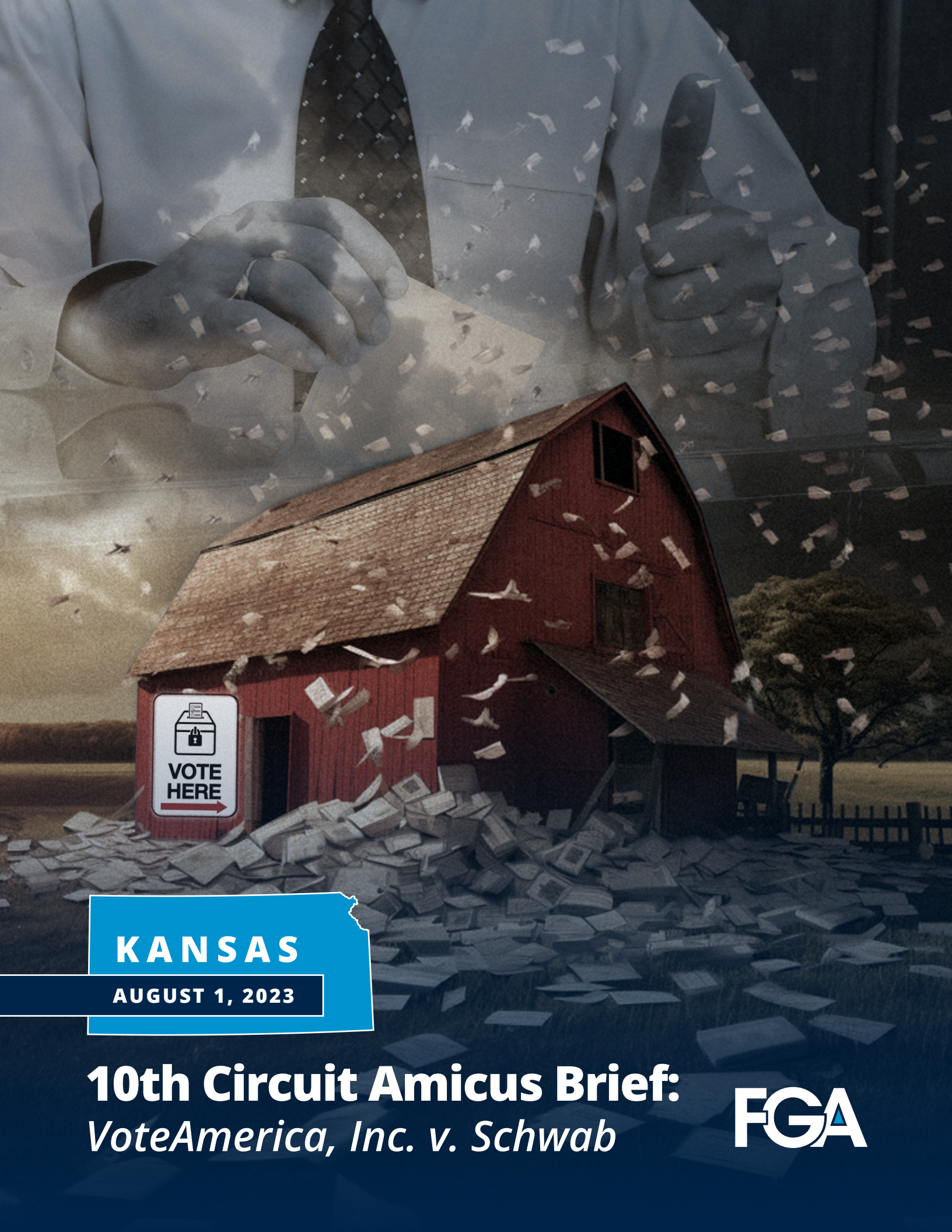

KANSAS

AUGUST 1, 2023

10th Circuit Amicus Brief:
VoteAmerica, Inc. v. Schwab

FGA

No. 23-3100

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

VOTEAMERICA, INC. and, VOTER PARTICIPATION CENTER,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

Appeal from the U.S. District Court for the District of Kanas
Honorable Kathryn H. Vratil, District Judge
District Court Case No. 2:21-CV-02253-KHV

BRIEF OF THE FOUNDATION FOR GOVERNMENT ACCOUNTABILITY AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

Stewart L. Whitson
THE FOUNDATION FOR GOVERNMENT ACCOUNTABILITY

15275 Collier Blvd., Ste. 201
Naples, FL 34119
(239) 244-8808
stewart@theFGA.org

Counsel for Amicus Curiae

August 1, 2023

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INTEREST OF AMICUS CURIAE[1]

The Foundation for Government Accountability ("FGA") is a nonpartisan, nonprofit organization that seeks to enhance the lives of all Americans by improving welfare, workforce, healthcare, and election integrity policy at the state and federal levels. Launched in 2011, FGA promotes policy reforms that seek to free individuals from the trap of government dependence, restore dignity and self-sufficiency, and empower individuals to take control of their futures. FGA's policy reforms are grounded in the principles of government transparency, the free market, individual freedom, and limited constitutional government.

Since its founding, FGA has helped achieve more than 781 reforms impacting policies in 42 states as well as 27 federal reforms. FGA supports its mission by conducting innovative research, deploying outreach and education initiatives, equipping policy makers with the information they need to achieve meaningful reforms, and by appearing *amicus curiae* before state and federal courts including the U.S. Supreme Court and the 11th Circuit Court of Appeals.

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[1] Counsel for *Amicus Curiae* certifies that no party has objected to the filing of this brief, though not all parties have responded to notification emails sent by *Amicus Curiae* to all parties notifying of the intent to file this brief. Therefore, pursuant to FRAP 29(a)(3) this brief is accompanied by a motion for leave to file. Pursuant to FRAP 29(a)(4)(E), counsel for *Amicus Curiae* states that no counsel for a party authored this brief in whole or in part, and no person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

In this case, Kansas has passed election reforms that strike a lawful and proper balance between making it easy to vote, but hard to cheat. Now groups that oppose all laws designed to prevent election fraud and inspire voter confidence have stepped forward in opposition. This case directly implicates FGA's core mission relating to election integrity. Accordingly, FGA files this *amicus curiae* brief in support of Appellants and Section 3(k)(2) of House Bill 2332 (codified at Kan. Stat. Ann. § 25-1122(k)(2)).

SUMMARY OF ARGUMENT

For a court to find the Kan. Stat. Ann. § 25-1122(k)(2) ("Personalized Application Prohibition") to be subject to the First Amendment, it must find that the speech or conduct being limited is considered "inherently expressive conduct." *Texas v. Johnson*, ("*Johnson*") 491 U.S. 397, 404 (1989). The Supreme Court's test to determine whether conduct is sufficiently communicative to warrant First Amendment protection was articulated in *Spence v. Washington* ("*Spence*"), 418 U.S. 405 (1974) and *Johnson*.

The Tenth Circuit has found that the test articulated in *Spence* and *Johnson* requires: 1) "an intent to convey a particularized message, and 2) a great likelihood that the message would be understood by those who viewed the symbolic act or display." *Cressman v. Thompson*, 719 F.3d 1139, 1149 (10th Cir. 2013) ("*Cressman* I").

First, the district court erred in asserting the Personalized Application Prohibition is subject to First Amendment protection as expressive conduct. In its decision, the Court refused to consider the cover letter drafted by Voter Participation Center ("VPC") and the unsolicited, pre-filled out absentee ballot application that violated the Personalized Application Prohibition as separate documents. *VoteAmerica v. Schwab* ("*VoteAmerica*"), No. 21-2253-KHV, 2023 WL 3251009, at 26 (D. Kan. May 4, 2023)(unpublished). While the letter did not violate Kansas law, the unsolicited, pre-filled out absentee ballot application did. In refusing to consider the documents separately, the Court wrongfully linked them together, and in doing so improperly subjected both to First Amendment expressive conduct strict scrutiny analysis. *VoteAmerica* at 37. As the statute does not infringe on a fundamental right nor affect a suspect classification, the Court should have applied the rational basis test. *Save Palisade Fruitlands v. Todd*, ("*Save Palisade*") 279 F.3d 1204, 1210-13 (10th Cir. 2022). As a result, the Court misapplied the test in *Cressman I* on the Personalized Application Prohibition of Kansas' law.

Second, the district court also erred in asserting the Personalized Application Prohibition is invalid as a violation of the First Amendment freedom of association. As discussed above, the Court refused to consider separately the letter drafted by Voter Participation Center ("VPC") and the unsolicited, pre-filled out absentee ballot application that violated the Personalized Application Prohibition.

The First Amendment freedom of association protects "joining in a common endeavor" or engaging in "collective effort on behalf of shared goals." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618, 622 (1984). It does not protect individuals who "are not members of any organized association," are "strangers to one another," and do not come together to "take positions on public questions." *Dallas v. Stanglin*, 490 U.S. 19, 24-25 (1989).

There is no common endeavor, shared goals, or membership of any organized association in the present case. Instead, VPC sent unsolicited, pre-filled absentee ballot applications to a list of individuals who are not all members of any organized association. The district court asserted that "[p]ublic endeavors which 'assist people with voter registration are intended to convey a message that voting is important,' and public endeavors which expend resources 'to broaden the electorate to include allegedly under-served communities' qualify as expressive conduct which implicates the First Amendment freedom of association." *VoteAmerica* at 27 (citing *Democracy N.C. v. N.C. State Bd. of Elections* ("*Democracy N.C.")*, 476 F. Supp. 3d 158, (2020)). In this case, VPC's conduct is not registering voters to broaden the electorate but contacting those already registered to vote via mail.

The district court is not the first to address this issue. In 2020, the Middle District of Tennessee addressed Tennessee's prohibition of absentee ballot applications by non-government officials saying "[n]o circuit court has held that the

actual [voter registration] receipt and delivery process is, itself, entitled to First Amendment protection.", *Lichtenstein v. Hargett*, ("*Lichtenstein*") 489 F. Supp. 3d 742, 769 (2020) (citing *Voting for Am., Inc. v. Andrade,* 488 Fed. Appx. 890, 898 (5th Cir. 2012)). The court in *Lichtenstein* concluded "that receipt and delivery of completed voter registration forms is not inherently expressive conduct, it is a small leap indeed to the proposition. . . that delivery of blank absentee-voting application forms is not inherently expressive conduct." *Id* at 769. VPC is not expanding the electorate in any way and, even if it were, the delivery of absentee ballot application forms is not inherently expressive conduct. Therefore, the First Amendment freedom of association does not apply.

Finally, Kansas has a legitimate and rationally related interest in ensuring its election process is secure, orderly, and efficient. The Personalized Application Prohibition is rationally related to Kansas' legitimate interests. Kansas passed House Bill 2332 in early 2021 as a response to the confusion, frustration, and anger between voters seeking to acquire mail-in ballots to vote and election officials receiving pre-filled absentee ballot applications with information that did not match the state's voter database.

As the First Amendment's protections do not apply to the Personalized Application Prohibition it is properly evaluated under rational basis review. *See Save Palisade at* 1210-13. Under this standard, the statute "need only be rationally related

to a legitimate government purpose." *Id*. at 1210. Kansas' interest in establishing the Personalized Application Prohibition include limiting voter confusion, ensuring the orderly and efficient administration of elections, enhancing public confidence in election processes and outcomes, and the deterrence of potential voter fraud. Each of these reasons have been recognized as legitimate government interests for election administration. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2340 (2021); *see also Doe v. Reed*, 561 U.S. 186, 197-98 (2010); *see also Burson v. Freeman*, 504 U.S. 191, 199 (1992).

Kansas also is not the only state to have pursued this policy. Several states including Tennessee, Georgia, North Carolina, and Oklahoma have all passed laws which restrict third parties from distributing pre-filled absentee ballot applications. N.C. Gen. Stat. § 163-230.2(e)(2); Ga. Code. Ann. § 21-2-381(a)(1)(C)(ii); 26 Okl. Stat. § 14-101.1(A)(5); Tenn. Code Ann. § 2-6-202(c)(3)). Each of these other states have taken positions equal to or more restrictive than Kansas' Personalized Application Provision. Given this, Kansas was operating well within the bounds of acceptable action that is occurring in several states to secure elections.

As the Personalized Application Provision is rationally related to Kansas' interests to limit voter confusion, ensure the orderly and efficient administration of elections, enhance public confidence in the election process and outcome, and deter potential voter fraud, Kansas' Personalized Application Provision was a lawful act.

For all the reasons outlined *infra*, the district court's ruling must be reversed.

ARGUMENT

I. The District Court Erred in Asserting a Pre-Filled Absentee Ballot Application is Expressive Conduct Subject to First Amendment Speech or Conduct Protections

In order to justify its holding that the Personalized Application Prohibition is a violation of the First Amendment, the district court needed to find that the Personalized Application Prohibition barred "inherently expressive conduct or speech." The court attempted to meet this heavy burden by finding that the pre-filled out absentee ballot application and cover letter are "characteristically intertwined." *VoteAmerica v. Schwab*, No. 21-2253-KHV, 2023 WL 3251009 (D. Kan. May 4, 2023)(unpublished)(citing *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980)).

The court defended this finding by citing *Riley v. Nat'l Fed'n of the Blind of N.C., Inc*., ("*Riley*") wherein the Supreme Court held that where "the component parts of a single speech are inextricably intertwined, we cannot parcel out the speech, applying one test to one phrase and another test to another phrase." *Riley* at 487 U.S. 781, 796 (1988).

However, *Riley* addressed a North Carolina law which compelled speech by professional fundraisers when soliciting donations. The Court refused to consider different sentences of the same speech by the same person to be subject to different

levels of constitutional scrutiny. As a result, the Court determined it was "inextricably intertwined." *Riley* at 786. That is not the case here.

Unlike in *Riley*, there are two distinct instances of speech or expressive conduct present here: the cover letter and the pre-filled absentee ballot application. While it is agreed that the cover letter is political speech, the pre-filled absentee ballot application is neither speech nor expressive conduct.

For a court to find the Personalized Application Prohibition to be subject to the First Amendment, it must, first, find that the speech or conduct being limited is "inherently expressive conduct." *Texas v. Johnson*, ("*Johnson*") 491 U.S. 397, 404 (1989). The Supreme Court's test to determine whether conduct is sufficiently communicative to warrant First Amendment protection was articulated in *Spence v. Washington,* ("*Spence*") 418 U.S. 405 (1974) and *Johnson*.

The Tenth Circuit distilled the Supreme Court's speech and expressive conduct tests in *Spence* and *Johnson* into its own two-part test. *Cressman v. Thompson*, 719 F.3d 1139 (10th Cir. 2013). ("*Cressman* I"). The court must find: 1) "an intent to convey a particularized message, and 2) a great likelihood that the message would be understood by those who viewed the symbolic act or display." *Id.* at 114. Under this test, courts must analyze the plaintiff's conduct "with the factual context and environment in which it was undertaken." *Spence*, 418 U.S. at 410.

A. Intent to convey a particularized message

In applying *Cressman I* to the present case, VPC's letter advocating for mail-in voting is undisputed as expressive conduct, as it conveys a particularized message about mail in voting, and there is a great likelihood that the message would be understood by those who read it. However, the same cannot be said for the pre-filled absentee ballot application.

The pre-filled absentee ballot applications only contained basic information such as a voter's name, the address where the voter is registered, and basic contact information. These pre-filled applications submitted to voters by VPC often contained errors or erroneous data that did not match the voter's information in Kansas' system.

Further, five waves of absentee ballot applications were sent to these individual voters over the course of five weeks. Thousands of voters were confused by the pre-filled application and often returned each application to election officials to ensure they received an absentee ballot. Voters also called local election officials about errant information contained within the pre-filled absentee ballot they thought had been resolved. These errors and multiple waves created significant confusion amongst the recipients of VPC's mail.

While the act of mailing a voter an absentee ballot application could have the intent to convey a particularized message and that the message could be understood,

pre-filling out the absentee ballot application does not. "[P]laintiffs do not establish First Amendment protection merely by labeling their conduct as 'speech.'" *Lichtenstein v. Hargett*, 489 F. Supp. 3d 742 (2020) (citing *United States v. O'Brien*, 391 U.S. 367, 376 (1968)). A court considering the pre-filling of another person's name and contact information on an absentee ballot application as expressive conduct is a significant expansion beyond current Supreme Court precedent. *Rumsfeld v. Forum for Academic & Institutional Rights, Inc*., 547 U.S. 47, 66 (2006) ("combining speech and conduct [is not] enough to create expressive conduct.").

B. The Greater Likelihood is the Message Was Not Understood by Recipients.

As many voters were confused by the incorrect information contained on the application and called their local election officials stating as much, the greater likelihood is the message or symbol was not understood by the recipients. The 10th Circuit made it clear in *Cressman I* that for an action to be safeguarded under the banner of expressive conduct, it must also be understood. *Id* at 1149.

In this case, not only does the situation fall short of this benchmark, but the district court moves in the opposite direction. The evidence at hand paints a stark picture: thousands of recipients misunderstanding the incorrectly pre-filled ballots, reactions characterized by confusion and frustration. Far from understanding the intended message, many voters were left puzzled.

A nearly identical law was passed in Georgia to address similar pre-filled ballot application issues which created voter confusion. When challenged, the court in *VoteAmerica v. Raffensperger*, 609 F.Supp.3d 1341, 1357 (N.D. Ga. 2022) found that:

> [W]ithout the accompanying cover information, the provision of an application form could mean a number of things to a recipient. [S]ome voters likely perceived the state's decision to send absentee ballot applications to all eligible voters during the 2020 primary elections as merely a convenience offered to citizens in light of the pandemic. This Court cannot say that the state's conduct in sending those forms would necessarily have been understood as communicating a pro-absentee voting message.

Id. at 1357. This underscores the fact that the Supreme Court's standard for protection as expressive conduct is not only unmet, but blatantly contradicted. As a result, the facts of this case fail to meet the 10th Circuit's test in *Cressman I*.

The court's extraordinary approach to combine multiple documents into one analysis and protect the act of filling out other people's names, addresses, and contact information under the First Amendment cannot be allowed to become a new legal framework for other plaintiffs to use elsewhere to sidestep legitimate state efforts to secure their elections.

The lower court's ruling must be reversed.

II. The District Court Erred in Asserting a Pre-Filled Absentee Ballot Application is Expressive Conduct Subject to First Amendment Association Protections

The court erred in ruling that the Personalized Application Prohibition is subject to the First Amendment right of association. As discussed above, the court ruled that VPC's pre-filled absentee ballot application is expressive conduct as it is "inexorably intertwined" with the letter included in the packet. *VoteAmerica v. Schwab*, at 34. However, the court ignored Supreme Court precedent in finding freedom of association protections applied.

The First Amendment freedom of association protects "joining in a common endeavor" or engaging in "collective effort on behalf of shared goals." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618, 622 (1984). It does not protect individuals who "are not members of any organized association," are "strangers to one another," and do not come together to "take positions on public questions." *Dallas v. Stanglin*, 490 U.S. 19, 24-25 (1989).

The court noted that "[t]he right to advance beliefs and ideas is at the heart of the First Amendment." *VoteAmerica v. Schwab*, (citing *NAACP v. Button*, 371 U.S. 415, 430 (1963)). However, where *Button* involved Virginia prohibiting letters written by NAACP attorneys inviting other African Americans to become parties in litigation, there is no common endeavor or shared goals in the present case. *Button* at 421-423. Instead, in this case VPC sent unsolicited pre-filled absentee ballot

applications to a list of individuals who are not all members of any organized association.

Further, the court posited that "[p]ublic endeavors which 'assist people with voter registration are intended to convey a message that voting is important,' and public endeavors which expend resources 'to broaden the electorate to include allegedly under-served communities' qualify as expressive conduct which implicates the First Amendment freedom of association." *VoteAmerica* at 27 (quoting *Democracy N.C.* at 223, (2020)). However, the court in *Democracy N.C.*, conceded that "several courts have found the collecting of ballots does not qualify as expressive conduct protected by the First Amendment." *Democracy N.C.*. at 223 (citing *Knox v. Brnovich*, 907 F.3d 1167, 1181 (2018), *Feldman v. Ariz. Sec'y. of State's Office*, 843 F.3d 366, 372 (9th Cir. 2016), and *Voting for Am., Inc. v. Steen*, 732 F.3d 382 (2013)).

In this case, VPC is not registering voters to broaden the electorate but contacting those already registered to vote via mail. As of 2020 "[n]o circuit court has held that the actual [voter registration] receipt and delivery process is, itself, entitled to First Amendment protection." *Lichtenstein v. Hargett*, 489 F. Supp. 3d 742, 769 (2020) (citing *Voting for Am., Inc. v. Andrade,* 488 Fed. Appx. 890, 898 (5th Cir. 2012)). "And from the proposition that receipt and delivery of completed voter registration forms is not inherently expressive conduct, it is a small leap indeed

to the proposition. . . that delivery of blank absentee-voting application forms is not inherently expressive conduct." *Id* at 769. Kansas has fewer restrictions on absentee ballot application distribution than Tennessee, and as VPC is not expanding the electorate in any way, is undertaking a process that is less likely to be expressive conduct, and there is no common endeavor or collective effort on behalf of shared goals, the First Amendment freedom of association does not apply.

The court's unprecedented approach to invoke first amendment association protections for those mailing unsolicited absentee ballot applications to strangers is a departure from the Supreme Court's precedent. There was no common endeavor between VPC and its recipients, VPC's pre-filled absentee ballot applications were not expanding the electorate, and VPC's conduct to distribute absentee ballot applications is not expressive conduct.

Therefore, the lower court's ruling must be overturned.

III. Kansas Has a Legitimate and Rationally Related Interest in Ensuring its Election Process is Secure, Orderly, and Efficient

The 2020 election cycle was unprecedented in that the United States conducted a presidential election during the worldwide COVID-19 pandemic. As a result of the pandemic's swift arrival and significant disruption shortly before the election, there was a substantial and unexpected increased use of absentee or mail-in ballots by voters. This increase in mail-in ballot demand put significant strain on the election process. The Kansas City Star Editorial Board, *Kansas Voters Have*

Been Inundated with Mail Ballot Applications. Here's What to Do, (October 2, 2020).[2]

The increased use of mail-in ballots caused confusion, frustration, and anger between voters seeking to acquire mail-in ballots to vote and election officials receiving pre-filled absentee ballot applications with information that did not match the state's voter database. Dan Cohen, "*Johnson County trying to ease voter confusion over extra mail-in applications*," KSHB.com, (Aug. 28, 2020).[3] This confusion was not limited to only Kansas as voters from numerous other states complained of confusion over VPC's mailings. Pam Fessler, "*A Big Vote Registration Push Reaches Millions – But Divides Elections Officials*," National Public Radio, (Feb. 13, 2020).[4]

In addition to sending out inaccurate advance voting ballot applications, VPC also caused large numbers of duplicate applications to be submitted. While the use of mail ballots was clearly higher in 2020 than in previous elections, the significant increase of duplicate applications submitted to county elections officials was also

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[2] https://www.kansascity.com/article246167140.html.
[3] https://www.kshb.com/news/election-2020/johnson-county-trying-to-ease-voter-confusion-over-extra-mail-in-applications.
[4] https://www.npr.org/2020/02/13/805694260/a-big-vote-registration-push-reaches-millions-but-divides-elections-officials; *see also* Chris Williams, "*Unsolicited Voter Registration Letters Confuse Kentucky Voters*," WHAS11.com, (Sept. 11, 2020), https://www.whas11.com/article/news/politics/kentucky-voters-unsolicted-registration-letters-confusion/417-11b93b48-7382-4f8a-93d4-c7dcd0323da7.

substantially higher than in prior elections. Thousands of voters told local Kansas election officials they thought the pre-filled applications were from the county election office and had to be returned. *Kansas Voters Have Been Inundated with Mail Ballot Applications. Here's What to Do*, *supra* note 1, at 14. They were confused and thought to return the application even if the voter had previously submitted another application for the election.

In addition to voter confusion, county election officials were forced to expend significant amounts of time and resources dealing with voter complaints, identify error-filled or duplicate applications, and follow the appropriate curing procedures to give voters with inaccurate and duplicate applications the opportunity to correct the errors and receive a mail-in ballot to cast. *Kansas Voters Have Been Inundated with Mail Ballot Applications. Here's What to Do*, *supra* note 1, at 14.

Election officials tried to resolve these new and unforeseen issues while also accomplishing the numerous ordinary tasks and requirements that come with administering a presidential election. The result was a tumultuous process that stretched the time and limited resources of overworked county election departments. Despite their best efforts, voters, who understandably believed the pre-filled ballots came from the State, lost trust and confidence in their election officials and accused them of incompetence for distributing error-filled ballots.

Far from intending to limit speech, association, or voter participation, Kansas passed HB 2332 in early 2021 to change the election laws to prevent the same issues and confusion from occurring in future elections. Even after the Governor vetoed the original legislation, the legislature subsequently voted to overrule the Governor's veto with over two-thirds of the Kansas House and Senate voting in favor of the new law. One of those changes was implementing the Personalized Application Prohibition.

As the First Amendment's protections do not apply to the Personalized Application Prohibition it is properly evaluated under rational basis review. *Save Palisade at* 1210-13. The "statute is presumed constitutional and the burden is on the one attacking the legislative arrangement to [negate] every conceivable basis which might support it, whether or not the basis has a foundation in the record." *Heller v. Doe*, 509 U.S. 312, 320-21 (1993) (internal citation omitted). "A State . . . has no obligation to produce evidence to sustain the rationality of a statutory classification" and "courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends." *Id*. at 321.

A case with similar facts and arguments was addressed in *Lichenstein*, where the District Court for the Middle District of Tennessee dismissed a challenge to Tennessee's 2020 felony prohibition on the distribution of absentee ballot

applications by anyone other than government election officials. *Lichtenstein v. Hargett,* 2021 WL 5826246 at 25 (M.D. Tenn. Dec. 7, 2021). The court in *Lichtenstein* concluded that the Tennessee "law is not within the scope of the First Amendment" and further found that "the law survives rational basis 'plus' scrutiny." *Lichtenstein* at 5, 23. The *Lichtenstein* Court noted that "[u]nder rational basis review, official decisions are afforded a strong presumption of validity" *Lichtenstein* at 24 (citing *In re Flint Water Cases*, 384 F. Supp. 3d 802, 844 (E.D. Mich. 2019).

Kansas' interests in establishing the Personalized Application Prohibition are limiting voter confusion, ensuring the orderly and efficient administration of elections, enhancing public confidence in the election process and outcomes, and the deterrence of potential voter fraud. Each of these reasons have been recognized as legitimate government interests for election administration. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2340 (2021) (combatting voter fraud is "strong and entirely legitimate" reason for passing voting laws); *Doe v. Reed*, 561 U.S. 186, 197-98 (2010) ("[t]he State's interest in preserving the integrity of the electoral process is . . . important . . . to promoting transparency and accountability."); *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (A state has a "compelling interest in protecting voters from confusion and undue influence."); *Marchioro v. Chaney*, 442 U.S. 191, 196 (1979) ("The State's interest in ensuring . . . [the electoral] process is conducted in a fair and orderly fashion is

unquestionably legitimate."); *Storer v. Brown*, 415 U.S. 724, 730 (1974) ("[T]here 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.").

Further, Kansas is not the first or only state to have implemented the Personalized Application Prohibition, nor does it have the greatest restrictions in place. Tennessee has in place a felony prohibition on distribution of absentee ballot applications by anyone who is not an employee of an election commission. Tenn. Code Ann. § 2-6-202(c)(3). This statute was upheld by the Middle District of Tennessee. *Lichtenstein* at 24-25.

Georgia also has a prohibition on mail-in ballot applications being prefilled by anyone other than a relative or a person signing for a physically disabled voter. Ga. Code Ann. § 21-2-381(a)(1)(C)(ii). Like Kansas, Georgia's law was also challenged and found not to violate the First Amendment. *VoteAmerica v. Raffensperger*, at 1357. In Oklahoma, it is unlawful to "[p]artially or fully complet[e] an application for an absentee ballot on behalf of another person without that person's prior consent." 26 Okl. Stat. § 14-101.1(A)(5). North Carolina will not issue an absentee ballot to a voter if the absentee ballot request is "completed, partially or in whole, by anyone other than the voter." N.C. Gen. Stat. § 163-230.2(e)(2). Given this, Kansas was operating well within the bounds of acceptable action that is occurring in several states across the country to secure elections.

As the Personalized Application Provision is rationally related to Kansas' interests to limit voter confusion, ensure the orderly and efficient administration of elections, enhance public confidence in the election process and outcome, and deter potential voter fraud, Kansas' Personalized Application Provision was a lawful act.

Therefore, the lower court's ruling must be overturned.

CONCLUSION

For the foregoing reasons, FGA respectfully urges the Court to reverse the lower court's ruling and uphold the constitutionality of K.S.A. 25-1122(K)(2).

Respectfully Submitted,

Date: August 1, 2023

/s/ Stewart L. Whitson
Stewart L. Whitson
THE FOUNDATION FOR
GOVERNMENT ACCOUNTABILITY
15275 Collier Blvd., Ste. 201
Naples, FL 34119
(239) 244-8808
stewart@theFGA.org

Attorney for Amicus Curiae
Foundation for Government Accountability