

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

VOTEAMERICA and VOTER
PARTICIPATION CENTER,

Plaintiffs,

v.

SCOTT SCHWAB, in his official capacity as
Secretary of State of the State of Kansas;
DEREK SCHMIDT, in his official capacity
as Attorney General of the State of Kansas;
STEPHEN M. HOWE in his official capacity
as District Attorney of Johnson County,

Defendants.

Civil Action No. 2:21-CV-2253

**STIPULATED ORDER FOR PERMANENT INJUNCTION
AND DECLARATORY JUDGMENT**

WHEREAS Plaintiffs VoteAmerica and Voter Participation Center (collectively, “Plaintiffs”) filed a Complaint in this case against Defendants Scott Schwab, in his official capacity as Secretary of State of the State of Kansas; Derek Schmidt, in his official capacity as Attorney General of the State of Kansas; and Stephen M. Howe in his official capacity as District Attorney of Johnson County (collectively, “Defendants”);

WHEREAS Plaintiffs allege that Defendants’ enforcement of sections 3(k)(2) and 3(l)(1) of Kansas House Bill (HB) 2332 (codified at Kan. Stat. Ann. § 25-1122) violate their rights under the First and Fourteenth Amendments to the U.S. Constitution, and, as to section 3(l)(1) only, the Commerce Clause of the U.S. Constitution, as more fully set out in the Complaint;

WHEREAS Plaintiffs’ Complaint seeks declaratory and injunctive relief to redress the alleged unlawful conduct, attorneys’ fees, and costs;

WHEREAS Plaintiffs filed a motion to preliminarily enjoin Defendants from enforcing the challenged sections, and the Court issued an order granting Plaintiffs' motion and preliminarily enjoined Defendants from enforcing Sections 3(k)(2) and 3(l)(1) of HB 2332;

WHEREAS Defendants answered Plaintiffs' Complaint and did not appeal the Court's entry of a preliminary injunction;

WHEREAS Defendants as well as Plaintiffs wish to resolve this matter in part;

WHEREAS the Parties have stipulated to the entry of this Order and agree to be bound by its terms;

WHEREAS Defendants, without admitting any allegations in the Complaint beyond those admitted in their answer, do not object to entry of partial judgment in favor of Plaintiffs with respect to the entry of this Order;

WHEREAS Defendants stipulate that they will not appeal this Order;

WHEREAS entry of this stipulated Order will partially resolve Plaintiffs' freedom of speech, freedom of association, and overbreadth claims (Counts I, II, and III of the Complaint, respectively) as to section 3(l)(1) of HB 2332 and fully resolve Plaintiffs' dormant Commerce Clause claim (Count IV of the Complaint);

WHEREAS this stipulated Order will be entered under Federal Rule of Civil Procedure 65 and will constitute a final judgment in this matter as to the aforementioned claims;

WHEREAS the parties will continue to litigate Plaintiffs' claims (Counts I, II, and III) as to section 3(k)(2) of HB 2332, but the parties further stipulate that section 3(k)(2) does not apply to persons who mail or cause to be mailed an application for an advance voting ballot with any portion completed to a registered voter where the portion of such application completed prior to mailing is completed at the request of the registered voter. For the avoidance of doubt, the parties

stipulate that where a registered voter asks a person to mail or cause to be mailed an advance voting ballot application to the registered voter, and that person does so, that person does not “solicit[] by mail a registered voter to file an application for an advance voting ballot” as set forth in section 3(k)(1) of HB 2332;

THEREFORE, the Court HEREBY ORDERS:

1. Section 3(l)(1) of HB 2332 violates the First and Fourteenth Amendments, both facially and as-applied to Plaintiffs.

2. Defendants, their agents, employees, representatives, attorneys, and all persons in active concert or participation therewith, are permanently enjoined from enforcing section 3(l)(1) of HB 2332, including the penalties contained therein.

3. Plaintiffs’ claims for declaratory and injunctive relief under the dormant Commerce Clause (Count IV) shall stand dismissed as moot.

4. Plaintiffs are the prevailing parties on Counts I, II, and III with respect to section 3(l)(1), and are entitled to an award of attorneys’ fees and costs of this suit pursuant to 28 U.S.C. § 1920 and 42 U.S.C. § 1988. Within 45 days of this Order the parties shall attempt to reach an agreement regarding the amount of attorneys’ fees and costs due to Plaintiffs. If they are unable to do so, Plaintiffs may file a motion for attorneys’ fees and costs.

5. Defendants, their agents, employees, representatives, attorneys, and all persons in active concert or participation therewith, are permanently enjoined from enforcing section 3(k)(2) of HB 2332 against persons who mail or cause to be mailed an application for an advance voting ballot to a registered voter where the registered voter has asked such person(s) to mail or cause to be mailed an application for an advance voting ballot to such registered voter.

IT IS SO ORDERED.

Dated: 2/25/2022

s/ Kathryn H. Vratil
U.S. District Judge Kathryn H. Vratil

We agree to abide by the terms of this Order **We agree to abide by the terms of this Order**

Respectfully Submitted,

By: /s/ Mark P. Johnson
Mark P. Johnson
KS Bar #22289, D. Kan. #22289
Wade Carr KS Bar #25105, D. Kan. #25105
DENTONS US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64105
816/460-2400
816/531-7545 (fax)
mark.johnson@dentons.com
wade.carr@dentons.com

Danielle M. Lang (*pro hac vice*)
Robert N. Weiner (*pro hac vice*)
Alice C.C. Huling (*pro hac vice*)
Aseem Mulji (*pro hac vice*)
Hayden Johnson (*pro hac vice*)
CAMPAIGN LEGAL CENTER
1101 14th Street, NW, St. 400
Washington, D.C. 20005
(202) 736-2200
DLang@campaignlegalcenter.org
RWeiner@campaignlegalcenter.org
AHuling@campaignlegalcenter.org
AMulji@campaignlegalcenter.org
HJohnson@campaignlegalcenter.org

Jonathan K. Youngwood (*pro hac vice*)
Meredith D. Karp (*pro hac vice*)
Brooke Jarrett (*pro hac vice*)
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
jyoungwood@stblaw.com
meredith.karp@stblaw.com
bonnie.jarrett@stblaw.com

Attorneys for Plaintiffs

Dated: February 22, 2022

Respectfully Submitted,

By: /s/ Bradley J. Schlozman
Bradley J. Schlozman (KS Bar #17621)
Scott R. Schillings (Bar # 16150)
HINKLE LAW FIRM LLC
1617 North Waterfront Parkway, Suite 400
Wichita, KS 67206
Tel.: (316) 267-2000
Fax: (316) 630-8466
E-mail: bschlozman@hinklaw.com
E-mail: sschillings@hinklaw.com

Attorneys for Defendants

Dated: February 22, 2022