No. 23-125084-S

IN THE SUPREME COURT OF THE STATE OF KANSAS

LEAGUE OF WOMEN VOTERS, et al.,

Plaintiffs-Appellants,

v.

SCOTT SCHWAB, in his official capacity as the Secretary of State for the State of Kansas, et al.,

Defendants-Appellees.

On Appeal from the Kansas Court of Appeals,
Decision Dated March 17, 2023

Appeal from the District Court of
Shawnee County, Kansas
Honorable Teresa Watson, District Judge
District Court Case No. 2021-CV-000299

AMICUS CURIAE BRIEF OF PUBLIC INTEREST LEGAL FOUNDATION, INC.

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IDENTITY AND INTERESTS OF THE *AMICUS CURIAE*

The Public Interest Legal Foundation, Inc. ("Foundation") is a non-partisan, public interest 501(c)(3) organization whose mission includes working to protect the fundamental right of citizens to vote and preserving election integrity across the country. For over a decade, the Foundation has sought to advance the public's interest in having elections free from unconstitutional burdens and discrimination. At the state level, this is best done by ensuring that state laws enacted by each state's legislative branch are constitutional. It is also done by monitoring judicial actions that intrude into the delegated responsibilities of the legislative branch. The separation of powers is foundational to election systems that are fair and free from undue partisan manipulation.

This case is of interest to the Foundation as it is concerned with protecting the sanctity and integrity of American elections and preserving the proper Constitutional balance of state control over elections. This appeal concerns challenges to the State of Kansas's signature verification requirement, K.S.A. 25-1124(h) and ballot collection restrictions, K.S.A. 25-2437(c). The level of scrutiny with which the Court of Appeals evaluated the challenged laws is a significant departure from other jurisprudence regarding election laws. This case also presents important issues regarding a state's interest in ensuring fair and honest elections.

The Foundation has extensive experience in election law litigation and is involved in such cases throughout the nation. The Foundation has filed *amicus curiae* briefs in cases on various election-related issues. *See, e.g.*, Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellants, *Merrill v. Milligan*, Case Nos.

21-1086, 21-1087, 142 S. Ct. 879 (2022); Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellants, *Rucho v. Common Cause*, Case No. 18-422, 139 S.Ct. 2484 (2019); Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellees, *Lichtenstein, et al., v. Hargett, et al.*, Case No. 22-5028, Dkt. Entry 39 (6th Cir. 2022); Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Defendant-Appellants, *League of Women Voters of Florida, Inc., et al. v. Florida Secretary of State, et al.*, Case No. 22-11133, 66 F.4th 905 (11th Cir. 2023). The Foundation has also been involved in cases determining the legality and constitutionality of state election practices. *See, e.g., Albence v. Higgin*, Case No. 342, 2022, 2022 Del. LEXIS 377, 2022 WL 17591864 (Del. 2022); *Pub. Interest Legal Found., Inc. v. Bellows*, Case No. 1:20-cv-00061, U.S. Dist. LEXIS 52315, 2023 WL 2663827 (D. Me. 2023); *Lisa M.F. Kim v. Bd. of Educ. of Howard Cnty.*, Civil Action No. DKC 21-0655, 2022 U.S. Dist. LEXIS 209893, 2022 WL 17082368 (D. Md. 2022).

SUMMARY OF THE ARGUMENT

The Constitution explicitly provides State legislatures with authority to regulate the "Times, Places and Manner of holding Elections[.]" U.S. Const. art. I, § 4, cl. 1. The Kansas Legislature exercised its constitutional authority in passing reasonable election integrity laws.

A review of empirical proven election crimes across the nation underscores the reasonableness of Kansas's election laws. Even one illegally cast vote can have significant consequences and there are myriad examples across the nation where signature verification procedures have affected the outcome of an election.

ARGUMENT

I. Kansas Has an Important Regulatory Interest in Ensuring Election Integrity.

Reasonable and nondiscriminatory restrictions, like those passed by the Kansas Legislature and challenged here, are justifiable because of a state's important regulatory interests in ensuring a fair and honest election.

> Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.

Burdick v. Takushi, 504 U.S. 428, 433 (1992) (internal citations and quotations omitted).

State laws regarding "the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (internal citations and quotations omitted). "Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Id.*

The district court correctly determined that Kansas had sufficient justifications for passing the challenged laws. As the district court stated as to one of the challenged laws, the Signature Verification Requirement, such provisions are "reasonable, non-discriminatory restrictions which are outweighed by the state's compelling state interest in the integrity of its elections." Petition for Review, Vol. 5, Page 74-75. *See also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) ("A State indisputably has a compelling interest in

preserving the integrity of its election process") (internal citations and quotations omitted); *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (affirming that "a state has a compelling interest in ensuring that an individual's right to vote is not undermined by fraud in the election process").

The United States Supreme Court has made it clear that:

> There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear.

Crawford v. Marion County Election Bd., 553 U.S. 181, 196 (2008).

II. Even One Illegally Cast Vote Can Have Consequences in Kansas.

Across the country, elections are won (or lost) by razor thin margins. The Foundation has published a database of elections that have *ended in ties or been decided by one vote*. Each example demonstrates how one illegally cast vote can have significant consequences. Public Interest Legal Foundation, *Tracking Elections that Ended in Ties & Close Results*, https://publicinterestlegal.org/tied-elections/. So far, the Foundation has cataloged 580 elections that ended in ties and 142 elections that were decided by only one vote. *Id.* The Foundation's database, though not an exhaustive list, include three examples of very close elections in Kansas: two that were decided by just one vote (2004 general election for District Magistrate, 25th Judicial District and 2016 primary election for Kansas House of Representatives, District 76) and one that ended in a tie (2014 primary election for Kansas House of Representatives, District 65). In most states, tied elections

come down to some form of a game of chance. *See, e.g.*, Public Interest Legal Foundation, "Kansas Lottery," *available at* https://publicinterestlegal.org/wp-content/uploads/2023/06/Tie-Breaking-Chart.pdf; *see also* K.S.A. § 25-3208.

III. Recent Cases Across the Country Underscore that Kansas's Laws Are Reasonable and Beneficial.

A review of recent cases involving errors (or worse) regarding mail-in voting further demonstrates that Kansas's laws are reasonable and beneficial.

Many examples come from the Heritage Foundation's "Election Fraud Database." As background, the Heritage Foundation, a research and educational institution, hosts an "Election Fraud Database" on its website. *See* https://www.heritage.org/voterfraud. The Heritage Foundation notes that its "database is not an exhaustive or comprehensive list. This database is intended to demonstrate the vulnerabilities in the election system and the many ways in which fraud is committed." *Id.*

Alabama and New Jersey: Signature Mismatch Changes Winner of Election Contest

One example of a close election that came down to the verification of signatures is that of a seat for city council in Wetumpka, Alabama. The initial results had the incumbent winning by 3 votes. Corey Arwood, "Washington wins District 2 council dispute," Aug. 23, 2023, *available at* https://www.thewetumpkaherald.com/archives/washington-wins-district-2-council-dispute/article_66a4225e-218f-50b0-9f32-7d7a3a4e40d0.html. His opponent brought a legal challenge regarding 8 specific ballots, which the judge ultimately determined were not properly cast. *Id.* It was determined that "at least three of the eight voters appeared to

have not signed their own name on the ballot." *Id.* One mother admitted that she signed her son's name and two more were determined "to be signed by the same woman signing on behalf of other people." *Id. See also* The Heritage Foundation, *Wetumpka City Council District 2*, https://www.heritage.org/voterfraud/9675.

Another example germane to the challenged laws comes from May 2020 in New Jersey. An election was held for the Third Ward Paterson City Council. Ultimately, a judge held that the election "was rife with mail in vote procedural violations constituting nonfeasance and malfeasance." Statement of Reasons, *McKoy v. Passaic County Board of Elections, et. al.*, Docket No.: PAS-L-1751-20 (Aug. 19, 2020), *available at* https://s.wsj.net/public/resources/documents/PatersonElectionRedo.pdf. Specifically, "Of all ballots cast in the Third Ward City Council election 24.29% were rejected." *Id.* According to press accounts, "the most common reason for the votes' disqualification was problems with voters' signatures not matching those on registration documents." Joe Malinconico, "Rejection rates of Paterson vote-by-mail ballots last month far exceeded previous years," June 6, 2020, *available at* https://www.northjersey.com/story/news/paterson-press/2020/06/06/paterson-nj-rejection-rates-votes-far-exceeded-previous-years/3158594001/. The anomalies with so many mail in ballots lead to an investigation which resulted in two city councilmen being indicted on mail-in voting fraud charges. *See* Noah Cohen, "2 N.J. councilmen indicted on mail-in voting fraud charges," Mar. 3, 2021, *available at* https://www.nj.com/passaic-county/2021/03/2-nj-councilmen-indicted-on-mail-in-voting-fraud-charges.html. *See*

also The Heritage Foundation, *May 2020 Third Ward Paterson City Council Election*, https://www.heritage.org/voterfraud/10041.

Michigan: Signature Mismatch Calls into Question Influx of Registration Forms

Recently, the City of Muskegon, Michigan was in the news because of 8,000-10,000 suspected fraudulent voter registration forms discovered prior to the 2020 General Election. Craig Mauger, "Michigan probe into fraudulent voter registrations referred to FBI," Aug. 11, 2023, *available at* www.detroitnews.com/story/news/politics/2023/08/11/michigan-probe-muskegon-fraudulent-voter-registrations-referred-to-fbi-attorney-general-dana-nessel/70574380007/. Given that the city has approximately 28,000 individuals registered to vote, *id.*, an influx of 8,000 to 10,000 new voter registrations would constitute an increase in the number of registrants of more than 28 percent. According to news reports, "Things that the clerk considered red flags according to the documents include Muskegon High School being listed as a residential address, signatures looking similar, and signatures not matching up with Secretary of State documentation." Julie Dunmire, "Documents detail MSP investigation into alleged Muskegon-area voter fraud," Sept. 1, 2023, *available at* https://www.fox17online.com/news/local-news/lakeshore/muskegon/documents-detail-msp-investigation-into-alleged-muskegon-area-voter-fraud.

Indiana, Oklahoma, Texas: Examples of Patterns of Signature Irregularities

Two men were sentenced in Indiana following an investigation into signature irregularities on requests for absentee ballots. At least 20 registrants confirmed that they did not submit requests for absentee ballots. Travis Thayer, "Lawrenceburg Men Receive

Probation in Voter Fraud Case," Jan. 4, 2023, *available at* https://www.eaglecountryonline.com/news/local-news/lawrenceburg-men-receive-probation-in-voter-fraud-case/. See *also*, The Heritage Foundation, *James Bartlett*, https://www.heritage.org/voterfraud/10229.

An Adair, Oklahoma man was charged with signing the names of two individuals on absentee ballots in February 2009. Sheila Stogsdill, "Adair County man charged with voter fraud," July 16, 2010, *available at* https://www.oklahomau.com/story/news/2010/07/16/adair-county-man-charged-with-voter-fraud/61226648007/. The same man had been investigated but not charged previously when he was found to have notarized 265 or the 465 absentee ballots in the county in 2004. *Id.* See *also*, The Heritage Foundation, *Darryl Cates*, https://www.heritage.org/voterfraud/9271.

In Texas, elderly voters complained of someone signing their names on mail-in ballots. Specifically, one man was accused of visiting a woman and taking her absentee ballot. *See* Tasha Tsiaperas, "Bogus voter gets 180 days in Dallas jail for forging mail-in ballot," June 20, 2018, *available at* https://www.dallasnews.com/news/courts/2018/06/20/bogus-voter-gets-180-days-in-dallas-jail-for-forging-mail-in-ballot/. "The woman contacted the district attorney's office about the incident. She identified Hernandez from a photo lineup." *Id.* See *also*, The Heritage Foundation, *Miguel Hernandez*, https://www.heritage.org/voterfraud/9783.

Pennsylvania: Examples of Individuals Signing the Ballot of a Relative

On a smaller scale are the examples of an individual caught forging a relative's signature on a ballot. In 2020, the Foundation's research found tens of thousands of deceased registrants on Pennsylvania's voter roll prior to the 2020 general election. The Foundation's research found 114 individuals that appeared to register to vote *after* the listed date of death. Public Interest Legal Foundation, *PA Lawsuit: 21K Deceased on Voter Rolls, Evidence of Voting Activity After Death*, Nov. 5, 2020, *available at* https://publicinterestlegal.org/press/pa-lawsuit-21k-deceased-on-voter-rolls-evidence-of-voting-activity-after-death/. One such person was Judith Presto. *See* J. Christian Adams, "ADAMS: The Evidence Is Real – Dead People Are Voting," June 11, 2022, *available at* https://dailycaller.com/2022/06/11/opinion-the-evidence-is-real-dead-people-are-voting-adams/. Shortly thereafter, Judith Presto's husband was charged for "requesting and casting a ballot in the name of his late wife, Judy Presto, who died in 2013." Mick Stinelli, "South Park man charged with casting ballot in dead wife's name," *Pittsburgh Post-Gazette* (Jan. 29, 2021), *available at* https://www.post-gazette.com/news/crime-courts/2021/01/29/voter-fraud-francis-presto-south-park-republican-election-ballot-dead-wife/stories/202101290136.

Colorado, Minnesota, and Washington: Family Impersonation

In 2018, the former chairman of the Colorado Republican Party was convicted of a felony when he filled out and signed his ex-wife's ballot in the 2016 general election. Michael Karlik, "Appeals court upholds former GOP chair's felony conviction for voter fraud," Aug. 5, 2021, *available at* https://www.coloradopolitics.com/courts/appeals-court-

upholds-former-gop-chairs-felony-conviction-for-voter-fraud/article_1d7e3e08-f628-11eb-b628-677d2ce0f1b9.html. His ex-wife, who lived in another state at the time, sought an absentee ballot but "learned that she had apparently voted already." *Id.* During the trial, he attributed the actions to "diabetes" and "poor vision, lack of sleep, and stress." *Id.* He was convicted of a misdemeanor mail ballot offense and felony forgery. *Id. See also*, The Heritage Foundation, *Steven Curtis*, https://www.heritage.org/voterfraud/9687.

Meanwhile, in Minnesota, a woman was convicted of voting for a former household resident in the 2016 primary election. The Free Press, "Voter fraud charge reduced to misdemeanor," Feb. 13, 2017, *available at* https://www.mankatofreepress.com/news/local_news/voter-fraud-charge-reduced-to-misdemeanor/article_1e875196-f206-11e6-8cd9-e72e8e0a799d.html. *See also*, The Heritage Foundation, *Michelle Marie Landsteiner*, https://www.heritage.org/voterfraud/9657.

In 2009, a Washington woman was charged with forging her son's signature on a ballot in the 2008 general election. Her son was not even eligible to vote as he had been convicted of domestic violence against his mother earlier in 2008. Kirk Boxleitner, "Marysville woman charged with voting fraud," Oct. 12, 2009, *available at* https://www.marysvilleglobe.com/news/marysville-woman-charged-with-voting-fraud/. *See also*, The Heritage Foundation, *Janice Waters*, https://www.heritage.org/voterfraud/9503.

CONCLUSION

For the foregoing reasons, the Foundation respectfully requests that the Court reverse the Kansas Court of Appeals' decision.

Respectfully submitted,

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ATTORNEYS FOR *AMICUS CURIAE*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 25, 2023, the above and foregoing *Amicus Curiae* Brief of the Public Interest Legal Foundation was electronically filed with the Kansas Supreme Court using the Court's electronic filing system, which will send notice to all counsel of record.

/s/ Ryan A. Kriegshauser
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