayor of the District of Columbia. (See Corley Decl. ¶ 51; Campbell Decl. ¶¶ 23-24.)

(See Brady Decl. Exs. A-P.)

DISCUSSION

By the instant motion, Plaintiff States seek a preliminary injunction prohibiting USDA from continuing to demand the SNAP data and from instituting noncompliance proceedings, i.e., disallowing SNAP funding as a consequence of noncompliance.

A. Legal Standard

Under the APA, "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof," see 5 U.S.C. § 702,[8] and, "[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court . . . may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings," see 5 U.S.C. § 705.

"[T]he factors used to determine whether to issue a § 705 stay under the APA are the same equitable factors used to consider whether to issue a preliminary injunction." Immigrant Defenders Law Center v. Noem, 145 F.4th 972, 995 (2025).

"A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest," Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008), or, alternatively, that there are "[1] serious questions going to the merits, and [2] a balance of hardships that tips sharply toward the plaintiff," provided there also is a "[3] likelihood of irreparable injury and [4] that the injunction is in the public interest," see Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

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[8] The APA defines "person" to include a "public or private organization," see 5 U.S.C. § 511(2), and courts have found States are public organizations, see, e.g., Maryland Dep't of Human Resources v. Department of Health & Human Services, 763 F.2d 1441, 1445 n.1 (D.C. Cir. 1985) (holding "a state is a person within the meaning of the APA").

B. Need for Preliminary Relief

The Court next considers the requisite factors

1. Likelihood of Success on the Merits

Plaintiff States argue they are likely to succeed on the merits of their APA claims and their ultra vires claim.[9]

a. Ultra Vires Claim

Plaintiff States allege USDA has "acted ultra vires in demanding Plaintiff States' SNAP recipient data," because "[n]o statute authorizes such a demand" in the absence of "a data and security protocol agreed to by the Plaintiff States." (See Amended Complaint ("AC") ¶ 355.)[10]

As the Supreme Court explained earlier this year, an "ultra vires" claim, i.e., a "nonstatutory" claim, was recognized "[b]efore enactment of the APA," and could be brought "where an agency's action was ultra vires – that is, unauthorized by any law and in violation of the rights of the individual." See Nuclear Regulatory Comm'n v. Texas, 605 U.S. 665, 680 (2025) (internal quotation and citation omitted). Today, however, such a claim cannot be brought where, "as is usually the case," a "statutory review scheme provides aggrieved persons with a meaningful and adequate opportunity for judicial review." See id. at 681.

Here, Plaintiff States have brought claims under the APA, and, consequently, they fail to show their ultra vires claim is likely to succeed, or, alternatively, that they have raised serious questions going to the merits of such claim.

b. APA Claims

Under the APA, "[t]he reviewing court shall . . . hold unlawful and set aside agency

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[9] Plaintiff States do not base the instant motion on their claim under the Spending Clause.

[10] Plaintiff States filed the AC on September 22, 2025. The sole difference between the AC and the initial Complaint is the addition of another plaintiff, namely, Josh Shapiro, in his official capacity as Governor of the Commonwealth of Pennsylvania.

action, findings, and conclusions found to be— (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law." See 5 U.S.C. § 706.

Here, Plaintiff States allege USDA's demand is "contrary to law [and] without observance of procedure required by law" (see AC at 65:1-2), as well as "arbitrary and capricious" (see AC at 71:1-2).

(1) Finality

To be reviewable, the agency action challenged here must be "final agency action." See 5 U.S.C. § 704.

"As a general matter, two conditions must be satisfied for agency action to be 'final.'" Bennett v. Spear, 520 U.S. 154, 177 (1997). "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature." Id. at 177-78 (internal quotation and citation omitted). "[S]econd, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." Id. at 178 (internal quotation and citation omitted).

Here, Plaintiff States assert, and USDA has not argued to the contrary, that the demand for SNAP data constitutes final agency action. The Court agrees. As noted, Secretary Rollins wrote to the State agencies on July 9, 2025, to inform them that, in light of Executive Order 14243 and the SORN, State agencies are "require[d]" to submit the SNAP date to the USDA no later than July 30, 2025, i.e., a determination that is neither tentative nor interlocutory. (See Gillette Decl. Ex. C; Corley Decl. ¶ 24.)[11] Additionally, although FNS's letter dated July 25, 2025, states a failure to comply "may trigger

[11] As set forth above, see n.6, the deadline to comply was extended by the USDA to August 19, 2025.

noncompliance procedures" (see Gillette Decl. Ex. E (emphasis added)), the statute authorizing such procedures states the Secretary of Agriculture, upon finding a failure, "without good cause," to comply, "shall proceed to withhold from the State . . . funds authorized under [the SNAP Act]." See 7 U.S.C. § 2020(g) (emphasis added).

In sum, the challenged action not only is final but also determines Plaintiff States' obligations and the consequences flowing from a failure to comply therewith.

(2) Ripeness

USDA argues that the APA claims are not ripe.

"Evaluating ripeness in the agency context requires considering (1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented." Environmental Defense Center v. Bureau of Ocean Energy Management, 36 F.4th 850, 870 (9th Cir. 2022); see also id. at 867-71 (finding determination of whether agency action is "final" and whether such action is "ripe" are separate questions).

Here, the sole reason advanced by USDA as to why the APA claims are not ripe is that Plaintiff States have not availed themselves of administrative review procedures set forth in the SNAP Act and a regulation implemented thereunder. See 7 U.S.C. § 2023(a)(3)-(5); 7 C.F.R. §§ 276.7. The cited administrative review procedures, however, do not use mandatory language, see 7 U.S.C. §§ 2023(a)(1), (a)(3) (providing a "retail food store," a "wholesale food concern," or a "State agency" aggrieved by USDA action "may" seek administrative review); 7 C.F.R. § 276.7(a) (providing State agency "may" appeal claim asserted by FNS), and the Supreme Court has held that the failure to avail oneself of an administrative review procedure does not bar an APA claim where the review is "optional," see Darby v. Cisneros, 509 U.S. 137, 146-47 (1993) (holding, under APA, exhaustion of administrative remedies required only where "statute or rule clearly mandates").

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USDA argues the procedures set forth in § 2023(a) and § 276.7 nevertheless are mandatory in light of language in a different statute, namely, 7 U.S.C. § 6912(e), which is contained in the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. Section 6912(e) provides: "Notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against – (1) the Secretary; (2) the Department [of Agriculture]; or (3) an agency, office, officer, or employee of the Department." 7 U.S.C. § 6912(e).

As Plaintiff States point out, however, § 6912(e) applies to "a person," see id., a term that is presumed not to apply to a sovereign, and which "longstanding interpretative presumption" may be "disregarded only upon some affirmative showing of statutory intent to the contrary." See Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 780 (2000) (citing cases applying presumption; holding False Claims Act, which imposes liability upon "person" who knowingly submits false claim to United States, does not apply to States or State agencies, as nothing in said Act indicates States are "persons" liable thereunder); United States v. Cooper Corp., 312 U.S. 600, 604-614 (1941) (holding § 7 of Sherman Act, providing "person" injured by violation may bring claim seeking treble damages, does not allow United States to bring such claim; explaining statutes employing "person" are "ordinarily construed to exclude [sovereigns]" and finding nothing in Sherman Act to indicate "Congress intended to confer upon the United States the right to maintain an action for treble damages").[12]

Although the chapter containing § 6912, titled "Department of Agriculture Reorganization," includes a "Definitions" section, the word "person" is not defined therein. See 7 U.S.C. § 6902. Additionally, although said chapter includes a section titled "Purpose," stating "[t]he purpose of this chapter is to provide the Secretary of Agriculture

[12] As noted, only a "person" may bring a claim under the APA. See 5 U.S.C. § 702. The APA, however, defines "person" to include public organizations, such as States. See 5 U.S.C. § 511(2).

with the necessary authority to streamline and reorganize the Department of Agriculture to achieve greater efficiency, effectiveness, and economies in the organization and management of the programs and activities carried out by the Department," see 7 U.S.C. § 6901, nothing therein clearly expresses an intent to require States to exhaust what otherwise are optional administrative remedies, see Vermont Agency of Natural Resources, 529 U.S. at 780; see also id. at 787 (explaining courts, in determining whether "person" is meant to apply to sovereigns, are to consider "the ordinary rule of statutory construction that if Congress intends to alter the usual constitutional balance between States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute").

Given such authority, Plaintiff States are likely to establish that a State is not a "person" for purposes of § 6912(e).

Additionally, Plaintiff States argue, even if § 6912(e) were to be interpreted to apply to sovereigns, an order requiring them to exhaust would be futile.

Where, as here, a statute mandating exhaustion is not jurisdictional, see McBride Cotton & Cattle Corp., 290 F.3d 973, 976 (9th Cir. 2002) (holding "the exhaustion requirement of 7 U.S.C. § 7612(e) is not jurisdictional"), exhaustion is excused where it "would be futile," see id. at 982.

"The purpose of exhaustion is to allow the agency, in the first instance, to develop a detailed factual record and utilize its expertise in applying its own regulations to those facts." Id. Such purpose is advanced by the manner in which the Appeals Board charged with conducting administrative appeals under § 276.7 conducts its hearings, see 7 C.F.R. § 276.7(a)(2), namely, to take "evidence and testimony," see 7 C.F.R. § 276.7(h)(3).[13]

[13] The members of the Appeals Board appear to be USDA employees, and the only qualification set forth in § 276.7 is that they be "people who were not involved in the decision to file the claim" against the entity seeking administrative review. See 7 C.F.R. § 276.7(a)(2).

In the instant case, however, there is no factual dispute and, consequently, no need to offer evidence and testimony at an administrative hearing. Rather, it is undisputed that USDA has demanded certain SNAP data be produced and that Plaintiff States have not provided the data, leaving for resolution the question of whether the demand is lawful under the SNAP Act. As discussed below, it also is undisputed that protocols are lacking, a requirement that must be met for USDA to demand data under § 2020(a)(3)(B),[14] leaving only the question of whether the demand can be made under § 2020(e)(8)(A), the statute on which USDA now exclusively relies, or whether said statute simply permits disclosure at the State agency's option. Resolving that issue of statutory interpretation does not involve an agency's "applying its own regulations to . . . facts," but, rather, its application of a statutory interpretation, as well as its interpretation of such agency's regulations promulgated thereunder. Consequently, it appears that "requiring exhaustion would be an idle act." See McBride Cotton & Cattle Corp., 290 F.3d at 976, 982 (finding exhaustion of claim challenging USDA's "interpret[ation]" of its regulation would be "futile").[15]

Under such circumstances, Plaintiff States are likely to establish that, even assuming they are "persons" subject to the requirements set forth in § 6912(e), exhaustion would be futile.

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[14] At the hearing conducted October 9, 2025, USDA asserted that disagreements about data and security protocols could be addressed at an administrative hearing. (See Def.'s Opp. at 15:20-21.) Here, however, there is no evidence that any Plaintiff State has refused to negotiate protocols, and, consequently, there is no factual dispute as the good faith of a negotiating party. Indeed, undisputed evidence has been submitted that some of the Plaintiff States have advised USDA of their willingness to negotiate protocols that would apply to the data USDA seeks, but have received no response. (See McClelland Decl. ¶¶ 19, 27, 30; Hall Decl. ¶ 28; Pham Decl. ¶¶ 31-33, Exs. 1-2.)

[15] As noted, the administrative appeals are not heard by a third party, but, rather, by USDA employees. Given such circumstances, it is unclear how any meaningful hearing would be conducted, as each Plaintiff State would argue "we are not required under § 2020(e)(8)(A) to provide SNAP data to USDA," to which USDA would respond "yes you are," at which point administrative proceedings would end.

Accordingly, the Court finds Plaintiff States are likely to establish the APA claims are ripe, and next turns to the merits of those claims.

(3) Whether USDA's Demand is Contrary to SNAP Act

The Court begins with Plaintiff States' claim that USDA's demand for data is contrary to the SNAP Act. In support of such argument, Plaintiff States cite the two provisions of the Act on which USDA initially relied, namely, 7 U.S.C. § 2020(a)(3) and § 2020(e)(8)(A).

The former provides:

> (3) Records
>
> (A) In general
>
> Each State agency shall keep such records as may be necessary to determine whether the program is being conducted in compliance with [the SNAP Act] (including regulations issued under [the SNAP Act).
>
> **(**B) Inspection and audit
>
> All records, and the entire information systems in which records are contained, that are covered in subparagraph (A) shall—
>
> (i) be made available for inspection and audit by the Secretary, subject to data and security protocols agreed to by the State agency and Secretary . . . .

<u>See</u> 7 U.S.C. § 2020(a)(3).

Plaintiff States, correctly observing that § 2020(a)(3) requires USDA and a State agency to agree to data and security protocols before the State agency is required to provide the SNAP records demanded by USDA, argue that, because the Secretary has not entered into protocol agreements with any of the Plaintiff States' agencies, they cannot be required to submit the data or be sanctioned for failing to do so, and, for those reasons, the demand and subsequent issuance of the formal warnings are contrary to the SNAP Act. USDA counters that it is entitled to demand SNAP data under § 2020(e)(8)(A), which makes no reference to protocols. Consequently, as USDA no longer relies on § 2020(a)(3), the question presented is whether a State must comply with a demand made by USDA under § 2020(e).[16]

Section 2020(e) provides that each State agency shall have a "plan of operation" that "shall provide," inter alia,

> (8) safeguards which prohibit the use or disclosure of information obtained from applicant households, except that—
>
> (A) the safeguards shall permit—
>
> (i) the disclosure of such information to persons directly connected with the administration or enforcement of the provisions of this chapter,[17] regulations issued pursuant to this chapter, Federal assistance programs, or federally-assisted State programs; and
>
> (ii) the subsequent use of the information by persons described in clause (i) only for such administration or enforcement[.]

See 7 U.S.C. § 2020(e)(8).

Plaintiff States interpret the words "shall permit" as meaning State agencies are allowed to provide information obtained from applicant households to the persons listed in § 2020(e)(8)(A)(i), in other words, that such disclosures would not be in violation of the general prohibition that State agencies cannot disclose any information to anyone. USDA, by contrast, interprets "shall permit" to mean State agencies are required to provide the information obtained from applicant households.

To resolve the partes' dispute, the Court must interpret § 2020(e)(8)(A) in light of the SNAP Act as a whole. See Richards v. United States, 369 U.S. 1, 11 (1962 (holding "it [is] fundamental that a section of a statute should not be read in isolation from the context of the whole Act, and that in fulfilling [a court's] responsibility in interpreting legislation, [courts] must not be guided by a single sentence or member of a sentence, but should look to the provisions of the whole law, and to its object and policy") (internal

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[16] As set forth above, the May 6 letter and the SORN cite to both § 2020(a)(3) and §2020(e)(8)(A) as authority for the demand. In the formal warnings, however, sent two days after the instant motion was filed, USDA cited as authority only § 2020(e)(8)(A).

[17] The referenced "chapter" is the SNAP Act.

quotation, footnotes, and citation omitted).

Here, as set forth above, Congress, in the "Records" section of § 2020, did use clear, mandatory language, specifically, "shall . . . be made available for inspection and audit," thereby giving USDA the right to obtain, subject to data and security protocols, all records necessary to determine whether the program is being conducted in compliance with the SNAP Act. See 7 U.S.C. § 2020(a)(3)(B).[18]

Moreover, the above-quoted exception in § 2020(e)(8) is the first of six exceptions, and, in describing those exceptions, Congress chose to use several phrases, including "shall be made available," which words it did not use in the exception on which USDA relies.

In particular, in two of the statutory exceptions, each of which identifies the recipient as Federal, state, and local "law enforcement," Congress states that the requested information "shall be made available," i.e., State agencies are required to provide information to law enforcement under the circumstances set forth in those subsections. See 7 U.S.C. § 2020(e)(8)(C) (providing "all information" obtained from applicant households "shall be made available" to law enforcement officials "investigating" violations of SNAP Act);[19] 7 U.S.C. § 2020(e)(8)(E) (providing "address, social security number, and, if available, photograph" of "member" of applicant household "shall be made available" to law enforcement officer seeking to locate specified member, e.g., a member who is a fleeing felon or key witness to any crime).[20]

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[18] Although § 2020(a)(3) covers a broader set of data than § 2020(e)(8), the latter covers a larger group of potential recipients.

[19] Section (e)(8)(C) provides: "notwithstanding any other provision of law, all information obtained under this chapter from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this chapter or any regulation issued under this chapter[.]" See id.

[20] Section (e)(8)(E) provides: "notwithstanding any other provision of law, the address, social security number, and, if available, photograph of any member of a household shall be made available, on request, to any Federal, State, or local law enforcement officer if the officer furnishes the State agency with the name of the member

In three of the exceptions, each of which references one or more statutes by which another agency is entitled to obtain information, Congress uses the phrase "the safeguards shall not prevent," i.e., State agencies are directed to comply with those other statutes instead of complying with the general prohibition against disclosure. See 7 U.S.C. § 2020(e)(8)(B) (providing "safeguards shall not prevent" State agencies from disclosing to Comptroller General information, if authorized by "any other provision of law");[21] 7 U.S.C. § (e)(8)(D) (providing "safeguards shall not prevent" disclosure to federal agencies seeking to "collect[ ] the amount of an overissuance of [SNAP] benefits" as authorized by two specified statutes);[22] 7 U.S.C. § (e)(8)(F) (providing "safeguards shall not prevent" State agencies from complying with subsections of § 2020 requiring disclosures to Immigration and Naturalization Service ("INS"), entities with knowledge of

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and notifies the agency that--

(i) the member--

> (I) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law; or
>
> (II) has information that is necessary for the officer to conduct an official duty related to subclause (I);

(ii) locating or apprehending the member is an official duty; and

(iii) the request is being made in the proper exercise of an official duty[.]

See id.

[21] Section 2020(e)(8)(B) provides: "the safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law[.]" See 7 U.S.C. § 2020(e)(8)(B).

[22] Section 2020(e)(8)(D) provides: "the safeguards shall not prevent the use by, or disclosure of such information, to agencies of the Federal Government (including the United States Postal Service) for purposes of collecting the amount of an overissuance of benefits, as determined under section 2022(b) of this title, from Federal pay (including salaries and pensions) as authorized pursuant to section 5514 of Title 5 or a Federal income tax refund as authorized by section 3720A of Title 31[.]" See id.

detained individuals, and State agencies administrating school lunch programs).[23]

The remaining exception, namely, the exception on which USDA relies, § 2020(e)(8)(A), does not contain the phrase "shall be made available" nor the phrase "the safeguards shall not prevent," but, rather, uses the phrase "the safeguards shall permit" the disclosures covered therein.

Where, as here, "Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." See Russello v. United States, 464 U.S. 16, 23 (1983) (internal quotation, citation, and alteration omitted). Had Congress intended to make the disclosures described in § 2020(e)(8)(A) mandatory, it presumably would have done so expressly as it did in § 2020(a)(3)(B), in § 2020(e)(8)(C), and in § 2020(e)(8)(E), and, as USDA points out, although mandating cooperation between State agencies and other agencies that administer or enforce the SNAP Act or other benefit programs is not unreasonable, the Court cannot interpret § 2020(e)(8)(A) as setting forth such a mandate in the absence of language to that effect. See id. (declining to conclude "that the differing language in . . . subsections [of the same statute] has the same meaning in each"; explaining, "[t]he short answer is that Congress did not write the statute that way") (internal quotation and citation omitted).

In light of the above, the Court finds Plaintiff States are likely to establish that, although they are permitted to do so, they are not required by § 2020(e)(8)(A) to provide data to the persons listed therein, and, consequently, have shown a likelihood of success

[23] Section 2020(e)(8)(F) provides: "the safeguards shall not prevent compliance with paragraph (15) or (18)(B) or subsection (u)[.]" See id. Those subsections, in turn, require "immediate reporting to the [INS]" of any determination State agencies make that an individual in a household "is present in the United States in violation of the Immigration and Nationality Act," see 7 U.S.C. § 2020(e)(15), require State agencies to "take action on a periodic basis" to "verify" that individuals who have been "placed under detention" for "more than 30 days" are ineligible for SNAP benefits, see 7 U.S.C. § 2020(e)(18), and require each State agency to "enter into an agreement with the State agency administering the school lunch program established under . . . 42 U.S.C. § 1751," see 7 U.S.C. § 2020(u).

on their claim that USDA, in demanding such data, acted in a manner contrary to law.

Further, even assuming, arguendo, § 2020(e)(8)(A) can be interpreted as mandating such disclosure, the Court finds Plaintiff States, for two reasons, nonetheless are likely to establish the specific demand made by USDA is contrary to the SNAP Act.

First, USDA has demanded information that is not "obtained from applicant households," see 7 U.S.C. § 2020(e)(8)(A), such as "transactional records," "SNAP usage and retailer data," and "records sufficient to calculate the total dollar value of SNAP benefits received by participants over time," and, to extent such data was obtained from a source other than an applicant, "data records used to determine eligibility or ineligibility" (see Gillette Decl. Ex. D). Consequently, the demand as presently made to Plaintiff States seeks information beyond that within the scope of § 2020(e)(8)(A).

Second, when a State agency provides information under § 2020(e)(8)(A), the recipient is subject to strict limitations placed on the use of the information so obtained, see 7 U.S.C. § 2020(e)(8)(A)(ii), and, as Plaintiff States point out, USDA has announced its intent to use such information in ways well beyond those permitted under § 2020(e)(8)(A)(ii). In particular, USDA, in the SORN, asserts the right to disclose the data to a number of entities, including numerous entities that are not assistance programs, and for purposes other than the administration or enforcement of the programs referenced in § 2020(e)(8)(A)(i). See 9 FR at 26522-23.[24] Under such circumstances, Plaintiff States, which are required by the SNAP Act to safeguard information they obtain from applicant households and are permitted to disclose such information under § 2020(e)(8)(A) only for the limited purposes set forth therein, see 7 U.S.C. § 2020(e)(8)(A)(ii), are prohibited from disclosing information to persons who announce in advance an intent to use the information for purposes beyond those set forth in

[24] Specifically, the SORN asserts the records USDA obtains from States "may be disclosed pursuant to the permitted routine uses outlined [in the SORN]," which include, for example, "[w]hen a record on its face, or in conjunction with other records, indicates a violation or potential violation of law . . ., the USDA/FNS may disclose the record to the appropriate agency, whether Federal, foreign, State, local, or tribal." See id.

§ 2020(e)(8)(A)(ii).[25]

Accordingly, the Court finds Plaintiff States are likely to show the SNAP Act prohibits them from disclosing to USDA the information demanded in the formal warnings and, consequently, for such additional reason, have shown a likelihood of success on their claim that USDA, in making such demand, acted in a manner contrary to law.

(4) Other Claims Under the APA

The Court next addresses the other APA claims argued in Plaintiff States' motion, and, as set forth on the record at the hearing conducted September 16, 2025, the Court, for the reasons stated at the hearing, found Plaintiff States were unlikely to succeed on the merits of such claims, nor were serious questions going to the merits raised, which reasons the Court next summarizes.

As to Plaintiff States' claim that USDA has failed to provide an "explanation for the change" in its "policy" pertaining to the scope of its demand for SNAP data, see Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 221-222 (2016) (setting forth agency's obligation to explain change of policy), Plaintiff States have made an insufficient showing that a policy pertaining to USDA's obtaining SNAP data existed prior to the subject demand, let alone that a change in policy has occurred.

As to Plaintiff States' claim that USDA's decision to demand SNAP data "lacks any rational connection between the facts found and the choice made" (see Pls.' Mot. at 14:9-10 (internal quotation and citation omitted)); see also Encino Motorcars, 579 U.S. at 221 (setting forth "procedural requirement[ ]" that federal agency "must give adequate reasons for its decisions"), Plaintiff States have made an insufficient showing that USDA's decision lacked the requisite rational connection, the stated reason for the action taken being, inter alia, the need to "verify[ ] SNAP recipient eligibility against federally

[25] USDA has stated it intends to amend the SORN in a manner that, according to USDA, will limit the uses to those that fall within § 2020(e)(8)(A)(ii). (See Supp. Corley Decl. ¶¶ 10-11.) USDA has not, however, submitted its proposed amendment, and, consequently, the Court is unable to consider it at this time.

maintained data bases" and "identify[ ] and eliminat[e] duplicate enrollments," see 9 FR at 26521.

As to Plaintiff States' claim that USDA "ignored several important aspects of the problem" (see Pls.' Mot. at 12:19-21) (internal quotation and citation omitted), in particular, the possibility of computer hackers accessing USDA's database, the potential chilling effect as to individuals seeking benefits, and the burden on State agencies to submit the volume of SNAP data, see Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) (holding agency's action is deemed "arbitrary and capricious" when it "entirely fail[s] to consider an important aspect of the problem"), there is an insufficient showing that those concerns were not considered.

As to Plaintiff States' claim that USDA did not consider the public comments submitted in response to the SORN, see 5 U.S.C. § 552a(e)(11) (providing agency publishing SORN must "provide an opportunity for interested persons to submit written data, views, or arguments to the agency"), although the Secretary's letter of July 9, 2025, requiring State agencies to comply with the demand preceded the July 23, 2025, deadline for public comment, the deadline to comply was extended by more than three weeks to August 19, 2025, thereby leaving adequate time for consideration of all comments submitted. Additionally, USDA has offered evidence that the comments were considered (see Corley Decl. ¶ 21 (summarizing comments received and USDA's consideration thereof)), and that, in light of those comments, USDA "is working to implement [a] change" to the SORN, namely, to eliminate a statement that USDA had the right to disclose SNAP data to "foreign" governments (see id. ¶ 22).

As to Plaintiff States' claim that USDA failed to comply with the Paperwork Reduction Act when it submitted to the Director of the Office of Management and Budget ("OMB") a request for what USDA described as a nonsubstantive change, see 44 U.S.C. § 3507 (setting forth process federal agency must follow before "conduct[ing] or sponsor[ing] the collection of information), the decision of the OMB to approve such request is not subject to judicial review, see 44 U.S.C. § 3507(d)(6).

Lastly, as to Plaintiff States' claim that the USDA failed to comply with the Computer Matching Act, USDA, in its opposition to the instant motion, made the argument that Plaintiff States lack standing to assert such claim, in that the Computer Matching Act protects the privacy of individuals who have provided information, see 5 U.S.C. § 552a(o), and Plaintiff States, in their reply, have not addressed the issue.[26]

(5) Summary: Likelihood of Success on the Merits

The Court finds Plaintiff States have shown a likelihood of success on the merits of their claim that USDA's demand and threatened disallowance of funding are contrary to the SNAP Act and, in all other respects, have failed to make the requisite showing.

2. Likelihood of Irreparable Harm

The amount of SNAP funds the USDA has formally warned it will disallow if Plaintiff States do not comply equals, for at least 18 of the 22 Plaintiff States, the entirety, or close to it, of the amounts to which those States otherwise would be entitled (see Second Brady Decl. Ex. C; Pham Decl. ¶¶ 30, 34), and the amounts proposed to be disallowed as to the other Plaintiff States are substantial as well.[27]

Further, Plaintiff States have offered declarations from their respective agency officials, who explain that having SNAP funds withheld is likely to require them to cut staffing and otherwise greatly reduce their ability to comply with their obligations under the SNAP Act to administer benefits, including, for example, the speed with which applications can be reviewed and required reports can be prepared.

USDA argues the claimed injuries identified in the above-referenced declarations can be remedied by a monetary award, namely, recovery of the withheld funds, and, consequently, do not constitute the irreparable harm required for preliminary injunctive

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[26] Moreover, although not discussed at the hearing, there is no evidence to support a finding that USDA intends to act in violation of the strictures set forth in the Computer Matching Act, and, consequently, any contention USDA intends to do so is, at best, speculative.

[27] UDSA pays fifty percent of the "administrative costs involved in each State agency's operation of [SNAP]." See 7 U.S.C. § 2025(a).

relief. The Ninth Circuit has held, however, that the "denial of reimbursements" by the federal government can constitute "irreparable" injury, as such denial can cause "economic injuries for which monetary damages are not available." See Washington v. Trump, 145 F.4th 1013, 1036-37 (9th Cir. 2025); see also East Bay Sanctuary Covenant v. Biden, 993 F.3d 640, 677 (9th Cir. 2021) (holding "significant change[s] in [organization's] programs" constitutes irreparable "intangible injury").

USDA next argues Plaintiff States have no need for preliminary relief because they have the option of seeking administrative relief whereby they would be entitled to a stay of the imposition of disallowances until such time as their administrative remedies are exhausted. See 7 C.F.R. § 276.7(e). As discussed above, however, Plaintiff States need not exhaust such optional administrative process before bringing their APA claims, see Darby, 509 U.S. at 154, and the Court finds a ruling requiring a party to pursue administrative remedies in lieu of preliminary relief would seriously undermine such party's right to proceed in court.[28]

Accordingly, the Court finds Plaintiff States have shown they are likely to incur irreparable harm if not provided injunctive relief.

3. Balance of Hardships/Public Interest

The two remaining factors are that the balance of hardships tips in the plaintiff's favor and that the injunction is in the public interest. See Winter, 555 U.S. at 20. Where, as here, the federal government is the defendant, "balancing the hardships and the public interest merge." See Immigrant Defenders Law Center, 145 F.4th at 994. Thus, a district court balances the public's interest asserted by the federal government in the particular

[28] The Court also finds unpersuasive USDA's argument that the filing of the instant motion three weeks after the filing of the Complaint signifies a lack of irreparable injury. The asserted three-week "delay" here is in no manner comparable to the lengthy periods of delay described in the authority cited by the USDA. See Y.Y.G.M. SA v. Redbubble, Inc., 75 F.4th 995, 1066 (9th Cir. 2022) (providing example of trademark holder that learned of infringement, yet waited three years to file suit and seek preliminary injunction; noting "any injury [the trademark holder] would suffer before trial on the merits would be a relatively short extension of the injury that [the trademark holder] knowingly suffered for three years before it filed suit").

case and the hardships to the plaintiff. See id.

The hardships to Plaintiff States are set forth above. The public interest asserted by the USDA is that "[the] proposed injunction would limit the President's ability to effectuate the policies the American people elected him to pursue, including the President's ability to identify fraud, waste, and abuse in this critical program." (See Def.'s Opp. at 24:16-18.) "[T]he mere existence of the Executive Branch's desire to enact a policy," however, "is not sufficient to satisfy the irreparable harm prong." See Immigrant Defenders Law Center, 145 F.4th at 985. "If that were the case," the Ninth Circuit has explained, "no act of the [E]xecutive [B]ranch asserted to be inconsistent with a legislative enactment could be the subject of a preliminary injunction [and] [t]hat cannot be so." See id.

Further, while eliminating fraud, waste, and abuse in a government assistance program is in the public interest, the showing made by USDA, namely "a preliminary snapshot review" of SNAP data submitted by States that have complied with USDA's demand for data (see Supp. Corley Decl. ¶ 4), is insufficient to warrant altering the status quo at this time, the status quo being USDA's retention of the right to inspect and audit Plaintiff States' SNAP records, albeit under agreed protocols. It is unclear whether the observations USDA has preliminarily made, such as "over 300,000 potential instances of deceased individuals" being enrolled in SNAP (see id. ¶ 6), pertain to the records submitted by all, or at least a significant number of, compliant States, or whether they represent an aberrant situation involving one or a few compliant States, thus limiting their potential relevance as being indicative of Plaintiff States.

Moreover, Plaintiff States have explained that the referenced 300,000 individuals represent only 1.6% of the total number of SNAP recipients (see Supp. Fernández Garcia Decl. ¶ 16), and that, in any event, SNAP regulations prohibit State agencies from removing a deceased person immediately upon learning or otherwise being notified of a death, see 7 C.F.R. §§ 272.14(b)-(c) (providing, when State agency learns of apparent "match," either from checking applicants/recipients against "SSA's Death Master File" or otherwise, it must, before disenrolling apparently deceased recipient, conduct "independent verification," and then provide "[n]otice to the household of match results" and give household "opportunity . . . to respond").

Further, Plaintiff States have submitted evidence to explain why other preliminary observations by USDA pertaining to records of complying States may not, in fact, be instances of fraud or waste. (See Supp. Fernández Garcia Decl. ¶¶ 10-15, 17-18; Supp. Reagan Decl. ¶¶ 7-16, 20.)

Accordingly, the third and fourth factors weigh in favor of Plaintiff States.

4. Conclusion: Need for Preliminary Relief

As discussed above, the Court finds all relevant factors support a grant of preliminary relief, and, accordingly, finds it appropriate to grant a preliminary injunction at this time.

C. Remaining Issues

USDA requests, in the event the Court enters a preliminary injunction, it issue an order imposing a bond, as well as an order staying the injunction during the pendency of any appeal or, alternatively, administratively staying the injunction for seven days to afford USDA an opportunity to request a stay from a higher court.

At the outset, the Court declines to impose a bond, as there is no showing that a "realistic likelihood of harm" to USDA will occur if, during the pendency of the preliminary injunction, it cannot disallow SNAP funding to Plaintiff States. See Johnson v. Couturier, 572 F.3d 1067, 1086 (9th Cir. 2009) (holding "district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining [its] conduct") (internal citation and quotation omitted). In particular, if Plaintiff States ultimately are unable to show judgment should be entered in their favor, USDA could, at that time, impose any amount of disallowance it finds appropriate, see 7 U.S.C. § 2020(g), and can withhold those funds from future disbursements once such funding is reinstated.

Next, a stay pending appeal is appropriate only where, inter alia, the appellant "has made a strong showing that he is likely to succeed on the merits." See Nken v. Holder, 556 U.S. 418, 434 (2009). Here, as set forth above, USDA has not made such showing. Additionally, although the Court, in some instances, might be amenable to an administrative stay, in this instance, given such a stay, USDA's planned disallowance of SNAP funds could occur immediately, and USDA at both hearings declined to extend, by even one day, let alone during the pendency of an administrative stay, the date by which USDA would begin to disallow such funding. Under these circumstances, the Court declines to enter an administrative stay.

CONCLUSION

For the reasons stated above, Plaintiff States' motion is hereby GRANTED, and USDA is PRELIMINARY ENJOINED from disallowing SNAP funding based on Plaintiff States' failure to comply with the demands set forth in the above-discussed formal warning letters or otherwise acting thereon.

IT IS SO ORDERED.

Dated: October 15, 2025

Maxine M. Chesney

MAXINE M. CHESNEY
United States District Judge

Exhibit 13

Food, Nutrition, and Consumer Services

August 20, 2025

Governor Laura Kelly
Office of the Governor
300 SW 10th Ave. Ste. 241S
Topeka, Kansas 66612

Dear Governor Kelly,

This formal warning is sent as a follow-up to our August 12, 2025 advance notification to Kansas's Department of Children and Families for non-compliance with the U.S. Department of Agriculture's (USDA) requirement to submit Supplemental Nutrition Assistance Program (SNAP) enrollment data by July 30, 2025.

The advance notification followed USDA's several earlier requests[1] for SNAP enrollment data and required Department of Children and Families to come into compliance with Federal requirements at 7 U.S.C. 2020(e)(8)(A) by transmitting SNAP enrollment data no later than close of business Friday, August 15, 2025. In response to State requests, on August 14, 2025, USDA extended the deadline for compliance to August 19, 2025. Although many states have fully complied with the law and submitted SNAP enrollment data to USDA, as of the date of this letter, the Food Nutrition Services (FNS) has not received complete enrollment data from Department of Children and Families.

This letter serves as a formal warning under 7 C.F.R. § 276.4(d)(2) to Kansas's Department of Children and Families for failure to comply with requirements for providing SNAP enrollment data. Unless Department of Children and Families can demonstrate compliance by transmitting the SNAP enrollment data for Kansas, FNS will initiate a disallowance of Federal funding.

FNS will determine whether Department of Children and Families has demonstrated such compliance based on successful completion of either of the two actions outlined in this letter.

- Department of Children and Families must submit, within 30 days from receipt of this letter, evidence that it has complied.

- If Department of Children and Families is unable to provide such evidence of compliance, it must submit, within 30 days from receipt of this letter, a corrective action proposal that FNS finds acceptable. The corrective action proposal must demonstrate how and by what date it will comply with the data sharing requirements outlined in USDA Secretary

Brooke Rollins' letter to State agencies on July 9, 2025. Department of Children and Families must also submit progress reports to FNS as set forth in the approved corrective action proposal.

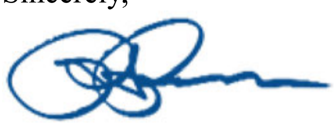
[1] In letters dated May 6, 2025, July 9, 2025, and July 25, 2025, USDA informed Department of Children and Families this data collection.

If Department of Children and Families fails to demonstrate compliance with the data sharing requirements to the satisfaction of FNS, FNS will disallow up to $10,439,386.49 for Department of Children and Families' SNAP administrative expenses for each quarter in which Department of Children and Families is out of compliance with the requirements of this letter, in accordance with 7 CFR 276.4. Because the data is needed to enhance the Government's ability to detect overpayments and fraud in SNAP, FNS has calculated this amount using Kansas's Federal Fiscal Year 2024 SNAP Quality Control payment error rate of 9.98%. As Department of Children and Families is aware, the SNAP Quality Control system measures how accurately State agencies determine eligibility and benefit amounts and, therefore, is the best measure available to FNS to estimate the cost of Department of Children and Families' noncompliance with USDA's data request. The amount of $10,439,386.49 represents 9.98% of Kansas's FFY 2024 total allotments, divided by four.

The complete transmission of the required SNAP enrollment data is imperative to ensure FNS and the State agency have full insight into SNAP program integrity. In the absence of data, FNS lacks key information necessary to ensure effective stewardship of taxpayer dollars. FNS has already discovered from states that are complying with this statutory data sharing requirement that fraud or duplication in state distribution of federal funds has gone unreported and needs remediation. FNS stands ready to assist Department of Children and Families with resolving the deficiencies through continued technical assistance to ensure its data is transmitted in compliance with Federal requirements.

If Department of Children and Families wishes to discuss these matters further, please contact the FNS Tech Team at SNAPdatabase@usda.gov.

Sincerely,



Patrick A. Penn
Deputy Under Secretary
Food, Nutrition, and Consumer Services

to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

Exhibit 14

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

The State of KANSAS, *ex rel.* KRIS W. KOBACH, Attorney General, Petitioner, v. LAURA HOWARD, Secretary, Department for Children and Families, in her official capacity; LAURA KELLY, Governor of Kansas, in her official capacity, Respondents.	Case No. SN-2025-CV-000695

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO MOTION FOR TEMPORARY INJUNCTION

The Respondents' prior public excuses for refusing to follow the law, that necessitated this mandamus action, have been exposed as empty and pretextual. As a result, in opposing the State's motion for a temporary injunction, Respondents now offer new justifications—nowhere apparent in their July 30 and August 14, 2025, letters to FNS—for their refusal to carry out their mandatory statutory responsibilities.

Respondents' new basis also fails to justify their unlawful actions. As explained below, as well as in the State's September 9, 2025, filing, this Court should issue a temporary injunction compelling Respondents to follow Kansas and federal law by complying with FNS's request for SNAP participant data. Two separate provisions of Kansas law require that the State cooperate with federal requests for program data—K.S.A. 39-708c and K.S.A. 39-708c(f). Neither of these provisions are discretionary; they are mandatory duties imposed by Kansas law. In order to disobey Kansas law, Respondents must identify a countervailing statutory or constitutional provision that frees them of their obligation to follow the law. This they have not done. Kansas meets all five factors to obtain a temporary injunction.

Dire consequences for low-income Kansans are imminent if Respondents are not compelled to follow the law requiring that relevant data requests be fulfilled before September 19, 2025. FNS has warned Kansas that, for starters, it will lose $10.4 million in federal funding, <u>which subsequently cannot be recovered</u>. That is only step one, because additional federal funding, and Kansas's eligibility to participate in SNAP, also will be lost. The State therefore respectfully asks the Court to rule on this motion prior to September 19, 2025, and is available for a hearing this week at any time that is convenient for the Court.

Additionally, Respondents noted that they plan to submit a motion to dismiss. The State is prepared to respond to such a motion if and when it is filed. But the possibility of a motion to dismiss being submitted does not change the urgency of the pending motion for a preliminary injunction. Accordingly, this Court should rule on the State's motion for a temporary injunction before September 19, 2025, and before any other dispositive motion.

1) The State will suffer an irreparable injury if an injunction is not issued

The State will suffer an immediate and irreversible funding cut of $10.4 million unless Respondents are compelled to comply with FNS's data requests.

There also is an impact to low-income Kansans as a result. This injury to the State is irreparable. Respondents note that they plan to appeal FNS's imminent disallowance of federal funding. But that will have no effect on the impending irreparable injury to the State.

Respondents improperly conflate the imminent date (September 19, 2025) on which their actions will cause Kansas to be noncompliant (and thus the date on which FNS will issue its decision disallowing $10.4 million in federal funding) with the date their speculative appeal process may be wrapped up. While an appeal of FNS's decision, pursuant to 7 C.F.R. § 276.7, does stay the implementation of the disallowance, it has no effect on the merits of FNS's decision. Therefore, while Kansas may appeal and obtain a stay pending a final decision,[1] any delay by FNS in implementing the disallowance will not affect the fact that the decision to disallow will occur on September 19, 2025.

Furthermore, due to Respondents' clear and unequivocal obligations under state and federal law, it is virtually certain that FNS's disallowance decision will be upheld on appeal. The applicable FNS regulations make clear that the reasons offered by Respondents in their letters are not sufficient to reverse FNS's

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[1] Pursuant to 7 C.F.R. § 276.7, a state has 10 days from the date of the disallowance decision to file an appeal (§ 267.7(c)), and 30 days from that request to provide FNS with information and briefing concerning that appeal (§ 267.7(g)). FNS must then schedule and complete the hearing within 60 days, with a minimum of 10 days' notice of the hearing date and location (§ 267.7(h)). FNS must reach a decision within 30 days of a hearing, which takes effect 30 days from the date of decision (§ 267.7(i)). Although Kansas could seek judicial review of an adverse decision, whether to do so falls within the Attorney General's exclusive discretion based on applicable law at issue. *See* K.S.A. § 75-702(a).

disallowance decision.[2] In other words, the only thing that will determine whether or not federal funding is disallowed is Kansas's compliance with FNS's request by September 19, 2025. An administrative appeal may delay enforcement, but it will not reverse the injuries to Kansas and low-income Kansans caused by the Respondents' defiance of the law. The irreparable injury to the State will occur on September 19, 2025, whether the funding itself is withdrawn on September 29, 2025, or in three months following DCF's unsuccessful appeal.

Respondents also illogically and incorrectly assert that *California v. USDA*,[3] the multi-state challenge in federal district court in the Northern District of California, will somehow affect the State's impending irreparable injury. It can't. Respondents assert that "the court's decision may have a direct impact on this matter given that the issues are identical," but they do not ever explain what exactly that impact would be. As discussed at length in the State's motion for temporary injunction (*see* Motion for Temp. Inj. at 19-21), that case cannot conceivably affect Kansas's obligation to comply with FNS's request, or the imminent disallowance of funding.

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[2] FNS regulations define "good cause" for state noncompliance, which constitute the only bases for a state to justify its noncompliance. *See* 7 C.F.R. § 276.6. "Good cause" includes natural disasters, labor strikes in the noncompliant state, a change to SNAP that causes a substantial adverse impact on the state agency's management, and "any other circumstances in which FNS determines good cause to exist." *Id.* Respondents' excuses clearly do not fall into any of these categories.

[3] *California, et al. v. U.S. Dep't of Agriculture, et al.*, No. 3:25-CV-6310 (N.D. Cal.) July 28, 2025.

Kansas is not a party to that case, does not fall within the jurisdiction of the Northern District of California, and does not fall within the jurisdiction of the Ninth Circuit Court of Appeals. And universal injunctions by a federal district court are impermissible. A preliminary injunction issued by a federal district court in California has no conceivable effect on Kansas. And it certainly does not change the mandatory obligations imposed by Kansas law.

Moreover, none of the claims in *California* concern Respondents' obligations under Kansas law and the Kansas Constitution, which require cooperation and compliance with FNS. So, even setting aside the jurisdictional problem, the California court could not possibly resolve all of the State's claims alleged in the petition.

Neither the possibility of a doomed administrative appeal—which at best can delay the effect, but cannot eliminate the fact of the State's injury—nor a doomed judicial challenge by other parties in an out-of-circuit federal court does anything to mitigate the State's certain, impending, and irreparable injury. On September 19, 2025, absent a temporary injunction, Respondents will cause FNS to be noncompliant; and Kansas's federal funding will be disallowed.

2) Respondents will not be harmed by a temporary injunction

Respondents attempt to contrive harms from following the express mandates of state and federal law. This Court should reject their spurious protests.

Petitioner *is the State of Kansas*. Respondents are executive branch officers sued in their official capacities. They do not represent the State. Respondents thus improperly conflate alleged harms to the State with harms to Respondents. And the State, via the Attorney General, has already determined that the State is at risk of harm from withholding the properly requested data. Respondents only allege some speculative (and ultimately baseless) harms that may occur as a result of complying with a lawful federal order. Respondents may claim harms only to themselves, not to third-parties, and certainly not to the opposing party. *See Garetson Bros. v. Am. Warrior, Inc.*, 51 Kan. App. 2d 370, 390 (2015) (noting the relevant question for temporary injunctive relief is whether "the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party").

Second, neither the State nor Respondents would be subject to penalties for hypothetically mishandling confidential data if Respondents comply with FNS's request. Respondents speculate that compliance could cause a range of possible harms to the State, from "corrective action plans to fines or the loss of the federal funds, not to mention lawsuits from affected individuals." (Resp. Br. at 9). Yet, Respondents neither sufficiently explain nor support their contrived potential harm.

The only statute Respondents mention is the Kansas Cybersecurity Act (KCA). K.S.A. 75-7236 *et seq*. But the KCA has no connection to federal funding and it does not authorize a private right of action that could enable "lawsuits from affected individuals."

More damaging to Respondents' claimed harm, the KCA requires state agencies to act only in the event of a breach—an unauthorized access or disclosure of personal information.[4] In their response, Respondents misleadingly cut short the Act's definition of "breach" to exclude the most important part:

> "Breach" or "breach of security" means unauthorized access of data in electronic form containing personal information. *Good faith access of personal information by an employee or agent of an executive branch agency does not constitute a breach of security*, *provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use*.[5]

Good faith disclosure of personal information mandated by applicable law is not a "breach" and does not create liability under the KCA. Respondents try to equate state officials lawfully sharing of required data with federal officials—data that SNAP applicants *consented to sharing with the federal government*—with a rogue individual accessing data for nefarious reasons. The Court should reject this unsubstantiated and baseless comparison.

The fact that SNAP applicants have already consented to the State sharing relevant data with the federal government merits emphasis here. By DCF regulation, applicants must be notified that their confidential information "shall be released by [DCF] if the release is directly related to any of these duties: … release of confidential information concerning applicants and recipients as authorized by state or federal law."[6] Much of this information is originally generated by the

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[4] K.S.A. 75-7237(b). KCA also uses the terms "security breach" and "cybersecurity incident," K.S.A. 75-7244, and requires agencies, *e.g.*, KSA 75-7240, to employ the breach notification procedures contained in Kansas consumer protection law, K.S.A. 50-7a01 *et seq*. For all practical purposes, every definition in Kansas law of "breach," "security breach," and "cybersecurity incident" contains a functionally identical exemption for good faith and/or lawful access to personal information. *See* K.S.A. 50-7a01(h).
[5] K.S.A. 75-7237(b) (emphasis added).
[6] K.A.R. 30-4-40(3)(E).

government, and applicants were fully informed that it could be shared among government entities when they sought SNAP benefits in the first place.

Respondents are obligated by Kansas law (both constitutional and statutory) and federal law to supply the requested information to FNS. This clear legal obligation means Respondents can comply with FNS's lawful request in good faith and thereby avoid a breach pursuant to KCA. A temporary injunction compelling Respondents to produce the information would give Respondents even more protection, foreclosing any nexus to the KCA. The Court therefore should reject Respondents' claimed harms under the KCA.

Finally, Respondents claim that SNAP applicants' personal information "will be put at risk if DCF is order to turn over the requested data." (Resp. Br. at 10). Once again, Respondents fail to support their audacious claim that this relevant program data would be put at risk by the very agency that administers the program for which the data is collected. Furthermore, they fail to acknowledge, let alone critique, the "Administrative, Technical, and Physical Safeguards" described in the June 23, 2025, SORN, which describe how Kansas's SNAP data will be protected.[7]

Respondents' statutory citations also do not help them. For example, they cite 7 U.S.C. § 2020(e)(8) as support for their claim that the requested data is "protected

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[7] *See* "National Supplemental Nutrition Assistance Program (SNAP) Information Database." 90 Fed. Reg. at 26,523 (June 23, 2025) (noting, for example, that "USDA has imposed strict controls to minimize the risk of compromising information in the system" and describing same).

from unauthorized disclosure [to FNS]," even though that statute explicitly *permits* the exact disclosure that FNS requested.[8]

Ultimately, Respondents do not and cannot support their assertion that an injunction to fulfill their duties will harm them. And they do not represent the State, so they are not even in the position to assert that such hypothetical outcomes would somehow harm the State.

3) The public interest requires SNAP compliance

Respondents spend two sentences discussing the public interest, arguing that an "illegal disclosure of confidential personal information is clearly adverse to the public interest." (Resp. Br. at 10.) Fortunately, no one is requesting that Respondents illegally disclose confidential personal information. The public interest requires public officers to follow their mandatory legal obligations requiring the State to provide relevant program data, avoid needlessly losing $10.4 million, and take the necessary actions to maintain Kansas's SNAP eligibility. A temporary injunction clearly is in the public interest.

4) The State is substantially likely to succeed on the merits

The State is substantially likely to succeed on the merits of all of its claims. To issue a temporary injunction, however, the Court need only find that the State is substantially likely to succeed on any one of its claims.

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[8] *See* 7 U.S.C. § 2020(e)(8) (requiring state information safeguards, which "*shall* permit—(i) the disclosure of such [personal] information to persons directly connected with the administration or enforcement of the provisions of this chapter...") (emphasis added)).

A. The State will succeed on its claim that Respondents are violating Kansas law

Respondents make four arguments to support their claim that they are not violating state law. It is worth noting at the outset that none of these are the same reasons Respondents gave to FNS, on July 30 and August 14, 2025, when they refused to comply with FNS's request. These are new reasons, produced in response to this action. And yet these, too, fail to justify Respondents' unlawful actions.[9]

First, Respondents claim that since Kansas statutes "do nothing more than reflect Federal law," the obligations described in those state statutes are not subject to the jurisdiction of state courts. *See* (Resp. Br. at 11). This argument is facially incorrect. The State's petition, among other things, requests a writ of mandamus under Kansas law, K.S.A. 60-801, compelling Respondents to obey Kansas law. Such a petition is intended to be adjudicated by the courts of Kansas. Moreover, the mandate in K.S.A. 39-708c that "[t]he secretary shall undertake to cooperate with the federal government" does not reflect a substantive provision of federal law; it is a mandate from the Kansas Legislature imposed upon the secretary. And even if a provision of state law did precisely mirror a provision of federal law, that in no way converts the obligation to follow state law into a federal claim.

[9] Although Respondents asserted twice, on July 30 and August 14, 2025, in letters to FNS (*see* Exs. E and G), that complying with FNS's request would be too burdensome for them to complete by FNS's deadline, Respondents have not made any argument to that effect in their response, and have offered no evidence to support that argument. The Court should therefore hold that Respondents have abandoned the argument that complying with FNS's request is too burdensome.

Confusingly, Respondents seem to assert that their defense based on federal law (*i.e.*, that the request for data violates federal law) deprives this Court of jurisdiction. But they cite no support for this notion. If "the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction," then it certainly cannot deprive this Court of jurisdiction. *See Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 813 (1986). State trial courts are courts of general jurisdiction that routinely decide matters of federal law, and this case is no exception. *Cf. Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) ("[W]e have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States."). This Court has unquestionable jurisdiction over the federal claims in this matter. And Respondents' suggestion that this Court lacks jurisdiction over the state law and state constitutional claims is nonsensical.

Second, Respondents deny that FNS's request for information constitutes a "report" under K.S.A. 39-708c(f).[10] Instead, they claim it is a "request." This is a distinction without a difference. It is also without any support. "Report" is not defined in any relevant section of state law or federal law, and Respondents offer no definition of their own. There is no evidence that the Legislature intended to use a narrow or specialized meaning of "report" such that Respondents would not be required to submit detailed program data to FNS. In the absence of a statutory

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[10] *See id.* (The secretary… *shall* make any reports required by federal agencies.") (emphasis added).

definition, the Court should use the commonly understood meaning of the word.[11] The Oxford English Dictionary defines "report" as:

> An account of a situation, event, etc., brought by one person to another, esp. as the result of an investigation; a piece of information or intelligence provided by an emissary, official investigator, etc.; a notification of something observed.[12]

Consistent with this definition, FNS's request for data is a request for a report of the relevant information that could support an individual's participation in the SNAP program. It is reasonable, relevant and necessary information—a detailed account of the state's SNAP applicants and beneficiaries—to be brought by Respondents to FNS. Accordingly, FNS's request falls squarely within K.S.A. 39-708c(f).

Moreover, the SNAP statutes in Kansas law have a principal goal: mandate compliance with SNAP requirements to ensure eligible Kansans can receive food assistance in conjunction with federal funding. It would be erroneous, therefore, to interpret undefined terms in the statute such that DCF could fail to meet program requirements and thus put food assistance at risk simply because FNS neglected to use the magic word "report" when it requested a report of program data. It would be

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[11] *See Szboszlay v. Glessner*, 233 Kan. 475, 478 (1983) ("It is a fundamental principle of statutory construction that words in common usage are to be given their natural and ordinary meaning in arriving at the proper construction of a statute."); *In re Marriage of Welliver*, 254 Kan. 801, 809 (1994) ("The courts are to give the language of statutes their commonly understood meaning.").

[12] *Report*, OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/report_n?tl=true.

using a cramped and illogical definition of a single word to defeat the very purpose of the law.

Independent of the obligation to make reports, Kansas law also requires Respondents to "cooperate" with FNS. K.S.A. 39-708c ("The secretary shall undertake to cooperate with the federal government."). Respondents' silence regarding this statutory provision speaks volumes. They offer *no response whatsoever* to the State's independent claim based on this statute. Respondents completely ignore this statute, which the Court should accept as a tacit admission that they are under this statutory obligation and they are failing to meet it. The statutory obligation to cooperate with FNS is clear and unequivocal. It should also be remembered that every word of a statute must be given meaning—no words can be interpreted as simply repeating what has already been said. Thus, even if Respondents' strained argument that the requested data is not a "report" held any water, they have a separate and independent legal obligation to cooperate with the federal government by accommodating its request.

Respondents' third argument is that they have no obligation to comply with FNS's request because it is "new." (Resp. Br. at 11). And they claim it is not authorized by any federal statute, despite FNS's listing a complete statutory justification in the Federal Register.[13] Respondents fail to cite any authority in support of their impertinent claim that their state-law obligations to make reports

[13] FNS described its authority to request the data as: 7 U.S.C. § 2020(a)(3) and (e)(8)(A); 7 CFR 272.1(c)(1) and (e); Executive Order 14243; and Executive Order 14218. 90 Fed. Reg. 26522.

and cooperate with federal officials do not include responding to official requests for program data or cooperating according to FNS's valid regulatory enactments. In fact, Kansas statutory language requiring the secretary to make "any reports" and to "cooperate" completely covers Respondents' obligation to make all reports, even if they may be new reports mandated by federal regulation.

Finally, Respondents mischaracterize their obligations under K.S.A. 39-709b. They argue that, although K.S.A. 709b(a)(3)(B) requires disclosure of information "directly connected to the administration" of SNAP or other federal assistance programs, they do not have to disclose the information because FNS listed one (out of eleven)[14] proposed routine uses of the information, and Respondents do not believe this single routine use is directly connected to the administration of those programs. Their argument falls flat.

Respondents are wrong that the requested disclosure of data is not directly related to the administration of SNAP, federal assistance programs, or other federally assisted state programs. FNS's June 23, 2025, publication in the Federal Register, "National Supplemental Nutrition Assistance Program (SNAP) Information Database," describes how FNS will administer SNAP, pursuant to its statutory authority.[15] It gives eleven categories of routine uses it intends for the requested information. "Routine use" is defined in relevant federal law to mean,

[14] *See* 90 Fed. Reg. at 26522-23; (Resp. Br. at 12).
[15] *See* 90 Fed. Reg. 26522 ("USDA will use the SNAP data to ensure the integrity of Government programs, including by verifying SNAP recipient eligibility against federally maintained databases. This is consistent with USDA's statutory authority.").

"with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected." 5 U.S.C. § 552a(a)(7). As long as the data disclosures described in the SORN are "compatible" with the administration or enforcement of SNAP, other federal assistance programs or federally-assisted state programs, it is "directly connected" for purposes of 7 U.S.C. § 2020(e)(8)(A). Thus, the collection of data, as described in FNS regulations, is directly connected to the administration of SNAP (or another federal assistance program). It must be disclosed to the federal government for obvious reasons.

Furthermore, in FNS's SORN, posted in the Federal Register, routine use category (8) refers to SNAP records that indicate a potential violation of law, which may be disclosed to another federal agency responsible for enforcing the law in question. Thus, these records qualify for disclosure under K.S.A. 39-709b(a)(3)(C): information which may be disclosed that "is directly connected to an investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration" of SNAP. K.S.A. 709b(a)(3)(C) encompasses *any* investigation conducted "in connection with" SNAP or another federal assistance program or federally-funded state program, so it is broad enough to independently authorize FNS's eighth category of routine use.

Respondents may not like how FNS will use the data to audit and administer the program, but that does not give them the ability to disobey Kansas law. Like the state plaintiffs in *California*, Respondents perhaps are politically motivated by the prospect that SNAP participant data will be used to discover waste, fraud and abuse or, in part, for ensuring that SNAP benefits do not go to illegal aliens.[16] Respondents are apparently unaware that checking applicants' immigration status is, by federal law, an inherent part of administering SNAP. In 1996, Congress amended all federal assistance programs to prohibit "public benefits" from going to any unqualified aliens. 8 U.S.C. § 1611. With limited exceptions, SNAP eligibility is limited to United States citizens and green card holders.[17] Immigration status is therefore an appropriate concern of federal officials administering, auditing, and enforcing SNAP and other federal assistance programs. Within the federal government, FNS is not the agency that ascertains a person's immigration status—DHS is. Therefore, it is sometimes necessary for relevant information to about a SNAP recipient to be conveyed to DHS.

In any event, Kansas law does not authorize Respondents to unilaterally refuse to cooperate and provide mandatory reports if they politically disagree that the requested material may not be connected with the "direct administration or enforcement" of SNAP or other federal assistance programs. That is wholly irrelevant. K.S.A. 39-708b(3) states that information "*shall* be disclosed to an…

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[16] *See California v. U.S. Dep't of Agri.*, No. 3:25-cv-6310 (N. Dist. Cal.) (July 28, 2025), Comp., ECF 1 at 67, para. 309 ("Plaintiffs reasonably believe that USDA intends to share the data it receives with DOGE and DHS, among other federal agencies, for immigration enforcement and other non-SNAP-purposes, in light of the facts described in Sections III, IV, and V.E, *supra*, DOGE's demand for EBT vendor data in conjunction with USDA, Defendants' lack of written assurances to the contrary, and the routine uses described in USDA's SORN.").

[17] *See* 7 U.S.C. § 2015(f) (as amended by 139 Stat. 85, Sec. 10108 (July 4, 2025)); additionally, as noted *supra*, it is a requirement of federal law that the federal government and state governments must not provide public benefits to unqualified aliens. 8 U.S.C. §§ 1611, 1621.

outside source" [*i.e.*, FNS] when the disclosure is "directly connected to the administration or enforcement" of SNAP or other federal assistance program (emphasis added). In the Federal Register and in its letters to Respondents, FNS has repeatedly asserted that the request is directly connected to the administration or enforcement of SNAP or other federal assistance programs. K.S.A. 39-708c therefore requires cooperation. Respondents have no discretion whatsoever under the law to refuse this request; and they certainly cannot deny the federal government's data request based on their personal, political agenda.

Thus, the State is substantially likely to succeed on the merits of its claim that Respondents are violating Kansas law.

B. The State is likely to succeed on its claim that Respondents are violating federal law

Respondents offer a single reason for their failure to perform their mandatory duty under federal law and comply with FNS's request:[18] FNS's list of "routine uses" for which it was requesting information includes routine use category (8), which allegedly "far exceeds the allowed use" in 7 U.S.C. § 2020(e)(8)(A).

Section 2020(e)(8) requires a state plan of operation that includes safeguards of SNAP applicant information, which "*shall* permit the disclosure of such information to persons directly connected with the administration or enforcement of

[18] As with their state law defense, this reason appears for the first time in Respondents' response to the motion for temporary injunction. In their earlier responses to FNS on July 30 and August 14, 2025, Respondents did not allege that complying with the request would violate the state plan.

the provision of this chapter, Federal assistance programs, or federally-assisted State programs" and "the subsequent use of the information … only for such administration or enforcement." (emphasis added).

Respondents claim they cannot comply with the request because, *without any evidence*, they do not believe that the information is intended for administration or enforcement of the SNAP program. Respondents have contrived "concerns over producing the requested data." Just as with state law, federal law leaves Respondents with no discretion to not comply whenever, in their opinion, they have "concerns." As shown above, the requested information is "directly connected" with the administration or enforcement of SNAP, other federal assistance programs, or federally-assisted state programs for purposes of 7 U.S.C. § 2020(e)(8)(A). Respondents' assertion that one of the routine uses "far exceeds" what is described in section 2020(e)(8)(A) is simply not the correct standard for determining if a disclosure is lawful.

Ultimately, Respondents claim that they cannot comply with FNS's request for SNAP data because FNS is acting unlawfully in some unspecified way. Yet Respondents have done nothing to challenge FNS's actions through the normal, legal means available to them for challenging unlawful actions. Nothing in federal law authorizes the course Respondents have taken: refusing to comply with FNS's request to report program data, while simultaneously failing to formally challenge the legality of that request. If Respondents are not authorized or able to challenge the legality of FNS's request, then they must comply with FNS's request.

Otherwise, they violate federal law. The State is therefore substantially likely to succeed on Count II of the petition.

C. The State is likely to succeed on its claims that Respondents are violating the Kansas Constitution

Respondents do not meaningfully or substantively respond to the charge that they are usurping the prerogatives of the Legislature by effectively re-writing mandatory duties as discretionary duties, thereby casting aside conscious policy choices made by the Kansas Legislature. Instead they bizarrely claim that they are attempting "give effect to both State and Federal law," even while FNS proceeds to disallow federal funding due to their noncompliance with federal and state law. Moreover, Respondents completely fail to respond to the argument that they are attempting to rewrite the terms of the agreement that the State made with the federal government when it agreed to participate in SNAP. Only the Kansas Legislature can do that.

According to Respondents, "this is not a separation of powers issue. It is an interpretation of Federal statutory law issue which a Federal court is currently considering." But as shown above, Respondents have not asked any court with actual jurisdiction to review FNS's action for legality, and no Court but this one is reviewing Respondents' obligations under Kansas law. Respondents cannot pretend to be party to a distant lawsuit in order avoid their statutory obligations.

Finally, Respondents misapprehend the charge that they are violating Art. 2, sec. 24, of the Kansas Constitution. If DCF plans to spend its operational budget, which is appropriated by the Legislature in Fiscal Year 2026, and DCF loses $10.4

million every three months due to its failure to comply with FNS's requests, where will it find the missing $41.6 million? DCF's appropriation does not account for any loss of federal funding. Absent compelled compliance, DCF will spend more money than was appropriated by the Legislature, and it will therefore violate the Kansas Constitution.

5) Granting a temporary injunction would preserve the status quo

Respondents make much of the fact that its prospective appeal of FNS's disallowance decision will stay enforcement, but they do not once claim that they can recover disallowed funds if their appeal is unsuccessful. <u>That is because they cannot</u>.

Once FNS disallows $10.4 million in federal funding on September 19, 2025, that money will never be recovered. And additional federal funding, and even Kansas's SNAP eligibility itself, is at risk for as long as the State remains out of compliance. A temporary injunction is therefore necessary to preserve the status quo which requires cooperation with FNS regarding the provision of requested data and thereby avoids any possible loss of benefits to low-income Kansans, as well as the state a minimum of $10.4 million. Stated differently, under the status quo the State will certainly receive the $10.4 million from the federal government. Under Respondents' course, if it is not temporarily enjoined, the State will lose that $10.4 million; and the State's continued participation in SNAP will be jeopardized.

CONCLUSION

The State meets the standard to obtain a temporary injunction stopping Respondents' unlawful actions. The State therefore requests an order, as described in its motion for temporary injunction, compelling Respondents to act in accordance with their statutory and constitutional obligations.

Respectfully submitted,

<u>/s/ Kris W. Kobach</u>
Kris W. Kobach, #17280
Attorney General
James R. Rodriguez, #29172
Assistant Attorney General
Office of the Attorney General
120 SW 10th Ave, 2d Fl
Topeka, Kansas 66612-1597
Phone: (785) 296-2215
Email: jay.rodriguez@ag.ks.gov
Counsel for the State of Kansas

CERTIFICATE OF SERVICE

I certify that on September 16, 2025, the above document was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants.

/s/ Kris W. Kobach
Kris W. Kobach,
Attorney General

Exhibit 15

Office of the Secretary
555 S. Kansas Ave., 6th Floor
Topeka, KS 66603

Kansas Department for Children and Families

Phone: (785) 296-3271
Fax: (785) 296-4985
www.dcf.ks.gov

Laura Howard, Secretary

Laura Kelly, Governor

SNAP Corrective Action Proposal

Agency: Kansas Department for Children and Families

Date: 09/19/2025

The Kansas Department for Children and Families (DCF) submits the following plan in conjunction with our letter dated September 5, 2025, requesting USDA's formal warning be held in abeyance until the completion of the case currently pending in the United States District Court for the Northern District of California, case no. 3:25-cv-06310-MMC. As of September 18, 2025, we have not received a response to our request for an abeyance.

On May 6, 2025, USDA issued letter guidance requiring all States to work through their SNAP payment processors to submit the following data to FNS for "the period beginning January 1, 2020, through present":

1. Records sufficient to identify individuals as applicants for, or recipients of, SNAP benefits, including but not limited to personally identifiable information in the form of names, dates of birth, personal addresses used, and Social Security numbers.
2. Records sufficient to calculate the total dollar value of SNAP benefits received by participants over time, with the ability to filter benefits received by date ranges.

On June 23, 2025, USDA published a notice in the Federal Register regarding the creation of a new system of records (SOR), USDA/FNS-15, "National Supplement Nutrition Assistance Program (SNAP) Information Database". On July 9, 2025, USDA issued a letter to all "SNAP State Agencies" requiring "collection of SNAP data from EBT processors or State agencies beginning on July 24, 2025, with submissions to USDA no later than the close of business on July 30, 2025." On July 23, 2025, USDA issued a letter to States requiring transmission of data elements as follows:

> ***Data Elements***
>
> The requested data elements are for individuals who have received, are currently receiving, or have applied to receive SNAP benefits from January 1, 2020, through present date. Requested data elements shall include records sufficient to identify individuals as applicants for, or recipients of, SNAP benefits, including but not limited to all household group members names, dates of birth, social security numbers, residential and mailing addresses used or provided, as well as all data records used to determine eligibility or ineligibility. It is understood that these data records will vary household to household, and may include earned and unearned income, absent parent(s), and other data used in the determination process. Please do not include supporting documents or case comments.

Additionally, transactional records from each household are also requested, and must be sufficient to calculate the total dollar value of SNAP received by recipients over time, with the ability to filter benefits received by date ranges, as well as SNAP usage and retailer data.

Data Transmission

Each State agency shall transmit data to FNS via the platform called Box. Once you identify the individual who will be responsible for transmitting the data for your State agency, please send their name, title, and email address to SNAPDatabase@usda.gov. The State agency identified contact will then receive an email for account creation and access for data transmission.

Box is a secure platform which employs various security measures, including encryption, access controls, and compliance features to handle the sensitive data that States will be transmitting.

In letters to USDA on July 30, 2025 and August 14, 2025, DCF notified USDA of various barriers associated with complying with the data request. These include: the legal uncertainty of the pending litigation in the Northern District of California; the breadth of the request; the short period of time to validate and submit the data; and the monetary burden on the agency.

USDA's August 20, 2025 letter indicates that FNS will determine whether DCF has demonstrated compliance with providing SNAP enrollment data based on successful completion of either of two actions:

1. Submission, within 30 days from receipt of this letter, evidence that it has complied.
2. Submission, within 30 days from receipt of this letter, a corrective action proposal that FNS finds acceptable.

Corrective action plan proposal for data submission:

DCF proposes a phased approach that if completed satisfactorily to both parties, will result in data sharing consistent with state and federal law data of the data elements described above spanning the required timeframe.

DCF proposes the following phases:

- **Phase 1: Study and Design**
  - DCF's team will work with USDA to identify all data elements requested, and the security features of all aspects of the proposed data transfer. DCF and USDA's technical teams will develop a technical plan for data extraction.
  - Target Completion Date: October 31, 2025

- **Phase 2: Initiation and Agreement**
  - DCF will submit a proposed Data Sharing Agreement that is consistent with state and federal law regarding the administration of the SNAP program (7. U.S.C. 2020). Whether such agreement is required is currently and recently disputed by USDA in *California v. USDA*, 25-CV-6310, Northern District of California. The parties agree to revisit and revise this Phase 2 as needed, upon a finding by the court.
  - Target Completion Date: November 28, 2025

- **Phase 3: Pilot Extract**
  - Extract pilot data set to validate data and ensure quality control.
  - Target Completion Date: January 2026

- **Phase 4: Complete Transfer**
  - DCF will transfer the final validated data to USDA consistent with state and federal law.
  - Target Completion Date: February 2026

- **Phase 5: Closeout**
  - USDA will provide written confirmation of receipt of the finalized data set.
  - Target Completion: March 2026

Name and title of person who has overall responsibility for this corrective action:

Carla Whiteside-Hicks, Ph.D.
Director of Economic and Employment Services
Kansas Department for Children and Families
[redacted]

Office of the Secretary
555 S. Kansas Ave., 6th Floor
Topeka, KS 66603

AD ASTRA PER ASPERA
Kansas
Department for Children and Families

Phone: (785) 296-3271
Fax: (785) 296-4985
www.dcf.ks.gov

Laura Howard, Secretary

Laura Kelly, Governor

September 19, 2025

Patrick A. Penn
Deputy Under Secretary
Food, Nutrition, and Consumer Service
Office of the Under Secretary for Food, Nutrition, and Consumer Services
1400 Independence Avenue, SW
Washington, DC 20250-9600

Re: ***Corrective Action Plan***

Dear Mr. Penn,

Please find the Kansas Department for Children and Families' Corrective Action Proposal, submitted pursuant to 7 C.F.R. § 276.4(d)(2)(ii), enclosed herewith. Please contact the undersigned with any questions.

Very truly yours,

Laura Howard

Laura Howard, Secretary

Encl.

cc: Karen Fletcher, General Counsel for USDA (via email: karen.fletcher@usda.gov)

Exhibit B

Exhibit 16

U.S. DEPARTMENT OF AGRICULTURE

Marc A. Altenbernt
General Counsel
Kansas Department for Children and Families
555 S. Kansas Avenue
Topeka, Kansas 66603

Dear Mr. Altenbernt,

As written with the proposed timeline, this corrective action plan is unacceptable.

Thank you,

Shiela Corley

Shiela Corley
Chief of Staff
Food, Nutrition, Consumer Services
U.S. Department of Agriculture

Exhibit 17

September 20, 2025

Governor Laura Kelly
Office of the Governor
300 SW 10th Ave. Ste. 241S
Topeka, Kansas 66612

NOTICE OF DISALLOWANCE

Dear Governor Kelly,

This letter serves as a notice of disallowance under 7 C.F.R. § 276.4(e) to Kansas's Department of Children and Families for failure to comply with requirements to provide SNAP enrollment data. This disallowance notice is sent as a follow-up to our August 20, 2025, formal warning letter (FWL) to Kansas's Department of Children and Families for non-compliance with the U.S. Department of Agriculture's (USDA) requirement to submit Supplemental Nutrition Assistance Program (SNAP) enrollment data by July 30, 2025.

The FWL informed the Department of Children and Families that it was required to demonstrate compliance no later than Friday, September 19, 2025 by either submitting an acceptable corrective action proposal or by submitting evidence it had complied with Federal requirements at 7 U.S.C. 2020(e)(8)(A) by transmitting the requested SNAP enrollment data. As of the date of this letter, Food and Nutrition Service (FNS) has not received an acceptable corrective action plan proposal or any SNAP enrollment data from the Department of Children and Families.

Because Kansas's Department of Children and Families has failed to demonstrate compliance with the data sharing requirements at 7 U.S.C. 2020(e)(8)(A) to the satisfaction of FNS, FNS is disallowing $10,439,386.49 for the Department of Children and Families' SNAP administrative expenses for each quarter in which it is out of compliance. As previously explained in the FWL, this figure represents 9.98% of the amount Kansas expended in SNAP benefits in Federal Fiscal Year (FFY) 2024, divided by four.

The complete transmission of the required SNAP enrollment data is imperative to ensure FNS and the State agency have full insight into SNAP program integrity. In the absence of data, FNS and the Department of Children and Families lack key information necessary to ensure effective stewardship of taxpayer dollars. FNS has already discovered from states that are complying with this statutory data sharing requirement that fraud or duplication in state distribution of federal funds has gone unreported and needs remediation. FNS stands ready to assist the Department of

Children and Families with technical assistance to ensure its data is transmitted in compliance with Federal requirements.

Kansas's Department of Children and Families has ten (10) days in which to file a formal appeal of this disallowance in accordance with 7 CFR 276.7. Appeals must be directed by email to the State SNAP Appeals Board at **SM.FN.StateSNAPAppealsBoard@usda.gov** or by mail to:

Executive Secretary
State SNAP Appeals Board, Food and Nutrition Service
c/o Administrative and Judicial Review Branch
1320 Braddock Pl., 5th Fl.
Alexandria, VA 22314

Please note that filings sent by mail may experience delays reaching the State SNAP Appeals Board.

Sincerely,

Patrick A. Penn
Deputy Under Secretary
Food, Nutrition, and Consumer Services

James C. Miller
Administrator
Food and Nutrition Service

Exhibit 18

STATE OF KANSAS

CAPITOL BUILDING, ROOM 241 SOUTH
TOPEKA, KS 66612

PHONE: (785) 296-3232
GOVERNOR.KS.GOV

GOVERNOR LAURA KELLY

September 22, 2025

<u>Sent via USPS</u>
Secretary
U.S. Department of Agriculture
c/o the Executive Secretary
State Food Stamp Appeals Board
Food and Nutrition Service, USDA,
Washington, DC 20250

-and-

Executive Secretary
State SNAP Appeals Board, Food and Nutrition Service
c/o Administrative and Judicial Review Branch
1320 Braddock Pl., 5th Fl.
Alexandria, VA 22314

<u>Sent via Email</u>
SM.FN.StateSNAPAppealsBoard@usda.gov

Re: <u>Demand For Appeal and Request for Administrative Review and Hearing</u>

Dear Executive Secretary,

Please accept this correspondence as a formal demand for appeal and request for administrative review under 7 C.F.R. § 276.7 filed by Laura Kelly, as Governor of the State of Kansas, Laura Howard, as Secretary for the Kansas Department for Children and Families, and the Kansas Department for Children and Families (collectively referred to herein as "Appellants"). The Appellants hereby appeal the Notice of Disallowance issued on September 20, 2025, a copy of which is enclosed herewith, and specifically request an opportunity to present information in support of its position.

Per 7 C.F.R. § 276.7(e), the timely filing of this appeal and request for administrative review "shall automatically stay the action of FNS to collect the claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final determination has been issued." Appellants request a hearing on this matter of significant public importance.

Respectfully,

Laura Kelly
Laura Kelly
Governor of Kansas

Laura Howard
Laura Howard
Secretary
Kansas Department for Children and Families

Enclosure
cc: Sarah Merrill (Via Email: [redacted])

Exhibit 19

From:	Justin H. Whitten [GO]
To:	Powell, Anthony J.; Hutchison, Robert [AG]
Cc:	Sherry Diel [KDADS]; Shon Qualseth [KDHE]; Ashley StitesHubbard [GO]; Dalton, Charles; Carswell, Dwight
Subject:	RE: States v. HHS litigation
Date:	Tuesday, May 20, 2025 11:31:53 AM
Attachments:	US_DIS_RID_1_25cv121_d213132860e6562_MEMORANDUM_AND_ORDER_Upon_consideration_of_the_Sta.pdf

Hello Tony, Robert, Charles, and Dwight:

Attached is the decision from Judge McElroy for the United State District Court for the District of Rhode Island granting a preliminary injunction against the U.S. Dept. of Health and Human Services over its likely unlawful, unilateral terminations of billions in federal grants to the states for public health. The decision is sound. HHS' likely unlawful action is impacting Kansas, and we need your office to reconsider our request that you join this litigation in support of the states. We are losing money; we are losing personnel; and we are losing critical public health infrastructure on account of the Trump Administration's unlawful actions.

In your April 9, 2025, letter declining to get involved in this case, you noted that you believe the position of HHS was legally correct. Respectfully, you were wrong. I encourage you to read the attached decision in detail and reconsider your position in this matter. Whether or not we agree with the President's policy initiatives, we must – absolutely must – agree that the President and the federal executive branch agencies must follow the law.

You have made your position on the need for executive officers to follow the law clear when you wrote about my client in your July 2023 mandamus petition against the Kansas Department of Revenue over Senate Bill 180, the discriminatory bill targeting transgender individuals for unequal treatment in the provision of government-issued identity documents:

> In the words of John Adams, we have "a government of laws, and not of men." The Legislature makes the law, and the executive branch—including the Governor and her subordinates—must execute it, whether they like the law or not. She does not possess the power that English monarchs claimed prior to the "Glorious Revolution" of 1688, namely, the power to suspend the operation of statutes. Indeed, the Declaration of Independence was in part a reaction to this practice. See Declaration of Independence ¶ 4.
>
> Thus, the Attorney General reluctantly brings this action to force the Governor's subordinates (those in the Division of Vehicles) to do what the Women's Bill of Rights clearly tells them they must do: issue driver's licenses that reflect a person's sex at birth and stop letting people select their sex designation at will. Someone must stand up for the law, even if the Governor won't.

Setting aside our legal differences, if the Attorney General's Office is to stand by its lofty defense of the Declaration of Independence from monarchs, then it must stand up for Kansas and defend the rule of law against unlawful actions of HHS, even if President Trump won't.

You showed a zeal for challenging the Biden Administration for alleged agency overreach on behalf of the State of Kansas, like when you sued the Department of Education over a final rule interpreting Title IX's prohibition against discrimination based on sex as including gender identity. *Kansas v. Department of Education* (DKAN 24-cv-40441). Or when you sued President Biden and that same agency over public loan forgiveness (DKAN 24-cv-1057). In both cases, Kansas argued that the major questions doctrine divested the agency from asserting authority over "matters of great economic and political significance" absent express congressional authority.

This case is that. As the attached decision aptly explains, the public health funding at issue was reviewed by Congress in June of 2023, and some was left in place while other parts were rescinded. This occurred after the pandemic was over and illustrates clear congressional intent to leave some of the money in place for the states - outside any arbitrary and unilateral decision by an agency about the necessity of the funds after the pandemic, which was a decision Congress already made. The court explains on page 33:

> More importantly, when undertaking this review in June 2023, Congress did not grant HHS authority to rescind or reallocate the funds, nor did it authorize such drastic action. In the interpretation of statutes, the express mention of one thing is to the exclusion of others. See, e.g., N.L.R.B. v. SW Gen., Inc., 580 U.S. 288, 302 (2017) ("If a sign at the entrance to a zoo says, 'come see the elephant, lion, hippo, and giraffe,' and a temporary sign is added saying 'the giraffe is sick,' you would reasonably assume that the others are in good health.") Thus, Congress's express decision to eliminate some COVID-era public health funding, but leave alone the funding at issue here, signals its intent to continue that funding.

That the examples of your past litigation I cite were of promulgation and interpretation of federal rules and not, as is the case here, grant terminations, is not dispositive because clearly cutting off billions in appropriated funds is a matter of great economic significance. The parallels between the federal and state governments regarding separation of powers in the three-part systems of government (legislative, executive, and judicial), mean that just as you argued my client cannot contravene the Kansas legislature, so, too, must you agree (and hopefully one day argue) President Trump and the agencies in his administration cannot contravene Congress. In your words regarding the law, the President and his subordinates, including HHS, "must execute it, whether they like the law or not." The attached decision thoroughly explains why HHS has not followed the law and is unlawfully taking millions of dollars from states like Kansas.

I understand if your office has concerns about the issue of jurisdiction and the Tucker Act. We can discuss, but I believe the attached decision sufficiently explains the inapplicability of the Tucker Act to cases such as this where we want to seek prospective equitable relief to prevent further harm to Kansas's public health infrastructure. As the Rhode Island court noted, "Just because 'a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'" (quoting *Bowen v. Massachusetts,* 487 U.S. 879, 893 (1988)). The Government's baseline argument appears to be that since this involves money from terminated grants this a contract action subject to the Tucker Act; that's bit a reductive. And this argument was rejected in the attached decision.

In simpler terms, if Congress appropriated money for a bridge to be built and the Department of Transportation decide the bridge was no longer necessary, a party would sue for the bridge to be built. And just because money is required to get that done as part of a judicial remedy does not convert it into solely a money claim under the Tucker Act because the relief sought is not just the money; rather, it's a congressionally mandated outcome: the bridge. That is prospective equitable relief outside the Tucker Act and without question appropriately within the jurisdiction of traditional Article III courts. Similarly, here, the money is for building infrastructure for public health -it's not just the money; it's the people, equipment, testing, monitoring, supply chains, research, etc. (the whole bridge).

The other elephant in the room is the stay order from *Department of Education v. California, 145 S. Ct. 996 (Apr. 4, 2025)*. Judge McElroy's decision is sound on this issue noting: 1) the three-page stay order is not a decision on the merits; 2) this is not a case of enforcement of contractual rights. This is enforcement of statutory and constitutional rights. See footnotes 10 and 11 in the attached order.

Respectfully, please reconsider your position and consider either joining the multi-state litigation in Rhode Island or filing something here in DKAN to protect Kansas's public health infrastructure from the unlawful actions of HHS. We are open to further dialog and ready to assist in defense of Kansas.

Thank you.
--Justin

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

From: Justin H. Whitten [GO]
Sent: Tuesday, April 8, 2025 11:16 AM
To: Powell, Anthony J. [redacted]; Hutchison, Robert [AG] [redacted]
Cc: Sherry Diel [KDADS] [redacted]; Shon Qualseth [KDHE] [redacted]; Ashley StitesHubbard [GO] <Ashley.StitesHubbard@ks.gov>; Dalton, Charles [redacted]; Carswell, Dwight [redacted]
Subject: RE: States v. HHS litigation

Here's the TRO.

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

IRS CIRCULAR 230 NOTICE: In compliance with IRS requirements, we inform you that any U.S. tax advice contained in this communication, including all attachments, is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter(s) addressed herein.

From: Justin H. Whitten [GO]
Sent: Tuesday, April 8, 2025 11:01 AM
To: Powell, Anthony J. [redacted]; Hutchison, Robert [AG] [redacted]

Cc: Sherry Diel [KDADS] [redacted]; Shon Qualseth [KDHE] [redacted]; Ashley StitesHubbard [GO] [redacted]; Dalton, Charles [redacted]; Carswell, Dwight [redacted]
Subject: RE: States v. HHS litigation

Copy of TRO attached. Also, I checked the docket this morning and saw HHS filed the attached motion for reconsideration.

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

From: Powell, Anthony J. [redacted]
Sent: Tuesday, April 8, 2025 9:01 AM
To: Justin H. Whitten [GO] [redacted]; Hutchison, Robert [AG] [redacted]
Cc: Sherry Diel [KDADS] [redacted]; Shon Qualseth [KDHE] [redacted]; Ashley StitesHubbard [GO] [redacted]; Dalton, Charles [redacted]; Carswell, Dwight [redacted]
Subject: RE: States v. HHS litigation

Thanks so much, Justin.

Anthony J. Powell | Solicitor General
Office of Kansas Attorney General Kris W. Kobach
120 SW 10th Avenue, 2nd Floor | Topeka, Kansas 66612
Office: [redacted] | Fax: [redacted]
[redacted] | www.ag.ks.gov

From: Justin H. Whitten [GO] [redacted]
Sent: Tuesday, April 8, 2025 9:00 AM
To: Powell, Anthony J. [redacted]; Hutchison, Robert [redacted]
Cc: Sherry Diel [KDADS] [redacted]; Shon Qualseth [KDHE] [redacted]; Ashley StitesHubbard [GO] [redacted]; Dalton, Charles [redacted]; Carswell, Dwight [redacted]
Subject: RE: States v. HHS litigation

Thank you, Tony. [redacted] I'll send meeting invite for 3:30, but absolutely understand if you cannot make it. I can be available anytime later to discuss/debrief.

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution or copying of this message is strictly prohibited. **If you have received this communication in error, please delete the original message and notify me immediately by e-mail.**

IRS CIRCULAR 230 NOTICE: In compliance with IRS requirements, we inform you that any U.S. tax advice contained in this communication, including all attachments, is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter(s) addressed herein.

From: Powell, Anthony J. [redacted]
Sent: Tuesday, April 8, 2025 8:55 AM
To: Justin H. Whitten [GO] [redacted]; Hutchison, Robert [AG] [redacted]
Cc: Sherry Diel [KDADS] [redacted]; Shon Qualseth [KDHE] [redacted]; Ashley StitesHubbard [GO] [redacted]; Dalton, Charles [redacted]; Carswell, Dwight [redacted]
Subject: RE: States v. HHS litigation

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Hi Justin,

We would be happy to visit about this, but it will have to be by phone. Robert is at a NAAG conference this week, but is available by phone at 3:30. I have to travel to Dallas today [redacted]. However, I can be available by phone at 3:30 as well.

Does that work?

Tony

Anthony J. Powell | Solicitor General
Office of Kansas Attorney General Kris W. Kobach
120 SW 10th Avenue, 2nd Floor | Topeka, Kansas 66612
Office: [redacted] | Fax: [redacted]
[redacted] www.ag.ks.gov

From: Justin H. Whitten [GO] [redacted]
Sent: Tuesday, April 8, 2025 8:08 AM
To: Powell, Anthony J. [redacted]; Hutchison, Robert [redacted]
Cc: Sherry Diel [KDADS] [redacted]; Shon Qualseth [KDHE] [redacted]; Ashley StitesHubbard [GO] [redacted]
Subject: States v. HHS litigation

Tony and Robert,

This matter is time sensitive. If you have time today, I would like to consult about the case brought by a number of AGs and the Governors' Offices of Kentucky and Pennsylvania against U.S. Dept. of Health and Human Services and HHS Secretary Kennedy in his official capacity. colorado-et-al-v-us-department-of-health-and-human-services-et-al-complaint-2025.pdf

The short version of this is HHS prematurely cancelled billions in health grants to the states causing numerous negative downstream consequences to state health agencies like KDHE and KDADS. Counsels for these two agencies are copied on this e-mail, and they can verify this claim: HHS's action will cause loss to KDHE in the amount of roughly $13-14 million and $6.1 million to KDADs. If this action stands, staff at these agencies will likely need to be reduced as soon as possibly this week.

Plaintiff states were able to obtain an injunction against the terminations, but the injunction does not appear to be nationwide, covering just Plaintiff states. https://thehill.com/policy/healthcare/5231020-federal-judge-temporary-pause-trump-administration-public-health-funding-cuts/. I'm trying to find a link to the actual TRO.

I'd like to discuss the possibility of the AG's Office filing a motion to intervene to join Kansas to this lawsuit. We do need answers on this quickly because if the AG is unwilling to join Kansas to the suit, then we will need to consider moving forward as the Office of the Governor, like PA and KY did.

My hope is that we could have good-faith partnership on this because this one seems pretty clear cut in terms of improper termination resulting in cognizable financial harm to Kansas agencies with downstream effects to the services provided to Kansans.

Please let me know if you have availability today for a quick call.

--Justin

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

Exhibit 20

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

KRIS W. KOBACH
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

April 9, 2025

Honorable Laura Kelly
Kansas Governor
300 S.W. 10th Avenue
Topeka, Kansas 66612

Re: *Colorado v. U.S. Dep't of Health and Human Services*, 25-cv-121 (D.R.I.)

Dear Governor Kelly:

During a discussion with my staff yesterday, your Chief Counsel suggested that you might direct me to appear for the State of Kansas in the lawsuit referenced above. While K.S.A. 75-702(b) may give you authority to require me to appear, please note that under Kansas law, I retain sole authority to control the legal position of the State.[1] In *State ex rel. Foster v. City of Kansas City*, the Kansas Supreme Court held that the Attorney General had authority to dismiss a case despite the Governor's direction not to do so.[2] The Kansas Supreme Court reiterated this holding in *State ex rel. Morrison v. Sebelius*, explaining that "the governor [] lacks constitutional authority to intrude into the attorney general's duties as an officer of the court."[3] And in 2013, the Legislature amended K.S.A. 75-702(a) to codify this principle. As that statute now specifies, the Attorney General "shall appear for the state . . . in all federal courts, in which the state shall be interested or a party, and shall, when so appearing, *control the state's prosecution or defense*" (emphasis added). Therefore, should you request me to appear for the State in the above-referenced case, I intend to advocate for the position that I believe to be legally correct, which is on the side of the Defendants.

Further, as I am neither sick nor absent, the provisions of K.S.A. 75-108 authorizing the Governor to hire counsel to represent the State are not applicable. Should you attempt to join or intervene in litigation in your own name and purport to represent the position of the State of Kansas contrary to the legal position as determined by the Attorney General, my office will take whatever measures are necessary to ensure that

---

[1] *See State ex rel. Stephan v. Reynolds*, 234 Kan. 574, 673 P.2d 1188 (1984) (Once the attorney general enters the case, he controls the prosecution . . . .").
[2] 186 Kan. 190, 196-97, 350 P.2d 37 (1960).
[3] 285 Kan. 875, 886-87, 179 P.3d 366 (2008).

the State's legal position and legal interests are represented. That may include seeking to intervene on the side of the Defendants.

Sincerely,

Kris W. Kobach
Attorney General

Exhibit 21

From:	Justin H. Whitten [GO]
To:	Hutchison, Robert [AG]; Dalton, Charles; Powell, Anthony J.
Cc:	Will R. Lawrence [GO]; Ashley StitesHubbard [GO]
Subject:	RE: Governor"s Direction to Attorney General under KSA 75-702 to Join or Initiate Litigation
Date:	Tuesday, July 8, 2025 2:23:13 PM

Robert,

We accept your answer as concession that the AG has fulfilled his legally required duties under K.S.A. 75-702 by exercising his independent judgment that the case described below is without legal merit. We disagree and will explore other legal options to address this federal overreach.

We appreciate your consideration of this matter. No further action is need from your office at this time.

Thank you.

--Justin

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

From: Hutchison, Robert [redacted]
Sent: Tuesday, July 8, 2025 11:06 AM

To: Justin H. Whitten [GO] [redacted]; Dalton, Charles [redacted]; Powell, Anthony J. [redacted]
Cc: Will R. Lawrence [GO] [redacted]; Ashley StitesHubbard [GO] [redacted]
Subject: RE: Governor's Direction to Attorney General under KSA 75-702 to Join or Initiate Litigation

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Justin,

Your discussion appears to concede that 75-702(b) does not give the Governor any ability to compel the Attorney General to join or file the lawsuits you have identified. Your response also seems to conflate elements of (a) and (b) to create a backdoor form of compulsion where somehow the Governor's office can identify a state interest, advise the AG of the interest, and by doing so compel the office to enter an existing case or file a new matter under a duty imposed by (a) even when directing the office to file under (b) is not an option. That interpretation undermines the entire point of subsection (b) and makes no sense in light of the distinctions of scope and venue between subsections (a) and (b). It also makes no sense to suggest that the AG's office is not in a position to identify state interests in such matters, which it would have to be able to do to exercise any functions under (a) including the control of any litigation in which it participates under 75-702. The OAG will act in accordance with its understanding of its duties under the law, which at this time does not include either joining the existing federal lawsuit or filing a new federal lawsuit.

Robert C. Hutchison | Acting Chief Deputy Attorney General
Office of Attorney General Kris W. Kobach
120 SW 10th Avenue, 2nd Floor | Topeka, Kansas 66612
Phone: [redacted] | Fax: [redacted]
[redacted] | www.ag.ks.gov

From: Justin H. Whitten [GO] [redacted]
Sent: Tuesday, July 8, 2025 9:59 AM
To: Hutchison, Robert [redacted]; Dalton, Charles [redacted]; Powell, Anthony J. [redacted]

Cc: Will R. Lawrence [GO] [redacted]; Ashley StitesHubbard [GO] [redacted]
Subject: RE: Governor's Direction to Attorney General under KSA 75-702 to Join or Initiate Litigation

Good Morning,

Following-up to see if there is any progress on the AG's merit determination of the discussed below and when we can expect a response?

Thank you.
--Justin

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

From: Justin H. Whitten [GO]
Sent: Wednesday, July 2, 2025 1:48 PM
To: Hutchison, Robert [redacted]; Dalton, Charles [redacted]; Powell, Anthony J. [redacted]
Cc: Will R. Lawrence [GO] [redacted]; Ashley StitesHubbard [GO] [redacted]
Subject: RE: Governor's Direction to Attorney General under KSA 75-702 to Join or Initiate Litigation

Robert,

Thanks for this. Setting aside the Office of the Attorney General's Opinion on K.S.A. 75-702(b), you have not addressed your obligation under K.S.A. 75-702(a), which as you know reads:

> The attorney general shall appear for the state, and prosecute and defend any and all actions and proceedings, civil or criminal, in the Kansas supreme court, the Kansas court of appeals and in all federal courts, in which the state shall be interested or a party, and shall, when so appearing, control the state's prosecution or defense.

Our previous correspondence has shown the state's interest: loss in excess of $9 million dollars of premature and potentially unlawful terminations of grants by federal agencies to several Kansas agencies. Beyond the current adverse fiscal impact, the state has an even stronger interest in receipt of ongoing and future federal grants not being subject to arbitrary and potentially unlawful terminations. This could be hundreds of millions of dollars in federal grants to the state.

While we agree that the Attorney General cannot be compelled to file a suit he believes does not have merit, that discretion is rooted in his duties as an officer of the court and his ethical obligations arising therefrom. As a policy maker in determining whether the interests of the state are affected, the Attorney General's judgment is superseded by that of: 1) the legislature; and 2) the Governor as the Supreme Executive – it is the Governor, not the Attorney General, who determines whether executive branch agencies are adversely affected by the actions like those at issue in this case.

For the AG to refuse under K.S.A. 75-702 where the Governor has already established the state has an interest, the Attorney General can only exercise his discretion as an officer of the court as to whether he believes the case as merit. The question of whether the state is interested – that is determining the concerns of the state, including the wisdom of whether to bring this case or ramifications therefrom, are not within the Attorney General's purview under this circumstance.

Please advise as to Office of Attorney General's legal merits determination of this case.

Thank you.
--Justin

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

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From: Hutchison, Robert [redacted]
Sent: Wednesday, July 2, 2025 10:16 AM
To: Justin H. Whitten [GO] [redacted]; Dalton, Charles [redacted]; Powell, Anthony J. [redacted]
Cc: Will R. Lawrence [GO] [redacted]; Ashley StitesHubbard [GO] [redacted]
Subject: RE: Governor's Direction to Attorney General under KSA 75-702 to Join or Initiate Litigation

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Good morning, Justin.

The Office of the Attorney has reviewed your email. As a formality, we would request similar directives in the future to be on letterhead and signed by the governor. This did not prevent consideration in this instance, but is rather a forward-looking request. As to the substantive matter, it is the opinion of the Office of the Attorney General that the Governor does not have authority under K.S.A. 75-702(b) to direct the Attorney General to join ongoing multi-state litigation in federal court. Further, it is the opinion of the Office of the Attorney General that the Governor does not have authority to direct the Attorney General to initiate any litigation in federal court, as such a suit is not one where "final resolution" can be given "in the supreme court of the State of Kansas." As such, this Office of the Attorney General will not be proceeding as requested.

Robert C. Hutchison | Acting Chief Deputy Attorney General
Office of Attorney General Kris W. Kobach
120 SW 10th Avenue, 2nd Floor | Topeka, Kansas 66612
Phone: [redacted] | Fax: [redacted]
[redacted] | www.ag.ks.gov

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From: Justin H. Whitten [GO] [redacted]
Sent: Tuesday, July 1, 2025 11:56 AM
To: Dalton, Charles [redacted]; Powell, Anthony J. [redacted]; Hutchison, Robert [redacted]
Cc: Will R. Lawrence [GO] [redacted]; Ashley StitesHubbard [GO] [redacted]
Subject: RE: Governor's Direction to Attorney General under KSA 75-702 to Join or Initiate Litigation

Thank you, Charles. Also, I have an update from Commerce on the amount lost under their grant from the termination. They drew $129,991 on a grant that was for $8,229,246.17. So, the state lost $8,099,255.17. If that portends what's on the horizon, we're facing tens of millions if not hundreds of millions in cuts to existing or future grants, and we need to do something to put better guardrails on federal agency action in this space.

Thank you.
--Justin

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

From: Dalton, Charles [redacted]
Sent: Monday, June 30, 2025 4:24 PM
To: Justin H. Whitten [GO] [redacted]; Powell, Anthony J. [redacted]; Hutchison, Robert [AG] [redacted]
Cc: Will R. Lawrence [GO] [redacted]; Ashley StitesHubbard [GO] [redacted]
Subject: RE: Governor's Direction to Attorney General under KSA 75-702 to Join or Initiate Litigation

Justin,

We are reviewing this matter and will respond as soon as possible.

Charles Dalton
Chief of Staff
Office of Kansas Attorney General Kris Kobach
120 SW 10th Avenue, 3rd Floor
Topeka, Kansas 66612-1597
[redacted] phone
[redacted]
www.ag.ks.gov

From: Justin H. Whitten [GO] [redacted]
Sent: Monday, June 30, 2025 3:10 PM
To: Powell, Anthony J. [redacted]; Hutchison, Robert [redacted]; Dalton, Charles [redacted]

Cc: Will R. Lawrence [GO] [redacted]; Ashley StitesHubbard [GO] [redacted]
Subject: Governor's Direction to Attorney General under KSA 75-702 to Join or Initiate Litigation

Hello Charles, Tony, and Robert,

Please assist in getting this direction from the Governor under K.S.A. 75-702 to Attorney General Kobach for review. The Governor directs the Attorney General to join multi-state litigation filed in the District of Massachusetts by several state Attorneys Generals and the Office of Pennsylvania Governor Shapiro against numerous federal agencies and their head officials in their official capacities related to federal officials' misuse of a federal regulation that allows federal grant terminations under several conditions, including:

> By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, *if an award no longer effectuates the program goals or agency priorities*.

A copy of the complaint is attached for your reference. Also attached are examples of such terminations affecting the Kansas Department of Agriculture, the Kansas Department of Commerce, and the Kansas Department for Health and Environment (KDHE). For KDHE, the grant was for $1 million. Payments are still being processed for services prior to the termination date, but at this time, the agency estimates they've only used approximately $90,000, so we'll be returning approximately $910,000.

This litigation is unlike other litigation challenging the Trump Administration's unlawful premature grant terminations in that this litigation seeks prospective relief to enjoin the Administration from future cancellations by superimposing changing agency priorities over those of Congress. Count I seeks declaratory judgment, Count II is an alleged violation of the APA for agency action contrary to law, Count III is an alleged violation of the APA for arbitrary and capricious agency action.

I think the nature of this prospective equitable relief, including declaratory judgment, should alleviate concerns about the Tucker Act and jurisdiction because this is clearly not seeking specific contractual relief. This is about reigning in executive misuse of a federal regulation causing economic harm to Kansas. The attached examples show harm already caused, and we expect current and future federal grants to have the same provision at issue in the litigation, that if not enjoined, subjects Kansas agencies to the unworkable uncertainty in that grants can be terminated on a whim without proper notice and potentially contrary to Congress's intent.

If the Attorney General cannot join the existing litigation, he is directed to initiate litigation in the

District of Kansas comparable to the existing multi-state litigation and seek the same relief.

We appreciate your assistance with this matter and will help in any way that we can.

Thank you.
--Justin

Justin Whitten | *Chief Counsel*
Kansas Governor Laura Kelly
300 SW 10th Avenue, Room 541-E| Topeka, KS 66612
Office: [redacted]
[redacted] | https://governor.kansas.gov/governor/

Exhibit 22

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al., Plaintiffs, v. U.S. OFFICE OF MANAGEMENT AND BUDGET, et al., Defendants.	C.A. No. 1:25-cv-11816

DECLARATION OF AMY PENROD

I, Amy Penrod, declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am Deputy Secretary for Fiscal Services of the Kansas Department of Health and Environment (KDHE). I am over the age of 18 and have personal knowledge of all the facts stated herein, including knowledge based on my experience and information provided to me. If called as a witness, I could and would testify competently to the matters set forth below.

2. As the Deputy Secretary for Fiscal Services of KDHE I am responsible for the KDHE's financial operations, including budgeting, accounting, grants and contracts, and fiscal policy implementation. My job ensures compliance with state and federal regulations while providing strategic guidance on resource allocation, financial planning, and oversight of contract and grants.

3. I submit this Declaration in support of the States' Motion for Summary Judgment relating to the clause stating that federal agencies may terminate grants "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer

effectuates the program goals or agency priorities" in 2 C.F.R. § 200.340(a)(4) (2024) and its predecessor, 2 C.F.R. § 200.340(a)(2) (2021) (jointly referred to as the "Clause").

4. The KDHE has had a grant terminated pursuant to the Clause, specifically:

a. In Kansas, on May 7, 2025, the EPA terminated a $1,000,000.00 award to the KDHE, which funded food equity and environmental sustainability in Southeast Kansas. The EPA cited the Clause in an accompanying termination letter to the KDHE. In citing the Clause, the EPA terminated that grant based on new agency priorities not contemplated at the time of the grant. The termination of this grant resulted in the KDHE terminating Sub-recipient Agreements with the Healthy Bourbon County Action Team and the Kansas University Medical Center. The activities contemplated by the cancelled project fell within three primary categories: (1) health promotion and education; (2) community-driven strategies to address environmental justice and food equity; and (3) communications and evaluation. With the funding from this grant, a mobile laboratory was empowered to deploy 25 times across three Southeast Kansas school districts to develop and implement experiments, including soil lessons that span K-12 grades and cover the effects of water pollution, soil pollution, and their outcomes. Additionally, local health equity action teams were to prioritize placemaking interventions to address environmental changes to adopt in community settings to expand food access, including building main street edible gardens, raised-bed garden kits, or rainwater collection.

5. The KDHE has current grants with Defendants that are at risk of termination pursuant to the Clause, including, but not limited to:

a. In Kansas, the KDHE was awarded a total of $284,000.00 for the grant period beginning on October 1, 2020, by the EPA. Under the award, the KDHE administers Kansas' voluntary lead testing program at no cost to participating schools and child care facilities. Termination of the funding award would result in the KDHE being unable to provide no cost lead testing in schools and child care facilities.

b. In Kansas, the KDHE was awarded $6,000,000.00 for the grant period beginning on October 1, 2022, by DOJ. Under the award, the KDHE administers the All Hands on DECK (Drug Endangered Child in Kansas) project, which seeks to prevent and mitigate adverse childhood experiences, specifically for drug endangered children. Termination of the funding award would result in the KDHE being unable to administer the program.

c. In Kansas, the KDHE was awarded $1,926,840.00 for the grant period beginning on July 1, 2024, by the Defense, United States Army Corps of Engineers. Under the award, the KDHE provides expedited review and other related services to execute the Defense Environmental Restoration Program at identified Defense installations, Base Realignment and Closure properties, National Guard properties, and Formerly Used Defense Sites properties. Termination of the funding award would result in the KDHE being unable to facilitate remediation of the properties.

d. In Kansas, the KDHE was awarded $2,829,000.00 for the grant period beginning on July 1, 2025, by the DOI. Under the award, the KDHE conducts reclamation activities of abandoned coal mines in Kansas, including land clearing, backfilling and grading, erosion and site drainage control, and revegetation. Termination of the funding award would result in the KDHE being unable to conduct reclamation activities of abandoned mines in Southeast Kansas.

e. In Kansas, the KDHE was awarded $27,768,000.00 for the grant period beginning on August 1, 2025, by the EPA. Under the award, the KDHE provides low interest rate financing to eligible public water systems for the costs associated with the planning, design, and construction of eligible drinking water improvement projects. Termination of the funding award would result in the KDHE being unable to provide the services.

6. The KDHE has pending grant applications with Defendants that, if awarded, will be at risk of termination pursuant to the Clause, including, but not limited to:

a. In Kansas, on or about July 24, 2025, the KDHE applied for a Water Infrastructure Improvements for the Nation (WIIN) Act grant in the amount of $1,292,000.00 with the EPA, and that application remains pending. The WIIN Act grant provides funding to states, territories, and tribes to assist public water systems in meeting Safe Drinking Water Act requirements. In Kansas, KDHE will utilize the grant funding to continue to provide no cost lead testing in schools and child care facilities.

b. In Kansas, in May 2025, the KDHE applied for a Clean Water Act 319 Non-point source management program grant in the amount of $9,668,805.00 with the EPA, and that application remains pending. The Clean Water Act 319 Non-point source management program grant provides grant money to supports a wide variety of activities including technical assistance, financial assistance, education, training, technology transfer, demonstration projects and monitoring to assess the success of specific nonpoint source implementation projects. In Kansas, KDHE will utilize the funding to, among other things, sponsor organizations who work with farmers to implement soil health practices, including obtaining cover crops, buffers, and relocate pasture cattle watering areas in key watersheds.

7. Kansas is likely to apply for grants from Defendants in the future.

a. In Kansas, between 2020 to 2031, the EPA will award over $333,000,000.00 to the KDHE. The KDHE is likely to apply for grants from the EPA in the future as the grant funding provided by the EPA funds a significant portion of the KDHE's environmental work.

b. In Kansas, between 2022 to 2029, the USDA will award over $105,000,000.00 to the KDHE. The KDHE is likely to apply for grants from the USDA in the future as the grant funding provided by the USDA funds, among other things, the Special Supplemental Nutrition Program for Women, Infants, and Children.

c. In Kansas, between 2022 to 2029, DOI will award over $27,000,000.00 to the KDHE. The KDHE is likely to apply for grants from the DOI in the future as the grant funding provided by the DOI funds portions of the KDHE's surface mining remediation projects.

d. In Kansas, between 2021 to 2026, the Defense will award over $3,000,000.00 to the KDHE. The KDHE is likely to apply for grants from the Defense in the future as the grant funding provided by the Defense funds portions of the KDHE's remediation efforts on Formerly Used Defense Sites.

e. In Kansas, between 2020 to 2025, DOJ will award approximately $6,000,000.00 to the KDHE. KDHE is likely to apply for grants from DOJ in the future if similar grant opportunities are available to continue the All Hands on DECK (Drug Endangered Child in Kansas) project.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of July, 2025, in Topeka, Kansas.

Amy Penrod

Amy Penrod
Deputy Secretary, Fiscal Services
Kansas Department of Health and Environment

Subscribed and sworn to before the undersigned on the 29th day of July, 2025 in Shawnee County, Kansas.

NOTARY PUBLIC - State of Kansas
KELLI J. MCGINLEY
My Appt Expires 4/20/2026

Kelli J. McGinley
Notary Public

My Appointment Expires:

4/20/2026

Exhibit 23

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al., Plaintiffs, v. U.S. OFFICE OF MANAGEMENT AND BUDGET, et al., Defendants.	C.A. No. 1:25-cv-11816

DECLARATION OF LITA BIGGS

I, Lita Biggs, declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am Chief Fiscal Officer of the Kansas Department of Agriculture ("KDA"). I am over the age of 18 and have personal knowledge of all the facts stated herein, including knowledge based on my experience and information provided to me. If called as a witness, I could and would testify competently to the matters set forth below.

2. My job duties are to serve as a senior advisor to the Kansas Secretary of Agriculture for all policy issues related to the agency's fiscal operations and to plan, organize, staff, direct, and control the operation of KDA's fiscal office subject to directives and policies established by the Kansas Secretary of Agriculture.

3. I submit this Declaration in support of the States' Motion for Summary Judgment relating to the clause stating that federal agencies may terminate grants "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no

longer effectuates the program goals or agency priorities" in 2 C.F.R. § 200.340(a)(4) (2024) and its predecessor, 2 C.F.R. § 200.340(a)(2) (2021) (jointly referred to as the "Clause").

4. Kansas has had grants terminated pursuant to the Clause, including, but not limited to:

a. On May 7, 2025, USDA terminated a $2,643,574 award issued to the Kansas Department of Agriculture (KDA) as part of USDA's Local Food Purchase Assistance Cooperative Agreement Program pursuant to the Clause. *See* Exhibit A. In citing the Clause, USDA terminated that grant based on new agency priorities not contemplated at the time of the grant. The stated goal of this grant was to "support, maintain, and improve food and agricultural supply chain resiliency through the procurement of local, domestic, and unprocessed or minimally processed agricultural commodities." This grant was to fund a program that purchases and distributes Kansas grown and processed foods to underserved communities and families across Kansas. Kansas food banks use these funds to purchase fresh, local foods directly from famers and producers and then distribute the food through their networks. This program will not continue in Kansas without additional federal funding.

5. Kansas has current grants with Defendants that are at risk of termination pursuant to the Clause, including, but not limited to:

a. KDA was awarded a total of $243,000.00 for The National Dam Safety Program State Assistance Grant award for FY 24, by FEMA. This grant is specifically used to support inspection services and staff training and travel, as well as equipment needed to implement KDA's dam safety program, and funds part of one agency staff person's salary. Termination of this award would result in the state being unable to efficiently regulate dams as necessary for the safety of the public and as statutorily required by K.S.A. 82a-301 *et seq*. A dam failure would have catastrophic consequences to life and property.

b. KDA was awarded a total of $4,276,978.00 for Cooperating Technical Partners for FY24, by FEMA. This grant is used to support outreach and education regarding flood prevention and mitigation and to provide technical assistance to local jurisdictions, including floodplain mapping. Termination of the funding award would result in the KDA being unable to effectively educate the citizens of Kansas about the risks of flooding. Kansas citizens would also be at greater risk in the event of a flood event because this grant provides funds for real-time technical assistance to mitigate flood risks for communities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 28th day of July, 2025, in Manhattan, Kansas.

Lita Biggs

Lita Biggs
Chief Fiscal Officer
Kansas Department of Agriculture