UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

FRESH VISION OP, INC., *et al.*, Plaintiffs, v. MARK SKOGLUND, in his official capacity as Executive Director, Kansas Governmental Ethics Commission, *et al.*, Defendants.	Case No. 5:24-cv-04055

DEFENDANTS' TRIAL BRIEF

Defendants respectfully submit this trial brief to address a number of issues that the parties will be addressing at the consolidated preliminary injunction hearing / merits trial on October 7. The facts are largely stipulated (Doc. 32) and Defendants do not anticipate much evidentiary presentation in this primarily legal dispute.

I. – Challenge to Kansas' Definition of "Political Committee"

Defendants have already thoroughly briefed their position as to why Kansas' definition of a "political committee" in K.S.A. 25-4143(*l*)(1) does not contravene the First Amendment. (Doc. 15). Defendants stand on that briefing and will not repeat it here. In this trial brief, Defendants will limit their discussion to the new argument raised in Plaintiffs' recently-filed reply brief (Doc. 34) in which Plaintiffs advocate that the statute be stricken not just on an as "applied basis," but also facially.

Facial challenges are highly disfavored. "For a host of good reasons, courts usually handle constitutional claims case by case, not *en masse*." *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2397 (2024). That is because facial challenges "often rest on speculation about the law's coverage and its future enforcement." 144 S. Ct. at 2397 (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51 (2008)). They also "threaten to short circuit the democratic process by

preventing duly enacted laws from being implemented in constitutional ways." *Id.* And they "run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Wash. State Grange*, 552 U.S. at 450 (internal quotations omitted).

Plaintiffs argue that, while Kansas' law could be applied to an organization with *the* major purpose of electing a candidate, (Doc. 34 at 2), "it could also be applied to a myriad of other organizations with innumerable major purposes unrelated to election activity when those groups tangentially support a candidate." *Id.* The Supreme Court has warned, however, that in "determining whether a law is facially invalid, [courts] must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange*, 552 U.S. at 449-50. This is especially true in a case such as this where the Kansas state courts "have had no occasion to construe the law in the context of actual disputes" or "to accord the law a limiting construction to avoid constitutional questions." *Id.* at 450.

"Because it destroys some good along with the bad, invalidation for overbreadth is strong medicine that is not to be casually employed." *United States v. Hansen*, 599 U.S. 762, 770 (2023) (quotations omitted). The "less demanding though still rigorous" standard that applies to the type of First Amendment challenge at issue here asks whether "a *substantial* number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Moody*, 144 S. Ct. at 2397 (emphasis added) (quoting *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021)). In other words, "their number must be substantially disproportionate to the statute's lawful sweep." *Hansen*, 599 U.S. at 770. "In the absence of a lopsided ratio, courts must handle unconstitutional applications as they usually do—case-by-case."

The doctrine, then, considers the potential chilling effect on free speech, but it also weighs this concern against the social costs of blocking the application of laws that address constitutionally unprotected conduct. And there is no dispute that the State has strong interests in mandating robust disclosures from entities whose major purpose is engaging in express advocacy. To strike down K.S.A. 25-4143(*l*)(1) in its *entirety*, as Plaintiffs propose, would leave Kansas powerless to regulate such entities. This would represent a substantial encroachment of the State's sovereignty. Plaintiffs have offered no evidence—other than rank speculation—that the unconstitutional applications of the statute substantially outweigh its plainly legitimate sweep. Even if the Court assumes, for purposes of this case, that the activities of these Plaintiffs could not constitutionally justify the requirements applicable to "political committees" under current Kansas law, that is no reason to preemptively prevent the State's enforcement of the statute under all circumstances. Respect for key principles of federalism counsel in favor of judicial restraint, not a "swing for the fences" approach. *See Phelps v. Hamilton*, 59 F.3d 1058, 1070 (10th Cir. 1995) (in considering whether state statute is facially unconstitutional, federal courts must "proceed with caution and restraint.") (quoting *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216 (1975). That is why the "[a]pplication of the overbreadth doctrine is, manifestly, strong medicine" which courts employ "sparingly and only as a last resort." *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973).

A statute "should not be deemed facially invalid unless it is not readily subject to a narrowing construction by the state courts and its deterrent effect on legitimate expression is both real and substantial." *Phelps*, 59 F.3d at 1070. In *Phelps*, the Tenth Circuit discussed federal courts' authority "to construe ambiguous state statutes and to extrapolate the true meaning of such statutes according to traditional rules of statutory construction, and then to judge the constitutionality of such statutes as so construed." *Id.* The Court also reiterated "the well-established principle that statutes will be interpreted to avoid constitutional difficulties." 59 F.3d at 1070 (quoting *Frisby v. Schultz*, 487 U.S.

474, 483 (1988)). The Court recognized that a federal court's role is to "evaluate whether a statute is fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question[.]" 59 F.3d at 1070 (quoting *Houston v. Hill,* 482 U.S. 451, 468 (1987)).

Defendants have argued that K.S.A. 25-4143(*l*)(1) is constitutional in its present form. The Court held otherwise. (Doc. 22). But the Court saw fit to adjudge the statute unconstitutional only as applied to *these Plaintiffs*, recognizing the severe implications of a broader ruling. (*Id.* at 12-13). Defendants urge the Court to maintain that restraint and not *facially* invalidate the challenged statute, just as the Tenth Circuit did in both *Colorado Right to Life Committee, Inc. v. Coffman*, 498 F.3d 1137, 1155-56 (10th Cir. 2007), and *New Mexico Youth Organized v. Herrera*, 611 F.3d 669, 677 n.5 (10th Cir. 2010).

II. – Challenge to Kansas' Regulation of Independent Expenditures

As for Plaintiffs' broadside attack on the disclosure requirements applicable to independent expenditures in K.S.A. 25-4150, Defendants again refer the Court to their brief filed in response to Plaintiffs' motion for a TRO and preliminary injunction. (Doc. 15 at 11-16). Plaintiffs ask the Court to facially invalidate a statute that has never been interpreted or enforced in the manner they purport to fear. But the Court need not reach this issue because Plaintiffs lack standing to pursue this claim inasmuch as there is no credible threat of enforcement.

A. Plaintiffs Lack Standing to Bring a Pre-Enforcement Action Against Enforcement of K.S.A. 25-4150 in a Manner in Which it has Never Been Enforced

In order to bring a pre-enforcement First Amendment challenge to K.S.A. 25-4150, Plaintiffs must first establish their standing to sue. Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const., Art. III, § 2. The doctrine of standing gives meaning to these constitutional limits by "identify[ing] those disputes which are appropriately resolved through the judicial process." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014) (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992)).

"A plaintiff bears the burden of establishing Article III standing by showing (1) an 'injury in fact' that is 'concrete and particularized' and 'actual or imminent'; (2) the injury is 'fairly . . . trace[able] to the challenged action of the defendant,' and (3) the injury is likely to be 'redressed by a favorable decision' by the court." *Chiles v. Salazar*, No. 22-1445, _ F .4th _, 2024 WL 4157902, at *4 (10th Cir. Sept. 12, 2024) (citing *Lujan*, 504 U.S. at 560-61). In *Winsness v. Yocom*, 433 F.3d 727, 734 (10th Cir. 2006), the Tenth Circuit explicitly rejected the argument that a First Amendment challenge based on the overbreadth doctrine dispenses of the requirement for a plaintiff to prove these requirements. The Court explained, "Overbreadth is an exception to the *prudential* standing doctrine requiring plaintiffs to show that their own First Amendment rights (as opposed to the rights of third parties) have been violated, but it does not exempt plaintiffs—even plaintiffs bringing facial challenges on overbreadth grounds—from the bedrock Article III standing requirements of injury-in-fact, causation, and redressability." *Id*.

Plaintiffs fall short of meeting their burden to prove standing because they cannot establish an injury in fact. When, as here, First Amendment pre-enforcement relief is based on an alleged "chilling effect," Plaintiffs must produce: "(1) evidence that in the past they have engaged in the type of speech affected by the challenged government action; (2) affidavits or testimony stating a present desire, though no specific plans, to engage in such speech; and (3) a plausible claim that they presently have no intention to do so because of a *credible threat* that the statute will be enforced." *Chiles*, 2024 WL 4157902, at *4-5 (emphasis added) (quoting *Initiative & Referendum Inst.* v. *Walker*, 450 F.3d 1082, 1089 (10th Cir. 2006) (en banc)); *see also 303 Creative LLC v. Elenis*, 600 U.S. 570, 580 (2023) ("To secure relief, [Plaintiff] first had to establish her standing to sue. That required her to show 'a credible threat' existed that Colorado would, *in fact*, seek to compel speech from her that she did not wish to produce."); *Walker*, 450 F.3d 1082, 1089 ("If all it took to summon the jurisdiction of the federal courts were a bare assertion that, as a result of government action, one

is discouraged from speaking, there would be little left of the Article III threshold in First Amendment cases."); *Frank v. Lee*, 84 F.4th 1119, 1134 (10th Cir. 2023) (noting that a plaintiff need not violate the law to challenge it, but must still demonstrate "'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder'") (quoting *Susan B. Anthony List*, 573 U.S. at 159), *cert. denied*, 144 S. Ct. 1349 (2024).

Defendants do not contest that Plaintiffs have engaged in express advocacy in the past or that they want to engage in express advocacy in the future. However, Defendants vigorously dispute the notion that Plaintiffs face a credible threat that K.S.A. 25-4150 and its implementing regulations will be enforced in the hypothetical and unprecedented manner in which Plaintiffs urge as part of their effort to wipe the statute off the books.

Plaintiffs seek relief based on their reading of K.S.A. 25-4150, K.A.R. 19-21-5, and K.A.R. 19-29-2. Plaintiffs aver that this statute and its operative regulations could cause the State to enforce "burdensome reporting and disclosure provision on Fresh Vision and its officers if the group, its members, or officers, contribute or spend as little as $100 on political advocacy." (Doc. 1 at ¶ 65). In particular, Plaintiffs maintain that this independent expenditure law, which by its express terms does not apply to political committees, nevertheless must be construed to require entities that are *not* political committees to comply with the same disclosure obligations that are applicable to political committees. And that construction, Plaintiffs insist, would represent an infringement of the subjects' First Amendment rights.

The problem is that Plaintiffs' arguments ask this Court to completely ignore the fact that no entity that is not a political committee has *ever* been forced to file disclosure reports with the Kansas Governmental Ethics Commission ("KGEC") required of a political committee. Entities that do *not* qualify as political committees, as defined by K.S.A. 25-4143(*l*), but make contributions or expendi-

tures in an aggregate amount of $100 of more on express advocacy within a calendar year, are governed by K.S.A. 25-4150. (Doc. 32, Stip. Fact 22). Plaintiffs assert that simply spending $100 on express advocacy automatically subjects an entity to the full panoply of regulations that accompany status as a political committee. Not true. Instead, Kansas requires persons or entities that are not political committees and that meet the $100 threshold on express advocacy expenditures to simply file a one-page, event driven form cataloguing such expenditures, and even then, only for and at the conclusion of the relevant reporting period. (*Id.*, Stip. Facts 25-32).

Defendants believe that there is nothing unconstitutional about the current text of K.S.A. 25-4150. But even if Plaintiffs could conjure a hypothetical application of the statute that may result in a First Amendment violation, this is insufficient to prove Article III standing. As the Tenth Circuit recently reiterated, "[t]he mere presence on the statute books of an unconstitutional statute, in the absence of enforcement or credible threat of enforcement, does not entitle anyone to sue, even if they allege an inhibiting effect on constitutionally protected conduct prohibited by the statute." *Chiles*, 2024 WL 4157902, at *7 (quoting *Winsness*, 433 F.3d at 732). "Instead, to satisfy Article III, the plaintiff's expressive activities must be inhibited by an objectively justified fear of real consequences." *Id.* (quotation omitted).

The Tenth Circuit has identified at least three factors to consider in determining if a plaintiff has established a credible fear of prosecution: "(1) whether the plaintiff showed past enforcement against the same conduct; (2) whether authority to initiate charges was not limited to a prosecutor or an agency and, instead, any person could file a complaint against the plaintiffs; and (3) whether the state disavowed future enforcement." *Id.* (quoting *Peck v. McCann*, 43 F.4th 1116, 1132 (10th Cir. 2022)).

Applying these factors, Plaintiffs cannot show a credible fear of prosecution. First, no entity that is not a political committee has ever been forced to file the disclosure reports that Kansas

requires of political committees. Second, while any person can file a complaint with the KGEC under K.S.A. 25-4160, the authority to initiate a criminal prosecution belongs to the attorney general or applicable county/district attorney under K.S.A. 25-4164, which provides: "If the commission finds that the respondent has violated any provisions of the campaign finance act, it shall state its findings of fact and submit a report thereon to the attorney general and to the county or district attorney of the appropriate county." This further undercuts Plaintiffs' allegedly credible threat of enforcement. *See Peck*, 43 F.4th at 1132 ("Here, the second factor weighs against Ms. Peck—only prosecutors can bring charges under [the Statute]."). And these prosecutorial entities can act only after the KGEC has concluded that a respondent has violated the campaign finance act. K.S.A. 25-4164. (*See also* Doc. 32, Stip. Facts 3, 7-11).

Finally, the State has disavowed any intention of invoking the provision against the Plaintiffs, not just through this litigation, but as evidenced by the fact that the KGEC has required only a simple, one-page form—which has remained essentially unchanged for more than *thirty years*, since at least 1992—to be used to disclose independent expenditures. (*Id.*, Stip. Facts 26-33); *cf. Brown v. Buhman*, 822 F.3d 1151, 1171-72 (10th Cir. 2016) (State's disavowal of complained-of position rendered plaintiff's claims moot). In *303 Creative*, the Supreme Court recently embraced standing in the pre-enforcement context where there was "a history of past enforcement against nearly identical conduct." 600 U.S. at 583. Here, however, the exact opposite is true. Plaintiffs cannot point to a single instance of past enforcement against the conduct they claim chills their behavior (and the behavior of other third-parties not before the Court).

Plaintiffs suggest that the KGEC could change its interpretation at any time. But the Tenth Circuit has held that such an "entirely speculative" theory about a possible shift in the government's future enforcement practices is insufficient to trigger standing. *See Smith v. Becerra*, 44 F.4th 1238, 1252 (10th Cir. 2022) (the fact that it's technically possible the government could change its position

is not a basis for holding that live controversy exists where history of agency's action "foreclose[s] a reasonable chance of recurrence of the challenged conduct) (citation omitted). And unlike in *Smith*, there is *no history whatsoever* of the State enforcing disclosure obligations under the strict terms of the policy, as Plaintiffs interpret them. Given that Plaintiffs have no "objectively justified fear of real consequences" based on their reading of the statute, they lack an injury-in-fact and are without standing to pursue any sort of constitutional challenge (facial or as-applied) to K.S.A. 25-4150.

B. K.S.A. 25-4150 is Not Facially Invalid

Defendants outlined at length, *supra*, the jurisprudence governing facial challenges and why they are so heavily disfavored generally and are particularly inappropriate here. Plaintiffs point to no Kansas appellate court decision interpreting K.S.A. 25-4150, and Defendants are unaware of any such precedent. This Court, therefore, must apply Kansas' rules of statutory construction. *Finstuen v. Crutcher*, 496 F.3d 1139, 1148 (10th Cir. 2007). The Kansas Supreme Court has held on multiple occasions that "[t]he most fundamental rule of statutory construction is that the intent of the Legislature governs if that intent can be ascertained." *Johnson v. U.S. Food Serv.*, 312 Kan. 597, 600, 478 P.3d 776 (2021). It is likewise well-established that "before a statute may be struck down, the constitutional violation must be clear. The statute is presumed to be constitutional, and all doubts are resolved in favor of upholding it. If a court can find any reasonable way to construe the statute as valid, it must." *Bd. of Cnty. Comm'rs of Johnson Cnty. v. Jordan*, 303 Kan. 844, 858, 370 P.3d 1170, 1179 (2016).

Plaintiffs insist that the plain language of K.S.A. 25-4150 dictates that anyone who spends $100 on express advocacy must file disclosure reports like those required for political committees. This isolated reading overlooks that, "even when the language of the statute is clear, [Kansas courts] must still consider various provisions of an act *in pari materia* to reconcile and bring those provisions into workable harmony, if possible." *Roe v. Phillips Cnty. Hosp.*, 317 Kan. 1, 5, 522 P.3d 277

(2023). Further, the Kansas Supreme Court has recognized that "[s]tatutory provisions that are clear when read separately may become ambiguous when read together, invoking employment of canons of construction, legislative history, or other background considerations to divine the legislature's intent." *Hays v. Ruther*, 298 Kan. 402, 406, 313 P.3d 782, 786 (2013). And where, as in this case, "two statutes conflict or at least create an ambiguity when read together, courts must consider the provisions of the entire act with a view toward reconciling and bringing the various provisions into harmony, if possible." *State ex rel. Sec'y of Dep't for Child. & Fams. v. Smith*, 306 Kan. 40, 57, 392 P.3d 68 (2017).

In light of Plaintiff's hypothetical regulation scenarios, it is important to begin with what K.S.A. 25-4150 actually says:

> Every person, other than a candidate or a candidate committee, party committee or political committee, who makes contributions or expenditures, other than by contribution to a candidate or a candidate committee, party committee or political committee, in an aggregate amount of $100 or more within a calendar year shall make statements containing the information required by K.S.A. 25-4148, and amendments thereto. Such statements shall be filed in the office or offices required so that each such statement is in such office or offices on the day specified in K.S.A. 25-4148, and amendments thereto. If such contributions are received or expenditures are made to expressly advocate the nomination, election or defeat of a clearly identified candidate for state office, other than that of an officer elected on a state-wide basis such statement shall be filed in both the office of the secretary of state and in the office of the county election officer of the county in which the candidate is a resident. If such contributions are received or expenditures are made to expressly advocate the nomination, election or defeat of a clearly identified candidate for state-wide office such statement shall be filed only in the office of the secretary of state. If such contributions or expenditures are made to expressly advocate the nomination, election or defeat of a clearly identified candidate for local office such statement shall be filed in the office of the county election officer of the county in which the name of the candidate is on the ballot. Reports made under this section need not be cumulative. K.S.A. 25-4150.

Contrary to Plaintiffs' argument, by its plain language, K.S.A. 25-4150 does *not* regulate a person or entity as a political committee merely for spending $100 on express advocacy. Rather, the statute provides that "every person, *other than* a candidate or a candidate committee, party committee or political committee" who makes or receives express advocacy expenditures or contributions of

$100 or more within a calendar year shall file a disclosure statement. Plaintiffs do not dispute that requiring the disclosure of expenditures and contributions totaling $100 or more on express advocacy in a calendar year is substantially related to important government interests. Instead, they argue that this Court must construe the statute in a manner in which would require persons governed by K.S.A. 25-4150 to comply with reporting requirements applicable to political committees and then determine if that construction of the statute facially invalidates it.

Plaintiffs ask for this construction despite the fact that it is clear certain portions of K.S.A. 25-4148—the statute referenced in K.S.A. 25-4150—do *not* apply to persons or entities governed by K.S.A. 25-4150. Indeed, K.S.A. 25-4148 is entitled "Reports required of treasurer; when filed; contents, electronic filing; when required." Not surprisingly, the statute predominately discusses what is required of "treasurers" in subsections (a), (c), (d), (e), (f), (g), and (h). Meanwhile, the Kansas Campaign Finance Act ("KCFA") defines "treasurer" as "a treasurer of a candidate or of a candidate committee, a party committee or a political committee appointed under the campaign finance act or a treasurer of a combination of individuals or a person other than an individual which is subject to K.S.A. 25-4172(a)(2), and amendments thereto." K.S.A. 25-4143(p). Critically, nothing in K.S.A. 25-4150 requires the appointment of a treasurer. The omission is telling as is the contrast to K.S.A. to K.S.A 25-4145, which governs party and political committees. Indeed, it is only party and political committees that are statutorily obligated to appoint treasurers. *See* K.S.A 25-4145 ("Each party committee and each political committee which anticipates receiving contributions or making expenditures shall appoint a chairperson and a treasurer.").

Granted, K.S.A. 25-4148(b) does not explicitly discuss the actions of a "treasurer." But this subsection must be read in conjunction with subsection (a), which, as noted above, describes the "treasurer's" obligation to file a report prescribed by "this section." And subsection (b) discusses what the report required by this "section shall state." Defendants recognize there is an ambiguity

with regard to what portions of K.S.A. 25-4148(b) apply to K.S.A. 25-4150. But in the face of that ambiguity, federal and Kansas rules of statutory interpretation require this court to reconcile them when possible. Construing K.S.A. 25-4148(b) and K.S.A. 25-4150 *in pari materia*, the legislature clearly did not intend for every provision of K.S.A. 25-4148(b) to apply to persons subject to K.S.A. 25-4150. This is evident from K.S.A. 25-4148(b)'s statutory text, which is reproduced below:

> (b) Each report required by this section shall state:
> (1) Cash on hand on the first day of the reporting period;
> (2) the name and address of each person who has made one or more contributions in an aggregate amount or value in excess of $50 during the election period together with the amount and date of such contributions, including the name and address of every lender, guarantor and endorser when a contribution is in the form of an advance or loan;
> (3) the aggregate amount of all proceeds from bona fide sales of political materials such as, but not limited to, political campaign pins, buttons, badges, flags, emblems, hats, banners and literature;
> (4) the aggregate amount of contributions for which the name and address of the contributor is not known;
> (5) each contribution, rebate, refund or other receipt not otherwise listed;
> (6) the total of all receipts;
> (7) the name and address of each person to whom expenditures have been made in an aggregate amount or value in excess of $50, with the amount, date, and purpose of each; the names and addresses of all persons to whom any loan or advance has been made; when an expenditure is made by payment to an advertising agency, public relations firm or political consultants for disbursement to vendors, the report of such expenditure shall show in detail the name of each such vendor and the amount, date and purpose of the payments to each;
> (8) the name and address of each person from whom an in-kind contribution was received or who has paid for personal services provided without charge to or for any candidate, candidate committee, party committee or political committee, if the contribution is in excess of $100 and is not otherwise reported under subsection (b)(7), and the amount, date and purpose of the contribution;
> (9) the aggregate of all expenditures not otherwise reported under this section; and
> (10) the total of expenditures. (Emphasis added.)

Multiple portions of subsection (b) do not even apply to persons or entities that are only subject to disclosure requirements under K.S.A. 25-4150. For example, it would make no sense to order an individual making a one-time express advocacy expenditure to list all the cash he/she has on hand

at the beginning of the reporting period. *See* K.S.A. 25-4148(b)(1). Similarly, the $50 thresholds for reporting contributions in K.S.A 25-4148(b)(2) and (b)(7) do not comport with the $100 reporting threshold in K.S.A. 25-4150. Meanwhile, proceeds from the sale of political materials, *see* K.S.A 25-4148(b)(3), is not something with which K.S.A. 25-4150 even concerns itself, particularly if there is no connection to express advocacy. For all these reasons, construing K.S.A. 25-4150 and K.S.A. 25-4148 *in pari materia*, as required to ascertain the legislature's intent, it is apparent that the only contributions and expenditures that must be disclosed under K.S.A. 25-4150 are those specific items included on the one-page form the KGEC has been using for decades.

Not surprisingly, this is the exact approach Kansas has taken to interpret and enforce the KCFA since at least 1992. Yet Plaintiffs ask this Court to disregard the statutory interpretation rules set out above, read K.S.A. 25-4150 in isolation, and facially invalidate the whole statute based on a hypothetical scenario. The Supreme Court has repudiated that approach, reasoning that state statutes must not be stricken based on "hypothetical and unreal" possibilities. *Wash. State Grange*, 552 U.S. at 455 (quoting *Pullman Co. v. Knott*, 235 U.S. 23, 26 (1914)). Even in the First Amendment context, *Washington State Grange* relied on the well-established principal that, "in evaluating a facial challenge to a state law, a federal court must consider any limiting construction that a state court or enforcement agency has proffered." *Id.* at 456 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 795-796 (1989)). "When legislation and the Constitution brush up against each other, [a court's] task is to seek harmony, not to manufacture conflict." *United States v. Rahimi*, 144 S. Ct. 1889, 1903 (2024). Defendants ask this Court to construe the KCFA *as a whole* and hold that K.S.A. 25-4150 is not facially unconstitutional.[1]

[1] If the Court agrees with Defendants' analysis of K.S.A. 25-4150, Plaintiffs' attack on the associated regulations also must fail. The Kansas Supreme Court has held that when its interpretation of a statute conflicts with a Kansas Administrative Regulation, the statute controls and the regulation must yield. *Bruce v. Kelly*, 316 Kan. 218, 255, 514 P.3d 1007 (2022).

C. K.S.A. 25-4150's Disclosure Regulations Survive Any Level of Scrutiny

Defendants explained in detail in their response to Plaintiffs' motion for a TRO and preliminary injunction why the independent expenditure disclosure obligation satisfies any level of scrutiny, including heightened scrutiny. (Doc. 15 at 14-16). Defendants will not repeat that analysis here and will simply rest on their prior brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 2, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to the e-mail addresses on the Court's electronic mail notice list.

/s/ Garrett R. Roe