UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
TOPEKA DIVISION

FRESH VISION OP, INC., et al., *Plaintiffs*, v. MARK SKOGLUND, Executive Director, Kansas Governmental Ethics Commission, et al., *Defendants*.	Case No. 24-cv-_____ PLAINTIFFS' APPLICATION FOR TEMPERORY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTION (Plaintiffs request oral argument)

MOTIONS

Plaintiffs Fresh Vision OP, Inc., James G. Muir, and Chengny Thao respectfully move pursuant to Fed. R. Civ. P. 65 for a temporary restraining order and preliminary injunction prohibiting Defendants from enforcing K.S.A. §§ 25-4143(l)(1), 25-4145, and 25-4148 and K.A.R. § 19-21-3 against Plaintiffs. Plaintiffs also respectfully move the Court to preliminarily enjoin Defendants' enforcement of K.S.A. § 25-4150 and K.A.R. §§ 19-21-5, 19-29-2.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiff Fresh Vision OP, Inc. is a grass roots nonprofit corporation that advocates for quality-of-life issues in the Overland Park area of Kansas. Plaintiffs James G. Muir and Chengny Thao are its officers. Fresh Vision pursues its goals primarily with public activism and education initiatives. Fresh Vision occasionally advocates for political candidates when doing so furthers its objectives, but doing so is not the organization's major purpose.

Defendants attempted to regulate Fresh Vision as a political committee despite the sporadic nature of its express advocacy efforts. Indeed, Defendants threatened to impose fines and

criminal sanctions against Fresh Vision's officers if they failed to register the group as a political committee.

But Kansas's definition of "political committee" in K.S.A. § 25-4143(l)(1) is unconstitutional. Although the First Amendment allows political committee regulation only for organizations with *the* major purpose of express advocacy, *see N.M. Youth Organized v. Herrera*, 611 F.3d 669, 677 (10th Cir. 2010), Kansas subjects any organization with "a" major purpose of express advocacy to regulation. K.S.A. § 25-4143(l)(1).

Because Defendants have previously attempted to sanction Plaintiffs for engaging in constitutionally protected activities, they should be temporarily restrained and preliminarily enjoined from enforcing the unconstitutional campaign finance law so that Plaintiffs may pursue fundraising and local community advocacy activities *immediately* without fear of regulation or prosecution.

The Court should also preliminarily enjoin Defendants' enforcement of K.S.A. § 25-4150 and K.A.R. § 19-21-5 so that they do not regulate Fresh Vision as a political committee for merely spending $100 on independent express advocacy. The $100 threshold for political-committee-like treatment is also patently unconstitutional, because the Tenth Circuit already ruled that $200 and $500 thresholds are unconstitutional. *See Colo. Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1154 (10th Cir. 2007); *N.M. Youth Organized*, 611 F.3d at 678. Plaintiffs seek only a preliminary injunction, and not a TRO, against these laws because no local elections are scheduled for this year, and, thus, Plaintiffs have no immediate intentions of engaging in express advocacy.

I. FACTUAL BACKGROUND

Overland Park community members, from various backgrounds created Fresh Vision for the major purpose of preserving the quality of life in and around Overland Park, by promoting wholesome neighborhoods, small-business economic growth, public safety, and responsible land development. *See* Ex. 1, Muir Decl. ¶¶ 3, 5. The organization promoted its mission with public advocacy and community education initiatives. *Id*. at ¶¶ 6-7. Later, in July 2021, Fresh Vision conducted minor express advocacy for Overland Park mayoral candidate Dr. Faris Farassati, with direct mail and candidate promotion on its website, because he committed to pursue public policies that aligned with Fresh Vision's goals. *Id*. at ¶ 8.

Defendants are responsible for enforcing Kansas's campaign finance laws. Immediately after Fresh Vision expressly advocated for Dr. Farassati, Defendants sent Plaintiffs a letter ordering them to register Fresh Vision as a political committee and threatening them with fines and imprisonment if they failed to comply with Kansas campaign finance laws. *Id*. at ¶ 9.

After filing an official enforcement action to compel compliance, Defendants tried to persuade Plaintiffs that if they would just submit to the government, fill out their "paperwork" and, consequently, disclose their financial supporters, then Muir's and Thao's circumstances would be less burdensome. *Id*. at ¶¶ 11-12. But because Plaintiffs believed Defendants were unlawfully attempting to regulate them as a political committee and out of fear of retribution to their financial contributors, Plaintiffs refused to comply. *Id*. at ¶ 12.

Subsequently, because of Defendants' procedural due process mistakes, Defendants dismissed the charges against Plaintiffs. *Id*. at ¶ 13. However, Defendants did not admit they mistakenly applied the law to Fresh Vision. *Id*. at ¶ 14. And, likewise, Plaintiffs did not admit they violated the law. *Id*. at ¶ 15.

Then Fresh Vision went dormant out of fear of further government interference with its mission and persecution of Muir, Thao, and its members. *Id*. at ¶ 16.

Now, however, Fresh Vision desires to begin pursuing its major purpose again and pursue it indefinitely into the future with public advocacy and community education initiatives similar to those it used in 2021. *Id*. at ¶ 17. Through its website, direct mail, and community organizing, Fresh Vision intends to begin raising community awareness immediately about ongoing explosives blasting; local hotel, neighborhood, retail, and other residential development projects; development projects supported by additional sales taxes; and the expansion of the local arboretum into an event center. *Id*. at ¶ 18. And to finance these efforts, Fresh Vision must begin fundraising immediately, but will only do so if its donors can remain anonymous. *Id*. at ¶ 19.

Plaintiffs have no desire to make Fresh Vision a political committee because of the disclosure and reporting burdens that come with that designation. *Id*. at ¶¶ 10, 22. Fresh Vision will periodically engage in express advocacy and contribute or spend an aggregate of $100 or more within a calendar year on express advocacy when that activity serves its purposes. *Id*. at ¶¶ 24-25. But express advocacy has not, is not, and never will be, Fresh Vision's major purpose. *Id*. at ¶ 23. And no candidate for public office or a candidate's committee has ever or will ever control Fresh Vision. *Id*. at ¶ 20.

III. LEGAL STANDARD

"When addressing a motion for [a TRO], the court applies the same standard as it applies to a motion for preliminary injunction. Four factors must be shown by the movant to obtain injunctive relief: (1) the movant is substantially likely to succeed on the merits; (2) the movant will suffer irreparable injury if the injunction is denied; (3) the movant's threatened injury

outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction is in the public interest." *First Baptist Church v. Kelly*, 455 F. Supp. 3d 1078, 1084 (D. Kan. 2020).

IV. ARGUMENT

A. Plaintiffs are likely to prevail on the merits.

1. Kansas law fails the major purpose test.

Kansas's political committee statutes and regulations violate the First Amendment because they fail the major purpose test. "[A] political committee may 'only encompass organizations that are under the control of a candidate or *the* major purpose of which is the nomination or election of a candidate.'" *N.M. Youth Organized*, 611 F.3d at 677 (quoting *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (*per curium*)) (emphasis added). It is undisputed that Fresh Vision is not under the control of a candidate. Therefore, Defendants may only regulate Fresh Vision as a political committee "under 'the major purpose' test," *id*., which "sets the lower bounds for when regulation as a political committee is constitutionally permissible." *Id.* (citing *N.C. Right to Life v. Leake*, 525 F.3d 274, 288, 289 (4th Cir. 2008) (*NCRL II*)). Indeed, "only organizations that have 'the major purpose' of electing or defeating a candidate may be forced to register as political organizations." *Id*. at 679.

Kansas defines a "political committee" as:

> any combination of two or more individuals or any person other than an individual, ***a*** major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.

K.S.A. § 25-4143(l)(1) (emphasis added). Kansas Administrative Regulation §19-21-3 is K.S.A. § 25-4143(l)(1)'s supplemental regulation. An organization deemed to be a political committee is required to register with the government and timely disclose its donors, contributions and

expenditures, and other internal financial information. *See* K.S.A. §§ 25-4145, 25-4148. Failure to comply with these ongoing, burdensome obligations exposes the political committee's officers to large civil penalties and imprisonment. *See* K.S.A. §§ 25-4152, 25-4167, 25-4181.

"Since designation as a political committee often entails a significant regulatory burden—as evidenced by the requirements imposed by [Kansas]—the [*Buckley*] Court held that only entities 'under the control of a candidate or *the* major purpose of which is the nomination or election of a candidate' can be so designated." *NCRL II*, 525 F.3d at 287 (quoting *Buckley*) (emphasis added).

Classifying organizations as political committees if they have "*a* major purpose" of electioneering "simply go[es] too far in regulating ordinary political speech to be considered constitutional." *Id.* at 277. Kansas's laws fail *the* major purpose test because they allow the government to regulate a group as political committee if express advocacy is "*a* major purpose" of the organization. K.S.A. § 25-4143(l)(1) (emphasis added). Indeed, they "threaten to impose numerous and burdensome obligations on organizations not primarily focused on nominating and electing political candidates." *NCRL II*, 525 F.3d at 279.

The Kansas statutes fail under existing Circuit precedent. "[T]he application of [these laws] to [Fresh Vision] creates an impermissible risk of the suppression of ideas because it omits the 'major purpose' test and encompasses groups whose 'incidental purpose' may be to engage in express advocacy." *Colo. Right to Life Comm* 498 F.3d at 1156 (quoting *N.C. Right to Life v. Bartlett*, 168 F.3d 705, 712-13 (4th Cir. 1999) (*NCRL I*)).

"[U]nder [Kansas's] 'a major purpose' approach, an organization can have *multiple* 'major purposes,' while under the Supreme Court's 'the major purpose' approach, an organization can have but *one* 'major purpose.' The constitutional importance of this distinction is self-evident." *NCRL II*, 525 F.3d at 303. Indeed, Kansas's laws allow the government to regulate an

organization "merely for having the support or opposition of a candidate as '*a* major purpose,'" even though the organization is "primarily engaged in speech on political issues unrelated to a particular candidate. This [ ] not only contravene[s] both the spirit and the letter of *Buckley*'s 'unambiguously campaign related' test, but it would also subject a large quantity of ordinary political speech to regulation." *Id.* at 287-88 (quoting *Buckley*). "The Supreme Court has [ ] not relaxed the requirement that an organization have '*the* major purpose' of supporting or opposing a candidate to be considered a political committee." *Id*. at 288. Accordingly, "it is unsurprising that a number of lower courts have also adopted *Buckley*'s '*the* major purpose' test in some form, highlighting that regulation as a political committee is only proper if an organization primarily engages in election-related speech." *Id.* (collecting cases).

The *Buckley* Court "did indeed mean exactly what it said when it held that an entity must have '*the* major purpose' of supporting or opposing a candidate to be designated a political committee." *Id.* at 288. "Permitting the regulation of organizations as political committees when the goal of influencing elections is merely one of multiple 'major purposes' threatens the regulation of too much ordinary political speech to be constitutional." *Id*. at 288-89.

Indeed, "under [Kansas's] 'a major purpose' standard, organizations can be subjected to regulation as a political committee even if the majority of their activity is not election related," which is exactly what happened to Fresh Vision. *Id*. at 303. "Since political committee burdens apply across the board to all of an organization's activities, this means that, under [K.S.A. § 25-4143(l)(1)], substantial amounts of pure political speech will be burdened in an effort to regulate relatively minor amounts of electoral advocacy." *Id*.

Kansas Statutes Annotated § 25-4143(l)(1) is facially unconstitutional because its text literally fails the major purpose test. "By imposing a political committee designation—and its

associated burdens—on entities when influencing elections is only 'a major purpose' of the organization, [Kansas] not only expands the definition of political committee beyond constitutional limits, but also neglects to provide potentially regulated entities with any idea of how to comply with the law." *NCRL II*, 525 F.3d at 289. Following "*Buckley*'s 'the major purpose' standard is the only way to ensure that political committee burdens fall primarily on electoral advocacy." *Id*. at 303-04.

Kansas's laws are, "in essence, a blank check to trample on protected political speech." *Id*. at 304. And trample on Plaintiffs' speech is exactly what Defendants did. The Court should issue a temporary restraining order and preliminary injunction against the enforcement of the definition of "political committee" in K.S.A. § 25-4143(l)(1), its supplemental regulation K.A.R. § 19-21-3, and the application of "political committee" in K.S.A. §§ 25-4145 and 25-4148 so that Plaintiffs may immediately exercise their political speech and association rights to fundraise and engage their community on issues of local concern.

2. Independent expenditures cannot be regulated like a political committee.

Another aspect of Kansas law allows Defendants to unconstitutionally regulate Fresh Vision like a political committee merely because it makes small independent expenditures.

"Independent expenditures are similar to pure issue discussion and therefore, remain far removed from the valid state interest of preventing election corruption." *Colo. Right to Life Comm*., 498 F.3d at 1147. But, under K.S.A. § 25-4150 and K.A.R. § 19-21-5, anyone that spends $100 on express advocacy in a calendar year is automatically regulated like a political committee. Indeed, anyone that spends $100 on express advocacy must file disclosure reports just like a political committee. *See* K.S.A. §§ 25-4148, 25-4150; K.A.R. §§ 19-21-5,19-29-2.

The Tenth Circuit has already enjoined similar statutes in Colorado and New Mexico that had higher thresholds. A "$200 trigger, standing alone, cannot serve as a proxy for the 'major purpose' test." *Colo. Right to Life Comm.*, 498 F.3d at 1154. "The amount of money an organization must accept or spend—$200—is not substantial and would, as a matter of common sense, operate to encompass a variety of entities based on an expenditure that is insubstantial in relation to their overall budgets." *Id.* (internal punctuation marks and citation omitted). Indeed, regulating a group "based upon the fact that it spends at least $500 a year for political purposes … is constitutionally infirm." *N.M. Youth Organized*, 611 F.3d at 678. If $200 and $500 thresholds are too low, then Kansas's $100 threshold cannot survive.

The *Buckley* Court "narrowly construed the federal definition of a PAC to 'only encompass organization that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.'" *Minn. Citizens Concerned for Life v. Swanson*, 692 F.3d 864, 872 (8th Cir. 2012) (*en banc*) (quoting *Buckley*). The Court "reasoned this narrow interpretation ensured the scope of the law was not 'impermissibly broad.'" *Id*. (quoting *Buckley*). "By subjecting political funds to the same regulatory burdens as PACs, [Kansas] has, in effect, substantially extended the reach of PAC-like regulation to all associations that ever make independent expenditures." *Id.* at 872. Kansas's law "manifestly discourages associations, particularly small associations with limited resources, from engaging in protected political speech." *Id*. at 874. "In short, the collective burdens associated with [Kansas's] independent expenditure law chill political speech." *Id.*

Kansas Statutes Annotated § 25-4150 and K.A.R. § 19-21-5 "automatically" require a group that spends $100 "on an election-related expense" to comply with "the reporting requirement and other limitations imposed on a political committee, regardless of what percentage of operating

funds that [$100] constitutes or what else the organization spends its resources on." *N.M. Youth Organized*, 611 F.3d at 679. These "campaign finance laws unconstitutionally infringe upon the right to engage in political speech through independent expenditures." *Minn. Citizens Concerned for Life*, 692 F.3d at 870. And they "contradict[] the Supreme Court's repeated admonition that only organizations that have 'the major purpose' of electing or defeating a candidate may be forced" to be regulated like a political committee. *N.M. Youth Organized*, 611 F.3d at 679. Thus, K.S.A. § 25-4150 and K.A.R. § 19-21-5 are facially unconstitutional because they regulate small independent expenditures like political committee expenditures. The laws deprive Plaintiffs of the freedom of political expression in violation of the First Amendment.

"In short, the collective burdens associated with [Kansas's] independent expenditure law chill political speech." *Minn. Citizens Concerned for Life*, 692 F.3d at 874. "Suppose two [Kansas] farmers owning adjoining property near a highway support a particular candidate for state office. The farmers decide to erect a large sign in support of the candidate and spend over $100 in supplies and labor." *Id*. at 873. The farmers will be forced to file timely reports just like political committees. *See* K.S.A. §§ 25-4148, 25-4150; K.A.R. §§ 19-21-5, 19-29-2. "If the farmers forget to file, …, they are subject to significant fines and possible imprisonment." *Minn. Citizens Concerned for Life*, 692 F.3d at 873; K.S.A. §§ 25-4167, 25-4181, 25-4152. "Faced with these regulatory burdens—or even just the daunting task of deciphering what is required under the law—the farmers reasonably could decide the exercise is simply not worth the trouble. And who would blame them?" *Minn. Citizens Concerned for Life*, 692 F.3d at 873-74 (citing *MCFL*; *NCRL II*). Kansas's $100 independent expenditure law "manifestly discourages associations, particularly small associations with limited resources, from engaging in protected political speech." *Id*. at 874. "Unlike compliance with the mandatory tax laws, the laws at issue here give

[Kansas] associations a choice—either comply with cumbersome [ ] regulatory burdens or sacrifice protected core First Amendment activity. This is a particularly difficult choice for smaller businesses and associations for whom political speech is not a major purpose nor a frequent activity." *Id*.

In 2010, the Tenth Circuit enjoined a similar New Mexico law with a $200 automatic trigger. *See N.M. Youth Organized*, 611 F.3d at 678-79. Even without a decade of economic inflation, Kansas's $100 automatic trigger laws are obviously worse. The Court should enjoin them.

3. Kansas's independent expenditure disclosure laws fail exacting scrutiny.

Even if the $100 threshold was viable, K.S.A. § 25-4150 and K.A.R. § 19-21-5 demand an unconstitutional amount of disclosure for contributing or spending $100 for express advocacy. Indeed, K.S.A. § 25-4150 and K.A.R. § 19-21-5 demand compliance with K.S.A. § 25-4148 and K.A.R. § 19-29-2, respectively, which are designed for or are the equivalent of candidate, party, and political committee disclosure rules—not $100 independent expenditures.

"The government may regulate in the First Amendment area only with narrow specificity, and compelled disclosure regimes are no exception. When it comes to a person's beliefs and associations, broad and sweeping state inquiries into these protected areas . . . discourage citizens from exercising rights protected by the Constitution." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. __, 141 S. Ct. 2373, 2384 (2021) ("*AFPF*") (cleaned up). "When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough, because First Amendment freedoms need breathing space to survive." *AFPF*, 141 S. Ct. at 2389 (punction marks and citation omitted).

"To be sure, the compelled disclosure of donors who make political contributions or expenditures . . . poses a significant threat to associational freedom by disincentivizing political activity that would trigger disclosure requirements and exposing citizens to public scrutiny." *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1243 (10th Cir. 2023) (citation omitted) (cleaned up). "[D]isclosure requirements can chill association even if there is no disclosure to the general public." *AFPF*, 141 S.Ct. at 2388 (cleaned up). "Exacting scrutiny is triggered by state action which *may* have the effect of curtailing the freedom to associate, and by the *possible* deterrent effect of disclosure." *Id*. (internal quotation marks and citation omitted).

"[E]xacting scrutiny requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest, and that the disclosure requirement be narrowly tailored to the interest it promotes." *AFPF*, 141 S. Ct. at 2385 (internal quotation marks and citations omitted). *See also Wyo. Gun Owners*, 83 F.4th at 1244. "[Kansas] is not free to enforce any disclosure regime that furthers its interests. It must instead demonstrate its need for universal production in light of any less intrusive alternatives." *AFPF*, 141 S. Ct. at 2386. "The narrow tailoring inquiry directs [this Court] to consider 'the extent to which the burdens are unnecessary.'" *Wyo. Gun Owners*, 83 F.4th at 1244 (quoting *AFPF*).

"The burdens of disclosure regimes are not best saved for upstart advocacy organizations" like Fresh Vision. *Id*. at 1246. Accordingly, "independent expenditures [cannot] be regulated as strictly as contributions." *Colo. Right to Life Comm.*, 498 F.3d at 1147 (citing *Fed. Election Comm'n v. Mass. Citizens for Life, Inc.,* 479 U.S. 238, 259 (1986) (*MCFL*)). "Independent expenditures are similar to pure issue discussion and therefore remain far removed from the valid state interest of preventing election corruption." *Id*. (citing *MCFL*). "[Kansas's] 'interest in

disclosure . . . can be met in a manner less restrictive than imposing the full panoply of regulations that accompany status as a political committee…." *Id*. at 1154 (quoting *MCFL*).

"A critical feature of the narrow tailoring inquiry turns on whether the government seriously undertook to address the problems it faces with less intrusive tools readily available to it." *Wyo. Gun Owners*, 83 F.4th at 1247 (cleaned up). "This means that, beyond proving a balanced relationship between the disclosure scheme's burdens and the government's interests, the government must 'demonstrate its need' for the disclosure regime 'in light of any less intrusive alternatives."' *Id*. (quoting *AFPF*).

"Here, the financial burden of state regulation on [organizations'] freedom of association approaches or exceeds the value of their financial contributions to their political effort; and the governmental interest in imposing those regulations is minimal, if not nonexistent, in light of the small size of the contributions." *Sampson v. Buescher*, 625 F.3d 1247, 1261 (10th Cir. 2010). Indeed, "[t]here is no *de minimis* exception for a speech restriction that lacks sufficient tailoring or justification." *Wyo. Gun Owners*, 83 F.4th at 1247 (cleaned up).

And "[Kansas] owes [organizations that make $100 expenditures] precision," *Wyo. Gun Owners*, 83 F.4th at 1247, instead of applying a one-size-fits-all disclosure regime designed for candidates, political parties, and political committees. *See* K.S.A. §§ 25-4150, 25-4148; K.A.R. §§ 19-21-5, 19-29-2. "A disclosure statute that burdens an advocacy group with muddling through ambiguous statutory text that fails to offer guidance on compliance does not afford that precision. It offers only uncertainty. This uncertainty is particularly problematic in the First Amendment context." *Wyo. Gun Owners*, 83 F.4th at 1247-48.

"Compliance with [K.S.A. § 25-4150 and K.A.R. § 19-21-5] necessarily burdens [any group's] First Amendment right to association." *Id*. at 1247. "'Narrow tailoring is crucial where

First Amendment activity is chilled—even if indirectly—'[b]ecause First Amendment freedoms need breathing space to survive.'" *Id*. at 1248 (quoting *AFPF*). "[U]ncertainty to small shops like" Fresh Vision "amidst the threat of sanction chills the exercise of First Amendment rights." *Id*. at 1249. "[A]ssociational rights must be protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Id*. (internal quotation marks omitted).

Whatever interest Kansas has in disclosure for $100 contribution or expenditures '"can be met in a manner less restrictive than imposing the full panoply of regulations that accompany status as a political committee. . . ."' *Colo. Right to Life Comm.*, 498 F.3d at 1154 (quoting *MCFL*). Accordingly, the laws facially deprive Plaintiffs of the freedom of association in violation of the First Amendment. The Court should enjoin them.

B. Plaintiffs will suffer irreparable harm without equitable relief.

Plaintiffs have suffered, are suffering, and will continue to suffer constant First Amendment harm under Kansas's laws. "When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (internal quotation marks and citation omitted). "The Supreme Court squarely has decided this point." *Koontz v. Watson*, 283 F. Supp. 3d 1007, 1024 (D. Kan. 2018) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

C. The balance of harm favors Plaintiffs.

Plaintiffs will likely succeed on their First Amendment claims. "'When a law is likely unconstitutional,'" the government's interests "'do not outweigh'" the protection of constitutional rights. *Marie v. Moser*, 65 F. Supp. 3d 1175, 1205 (D. Kan. 2014) (quoting *Hobby Lobby Stores v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) (*en banc*) (plurality), *aff'd*, 573 U.S. 682 (2014)) (cleaned up). Here, "the balance of harm analysis favors injunctive relief." *Id*.

D. The public interest is always served by protecting constitutional rights.

No one has an interest in enforcing unconstitutional laws. Therefore, '"it is always in the public interest to prevent'" their enforcement. *Id*. (quoting *Hobby Lobby*).

V. THE COURT SHOULD WAIVE RULE 65(C)'S SECURITY REQUIREMENT.

The Court has "discretion [to] determine that a bond is unnecessary" absent "proof showing a likelihood of harm." *Bushnell, Inc. v. Brunton Co*., 673 F. Supp. 2d 1241, 1265 (D. Kan. 2009) (citing *Winnebago Tribe of Nebraska v. Stovall*, 341 F.3d 1202, 1206 (10th Cir. 2003). Enjoining unconstitutional laws harms no one. Accordingly, the Court should not require bond.

VI. CONCLUSION

Plaintiffs' motions should be granted.

Dated: June 24, 2024

Respectfully submitted,

/s/ Ryan A. Kriegshauser

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