

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

)	
James Clark, Roseanne Rosen, Kansas)	
for Change, Inc., and Daniel DeGroot,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	19-cv-2297
)	
Scott Schwab, in his official capacity)	
as the Secretary of State of Kansas; and)	
Ronnie Metsker, in his official capacity)	
as the Johnson County Election)	
Commissioner)	
)	
<i>Defendants.</i>)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs James Clark, Roseanne Rosen, Kansas for Change, Inc., and Daniel DeGroot, by and through their attorneys, bring this action for declaratory and injunctive relief against Kansas Secretary of State Scott Schwab and Johnson County Election Commissioner Ronnie Metsker, each in their official capacity, and allege as follows:

INTRODUCTION

1. The State of Kansas maintains and enforces a law, K.S.A. § 25-2430, prohibiting any person from attempting to persuade or influence eligible voters to vote for or against a particular candidate, party, or ballot initiative within a 250-foot radius from the entrance of a polling place open for voting. This no-electioneering buffer zone is one of the largest in the country and K.S.A. § 25-2430 is the only statute in the country that does not exempt private

property located within the radius. Kansas’s statute is geographically overbroad and restricts substantially more speech than necessary to achieve any legitimate governmental goal— much less a compelling government goal—including but not limited to preventing voter intimidation and interference with voters en route to the polls.

2. The Johnson County Election Office has an official policy banning all First Amendment protected speech, including non-partisan voter protection volunteer efforts and signage, from the 250-foot buffer zone under K.S.A. § 25-2430. In response to concerns that non-partisan election protection work is First Amendment protected speech, and as such fundamentally protected conduct even within a polling location’s buffer zone, the Johnson County Election Office has asserted that no election protection efforts can be permitted due to the possibility that a voter seeking assistance could engage in electioneering.

3. The State of Kansas also maintains a law granting election officials “control” over voting places, K.S.A. § 25-2810, subject to the oversight authority of the Kansas Secretary of State. The Secretary of State in turn maintains an official policy of granting election officials unfettered discretion to restrict any speech or assembly activity within 250 feet of a polling location if they forecast that the activity could become a nuisance. County election officials across the state have exercised this authority to exclude nonpartisan election observers, petition circulators, and journalists from spaces near polling locations.

4. Plaintiff James Clark is a resident of Douglas County who has and wishes to continue working as an election protection volunteer. However, he has been and continues to be prohibited from publicizing election protection efforts within 250 feet of an open polling location on election day under applications of K.S.A. § 25-2430 and § 25-2810. Mr. Clark intends to provide non-partisan election protection support during the 2020 election at the United Way

Building polling location in Douglas County or another voting place in his community, and during other elections held between the date hereof and the 2020 election. However, Mr. Clark fears that he will be subject to arrest and prosecution for election misconduct as a result of his election protection efforts.

5. Mr. Clark has also campaigned for himself and other candidates on Election Day within 250 feet of a polling location before 2018 when he became aware that doing so was unlawful under K.S.A. § 25-2430. He would like to campaign in future elections but is hesitant to do so because he is concerned that he will be arrested for electioneering.

6. Plaintiff Rosanne Rosen volunteered as a nonpartisan election protection worker in Johnson County during the August 2018 primary election, but she was prohibited from offering assistance to voters under Johnson County's official policy and practice of banning nonpartisan election protection workers under K.S.A. § 25-2430. Ms. Rosen would like to provide nonpartisan election protection support during the 2020 elections in Johnson County, and during other elections held between the date hereof and the 2020 elections, but fears she will face criminal penalties under Defendant Metsker's application of the electioneering statute.

7. Plaintiff Kansas for Change, Inc. is a 501(c)(4) organization located in Wichita, Kansas that runs signature petition drives to develop local solutions for cannabis reform. During the April 2017 special elections, Kansas for Change organized a petition drive outside of several Sedgwick County polling locations where their volunteers were harassed and threatened with arrest because an election judge exercising authority under K.S.A. § 25-2810 determined that their non-electioneering speech activities would still not be allowed at the polling place. Kansas for Change would like to continue running petition drives at polling places but is chilled from

doing so under the Secretary of State's policy granting Sedgwick County election judges unfettered discretion pursuant to K.S.A. § 25-2810.

8. Kansas for Change also engages in political rallies and takes a position on certain candidates for office depending on their stance on marijuana-related issues. Kansas for Change and its members would like to host political rallies closer than 250 feet from a polling location but are afraid to do so for fear of prosecution under K.S.A. § 25-2430.

9. Plaintiff Daniel DeGroot has participated in signature collection for various political and civic issues on public property in Sedgwick County. In April 2017, he volunteered to collect signatures and have conversations with voters about marijuana decriminalization outside of a polling location in Sedgwick County on the day of the special election for Kansas's 4th Congressional District. When Mr. DeGroot arrived for his volunteer shift, he witnessed as law enforcement officers were called to the voting site because an election judge initiated a complaint that his fellow volunteers were engaged in an election crime. He would like to solicit signatures and have issue-based conversations near polling locations in future elections, however, he fears that an election judge will exercise their authority under K.S.A. § 25-2810 and have him arrested.

JURISDICTION AND VENUE

10. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violations of civil rights under color of state law that violate the First and Fourteenth Amendments to the United States Constitution.

11. This case presents a federal question within this Court's jurisdiction under Article III, § 2 of the United States Constitution and 28 U.S.C. §§ 1331 and 1343.

12. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

13. Venue is proper in this Court under 28 U.S.C. § 1391 because the parties reside in this District, and a substantial part of the events giving rise to this action occurred in this District.

PARTIES

14. Plaintiff James Clark is a registered voter and former County Attorney who resides in Douglas County, Kansas. Mr. Clark engaged in non-electioneering speech within 250 feet of a polling location during the 2018 primary election and was improperly censored by a county election official under the state's policy of unfettered discretion. Clark has also engaged in partisan electioneering in the past. He would like to engage in political speech and non-political speech within a 250-foot radius of his polling location on Election Day. However, he fears that he will face prosecution for election misconduct. Mr. Clark would also like to engage in partisan speech on private and public property outside of other polling locations in Douglas County within the 250-foot radius of a voting place.

15. Plaintiff Rosanne Rosen is a resident of Johnson County who votes at the Crossroads Church RCA polling location at 10551 South Quivira Road, Shawnee Mission, KS 66215. Ms. Rosen engaged in non-electioneering speech on private property within a 250-foot radius of her polling location on Election Day and was ejected by Defendant Metsker pursuant to his application of K.S.A. § 25-2430. She would like to engage in non-partisan election protection-related speech within 250 feet of her polling location in future elections. However, she fears that Defendant Metsker will censor her and prosecute her for a misdemeanor election crime.

16. Plaintiff Kansas for Change Inc., is a 501(c)(4) nonprofit organization based in Sedgwick County, Kansas with dozens of members across the state. Its core mission is to change cannabis policy in Kansas through political advocacy and political initiatives. To fulfill this core

mission, Kansas for Change mobilizes its members to circulate petitions, solicit signatures, and engage eligible voters to support marijuana decriminalization ballot measures and laws. During past elections, Kansas for Change has engaged in advocacy outside of polling locations on Election Day in order to ensure that they are connecting with eligible voters and obtaining legitimate signatures for ballot measures. During past elections, Kansas for Change members have been asked to leave polling locations because election judges determined that their non-electioneering activities would still be prohibited. Kansas for Change would like to engage in petition circulating activities within 250 feet of Sedgwick County polling location in future elections. However, they fear that they will be subject to exclusion and arrest under the Secretary of State's application of K.S.A. 25-2810, permitting election officials to exercise unlimited control to restrict First Amendment activity within a 250-foot radius of a polling location. The Secretary of State's policy of granting unfettered discretion to election judges has chilled the organization's members' First Amendment activity and frustrated its ability to carry out its core mission.

17. Plaintiff Daniel DeGroot is a registered voter who resides in Sedgwick County and regularly engages in political advocacy efforts. In April 2017, he volunteered to collect signatures in support of a ballot initiative that would decriminalize marijuana at a polling place located at the Gloria Dei Lutheran Church in Wichita, Kansas. When Mr. DeGroot arrived for his volunteer shift, he was informed that his fellow volunteers had been accused of violating the electioneering statute by the election judge and that police were called to the scene. He would like to engage in petition circulation activities on public property within 250 feet of a polling location on Election Day during future elections. Mr. DeGroot would also like to advocate in favor of ballot questions within 250 feet of Sedgwick County polling locations during future

elections. However, he is hesitant because he does not want to be arrested for electioneering or ejected from the polling location by an election judge exercising their discretion under K.S.A. 25-2810.

18. Defendant Scott Schwab is the Kansas Secretary of State and in that position is the state's chief election official responsible for overseeing all Kansas elections. He is sued in his official capacity as the Kansas Secretary of State. Defendant Schwab is charged with the general supervision of elections and enforcement of the election code, including the electioneering and polling place control statutes. While Defendant Schwab retains authority to enforce provisions of the election code, he also provides county election officers with broad discretion to enforce election crime and polling place control laws within their jurisdiction. Specifically, Defendant Schwab maintains an official policy of granting unfettered discretion to local officials permitting them to censor speech that will be potentially annoying for voters.

19. Defendant Ronnie Metsker is the Johnson County Election Commissioner and is sued in his official capacity. Defendant Metsker enforces election crime laws within Johnson County, including the electioneering statute. Defendant Metsker is also authorized to "control" polling locations and the 250-foot radius around the entrance to the polls. He maintains an official policy of banning nonpartisan election protection signs, which promote nothing other than election assistance, under K.S.A. § 25-2430 because they could cause a voter seeking assistance to engage in electioneering. He, or public employees working under his instructions, has similarly banished nonpartisan election protection workers under K.S.A. § 25-2430 whose speech was limited to helping individuals make their vote count. Defendant Metsker has formally articulated this policy in writing.

FACTUAL BACKGROUND

Electioneering Statute-K.S.A. § 25-2430

20. The Kansas Election Code makes electioneering a class C misdemeanor and defines electioneering as:

“knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicate support or opposition to a question submitted election *within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof.*”

K.S.A. § 25-2430 (emphasis added).

While the code exempts bumper stickers affixed to motor vehicles from the definition of electioneering, there is no exception for private property located within the 250-foot radius of a polling place or advance voting site. State Elections Director Bryan Caskey has confirmed that no exemption exists for private residences and businesses.¹

21. As a Class C misdemeanor, electioneering is punishable by up to one month in jail and a fine of up to \$500 and can be enforced by the Secretary of State, the Kansas Attorney General, or the District Attorney or County Attorney where the electioneering took place. *See* K.S.A. §§ 21-6602, 21-6611.

22. The Kansas Secretary of State’s Office prosecuted an individual for electioneering within 250 feet of an advance polling site in Clark County in 2004 and referred another

¹ Hearing on HB 2566 Before the H. Comm. on Elections, 87th Leg., 2018 Sess. (Kan. Jan. 31, 2018) (statement of Bryan Caskey) (“this office would like to recommend an amendment to this bill that would exempt privately held property from the ban on electioneering”), *available at* http://kslegislature.org/li_2018/b2017_18/committees/ctte_s_ethics_elections_and_local_government_1/documents/testimony/20180131_01.pdf.

electioneering matter to the Sedgwick County District Attorney's office in 2010.²

23. The Secretary of State maintains an official policy authorizing county election officers to enforce laws regarding voting procedures, including the duty to “prevent illegal activities such as electioneering” and coordinate with “local law enforcement officials.”³

Polling Place Control Statute-K.S.A. § 25-2810

24. The Secretary of State, chief county election officer, deputy election officer, and supervising judge are all authorized to supervise and direct control over a voting place. K.S.A. § 25-2810(b).

25. The Secretary of State maintains an official policy authorizing election officers to impose any speech and assembly restrictions under K.S.A. § 25-2810(b), explaining that such prohibitions within the 250-foot radius of a polling place entrance are “consistent with the statutory responsibility of election boards.”⁴

26. In a 2018 opinion, the Kansas Attorney General interpreted the control statute similarly, suggesting that the right to control a voting place empowers an election judge to restrict non-electioneering speech within the 250-foot radius even if it does not constitute disorderly election conduct or intimidation.⁵

Restrictions on Electioneering Speech

27. The 250-foot radius buffer zone restricts speech over a significant geographic area and encompasses 18,241.4 square meters of the public and private property surrounding a polling location.

² *Fish v. Kobach*, No. 2:16-cv-02105-JAR (D. Kan. filed Feb. 18, 2016), ECF No. 269-32 (“Known Reported Incidents of Election Crimes, 1997 - 2012”), at 1, 4.

³ See KANSAS ELECTION STANDARDS MANUAL (2014), attached as Exhibit A, at II-41.

⁴ *Id.* at II-42.

⁵ KAN. ATT’Y GEN. OP. NO. 18-15 (Oct. 22, 2018), at 4, available at https://ag.ks.gov/docs/default-source/ag-opinions/2018/2018-015.pdf?sfvrsn=f3a9d11a_6.

28. On information and belief, the majority of Johnson County’s electioneering buffer zones include the front yards, drive ways, and houses of private residences.⁶ Fully two-thirds of the electioneering buffer zones in Douglas County also encompass private residential property.⁷

29. Because K.S.A. § 25-2430 includes no exception for private property within electioneering buffer zones, hundreds of Kansas residents, organizations, and business owners are subject to arrest and prosecution if they campaign on private property they own or are authorized to use on Election Day.

30. Electioneering buffer zones also foreclose speech in spaces that are typically open to public assembly and speech. Over 80% of the electioneering buffer zones in Douglas County encompass areas that include public streets and sidewalks.⁸ Approximately 70% of electioneering buffer zones in Johnson County encompass public streets, sidewalks, and parks.⁹

31. Because the electioneering statute includes no exception for public spaces within 250-feet of a polling place entrance, a candidate would be in violation of the statute if she held a rally in a public park across the street from a polling location. Similarly, Kansans like Mr. Clark are prohibited from campaigning on a public sidewalk near a polling location even if they are not interfering with voters on their way into vote.

Johnson County Restrictions on Non-Electioneering Speech Under K.S.A. § 25-2430

32. The Johnson County Elections Office maintains a practice under K.S.A. § 25-2430 of prohibiting all speech within 250 feet of an open polling place even if that speech is unrelated to candidates, parties, or ballot questions.

⁶ It is clear that 114 of Johnson County’s 194 polling locations have buffer zones that encompass private property. *See* Johnson County 2018 Polling Location Maps, attached as Exhibit B, at 195 (summary page identifying each of the polling locations whose buffer zone maps on the pages prior reveal private property within the 250-foot radius).

⁷ *See* Douglas County 2018 Polling Location Maps, attached as Exhibit C, at 60 (summary page identifying each of the polling locations whose buffer zone maps on the pages prior reveal private property within the 250-foot radius).

⁸ *See id.*

⁹ *See* Ex. B, at 195.

33. During the August 2018 primary election, Defendant Metsker ordered election judges to remove dozens of nonpartisan election protection volunteers, including Ms. Rosen, from the parking lots of polling locations because he believed their efforts to assist voters constituted “electioneering.”

34. During the August 2018 primary election, Defendant Metsker also removed nearly one hundred signs promoting nonpartisan election protection programs because he believed the signs constituted electioneering.

35. Prior to the November 2018 general election, Defendant Metsker explained that he intended to exclude all signs—including nonpartisan election protection signs—from the 250-foot buffer zone, citing the electioneering statute.¹⁰

36. Defendant Metsker also announced his intention to ban any nonpartisan election protection worker from entering the 250-foot radius due to his fear that a person providing election protection assistance would prompt voters to engage in electioneering.¹¹

Restrictions on Non-Electioneering Speech Under K.S.A. § 25-2810

37. The Secretary of State maintains an official policy authorizing county election officials to restrict speech, assembly, and information collection under K.S.A. § 25-2810. The Secretary of State gives county election officials unfettered discretion to prohibit any activity within 250 feet of the polling place that they anticipate will be a nuisance or distraction for voters, without regard to the actual content of the activity.¹²

38. County election officials across the state restrict all manner of non-electioneering speech within 250 feet of a polling location pursuant to their authority under K.S.A. § 25-2810.

¹⁰ Letter from Ronnie Metsker to the American Civil Liberties Union Foundation of Kansas (Oct. 19, 2018), attached as Exhibit D.

¹¹ *Id.*

¹² *See* Ex. A, at II-42.

39. On information and belief, Riley County Clerk Rich Vargo maintains a practice of treating all speech within a 250-foot radius of a polling place as electioneering regardless of whether the signs promote a candidate, party, or ballot question.

40. On information and belief, Ford County Clerk Debbie Cox excludes not just election protection volunteers, but also members of the press who wish to cover and report on elections, pursuant to the Kansas Secretary of State's policy authorizing unfettered discretion to censor speech near a voting place.¹³ During the November 6, 2018 general election, physically aided by legal counsel, Cox banned members of the press from covering the election activities at the one and only polling place for Dodge City, citing her "discretion as to what to allow."¹⁴ In past elections, Cox has also removed election protection signs erected within 250 feet of the polling location.

41. Douglas County Clerk Jamie Shew excludes nonpartisan election protection volunteers from engaging in passive speech within 250 feet of a polling location pursuant to Defendant Schwab's policy permitting unfettered discretion to censor speech near polling locations.

42. On information and belief, Wyandotte County Election Commissioner Bruce Newby maintains a practice of removing election protection signs erected within 250 feet of a polling location under Defendant Schwab's control policy.

Restrictions on Rosanne Rosen's Non-Electioneering Speech

43. On August 8, 2018, Rosanne Rosen volunteered to be a nonpartisan election protection worker at her polling place located at Crossroads Church RCA at 10551 South Quivira

¹³ Vincent Marshall, *Election Day 2018*, DODGE CITY GLOBE (Nov. 6, 2018), <https://www.dodgeglobe.com/news/20181106/election-day-2018>.

¹⁴ *Id.*

Road, Shawnee Mission, KS 66215.

44. Ms. Rosen sat in a lawn chair outside of her car in the parking lot approximately 150 feet from the entrance to the polling location and held up an 8 x 11 sign that read “ELECTION PROTECTION VOLUNTEER 1-866-OUR-VOTE.” The sign also had a graphic of the Statue of Liberty. Ms. Rosen’s sign did not identify a party, candidate, or ballot issue, nor did any of her clothes or her vehicle display any such identifying insignia.

45. Ms. Rosen did not approach any voters or verbally solicit voters to offer assistance.

46. Approximately 30 minutes after Ms. Rosen began her voter assistance work, a poll worker came out and asked her what she was doing. Ms. Rosen explained that she was providing nonpartisan assistance to voters. The poll worker responded that she was “okay” to continue her assistance. Five to ten minutes later, the same poll worker returned with another person and told Ms. Rosen that she was “electioneering” and that he had received orders from the Johnson County Election Commissioner’s (Defendant Mestker’s) office to move her 250 feet away from the polling location entrance.

47. The poll worker measured 250 feet from the location entrance, which was found to be at the very end of the parking lot. The worker then instructed Ms. Rosen that the end of the parking lot was the closest she was permitted to be.

48. Ms. Rosen attempted to continue her assistance for another ten or fifteen minutes but abandoned her efforts when she realized that at the location to which she was moved she could not be seen by or interact with any voters in need of assistance.

49. Ms. Rosen would like to provide voter protection assistance in Johnson County in future elections. However, Ms. Rosen is afraid that she will be arrested for electioneering if she attempts to offer voters nonpartisan assistance within 250 feet of a polling place.

Restrictions on James Clark's Non-Electioneering Speech

50. In August, 2018, James Clark volunteered as an election protection volunteer in Douglas County at the United Way polling place located at 2518 Ridge Court, Lawrence, KS 66046.

51. Mr. Clark parked his car across the street from the polling location in front of the private residence located at 2519 Ridge Court, less than 50 feet from the entrance to the building in which the polling place was located. He brought his chair across the street and sat down under a tree at the entrance of the parking lot to the polling location. Mr. Clark had a folder with an 8x11 paper that said "ELECTION PROTECTION VOLUNTEER 1-866-OUR-VOTE." He also wore a 3 x 4.5 sticker that said "Problem at the Polls? Talk to me. Election Protection Volunteer."

52. About 30 minutes into Mr. Clark's shift, the election judge approached him and said that he was not permitted to be there. She showed him a full color locator map that identified the 250-foot buffer zone.

53. When Mr. Clark informed the poll worker that he was not electioneering, she responded that she was required to order him off the premises. Mr. Clark asked if he would be in violation of any statute if he moved several feet across the street and sat outside of his car. The poll worker declined to take a position on the legality of Mr. Clark continuing his poll observing across the street.

54. Unsure of whether the poll worker would call the police if he sat next to his car and aware no voters would be able to see him if he was 250 feet away from the polling location, Mr. Clark decided to leave. He ended his election protection activity because of the enforcement of the 250-foot buffer zone mandated by K.S.A. § 25-2430 and the election judge's unlimited

discretion to censor speech near a polling location under Defendant Schwab's official policy interpreting K.S.A. § 25-2810.

55. Mr. Clark would like to engage in election protection activities in future elections, including the 2020 primary and general election. However, he fears that he will be arrested for an election crime.

Restrictions on James Clark's Electioneering Speech

56. Mr. Clark would also like to engage in partisan speech on private and public property outside of other polling locations in Douglas County within 250 feet of their entrances, including property across the street from the polling location.

57. Mr. Clark has campaigned for himself and other candidates within 250 feet of various Kansas polling locations on Election Day. However, now that he is aware of the size of a buffer zone, he is hesitant to engage in Election Day political advocacy and campaigning. In particular, he is afraid that he will be prosecuted for electioneering under K.S.A. § 25-2430.

Restrictions on Kansas for Change, Inc.'s Election Day Petitioning Speech

58. Kansas for Change, Inc. and their members would like to engage in Election Day petition circulation activities and issue-based conversations with voters within 250 feet of Sedgwick County polling locations. These are non-electioneering activities.

59. On April 11, 2017, Kansas for Change members went to the polling place at Gloria Dei Lutheran Church, located at 1101 N. River Boulevard in Wichita, and proceeded to ask voters to sign a petition on marijuana sentencing reform as they left the polls. The election judge informed them that they could not collect signatures within 250 feet of the polling place. Despite the fact that Kansas for Change members stated that they were not electioneering or discussing

a current ballot issue, the election judge informed them that they were not allowed to be on the property.

60. Kansas for Change members are used to being excluded from the buffer zones surrounding polling places even for non-electioneering activity. Over the past five years, Kansas for Change members have routinely been escorted from polling locations by election judges acting under K.S.A. § 25-2810 based on erroneous accusations that handing out informational material on marijuana-related policy was causing a disturbance to voters.

61. These arbitrary non-electioneering restrictions on Kansas for Change members are a direct result of the unfettered discretion granted to election judges by Defendant Schwab's official policy interpreting K.S.A. § 25-2810. This policy permits election judges who disagree with Kansas for Change policy stances to remove their members from polling locations without cause and without offering a legitimate basis for removal under threat of arrest. It also effectively prevents Kansas for Change from carrying out its core mission to educate and inform the voting community about marijuana policy and to secure signatures for future ballot initiatives.

Restrictions on Kansas for Change, Inc.'s Electioneering Speech

62. Kansas for Change routinely opposes candidates in certain political races and actively critiques candidates for office regarding their stance on marijuana-related issues. In the Kansas for Change and their members have held non-disruptive demonstrations on public property to promote reform. Kansas for Change would like to engage in these types of non-disruptive demonstrations on public property near polling locations, including adjacent parks, on election day to persuade voters to support candidates and ballot initiatives that advance cannabis policy reform. The organization does not hold political rallies near polling places on election

day, however, because even their non-electioneering activities have resulted in their members being removed from the premises under threat of arrest.

63. Kansas for Change and its members are chilled from holding political rallies on sidewalks, in parks, or on other public property around a polling location because of the looming threat of prosecution under the electioneering statute, K.S.A. § 25-2430.

Restrictions on Daniel DeGroot's Election Day Petitioning Speech

64. Daniel DeGroot volunteered with Kansas for Change to collect petition signatures and have conversations with voters as they exited the polls about lowering sentences for marijuana possession convictions during the April 11, 2017 special election for Kansas's 4th Congressional District.

65. Mr. DeGroot was assigned to collect signatures at a polling location at Gloria Dei Lutheran Church. When he arrived to begin his volunteer shift, Mr. DeGroot saw that law enforcement officers were on the scene. He learned that the election judge of the polling location had determined that Kansas for Change volunteers were not authorized to collect signatures there, even though they were not advocating for an issue on the ballot and had not disturbed voters.

66. Mr. DeGroot would like to engage in Election Day advocacy efforts to encourage Sedgwick County voters to support cannabis reform, including if the issue is ever on the ballot for a vote. He would like to engage in these efforts within 250 feet of the entrance of Sedgwick County polling locations so he can effectively communicate with voters. However, he has no current plans to engage in advocacy efforts during future elections because he is afraid that he will be prosecuted for electioneering under K.S.A. 25-2430. Even if the issue is not on the ballot, Mr. DeGroot fears that his activities will be mischaracterized as election misconduct by an

election judge exercising unfettered discretion to censor speech under Defendant Schwab's interpretation of K.S.A. 25-2810.

CAUSES OF ACTION

Count 1- VIOLATION OF FIRST AMENDMENT RIGHTS (42 U.S.C. § 1983) Facially Invalid Electioneering Buffer Zone (K.S.A. § 25-2430) (Claims of Plaintiffs Clark, Kansas for Change, and DeGroot against All Defendants)

67. Plaintiffs restate and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

68. In the following paragraphs, references to the First Amendment include the First Amendment as applied to the states through the Fourteenth Amendment. *Gitlow v. New York*, 268 U.S. 652 (1925).

69. Plaintiffs' political, partisan, or non-partisan speech supporting or opposing candidates, parties, and ballot issues is speech related to a matter of public concern. It is therefore protected by the First Amendment.

70. K.S.A. § 25-2430's 250-foot radius violates the First Amendment on its face because its broad application to protected speech is impermissible when compared against any legitimate sweep of the statutes.

71. The 250-foot radius is geographically overbroad and bans far more speech on matters of public concern than is necessary to meet the State's legitimate goal of preventing fraud, intimidation, or disruption.

72. Specifically, a substantial number of instances exist in which the law cannot be applied constitutionally. These include, among other things, and without limitation: (i) conversations between family members inside a private vehicle within 250 feet from a polling

location; (ii) activities on private property located within a 250-foot radius, but not the actual polling place, including behind closed doors of organizations, residences, and businesses; (iii) passive activities that do not interfere with the act of voting at a polling site, such as the displaying of signs, buttons, or t-shirts on private property; (iv) activities outside of the 100-foot limitation approved in *Burson v. Freeman*, 504 U.S. 191, 201 (1992) that occur on public sidewalks and walkways and that do not actually involve approaching or interfering with voters.

**Count 2- VIOLATION OF FIRST AMENDMENT RIGHTS (42 U.S.C. § 1983)
Electioneering Buffer Zone Statute Invalid As-Applied
(Claims of Plaintiffs James Clark, Kansas for Change,
and Daniel DeGroot against Defendant Schwab)**

73. Plaintiffs hereby reincorporate the preceding paragraphs as if fully set forth herein.

74. The Supreme Court plurality noted in *Burson v. Freeman* that as-applied challenges are appropriate in a case where a 100-foot buffer zone crosses a roadway, ostensibly a “quintessentially public forum.” 504 U.S. at 210 n.13.

75. Plaintiffs James Clark, Kansas for Change, and Daniel DeGroot allege that the application of K.S.A. § 25-2430 to partisan activities they intend to conduct on private property that they are authorized to use and on public property outside of polling locations violates their First Amendment right to speak about matters of public concern.

**Count 3-VIOLATION OF FIRST AMENDMENT RIGHTS (42 U.S.C. § 1983)
Electioneering Buffer Zone Statute Invalid As-Applied to
Non-Electioneering Speech in Johnson County
(Claims of Rosanne Rosen against Defendant Metsker)**

76. Plaintiffs reincorporate the preceding paragraphs as if fully set forth herein.

77. Defendant Metsker has deprived and continues to deprive Plaintiff Rosen of her right to engage in non-electioneering speech within a 250-foot radius of a polling location, including areas that are traditionally a public forum, under K.S.A. § 25-2430.

78. Defendant's restriction on non-electioneering speech is not narrowly tailored to serve the government interest of preventing electioneering and interference with elections, or any other legitimate interest. There is no justification for banning non-electioneering speech, signs, and assembly over thousands of square feet of private and public property near a polling location in the name of guarding against electioneering.

79. Defendant Metsker's application and threatened application of this ban on non-electioneering speech is likewise not narrowly tailored to the government's stated interest of preventing electioneering or any other legitimate government interest, and is therefore invalid.

**Count 4- VIOLATION OF FIRST AMENDMENT RIGHTS (42 U.S.C. § 1983)
Unbridled Discretion Under the Voting Place Control Statute
(Claims of All Plaintiffs against All Defendants)**

80. Plaintiffs reallege the material facts alleged in the preceding paragraphs against Defendants.

81. Defendants maintain an official policy and practice that empowers state and local election officials to exclude anyone from engaging in any activity within 250 feet of a polling location if it might cause a nuisance to voters.

82. The policy grants Defendants unfettered discretion and lacks narrow tailoring to serve any legitimate government interest.

83. Further, this policy lacks narrow, definitive, and objective standards as to what types of non-electioneering speech and expressive activities may be banned, thus restricting far more speech than necessary and inviting viewpoint discrimination in application of the statute.

84. The unconstitutional overbreadth and vagueness of Defendants' policy, coupled with its chilling effect on First Amendment rights, render the policy facially unconstitutional and invalid in all applications.

**Count 5- VIOLATION OF FOURTEENTH AMENDMENT RIGHTS (42 U.S.C. § 1983)
Due Process Violations from Unfettered Discretion Under the Control Statute
(Claims of All Plaintiffs against All Defendants)**

85. Plaintiffs reallege the material facts alleged in the preceding paragraphs against Defendants.

86. Defendants maintain an official policy and practice that empowers state and local election officials to exclude anyone from engaging in any activity within 250 feet of a polling location in their sole discretion.

87. Defendants' policy lacks narrow, definitive, and objective standards for restricting non-electioneering speech, thereby inviting the risk of viewpoint discrimination in enforcement.

88. Plaintiffs and other individuals seeking to exercise their First Amendment rights at polling places are therefore subject to curtailment of those rights without sufficient notice as to how to regulate their conduct, and with a high likelihood that their rights will be erroneously curtailed by an election judge without any opportunity for a hearing or review of any kind.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

- a. Enter a judgement in favor of Plaintiffs and against Defendants, adjudging Defendants' policies and actions to be unconstitutional, and holding Defendants liable to Plaintiffs;

- b. Enter declaratory judgment in favor of Plaintiffs adjudging that K.S.A. § 25-2430 is unconstitutional on its face because it prohibits a substantial amount of protected speech without leaving open alternative channels;
- c. Enter declaratory judgment in favor of Plaintiffs adjudging that K.S.A. § 25-2430 is unconstitutional as applied to: (i) any activities on private property not included within the actual polling location; (ii) the placement of political signs on private property not included within the actual polling location; (iii) any activities, signs, or speech that do not attempt influence a voter to support or oppose a particular candidate, party, or question submitted;
- d. Enter declaratory judgment in favor of Plaintiffs and against Defendants adjudging that K.S.A. § 25-2810 is unconstitutional on its face and as applied to: (i) any activities that do not contribute to voter intimidation or actual interference with the election; (ii) the placement of signs on private property not included within the actual polling location; and/or to (iii) the placement of signs on public property not within the actual polling location;
- e. Enter injunctive relief enjoining Defendants from implementing K.S.A. § 25-2430;
- f. Enter injunctive relief enjoining Defendants from enforcing K.S.A. § 25-2810 against protected speech that does not contribute to voter interference or intimidation within the electioneering buffer zone outside of the polling location;
- g. Award Plaintiffs the costs and reasonable attorneys' fees incurred in this action; and
- h. Grant such other relief as the Court deems just and proper.

Designation of Place of Trial

Pursuant to D. Kan. 40.2, Plaintiffs designate Kansas City, Kansas as the place of trial.

Respectfully submitted,

/s/ Lauren Bonds

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ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, on this 13th day of June, 2019, which will send a notice of electronic filing to all attorneys of record.

/s/ Lauren Bonds
Lauren Bonds