

No. 22-125084-AS

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IN THE SUPREME COURT OF THE STATE OF KANSAS

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LEAGUE OF WOMEN VOTERS OF KANSAS; LOUD LIGHT;  
KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC.;  
TOPEKA INDEPENDENT LIVING RESOURCE CENTER;  
CHARLEY CRABTREE; FAYE HUELSMANN; AND PATRICIA LEWTER,

*Plaintiffs/Appellants,*

vs.

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

*Defendants/Appellees.*

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BRIEF OF *AMICUS CURIAE*  
LAWYERS DEMOCRACY FUND

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Appeal from the District Court of Shawnee County  
Hon. Teresa Watson, Judge  
District Court Case No. 21-CV-299

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TOPEKA INDEPENDENT LIVING RESOURCE CENTER;  
CHARLEY CRABTREE; FAYE HUELSMANN; AND PATRICIA LEWTER,

*Plaintiffs/Appellants,*

vs.

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

*Defendants/Appellees.*

---

BRIEF OF *AMICUS CURIAE*  
LAWYERS DEMOCRACY FUND

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**IDENTITY AND INTEREST OF AMICUS CURIAE**

Lawyers Democracy Fund (“LDF”) is a social welfare organization that promotes ethics and legal professionalism in the electoral process. LDF seeks to ensure that all citizens are able to exercise their right to vote and that reasonable, common-sense administrative processes and protections may be implemented to (a) prevent the dilution of any citizen’s vote or disenfranchisement as a result of administrative error or fraud and (b) instill public confidence in election procedures and outcomes. LDF periodically engages in public interest litigation to uphold the rule of law and integrity in elections and files briefs as *amicus curiae*

in cases where its background, expertise, and national perspective in the field of election law may help illuminate important points for consideration.

LDF has an interest in the issues presented in this case, which involves the constitutionality of two state election regulations: the signature verification requirement in K.S.A. 25-1124(h), and ballot collection restrictions in K.S.A. 25-2437(c). The appellate court applied strict scrutiny to find that these laws violated the general right to vote secured by the Kansas Constitution. If allowed to stand, this result will unduly impair the State's regulatory power to structure the electoral process to ensure the efficiency, integrity, and reliability of its elections, which would make Kansas law an extreme outlier in the Nation.

LDF's expertise is particularly appropriate to demonstrate that the two provisions at issue in this case are consistent with the election laws of states across the country: Many states have adopted similar regulations to protect the integrity and reliability of the electoral process. This Court should consider the mainstream election laws of other states when evaluating claims that Kansas' signature verification and ballot collection regulations violate the right to vote. This amicus brief catalogues those regulations, which confirm that the Kansas Legislature's approach is consistent with the widespread adoption of similar legislation aimed at ensuring fair and efficient elections.

LDF is also concerned with the Court of Appeals' holding that strict scrutiny applies to all election administration rules that inherently affect exercise of the franchise. The United States Supreme Court has uniformly held that strict scrutiny is reserved only for restrictions that severely burden the right to vote. For all other restrictions, the Supreme Court applies

a flexible standard that judges election restrictions on a case-by-case basis, and it has repeatedly rejected constitutional challenges where, as here, a state enacts evenhanded regulations that protect election integrity and impose only a modest burden on voting rights. That same approach should be considered and applied here. Moreover, the Court of Appeals' approach fails to properly weigh the State's profoundly important regulatory interests in structuring an electoral process that is fair, honest, and efficient.

## ARGUMENTS AND AUTHORITIES

### **I. THE COURT SHOULD CONSIDER OTHER STATES' ELECTION PRACTICES WHEN EVALUATING CLAIMS THAT THE ELECTION REGULATIONS HERE DENY KANSANS' RIGHT TO VOTE.**

The plaintiffs here challenge two election laws that they claim operate to deny them their right to vote. These laws do not exist in a vacuum. They are interwoven parts of an election administration system calibrated by the Kansas Legislature to protect all Kansans' fundamental right to vote, while ensuring integrity and uniformity in the process. The U.S. Constitution assigns this responsibility to the Kansas legislature in conducting federal elections, which unavoidably govern Kansas elections. U.S. CONST., art. I, § 4; *cf. Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) (“The Constitution provides that state legislatures-not federal judges, not state judges, not state governors, not other state officials-bear primary responsibility for setting election rules.”) (Gorsuch and Kavanaugh, JJ., concurring). Accordingly, “the legislature in each state of our federal system possesses the presumptive authority to regulate elections within that state’s

sovereign territory. This authority stems directly from . . . Article I Section 4 Clause 1 of the Constitution.” *Libertarian Party of Virginia v. Alcorn*, 826 F.3d 708, 714 (4th Cir. 2016). The Court recently stressed that, because “the Elections Clause vests power to carry out its provision in ‘the Legislature’ of each State,” courts may not use expansive language in state constitutions to “arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Moore v. Harper*, 143 S.Ct. 2065, 2088, 2089 (2023).

Moreover, Kansas’ signature verification and ballot collection regulations are fully consistent with the election laws of states across the country. Courts regularly and appropriately consider the experiences of other states-and the election administration rules fashioned in response to those experiences-as relevant touchstones for determining the lawfulness of rules in a particular case. For example, in evaluating whether Indiana’s voter identification law violated the Fourteenth Amendment, the United States Supreme Court surveyed the “different methods of identifying eligible voters at the polls” that states use and noted the “increasing number of States [that] have relied primarily on photo identification.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008); *see also id.* at 222-23 (Scalia, Thomas, and Alito, JJ., concurring) (citing briefs comparing various other states’ voter identification laws relative to Indiana’s law and *Randall v. Sorrell*, 548 U.S. 230, 253 (2006), where the Court compared Vermont’s campaign contribution limits with those in other states). Similarly, in evaluating whether Arizona’s ban on voters voting outside of their precincts violated the Fifteenth Amendment and Section 2 of the Voting Rights Act (52 U.S.C. § 10301), the Court looked to other states’ election laws and determined that such a

ban was “widespread” among the states. *Brnovich v. Democratic Nat’l Comm.*, 141 S.Ct. 2321, 2345 (2021) (citation omitted).

The bottom line in this case is that the procedures in current use by other states demonstrate that the two election laws at issue here are entirely within the mainstream of the Nation’s election-regulation systems. And, as a practical matter, this Court could not hold that Kansas’ election rules are unlawful without making Kansas an outlier in its evaluation of election laws. Such a drastic conclusion is wholly unwarranted here.

## **II. KANSAS’ SIGNATURE VERIFICATION AND BALLOT COLLECTION REGULATIONS ARE ENTIRELY CONSISTENT WITH OTHER STATES’ LAWS.**

### **A. Forty-One States Have Adopted Signature Regulations To Protect The Integrity Of Absentee Ballots.**

Plaintiffs challenge a Kansas law that requires election officials to verify all signatures on advance ballots (i.e., absentee or mail-in ballots) before counting. K.S.A. 25-1124(h) (“Section 25-1124(h)”). Specifically, the statute provides that advance ballots shall not be accepted or counted unless election officials verify that the signature on the ballot matches that in the voter registration file. The appellate court found that this requirement “burdens the whole electorate” because of the risk that signatures would be “wrongly mismatched” by inept administrators. *League of Women Voters of Kansas v. Schwab*, 63 Kan. App. 2d 187, 212, 525 P.3d 803 (2023). Setting aside the fact that this was based solely on Plaintiffs’ allegations, it further ignores the longstanding presumption that government workers will adequately perform their duties *See, e.g., Dauffenbach v. City of Wichita*, 233 Kan. 1028, 1033, 667 P.2d 380 (1983); *Gladen v. State*, 196 Kan. 586, 590, 413 P.2d 124 (1966).

Kansas' approach is entirely consistent with laws adopted throughout the country. The vast majority of states have adopted regulations that similarly require confirmation of the authenticity of advance ballots through signature verification or other means to prevent the all-too-common problem of absentee ballot fraud. *See, e.g., Crawford*, 553 U.S. at 195-96 (noting problem of absentee ballot fraud); *Brnovich*, 141 S.Ct. at 2340 (“One strong and entirely legitimate state interest is the prevention of fraud. . . . [F]raudulent votes dilute the right of citizens to cast ballots that carry appropriate weight.”).

Kansas is one of 31 states that subject advance ballots to signature verification.<sup>1</sup> Consistent with Section 25-1124(h), these laws generally require state or local election officials to compare the signature on a voter's advance ballot with the signature on file in the state's voter file (usually against the voter's registration materials). *See, e.g., N.D. CENT. CODE* § 16.1-07-12 (election officials “shall compare the signature on the application for an absent voter's ballot with the signature on the voter's [absentee] affidavit . . . to ensure the signatures correspond”); *OR. REV. STAT.* § 254.470(11) (the election official “shall verify the

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<sup>1</sup> Arizona, *ARIZ. REV. STAT.* §16-550(A); Arkansas, *ARK. CODE* § 7-5-416(b)(1)(F)(i); California, *CAL. ELEC. CODE* § 3019; Colorado, *COLO. REV. STAT.* § 1-7.5-107.3; Florida, *FLA STAT.* § 101.68(1)(a), (2)(c); Hawaii, *HAW. REV. STAT.* § 11-106(3); Idaho, *IDAHO CODE* § 32-1005(2); Illinois, *10 ILL. COMP. STAT.* § 5/19-8(g); Indiana, *IND. CODE* § 3-11.5-4-5; Iowa, *IOWA CODE* § 53.18(3); Kansas; Kentucky, *KY. REV. STAT.* § 117.087(c)(5); Maine, *ME. REV. STAT.* § 756(2); Massachusetts, *MASS. GEN. LAWS* ch. 54, § 94; Michigan, *MICH. COMP. LAWS* § 168.766; Mississippi, *MISS. CODE ANN.* § 23-15-639(1)(b); Montana, *MONT. CODE* § 13-13-241(1); Nevada, *NEV. REV. STAT.* § 293.269927; New Hampshire, *N.H. REV. STAT.* § 659:50; New Jersey, *N.J. STAT. ANN.* § 19:63-17(a); New York, *N.Y. ELEC. LAW* § 9-209(2)(c); North Dakota, *N.D. CENT. CODE* § 16.1-07-12; Ohio, *OHIO REV. CODE* § 3509.06(D); Oregon, *OR. REV. STAT.* § 254.470(11); Rhode Island, *17 R.I. GEN. LAWS* § 17-20-26(c); South Dakota, *S.D. CODIFIED LAWS* §§ 12-19-10, 12-19-10.1; Tennessee, *TENN. CODE ANN.* § 2-6-202(g); Texas, *TEX. ELEC. CODE* § 87.027; Utah, *UTAH CODE ANN.* § 20A-3a-401(2)(b), (3), (11); Washington, *WASH. REV. CODE* § 29A.40.110(3); and West Virginia, *W. VA. CODE*, § 3-3-10(b)(4).



signature of each elector on the return identification envelope with the signature on the elector’s registration record”).

Of the minority of states that do not conduct signature verification, ten states have taken far more aggressive steps to verify voter identity to protect the integrity of advance ballots. Three states require advance ballots to be notarized—a significantly more burdensome requirement on voting than after-the-fact signature verification by election officials.<sup>2</sup> Seven of these states require either one or more witnesses, or a notary.<sup>3</sup> And several states require voters to submit additional information with their ballot for identity verification, such as a copy of their driver’s license, state-issued identification card, or social security number.<sup>4</sup>

In sum, Kansas’ signature-verification requirement is well within the mainstream among the more than 40 states that have adopted regulations to protect the integrity of absentee ballots by confirming the identity of the voter claiming to submit the ballot. Yet the Kansas Court of Appeals has substituted its policy judgment for the policy judgments of 41 legislatures, including Kansas’, and made Kansas elections vulnerable to fraudulent practices.

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<sup>2</sup> Mississippi, MISS. CODE ANN. § 23-15-635; Missouri, MO. REV. STAT. § 115.283; and Oklahoma, OKLA. STAT. tit. 26, § 14-108.

<sup>3</sup> Alabama, ALA. CODE § 17-11-7; Alaska, ALASKA STAT. § 15.20.203(b)(2); Louisiana, LA. STAT. § 18:1306.F(2); Minnesota, MINN. STAT. § 203B.07(3); North Carolina, N.C. GEN. STAT. § 163-231(a); South Carolina, S.C. CODE ANN. § 7-15-220; and Wisconsin, WIS. STAT. § 6.87.

<sup>4</sup> Arkansas, ARK. CODE § 7-5-412(a)(2)(A); Georgia, GA. CODE ANN. § 21-2-386(a)(1); Minnesota, MINN. STAT. § 203B.07(3); Nebraska, NEB. REV. STAT. § 32-957 (as amended June 1, 2023); Ohio, OHIO REV. CODE § 3509.04; Virginia, VA. CODE ANN. § 24.2-706.

**B. Half Of The States Impose Reasonable, Non-Discriminatory Restrictions On Ballot Collection Similar To The Collection Regulation Challenged Here.**

Kansas law provides that no person can deliver “more than 10 advance voting ballots on behalf of other voters during an election.” K.S.A. 25-2437(c). This same statute also requires ballot collectors to verify both that they are authorized to deliver each absentee ballot and that they did not “exercise[ ] undue influence on the voting decision of the voter.” *Id.*, subd. (a). Kansas’ 10-ballot restriction is thus part of its scheme to ensure the security and integrity of absentee ballots.

This regulation is consistent with the practice of other states that impose various restrictions on ballot collection practices to protect the integrity and reliability of the electoral process by avoiding undue influence or other inappropriate behavior associated with “ballot harvesting.” *See, e.g., Brnovich*, 141 S.Ct. at 2348 (“[P]revention of fraud is not the only legitimate interest served by restrictions on ballot collection. . . . [T]hird-party ballot collection can lead to pressure and intimidation.”). When evaluating a claim that limiting ballot-harvesting collection to ten ballots violates the rights of voters worried they will not be able to find a harvester, it is highly relevant at the outset to note that one state (Alabama<sup>5</sup>) only allows voters to return their own ballots, and another (Oklahoma<sup>6</sup>) does the same thing by prohibiting “absentee ballot harvesting” altogether.

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<sup>5</sup> ALA. CODE § 17-11-9.

<sup>6</sup> OKLA. STAT. tit. 26, § 14-104.1.

Overall, about half of the states expressly permit someone chosen by a voter to return advance ballots. Those states have taken a variety of steps to regulate ballot collection to ensure election integrity. Kansas is among 13 states that limit the number of ballots that can be collected.<sup>7</sup> In comparison to her sister states, Kansas' ten-ballot limit stands out as high: Ten states limit ballot collection at five or fewer ballots; Montana allows six; and only Colorado matches Kansas' generosity at permitting the collection of ten.

Limiting the number of ballots that may be collected is only one aspect of other states' approach to protecting elections from the abuse of advance ballots. For example, 16 states limit who may collect ballots (such as a family or household member, etc.).<sup>8</sup> At least nine states have restrictions prohibiting certain people-like candidates, campaign workers, or

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<sup>7</sup> Arkansas, ARK. CODE § 7-5-403 (limiting ballot collection to two ballots per election and prohibiting the possession of more than two absentee ballots at any time); Colorado, COLO. REV. STAT. § 1-7.5-107(4)(b)(I)(B) (ten ballots per election); Florida, FLA STAT. § 104.0616(2) (felony to collect than two vote-by-mail ballots per election); Louisiana, LA. STAT. § 18:1308(B) (limiting collection for non-immediate-family member to one ballot every election); Maine, ME. REV. STAT. § 753-B(2)(C) (person may only possess five absentee ballots at a time); Minnesota, MINN. STAT. § 203B.08(1)(b) (three ballots per election); Montana, MONT. CODE § 13-35-703(3) (six ballots per election); Nebraska, NEB. REV. STAT. § 32-943(3) (agent can only return ballots for two voters in any election); New Jersey, N.J. STAT. ANN. § 19:63-4 (three ballots per election or five ballots for family members who share a household); New Hampshire, N.H. REV. STAT. § 657:17 (four absentee ballots in any election); North Dakota, N.D. CENT. CODE § 16.1-07-06(3) (four ballots in an election); South Carolina, S.C. CODE ANN. § 7-15-385(G) (five ballots in an election); and West Virginia, W. VA. CODE, § 3-3-5(k) (two absentee ballots in any election).

<sup>8</sup> Arizona, ARIZ. REV. STAT. § 16-1005(I)(2); Georgia, GA. CODE § 21-2-385; Indiana, IND. CODE § 3-11-10-1(6)(C); Iowa, IOWA CODE § 53.33(2); Louisiana, LA. STAT. § 18:1308; Massachusetts, MASS. GEN. LAWS ch. 54, § 92; Michigan, MICH. COMP. LAWS § 168.764a; Missouri, MO. REV. STAT. § 115.291; Montana, MONT. CODE § 13-35-703(2); New Hampshire, N.H. REV. STAT. § 657:17; New Mexico, N.M. STAT. § 1-6-10.1; North Carolina, N.C. GEN. STAT. § 163-231(b)(1); Ohio, OHIO REV. CODE § 3509.05(C)(1); Oklahoma, OKLA. STAT. tit. 26, § 14-104.1; South Carolina, S.C. CODE ANN. §§ 7-15-385, 7-15-310(7), (8); and Texas, TEX. ELEC. CODE § 86.006(f)(1)-(2).

agents of the voter's employer or union-from returning ballots for others.<sup>9</sup> And at least six states restrict who may have their ballot collected, often limiting advance ballots to voters who have a disability or are otherwise unable to vote in person.<sup>10</sup>

In short, Section 25-2437(c) is one of, if not the, most permissive absentee ballot harvesting limitations in the Nation. A ruling in Plaintiffs' favor would unduly call into question the legitimacy of these regulatory measures around the country despite the well-documented history of abuses in ballot harvesting. *See, e.g.*, Press Release, Ariz. Att'y Gen. Mark Brnovich, Yuma County Women Sentenced for their Roles in Ballot Harvesting Scheme (Oct. 14, 2022) (<https://www.azag.gov/press-release/yuma-county-women-sentenced-their-roles-ballot-harvesting-scheme>); Andrew Hay, *North Carolina Orders New U.S. House Election After 'Tainted' Vote*, REUTERS (Feb. 21, 2019), <https://www.reuters.com/article/us-usa-election-north-carolina/north-carolina-orders-new-u-s-house-election-after-tainted-vote-idUSKCN1QAI0G>; *18 Are Arrested in 1997 Miami Ballot Fraud*, N.Y. TIMES (Oct. 29, 1998), <https://www.nytimes.com/1998/10/29/us/18-are-arrested-in-1997-miami-ballot-fraud.html>.

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<sup>9</sup> Alaska, ALASKA STAT. § 15.20.072(g); California, CAL. ELEC. CODE § 3017(e); Kentucky, KY. REV. STAT. §§ 117.0863(2), 117.255(3); Maine, ME. REV. STAT. § 753-B(2); Maryland, MD. CODE ELEC. LAW § 9-307(b)(2); Nebraska, NEB. REV. STAT. § 32-943(3); New Jersey, N.J. STAT. ANN. § 19:63-4; North Dakota, N.D. CENT. CODE § 16.1-07-08(1); Virginia, VA. CODE § 24.2-705(A).

<sup>10</sup> Alaska, ALASKA STAT. § 15.20.072(a); Connecticut, CONN. GEN. STAT. § 9-140b; Georgia, GA. CODE § 21-2-385; Kentucky, KY. REV. STAT. § 117.0863; Pennsylvania, 25 PA. CONS. STAT. § 3146.2a(a.3)(1); and Virginia, VA. CODE § 24.2-705(A).

### **III. SUBJECTING ALL ELECTION RESTRICTIONS TO STRICT SCRUTINY UNREASONABLY IMPAIRS KANSAS' INTEREST IN STRUCTURING A FAIR AND EFFICIENT ELECTORAL PROCESS.**

The Court of Appeals' holding that strict scrutiny applies to any regulation that affects the casting of ballots is erroneous and will unnecessarily open many traditional administrative rules to challenge. Broad state regulatory authority over elections is a matter of original constitutional design. "[T]he Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections." *Gregory v. Ashcroft*, 501 U.S. 452, 461-62 (1991) (quoting *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973)). This intent is reflected in the Elections Clause, which "grants to the States a broad power to prescribe the 'Times, Places and Manner of holding Elections for Senators and Representatives.'" *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986) (quoting U.S. CONST., art. I, § 4, cl. 1). The states' power over federal elections "is matched by state control over the election process for state offices." *Id.* This delegation of authority is "not absolute," since it is "'subject to the limitation that [it] may not be exercised in a way that violates . . . specific provisions of the Constitution.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (quoting *Williams v. Rhodes*, 393 U.S. 23, 29 (1968)). Moreover, the lower court's analysis fails to accurately credit the State's important regulatory interests in structuring an electoral process that is fair, free of fraud, and efficient.

Rather than assert a claim challenging the rules for federal elections under the federal constitution, the Plaintiffs here have brought a challenge under the right to vote guaranteed by the Kansas Constitution seeking to expand rights far beyond the protection of the

Fourteenth Amendment. Yet, this Court has looked to federal jurisprudence as guidance in interpreting the Kansas Constitution. *See Rivera v. Schwab*, 315 Kan. 877, 898, 512 P.3d 168 (2022) (looking to the United States Supreme Court’s guidance on analogous federal principles when interpreting the Kansas Constitution in election redistricting context). Accordingly, the Court can and should find guidance in the United States Supreme Court’s election-regulation caselaw, which confirms that there is no constitutional violation where, as here, a state enacts evenhanded election regulations that ensure integrity in the election process yet impose only a modest burden on voting rights. Several lessons from the Supreme Court are instructive when considering the constitutionality of the statutes at issue in this case.

First, the United States Supreme Court has consistently recognized that states must have flexibility to design and operate their electoral systems to ensure the integrity and reliability of the election process. *See, e.g., Storer v. Brown*, 415 U.S. 724, 730 (1974) (“[A]s 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) (“Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections”); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (“[I]t is . . . clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.”).

Second, “[e]lection laws will invariably impose some burden upon individual voters.” *Burdick*, 504 U.S. at 433; *see also Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (every election law “inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends”). But that does not mean that all election laws are constitutionally suspect simply because they impose some burden on voters’ rights. Instead, the Supreme Court has crafted a careful test that measures the states’ regulatory interest against the burdens imposed by an election regulation, and the Court has cautioned that judgments must be made on a case-by-case basis. “Constitutional challenges to specific provisions of a State’s election laws . . . cannot be resolved by any ‘litmus-paper test,’” and “there is ‘no substitute for the hard judgments that must be made.’” *Anderson*, 460 U.S. at 788-90 (citation omitted); *see also Timmons*, 520 U.S. at 358-59 (“No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms.”). This pragmatic approach accounts for the states’ broad regulatory power to structure the electoral process to ensure the efficiency and integrity of their elections, while accounting for the burdens imposed on voters’ constitutional rights.

The Court of Appeals’ framework derogates Kansas’ interest in structuring the state’s elections. Here again, the United States Supreme Court’s guidance is useful: It has confirmed that the states’ interest in “protecting the integrity and reliability of the electoral process” extends to “deterring and detecting voter fraud,” as well as to “safeguarding voter confidence.” *Crawford*, 553 U.S. at 191. And it has similarly stressed that “[e]nsuring that every vote is cast freely, without intimidation or undue influence, is . . . a valid and important

state interest.” *Brnovich*, 141 S.Ct. at 2340; *see also id.* (“One strong and entirely legitimate state interest is the prevention of fraud.”). These interests, of course, underlie each of the regulations challenged here.

Third, the United States Supreme Court’s precedents uniformly counsel that strict scrutiny should be reserved only for restrictions that severely burden the right to vote. Otherwise, states will be unable to effectively regulate their elections. “[T]o subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest . . . would tie the hands of States seeking to assure that elections are operated equitably and efficiently.” *Burdick*, 504 U.S. at 433-34; *Clingman v. Beaver*, 544 U.S. 581, 593 (2005) (“To deem ordinary and widespread burdens . . . severe would subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes.”). On the other hand, “when a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon . . . rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788); *see also Clingman*, 544 U.S. at 586-87 (state election “[r]egulations that impose severe burdens on associational rights must be narrowly tailored to serve a compelling state interest,” “[h]owever, when regulations impose lesser burdens, ‘a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.’”) (citing and quoting *Timmons*, 520 U.S. at 358).



These same concerns should guide this Court to reject the lower court's approach to this case. Upholding the Court of Appeals' opinion would subject the State of Kansas to litigation over nearly every rule governing elections, from voter-registration requirements, to the deadline for requesting advance ballots, all the way down to the time the polls close on Election Day. Indeed, requiring the state to satisfy strict scrutiny for mundane, nondiscriminatory rules that provide for smooth, fair election administration would threaten the voting rights of Kansas citizens far more than the rules that would be challenged. Even so, the Court of Appeals' application of strict scrutiny failed to properly credit the government's profoundly important interest in administering elections with necessary integrity in a way that protects all voters against the risk of diluting their votes with fraudulently cast ballots. That interest is fundamental, as demonstrated by the regulations adopted by other states to verify absentee ballots and to protect voters against the well-documented history of abuse in the return of advance ballots. The Court should adopt a standard that respects the State's important regulatory interests in structuring a fair and efficient electoral process.

### **CONCLUSION**

This Court should reverse the court below and preserve the State's power to structure the electoral process to ensure the efficiency, integrity, and reliability of its elections.

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Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2023, a true and correct copy of the above and foregoing Brief was filed with the Clerk of the Appellate Courts via the eFilex system, which will provide service to all registered counsel of record pursuant to Supreme Court Rule 1.11. I further certify that a true and correct copy of the Brief was emailed to the following:

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