No. 25-128,896-A
IN THE COURT OF APPEALS
OF THE STATE OF KANSAS

UNITED KANSAS INC., ET. AL.,

Plaintiffs – Appellants,

v.

SCOTT SCHWAB, KANSAS SECRETARY OF STATE, *ET. AL*.,

Defendants – Appellees

On Appeal from The District Court of Saline County,
Honorable Jared B. Johnson, Judge, District Court Case Nos. SA-2024-CV-000152; RN-2024-CV-000184

RESPONSE TO DEFENDANTS-APPELLEES' NOTICE OF SUPPLEMENTAL AUTHORITY

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Plaintiffs submit this response to Defendants' August 26, 2025 notice of supplemental authority. *Walden v. Kosinski*, No. 25-764-CV, 2025 WL 2413251, at *2 (2d Cir. May 2, 2025), is materially different from and thus irrelevant to this matter.

First, *Walden* says nothing about the Kansas Constitution or Kansas's unique free-expression protections.

Second, the restriction in *Walden* was more narrowly targeted based on legislative findings that two words ("Independence" and "Independent") in the names of nominating bodies were likely to cause voter confusion. Here, by contrast, the anti-fusion laws sweep in not just parties who seek to label themselves "Independent" or "Independence" but *all* minority parties who wish to cross-nominate another party's candidate. The two contexts cannot be equated.

Third, *Walden* concerned a distinct constitutional question: *how* a nominating petition can describe an independent body. At issue here, however, is *who* a party can nominate as its preferred candidate and whether that nomination will appear on the ballot at all. The intrusion on constitutional rights is markedly different here than in *Walden*, compelling a different result. As plaintiffs highlighted in their briefs, a party's *choice of nominee* remains "'the most effective way in which that party can communicate to the voters what the party represents and, thereby, attract voter interest and support.'" Reply Br. at 7 (quoting *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000) (cleaned up)). Limiting who a party can choose as a standard bearer and spokesperson—like the anti-fusion laws do here—imposes a more severe burden on speech and association than the

naming restriction at issue in *Walden*. That, in turn, justifies a heightened level of scrutiny. Reply Br. at 10. And under that heightened level of scrutiny, Kansas has "less restrictive alternatives to achieving," *Swamp v. Kennedy*, 950 F.2d 383, 389 (7th Cir. 1991) (Ripple, J., dissenting from the denial of rehearing en banc, joined by Posner and Easterbook, JJ.), the interest *Walden* credits in preventing voter confusion. Pls' Op. Br. 35. Thus, *Walden* has little to no applicability or persuasive value here.

Respectfully submitted,
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**Pro hac vice*

***Applications for admission pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I certify that on the 2nd day of September 2025, the foregoing was electronically filed with the Clerk of the Court by using the Court's e-Filing system which will send notification of electronic filing to counsel for all parties of record.

/s/ Rex A. Sharp
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