

ELECTRONICALLY FILED

2026 Oct 23 AM 8:46

CLERK OF THE SHAWNEE COUNTY DISTRICT COURT

CASE NUMBER: 2021-CV-000299

PII COMPLIANT



Court: Shawnee County District Court
Case Number: 2021-CV-000299
Case Title: League of Women Voters of Kansas, et al. vs. Scott Schwab - Kansas Secretary of State, et al.
Type: ORD: Order Originated by Judge MEMORANDUM DECISION AND ORDER

SO ORDERED,

A handwritten signature in black ink, appearing to read "T. Watson", is written over a horizontal line.

/s/ Honorable Teresa L Watson, District Court Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION THREE**

LEAGUE OF WOMEN VOTERS
OF KANSAS, et al.,

Plaintiffs

2021-CV-299

SCOTT SCHWAB, KANSAS
SECRETARY OF STATE, et al.,

Defendants

MEMORANDUM DECISION AND ORDER

Plaintiffs present a facial challenge to the signature verification requirement (“SVR”) for advance mail ballots set forth in K.S.A. 25-1124(h) and its implementing regulation, K.A.R. 7-36-9. Plaintiffs argue that the SVR violates their rights to equal protection and due process under the Kansas Constitution. Plaintiffs seek a permanent injunction against enforcement of K.S.A. 25-1124(h) and K.A.R. 7-36-9 to prevent the rejection of ballots based on a signature mismatch.

This matter is before the Court for decision following a bench trial. The Court has thoroughly considered the evidence admitted at trial, the stipulated facts, and the arguments of counsel. Plaintiffs do not have standing to sue and the case must be dismissed on that basis. Even if one of the Plaintiffs had standing to sue, the challenge fails on the merits. Plaintiffs are not entitled to a permanent injunction, and their request for relief is denied.

PROCEDURAL BACKGROUND.

A brief background of this multi-year litigation provides context for the issues now before the Court. In 2021, Plaintiffs filed a petition challenging the legality of then-recently enacted Kansas election laws. Defendants Kansas Secretary of State Scott Schwab and Attorney General Derek Schmidt (now Kris Kobach) moved to dismiss the petition. Plaintiffs later filed an amended petition, and Defendants once again moved for dismissal. In the meantime, Plaintiffs sought a partial temporary injunction to prevent the implementation and enforcement of one provision of the challenged laws, known as the false representation provision (“FRP”). The Court denied Plaintiffs’ motion for a partial temporary injunction. Plaintiffs appealed that ruling. This Court later granted Defendants’ motion to dismiss the amended petition in its entirety on grounds other than standing. Plaintiffs separately appealed that ruling.

One panel of the Kansas Court of Appeals addressed this Court’s denial of Plaintiffs’ temporary injunction regarding the FRP. See *League of Women Voters of Kansas v. Schwab*, 62 Kan.App.2d 310, 513 P.3d 1222 (2022). The Court of Appeals majority concluded that Plaintiffs did not have standing to mount a pre-enforcement challenge to the FRP and dismissed the appeal. The Kansas Supreme Court granted Plaintiffs’ petition for review. The Supreme Court reversed the Court of Appeals, concluding that Plaintiffs had established standing sufficient for the motion to dismiss stage. The Supreme Court remanded the matter to the Court of Appeals to analyze the merits of this Court’s temporary injunction decision. See *League of Women Voters of Kansas v. Schwab*, 317 Kan. 805, 539 P.3d 1022 (2023) (“*LOWV II*”).

A different panel of the Court of Appeals addressed this Court’s grant of Defendants’ motion to dismiss the amended petition. See *League of Women Voters of Kansas v. Schwab*, 63 Kan. App. 2d 187, 525 P.3d 803 (2023) (“*LOWV I*”). The Court of Appeals concluded in pertinent

part that: 1) Plaintiffs had standing to challenge the signature verification requirement and the ballot collection provision; and 2) the signature verification requirement and the ballot collection provision impaired various rights guaranteed by the Kansas Constitution and were subject to strict scrutiny. The Court of Appeals remanded the matter to this Court for further constitutional analysis of the signature verification requirement and the ballot collection provision under a strict scrutiny standard.

The Kansas Supreme Court granted Defendants' petition for review of the second panel's decision. It decided to transfer the FRP case it earlier remanded to the Court of Appeals back to itself and consolidated the two appeals. Ultimately, a majority of the Kansas Supreme Court: 1) reversed this Court's denial of Plaintiffs' motion for a temporary injunction regarding the FRP and remanded to this Court for further consideration of the temporary injunction factors; 2) affirmed this Court's dismissal of Plaintiffs' challenge to the ballot collection restriction; 3) affirmed this Court's dismissal of Plaintiff's challenge to the signature verification requirement under a state constitution "right to vote" theory; and 4) reversed this Court's dismissal of the remainder of Plaintiffs' challenge to the signature verification requirement, remanding it for further consideration of whether the statute and implementing regulations violate state equal protection or due process guarantees according to standards set forth in the Supreme Court's majority opinion. *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 549 P.3d 363 (2024) ("*LOWV III*").

After a remand to this Court, the parties agreed to, and the Court approved, a permanent injunction prohibiting enforcement of the FRP. Defendants then filed a motion to dismiss the remainder of the case – at this point narrowed to Plaintiffs' challenge to the signature verification requirement on equal protection and due process grounds – asserting that Plaintiffs lacked standing to sue. Plaintiffs claimed that the issue of standing had been determined in their favor by the

appellate courts, at least impliedly, and was not part of the mandate to this Court on remand. This Court denied the motion to dismiss and discovery occurred throughout 2025.

On November 14, 2025, Defendants filed a motion for summary judgment on all claims against them. Separately, Defendants filed two motions to exclude Plaintiffs' expert witnesses. On the same day, Plaintiffs filed a motion for summary judgment on all remaining claims. Plaintiffs later filed three motions (and a supplemental motion) to strike or exclude the testimony of three of Defendants' witnesses. All motions were fully briefed and argued at the pretrial conference on April 1, 2026.

In an order dated June 23, 2026, this Court denied Plaintiffs' and Defendants' motions for summary judgment, denied Defendants' motions to exclude Plaintiffs' expert witnesses, and denied Plaintiffs' motions to strike certain testimony from Defendants' witnesses. The matter proceeded to a bench trial held July 20 to July 24, 2026.

FINDINGS OF FACT

The Court makes the findings of fact set forth below based on the testimony presented at trial and the exhibits admitted into evidence, along with the parties' joint statement of stipulated facts filed on November 11, 2025, and reaffirmed by the parties at trial.

INTRODUCTION.

1. Plaintiffs challenge the constitutionality of the advance ballot signature verification requirement ("SVR") adopted by the Kansas Legislature in House Bill 2183. It became law effective July 1, 2021.
2. The SVR is codified at K.S.A. 25-1124(h). It says:

“Subject to the provisions of subsection (b), no county election officer shall accept an advance voting ballot transmitted by mail unless the county election officer verifies that the signature of the person on the advance voting ballot envelope matches the signature on file in the county voter registration records,

except that verification of the voter's signature shall not be required if a voter has a disability preventing the voter from signing the ballot or preventing the voter from having a signature consistent with such voter's registration form. Signature verification may occur by electronic device or by human inspection. In the event that the signature of a person on the advance voting ballot envelope does not match the signature on file in the county voter registration records, the ballot shall not be counted."

KANSAS ADVANCE VOTING BY MAIL.

3. Any registered Kansas voter may vote by advance mail ballot for any office or question on which the voter is otherwise entitled to vote. K.S.A. 25-1119(a).
4. Unless a voter has permanent advance voting status, a Kansas voter who wishes to vote by mail must apply to vote by mail for each election.
5. Subject to an exception for voters who cannot sign due to an illness or physical disability, a voter desiring to vote by advance mail ballot must sign the application. Applicants must also provide a form of identification required by Kansas law. K.S.A. 25-1122.
6. Kansas counties receive and accept advance ballot applications bearing digitally captured signatures.
7. Kansas law provides that "[a]ny voter who has an illness or physical disability . . . and is unable to apply for or mark or transmit an advance voting ballot, or any voter who has a disability preventing the voter from signing an application or the form on the ballot envelope, may request assistance by a person who has signed a statement required by subsection (e) in applying for or marking an advance voting ballot, or in signing an application or the form on the ballot envelope if the voter has a disability preventing the voter from signing." K.S.A. 25-1124(c).
8. Any Kansas registered voter with a permanent disability or illness may apply for permanent advance voting status. K.S.A. 25-1122(h).

9. The evidence at trial was that election officials do not question the voter's self-designation as disabled or ill; voters are taken at their word.
10. Voters with permanent advance voting status are automatically mailed an advance mail ballot without having to submit a separate application each time. K.S.A. 25-1122(m).
11. When mailing advance ballots to voters, the county election office also provides voters with an advance ballot envelope to use when returning the completed ballot.
12. The cover of the advance ballot envelope contains instructions prescribed by the Secretary of State, as well as certain language required by law.
13. Per K.S.A. 25-1121(c), the ballot envelope shall contain the following statement after the signature block for use by a third party signing the advance ballot envelope on behalf of a voter:

“My signature constitutes an affidavit that the person for whom I signed the envelope is a person who is physically unable to sign such envelope. By signing this envelope, I swear this information is true and correct, and that signing an advance ballot envelope under false pretenses shall constitute the crime of perjury.”
14. Kansas election officials testified at trial that the "physically unable to sign" language on the ballot envelope affidavit is construed broadly to encompass situations not only when a voter may be altogether unable to sign (e.g., because the voter is paralyzed), but also when a voter is simply unable to sign consistently with the signature on file for the voter in the county election office or statewide registration database (e.g., because the voter has had a stroke or suffers from a neuromuscular disorder).
15. After receiving an advance ballot by mail and making selections for candidates and/or questions submitted, a voter must place the ballot into the advance ballot envelope, seal the advance ballot envelope, sign the outside of the advance ballot envelope (or, if applicable,

have a third party sign the envelope on the voter's behalf by executing the affidavit on the envelope), and return the ballot inside the envelope to the voter's county election office.

16. A Kansas voter who casts an advance ballot by mail may use the State's online VoterView system to determine if/when the ballot has reached the county election office. The online tracker does not indicate whether the ballot ultimately was counted.

17. The evidence established that counties process advance ballot envelopes promptly. In Shawnee County, once two reviewers determine that a signature is inconsistent, the office generally begins the notice process the same day or within 24 hours. Riley County begins the cure process immediately after an inconsistency is identified, making a telephone call right away, mailing notice the same day, and making additional calls on the following two days. There was no evidence presented of any delays by county election offices in processing advance mail ballots upon receipt.

THE KANSAS SIGNATURE VERIFICATION REQUIREMENT.

18. Before 2021, Kansas law did not specifically require county election officials to conduct signature verification on advance ballots returned by mail.

19. Bryan Caskey, who has served as Kansas' Director of Elections for more than a decade, testified that some counties began reviewing signatures on advance ballot applications and ballot envelopes in the early 2000s, while other counties did not. He described the pre-2021 system as the "wild, wild west of pre-signature verification." The State had no oversight over the signature review practices that individual counties chose to employ, there were no consistent statewide procedures governing those reviews, and there was no statewide cure process.

20. In 2021, the Kansas Legislature enacted K.S.A. 25-1124(h), requiring county election officials, subject to statutory exceptions, to verify the signature on an advance mail ballot envelope against signatures maintained in the voter's registration records.
21. The Secretary of State thereafter promulgated K.A.R. 7-36-9 to establish standards and procedures governing signature verification. A temporary version of the regulation became effective May 26, 2022, and the permanent regulation became effective September 23, 2022. The 2022 general election was the first statewide general election in which both K.S.A. 25-1124(h) and K.A.R. 7-36-9 were in effect.
22. The 2021 statute and implementing regulation changed signature verification in connection with advance mail ballots in Kansas. K.S.A. 25-1124(h) made signature verification a statewide requirement, while K.A.R. 7-36-9 established common standards and procedures governing how counties perform that review.

SIGNATURE REVIEW BY ELECTION OFFICIALS.

23. Pursuant to K.A.R. 7-36-9(b), upon receiving a voter's mail ballot envelope at the county election office, election officials compare the voter's signature on the advance mail ballot envelope with signatures on file for such voter in the county's voter registration records to determine whether the signatures match.
24. The regulation says the voter's signature shall be compared to as many recorded signatures as possible from the voter registration database. K.A.R. 7-36-9(g)(1).
25. Trial testimony established that voter records may contain signatures from many sources. Shawnee County Election Commissioner Andrew Howell testified that comparator signatures commonly originate from voter registration forms submitted on paper or electronically through the Department of Motor Vehicles ("DMV"). If additional

comparison is necessary, Shawnee County may consult signatures from advance ballot applications, prior mail ballot records, and poll books.

26. Former Johnson County Election Commissioner Fred Sherman similarly testified that his county scans virtually every signed document received from a voter to help ensure that multiple signatures are available for comparison when necessary.
27. Sherman further noted that Johnson County has more signature exemplars for many voters than other counties because of the unusually large number of all-mail-ballot elections conducted in that county. During Sherman's five years working in the Johnson County Election Office, the county conducted approximately 20 or more special all-mail-ballot elections.
28. Caskey testified that the Secretary of State's Office instructs counties to place every voter signature they can capture into the statewide voter registration system.
29. K.A.R. 7-36-9(b)(1) says that any signature submitted by the voter that "matches" the voter's signature on file shall be accepted. K.A.R. 7-36-9(a)(4) defines a "match" as a signature that is "generally uniform and consistent with the voter's signature in the voter registration database."
30. Conversely, a signature is "inconsistent" if it "differs in multiple, significant, or obvious respects from the voter's signature in the voter registration database." K.A.R. 7-36-9(a)(2).
31. An advance mail ballot signature may not be deemed "inconsistent" based on the judgment of a single reviewer. K.A.R. 7-36-9(g)(4) requires agreement by at least two election officials who have received the Secretary of State-approved training before a signature may be deemed inconsistent.

32. Although the governing regulation defines when a signature is a "match" or "inconsistent," application of those standards necessarily requires election officials to compare the ballot envelope signature with the available exemplars and exercise judgment concerning the nature and significance of any differences.
33. If at least two county election officials agree the signature on a ballot envelope is "inconsistent" with the signatures in a voter's registration file, the ballot is not rejected at that point. It simply identifies a discrepancy requiring additional procedures before the ballot may be counted.
34. In such circumstances, election officials undertake a series of detailed procedures to attempt to inform the voter of the inconsistent signature and to provide the voter with an opportunity to "cure" the inconsistent signature. See K.A.R. 7-36-9(b)-(e). If the voter successfully cures the discrepancy, the ballot is counted.
35. County officials who testified at trial described procedures consistent with that regulatory requirement. In Riley County, an initial reviewer who questions a signature obtains review by a second individual; only if the two reviewers agree that the signature is inconsistent does the cure process begin, with further review available when the determination is unclear. Similarly, in Shawnee County, one reviewer first identifies a signature inconsistency and a second reviewer independently agrees before the ballot enters the cure process rather than being counted at the outset.
36. Johnson County, with more ballots voted by mail than any other Kansas county, employed even more layers of review during Sherman's time in office. An initial reviewer first examined the mail ballot envelope signature. If that reviewer questioned the signature, a supervising judge conducted a more detailed review of the signature and other exemplars

in the voter's file. If the supervising judge likewise determined the signature to be inconsistent with the signatures on file, three additional staff members would independently review it, with the determination as to the consistency of the signature made by majority agreement.

37. K.S.A. 25-1124(h) and K.A.R. 7-36-9(g)(5) contain an exception for voters whose disability or illness prevents them from signing the ballot envelope or from providing a signature consistent with their signature(s) on file in the county election office. For such voters, a third party may sign the ballot envelope on the voter's behalf, thereby negating the obligation of the voter to produce a consistent signature. In other words, an advance mail ballot envelope that has been signed by a third-party assister is not subject to the signature verification requirement.

38. Although K.A.R. 7-36-9 does not prescribe a numerical formula for determining whether differences between signatures are sufficiently significant to warrant further review, the trial evidence established that election officials apply the regulatory standard in K.A.R. 7-36-9, together with the training approved by the Secretary of State, to evaluate characteristics of the signatures being compared.

39. Caskey testified that the standard established by K.A.R. 7-36-9 is intentionally not a strict matching standard. As he pointed out, every person's signature varies and the number of comparator signatures available for a particular voter likewise varies. Some voters may have only a few signatures available for comparison, while others may have many. Election officials therefore take a holistic view of the ballot envelope signature rather than requiring an exact or mechanical correspondence between particular characteristics. That is why, he

noted, the regulation specifically defines a "match" as "generally uniform and consistent" with an exemplar signature instead of a more definitive and demanding criterion.

40. The Court credits Caskey's explanation of the governing regulatory standard. The regulation confirms that a perfect match is not required. A signature shall be accepted if it is "generally uniform and consistent" with a signature in the voter's registration records, while further action is warranted only if the ballot envelope signature differs in "multiple, significant, or obvious respects." This standard expressly accommodates ordinary variation among a voter's signatures rather than treating every discernible difference as grounds for questioning the ballot.
41. The county election officials' testimony was consistent with that of Caskey. Riley County Clerk Rich Vargo explained that reviewers examine identifiable characteristics including how letters are crossed or dotted, the slant of letters, and how a signature begins and ends. Reviewers make the ultimate assessment based on those characteristics and the training they have received from the Secretary of State's Office. Vargo further testified that Riley County reviewers begin with the presumption that the signatures are consistent.
42. Sherman likewise testified that signature review is not a "scorecard type of process." Rather, reviewers consider the totality of the ballot envelope signature in comparison with the available signatures in the voter's record. Among the identifiable characteristics reviewers consider are the slant of the writing, the size of loops, pen marks, and other conscious and unconscious movements reflected in a person's signature. Although Sherman acknowledged that the process involves judgment, he emphasized that the match determination is based upon the signature as a whole rather than a mechanical tally of individual differences.

43. The evidence further established that counties entrust signature review to trained and generally experienced election personnel. In Shawnee County, for example, Howell testified his office typically uses reviewers with "many years of experience." The two employees who manage the department responsible for signature review have been doing so for approximately ten years, while another employee has approximately 28 to 30 years of experience. New reviewers work alongside experienced personnel, and management verifies that they understand and follow the required training. In Johnson County, signature review is similarly performed by a recurring pool of approximately 12 highly experienced officials.
44. Defendants' election administration expert, Dr. Lonna Atkeson, testified that guided judgment is common throughout election administration, and the possibility that two election officials might occasionally reach different conclusions while applying the same objective criteria does not mean the governing standard lacks objective guidance. Dr. Atkeson testified that K.A.R. 7-36-9 provides meaningful guidance to Kansas election officials and is comparable in that respect to standards used in most other states.
45. The Court finds that the fact that trained election officials exercise judgment in applying criteria in K.A.R. 7-36-9 does not render such criteria arbitrary or overly subjective. The relevant distinction is between guided judgment applied to observable characteristics and unfettered discretion not related to any governing standard. Here, the regulation supplies the governing standard. The training approved by the Secretary of State provides instruction concerning the characteristics to be examined. The regulation requires that two trained reviewers agree before an inconsistency determination may trigger the cure process, which further safeguards against arbitrary determinations.

46. Nothing in the trial evidence persuades the Court that an objective standard must be reducible to a mathematical formula or require every decisionmaker, in every conceivable circumstance, to reach the identical conclusion. The evidence instead demonstrated that signature review necessarily involves the application of common criteria to signatures that naturally vary from person to person and, for the same person, from signature to signature.
47. The practical operation of the SVR is reflected in the extremely small number of ballots that have been rejected due to an uncured signature mismatch since the new regulatory requirement went into effect. In the 2022 general election - the first general election conducted under the challenged statute and regulation, there were 131,204 advance mail ballots cast and counted statewide. Only 130 were rejected because of a signature inconsistency. In the 2024 general election, there were 148,138 advance mail ballots cast and counted statewide, and just 94 were rejected for that reason. These figures represent less than one-tenth of one percent of all advance mail ballots in those two elections.

TRAINING FOR COUNTY ELECTION OFFICIALS.

48. K.A.R. 7-36-9(f) says that, before performing signature verification, a county election official shall complete training approved by the Secretary of State on procedures to determine whether a voter's signature is consistent with the signature on file in the voter registration database.
49. The Secretary of State provides counties with training materials addressing the signature review process and the characteristics reviewers should consider when comparing a ballot envelope signature with signatures contained in the voter's registration records.
50. Caskey testified that he personally selected the signature verification training used by the Secretary of State's Office after consulting with and reviewing training practices from

several states with greater experience administering mail ballot elections, including Colorado, California, Oregon, and Washington. After reviewing those states' training materials and videos, Caskey concluded that Oregon's training best fit what Kansas was trying to accomplish with its signature review process. He explained that the purpose of the training was to expose county election officials to the ways in which genuine signatures may vary and to provide practical instruction from a trainer in a state with extensive experience reviewing millions of signatures. The training was designed to establish a common baseline for every person conducting signature review by demonstrating the differences that typically appear in signatures and what reviewers should be looking for.

51. The original training materials contained a reference to Oregon's legal standard. Caskey testified that when the video was presented to Kansas election officials at statewide conferences, he expressly advised them that the referenced standard was Oregon's and "not the Kansas standard." The video was updated in 2025 to remove the reference to the Oregon standard and insert the standards in K.A.R. 7-36-9.
52. County election officials confirmed that this training is incorporated into their actual review procedures. Howell said that in Shawnee County, signature review is a task assigned to full-time staff, most of whom have many years of experience in the office. Howell testified that Shawnee County requires every election official who participates in signature review to complete the training before performing such work. When a new person takes this training, a member of the management team will sit with that individual to verify that he or she understands it. Riley County reviewers likewise conduct their comparisons based on the training provided by the Secretary of State's Office. The same is true of Johnson County election officials.

53. While the Secretary of State's training serves as a common baseline for counties across the state, counties may supplement the training if desired.

THE CURE PROCESS.

54. A determination that a ballot envelope signature is inconsistent with the voter's signature on file does not result in immediate rejection of the ballot. Rather, it triggers the cure process prescribed by K.A.R. 7-36-9(b)(2)-(e). County election officials shall attempt to notify the voter of the inconsistency and provide the voter with an opportunity to verify the voter's identity and cure the discrepancy before the county canvass.
55. The regulation requires multiple attempts to contact the voter. If a telephone number is reasonably available, the county shall attempt to contact the voter by telephone at least three times. K.A.R. 7-36-9(b)(2)(A). The county shall also send the voter written notice, by first-class mail, informing the voter of the apparent signature inconsistency with instructions on how to verify the voter's identity. K.A.R. 7-36-9(b)(2)(B).
56. In addition to phone and first-class mail, county election officials may use any other means, including electronic mail or a personal visit to a voter's residence, to contact the voter about the voter's apparently inconsistent signature. K.A.R. 7-36-9(b)(2)(C).
57. County election officials shall record each contact by phone with the date, time, and phone number for each call as well as whether instructions for curing an apparently inconsistent signature were left by voice mail, by conversation with the voter, or by conversation with another individual. K.A.R. 7-36-9(b)(2)(A) and (c)(1)(A).
58. County election officials shall record each contact by mail by noting the date the letter was sent, the address to which the letter was sent, and a copy of the letter that was sent. K.A.R. 7-36-9(c)(1)(B).

59. County election officials shall record each contact by other means by providing a general description of the means of voter contact. K.A.R. 7-36-9(c)(1)(C).
60. A voter's signature on a ballot envelope that has been deemed inconsistent with the voter's signature on file in the county voter registration records may be cured by providing an updated signature consistent with the signature on file at any time until the commencement of the county board of canvassers. K.A.R. 7-36-9(d)(1). If the voter successfully cures the discrepancy, the ballot is counted.
61. In Riley County, Vargo testified that once an inconsistent signature is identified, his office acts "immediately" by calling the voter right away, mailing a letter to the voter the same day, and making additional calls during the next two days as necessary. In Shawnee County, Howell similarly testified that the notice process ordinarily begins the same day or within 24 hours after the required reviewers agree that the signature is inconsistent. He said a letter goes out and they make at least three attempts to reach the voter by telephone.
62. K.A.R. 7-36-9 does not prescribe a single exclusive method by which every voter must cure an inconsistent signature. Instead, Kansas counties use a variety of practical methods to permit voters to verify their identity and provide an updated signature. Curing generally can be accomplished in person at the county election office, or via U.S. mail, e-mail, fax, or (in rare circumstances involving smaller counties) a personal home visit by an election official.
63. Caskey, who was involved in drafting the cure procedures in K.A.R. 7-36-9, said that part of the purpose in adopting such broad and flexible cure provisions was to provide a uniform process that every county had to follow and to ensure that, any time a voter's signature is

flagged as a potential mismatch, that voter has ample opportunity to cure it and have his or her ballot counted.

64. Johnson County has historically relied more heavily on in-person curing given its large population. Sherman testified that during his tenure the county's "general practice" was to have a voter appear at the election office, verify the voter's identity, and sign in person. But he said this was a general or preferred practice, not necessarily the only means by which a cure could occur. He agreed that county records identified multiple voters who were unable to appear in person but nevertheless cured by mailing a new signature card to the election office.

65. After Sherman's departure in December 2025, the new Johnson County Election Commissioner, Connie Schmidt, announced that the county adopted a special accommodation for disabled voters in connection with the curing process. "In particular, if - during the cure process, after being contacted by a county election official about the voter's opportunity to cure - a voter specifically advises the election office that he/she is physically unable to come into the office to cure a signature mismatch as a result of a disability, the election office will accommodate the voter by allowing him/her to submit an updated signature card electronically (e.g., via e-mail, fax, text) and thereby cure any signature mismatch. The office will also allow the voter to mail in an updated signature card."

ELECTION OUTCOMES SINCE ADOPTION OF THE SVR.

66. The actual results under the challenged system demonstrate that final rejection of advance mail ballots because of an uncured signature inconsistency is rare.

67. In the 2022 general election, the first statewide general election conducted under both K.S.A. 25-1124(h) and K.A.R. 7-36-9, there were 131,204 advance mail ballots cast and counted. Only 130 ballots statewide were ultimately not counted because of an uncured signature mismatch. In other words, less than one tenth of one percent of all mail ballots in the State were rejected due to an uncured signature mismatch during that election.
68. The numbers were even smaller in the 2024 general election. Although the number of advance mail ballots cast and counted increased to 148,138, the number ultimately rejected because of an uncured signature mismatch declined to 94. In other words, less than seven hundredths of one percent of all mail ballots in the State were rejected due to an uncured signature mismatch.
69. The county-specific evidence presented at trial reflects the same extremely low numbers. Johnson County (the State's most populous county) reported 35,387 advance mail ballots cast and counted in 2022, with only 37 rejected due to an uncured signature mismatch. In 2024, the number of advance mail ballots cast and counted in Johnson County increased to 47,065, while the number ultimately rejected for a signature mismatch declined to 12.
70. The figures were smaller still in Shawnee County. Of 7,676 advance mail ballots cast and counted in 2022, only four were rejected based on an uncured signature mismatch. In 2024, Shawnee County counted 7,056 advance mail ballots and rejected only one because of an uncured signature mismatch.
71. Riley County likewise reported only two advance mail ballots rejected because of an uncured signature mismatch in 2022, out of 1,714 advance mail ballots cast and counted. In 2024, Riley County counted 1,795 advance mail ballots and reported not a single ballot rejected because of a signature inconsistency.

72. The overwhelming majority of Kansas counties reported zero ballots rejected due to an uncured signature mismatch in both 2022 and 2024.

73. The fact that a particular ballot was not cured does not necessarily suggest the voter lacked an opportunity to cure. Election officials testified that voters may elect not to complete the cure process for reasons unrelated to their ability to do so, for example, because the projected election results have already been publicized. Caskey said that election officials can provide voters every reasonable opportunity to cure, but they cannot compel voters to complete the cure process.

PLAINTIFFS' EXPERT DR. KENNETH MAYER.

74. Plaintiffs assert that, notwithstanding the statewide regulatory framework in K.S.A. 25-1124(h) and K.A.R. 7-36-9, the SVR is incapable of generally uniform application because county election officials exercise judgment in comparing signatures, their training is inadequate, some counties' practices vary in certain administrative respects, and the number of ballots ultimately rejected because of an uncured signature inconsistency differs among counties.

75. Plaintiffs' expert, Dr. Kenneth Mayer, is a political scientist who studies election administration.

76. Dr. Mayer presented no quantitative comparisons of county-level rejection rates to demonstrate any county-to-county disparities. He further acknowledged that none of the opinions he offered at trial were based on the actual number or percentage of Kansas advance mail ballots that were flagged, cured, counted, or ultimately rejected because of an inconsistent signature. The Court, therefore, gives no weight to any suggestion that his

testimony provides quantitative or empirical proof of any systemic nonuniformity in the actual operation of Kansas' SVR.

77. Although evidence at trial showed minor, insignificant differences in how some counties administer certain details of the signature review and cure processes, those differences operate within the common statewide framework. Each county applies K.A.R. 7-36-9, each uses trained reviewers, each has at least two trained reviewers agree before a signature may be deemed inconsistent, and each affords voters whose signatures are deemed inconsistent an opportunity to cure before the ballot is finally rejected.
78. The fact that some counties may have different numbers of comparator signatures available for certain voters does not necessarily reflect any difference in county policy or administration of the SVR. The number of signatures available for a particular voter depends on the voter's individual history and interactions with election officials, including how long the voter has been registered, whether and how frequently the voter has applied to vote by advance mail ballot, and the amount of other signed election records the voter might have generated. As discussed above, exemplar signatures typically originate from voter registration records, advance mail ballot applications, prior mail ballot records (which exist in far greater numbers in Johnson County, for example, due to the frequent use of all-mail-ballot elections), poll books, and other signed documents. A newly registered voter will have fewer opportunities to generate such records than a voter with a lengthy history of voting by mail.
79. Dr. Mayer acknowledged that differences among counties may simply reflect the practical realities of administering elections in jurisdictions of different size. For example, he agreed that it would be difficult to expect a county the size of Johnson County to send election

personnel to the residence of every voter requiring assistance, even though a smaller county may be able to provide such individualized service. The existence of different administrative means for accomplishing the same regulatory objective does not itself establish that counties apply different substantive standards.

80. Nor does the fact that counties report different raw numbers or percentages of uncured signature mismatches establish that they are applying different standards. Although the number of ballots rejected on this basis is minuscule anyway, the final rejection figures do not reveal how many signatures were initially questioned, how many voters successfully cured, why particular voters chose not to cure, the nature of the signatures reviewed, or the number and quality of comparator signatures available in a particular voter's file. The ultimate number of uncured ballots may also depend upon voter behavior after notice is provided.

81. Dr. Mayer conceded that he did not interview any Kansas election officials concerning how the SVR is administered. Nor did he speak with any Kansas voters concerning the alleged burdens associated with curing a questioned signature. The Court finds these limitations greatly diminish the weight of his generalized opinions concerning how Kansas election officials administer the SVR and how Kansas voters experience the process.

82. Dr. Mayer also agreed that requiring a mail voter to sign the ballot is not itself a burden and is a nearly universal feature of mail voting. He acknowledged that once a voter signs and returns the ballot, a voter whose signature is accepted during the initial review experiences no additional burden attributable to the SVR. The additional burden he identifies, therefore, applies only to the extremely small subset of voters whose signatures are initially questioned and then move to the cure process.

83. The Court finds that any alleged burden associated with curing an apparently inconsistent signature is minimal. As described above, a voter whose signature is deemed to be a mismatch is not required to re-register, cast another ballot, or prove that the questioned signature is genuine through any forensic or similarly demanding process. The voter need only confirm his or her identity by providing an updated signature, which counties permit voters to accomplish through a variety of means.
84. Dr. Mayer characterized an initial determination that a signature is inconsistent as an "error" whether the voter subsequently cures the discrepancy or not. When presented with a hypothetical county in which only two ballots were initially flagged and both voters subsequently cured their signatures (and thus had their ballots counted), Dr. Mayer said that his terminology would characterize the county as having a 100% "error rate," even though 100% of the qualified voters ultimately had their ballots counted. His methodology conflates flagging a ballot that is subsequently cured with an ultimate erroneous rejection.
85. Dr. Mayer likewise could not establish that the small number of ballots ultimately rejected for uncured signature mismatches represented ballots that had been legitimately signed by the registered voters. He made no effort to compare the ballot envelope signatures to the voters' comparator signatures and conceded that he was not offering an opinion as to whether any Kansas election official had incorrectly evaluated a particular signature. Nor could he determine, without further investigation, whether any of the 130 mail ballots rejected in 2022 or 94 mail ballots rejected in 2024 involved attempted voting by someone other than the registered voter.
86. As for Dr. Mayer's opinions on excessive subjectivity, although he criticized the SVR because application of terms such as "multiple," "significant," and "obvious" necessarily

involves some degree of judgment, he acknowledged that judgment and discretion are ordinary and unavoidable features of election administration. He agreed that local election officials and poll workers almost universally must exercise discretion, that it is impossible to draft rules covering every conceivable election administration contingency, and that the mere presence of judgment does not automatically render an election process invalid.

87. Dr. Mayer recognized the legitimacy of the governmental interests served by preventive election safeguards. While he suggested that voter impersonation fraud is rare, he did not contend that such fraud never occurs. And he agreed that election integrity and public confidence are legitimate governmental concerns. He described the general proposition that government may take proactive measures to prevent fraud and protect election integrity as "unobjectionable and axiomatic."

88. Dr. Mayer conceded that both the advance mail ballot application process and the casting of the completed mail ballot ordinarily occur outside the presence of election officials. Thus, notwithstanding his disagreement with the policy judgment embodied in Kansas' SVR, his testimony did not dispute the basic factual premise that mail voting presents election officials with fewer opportunities to observe directly whether the person returning a ballot is the voter to whom it was issued.

DEFENDANTS' EXPERT DR. ALEKSANDR ARAVKIN.

89. Defendants presented expert testimony from Dr. Aleksandr Aravkin, an applied mathematician from the University of Washington, who analyzed the actual empirical results of Kansas' SVR after its implementation. Unlike Dr. Mayer's opinions concerning the potential for error in signature verification, Dr. Aravkin examined the known outcomes of Kansas elections conducted under the challenged requirements.

90. Dr. Aravkin noted that, based on the undisputed election data reported by the Secretary of State, more than 99.9% of advance mail ballots subject to the SVR in both the 2022 and 2024 general elections were ultimately counted.
91. Dr. Aravkin's prior work in signature verification litigation included statistical analyses of much larger datasets from Washington and Colorado, where he examined whether signature-related ballot rejections were associated with demographic characteristics such as race, age, or voting experience. He did not perform a comparable analysis in Kansas because the number of ballots ultimately rejected for an uncured signature mismatch was simply too small. As he explained, the Washington and Colorado datasets involved tens of thousands of rejected mail ballots, whereas Kansas had only 94 such ballots in one general election (2024) and a mere 130 in the other (2022). Those numbers are so tiny, he said, that they cannot even be divided into meaningful statistical groups to draw statistically significant conclusions. He further underscored that even assuming every one of the mail ballots rejected due to an uncured signature mismatch in those two general elections should have been counted, there was "very little room for improvement" between the observed results and a 100% acceptance rate.
92. Dr. Aravkin criticized Dr. Mayer's characterization of every ballot questioned but later cured as constituting an "error." Dr. Aravkin pointed out that, although a researcher may define a metric as he or she chooses, labeling a successfully cured ballot as an "error" is misleading because the ballot was ultimately verified and counted through the very safeguard incorporated into the SVR for resolving questioned signatures.
93. Dr. Aravkin said that Kansas' actual experience with the SVR is nothing like the error rates reported in the literature that served as the foundation for much of Dr. Mayer's analysis.

Dr. Aravkin examined, among other things, Dr. Mayer's reliance upon research (in particular, a 2024 study by Professor Alex Street) suggesting false negative rates in judging signatures ranging from 7%-12%. If applied to the approximately 148,000 Kansas advance mail ballots, a 12% rate would correspond to roughly 17,700 questioned ballots. Yet the county records Dr. Mayer cited in his report showed only 87 ballots flagged for signature inconsistency in 2022 and approximately 100 in 2024.

94. It is undisputed that Kansas does not maintain a definitive statewide dataset identifying every mail ballot that was initially flagged for signature inconsistency and subsequently cured. Thus, Dr. Aravkin said that the precise statewide number of initially questioned ballots could not be determined. Instead, he reviewed the county-level files relied upon by Dr. Mayer to obtain a "ballpark estimate" of the number of flagged ballots reflected in those records – which were gleaned from some, but not all, Kansas counties. Dr. Aravkin's point was that the evidence presented from some Kansas counties in this case bears no resemblance to the thousands of questioned ballots that would be expected if the error rates identified in the literature referenced by Dr. Mayer were directly transferable to Kansas.
95. Further, Dr. Aravkin said that since Kansas has conducted multiple statewide elections under the challenged requirements, generalized concerns derived from other systems are less informative when they do not correspond with the results actually observed in Kansas.
96. The evidence presented at trial regarding the number of ballots flagged for cure in some Kansas counties cannot be extrapolated to a 7-12% "error rate" (Dr. Mayer's term for flagged ballots) statewide. This undercuts Dr. Mayer's opinions and his references to studies conducted under different signature verification systems – his predicted 7-12% "error rate" simply never came close to fruition in Kansas.

97. For all the reasons set forth above, the Court gives little to no weight to Dr. Mayer's opinion that Kansas' SVR is incapable of generally uniform administration or that its standards are not objective.

98. The small number of ballots ultimately rejected for an uncured signature mismatch does not establish that every initial determination was correct. But it undermines Plaintiffs' contention that the SVR is inherently incapable of generally uniform administration and instead demonstrates that the safeguards built into the SVR process overwhelmingly result in advance mail ballots being counted.

PLAINTIFFS' EXPERT DR. LINTON MOHAMMED.

99. Plaintiffs presented testimony from Dr. Linton Mohammed, a forensic document examiner, who criticized the reliability of signature comparisons performed by Kansas election officials.

100. Dr. Mohammed's expertise is forensic document examination, not election administration. He acknowledged that he has never worked in an election office or for a secretary of state, has never administered an election, has never consulted for an election office, has never trained election officials, and possesses no expertise in general election administration or Kansas' election procedures specifically.

101. Dr. Mohammed said signature authentication under a forensic examination standard requires extensive training. Forensic document examiners require a minimum of two years of full-time training, with at least eighteen months focused on signatures and handwriting, followed by board certification examinations.

102. Dr. Mohammed testified that signature authentication under a forensic examination standard requires several things. The first is enough high-quality comparator signatures

from the same writer. He said the comparator signatures should include the full spectrum of a writer's range of variation, including "formal" and "informal" signatures and "anything in between." And the conditions used to create a comparator for signature verification purposes should be similar to the conditions under which the examined signature was created: for example, if the signature being examined for authenticity was created with a ballpoint pen, then the "exemplar should be . . . ballpoint on paper" as well. He said signatures taken from a stylus and digital pad, which are commonly used when registering to vote at the DMV, are not sufficient comparators because "writing on a digital pad can introduce more variations" than if the voter was "signing with a pen or paper."

103. Dr. Mohammed said signature authentication also requires sufficient time for reviewers to analyze signatures. He said the minimum amount of time necessary to conduct a reliable signature comparison is two to four hours per signature.
104. Dr. Mohammed said signature authentication requires the use of adequate equipment, including high powered microscopes and adequate "lighting sources," "side light," and "graphic software to extract the signatures and enlarge them for comparison."
105. According to Dr. Mohammed, any signature verification requirement without all these elements is deficient. Dr. Mohammed admitted that he was "fairly confident" that, even before he reviewed any materials as part of his assignment in the instant case, he would conclude Kansas' SVR would be unacceptable simply because "signature verification is a process that has a high likelihood of error." He said even trained forensic document examiners cannot determine signature authenticity with perfect accuracy. In other words, the possibility of error exists even when signature comparison is performed by specialists with substantially more time, training, and resources.

106. Dr. Mohammed acknowledged that he has never found any signature verification regime acceptable, has never proposed an alternative signature verification system, and is not qualified within his field of expertise to design a replacement election system.
107. Dr. Mohammed's testimony revealed the differences between forensic document examination standards and the signature review process required by Kansas law. Kansas election officials are not required to determine the authenticity of a ballot envelope signature to the standard employed in a forensic document examination. Rather, K.A.R. 7-36-9(a)(2) and (4) direct election officials to assess whether the signature on a mail ballot envelope is "generally uniform and consistent" with the voter's signature on file in the voter registration database or, conversely, whether it differs in "multiple, significant, or obvious respects." Dr. Mohammed agreed that the Kansas standard is "less taxing" than determining authenticity through a forensic document examination.
108. Dr. Mohammed did not evaluate the SVR as a whole; he did not review or have an opinion on the cure process. His focus was solely on whether election officials might err in initially questioning a genuine signature, not whether that initial "inconsistent" assessment ultimately results in the rejection of a qualified voter's ballot.
109. Under Kansas' SVR, an initial determination that a signature is inconsistent does not reject the voter's ballot; it triggers additional procedures (the cure process) that are designed to determine whether the ballot should be counted and that give the voter an opportunity to correct the potential deficiency and establish his or her identity before the ballot is finally rejected. A forensic document examination contains no comparable cure process.
110. Although Dr. Mohammed maintained, in response to questioning from Plaintiffs' counsel, that the SVR cannot confirm authentic signatures, he conceded on cross-examination that,

if a voter's signature is flagged as a potential mismatch and the voter subsequently completes the cure process to verify his or her identity, the Kansas process can confirm the authenticity of the signature.

111. Dr. Mohammed's opinions likewise were not tested against the actual outcomes produced by the Kansas SVR since it was adopted. Although he predicted that signature review by non-forensic document examiners would yield significant erroneous determinations, he admitted that he did not know how many Kansas advance mail ballots had been rejected because of an uncured signature mismatch. He said he had not considered the stipulated 2022 and 2024 ballot rejection figures in forming his opinions.

112. When presented with the actual figures on cross-examination, Dr. Mohammed agreed that if more than 99.9% of Kansas advance mail ballots were accepted, he would characterize a 99.9% acceptance rate as "pretty good."

113. The scientific literature upon which Dr. Mohammed relied is of little to no relevance to the SVR process used by the State of Kansas. The differences are particularly significant with respect to the study by Professor Moshe Kam that he highlighted. The lay reviewers in that study received no training; the study did not employ Kansas' requirement that at least two reviewers agree on a signature's inconsistency; and it contained no cure process. When asked whether it would be scientifically appropriate to take the error rate observed in that study and extrapolate it to the Kansas SVR, Dr. Mohammed said, "It wouldn't. It would be speculation."

114. The Court gives little credit to Dr. Mohammed's criticism of the training provided to Kansas election officials. Dr. Mohammed characterized the State-approved training as "very inadequate" and predicted that lack of training, along with lack of time, equipment,

and adequate comparator signatures, would produce a "significant number of erroneous rejections." But his criticism rested substantially upon comparing the work of Kansas election officials to the very different work performed by forensic document examiners. Indeed, Dr. Mohammed testified that no amount of training would make election officials sufficiently reliable because, in his view, signature comparison requires substantially more time, equipment, exemplars, and essentially daily practice. But Kansas election officials are not conducting forensic document examinations, and the actual Kansas election results provide no empirical support for Dr. Mohammed's prediction of a "significant number" of erroneous ballot rejections.

115. Dr. Mohammed testified that any signature verification system resulting in even a single voter being "disenfranchised" is unacceptable.

116. This Court gives no credence to Dr. Mohammed's use of the term "disenfranchised" to describe a voter whose ballot was rejected due to an uncured signature mismatch - he did not consider the cure process and gave no opinion on it. He is not an expert on elections or election administration, only signature comparison.

117. Dr. Mohammed testified that a forensic signature examination ordinarily requires at least ten exemplar signatures and two to four hours to examine a single questioned signature. He further noted there are only approximately 120 certified forensic document examiners nationwide. Given the number of advance mail ballots cast in Kansas elections, forcing election officials to conduct the equivalent of a forensic document examination for each ballot envelope would be unrealistic for the mail voting process, a point Dr. Mohammed acknowledged.

118. Although there appears to be no dispute among the parties on this point, the Court finds that requiring a full forensic document examination as part of the SVR is not what the law requires and would not be a feasible method of signature review for advance mail ballots in a statewide election.

DEFENDANTS' EXPERT DR. LONA ATKESON.

119. Defendants presented testimony from Dr. Lona Atkeson, a political scientist who studies election administration and election science.

120. Election administration requires the simultaneous pursuit of multiple important objectives. Dr. Atkeson identified three principal state interests: access, integrity, and finality. Election integrity, she explained, is important because it demonstrates to the public that elections are conducted through a fair, orderly, and accurate process. Consistent with those objectives, election administrators balance facilitating voter access with maintaining safeguards designed to protect the integrity of the electoral process.

121. Signature verification is critical to those objectives in the context of mail voting. Advance mail voting necessarily occurs outside the presence of election officials. Unlike voters appearing at a polling place, voters casting advance mail ballots ordinarily apply for, receive, cast, sign, and return their ballots without an election official ever observing the completion of any of those steps. The State has fewer opportunities to verify the identity of a mail voter through the means available during in-person voting. Caskey testified that Kansas' SVR addresses that concern by helping election officials determine whether the individual who signed the ballot envelope and completed the ballot is the same individual reflected in the voter registration record.

122. Dr. Atkeson testified that election administrators do not, and should not, wait until their jurisdiction has experienced harm before implementing reasonable safeguards. Rather, they take preventative measures by evaluating potential risks and learning from difficulties encountered in other jurisdictions to determine whether similar concerns may exist in their own election systems. Plaintiffs' expert, Dr. Mayer, agreed that the government has authority to act proactively to prevent fraud and protect election integrity, calling the premise "unobjectionable and axiomatic."
123. Dr. Atkeson testified that election fraud is difficult to detect and that the number of criminal prosecutions is not a reliable measure of the amount of fraud that occurs. Among other reasons, not every detected incident is prosecuted, and Kansas does not require county election officials or prosecutors to report every referral or prosecution to the Secretary of State. Further, once a mail ballot has been separated from its signed envelope and counted, the ballot can no longer be identified and removed if election officials subsequently learn that it was fraudulently cast.
124. There was evidence that signature verification helps identify that a mail ballot may have been signed by someone other than the voter to whom it was issued. Sherman, for example, testified that the Johnson County Election Office had made criminal referrals for possible election offenses in circumstances where a signature mismatch, coupled with information obtained during the cure process, indicated that someone other than the voter had likely cast the ballot. Sherman testified that in one such instance, during the cure process the purported voter reported that he or she was away at school out of state and had neither signed nor voted the ballot.

125. Howell testified that Shawnee County had likewise referred cases to the local Sheriff's Office on occasion after encountering documents that appeared questionable, including voter registration forms and one matter involving a mail ballot.
126. Dr. Atkeson testified that her research reflected instances in Utah in which parents signed and returned ballots issued to children who were away on religious missions. She also described an incident in Mesa County, Colorado, in which a questioned signature entered the cure process and the purported voter advised election officials that he had neither received nor voted the ballot, prompting an investigation that uncovered additional fraudulent ballots.
127. Dr. Atkeson analyzed Kansas-specific data from the Survey of the Performance of American Elections ("SPAЕ") concerning voters' views of signature verification. The survey asked Kansas residents whether having election officials conduct signature verification on mail ballots increased or decreased their confidence in elections.
128. In 2022, approximately 66% of Kansas respondents reported that knowing election officials conducted signature verification on mailed ballots increased their confidence either "a lot" or at least "a little." In 2024, the corresponding figure was 62%. By contrast, only 5% of Kansas respondents in 2022, and 4% in 2024, reported that signature verification decreased their confidence.
129. Dr. Atkeson testified that approximately 32 states employ signature verification for mail ballots. She said signature verification imposes a low barrier on voters, requires relatively little additional technology from election administrators, and creates a transparent and auditable record.

130. Dr. Atkeson testified that Kansas' SVR supports access because it allows voters to cure a flagged signature for a period of time after election day, which is more flexible than some states; and there are multiple options for disabled voters who wish to cast an advance mail ballot, for example through the permanent advance voting list or the ability to have someone else sign on the disabled voter's behalf.

131. The Court finds that Kansas' SVR serves multiple substantial election administration interests. It provides a mechanism for confirming the identity of voters casting ballots outside the presence of election officials. It operates as a safeguard against ballots being cast by individuals other than the voters to whom they were issued. It assists in detecting fraud or other misconduct when it occurs. And it promotes public confidence that advance mail ballots are subject to meaningful security protections.

FACTS RELATING TO INDIVIDUAL VOTERS.

132. A Kansas voter from Dickinson County testified that her ballot from the 2024 general election was not counted because of a signature mismatch determination. She said she personally signed the advance ballot envelope. She said no one from Dickinson County contacted her about the mismatch. She first learned that her ballot was not counted approximately one year after the election. She was informed of this fact by Plaintiffs. She acknowledged that her signature on the advance ballot envelope looked different than the signature on file with the county. She said it was because she had burned her hand around the time she signed the ballot envelope and the signature on file was made on an electronic signature pad.

133. A Kansas voter from Butler County testified that her advance ballot from the 2024 general election was not counted because of a signature mismatch determination, though she

personally signed the advance ballot envelope. She said she learned this the day after the election by checking the Kansas Secretary of State's website. It is stipulated by the parties in this case that the Kansas Secretary of State's website does not provide information about whether a ballot was counted. She said she did not call Butler County to inquire about curing it or otherwise follow up. She said no one from the county election office contacted her. She acknowledged that her signature on the advance ballot envelope looked different than the signature on file with the county. She said this was because the signature on file was five years old, but when questioned she was uncertain about the origin of the signature on file.

134. A Kansas voter from Sedgwick County, who works for Plaintiff Kansas Appleseed as a senior campaign director, cast an advance mail ballot in the 2022 general election. She testified that she signed her advance ballot envelope. Her ballot was flagged as having a mismatched signature. She was contacted by the Sedgwick County election office more than a week after the election, while she was out of state for a work trip, and she cured her ballot. She testified that she could not remember what she did to cure the ballot.

FACTS RELATING TO PLAINTIFFS' STANDING TO SUE.

League of Women Voters of Kansas.

135. Plaintiff League of Women Voters of Kansas ("League") is a nonprofit membership organization. Its primary mission is to promote civic engagement and voter registration.

136. The League is a member of the national League of Women Voters, which is based in Washington, D.C. The League has nine local leagues across Kansas.

137. The League has approximately 1,000 dues-paying members in Kansas, the majority of whom are registered voters.

138. The League encourages Kansans to vote by hosting voter registration tables, answering voters' questions, and holding candidate forums at various events, among other forms of outreach. Through these activities, the League both promotes and educates Kansans on voting by advance ballot.
139. Jacqueline Lightcap testified on behalf of the League at trial. She is a current member of the League, and she previously served as its co-president and communications chair.
140. The League has members in Kansas who are advanced in age or suffer from disabilities.
141. The League has members who vote by advance ballot.
142. Lightcap identified one member who votes by advance ballot and has a degenerative neuromuscular disorder. Lightcap testified that this member has not had an advance ballot rejected.
143. Lightcap could not name any League member whose advance ballot has been rejected due to the SVR.
144. Lightcap testified that the impact of the SVR on the League is that the League has had to talk more to first-time voters about the importance of reading the directions on the advance ballot envelope and taking care to sign their names consistent with the signature on their driver's license. The League has also changed some of their presentation materials to underscore this point.
145. Lightcap testified that the League has not had to spend additional funds or divert resources in response to the SVR.

Loud Light.

146. Plaintiff Loud Light is a statewide nonprofit advocacy organization focused on promoting civic engagement and voter registration for Kansans ages 18 to 35. This is done in person at events and educational programs and through online presence.
147. Loud Light is not a membership organization and does not charge dues. It is funded by grants and private donations. The organization's board of directors selects its own members.
148. Loud Light's president, Davis Hammet, testified on behalf of Loud Light at trial.
149. Loud Light's activities focus on helping young people register to vote, understand the voting process, and cast a ballot. Loud Light employs community organizers, staff, and fellows across the state. Loud Light's organizers, staff, and fellows engage with voters before, during, and after elections.
150. Loud Light calls counties after an election to obtain a list of voters whose ballots have been challenged because of the SVR. Loud Light then attempts to contact these voters to tell them how to cure the ballot so it can be counted.
151. Loud Light also engages in legislative advocacy and in educating young people about how to make change through advocacy on various issues at the state and local levels.
152. Hammet testified about the effects of the SVR on Loud Light's activities. Since the SVR was adopted, Loud Light has devoted more of its time to the following: 1) preparing answers to voter questions about the SVR; 2) calling various counties to inquire about each county's SVR procedures; 3) calling various counties seeking lists of voters whose ballots have been challenged; and 4) calling voters whose ballots have been challenged to explain how to cure the ballot.

153. Hammet testified that the SVR has cost the organization more of his time and his advocacy director's time because they are the ones who find answers to voter questions and interface with the various counties.

154. Hammet testified that Loud Light is no longer able to spend as much time on election day "micro-targeting," in other words, making direct contact with individual voters reminding each one to vote and where their polling place is located.

155. Hammet said that he is not aware of any employee of Loud Light whose advance ballot was rejected due to the SVR.

Kansas Appleseed.

156. Plaintiff Kansas Appleseed is a statewide nonprofit advocacy organization whose mission is "that all Kansans should live in thriving, just, and inclusive communities."

157. Kansas Appleseed's executive director, Jami Reeve, testified on behalf of Kansas Appleseed at trial.

158. Kansas Appleseed is not a membership organization and does not charge dues. It is funded by donations and private foundations. The organization's board of directors is self-governing and selects its own members.

159. Reeves said the organization's "constituents" vary depending on what issue Kansas Appleseed is advocating at any given time.

160. Kansas Appleseed engages in a variety of activities to end hunger by helping people access SNAP benefits and supporting child nutrition programs; it addresses issues in the criminal justice and foster care systems by advocating changes to laws regarding driver's licenses suspensions; and it works to increase voter registration and civic engagement.

161. Kansas Appleseed encourages participation in Kansas elections by hosting voter registration tables at gatherings across the state, producing articles about voting laws, and hosting webinars and in-person presentations.

162. Reever said that since the SVR was adopted, Kansas Appleseed has spent more time on educating voters about the SVR and less time working on hunger and justice-related issues.

163. She said Kansas Appleseed has updated and adjusted multiple webinars and presentations throughout the year to make voters aware of the SVR.

Lois Curtis Center.

164. Plaintiff Lois Curtis Center (“LCC”) is a physical and virtual hub for community services, support, and guidance for persons with physical, developmental, and age-related disabilities. It was founded in 2024.

165. Prior to 2024, the LCC operated as the Topeka Independent Living Resource Center (“TILRC”). TILRC provided certain Medicaid-related services, and it received state and federal grants.

166. The LCC does not provide Medicaid-related services. It is funded through private grants.

167. The LCC is not a membership organization and does not charge dues. There are six employees, including Hyten, and a board of directors. The organization’s board of directors selects its own members.

168. The LCC in its physical location offers its constituents laundry and shower facilities, meeting rooms, technology resources, a food pantry, and other services.

169. The LCC’s director, Ami Hyten, testified on behalf of LCC at trial.

170. Hyten said that LCC, and its predecessor TILRC, have worked for more than 40 years on voter registration and voter education for people with disabilities.

171. Hyten said most of the LCC's constituents vote by permanent advance ballot because they may face accessibility and transportation hurdles to voting in person.
172. Hyten said the LCC offers voter registration, applications for advance ballots, and voter education in its physical location and at events in the community.
173. The LCC assists people in addressing disability-related barriers to voting. The LCC also assists with filling out advance ballot applications and advance ballots.
174. Since the SVR was adopted, Hyten said that LCC staff has spent more time educating disabled voters about the SVR and "what it means for their ballot."
175. Since the SVR was adopted, the LCC has assisted disabled voters in obtaining a signature stamp to ensure consistency between their signatures over time.
176. Hyten said the SVR has affected the operations of the LCC in that sometimes they cannot participate in a voting-related community event when asked because it requires sending a staff person who is well-versed in the requirements of the SVR, and sometimes such a staff person is not available.
177. Hyten said the SVR has affected the operations of the LCC in that sometimes they have not had adequate staff to participate in an "off-the-shelf" national program to go door-to-door in the community encouraging people to vote in primary elections.
178. Hyten said the SVR has affected the operations of the LCC in that they have had to decline offers from Kansas Legal Services to hold expungement clinics at the LCC because there are not enough LCC staff to support it.
179. Hyten testified that she could not quantify how much additional time or money has been spent by the LCC due to the impact of the SVR.

180. Hyten testified that the LCC has not had to cancel any of its programs due to the impact of the SVR.

181. Hyten said that she is not aware of any LCC constituent whose advance ballot was challenged due to the SVR. She said no one has approached the LCC to ask for help with a ballot challenged due to the SVR.

CONCLUSIONS OF LAW

Two of Plaintiffs' claims remain for this Court's determination on remand: 1) whether the SVR violates Plaintiffs' right to equal protection under the Kansas Constitution; and 2) whether the SVR violates Plaintiffs' right to due process under the Kansas Constitution. Before reaching the merits of these claims, the Court first considers whether Plaintiffs have standing to sue.

PLAINTIFFS' STANDING TO SUE

Plaintiffs assert that they have standing to bring this facial challenge to the SVR based on equal protection and due process guarantees found in the Kansas Constitution.

BACKGROUND.

This is not the first time Plaintiffs' standing has been at issue in this litigation. This Court initially dismissed all of Plaintiffs' claims on the merits without deciding the issue of standing. The dismissal spawned two separate appeals. In *LOWV II*, Plaintiffs appealed this Court's denial of a temporary injunction regarding the False Representation Provision ("FRP"). The Kansas Court of Appeals dismissed the appeal because it concluded that Plaintiffs lacked standing. The Kansas Supreme Court reversed the Kansas Court of Appeals' dismissal because it held that the Plaintiffs had standing, at the motion to dismiss stage, to challenge the FRP.

In *LOWV I*, Plaintiffs appealed this Court's dismissal of its amended petition. The Kansas Court of Appeals reversed the dismissal. As part of its analysis, the *LOWV I* panel concluded that

Plaintiffs had standing to raise various challenges to the signature verification requirement and the ballot collection provision (no longer at issue here).

In *LOWV III*, the Kansas Supreme Court affirmed *LOWV I* in part, concluding that Plaintiffs should have the opportunity to develop their theory that the signature verification requirement violated equal protection and due process principles, but not under the strict scrutiny standard dictated by the Kansas Court of Appeals. The Kansas Court of Appeals decision was reversed in part because this Court correctly dismissed the challenge to the ballot collection provision in its entirety and correctly dismissed the challenge to the signature verification requirement based on a “right to vote” theory under the Kansas Constitution. The Supreme Court did not analyze Plaintiffs’ standing to challenge the signature verification requirement in its opinion.

Immediately upon remand to this Court following the decision in *LOWV III*, Defendants filed a motion to dismiss Plaintiffs’ SVR claim for lack of standing. This Court denied the motion to dismiss based upon the mandate rule – because the case was returned to this Court to allow Plaintiffs “their full opportunity to prove up their claims as a matter of evidence in the district court” applying the proper legal standards articulated by the Kansas Supreme Court. 318 Kan. at 807. This Court was not directed to analyze standing at the motion to dismiss stage. To do so immediately upon remand would fly in the face of the mandate given by the Kansas Supreme Court.

Now Plaintiffs have had their full opportunity. While the Kansas Court of Appeals in *LOWV I* concluded that Plaintiffs had standing, that was at the pleadings, or motion to dismiss, stage. Any consideration, implicit or explicit, given to this conclusion by the Kansas Supreme Court in *LOWV III* was also in the context of the motion to dismiss stage. This matter has now been tried to the

Court, so the Court will analyze the issue of standing according to the degree of proof required to establish standing at the trial stage.

ANALYSIS.

“The Kansas Constitution imposes a case-or-controversy requirement, part of which includes standing, or a party's right to make a legal claim or seek judicial enforcement of a duty or a right. Standing is one of the most amorphous concepts in the entire domain of public law, but if a person does not have standing to challenge an action or to request a particular type of relief, then there is no justiciable case or controversy, and that person's suit must be dismissed.” *Matter of L.L. by & Through C.W.*, 315 Kan. 386, 390–91, 508 P.3d 1278 (2022) (internal quotations and citations omitted). Standing is a component of subject matter jurisdiction and can be raised at any time. *Ross v. Nelson*, 319 Kan. 266, 273, 554 P.3d 636 (2024).

The test for standing under Kansas law is different from the federal standard. “Under Kansas' traditional, two-part standing test, a party must demonstrate they have suffered a cognizable injury and that there is a causal connection between the injury and the challenged conduct.” *LOWV II*, 317 Kan. at 813 (internal quotations omitted). “A party establishes a cognizable injury - i.e., an injury-in-fact - when they suffer some actual or threatened injury as a result of the challenged conduct. The injury must pose adverse legal interests that are immediate, real, and amenable to conclusive relief.” *Id.* (internal quotations and citations omitted).

The burden to prove standing is borne by the party asserting it. “And the nature of that burden depends on the stage of the proceedings because the elements of standing are not merely pleading requirements. Each element must be proved in the same way as any other matter and with the degree of evidence required at the successive stages of the litigation.” *Gannon v. State*, 298 Kan. 1107, 1123, 319 P.3d 1196 (2014).

“At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific facts that are necessary to support the claim. In response to a summary judgment motion ... the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts, ... which for purposes of the summary judgment will be taken to be true. [A]t the final stage, those facts (if controverted) must be supported adequately by the evidence adduced at trial.” *FV-I, Inc. for Morgan Stanley Mortg. Cap. Holdings, LLC v. Kallevig*, 306 Kan. 204, 212, 392 P.3d 1248 (2017) (internal quotations and citations omitted).

The issue of standing is now before the Court based on the evidence presented at trial. Plaintiffs here are four organizations. There are no individual plaintiffs. An organization has two paths to establish standing. It may have standing to sue on behalf of its members, known as associational standing. Alternatively, an organization may have standing to sue in its own right.

Associational standing.

Plaintiffs assert they have associational standing. “An association has standing to sue on behalf of its members when (1) the members have standing to sue individually; (2) the interests the association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires participation of individual members.” *Kansas Nat'l Educ. Ass'n v. State*, 305 Kan. 739, 747, 387 P.3d 795 (2017) (internal quotations omitted). “[A] mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization adversely affected or aggrieved” by the government action. *Sierra Club v. Moser*, 298 Kan. 22, 35, 310 P.3d 360 (2013) (internal quotations omitted).

Loud Light, Kansas Appleseed, and the LCC cannot establish associational standing because they have no members and their “constituents” have no indicia of membership in an organization.

An organizational plaintiff must first prove its members have standing to sue individually. *Friends of Bethany Place, Inc. v. City of Topeka*, 297 Kan. 1112, 1126, 307 P.3d 1255 (2013). The

League is the only Plaintiff that is a membership organization. Loud Light, Kansas Appleseed, and the Lois Curtis Center are not; they do not have members. Organizations that are not membership associations may still assert associational standing if those involved with the organization have “indicia of membership” equivalent to what they would have in a trade or other membership association. *Hunt v. Washington State Apple Advert. Com'n*, 432 U.S. 333, 344 (1977).

In *Hunt*, the plaintiff was a state agency charged with promoting and protecting Washington State’s apple industry. It filed suit challenging another state’s regulation that caused harm to the marketing of Washington apples in that state. *Id.* at 336-38. The only challenge to plaintiff’s standing was that it was not a membership organization. *Id.* at 342-44. The United States Supreme Court said the plaintiff in that case had standing because those it purported to represent had “indicia of membership in an organization.” *Id.* at 344.

“They alone elect the members of the Commission; they alone may serve on the Commission; they alone finance its activities, including the costs of this lawsuit, through assessments levied upon them. In a very real sense, therefore, the Commission represents the State's growers and dealers and provides the means by which they express their collective views and protect their collective interests.” *Id.* at 344-45.

Loud Light, Kansas Appleseed, and the LCC offered no facts suggesting that their “constituents” have any indicia of membership in their organizations under *Hunt*. The testimony at trial was that the governing boards of Loud Light, Kansas Appleseed, and the LCC were not elected by their “constituents,” but were selected by other board members. The testimony at trial was that the “constituents” of Loud Light, Kansas Appleseed, and the LCC did not pay dues or assessments of any kind to the organization. Rather, the testimony at trial was that each organization is funded by grants and private donations. This evidence is reason enough to conclude that Loud Light, Kansas Appleseed, and the LCC do not have associational standing.

In addition, the “constituencies” of these organizations are very broadly defined. Hammet testified that Loud Light’s “constituents” are any “underrepresented population,” with focus on Kansans 18 to 35 years of age. Reeve testified that Kansas Appleseed’s “constituents” are anyone who receives SNAP benefits or free or reduced-price meals, people who interact with the justice system and foster care system, people who “reach out to us,” and people “we are advancing laws for.” Hyten testified that the LCC represents any person with a physical, developmental, or age-related disability.

Associational standing cannot be created by simply claiming a particular audience. *Am. Legal Found. v. F.C.C.*, 808 F.2d 84, 89-91 (D.C. Cir. 1987) (a “completely open-ended” “constituency” that does not select its organization’s leadership, guide its activities, or finance those activities does not support associational standing). See also *Viasat, Inc. v. F.C.C.*, 47 F.4th 769, 781 (D.C. Cir. 2022) (associational standing turns on “whether members finance the organization, guide its activities, or select its leadership”; and “it is not enough for putative members simply to read a group’s publications, subscribe to its e-mail list, or follow its Facebook page”).

Loud Light, Kansas Appleseed, and the LCC do not have associational standing because they have no members, and their “constituents” have no “indicia of membership in an organization.” There is no evidence their “constituents” finance the organization, select its leadership, or guide its activities. Loud Light, Kansas Appleseed, and the LCC do not have associational standing to sue.

The League cannot meet the test for associational standing because it identified no member who has standing to sue in his or her own right.

Associational standing also requires an organization to show that it or one of its members “has suffered actual or threatened injury—i.e., the association or one of its members must have

suffered cognizable injury or have been threatened with an impending, probable injury and the injury or threatened injury must be caused by the complained-of act or omission.” *Sierra Club v. Moser*, 298 Kan. at 33. The injury must pose “adverse legal interests that are immediate, real, and amenable to conclusive relief.” *Kansas Bldg. Industry Workers Comp. Fund v. State*, 302 Kan. 656, 678, 359 P.3d 33 (2015) (internal quotations omitted).

Lightcap testified that she could not identify any member of the League who had suffered actual or threatened injury caused by the SVR. She could not identify any member whose ballot was improperly flagged or rejected, or anyone who had difficulty with the cure process. She identified one member of the League who suffered from a neuromuscular disorder and who voted by advance ballot. Lightcap said she wondered how the member’s disorder may affect her signature in the future, but she said this member had not had any issues with her signature or the SVR so far. This member did not testify at trial.

Without any evidence to support this element of associational standing, the League’s argument for standing is that it has (unnamed) members who are elderly and members who have disabilities, these factors may affect a person’s signature over time, such a person might vote by advance ballot, such a person’s signature on the advance ballot envelope might be flagged by election officials, and such a person may not be able to complete the cure process or any of the other alternatives available to those who have difficulty signing the ballot envelope. This is not evidence of actual or threatened injury to any identified member of the League.

Claiming that voters might erroneously be flagged for an inconsistent signature in the future is speculative in nature and cannot establish an injury in fact for standing. The same premise was rejected as a basis for standing in *Memphis A. Phillip Randolph Institute v. Hargett*, 978 F.3d 378 (6th Cir. 2020) (“*MPRI*”). There, the court said “allegations of *possible* future injury” are

insufficient to constitute a “certainly impending” threatened injury. *Id.* at 386 (internal quotations and citations omitted). Evaluating a similar challenge to Tennessee’s signature matching requirements for absentee ballots, the court noted that “plaintiffs’ allegations boil down to fear of the ever-present possibility that an election worker will make a mistake.” *Id.* at 389 (internal quotations omitted).

The League cannot claim associational standing because it did not demonstrate at trial that one of its members has suffered actual or threatened injury caused by the SVR. Because the League fails the test for associational standing on the first prong, there is no need to analyze the remaining two requirements.

Organizational standing.

Without associational standing, Plaintiffs claim that they as organizations have suffered injury and have standing to sue. Like an individual, an organization may assert standing on its own behalf if it can establish a cognizable injury and a causal connection between the injury and the challenged conduct. *Gannon*, 298 Kan. at 1127.

All four Plaintiffs claim cognizable injury in the form of diversion of resources from usual activities to combat what they allege are the negative effects of the SVR. At the pleadings stage, Plaintiffs asserted direct organizational standing based on a belief that they would be forced to divert substantial resources from existing programs to address the impact of the SVR. The evidence at trial to support this point did not materialize.

The diversion of resources theory of standing comes from *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982). There, a housing organization alleged that a realty corporation’s racial steering practices blocked efforts to provide counseling and referral services

to the housing organization’s clients seeking homes. *Id.* The district court dismissed the case for lack of standing. *Id.* at 378.

The United States Supreme Court reversed, concluding that the housing organization had stated a claim for standing in its own right. *Id.* at 378. The court said:

“If, as broadly alleged, petitioners' steering practices have perceptibly impaired HOME's ability to provide counseling and referral services for low-and moderate-income homeseekers, there can be no question that the organization has suffered injury in fact. Such concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes far more than simply a setback to the organization's abstract social interests . . .” *Id.* at 379.

The court added: “Of course, HOME will have to demonstrate at trial that it has indeed suffered impairment in its role of facilitating open housing before it will be entitled to judicial relief.” *Id.* at 379, n. 21.

During the pendency of the instant case, the United States Supreme Court revisited *Havens* and declined to extend it beyond its particular facts. See *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 395-96 (2024) (“*Alliance*”). In *Alliance*, plaintiffs were physicians and a national association of physicians who opposed abortion and the use of certain drugs to induce abortion, though they did not prescribe the drug themselves. Plaintiffs opposed the Food and Drug Administration’s (“FDA”) relaxed regulation of an abortion drug. *Id.* at 372-74.

The question in *Alliance* was whether plaintiffs had standing to sue under Article III. The United States Supreme Court said they did not, because they had not suffered an injury in fact. *Id.* at 396. “[A]n organization may not establish standing simply based on the intensity of the litigant's interest or because of strong opposition to the government's conduct, no matter how longstanding the interest and no matter how qualified the organization.” *Id.* at 394 (internal quotations and citations omitted).

Instead, a cognizable injury occurs when the complained-of action “directly affected and interfered with [Plaintiffs’] core business activities.” *Id.* at 395. The United States Supreme Court in *Alliance* explained:

“The relevant question in *Havens* was whether a housing counseling organization, HOME, had standing to bring a claim under the Fair Housing Act against Havens Realty, which owned and operated apartment complexes. Havens had provided HOME's black employees false information about apartment availability - a practice known as racial steering. Critically, HOME not only was an issue-advocacy organization, but also operated a housing counseling service. And when Havens gave HOME's employees false information about apartment availability, HOME sued Havens because Havens perceptibly impaired HOME's ability to provide counseling and referral services for low- and moderate-income homeseekers. In other words, Havens's actions directly affected and interfered with HOME's core business activities - not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer.” *Id.* (internal quotations and citations omitted).

Havens did not say that an organization may demonstrate standing simply by establishing that it “diverts its resources in response to a defendant's actions.” *Id.* If it were so, “that theory would mean that all the organizations in America would have standing to challenge almost every . . . policy that they dislike, provided they spend a single dollar opposing those policies.” *Id.* An organization “cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. An organization cannot manufacture its own standing in that way.” *Id.* at 394.

In light of *Alliance*, the question here is whether the SVR “directly affected and interfered with” Plaintiffs’ “core business activities.” The answer is no.

Lightcap testified that the impact of the SVR on the League is that the League has had to talk a little bit more to first-time voters about the importance of reading the directions on the advance ballot envelope and taking care to sign their names consistent with the signature on their driver’s license. The League has also changed some of their presentation materials to underscore

this point. Lightcap testified that the League has not had to spend additional funds or divert resources in response to the SVR.

Hammet testified that since the SVR was adopted, Loud Light has devoted more of its time to: 1) preparing answers to voter questions about the SVR; 2) calling various counties to inquire about SVR procedures and lists of voters whose ballots have been challenged; and 3) calling voters whose ballots have been challenged to explain how to cure the ballot. Hammet testified that the SVR has cost the organization more of his time and his advocacy director's time because they are the ones who find answers to voter questions and interface with the various counties. Hammet testified that Loud Light is no longer able to spend as much time on election day "micro-targeting," in other words, making direct contact with individual voters reminding each one to vote and where their polling place is located.

Reever testified that since the SVR was adopted, Kansas Appleseed has spent more time on educating voters about the SVR and less time working on hunger and justice-related issues. She said Kansas Appleseed has spent time updating webinars and presentations throughout the year to make voters aware of the SVR.

Hyten said that since the SVR was adopted, the LCC staff has spent more time educating disabled voters about the SVR. She said sometimes there are not enough staff available who are knowledgeable about the SVR to be present at certain events. Hyten could not quantify how much additional time or money has been spent by the LCC due to the impact of the SVR. Hyten testified that the LCC has not had to cancel any of its programs due to the impact of the SVR.

Organizations cannot claim standing "based solely on the baseline work they are already doing." *Common Cause Indiana v. Lawson*, 937 F.3d 944, 955 (7th Cir. 2019). Adding the SVR to existing voter education and support efforts as described above does not interfere with Plaintiffs'

core activities; rather, it is part of their core activities. See *Fair Elections Ohio v. Husted*, 770 F.3d 456, 459–61 (6th Cir. 2014) (no standing where the alleged injury was the provision of training that the organization was already providing, where a sought-after change in the law would change only the content of the training).

Plaintiffs’ education and outreach activities here are not materially different from what the associations did in *Alliance* in voluntarily spending additional time and effort to engage in public advocacy and education about FDA policies regarding abortion medication. The Supreme Court deemed those activities an inadequate basis for organizational standing, and the same holds true for Plaintiffs here.

Plaintiffs point out that the SVR requires them to spend time talking to voters and engaging in election-education activities, but these are activities that Plaintiffs were performing before the SVR took effect. In other words, all Plaintiffs admitted that they were already using resources to perform the very voter engagement and education activities to which they now claim they must divert additional resources. Because voter outreach and education have been a component of the Plaintiffs’ respective missions for many years, the fact that they might infuse additional resources into such activities following the enactment of the SVR does not mean they have suffered an injury in fact. See *NAACP v. City of Kyle*, 626 F.3d 233, 238-39 (5th Cir. 2010) (diversion of resources to activities cannot support organizational standing if such activities do not differ from plaintiff’s routine activities or projects); *Clark v. Edwards*, 468 F.Supp.3d 725, 748 (M.D. La. 2020) (“Injury does not arise because of their desire or preference for a different scheme of absentee by mail voting, nor because they adjust their organization’s activities in response to . . . changes to the law. The law is not static. It cannot follow that every change in voting laws that causes voting advocacy groups to ‘check and adjust’ is an injury.”).

An “organization does not automatically suffer a cognizable injury in fact by diverting resources in response to a defendant’s conduct.” *La. Fair Hous. Action Ctr., Inc. v. Azalea Garden Props., LLC*, 82 F.4th 345, 353 (5th Cir. 2023) (internal quotations omitted). Rather, the legal injury “comes when that diversion of resources concretely and perceptibly impairs the organization’s ability to carry out its purpose.” *Id.* (citations and internal alterations omitted). In other words, the critical focus for standing purposes in the context of a diversion of resources theory is “not the drain on the organization’s resources,” but instead the organization’s “ability to carry out its mission.” *Id.* Accord *RNC v. Burgess*, 2024 WL 3445254, at *4 (D. Nev. 2024) (unpublished) (“[a]ny diversion of resources to an Election Day ‘mail ballot chase’ program appears to be nothing more than ‘business as usual’ for Organizational Plaintiffs,” and “not an affirmative diversion of resources.”).

At the trial stage, Plaintiffs cannot create standing by labeling advocacy expenditures a “diversion of resources” or invoking their “core mission.” The relevant inquiry is whether the evidence demonstrates that the SVR has actually impaired Plaintiffs’ ability to carry out their organizational purposes, not whether they have elected to devote additional resources to advocating against or adapting to a new law. See *Ariz. All. for Retired Ams.*, 186 F.4th 622, 635 (9th Cir. 2026) (“The Organizations also contend that they must divert resources to educate voters and the public about [a law’s] supposed effects. But without . . . harm to the Organizations’ voter-registration activities, their mere diversion of resources to educate and train voters on the potential effects of the [law] cannot independently establish an injury-in-fact.”).

The SVR does not compel Plaintiffs to expend any resources at all. Their alleged injury stems entirely from their own discretionary decision to devote additional time and money to voter education and advocacy. But self-inflicted expenditures undertaken in response to legislation do

not establish standing. Otherwise, every advocacy organization could manufacture standing simply by deciding to spend more money opposing, explaining, or responding to any statute with which it disagreed. Accord *League of United Latin American Citizens of Iowa v. Pate*, 20 N.W.3d 822, 835–39 (Iowa 2025) (organizational plaintiff alleged standing based on need to “translate voter registration materials without assistance from government officials,” which would entail diversion of resources “from other activities related to voter registration and outreach”; court rejected standing because such spending was “purely discretionary”).

For the reasons set forth above, Plaintiffs have not established that any one of them has organizational standing to sue in this case.

CONCLUSION

The Court concludes that Plaintiffs have failed to establish either associational or organizational standing to maintain this action. Where Plaintiffs lack standing to sue, the Court has no jurisdiction over the case and it must be dismissed.

But even if at least one of the Plaintiffs had standing to sue, they still cannot prevail because their facial constitutional challenge to the SVR under equal protection and due process theories must likewise fail. The merits of Plaintiffs’ constitutional challenge are addressed below as an independent alternative basis for this Court’s denial of Plaintiffs’ requested relief.

STANDARDS FOR EVALUATING PLAINTIFFS’ CONSTITUTIONAL CLAIMS

Defendants urge the Court to apply two standards to its consideration of Plaintiffs’ constitutional claims: (1) that statutes are presumed to be constitutional; and (2) a facial challenge requires a showing that the law is unconstitutional in every way it reasonably could be applied. Neither of these standards was mentioned by the Kansas Supreme Court as part of its equal

protection or due process analysis concerning the SVR in *LOWV III*. The two standards will be discussed briefly below but will not be applied here as Defendants suggest.

STATUTES ARE PRESUMED TO BE CONSTITUTIONAL IN SOME CONTEXTS.

Whether a statute is constitutional is a question of law. *Matter of A.B.*, 313 Kan. 135, 138, 484 P.3d 226 (2021). Historically, the Kansas Supreme Court presumed statutes to be constitutional and resolved all doubts in favor of that conclusion. *Id.* “If there is any reasonable way to construe a statute as constitutionally valid, this court has both the authority and duty to engage in such a construction.” *Id.*

Plaintiffs point out that there are some limited exceptions to this traditional presumption. For example, the presumption of constitutionality does not apply to First Amendment challenges. *Doe v. City of Albuquerque*, 667 F.3d 1111, 1120 (10th Cir. 2012). The Kansas Supreme Court has declined to apply the presumption as stated in the Fourth Amendment context, in a criminal case involving a statute allowing warrantless searches. *State v. Ryce*, 303 Kan. 899, 915, 368 P.3d 342 (2016) (“*Ryce I*”), *adhered to on reh'g*, 306 Kan. 682 (2017) (“*Ryce II*”).

The Kansas Supreme Court also declined to apply the presumption in *Hodes & Nauser, MDs v. Schmidt*, 309 Kan. 610, 440 P.3d 461 (2019), where a statute regulating abortion was held to have violated a “fundamental interest” in personal autonomy under the Section 1 of the Kansas Constitution Bill of Rights. *Id.* at 673-74. In *Hodes*, the Kansas Supreme Court said that in cases involving suspect classifications or fundamental interests, “the courts peel away the protective presumption of constitutionality and adopt an attitude of active and critical analysis,” where “the burden of proof is shifted from plaintiff to defendant and the ordinary presumption of validity of the statute is reversed.” *Id.* at 673.

Plaintiffs do not raise a challenge under the First or Fourth Amendments. There is no allegation of a suspect class. There is no “fundamental interest” at stake akin to *Hodes*’ Section 1 right of personal autonomy. Indeed, in *LOWV III*, the Kansas Supreme Court concluded that there was no fundamental “right to vote” guaranteed by Section 2 of the Kansas Constitution Bill of Rights. *LOWV III*, 318 Kan. at 799-800. This would seem to support the notion of applying a presumption of constitutionality here.

However, the *LOWV III* court did not mention the presumption in its discussion of the equal protection or due process analysis, and its method of analyzing the overarching “right to vote” issue as a “right to suffrage” issue under Article 5 of the Kansas Constitution suggests such a presumption may be out of place here. The court analyzed the Article 5 “right to suffrage” as an “enumerated political right” providing “the strongest possible constitutional protections.” *Id.* at 800.

About that enumerated right, the court said:

“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. Such unreasonable burdens, as a matter of law, bear no reasonable relationship to the Legislature’s lawful role of providing proper proofs but instead amount to extra-constitutional and de facto qualifications on the right to suffrage. . . .

This mode of review for an enumerated right differs significantly from the tiered scrutiny analysis typically used to evaluate regulations on unenumerated rights—whether they be designated ‘fundamental’ or not. Put simply, if a law violates the article 5 right to suffrage, it is unconstitutional, full stop. Once an extra-constitutional qualification on the right to suffrage is found, courts need not permit the government an opportunity to satisfy a balancing test, even such a stringent one as strict scrutiny.” *Id.* at 801-02 (internal citations omitted).

Ultimately, the court concluded that the SVR is “a reasonable effort by the Legislature to provide ‘proper proofs’ of the right to be a qualified elector” and “does not impose a new

qualification on the right to suffrage because its burdens are reasonably related to the Legislature's duty and prerogative to provide proper proofs.” *Id.* at 805. But even so, the court said, “the Legislature still must comply with other constitutional guarantees such as those of equal protection and due process.” *Id.*

The Kansas Supreme Court’s analysis of whether the SVR violated the “right to suffrage” under Article 5 eschewed application of a balancing test and instead applied a “full stop” analysis – despite declining to label the Article 5 right a “fundamental right.” It seems unlikely that the Kansas Supreme Court, absent specific language to the contrary, would direct this Court to apply any presumption of constitutionality to the SVR when dealing with derivative questions of the equal protection or due process claims on remand.

PLAINTIFFS PRESENT A FACIAL CHALLENGE.

Kansas courts recognize two types of challenges to the constitutionality of a statute: facial and as applied. “A facial challenge is commonly described as an argument that a statute is unconstitutional in every way it reasonably could be applied.” *State v. Hall*, 65 Kan. App. 2d 369, 382, 564 P.3d 786 (2025). “Unlike a facial challenge, an as-applied claim looks at whether the particular factual circumstances create a constitutional violation.” *Id.* at 389. Accord *State v. Stubbs*, 320 Kan. 568, 572, 570 P.3d 1209 (2025).

Plaintiffs here assert a facial challenge to the signature verification requirement in K.S.A. 25-1124(h) and its supporting regulation, K.A.R. 7-36-9. “A successful facial challenge generally requires a litigant to establish that the law is unconstitutional in all its applications. Thus, for the State to prevail in a facial challenge, it need only demonstrate that the law is constitutional in at least some applications.” *State v. McCray*, 321 Kan. 316, 320, 579 P.3d 126 (2025).

For this reason, “[a] facial challenge to the constitutionality of legislation is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” *State v. Jones*, 313 Kan. 917, 931, 492 P.3d 433 (2021) (internal quotations omitted). The fact that a challenged statute “might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an overbreadth doctrine outside the limited context of the First Amendment.” *Id.*

Plaintiffs urge this Court at the very least to “narrow” the application of the “no set of circumstances test” as set forth in *Ryce I*. There, the Kansas Supreme Court followed the then-recent decision in *Los Angeles v. Patel*, 576 U.S. 409 (2015), saying:

“*Patel* emphasizes that when it comes to Fourth Amendment challenges, the no set of circumstances test becomes more focused. *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.” *Ryce I*, 303 Kan. at 915.

Further,

“The *Patel* Court observed that this approach was necessary when dealing with the Fourth Amendment because the no set of circumstances rule would preclude facial relief in every Fourth Amendment challenge to a statute authorizing warrantless searches, in part because the determination of the reasonableness of a search is inherently factual.” *Id.* (internal quotations omitted).

Ryce, like *Patel*, dealt with Fourth Amendment claims in a criminal case. The Kansas appellate courts since *Ryce* have not explicitly narrowed the “no set of circumstances” test in cases with various other types of constitutional challenges. See, e.g., *McCray*, 321 Kan. at 320 (facial challenge to a statute based on Second Amendment); *Hall*, 65 Kan. App. 2d at 382 (facial challenge to a statute based on Section 4 of Kansas Constitution Bill of Rights). This is not a Fourth Amendment case.

The best guide is the Kansas Supreme Court’s direction to this Court on remand: the “proper legal standard” is whether the signature verification requirement “achieve[s] reasonable uniformity on objective standards,” and whether it “provide[s] reasonable notice of defects and an opportunity to cure.” *LOWV III*, 318 Kan. at 807. The plain text of the charge is not layered with any standard, including the traditional standard for facial challenges. This Court will follow the “proper legal standard” as stated with no embellishment.

PLAINTIFFS’ EQUAL PROTECTION CLAIM

Section 2 of the Kansas Constitution Bill of Rights says in pertinent part: “All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit.” The equal protection guarantees found in Section 2 are equivalent to those afforded by the Fourteenth Amendment to the United States Constitution. *Rivera v. Schwab*, 315 Kan. 877, 894, 512 P.3d 168 (2022).

THE KANSAS SUPREME COURT’S EQUAL PROTECTION FRAMEWORK FOR THIS CASE.

In the instant case, the Kansas Supreme Court framed the equal protection analysis to be applied to the statute and regulation at issue here. In the syllabus of its opinion, the Kansas Supreme Court said: “To comply with equal protection, any proper proofs devised by the Legislature must be capable of being applied with reasonable uniformity upon objective standards.” *LOWV III*, 318 Kan. 777, Syl. ¶13.

In the analysis section of the majority opinion, the Kansas Supreme Court said:

Equal protection requires similarly situated individuals should be treated alike. It does not require that all persons receive identical treatment, but only that persons similarly situated with respect to the legitimate purpose of the law receive like treatment. To comply with equal protection in the context of providing proper proofs of the right to be a qualified elector, any proper proofs devised by the Legislature must be capable of being applied with reasonable uniformity upon objective standards so that no voter is subject to arbitrary and disparate treatment. If the determination of proper proofs is subject to arbitrary and non-uniform

standards, different citizens will be treated differently in violation of equal protection. *Id.* at 805–06 (internal quotations and citations omitted).

In summing up this discussion, the Kansas Supreme Court provided specific guidance to this Court:

“Because we are at a motion to dismiss stage of the proceeding, we will not deny the League their full opportunity to prove up their claims as a matter of evidence in the district court. Accordingly, we reverse the district court's grant of the State's motion to dismiss on the equal protection and due process claims. The League must have an opportunity to test the signature requirement against the proper legal standard: Does the signature requirement (and its implementing regulations and policies, such as those promulgated in K.A.R. 7-36-9, K.A.R. 7-36-7 [2023 Supp.], and K.A.R. 7-36-3) achieve reasonable uniformity on objective standards, and does it provide reasonable notice of defects and an opportunity to cure? We reverse and remand to the district court for that determination.” *Id.* at 807 (emphasis added).

Thus, for purposes of the equal protection analysis, the “proper legal standard” is whether the statute and regulations comprising the SVR “achieve reasonable uniformity on objective standards.”

Defendants suggest that this Court should apply the Kansas Supreme Court’s test above *plus* a rational basis test used in other equal protection cases. The rational basis tests measures “whether a statutory classification bears some rational relationship to a valid legislative purpose.” *Downtown Bar & Grill, LLC v. State*, 294 Kan. 188, 193, 273 P.3d 709 (2012). The Kansas Supreme Court articulated the test to be applied, and it was not rational basis, so the Court will not apply a rational basis test here. The same goes for Defendants’ suggestion regarding the *Anderson-Burdick* flexible balancing test, see *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). The Kansas Supreme Court did not mention the rational basis test or *Anderson-Burdick* in its majority opinion. It has formulated its own test for this equal protection and due process challenge under our state constitution, and that is what will be applied.

REASONABLE UNIFORMITY ON OBJECTIVE STANDARDS.

The Court looks to the provisions of the SVR, including K.S.A. 25-1124 and K.A.R. 7-36-9, and the evidence presented at trial, and considers whether the statute and regulations comprising the SVR “achieve reasonable uniformity on objective standards.”

Plaintiffs assert that the SVR violates equal protection principles because it allows election officials discretion in determining whether signatures on advance mail ballot envelopes match the voters’ signatures on file and flexibility in administering the cure process. This, Plaintiffs argue, results in arbitrary and disparate treatment of similarly situated voters. The Court disagrees. The evidence at trial establishes that the statutory framework, along with the implementing regulation, set up objective criteria that can be and have been applied with reasonable uniformity across the state.

As long as a signature is “generally uniform and consistent with the voter’s signature,” it shall be treated as a match. K.A.R. 7-36-9(a)(4). A signature is “inconsistent” only if it “differs in multiple, significant, or obvious respects from the voter’s signature” on file. K.A.R. 7-36-9(a)(2). Moreover, every signature “shall be compared to as many recorded signatures as possible from the voter registration database.” K.A.R. 7-36-9(g)(1). If the ballot envelope signature is consistent with a signature in the voter’s file, the ballot is counted. K.A.R. 7-36-9(g)(3).

The regulation further provides that no single election official may determine that a signature is inconsistent. Before the cure process can be triggered, at least two election officials who have received the required signature verification training shall agree that the signature is inconsistent. K.A.R. 7-36-9(g)(4). At that point, the county election official shall attempt to contact the voter and afford the voter an opportunity to cure the perceived inconsistency before the county canvass. K.A.R. 7-36-9(b), (d). Thus, even an initial judgment that a signature appears inconsistent

does not cause a ballot to be rejected. It merely triggers additional review and, if necessary, a cure opportunity.

The evidence at trial confirmed that this permissive structure is how Kansas election officials understand and administer the SVR. Caskey testified that the regulation intentionally does not use a strict matching standard because every person's signature varies. Election officials instead take a holistic view of the ballot envelope signature, which is why the regulation defines a "match" as a signature that is "generally uniform and consistent" with the voter's exemplar signatures rather than requiring exact correspondence.

Vargo testified that reviewers apply identifiable characteristics taught through the state-approved training and begin their review with a presumption that the signatures are consistent. Sherman likewise explained that the process is not a mechanical "scorecard" exercise but instead evaluates the signature as a whole and contemplates meaningful rather than trivial differences before the cure process is triggered.

Plaintiffs nevertheless parse the phrase "multiple, significant, or obvious" in isolation while giving insufficient attention to the deliberately broad definition of a "match." The regulation cannot properly be read that way. Its provisions must be construed together. See *Woessner v. Labor Max Staffing*, 312 Kan. 36, 49, 471 P.3d 1 (2020). Read as a whole, K.A.R. 7-36-9 directs election officials to make an overall judgment about whether the ballot envelope signature is generally uniform and consistent with the voter's signatures on file. It does not establish, and was not intended to establish, a mechanical checklist under which every minor variation is separately scored.

Plaintiffs' belief that election officials have too much discretion assumes that only a review process guaranteeing accuracy approaching mathematical precision can survive constitutional

scrutiny. That is not the law. Plaintiffs equate the involvement of human judgment with the absence of objective criteria. But an objective criterion is one that directs officials to evaluate identifiable facts, limits discretion, and supplies a reviewable basis for determining compliance. It is not synonymous with 100% mathematical precision.

K.A.R. 7-36-9 directs election officials to compare observable handwriting characteristics in determining whether a ballot envelope signature is generally uniform with the voter's signatures on file and permits an inconsistency finding only when the differences are "multiple, significant, or obvious." The statewide training provides further guidance concerning the characteristics reviewers should consider and the natural variations that may occur in a person's handwriting. Together, the regulation and training channel the exercise of judgment toward a common objective standard rather than conferring unbounded discretion upon county election officials.

Some judgment is inherent in nearly every system administered by people. The Ninth Circuit recognized this in *Lemons v. Bradbury*, 538 F.3d 1098, 1106-07 (9th Cir. 2008), when it rejected the proposition that modest variations among counties in signature-related decisions established an equal protection violation. Likewise, the Sixth Circuit has observed that "[a]rguable differences in how elections boards apply uniform statewide standards to the innumerable permutations of ballot irregularities, although perhaps unfortunate, are to be expected, just as judges in sentencing guidelines cases apply uniform standards with arguably different results." *N.E. Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612, 636 (6th Cir. 2016). Objective standards are designed to constrain subjectivity. They do not require that every person applying them invariably reaches the same conclusion. The concern identified in *LOWV III* was arbitrary and unbounded discretion, not judgment exercised pursuant to structured criteria.

All parties agree that signatures naturally vary depending upon such matters as the writing

instrument, writing surface, speed, age, health, and physical condition of the signer. A workable standard must allow reviewers to distinguish ordinary variation from discrepancies significant enough to warrant further inquiry. A mechanical checklist could prevent election officials from accounting for those natural variations and thereby cause more, rather than fewer, lawful ballots to be questioned. Kansas pairs guided judgment with safeguards designed to protect the voter, including consideration of all available exemplars, concurrence by multiple reviewers, and a cure process before a ballot is ultimately rejected.

Further, legislatures and administrative agencies are not required to supply specialized definitions for ordinary words capable of being understood through their common meaning. See *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989); *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) (“Condemned to the use of words, we can never expect mathematical certainty from our language.”). Terms such as “multiple,” “significant,” and “obvious” are not esoteric terms requiring technical definitions before they can guide official conduct. The possibility that imaginative counsel can construct difficult hypothetical applications does not render those terms unconstitutional. See *Grayned*, 408 U.S. at 110 n.15.

Finally, Plaintiffs’ forensic document examination evidence does not establish that the Kansas SVR standards are constitutionally inadequate. As Dr. Mohammed acknowledged at trial, Kansas election officials are not attempting to conduct forensic document examinations, and the regulatory task imposed upon them is considerably less taxing than determining authenticity to a forensic standard. *LOWV III* does not require a forensic examination before an election official may question a ballot envelope signature.

The evidence of how the SVR operates in Kansas confirms what its structure suggests. Plaintiffs did not establish at trial that Kansas counties apply materially different standards in

determining whether advance mail ballot signatures are consistent. Nor did they establish that differences in county administrative practices have resulted in materially disparate treatment of Kansas voters. To the contrary, the actual experience under K.A.R. 7-36-9 demonstrates a system operating with consistency. Across the 2022 and 2024 General Elections, more than 99.9% of advance mail ballots subject to the SVR were ultimately counted. Only 130 ballots were rejected because of an uncured signature inconsistency in 2022 and only 94 in 2024. The overwhelming majority of Kansas counties reported no such rejections at all.

The significance of those actual results is underscored by the posture in which this case began. Plaintiffs filed this lawsuit thirty days before K.S.A. 25-1124(h) took effect, and before K.A.R. 7-36-9 supplied the statewide standards and cure procedures that Plaintiffs now challenge. At that point, in June 2021, Plaintiffs had no experience under the new system on which to base their predictions. Nevertheless, they alleged that the SVR would cause “countless” eligible Kansas voters to be disenfranchised. The benefit of four years of actual experience is that the Court need not decide this case based on such predictions.

The evidence now available bears no resemblance to the dire consequences Plaintiffs forecast. In the two general elections for which statewide evidence was presented, fewer than 1/10 of 1% of advance mail ballots were ultimately rejected because of an uncured signature inconsistency. These actual results are difficult, if not impossible, to reconcile with Plaintiffs’ contention that the SVR is administered in an arbitrary or materially disparate manner. The rejection figures do not show, of course, that every county official will reach the same conclusion concerning every signature. Nor must they. But they provide powerful evidence against Plaintiffs’ theory that differences in county administration or reviewer judgment have produced systemic disparate treatment. Dr. Aravkin testified that the number of ultimately rejected ballots was so

small that it could not even support meaningful statistical comparisons of the kind he had performed using much larger datasets from Washington and Colorado. In fact, the rejection rate was so tiny, he observed, that there was “very little room for improvement” between Kansas’ observed results and a 100% acceptance rate.

Against that evidence, Plaintiffs identify some differences in how individual counties administer certain aspects of the SVR and cure process. Those differences do not demonstrate that Kansas voters are subjected to different standards for determining whether their signatures are consistent. The evidence at trial underscored that Kansas counties vary widely in population, staffing, workload, and election experience. Johnson County processed 47,065 counted advance mail ballots in the 2024 General Election, while Riley County processed only 1,795, and Greeley County just 28. Such differences in scale necessarily affect how election offices may reasonably organize their operations, a point even Plaintiffs’ expert, Dr. Mayer, conceded.

Equal protection does not require those counties to administer every aspect of an election identically. As the Ninth Circuit explained in *Election Integrity Project California, Inc. v. Weber*, 113 F.4th 1072, 1091 (2024), *Bush v. Gore*, 531 U.S. 98 (2000), imposes only the “‘minimal’ standard of non-arbitrary state action,” not “absolute uniformity of election rules” or “total precision in their formulation.” Indeed, “[s]tate-by-state and intra-state variation in the administration of elections is a feature - not a bug - of our federal system.” *Id.* Likewise, even “uniform standards can produce different results,” *Lemons*, 538 F.3d at 1107, and “isolated discrepancies . . . are insufficient to demonstrate the absence of a uniform standard.” *Weber*, 113 F.4th at 1094 (internal quotations omitted).

Plaintiffs’ specific examples of purported nonuniformity do not demonstrate otherwise. Plaintiffs first emphasize differences in the number of election officials involved in reviewing a

questioned signature. But K.A.R. 7-36-9(g)(4) establishes a uniform statewide minimum: at least two election officials trained by the Secretary of State shall agree that a ballot envelope signature is inconsistent with the voter's signatures on file before the cure process may be initiated. Some counties provide additional review beyond that minimum. Riley County, for example, may involve a third reviewer, while Johnson County's process effectively requires agreement by additional personnel before finding a signature inconsistency. A county does not subject its voters to a materially different or less protective substantive standard merely because it provides additional review before questioning their signatures. Nor does the presence of an extra reviewer or two suggest that the SVR is incapable of being applied with reasonable uniformity.

Plaintiffs attach constitutional significance to differences in the number of exemplar signatures available for different voters and counties. But the evidence did not establish that such differences result from counties applying different standards. The number of available exemplars necessarily varies from voter to voter. A recently registered voter may have only a registration signature on file, while a long-time voter who has repeatedly applied for advance ballots, updated registration information, or otherwise submitted signed election documents may have numerous exemplars. Johnson County also possesses more historical signatures for many voters because of its frequent use of all-mail special elections. Such differences are an inevitable consequence of individual voters' histories and circumstances, not evidence that counties employ different substantive standards for determining whether signatures are consistent.

Nor did Plaintiffs establish material county-to-county differences in the types of signatures used for comparison. Election officials under K.A.R. 7-36-9(g)(1) shall compare the ballot envelope signature with the voter's signatures on file, and the trial evidence established that counties maintain signatures obtained through numerous interactions with voters. In Shawnee

County, Howell identified voter registration documents, advance ballot applications, prior ballot envelopes, poll pad signatures, and other voter correspondence as potential sources. Sherman likewise testified that Johnson County scans virtually every signed document received from a voter, except documents regarded as invalid or otherwise inappropriate for use as exemplars. Caskey testified that the Secretary of State has instructed counties to capture every voter signature received into the statewide system. Plaintiffs identified no evidence that any material variation in the retention of signatures has resulted in systemic disparate treatment of voters.

Plaintiffs also point to differences in the methods some counties use to facilitate the cure process. Those differences likewise do not establish nonuniformity. Kansas law provides every voter whose signature is questioned the same fundamental protection: notice of the inconsistency and an opportunity to cure before the county canvass. K.A.R. 7-36-9(b)-(e). The parties stipulated, and the trial testimony confirmed, that counties may use various practical means to provide that opportunity, including mail, electronic communication, and in rare circumstances, home visits. Reasonable uniformity, however, does not require counties of vastly different size and resources to employ identical administrative methods. Indeed, Dr. Mayer acknowledged that individualized assistance feasible in a smaller county, such as sending election personnel to a voter's residence, might be impracticable in Johnson County. What matters is that voters receive the same substantive protection – notice and a meaningful opportunity to cure – not that every county accomplish that objective through precisely the same means.

Plaintiffs' own election administration expert did not establish that these administrative variations produced materially differential treatment. None of Dr. Mayer's opinions at trial were based upon the actual number or percentage of Kansas advance mail ballots flagged, cured, counted, or rejected. He did not interview Kansas election officials or voters concerning the

operation of the SVR. And he could not identify a single ultimately rejected ballot that he could say represented an erroneous signature determination by Kansas election officials. Plaintiffs therefore presented no expert analysis demonstrating that the minor county-level variations they highlight have produced materially disparate outcomes.

The evidence at trial establishes that the statewide objective standards here are entirely capable of, and in practice have been, applied with reasonable uniformity.

EVEN IF THIS COURT APPLIED A RATIONAL BASIS OR OTHER BALANCING TEST, THE SVR PASSES MUSTER.

This Court declined, above, to apply a rational basis or other balancing test in addition to the “proper legal standard” announced by the Kansas Supreme Court in *LOWV III*. Defendants urged the application of a rational basis test to determine in addition whether the SVR “bears some rational relationship to a valid legislative purpose.” *Downtown Bar & Grill*, 294 Kan. at 193. But even if a balancing test were meant to be applied, the outcome would be the same.

Kansas has substantial and legitimate interests in protecting the integrity of its elections, preventing and deterring fraud, ensuring that advance mail ballots are cast by the voters to whom they were issued, promoting orderly election administration and finality, and maintaining public confidence in election results. *LOWV III* recognized the legitimacy of the State’s interest in preventing invalidly cast ballots from being counted. 318 Kan. at 802-03.

Dr. Atkeson likewise explained that sound election administration requires the simultaneous pursuit of three principal objectives: access, integrity, and finality. Election integrity is especially important because it assures the public that elections are conducted through a fair, orderly, and accurate process. Plaintiffs’ expert, Dr. Mayer, agreed that election integrity and public confidence are legitimate governmental concerns and characterized the proposition that government may act proactively to prevent fraud and protect election integrity as “unobjectionable and axiomatic.”

Those interests are important in the context of advance voting by mail. Unlike voting at a polling place, the application for, completion of, and return of a mail ballot ordinarily occur outside the presence of election officials. Election officials thus have fewer opportunities to verify that the person casting the ballot is the same registered voter to whom it was issued. As Caskey noted, the SVR addresses that concern by providing election officials a means of determining whether the person who signed the ballot envelope is the same individual reflected in the voter registration record.

Plaintiffs cannot negate that interest by arguing that documented instances of mail ballot fraud are comparatively rare. Dr. Atkeson explained that responsible election administration is necessarily proactive. Election officials cannot, and should not, wait until their own jurisdiction has experienced harm before implementing reasonable safeguards. Instead, they must evaluate potential risks and learn from difficulties encountered in other jurisdictions in determining whether similar safeguards are appropriate in their own election systems. States need not wait for election fraud to become widespread before adopting reasonable measures designed to prevent it. As the Supreme Court has repeatedly recognized, legislatures may act in advance to protect the integrity of elections without first establishing that the threatened harm has already occurred on a substantial scale. See *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1986) (“To require States to prove actual voter confusion, ballot overcrowding, or the presence of frivolous candidacies as a predicate to the imposition of reasonable ballot access restrictions would invariably lead to endless court battles over the sufficiency of the ‘evidence’ marshaled by a State to prove the predicate.”); *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 685-86 (2021) (“Fraud is a real risk that accompanies mail-in voting,” and a State “may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.”).

Nor does the relatively small number of criminal prosecutions establish that the State's concerns are illusory. Dr. Atkeson explained that election fraud is inherently difficult to detect and prosecution statistics are an unreliable measure of its actual incidence. Not every suspected instance of fraud results in prosecution. Kansas does not mandate that county election officials or prosecutors report every referral or prosecution to the Secretary of State. Prosecutors have broad discretion as to which cases to charge. There is also a practical finality problem unique to ballots: once a mail ballot has been separated from its signed envelope and counted, election officials cannot later identify and remove that ballot if they subsequently learn it was fraudulently cast. These practical realities further demonstrate why the State need not rely exclusively on after-the-fact detection and prosecution rather than reasonable preventive safeguards.

The trial evidence nevertheless demonstrated that the fraud risks addressed by the SVR are not purely hypothetical. Sherman testified that the Johnson County Election Office made criminal referrals during his tenure when a questioned signature, coupled with information obtained during the cure process, suggested that someone other than the registered voter had cast the ballot. In one such instance, the purported voter reported being away at school and stated that he had neither signed nor voted the ballot. Howell similarly testified about his experiences in Shawnee County. Dr. Atkeson referenced incidents from other jurisdictions in which signature verification revealed ballots signed by someone other than the registered voter, including parents signing ballots issued to children away on religious missions and a Colorado voter who advised election officials during the cure process that he had neither received nor voted the ballot attributed to him. These examples are not necessary to establish the constitutionality of the SVR, but they suggest that the risk Kansas seeks to address is a real one.

The SVR also advances Kansas’ interest in the orderly administration of elections. That interest extends beyond preventing fraud. As the Supreme Court recognized, a State’s interest in electoral integrity encompasses identifying invalid signatures resulting from mistake as well as fraud and, more broadly, “promoting transparency and accountability in the electoral process.” *Doe v. Reed*, 561 U.S. 186, 198 (2010). The trial evidence demonstrated why the SVR serves those objectives. Dr. Atkeson testified that approximately 32 states employ signature verification for mail ballots and that the process combines several useful administrative features: it imposes a low barrier on voters, requires relatively little additional technology from election administrators, and creates a transparent and auditable record that can be reviewed if questions later arise concerning an election. Those features are particularly valuable in mail voting, where election officials relinquish the chain of custody they possess when voting occurs in person.

The State also has a substantial interest in protecting public confidence in the integrity of its elections. See *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008). The Kansas-specific evidence at trial supports that interest. Dr. Atkeson testified that approximately 66% of Kansas respondents to the Survey of the Performance of American Elections in 2022 reported that signature verification increased their confidence in elections either “a lot” or “a little.” The corresponding figure in 2024 was approximately 62%. While that survey data does not establish whether election fraud actually occurred, it does demonstrate that signature verification itself contributes to public confidence in the security of Kansas elections.

The State’s substantial interests are advanced through the imposition of a modest requirement on advance mail voters. Kansas does not require mail voters to appear before an election official, have their signatures notarized, or satisfy a forensic standard of authenticity. It simply requires them to sign the ballot envelope, just as they signed the application used to obtain

the ballot. If trained election officials conclude that the signature is inconsistent with the voter's signatures on file, the ballot is not rejected. The voter instead receives notice and an opportunity to cure before the canvass. The actual experience under the SVR confirms the limited nature of the resulting burden: more than 99.9% of advance mail ballots were ultimately counted in both general elections for which the Court received evidence.

In sum, there is far more than the "rational connection" necessary under rational basis review, *Hoesli v. Triplett, Inc.*, 303 Kan. 358, 370, 361 P.3d 504 (2015), for the SVR to pass constitutional muster. Requiring a voter casting a ballot outside the presence of election officials to provide a signature that is generally consistent with a signature already associated with that voter is clearly and rationally related to the State's interests in deterring improperly cast ballots, protecting the weight of lawful votes, facilitating the orderly administration of elections, and maintaining public confidence in election results. The fact that Plaintiffs or their experts might prefer different safeguards, additional training, or some alternative method of identity verification does not render the Legislature's chosen means unconstitutional.

The same conclusion follows under *Anderson-Burdick*. The burden imposed by the SVR is minimal, and that modest burden must be compared to and contrasted with the State's significant interests described above. Reasonable, nondiscriminatory election regulations are justified by important regulatory interests. *Burdick*, 504 U.S. at 434. A state has no obligation to demonstrate that its chosen measures are the least restrictive or most finely calibrated means of advancing those interests.

Again, this Court did not interpret the mandate in *LOWV III* to include application of either of these tests. But even if analyzed under a traditional rational basis review, or *Anderson-Burdick*

balancing, the result is the same. Plaintiffs' equal protection claim fails under the standard articulated in *LOWV III*, with or without either of these alternative standards.

PLAINTIFFS' DUE PROCESS CLAIM

Plaintiffs assert that the SVR violates Section 18 of the Kansas Constitution Bill of Rights. Section 18 says: "All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay." The phrase "remedy by due course of law" is "tied to due process concerns." *In re Marriage of Soden*, 251 Kan. 225, 233, 834 P.2d 358 (1992). "The basic elements of procedural due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *State v. N.R.*, 314 Kan. 98, 113, 495 P.3d 16 (2021).

THE KANSAS SUPREME COURT'S DUE PROCESS FRAMEWORK FOR THIS CASE.

The Kansas Supreme Court framed the due process analysis to be applied to the statute and regulation at issue here:

"To comply with due process guarantees, any proper proofs devised by the Legislature must include reasonable notice to the voter and an opportunity to be heard at a meaningful time and in a meaningful manner by providing an opportunity to contest the disqualification of otherwise valid absentee ballots and to cure deficiencies based on an apparent discrepancy between the voters' signatures and sample signatures available to election officials." *LOWV III*, 318 Kan. at 806.

In summing up this discussion, the majority opinion of the Kansas Supreme Court provided specific guidance to this Court: the "proper legal standard" to be applied on remand is whether the SVR provides voters with "reasonable notice of defects and an opportunity to cure." *Id.* at 807.

Plaintiffs suggest that this Court should apply the Kansas Supreme Court's test above *plus* the balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under *Mathews*, the Plaintiffs would have this Court weigh the private interest affected, the risk of erroneous deprivation, the probable value of additional safeguards, and the government interests involved.

But the majority in *LOWV III* did not adopt *Mathews* as part of the “proper legal standard” and did not direct this Court to apply it on remand, so it will not be applied here.

The statute and the regulation on their face provide for reasonable notice to the voter of a signature discrepancy. In Kansas, ballots “shall be transmitted” to the advance voter “within two business days of the receipt of such voter's application” but “not more than 20 days before the election.” K.S.A. 25-1123(a). Upon return of the advance ballot, if the voter’s signature on the advance ballot envelope does not match a signature on file, the county election officer “shall attempt to contact” that voter and allow the opportunity to correct the deficiency before the commencement of the final county canvass. K.S.A. 25-1124(b). The final county canvass occurs between the sixth and 13th day following an election. K.S.A. 25-3104.

If the voter’s phone number is reasonably available, the county election official shall attempt to call the voter at least three times, and either speak to the voter or leave a message with another person or with voice mail. K.A.R. 7-36-9(b)(2)(A). The official shall inform the voter of the apparently inconsistent signature and the way to verify the voter's identity. The election official shall send a letter by first class mail to the voter with the same information. K.A.R. 7-36-9(b)(2)(B). The election official may also attempt to contact the voter by email, a personal visit, or other means. K.A.R. 7-36-9(b)(2)(C). County election officials are directed to record the details of the contacts made. K.A.R. 7-36-9(c).

The statute and the regulation on their face provide for an opportunity to cure a signature discrepancy. Once contacted, a voter may correct an inconsistent ballot envelope signature at any time until the commencement of the county canvass by providing an updated signature. K.A.R. 7-36-9(d)(1). If the discrepancy is cured, the ballot is counted. The key point is that the State provides

the voter an opportunity to resolve the perceived deficiency *before* the ballot is finally excluded, rather than merely informing the voter after the deprivation has occurred.

Riley County Clerk Vargo testified that his office commences the cure process immediately after staff identify an inconsistency. Riley County calls the voter right away, sends written notice the same day, and makes additional telephone calls over the following two days when necessary. Shawnee County Election Commissioner Howell similarly testified that his office ordinarily begins the notice process the same day the inconsistency is identified or within approximately 24 hours. No evidence presented at trial demonstrated any systemic delay by county election offices in processing advance mail ballots or initiating the cure process.

The evidence likewise demonstrated flexibility in the manner in which voters may cure. County election officials described procedures permitting voters to verify their identities and provide updated signatures through practical means that include in-person submission, mail, and, in many circumstances, electronic transmission. Even home visits occur on occasion. Contact with the voter is not always possible, of course, and curing does not always occur. Election officials can provide voters the opportunity to cure but cannot compel voters to respond to those efforts. That is not a constitutional infirmity. Due process requires a meaningful opportunity to cure. It does not require election officials to guarantee that every voter will avail himself or herself of that opportunity.

ISOLATED INCIDENTS DO NOT RENDER THE SVR UNCONSTITUTIONAL.

Plaintiffs cannot establish that the SVR is unconstitutional simply by identifying instances in which an election official may have made an erroneous determination or failed to administer the cure procedures perfectly. The trial record provides no basis for concluding that Kansas' cure procedures are inherently incapable of providing constitutionally adequate process. The governing

regulation requires affirmative notification efforts and affords voters whose signatures are questioned an opportunity to cure before their ballots are rejected. The testimony concerning the actual administration of those procedures demonstrated that county election officials initiate the cure process promptly and employ multiple means of attempting to reach affected voters. The possibility that an election official might occasionally make a mistake in administering those procedures does not transform an otherwise constitutionally adequate system into a facial violation of Section 18.

In sum, the evidence establishes that Kansas provides the process that *LOWV III* requires. Voters whose ballot envelope signatures are questioned receive reasonable notice of the perceived deficiency and a meaningful opportunity to cure before their ballots are finally rejected. Plaintiffs have not shown that the SVR or its implementing regulation inherently denies voters either protection. Plaintiffs' facial due process challenge under Section 18 therefore must fail.

PLAINTIFFS' RIGHT TO VOTE CLAIM

Finally, to the extent Plaintiffs raise the specter of their right to vote claim under the Kansas Constitution, it will not be addressed here. The Kansas Supreme Court rejected this claim in *LOWV III* and did not direct this Court to address it on remand. The mandate rule prohibits this Court's consideration of Plaintiffs' right to vote claim. See K.S.A. 60-2106(c) (mandate and opinion of Kansas Supreme Court "shall be controlling in the conduct of any further proceedings necessary in the district court." A district court must execute any further proceedings "according to the command of the appellate court made therein," K.S.A. 20-108, and as part of this directive, "a district court is required to apply the mandate without exception." *State v. Kleypas*, 305 Kan. 224, 297, 382 P.3d 373 (2016).

CONCLUSION

Plaintiffs failed at trial to demonstrate standing to pursue their attack on the SVR. As a threshold matter, it requires dismissal of this case. But even if at least one Plaintiff had standing to sue, the claims would fail on the merits. The SVR achieves reasonable uniformity on objective standards, and it provides voters reasonable notice of a questioned signature and a meaningful opportunity to cure before their ballots are rejected. Plaintiffs have simply not demonstrated that K.S.A. 25-1124(h) or K.A.R. 7-36-9 violate their rights to equal protection or due process under the Kansas Constitution.

This case is dismissed because Plaintiffs lack standing to sue. In the alternative, this Court would enter judgment in favor of Defendants on the merits of the equal protection and due process claims. Plaintiffs' request for a permanent injunction is denied; this terminates the litigation in favor of Defendants. No further journal entry is necessary.

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

**HON. TERESA L. WATSON
DISTRICT COURT JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically on the date stamped on the order, providing notice to counsel of record.

/s Angela Cox
Administrative Assistant