

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS APPLESEED CENTER FOR,  
LAW AND JUSTICE, INC, ET AL.,

Case No. 130,839

## EMERGENCY MOTION TO TRANSFER TO SUPREME COURT

Defendant-Appellant Scott Schwab, in his official capacity as the Kansas Secretary of State (“the Secretary”), moves to transfer this appeal to the Kansas Supreme Court. This appeal presents novel and important state constitutional questions, including whether the Kansas Constitution somehow mandates a three-day grace period for the receipt of advance ballots after Election Day—even though for all but eight years of its existence, Kansas had no grace period for receiving ballots after Election Day. Because the district court recognized new constitutional rights to a grace period that the Kansas Constitution does not confer, this Court must now decide whether such rights actually exist. Transfer is necessary for the expeditious resolution of those questions.

The Secretary requests that this motion be decided on an emergency basis so that this Court may promptly grant his contemporaneously filed motion to stay the district court's temporary injunction, which has disrupted election procedures during an ongoing election.

### **Jurisdiction**

This case is within the jurisdiction of the Supreme Court. The district court issued an order granting a temporary injunction on July 16, 2026. The Secretary filed his notice of appeal with the district court and docketed this appeal with the Clerk of the Appellate Courts on the same day. The Court of Appeals has jurisdiction under K.S.A. 60-2101(a) and K.S.A. 60-2102(a)(2).

This motion to transfer is authorized by Supreme Court Rule 8.02 and K.S.A. 20-3017 and has been filed with the Clerk of the Appellate Courts within 30 days after service of the notice of appeal.

### **Nature of the Case**

This case involves a state facial constitutional challenge to 2025 Senate Bill 4, which requires that all advance voting ballots must be received in the county election office or polling place no later than the close of the polls on Election Day to be counted. *See* K.S.A. 25-1132. This is the same deadline Kansas had for many decades, until 2017 when the Legislature amended the statute to allow ballots to be received up to three days after Election Day if they were postmarked no later than Election Day.

Plaintiffs, three registered voters and three activist groups, moved to temporarily enjoin SB 4. In an unprecedented and unsupportable decision, the district court granted that motion, holding that Plaintiffs were likely to succeed on their claims that SB 4 violates the Kansas Constitution's guarantees of equal protection, due process, and the right to suffrage. The district court further held that Plaintiffs were reasonably likely to suffer an irreparable injury and that the remaining

injunction factors favored Plaintiffs. The district court stated that it was enjoining SB 4 on a state-wide basis. The Secretary promptly appealed that decision.

### **Grounds for Transfer**

Transfer to the Supreme Court is warranted for three reasons. First, “the subject matter of the case has significant public interest” because it involves the integrity of the election process and the question of which ballots will be counted in the ongoing and upcoming elections. Supreme Court Rule 8.02(b)(3)(B). Moreover, it affects a substantial number of Kansans, as tens of thousands of Kansans vote by mailed advance ballot in each even-year election.

Second, this appeal involves legal questions of “major public significance,” Supreme Court Rule 8.02(b)(3)(C), specifically whether the Kansas Constitution somehow mandates a three-day grace period, even though Kansas went without a grace period for all but a brief eight-year period. The substantial flaws in the district court’s policy-laden analysis are explained in more detail in the Secretary’s motion to stay.

Finally, transfer of this case would promote the “expeditious administration of justice.” Supreme Court Rule 8.02(b)(3)(D). Because Plaintiffs in this case seek to discover a previously unrecognized constitutional right found nowhere in the Kansas Constitution, it is incumbent on this Court, as the ultimate arbiter of the meaning of the Kansas Constitution, to determine whether the district court strayed in accepting their invitation. Requiring this case to be heard in the Kansas Court of Appeals before this Court’s review will unduly delay the ultimate resolution of these questions. The district court’s order creates voter confusion because 46,127 ballots had already been mailed with instructions requiring receipt by the close of polls on Election Day. If the Court of Appeals and this Court reach different conclusions, the resulting uncertainty will only

compound voter confusion. A decision by this Court will provide necessary direction to voters and election officials.

### **Conclusion**

For the foregoing reasons, the Secretary respectfully moves to transfer this appeal to the Supreme Court.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 20, 2026, the above Motion to Transfer was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants.

/s/ Dwight R. Carswell \_\_\_\_\_