

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

KANSAS APPLESEED CENTER FOR	)	
LAW AND JUSTICE, INC., ET AL.,	)	
	)	
<i>Plaintiffs,</i>	)	Case No. DG-2025-CV-000206
	)	
v.	)	
	)	
SCOTT SCHWAB, in his official capacity	)	
as the Kansas Secretary of State; and	)	Division 7
JAMIE SHEW, in his official capacity as	)	
DOUGLAS COUNTY CLERK,	)	
	)	
<i>Defendants.</i>	)	

Order Granting Temporary Injunction

Plaintiffs challenge 2025 Senate Bill 4 (“SB 4”), which requires the rejection of any advance mail ballot that arrives at county election offices after 7:00 p.m. on Election Day for elections after January 1, 2026. *See* 2025 Kan. Sess. Laws 33, Ch. 8; K.S.A. 25-1132(b) (2026). Plaintiffs move the Court for a temporary injunction enjoining SB 4 during the pendency of this litigation. This injunction would maintain the process that Kansas has used for its elections since 2017, when election officials were required to count mailed advance ballots that were postmarked on or before Election Day, if received within three days. *See* K.S.A. 25-1132 (2017). After considering the extensive briefing and evidence submitted on this issue, the Court grants the temporary injunction requested by Plaintiffs.

I. Overview

The Court reviewed evidence and arguments at the motion hearing held on January 27, 2026. The Court also reviewed exhibits and notices of supplemental evidence and authority after the hearing was over. After closely reviewing all of the briefing and evidence, the Court grants the temporary injunction requested by Plaintiffs and issues a temporary order enjoining SB 4 from applying in upcoming elections. Thus, temporarily, K.S.A. 25-1132(b) (2026) will not take effect for upcoming elections. As explained at the end of this order, election officials will be required to follow K.S.A. 25-1132 (2021), which allowed for a three-day grace period for mailed advance ballots that were postmarked on or before Election Day, if received within three days thereafter.

This temporary injunction is not a final determination of any claim. But it is intended to prevent the Plaintiffs from suffering irreparable injury during the pendency of this lawsuit while Plaintiffs' claims are being litigated.

II. Findings of Fact

A. Plaintiffs challenge a recent law eliminating Kansas's prior three-day grace period for accepting and counting mail ballots.

1. At issue in this case is SB 4, enacted by the Legislature last year and codified at K.S.A. 25-1132(b). SB 4 repeals the grace period that previously allowed election officials to count advance ballots returned by mail but received after election day, so long as they were postmarked by election day and received in the mail within three days thereafter. *See* K.S.A. 25-1132(b) (2017).

2. The grace-period rule was in place in the last elections that Kansas had in 2025 and was the rule applied in Kansas elections for nearly ten years before. If SB 4 is enforced in Kansas’s upcoming elections, it will replace the grace period with a strict election day receipt deadline for all advance ballots—even if they were voted and mailed days or even weeks before—and will mandate that election officials reject any advance ballot returned by mail received any time after 7:00 p.m. on Election Day. K.S.A. 25-1132(b).

3. Plaintiffs are three registered Kansas voters, Dorothy Nary, Martha Hodgesmith, and Robert Mikesic (together, the “Voter Plaintiffs”), who rely heavily on advance mail ballots to vote, Ex. 5 (“Nary Decl.”) ¶¶ 4, 9; Ex. 6 (“Hodgesmith Decl.”) ¶¶ 9–11; Ex. 7 (“Mikesic Decl.”) ¶¶ 4, 10, and three nonpartisan, nonprofit civic organizations, Kansas Appleseed Center for Law and Justice, Inc. (“Kansas Appleseed”), Loud Light, and the Disability Rights Center of Kansas (“DRC”), which work to register, educate, and turn out voters and protect voting rights in Kansas (together, the “Organizational Plaintiffs”), particularly among communities reliant on advance mail ballot voting. Ex. 2 (“Reever Decl.”) ¶¶ 3–5; Ex. 3 (“Hammet Decl.”) ¶¶ 3–4; Ex. 4 (“Nichols Decl.”) ¶ 3.¹

4. Plaintiffs contend that unique features about Kansas, including worsening mail delays, the significant amount of rural voters in the state, and the short window that Kansas allows for advance voting, make it inevitable that SB 4

¹ Citations to “Ex.” are to exhibits submitted by Plaintiffs in support of their motion for a temporary injunction. The Secretary did not submit any evidence in support of his opposition to the motion.

will cause significant numbers of ballots that are timely voted and mailed by lawful Kansas voters to be rejected, due to arbitrary factors beyond their control. *See* Am. Pet. ¶¶ 10–11; 55–97; Mem. at 3–5. Plaintiffs allege that this violates several different provisions of the Kansas Constitution, specifically its guarantees of equal protection, due process, and the right to vote. Am Pet. ¶¶ 98–125 (Dkt. No. 22); Mem. at 9–14 (Dkt. No. 69).

5. Plaintiffs initiated this action in the District Court of Douglas County, Kansas, on May 5, 2025. Pet., Dkt. No. 1. Shortly thereafter, the Secretary noticed removal to federal court. Dkt. No. 41. Plaintiffs moved to remand, but that motion was not decided until October 16, 2025, when the federal district court granted the motion to remand. Order, *Kan. Appleseed Ctr. for L. & Just., Inc. v. Schwab*, No. 25-cv-02375-JWB-GEB (D. Kan. Oct. 16, 2025), ECF No. 55.

6. Two business days later, Plaintiffs moved for a briefing schedule that would allow the Court to decide any motion for a temporary injunction before SB 4’s effective date of January 1, 2026. Dkt No. 47. In response, the Secretary moved to dismiss and opposed any effort to set a briefing schedule on the timetable requested by Plaintiffs. Dkt No. 50. The Secretary represented to the Court that there was no need for such an expedited schedule because SB 4 would not be applied to any elections for many months, so the effective date of January 1 was “largely meaningless,” and that a hearing on the motion for a temporary injunction “in mid-to late January” would be more than sufficient, while permitting the parties to “enjoy the holiday season.” *Id.* at 2, 4. The parties accordingly agreed to a schedule

that aligned with that timetable and the Court subsequently scheduled a hearing for both motions on January 27, 2026.

7. The Court has now carefully reviewed the parties’ briefing on the motion for a temporary injunction; the evidence submitted in connection with that motion; and the arguments made by the parties at that hearing, and renders its decision on that basis.²

B. Advance voting has a long history in Kansas and thousands of voters regularly rely on it to participate in the State’s elections.

8. In 2024, Secretary Schwab wrote to the U.S. Postmaster General that he was “extremely concerned” that issues with USPS performance were “disenfranchis[ing]” Kansas voters. Ex. 9 at 1–2. He stressed that this had not been historically true: “Kansas has had mail voting in some form since the Civil War,” he wrote, but there has “never . . . [been] a lack of confidence in the delivery” of ballots, until “the 21st Century.” *Id.*

9. This new danger—and the undisputed evidence that voters who accept Kansas’s invitation to use and return advance ballots by mail to exercise their right to vote are increasingly at risk of having those ballots rejected due to unpredictable and extended mail delays—is at the heart of this lawsuit.

² At the hearing, the Court inquired if there were a specific date by which it must reach a decision on this motion before the forthcoming August primary election to avoid causing any undue interference with election administration, and the Secretary indicated that the time had not yet passed and he would inform the Court if he became aware of a relevant deadline. See Jan. 27, 2026 Hr’g Tr. at 100–03. The Secretary has not since identified any such deadline.

10. This issue arises, as the Secretary’s letter to the Postmaster General emphasized, in a state that has an unusually long history of recognizing the important role that absentee voting (now largely known in Kansas as “advance” voting) plays in ensuring that its citizens are able to vote that goes back to the Civil War.

11. During the Civil War, Kansas permitted soldiers to vote in the field and have their votes transmitted back for tallying. See *Josiah Henry Benton, Voting in the Field: A Forgotten Chapter of the Civil War* 115–17 (1915). After that, “[t]he first absentee voter[] act appears in [Kansas law in] 1868.” *Lemons v. Noller*, 144 Kan. 813, 63 P.2d 177, 184 (1936). The 1868 law retained the Civil War Era practice and allowed “qualified electors absent from their township and ward, employed in the militia or volunteer service of the state or United States” to vote absentee. *Id.*; see also *supra Benton*, at 112–17; G.S. 1868, ch. 36, art. 4, §§ 45–56.

12. As society changed and voters became more mobile, Kansas adapted to ensure that its citizens could access the franchise. In 1901, it extended the right to vote absentee to railroad workers who were “unavoidably absent” from their polling place on election day. See *Lemons*, 63 P.2d at 184–85.

13. Throughout the early to middle part of the 1900s, Kansas extended the right in various ways, before passing a law in 1967 allowing any voter who would be absent from the county while the polls were open to vote absentee. See *Lemons*, 63 P.2d at 184–85 (discussing various absentee voting legislation, and noting that for each statute, “machinery [was] provided for the delivery of ballots and the ultimate

return thereof”); *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 835, 549 P.3d 363, 399 (2024) (hereinafter *LWV II*) (Biles, J., concurring in part and dissenting in part).

14. In 1984, Kansas recognized that access to mail voting is critical to ensure that voters with permanent physical disabilities or illnesses are able to vote and passed a law creating a permanent absentee voter list for such voters. *See* K.S.A. 25-1122(e)–(f) (1984) (now codified at K.S.A. 25-1122(h)–(i)). For permanent absentee voters, county election officers were required to mail the ballots “within five days of the receipt of the printed absentee ballots by the county election officer.” K.S.A. 25-1123 (1984). Permanent absentee ballots have now been an option for Kansans for over four decades, and Plaintiff Robert Mikesic is an example of a voter who is on that permanent absentee (now, “advance”) voter list. *See* Mikesic Decl. ¶¶ 5, 10.

15. Finally, in 1995, Kansas recognized that access to mail voting is key to ensuring that all of its citizens are able to exercise their right to vote and passed a law to that effect. *See* K.S.A. 25-1119 (1995). Starting at that time, “advance” ballots would be sent to voters “not more than 20 days before the election but within two business days of the receipt of such voter’s application by the election officer or the commencement of such 20-day period.” K.S.A. 25-1123 (1995). Thus, for three decades now, all Kansas voters have had the right to vote by advance ballot (though unless a voter is on the permanent advance voting list, they must submit an application to do so, each election). *Id.*; K.S.A. 25-1122 (setting forth advance ballot

application process). *See also* Kan. Const. art. 5, § 1 (guaranteeing that citizens “otherwise qualified to vote in Kansas for . . . the offices of president and vice-president. . . may vote for such officers either in person or by absentee ballot”).

16. Advance voting—and particularly advance voting by mail—is a powerful tool that can facilitate broader voter engagement, not only among voters who may otherwise struggle to vote due to disabilities or geography, but also by increasing turnout among underrepresented and underserved populations. *See* Reeve Decl. ¶ 6; Hammet Decl. ¶ 5; Nichols Decl. ¶ 7.

17. And, indeed, hundreds of thousands of Kansas voters have used advance ballots to vote in recent years. *See* Ex. 1 (“Herron Decl.”) at 15–16 (approximately 465,000 advance ballots were cast by Kansans by mail in the 2020 general election and approximately 147,000 in the 2024 general election); Ex. 9 at 1 (Secretary in letter to U.S. Postmaster General noting that, in the 2024 primary, “[o]ver 18 percent” of Kansas voters “exercise[d] their constitutional right to cast a ballot” by mail); Ex. 10 at 1 (Douglas County Clerk Shew emphasizing that “more voters are utilizing mail advance ballots”).

18. There are many different voters who rely on advance mail voting. This includes disabled or ill voters. *See, e.g.*, Ex. 22 (testimony from DRC before Legislature describing importance of voting by mail for people with disabilities); Nichols Decl. ¶ 7 (similar); Mikesic Decl. ¶ 9 (similar). This includes voters temporarily outside of the jurisdiction, such as college students. *See, e.g.*, Ex. 14 (testimony from the Secretary’s office about college students voting by mail); Ex. 8

(“Simons Decl.”) ¶¶ 4–5 (describing difficulty voting by mail as an out-of-state college student due to mail delays). This includes many of Kansas’s rural voters. *See, e.g.*, Herron Decl. ¶ 57 (showing rural voters are twice as likely to have mail ballots arrive during grace period than voters in urban counties); Ex. 21 (Hammet legislative testimony that voters in rural counties are twice as likely to have their ballots arrive in the grace period). It includes elderly voters, who may not have a permanent disability or illness, but who have mobility issues or other health problems that make voting in person difficult. *See, e.g.*, Nary Decl. ¶ 8; Hodgesmith Decl. ¶ 8. It also includes Kansans busy with caretaking responsibilities or inflexible jobs, who might only be able to vote because of the ability to do so by mail. *See* Herron Decl. ¶¶ 24–25 (describing how mail voting lessens the “cost of voting”).

19. For the same reason that many voters need or choose to vote by an advance ballot to begin with, many return them by mail. For some (*e.g.*, those temporarily outside of the jurisdiction or with disabilities, illnesses, or lack of easy access to transportation or other means of exercising their right to vote), returning their ballots by mail is the least burdensome option—but it may also be the only practical option. Nary Decl. ¶ 8; Hodgesmith Decl. ¶ 8; Mikesic Decl. ¶ 9; Simons Decl. ¶¶ 4–5. And, indeed, since it started absentee or advance voting more than 150 years ago, Kansas has consistently allowed for submission of those ballots by mail (or something similar to it). *See* Ex. 9 (the Secretary noting that “Kansas has had mail voting in some form since the Civil War”); *see also* Jan. 27, 2026 Hr’g Tr. at 5 (counsel for the Secretary noting that Kansas has been “very solicitous” of

voting by mail and has had voting by mail in some form since the Civil War).

20. Thus, Kansas voters who submit their lawful advance ballots by mail, who do their part and vote and timely return it, should be able to trust that their ballot will be counted. *See Jones v. United States Postal Serv.*, 488 F. Supp. 3d 103, 110 (S.D.N.Y. 2020), *order clarified*, No. 20 CIV. 6516 (VM), 2020 WL 6554904 (S.D.N.Y. Sept. 29, 2020) (“One of the evident ways by which our society fosters and guarantees voting rights is by absentee balloting, accommodating the exceptional needs of citizens unable to vote in person for various legitimate reasons -- illness, travel, education or employment out of the jurisdiction, or military or diplomatic service. . . . [A]ll voters, regardless of whether they submit their ballots in person or by mail, have a right to have their votes counted and their voices heard.”).

C. In the 2010s, mail delivery in Kansas began to deteriorate, and the Legislature acted to protect the right to vote and save voters from disenfranchisement.

21. In approximately 2011–12, USPS began implementing several significant changes to its services and processes in Kansas, and mail delivery services in the state started to deteriorate as a result. Ex. 10 at 1 (Testimony on SB 8 by Jamie Shew, Douglas County Clerk).

22. For example, USPS significantly reduced mail processing centers in Kansas and began routing all mail to five processing centers—only two of which were actually located in Kansas (in Wichita and Hutchinson). *Id.* The three others were located in Texas, Nebraska, and Missouri. *Id.*

23. The largest impact of these changes was slower delivery, such that

USPS no longer guaranteed one-to-two-day delivery for local first-class mail, but projected a two-to-five-day window for delivery of such mail. *Id.*; Ex. 12 at 1 (then-Secretary Kobach’s office similarly noting that these changes resulted in “an increase in the amount of time needed to transmit mail” in Kansas).

24. At the same time, USPS limited weekend processing, a result of which was that mail sent on Friday and Saturday might not actually begin processing until Monday, and election officials found that meant a decrease in delivered mail on Tuesdays. Ex. 10 at 1.

25. Election Days are on Tuesdays. And, as USPS implemented these changes, election offices in Kansas experienced an increase in ballots failing to arrive by Election Day, with many instead arriving on the Wednesday or Thursday after. *Id.*

26. At the time that all of this was happening, Kansas required advance mail ballots to arrive at county election offices by Election Day in order to be counted. *See* K.S.A. 25-1132 (1995).

27. This sparked a crisis—ballots that were being mailed by qualified voters, and when “it [was] clear the ballot was sent days before the election,” were being rejected because of postal delays beyond voters’ control. Ex. 10 at 1.

28. This crisis came to a head in the 2016 general election, when 1,449 advance ballots that were cast and postmarked before Election Day were rejected because they arrived afterward. Ex. 11.

29. Then-Secretary of State Kobach and nearly every member of the

Legislature appeared to agree that this was unacceptable and broadly supported legislation that would replace the strict Election Day-receipt deadline with a three-day grace period, to allow for the counting of ballots received after Election Day if they were postmarked on or before and received within three days of the election. *See* 2017 HB 2158 (effective July 1, 2017); *see also* Ex. 12 (Secretary Kobach stating he was “a proponent of this bill”).

30. That legislation (2017 HB 2158) was enacted nearly unanimously by the Legislature with a vote of 123–1. Ex. 12; Ex. 26. As a result, going forward, “the deadline for the receipt by mail of the advance voting ballots by the office of the county election officer” was “the last delivery of mail by the United States postal service on the third day following the date of the election.” K.S.A. 25-1132(b) (2017).

31. As reflected by the testimony submitted by election officials at the time, the grace period was enacted to ensure that voters were not disenfranchised by mail delays beyond their control—and the change was carefully crafted based on the evidence that maintaining the prior strict Election Day rule, which was “written during [a] different era of postal delivery,” would have that effect. Ex. 10 at 1.

32. The choice to extend the deadline by three days did not come out of thin air. The testimony to the Legislature, including from election officials, was that while Kansans could no longer presume that local First-Class mail would be delivered in a one-to-two day time frame—by 2017 that time had lengthened significantly to two-to-five days. And specific changes by USPS limiting weekend mail processing affected the number of ballots that were arriving by Election Day,

and many mail-in ballots were arriving the Wednesday and Thursday after Election Day. *See* Ex. 10 at 1.

33. In addition, in 2023, the Secretary’s office testified at the Legislature that the three-day grace period was responsive to the fact that Kansas election offices are not permitted to mail advance mail ballots to voters until 20 days before the election. Ex. 13 at 1 (Jan. 26, 2023 Testimony by Clay Barker, Deputy Ass’t Sec’y of State, Gen. Counsel on 2023 HB 2056) (“Considering this short timeframe, the legislature authorized advance by mail ballots postmarked by Election Day and received within three days following the election to be counted.”).

34. The three-day grace period acted as it was designed and allowed many thousands of ballots to be counted that otherwise would have been rejected. In the 2020 elections—the first presidential general election when the grace period was operative, which was held during the COVID-19 pandemic—more than 32,000 ballots arrived at county election offices within three days after Election Day and were counted as a result. Ex. 11. Approximately 1,000 ballots arrived during the grace period during the 2022 midterm general election, and another 2,110 ballots in the 2024 general election. Ex. 13; Ex. 14. Had the grace period not been in place during those elections, none of those ballots would have counted.

D. The undisputed evidence establishes that postal delays have not improved since 2017—they have gotten worse.

35. According to 2025 legislative testimony by the Secretary’s office, “[p]ostal service delivery has gotten even slower since 2017[.]” Ex. 14 at 2 (neutral testimony on SB 4).

36. A 2024 USPS audit found that the Kansas-Missouri district's on-time mail delivery rate had deteriorated to among the three or four worst in the nation (out of fifty districts). Ex. 15 at 3.

37. Thus, the USPS mail delay is even worse than in 2017, when the increasing mail delays caused the Legislature and Kansas election officials in 2017 to broadly agree that a three-day grace period was necessary to save voters from disenfranchisement. *See* Mem. at 3 n.2 (citing USPS Service Performance publication showing USPS delivered *only 51%* of first-class mail within a three-to-five-day service standard in second quarter of 2025).

38. Data from Douglas County for the August 6, 2024, primary shows how this is impacting Kansas elections. In that election, more than 12% of ballots in that county took ten days or longer to travel through the mail in one direction, and more than 5% took fifteen days or longer to travel in a single direction. Herron Decl. at 72, tbl. 20. In the end, Douglas County had to reject over 200 ballots because they were received after the grace period (*i.e.*, they were received on August 10 or later), even though they had been postmarked *in July*. Ex. 16.

39. Shortly thereafter, Secretary Schwab wrote to the U.S. Postmaster General stating that he was “extremely concerned” about USPS’s processing of ballots. Ex. 9. The Secretary reported that many ballots are “failing to reach the county election office on time, *even when voters have mailed them timely.*” *Id.* (emphasis added). He wrote that “[m]ultiple county election officials have notified my office that ballots were received from the local post office days, if not weeks,

after they were placed in the custody of the USPS under the assumption that they would be received and counted by county election officials.” *Id.* He was unequivocal: “it is unacceptable that voters, who follow the rules for requesting, voting, and returning their mail ballot, are disenfranchised” when USPS fails to deliver their ballots in a timely manner. *Id.* Finally, the Secretary emphasized that “Kansas has had mail voting in some form since the Civil War, but never has a lack of confidence in the delivery of our ballot been questioned as it has in the 21st Century.” *Id.*

40. Secretary Schwab also expressed his dissatisfaction with USPS on social media. In the runup to the 2024 general election, the Secretary opined that the “Pony Express is more efficient at this point” and he warned the public that voting by mail carries the “highest risk” of a ballot not being counted compared to other voting methods. Ex. 19; Ex. 20.

41. Other Kansas election officials have similarly stressed that this is a real and continuing problem. *See, e.g.*, Ex. 17 at 3 (Douglas County Clerk Shew has joked that “we could walk to people’s houses faster than [a ballot] gets there by mail,” and reported that his office has found that it can take an average of seven to nine days for ballots to reach voters in Douglas County).

42. The personal experience of voters also reflects this, including that of Plaintiff Robert Mikesic, who is on the permanent advance mail ballot list and yet did not receive his ballot for the November 2025 election until the day after the election, despite its having been sent (as shown by the postmark) *21 days before*, on the first day that his county was allowed to send it to him. Mikesic Decl. ¶¶ 5–6 &

Attachment A. And in 2022, Kansas voter Benjamin Simons, a college student temporarily residing out of state as he attends school in Oklahoma was unable to vote when his advance ballot arrived two weeks after election day. Simons Decl. ¶ 4.

43. The Secretary does not dispute any of this. Indeed, as counsel for the Secretary acknowledged at the hearing on this matter, “no one is here to argue that [USPS] deserves all kinds of awards in the State of Kansas for their delivery times,” and that he was “not going to, you know, deny the obvious.” Jan. 27, 2026, Hr’g Tr. at 21. Simply put, Kansas suffers from worsening and extraordinary mail delays—this is well supported by the evidence and not contested by the parties.

E. In 2025, the Legislature enacted Senate Bill 4.

44. In January 2025, the Legislature introduced a bill, SB 4, to repeal the three-day grace period and impose a strict 7:00 p.m. Election Day ballot receipt deadline. *See* 2025 Kansas Laws Ch. 8 (SB 4).

45. The Secretary’s office presented itself as “neutral” on the bill—but in comments, it offered to the House Committee on Elections it stressed several things. Ex. 14 (Testimony on SB 4, Feb. 11, 2025). First, the Secretary noted that in 2017, the three-day grace period was enacted to respond to increasingly slowing USPS delivery standards. Second, the Secretary noted that under Kansas law, election officials cannot begin sending advance ballots to voters until 20 days before the election. And third, the Secretary noted that in all the time that the grace period was in place, “[t]here has *never* been a mail ballot received in the 3-day period that was not requested and returned by a registered Kansas voter.” Ex. 14 at 1

(emphasis added).

46. The Secretary’s office also made clear that “[p]ostal service delivery has gotten even slower since 2017[,]” that Kansas’s rule that election officials shall not mail out advance ballots until 20 days before the election creates “a comparatively short time-period” in which ballots must make it to the voters and then back in time to be counted, and that “[i]f SB 4 becomes law, Kansas voters temporarily living out of state . . . (e.g., college students) may have increased difficulty in returning their advance by mail ballot by Election Day without the use of overnight delivery.” *Id.*

47. The Secretary’s office also testified that in most states mail-in ballots are sent to voters at least 30, or many 45 days, before Election Day. Ex. 14. In contrast, Kansas law prohibits mailing ballots to voters more than 20 days before the election. *Id.*; K.S.A. 25-1123(a). Under SB 4, Kansas has the most-compressed window for mail voting in the country. *See Table 7: When States Mail Out Absentee/Mail Ballots, Nat’l Conf. of State Legislatures* (Oct. 3, 2024), <https://www.ncsl.org/elections-and-campaigns/table-7-when-states-mail-out-absentee-mail-ballots> (obtained online July 14, 2026); *Table 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots, Nat’l Conf. of State Legislatures* (Dec. 25, 2025), <https://www.ncsl.org/elections-and-campaigns/table-11-receipt-and-postmark-deadlines-for-absentee-mail-ballots> (obtained online July 14, 2026).

48. The Elections Committee of the Kansas County Clerks and Election Officers (KCCEOA), which represents all county clerks and election commissioners

in Kansas, actively opposed SB 4, submitting written testimony under the Election Day deadline for mail-in ballots, “valid voted ballots would not be counted[.]” *See* Test. of R. Piepho on SB 4 Before H. Comm. on Elections (Kan. Feb. 11, 2025), https://www.kslegislature.gov/b2025_26/committees/testimony/pdf/?apn=b2025_26/year2/house/committees/ctte_h_electns_1/testimony/published/ctte_h_electns_1_20250211_02_testimony.html (obtained online July 14, 2026).

49. The majority of the testimony before the Legislature was against SB 4, with witnesses stressing that postal delays had worsened since 2017 and that eliminating the grace period would disenfranchise significant numbers of Kansas voters, especially rural and disabled voters. *See, e.g.*, Ex. 21; Ex. 22.

50. Using data from the Secretary of State’s survey to County Election Officials, a representative of Plaintiff Loud Light testified that nearly 12% of the advance-mail ballots in Montgomery County would be discounted under SB 4. Ex. 21. In addition, over 10% of the advance-mail ballots in Nemaha County and over 10% of the advance-mail ballots in Seward Counties would be discounted under SB 4 (because the ballots arrived during the three-day grace period). *Id.* In other words, a substantial number of mail voters in those counties would have been disenfranchised under SB 4. *Id.* A representative from Plaintiff DRC testified about the significant impacts that SB 4 would likely have on Kansans with disabilities, who rely heavily on advance-mail voting. Ex. 22.

51. Despite this testimony, the Legislature enacted SB 4, repealing the grace period beginning with elections after January 1, 2026. 2025 Kan. Sess. Laws

Ch. 8; *see* K.S.A. 25-1132.

52. When SB 4 reached the Governor’s desk, she vetoed it, explaining that the grace period “was a bipartisan solution approved by the Legislature in 2017 to address [mail] delays . . . particularly in rural areas. The goal was to ensure that all Kansans had their votes counted, no matter where they lived.” Ex. 23. She described SB 4 as “an attack on rural Kansans who want to participate in the electoral process guaranteed by our Constitution,” and stated: “I will not sign legislation that deprives Kansans from having their vote counted.” *Id.*

53. The next day, the Legislature overrode the veto. Ex. 27. As a result, elections officials are now required to reject ballots cast by eligible voters and mailed by Election Day, unless the ballots are delivered by 7:00 p.m. on Election Day.

F. SB 4 imposes a substantial and highly variable risk of disenfranchisement.

54. In support of their motion for a temporary injunction, Plaintiffs submitted evidence that establishes that SB 4 imposes a substantial and highly variable risk of disenfranchisement. This includes public statements from the Secretary and County Clerk Shew, among others; evidence from an expert analyzing data provided by the Secretary’s office and other public sources; testimony before the Legislature when it considered SB 4; and declarations from the three Organizational Plaintiffs, three Voter Plaintiffs, and a college student affected by mail delays.

55. The Secretary provided no evidence relevant to this motion or these issues. Plaintiff's evidence is sufficiently credible and is un rebutted. As a result, the undisputed record establishes the following.

56. If SB 4 were in place for the past three major general elections, tens of thousands of lawful voters would have had their ballots disregarded and not counted. See Ex. 11; Ex. 13; Ex. 14. But the grace period did what it was designed to do, saving thousands of ballots from rejection that were postmarked before Election Day, but arrived sometime in the three days thereafter. Without the grace period, all of these voters would have been disenfranchised.

57. Moreover, when the Legislature was considering SB 4, the undisputable evidence was that mail delivery was getting worse, and that, if anything, the three-day grace period was no longer sufficient to save ballots from rejection.

58. Over 200 Douglas County ballots for the August 6, 2024, primary had to be thrown out because—despite being postmarked in July—they arrived after the three-day grace period. Ex. 16. This means, at a minimum, those ballots took over nine days to travel one way, ultimately arriving on August 10 or later. *See id.*

59. Plaintiff Robert Mikesic, a resident of Douglas County, has voted consistently in Kansas since 1984. He is also paralyzed from the mid-back down, uses a wheelchair, and cannot easily vote in person. Mikesic Decl. ¶¶ 3, 10. As a result, he is on the permanent advance voting list. *Id.* ¶ 5.

60. As noted above, in the November 2025 municipal elections, Douglas

County sent Mr. Mikesic his ballot on the first day that it was statutorily permitted to do so—October 15, a full 20 days before Election Day. *Id.* ¶ 6. This is evidenced by the postmark on the ballot. *Id.* (Attachment A to Mikesic Decl.). But that ballot was not delivered to Mr. Mikesic until the day *after* election day. *Id.* In other words, it took 21 days to arrive at his home.

61. These examples illustrate, as the Secretary complained to the Postmaster General, that voters who follow the rules for advance mail voting under Kansas law are nonetheless being disenfranchised by postal delays that are—clearly—entirely out of their control. *See* Ex. 9.

62. The evidence is also undisputed that a voter’s personal risk of disenfranchisement under SB 4 differs greatly based on where the voter happens to live. Dr. Michael Herron—an expert on voting data—analyzed 2024 general election data from the Secretary’s office and found “substantial variance across Kansas counties” in the rate at which ballots sent by mail arrived during the grace period. Herron Decl. ¶ 49. The Court rejects the Secretary’s attempt to discredit this unrebutted testimony. *See* Opp. at 11–13 (Dkt. No. 77).

63. For instance, in three Kansas (Seward, Nemaha, and Graham), over ten percent of mail ballots arrived during the grace period for the 2024 general election and thus would have been rejected under SB 4. Herron Decl. ¶ 50. Another seven counties (Lane, Chase, Edwards, Wallace, Pottawatomie, Dickinson, and Meade) had over five percent of mail ballots arrive during the grace period. *Id.* at 22, tbl. 4. By contrast, the statewide average rate of ballots arriving in the grace

period was 1.4%, and several counties had no ballots during the grace period. *Id.* ¶¶ 37, 51.

64. These disparities are not randomly distributed. The data shows that “the more rural a county, the greater the grace period rate in the 2024 general elections,” with Kansas’s most rural counties seeing more than double the rate of ballots arrive during the grace period compared to the most urban counties. *Id.* ¶ 57.

65. The Legislature was informed that SB 4 would disproportionately burden rural Kansans. *See* Ex. 21 (testimony from Davis Hammet of Loud Light stating, “According to the Secretary of State’s survey to County Election Officials, voters in rural counties benefitted the most from the 3-day mail processing period, with rural votes being twice as likely to be counted because of the 3-day grace period than non-rural votes.”).

66. Similarly, Kansans who temporarily reside outside their county of registration—such as college students—are also more likely to be disenfranchised by SB 4, both because they must rely on mail voting and are more likely to experience mail delays given their distance from county election offices. *See* Ex. 14.

67. Dr. Herron’s analysis shows that many voters registered in Sedgwick County temporarily reside elsewhere, and that in the 2024 general election, 1,575 Sedgwick County voters requested advance ballots to addresses more than 100 miles away from the County election office, and 316 requested ballots to addresses more than 1,000 miles away. Herron Decl. ¶ 76.

68. These voters face greater risks of being disenfranchised under SB 4 because, as Dr. Herron’s analysis shows, “the greater the distance an advance ballot had to travel in the 2024 general election, the more likely it was to arrive after election day[.]” *Id.* ¶ 98.

69. In testimony submitted to the Legislature, the Secretary’s office recognized that this risk could be particularly severe for voters located out of state, including specifically college students, recognizing that “[i]f SB 4 becomes law . . . [they] may have increased difficulty in returning their advance by mail ballot by Election Day without the use of overnight delivery.” Ex. 14.

70. For the last several years, out-of-state voters have been experiencing mail delays that could make voting by advance ballot impossible. This is illustrated by the experience of Benjamin Simons, a college student at Oklahoma State University who was unable to vote in 2022 after his advance ballot arrived two weeks after election day. Simons Decl. ¶ 4. As a result, Mr. Simons was compelled to take extraordinary steps in 2024 to ensure that he would not be disenfranchised again, with his mother physically driving his ballot to and from Oklahoma to ensure that it would be counted. *Id.* ¶ 5. This is obviously not a realistic option for most voters who are temporarily out of state.

71. But it is not just out-of-state voters who are at risk with the Election Day deadline in SB 4, nor can voters simply adjust their behavior. Again, even if a voter is on the permanent advance voting list, their county election official is not allowed to send them their ballot until 20 days before the election. Immediately, the

clock starts ticking, such that even modest delays can be the difference between getting a ballot back in time to be counted, or disenfranchisement. And that is in the best-case scenario, where a voter has already requested (or will automatically be sent) a ballot 20 days before an election. Many voters do not know they will need an advance ballot, or do not know how to ask for one, until the election is much closer. Very quickly, the evidence shows, with the elimination of the grace period, it is ever more likely that advance mail voters will have their ballots discounted under SB 4.

72. Finally, voters whose personal circumstances are such that they are more likely to have to depend on advance mail voting to vote, including disabled voters, are more likely to be disenfranchised by SB 4. *See* Ex. 22 (testimony from Mike Burgess of DRC stating “[M]any Kansans with disabilities utilize advance voting by mail. They would definitely be amongst the Kansans who could be negatively impacted by the change in this bill.”). This includes the Voter Plaintiffs here, *see* Nary Decl. ¶¶ 8–9; Hodgesmith Decl. ¶¶ 7–11; Mikesic Decl. ¶¶ 9–10, and it includes the constituents and voters that the Organizational Plaintiffs serve, Reeve Decl. ¶¶ 3, 6; Hammet Decl. ¶¶ 3–5; Nichols Decl. ¶¶ 3–4, 7.

73. The likelihood of significant voter disenfranchisement is supported by the data from Johnson County elections held on March 3, 2026. On that Election Day, three jurisdictions within Johnson County held special elections on local ballot issues conducted by mail voting. Approximately 30,000 ballots were cast across these elections, of which 1,008 were rejected for arriving after Election Day. Thus, approximately 1-in-30 ballots were discounted.

III. Conclusions of Law

The “purpose of a temporary or preliminary injunction is not to determine any controverted right, but to prevent injury to a claimed right *pending a final determination of the controversy on its merits.*” *Steffes v. City of Lawrence*, 284 Kan. 380, 394, 160 P.3d 843, 853 (2007) (emphasis in original). Under K.S.A. 60-901 and K.S.A. 60-905, the Court may issue a temporary injunction after notice and a hearing.

To obtain temporary injunctive relief, the movant must show: (1) A substantial likelihood of eventually prevailing on the merits; (2) a reasonable probability of suffering irreparable future injury; (3) the lack of obtaining an adequate remedy at law; (4) the threat of suffering injury outweighs whatever damage the proposed injunction may cause the opposing party; and (5) the impact of issuing the injunction will not be adverse to the public interest. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 619, 440 P.3d 461 (2019) (*Hodes I*) (citing *Downtown Bar and Grill, LLC v. State*, 294 Kan. 188, 191, 273 P.3d 709 (2012)). To obtain injunctive relief, Plaintiffs must meet each these factors. *Idbeis v. Wichita Surgical Specialists, P.A.*, 285 Kan. 485, 491, 173 P.3d 642 (2007) (citing *Steffes*, 284 Kan. at 395).

Plaintiffs have alleged that SB 4 violates the Kansas Constitution’s guarantees of equal protection, due process, and the right to vote. *See generally* Am. Pet. For the reasons stated below, Plaintiffs have made a successful showing on all five prongs of the test for a temporary injunction.

A. There is a substantial likelihood that Plaintiffs will have success on the merits for at least one of their claims.

Plaintiffs have alleged that 2025 SB 4 violates the Kansas Constitution's guarantees of equal protection, due process, and the right to vote. *See generally* Am. Pet. If Plaintiffs show that they are substantially likely to prevail on the merits of any one of their claims and meet the other temporary injunction factors (which the Court discusses below), then they are entitled to a temporary injunction.

The Court concludes that Plaintiffs are substantially likely to prevail on each of their claims. In addition, the Court rejects the Secretary's other arguments on Plaintiffs' likelihood of success.

As an initial matter, in his opposition to Plaintiffs' motion for a temporary injunction, the Secretary briefly cross-references his motion to dismiss to suggest Plaintiffs lack standing, *see* Opp. at 2, and also makes a solitary and unsupported suggestion that the federal election-day statutes justify SB 4, *see id.* at 20. The Court affirmatively finds that Plaintiffs have standing to bring their claims. In addition, the U.S. Supreme Court recently rejected the Secretary's argument that federal election-day statutes preempt state statutes that allow a grace period for mail-in ballots. *See Watson v. Republican Nat'l Comm.*, No. 24-1260, 2026 WL 1855462, at *5 (U.S. June 29, 2026).

1. Plaintiffs are likely to prove that SB 4 violates the Kansas Constitution's guarantee of equal protection because whether a ballot will count depends on arbitrary factors such as mail delays and where a voter lives.

The Court finds that Plaintiffs are likely to succeed on their claim that SB 4

violates the Kansas Constitution’s guarantee of equal protection. *See* Kan. Const. Bill of Rights §§ 1–2. The Court evaluates these claims under the standard articulated by the Kansas Supreme Court in *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 549 P.3d 363 (2024) (*LWV II*). This is the most recent case involving an equal-protection challenge to a ballot-counting procedure, and it involved similar state constitutional claims. In *LWV II*, the Supreme Court considered a district court’s decision to dismiss a challenge brought against a different Kansas election law involving the counting of advance mail ballots under the same constitutional provisions. 318 Kan. at 780–84.

In *LWV II*, the Supreme Court held that for an election law to comply with the equal protection guarantees of the Kansas Constitution, it “must be capable of being applied with reasonable uniformity upon objective standards so that no voter is subject to arbitrary and disparate treatment.” *Id.* at 805 (emphasis added); *see also id.* at 806 (noting “equal protection requires ‘uniform treatment of persons standing in the same relation to the governmental action questioned or challenged’”) (quoting *Reynolds v. Sims*, 377 U.S. 533, 565 (1964)). This test is results based: under “the proper legal standard,” the question is whether a voting law “achieve[s] reasonable uniformity on objective standards.” *Id.* (emphasis added); *see also id.* at 834 (Biles, J., concurring in part and dissenting in part) (explaining that those principles require that “the likelihood of having a ballot discarded . . . must be the same in Wyandotte County as in Gove County”).

The evidence for the motion for a temporary injunction supports a finding

that Plaintiffs are likely to succeed on this claim. Among other things, it shows that similarly situated voters (including those who mail their ballot back to election officials on the same day) will be subject to arbitrary and disparate treatment—some will have their ballots rejected when they arrive after 7:00 p.m. on Election Day due to unanticipated or extended mail delays, or simply where they happen to live. *See, e.g.*, Herron Decl. ¶¶ 47, 49, 57, 109, 117 (showing voters in rural areas and voters whose ballots must travel further from election offices will be disproportionately disenfranchised under SB 4); Ex. 14 (testimony from the Secretary’s office noting that voters temporarily out of state such as college students would be disproportionately affected by SB 4); Ex. 21 (legislative testimony that voters in rural counties are twice as likely to have their ballots arrive in the grace period).

The evidence further supports the conclusion that Plaintiffs are likely to show that, in enforcing SB 4, Kansas election officials will not reliably and uniformly count votes of lawful Kansas voters and that, at a minimum, thousands of voters will likely have their ballots rejected as a result—despite having timely voted and mailed those ballots (potentially weeks before Election Day). *See, e.g.*, Ex. 11; Ex. 13; Ex. 14 (describing how thousands of ballots arrived during grace period in 2020, 2022, and 2024 elections and would have been rejected if not for the grace period); Herron Decl. at 72, tbl. 20 (indicating that more than 12% of Douglas County ballots in the 2024 primary took ten or more days to travel to election officials); Ex. 16 (noting that even with the grace period in place, in Douglas County

more than 200 ballots had to be rejected because they arrived more than three days after the August 6, 2024, primary, *even though they had been postmarked in July*).

It is undisputed that hundreds of thousands of Kansas voters have relied on USPS to deliver their ballots. Herron Decl. at 15, tbl. 1; *id.* ¶ 39. It is also undisputed that, over the past decade, USPS delivery has become slower, less reliable, and more erratic. Ex. 9 (letter from the Secretary to USPS decrying worsening mail delays and how they are disenfranchising Kansas voters); Ex. 14 (testimony from the Secretary’s office pointing out that mail delays in Kansas had worsened since 2017); Ex. 18 (letter from Kansas and Missouri congressional delegation criticizing worsening mail delays). In fact, in the second quarter of 2025, USPS delivered only 51% of first-class, three-to-five-day service standard mail in the district on time. *See* Mem. at 3 n.2; *see also* Ex. 29 at 3–5 (USPS audit in 2023 confirming “significant delays” at the regional Kansas City Processing and Distribution Center); Ex. 15 at 3 (2024 audit ranking the Kansas-Missouri USPS district among the third or fourth worst-performing mail districts in the country (out of 50 districts)).

In 2017, a far less dire situation led the Legislature to conclude that a three-day grace period was necessary to ensure that thousands of voters would not have their ballots arbitrarily rejected without recourse. Ex. 10 (in testimony before Legislature when it was considering the grace period in 2017, noting “[t]he U.S. Postal Service no longer guarantees 1-2 day delivery for local mail, but now has a 2-5 day window for delivery of First Class local mail”). After that grace period was

enacted, it saved tens of thousands of voters' ballots from being rejected—and those voters from being disenfranchised—due to mail delays. *See* Ex. 11; Ex. 13; Ex. 14.

Even so, as mail delivery continued to worsen in the ensuing years, the grace period was not always sufficient to save voters' timely-mailed ballots from rejection. Ex. 11 (566 ballots arrived after the grace period in the 2018 general election, and 400 in the 2020 general election, and were not counted as a result); Ex. 14 (603 ballots arrived after the grace period in the 2024 general election, and were not counted as a result); Ex. 16 (more than 200 Douglas County ballots arrived after the grace period in the August 6, 2024, primary, and were not counted as a result—even though the ballots had been postmarked in July). These issues were of increasing concern to Kansas election officials, including the Secretary, as evidenced by his repeated public statements.

For instance, after the August 2024 primary, the Secretary wrote to the U.S. Postmaster General emphasizing that he was “extremely concerned” about USPS’s processing of ballots and how it was disenfranchising Kansas voters. Ex. 9. In that letter, the Secretary reported that many ballots are “failing to reach the county election office on time, *even when voters have mailed them timely.*” *Id.* (emphasis added). He wrote that “[m]ultiple county election officials have notified my office that ballots were received from the local post office days, if not weeks, after they were placed in the custody of the USPS under the assumption that they would be received and counted by county election officials.” *Id.* He was clear: “it is unacceptable that voters, who follow the rules for requesting, voting, and returning

their mail ballot, are disenfranchised” when USPS fails to deliver those ballots in a timely manner. *Id.* Finally, the Secretary emphasized that “Kansas has had mail voting in some form since the Civil War, but never has a lack of confidence in the delivery of our ballot been questioned as it has in the 21st Century.” *Id.*

The Secretary also criticized the USPS on social media, claiming that the “Pony Express is more efficient at this point[,]” Ex. 19, and he publicly warned voters that USPS delays meant that voting by mail came with the “highest risk” that the ballot would not be counted, Ex. 20.

Rather than addressing this worsening problem to save voters’ ballots from being rejected due to arbitrary circumstances often out of their control, the Legislature chose to repeal the grace period with 2025 SB 4. Ex. 27.

In the 2025 legislative proceedings, the Legislature was repeatedly warned—including by the Secretary’s office—that repealing the grace period would have negative consequences for voters, including by the Secretary’s office. In testimony before the Legislature, the Secretary’s office explained that (1) USPS “delivery has gotten ever slower since 2017 [when the grace period was enacted],” (2) Kansas’s “comparatively short time period in which ballots are mailed out and returned” makes returning ballots by election day more difficult for Kansas voters as compared to voters in other states, and (3) “Kansas voters temporarily living out of state who do not qualify for federal voting status (e.g., college students) may have increased difficulty in returning their advance by mail ballot by Election Day without the use of overnight delivery.” Ex. 14.

In addition, as the Secretary's office indicated in its testimony to the Legislature, the risk of disenfranchisement is particularly high for Kansas voters because of its extremely narrow window for mail voting. Kansas law does not permit election officials to mail advance ballots to voters until 20 days before an election. And under SB 4, Kansas now has the shortest turn-around period for mail voting in the country. *See* K.S.A. 25-1123(a). During that 20-day window, a ballot must go through the mail twice: first from the election office to a voter, and then back. In fact, the total time period for many Kansas voters will actually be shorter because Kansas voters may request advance mail ballots until seven days before most elections. *See* K.S.A. 25-1122(f). In many cases, that mail will leave the state even if it is mailed from a Kansas address to another Kansas address. Ex. 10.

Kansas election officials—including the Secretary—recommend allowing at least seven days for each leg of that journey, Ex. 20, creating a tight window for voters to receive and cast their ballot, which narrows harrowingly with any delay at any point in the process. *See* Jan. 27, 2026, Hr'g Tr. at 60–68 (describing narrow window using demonstrative exhibit entered into evidence). And for voters who request their ballot after the 20-day window has begun, it can be impossible for them to ensure that it will be received on time, even if they return it to election officials as soon as they receive it. *See* Herron Decl. at 72, tbl. 20.

To that point, the undisputed evidence showed that in the 2024 general election, 25% of advance Douglas County mail ballots spent seven days or more of total transit time in the mail, while 1.5% spent more than ten days in mail transit.

Id. at 67, tbl. 17. In the 2024 primary election, the effects were even more pronounced—more than 12% of ballots spent ten or more days in the mail going from the voter to the county election office. In other words, these ballots spent half or more of the 20-day maximum window to vote traveling the mail *in a single direction*. *Id.* at 72, tbl. 20. More than 5% of the 2024 primary mail ballots spent 15 days or longer traversing the mail in a single direction. *Id.*

If it can take 10 or 15 days for a ballot to travel one way between a county election office and a voter, then logically there is a substantial risk that a 20-day timeframe for the ballot to travel in both directions (in addition to whatever time the voter takes to consider and fill out their ballot) will be insufficient. This too is borne out by the evidence from the 2024 primary in Douglas County. That election took place on August 6, 2024, and it was held while the grace period was still operative. This means that a ballot postmarked on or before Election Day would be counted so long as it arrived by August 9. But in fact, more than 200 ballots that had been postmarked in July were rejected because they arrived on August 10 or later. Ex. 16. In other words, these 200 voters placed their ballots in the mail at least nine days before the deadline; but their votes did not count because their ballots were stuck in the mail for at least 10 days.

In light of these failures in the timely delivery of mail ballots, it is not surprising that Douglas County Clerk Shew has remarked, tongue-in-cheek, that “we could walk to people’s houses faster than [a ballot] gets there by mail.” Ex. 17 (adding that it took an average of 7–9 days for ballots to reach voters in Douglas

County).

These mail delays and their disenfranchising effects are also consistent with other evidence in the record about voters' experiences. For example, one of the Voter Plaintiffs' mail ballots for the 2025 municipal elections was mailed to him by his county on the first possible day that it could be mailed (*i.e.*, 20 days before the election). But it took 21 days for the ballot to reach him, arriving at his home the day after Election Day. Mikesic Decl. ¶ 6, Attachment A. And another voter was unable to vote in 2022 because his advance ballot (which he requested before Election Day to be sent to his Oklahoma college address), did not arrive until about two weeks after Election Day. Simons Decl. ¶ 4.

Finally, recent elections in Kansas show that many timely voted mail ballots will arrive after Election Day. During the 2020 general election—in which high numbers of voters cast their ballots by mail due to the pandemic—more than 32,000 advance ballots arrived after Election Day, but within the then-existing three-day grace period. Ex. 11. The same was true for roughly 1,000 ballots in the 2022 general election and for more than 2,100 ballots in the 2024 general election. Ex. 13; Ex. 14.

Recent elections in Johnson County—held after SB 4 went into effect—led to a similar result. On March 3, 2026, three jurisdictions within Johnson County held special elections on local ballot issues conducted by mail voting. Approximately 30,000 ballots were cast across these elections—1,008 of these ballots were rejected for arriving after Election Day.

None of this evidence is disputed by the Secretary (except the post-briefing Johnson County data³), nor has he offered any countervailing evidence.

In light of this factual record, the Court concludes that Plaintiffs have shown that SB 4's new strict Election Day deadline will make it entirely arbitrary whether a given mail-in ballot will be counted. For example, the evidence shows that, even if a voter mails their ballot ten days before Election Day (which a reasonable person would expect to be more than sufficient to ensure a timely delivery), it is unclear if the ballot will actually arrive before the deadline.

Nor is there any way that a voter can know in advance how long his or her ballot will take to transit the mail. For example, while more than 60% of the Douglas County ballots in the 2024 primary took four or fewer days to travel from a voter to election officials, more than 12% took ten or more days to make the same journey. Herron Decl. at 72, tbl. 20; *see also id.* ¶ 151 (Dr. Herron explaining that a Kansas voter cannot know in advance whether their ballot will be in the group that takes a relatively long or short time to transit the mail).

In other words, some voters who mail their ballot well before the election will not have their ballot counted solely because of poor USPS performance, even though thousands of other voters who mail their ballots on the same day (or even later) will have their votes counted. Again, this situation played out exactly as expected by

³ The Court includes this recent evidence from Johnson County over the Secretary's objection because of the importance of having up-to-date information for any injunction request, because it would be easy for the Secretary to dispute if the information was erroneous, and because of the lower evidentiary standards that apply in this context. But this is just one small piece of Plaintiffs' evidence. It corroborates the request for a temporary injunction; but it is not dispositive of the request.

Plaintiffs in the March 2026 elections in Johnson County.

The Secretary did not dispute this either. In fact, counsel conceded that SB 4 “may have a disparate impact on certain individuals,” calling that disparate impact “unfortunate but constitutionally irrelevant.” Jan. 27, 2026, Hr’g Tr. at 10. But in *LWV II*, the Kansas Supreme Court articulated an “arbitrary and disparate” treatment standard for equal-protection claims brought against voting laws under the Kansas Constitution. 318 Kan. at 805. As a result, the arbitrary and disparate impact of SB 4 is absolutely relevant to this constitutional inquiry.

The evidence demonstrates that whether a voter’s ballot will count or be rejected will depend entirely on arbitrary postal performance that is unpredictable and outside the voter’s control. In other words, “[a] voter’s right to vote, therefore, may hinge on random chance.” *Gallagher v. New York State Bd. of Elections*, 477 F. Supp. 3d 19, 48 (S.D.N.Y. 2020) (finding an equal-protection violation based on arbitrary postal delays). That is “arbitrary and disparate treatment”—see *LWV II*, 318 Kan. at 805—and thus there is a substantial likelihood that SB 4 violates the equal-protection guarantees of the Kansas Constitution Bill of Rights.

Plaintiffs are separately likely to prove that SB 4 violates the Kansas Constitution’s equal-protection guarantees because the undisputed evidence establishes that this arbitrary treatment occurs in unfair and non-uniform ways across Kansas and will impact some groups of voters more than others. See, e.g., Herron Decl. ¶¶ 57, 109, 117; Ex. 14; Ex. 21; Ex. 22. That lack of uniformity creates an independent violation of equal-protection principles. See *LWV II*, 318 Kan. at 807

(equal protection requires that a voting law “achieve reasonable uniformity”); *see also id.* at 834 (Biles, J., concurring in part and dissenting in part) (interpreting *LWV II* majority opinion to require that “the likelihood of having a ballot discarded . . . must be the same in Wyandotte County as in Gove County”); *Bush v. Gore*, 531 U.S. 98, 107, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000) (finding an equal-protection violation when different counties used different standards to determine whether to count a ballot).

For instance, the Legislature heard testimony that rural votes were more than twice as likely to be saved by the three-day grace period than non-rural votes, and that in some counties, 10% to 12% of advance mail ballots arrived during that grace period (meaning that those voters would have been disenfranchised under SB 4). Ex. 21; *see also Gallagher*, 477 F. Supp. 3d at 47 (finding equal-protection violation where mail ballots in New York City were substantially more likely to be rejected for lack of a postmark in Brooklyn compared to Manhattan or Queens).

This is supported by the analysis of Dr. Michael Herron, who found 2024 general election data shows “substantial variance across Kansas counties” in the rate at which ballots sent by mail arrived during the grace period. Herron Decl. ¶ 49. While some counties saw over ten percent of all ballots sent by mail arrive during the grace period, other counties saw no mail ballots arrive during that period. *Id.* ¶ 47.

Moreover, voters in more rural counties will be exposed to a greater risk of mail delays and thus disenfranchisement. As Dr. Herron’s analysis shows, Kansans

living in the most rural counties were more than twice as likely to have their ballot arrive during the grace period than those living in the most urban counties. *Id.* ¶ 57. That finding closely matches testimony before the Legislature that “rural votes [were] twice as likely to be counted because of the 3-day grace period than non-rural votes.” *See* Ex. 21.

The evidence also shows that Kansas voters who temporarily reside out of state are more likely to be disenfranchised by SB 4 than voters residing within Kansas. Dr. Herron’s analysis demonstrates that the farther away a voter is from their county’s election office, the more likely it is that their ballot would be discarded under SB 4—a particularly acute problem for voters such as college students temporarily residing out of the county where they are registered. Herron Decl. ¶¶ 109, 117. This is consistent with testimony to the Legislature from the Secretary’s office, which warned that “[i]f SB4 becomes law, Kansas voters temporarily living out of state who do not qualify for federal voting status (e.g., college students) may have increased difficulty in returning their advance by mail ballot by Election Day. . . .” Ex. 14.

Moreover, other discrete groups will be particularly and disparately harmed by SB 4. For instance, seniors and Kansans with disabilities often have no other feasible and safe option to vote. Ex. 22; Nary Decl. ¶¶ 8–9; Hodgesmith Decl. ¶¶ 7–12; Mikesic Decl. ¶ 9; Nichols Decl. ¶¶ 6, 9.

The lack of uniformity in ballot rejection creates an independent violation of equal-protection principles. *See LWV II*, 318 Kan. at 807 (equal protection requires

that a voting law “achieve reasonable uniformity”); *id.* at 834 (Biles, J., concurring in part and dissenting in part) (interpreting majority opinion to require that “the likelihood of having a ballot discarded . . . must be the same in Wyandotte County as in Gove County”); *see also, e.g., Bush*, 531 U.S. at 107 (finding an equal-protection violation when different counties used different standards to determine whether to count a ballot); *Gallagher*, 477 F. Supp. 3d at 47 (finding equal protection violation after noting that mail ballots in New York City were substantially more likely to be rejected in Brooklyn compared to Manhattan or Queens).

In sum, the evidence before the Court establishes a substantial likelihood that SB 4 will result in arbitrary treatment of voters because ballots will be rejected due to postal delays outside the voters’ control, and the impact of these harms will be non-uniformly spread around the state. Accordingly, SB 4 appears to fail the test announced in *LWV II*, and Plaintiffs are substantially likely to prevail on their equal-protection claim.

The Court rejects the Secretary’s arguments that voters will simply adapt their behavior and that the voters only need to exercise a “modicum of diligence” to have their votes counted under SB 4. These arguments are contrary to the facts that the Plaintiffs have presented as part of this motion.

The Court also rejects the Secretary’s claims that the disparate treatment of voters is “constitutionally irrelevant.” *See* Jan. 27, 2026, Hr’g Tr. at 10. Because Kansas has decided to allow voting by mail, the system must comply with equal-

protection guarantees. *See LWV II*, 318 Kan. at 805 (reversing and remanding to determine whether Kansas’s signature verification rules for advance ballots complied with the Kansas Constitution’s equal-protection provisions); *see also, e.g., Idaho Coal. United for Bears v. Cenarrusa*, 342 F.3d 1073, 1077 n.7 (9th Cir. 2003) (“[W]hen a state chooses to grant the right to vote in a particular form, it subjects itself to the requirements of the Equal Protection Clause.”); *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012) (finding equal-protection violation when state denied early voting to nonmilitary voters even though it was under no obligation to permit early voting at all); *Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 308 (3d Cir. 2025) (“Even if no . . . right to vote by mail exists, we still must scrutinize [a state’s] mail-in voting regime to ensure that it complies with the Constitution.”); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 665, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966) (“[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause . . .”).

To hold otherwise would effectively allow Kansas to “induce its citizens to vote by mail, yet proceed to discard countless ballots for any number of reasons unrelated to a voter’s qualifications or the State’s legitimate interests.” *See Eakin*, 149 F.4th at 308. In fact, the Secretary has previously emphasized that “it is unacceptable that voters, who follow the rules for requesting, voting, and returning their mail ballot, are disenfranchised” when USPS fails to deliver their ballots in a timely manner. Ex. 9. Under the holding of *LWV II*, the Court rejects any

interpretation of the Kansas Constitution that would allow such a result.

2. There is a substantial likelihood that SB 4 violates the Kansas Constitution’s guarantees of due process.

In *LWV II*, the Supreme Court held that voting laws “must . . . comply with due process.” 318 Kan. at 806; *see* Kan. Const., Bill of Rights § 18 (“All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.”). The Supreme Court held that the State of Kansas fails to provide adequate process if it rejects a ballot without providing the voter “reasonable notice” and an “opportunity to contest the disqualification of otherwise valid absentee ballots and to cure deficiencies.” *LWV II*, 318 Kan. at 806.

There is a substantial likelihood that SB 4 fails this standard. By its plain terms, SB 4 creates an unforgiving deadline—if a ballot fails to arrive by Election Day, it will be summarily rejected, it can never be validly counted, and there is no possibility of curing this issue. K.S.A. 25-1132. In contrast, Kansas permits voters to cure other types of defects until the “final county canvass”—which can be up to 13 days after election day. *See, e.g.*, K.S.A. 25-1124(b); K.S.A. 25-3104.

Under SB 4, a voter does not have a chance to have their late-arriving ballot count, even if it was postmarked well before Election Day and the voter otherwise complied with all Kansas requirements to vote. In fact, a ballot could be cast by a voter and postmarked 19 days before Election Day and still be deemed late by election officials—this voter would have no recourse to have their ballot counted.

See K.S.A. 25-1132(b). Plaintiffs are thus entitled to a temporary injunction because there is a substantial likelihood that SB 4 violates due process by providing no redemptive process to affected voters.

In evaluating due-process claims, Kansas courts apply the test from *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). *State v. Wilkinson*, 269 Kan. 603, 609, 9 P.3d 1 (2000); *see also Creecy v. Kan. Dep't of Revenue*, 310 Kan. 454, 463, 447 P.3d 959 (2019).

To determine what procedures are constitutionally required to ensure due process, Kansas courts consider (1) the nature of the individual interests at stake, (2) the risk of erroneous deprivation of those interests and the value of additional safeguards, and (3) the burden on the State of imposing those additional safeguards. *Wilkinson*, 269 Kan. at 609. Although this test was not cited in *LWV II*, nothing in the opinion suggests that the Supreme Court has moved away from the *Mathews v. Eldridge* test for due-process challenges involving ballot issues. *See LWV II*, 318 Kan. at 828 (Rosen, J., concurring in part and dissenting in part) (citing *Wilkinson* and noting that “[t]he majority appears to agree the legislation denies a liberty interest”).

Under the *Mathews v. Eldridge* balancing test, it is appropriate to issue a temporary injunction that prohibits enforcement of SB 4, preserving the status quo so the three-day grace period remains in place during the pendency of this suit.

First, the liberty interest at stake is the ever-important right to vote in our democratic elections. *See Provance v. Shawnee Mission Unified Sch. Dist. No. 512*,

231 Kan. 636, 641, 648 P.2d 710 (1982) (describing the right as fundamental). Although the Supreme Court in *LWV II* concluded that the right to vote is not protected in the Kansas Constitution Bill of Rights, the court emphasized that this “does not mean that constitutional voting guarantees are somehow weak or ineffective. Quite the contrary. The article 5 right protected by the Kansas Constitution is an *enumerated political right*. As an expressly enumerated right, article 5 provides the strongest possible constitutional protections.” *LWV II*, 318 Kan. at 800 (emphasis in original). The court also left standing Kansas case law that that described the right to vote as fundamental. *See LWV II*, 318 Kan. at 799 (“Today’s decision does not conflict with any of our past precedent”); *Provance*, 231 Kan. at 641 (described the right to vote as “fundamental”). Thus, the right to vote undoubtedly involves a substantial liberty interest.

Second, the evidence shows that a three-day grace period is likely to save many ballots, as tens of thousands of ballots in recent elections arrived within that grace period and were counted as a result. Ex. 11; Ex. 13; Ex. 14.

And third, any burden to the State is minimal. The State of Kansas has employed this identical post-Election Day grace period for almost a decade.

In short, the three-day grace period for mail-in ballots has significant value in protecting mail ballots from unpredictable mail delays—and this safeguard has successfully saved ballots in Kansas from arbitrary disenfranchisement for nearly ten years. Under the *Mathews v. Eldridge* test, Plaintiffs are substantially likely to prevail on their due-process claim. *See also Raetzel v. Parks/Bellefont Absentee*

Election Bd., 762 F. Supp. 1354, 1358 (D. Ariz. 1990) (“due process is not provided when the election procedures do not give some form of post-deprivation notice to the affected individual so that any defect in eligibility can be cured”); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018) (“Having induced voters to vote by absentee ballot, the State must provide adequate process to ensure that voters’ ballots are fairly considered and, if eligible, counted.”).

3. There is a substantial likelihood that SB 4 violates the Kansas Constitution’s protections of the right to vote.

Although Plaintiffs need only show that they are likely to succeed on one of their claims, the Court also finds that Plaintiffs have established that there is a substantial likelihood that SB 4 violates the Kansas Constitution’s protections of the right to vote.

To begin, Kansas has long recognized the importance of the right to vote by mail or absentee ballot for its citizens. G.S. 1868, ch. 36, art. 4, §§ 45–56; *Lemons v. Noller*, 144 Kan. 813, 63 P.2d 177, 184 (1936). Kansas’s history of enabling such voting goes as far back as the Civil War. Ex. 9; *see also Josiah Henry Benton, Voting in the Field: A Forgotten Chapter of the Civil War* 115–17 (1915). And for three decades now, any Kansas voter has been guaranteed the right to vote by advance ballot. K.S.A. 25-1119. Even the Kansas Constitution refers directly to absentee ballots in its voting provisions. Kan. Const. art. 5, § 1.

In *LWV II*, the Supreme Court held that the Kansas Constitution guarantees all qualified Kansans the right to vote in the State’s elections. *See* 318 Kan. at 800

(“As an expressly enumerated right, article 5 provides the strongest possible constitutional protections.”). Although *LWV II* does not describe the right to vote as fundamental, the Supreme Court has described the right to vote in that way. *See, e.g., Moore v. Shanahan*, 207 Kan. 645, 649, 486 P.2d 506 (1971) (describing the right to vote as “fundamental,” “pervasive of other basic civil and political rights,” and “the bed-rock of our free political system”); *Provance*, 231 Kan. at 641 (“We agree the right to vote for elected representatives is fundamental . . .”).

LWV II held that regulations or laws affecting the state constitutional right to vote should be analyzed under the test announced in *State v. Butts*, 31 Kan. 537, 2 P. 618 (1884). The *Butts* opinion recognized that there is no “special virtue in the mere day of election,” it states that citizens wishing to exercise the right of suffrage must meet the reasonable requirements of the Legislature, and that a failure to do so does not mean that citizen has been disenfranchised. 31 Kan. 537, 2 P. at 622.

Thus, “*Butts* provides that the Legislature may validly make registration (or the provision of other ‘proper proofs’) a prerequisite to the act of voting, but in so doing, the Legislature cannot ‘under the pretext of securing evidence of voters’ qualifications . . . cast so much burden as really to be imposing additional qualifications’ on the right to suffrage.” *LWV II*, 318 Kan. at 801 (citing 31 Kan. at 554, 2 P. 618). “Accordingly, to prevail on a claim that the article 5 right to suffrage has been violated, a plaintiff must show that the Legislature has imposed what amounts to a new, extra-constitutional qualification on the right to be an elector—that is, the law must be shown to unreasonably burden the right to suffrage.” *Id.* If

such a finding is made, such laws are per se unconstitutional, without the need for any balancing test. *Id.* at 801–02.

Plaintiffs have shown a substantial likelihood that SB 4 violates the Kansas Constitution’s protections of the right to vote.

In beginning this analysis, it is important to note that SB 4 involves the right of *qualified* voters to have their votes counted. This is because Kansas suffers from no meaningful voting fraud. Ex. 25 at 4 (quoting the Secretary’s testimony); *VoteAmerica v. Schwab*, 790 F. Supp. 3d 1255, 1275 (D. Kan. 2025). The Secretary’s office testified in February 2025 that “[t]here has *never* been a mail ballot received in the 3-day period that was not requested and returned by a registered Kansas voter.” Ex. 14 at 1 (emphasis added). Lastly, the Secretary has put forth no evidence of voting fraud here. Thus, this issue involves the right of *qualified voters* to have their votes counted. These voters have already demonstrated the “proper proofs” that they are qualified voters—but SB 4 allows for their votes to be discarded if their mail-in ballots are not received by Election Day.

Although this Election Day deadline may seem like a simple regulation on how votes are counted, the problem is that mail ballots cannot be mailed to qualified voters until 20 days before the election. And then, even if the ballots are returned in the mail the same day they are received, the ballots are discarded if they are not received by election officials by 7:00 p.m. on Election Day. Given the evidence of arbitrariness and the mailing delays that Plaintiffs have presented to the Court, there is a substantial likelihood that this regulation is an unreasonable

burden on the right to suffrage.

The Kansas Constitution sets out three requirements to be a qualified elector: one must be a U.S. citizen, 18 years or older, and a resident of the voting area in which he or she seeks to vote. Kan. Const. art. 5, § 1. SB 4 has nothing to do with any of those qualifications and thus is not a law enacted pursuant to the Legislature's authority to "provide by law for proper proofs of the right of suffrage." *Id.* art. 5, § 4.

Plaintiffs have shown a substantial likelihood that SB 4 imposes an extra-constitutional burden on the right to suffrage. This burden requires any mail-in ballot to survive a difficult-to-meet and unforgiving deadline, with no ability to correct the deficiency, and no ability to swear or affirm the circumstances of the mail-in ballot. If it's late, the vote is excluded, even if the voter is qualified and they mailed it as soon as they received it in the mail. This is harsh and arbitrary.

Kansas law specifically allows for this mail-in voting process, to accommodate those qualified voters that may need to or otherwise choose to vote by mail. But the 20-day process, with the unforgiving Election Day deadline, and the evidence of arbitrary delays in U.S. Mail, is substantially likely to be an extra-constitutional burden on the right to suffrage for voters who need to use mail-in voting. There is a substantial likelihood that qualified voters will have their ballots discarded based on factors beyond their control—this is an unreasonable burden on these Kansans' right to vote.

For these reasons, Plaintiffs have shown a substantial likelihood that SB 4

violates the Kansas Constitution’s protections of the right to vote.

B. There is a reasonable probability of Plaintiffs suffering an irreparable injury.

To be entitled to a temporary injunction, Plaintiffs must also show a “reasonable probability” of irreparable injury absent a temporary injunction, and a lack of any “adequate legal remedy, such as damages.” *Hodes & Nauser*, 309 Kan. at 619.

Once a plaintiff shows that a constitutional right will be abridged, no further showing of irreparable harm is required—a deprivation of a constitutional right is in and of itself irreparable harm. *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (citation omitted); *see also Mirabelli v. Bonta*, 607 U.S. 492, 497, 146 S. Ct. 797 224 L. Ed. 2d 310 (2026) (“The denial of plaintiffs’ constitutional rights during the potentially protracted appellate process constitutes irreparable harm.”). *ACLU v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999); *Adams By & Through Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996) (“A deprivation of a constitutional right is, itself, irreparable harm.”). *See also Bonner Springs Unified Sch. Dist. No. 204 v. Blue Valley Unified Sch. Dist. No. 229*, 32 Kan. App. 2d 1104, 1118, 95 P.3d 655 (2004) (citing federal cases as persuasive authority for the nature-of-harm analysis); *Trust Women Found. Inc. v. Bennett*, 509 P.3d 599, at *7 (Kan. Ct. App. 2022) (unpublished) (“courts presume that irreparable injury results when a constitutional right is violated”).

“This is especially so in the context of the right to vote. Because there can be

no ‘do-over’ or redress of a denial of the right to vote after an election, denial of that right weighs heavily in determining whether plaintiffs would be irreparably harmed absent an injunction.” *Fish*, 840 F.3d at 752 (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)).

Plaintiffs need only show a “reasonable probability” of irreparable harm—a “much lower burden than the applicable burden of proof at a trial.” *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 691, 571 P.3d 6 (2025) (quoting *Idbeis v. Wichita Surgical Specialists*, 285 Kan. 485, 492, 173 P.3d 642 (2007)).

The Voter Plaintiffs are threatened with irreparable injury to their fundamental right to vote in the upcoming 2026 elections absent an injunction. Each relies on voting advance ballots by mail. *See* Nary Decl. ¶¶ 4, 9; Hodgesmith Decl. ¶ 11; Mikesic Decl. ¶¶ 4–10. Further, Plaintiffs Nary, Hodgesmith, Mikesic are all disabled, elderly, and have limited mobility, so voting by mail is their safest and most reliable option to exercise their right to vote. Nary Decl. ¶ 9; Hodgesmith Decl. ¶¶ 9–11; Mikesic Decl. ¶ 10. Accordingly, if SB 4 is in effect during the upcoming 2026 elections, the Voter Plaintiffs will be at serious risk of having their ballots discounted if postal delays outside their control cause them to arrive after 7:00 p.m. on Election Day.

The constituents of each of the Organizational Plaintiffs will also face the same risk of irreparable harm for similar reasons as the Voter Plaintiffs. Nichols Decl. ¶ 7; Hammet Decl. ¶ 6; Reeve Decl. ¶ 7.

Lastly, the Organizational Plaintiffs will suffer direct, irreparable injuries to

their organizational interests because they must divert resources toward operating programs to mitigate the burdens of SB 4—resources that otherwise would be put toward other mission-critical activities. *See* Reeve Decl. ¶ 8; Hammet Decl. ¶¶ 7–8, 11; Nichols Decl. ¶¶ 8–16.

C. There is no adequate legal remedy for Plaintiffs’ injuries.

The potential harm that Voter Plaintiffs’ votes would not be counted in upcoming elections is one that cannot be compensated by a legal remedy like money damages. *Fish*, 840 F.3d at 753 (“[D]enial of the right to vote constitutes a strong showing of irreparable harm, and one which cannot be compensated by money damages.”). The same is true for the potential harms suffered by Organizational Plaintiffs, where they may have to divert resources toward operating programs to mitigate the burdens of SB 4. *See League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018) (“Courts routinely recognize that organizations suffer irreparable harm when a defendant’s conduct causes them to lose opportunities to conduct election-related activities, such as voter registration and education.”).

Thus, unless enjoined, there is a reasonable probability that SB 4 will impose irreparable injury, and Plaintiffs have no other adequate legal remedy.

D. The threat of suffering injury outweighs whatever damage the proposed injunction may cause Defendants.

Plaintiffs have shown the threat of irreparable injury to them from the new law that would prohibit election officials from counting ballots that arrive after

Election Day. The three-day rule has been in effect since 2017, and this injunction merely continues the election process that the State of Kansas has used for nearly a decade.

Given these circumstances, the balance of hardships in this case suggests a substantial threat of irreparable harm without temporary-injunctive action. The ongoing injury to Plaintiffs “outweighs whatever damage the preliminary injunction may cause Defendants’ inability to enforce what appears to be an unconstitutional statute.” *See Am. C.L. Union v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999).

The harm that SB 4 poses to the Voter Plaintiffs and the Organizational Plaintiffs’ constituents is of the most grave and fundamental nature in a democratic society—it threatens the arbitrary loss of their right to vote in upcoming elections. *See Fish*, 840 F.3d at 752. The Organizational Plaintiffs will also suffer irreparable injury by being forced to divert resources away from their mission-critical activities. Nichols Decl. ¶¶ 15–16; Hammet Decl. ¶ 12; Reeve Decl. ¶¶ 9–10.

In contrast, Defendants would merely follow the same election process for mail-in ballots that has been in place since 2017. Thus, any alleged harms to the Defendants stemming from an injunction do not compare to the threat of injury to Plaintiffs. *See Fish*, 840 F.3d at 755 (“There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [state] and local offices involved in elections.”).

E. The impact of issuing the injunction will not be adverse to the public interest.

The public's interest in not suffering a potential constitutional limitation is served more by maintaining the status quo than by permitting a law which may be unconstitutional to go into effect. In addition, "ensuring qualified voters exercise their right to vote is always in the public interest." *League of Women Voters of Mo.*, 336 F. Supp. 3d at 1006 (citation omitted); see *Fish*, 840 F.3d at 756 (holding "[t]he public interest in broad exercise of the right to vote will be furthered rather than harmed" by an injunction).

F. Scope of Relief

Having held that Plaintiffs are entitled to a temporary injunction, the Court must determine the appropriate scope of that relief. For the reasons stated below, a statewide, facial injunction against SB 4 is both necessary and appropriate.

Kansas district courts have the equitable authority to issue statewide injunctions of unconstitutional state laws. See, e.g., *Hodes I*, 309 Kan. at 614 (affirming the trial court's injunction temporarily enjoining the enforcement of S.B. 95). For this issue, a facial injunction with statewide effect is the appropriate scope of relief for the temporary injunction.

Defendant argues that Plaintiffs' facial challenge requires Plaintiffs to demonstrate that no set of circumstances exist under which S.B. 4 would be valid. But some federal jurisprudence explains that the "proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the

law is irrelevant.” *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409, 418, 135 S. Ct. 2443, 192 L. Ed. 2d 435 (2015).

The Kansas Supreme Court has cited *Patel* with approval. *State v. Ryce*, 303 Kan. 899, 915, 368 P.3d 342 (2016), *adhered to on reh'g*, 306 Kan. 682, 396 P.3d 711 (2017) (“*Patel* emphasizes that the scope of circumstances we examine is determined and limited by the application of the statute—we do not consider the entire universe of possible scenarios, we must instead look to the circumstances actually affected by the challenged statute.”).

Here, the group of relevant voters affected by SB 4 are those who choose to vote using a mail-in ballot. With this group, literally any mail-ballot voter could be impacted by the arbitrary mail delays and have their ballot discarded with no recourse. For these voters, who are spread throughout the state, SB 4 is extremely relevant, making a statewide injunction appropriate.

Because of the statewide application of SB 4, and the likelihood that this will affect voters throughout the State, a facial injunction with statewide effect can be needed to redress the potential irreparable harm, including the constitutional injuries, imposed by SB 4.

IV. Conclusion

For these reasons, Plaintiffs’ Motion for a Temporary Injunction is GRANTED. SB 4 (now codified at K.S.A. 25-1132 (2026)) is TEMPORARILY ENJOINED from taking effect pending further order of this Court.

Accordingly, prior law governing the receipt of advance ballots sent by mail

before SB 4 remains in effect. *See* K.S.A. 25-1132 (2021). Subject to the deadline for receipt by the office of the county election officer as set forth in this subsection, all advance voting ballots received by mail by the office of the county election officer after the closing of the polls on the date of any election specified in K.S.A. 25-1122(f), and amendments thereto, and which are postmarked or are otherwise indicated by the United States Postal Service to have been mailed on or before the close of the polls on the date of the election, shall be delivered by the county election officer to a special election board or the county board of canvassers, as determined by the Secretary of State, for canvassing in a manner consistent, as nearly as may be, with other advance voting ballots. The deadline for the receipt by mail of the advance voting ballots by the office of the county election officer shall be the last delivery of mail by the United States Postal Service on the third day following the date of the election.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carl Folsom, III', written over a horizontal line.

Carl Folsom, III
District Judge