

CASE NUMBER: JO-2026-CV-002080

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL DEPARTMENT

THE CITY OF EDGERTON, KANSAS,	)	
<i>Plaintiff,</i>	)	No. JO-2026-CV-002080
	)	K.S.A. Chapter 60
v.	)	Div. # 20
	)	
CARRIE SCHMIDT,	)	
PUBLIC TRUST COLLECTIVE, INC.,	)	
KIMBERLY TWENTE, AND	)	
ALL OTHER DEFENDANTS KNOWN	)	
OR UNKNOWN	)	
<i>Defendants.</i>	)	

ORDER GRANTING MOTIONS TO STRIKE

On September 3, 2026, this case came before the Court for hearing on Defendants’ motions to strike under the Kansas Public Speech Protection Act (“KPSPA”) (Index #12, #15, #16). Carrie Schmidt, Kimberly Twente, and the Public Trust Collective appeared with their attorney, Linus L. Baker. The City of Edgerton appeared via Todd A. Luckman. The parties and counsel appeared in person. For the reasons set forth below, Defendants’ motions to strike are **GRANTED** and defendant Twente’s motion for discovery is **DENIED**.

I. Brief Background

Defendants Schmidt and Twente were among of a group of citizens who circulated the “Petition for Proposed Ordinance to Prohibit High Impact Data Centers” (“proposed ordinance”) in their town, in accordance with K.S.A. 12-3013. The proposed ordinance was submitted to the Edgerton city council. Instead of

either passing the ordinance or putting it on the ballot for the electors of the city to vote upon, the City sued for declaratory relief.

It is undisputed that the proposed ordinance received a sufficient number of signatures; that proponents submitted it to the Johnson County Legal Department and the Johnson County Election Office, where both entities approved the ordinance as to form; and that when the proposed ordinance was presented to the City to pass or put on the ballot, the City refused. The City asks the Court to declare that the proposed ordinance is factually and legally inaccurate, and that it is administrative in nature, a status which would enable the City to avoid putting the issue to vote in November. See K.S.A. 12-3013(e)(1).

Defendants responded to the City's declaratory judgment action by filing and personally serving motions to strike under K.S.A. 60-5320(d) of the KPSPA. Defendant Twente also filed a motion for limited discovery under the same statute.

The collective motions to strike and motion for discovery were noticed for, and heard, on September 3, 2025.

II. Framework under the Kansas Public Speech Protection Act

The KPSPA sets forth a two-step process for determining a motion to strike under the statute.

Step One

First, the party filing the motion to strike has the initial burden of demonstrating that the claim they seek to strike implicates the right of association, free speech, or petition. K.S.A. 60-5320(d). The claim itself is not the focus at this

step, but rather, the communication that underpins it. *Neuman v. Anesthesia Assocs. of Kansas City, P.A.*, 66 Kan. App. 2d 1, 15-6, 577 P.3d 559, 569 (2025). A communication is “the making or submitting of a statement or document in any form or medium, including oral, visual, written or electronic.” K.S.A. 60-5320(c)(2).

At step one, courts are only concerned with whether the communication falls within one of the three protected rights; courts do not determine truth or falsity at this stage, nor do they concern themselves with the “motives or merits of a communication.” *Doe v. Kansas State University*, 61 Kan.App.2d 128, 143, 499 P.3d 1136, 1147 (2021); *Williams v. Greenstein*, 66 Kan.App.2d 253, 265-66, 580 P.3d 43, 53 (2025). Courts may consider the content and context of the communication when making the determination. *Doe*, 61 Kan. App.2d at 142; *Neuman*, 66 Kan.App.2d at 13-5.

Step Two: Burden Shifting

If parties meet their burden at step one, “the burden shifts to the responding party to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a prima facie case.” K.S.A. 60-5320(d). Substantial competent evidence is legal and relevant evidence that a reasonable person could accept as being adequate to support a conclusion. *Doe*, 61 Kan.App.2d at 147-48. Although the pleadings may be considered, the Court is not required to accept them as true, nor may a responding party fall back on “notice pleading” as an avenue to survive step two. *Id.* at 150 (allowing a party to “skate by” on a notice pleading

argument “would eviscerate the second prong of the court’s analysis under K.S.A. 60-5320(d) and turn anti-SLAPP motions to strike into a game of wack-a-mole.”).

Expedited Discovery Permitted

Upon a showing of good cause, the Court may allow specified and limited discovery relevant to the motion. K.S.A. 60-5320(e)(1). Good cause exists when the information sought cannot be readily obtained by other means and the information will assist the court in determining whether the parties have established the elements supporting or defending the motion to strike. *Creative Planning, LLC v. Greco*, 66 Kan.App.2d 649, 673, 589 P.3d 15, 30 (2026).

III. Analysis

Defendants meet step one of the analysis. The City concedes that Defendants were specifically chosen to defend suit because they participated in circulating the proposed ordinance for signature (including signing it themselves), and otherwise assisted in facilitating the proposed ordinance to the current posture. These activities constitute communications related to the right to petition. K.S.A. 60-5320(c)(5). While the Court understands the City’s “mechanics” argument to mean that the suit for declaratory judgment is not necessarily unfriendly but merely a vehicle to access the courts, the KPSPA’s step one framework only requires Defendants to show a prima facia case that the claim on which the motion to strike “relates to” the “right to petition.” Given the Legislature’s directive for liberal construction of the KPSPA, Defendants fairly easily meet their burden at step one.

Accordingly, the burden shifts to the City to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a prima facie case. K.S.A. 60-5320(d). The City brought two counts: declaratory judgment and permanent injunction. Under either count, the ultimate question concerning the proposed ordinance is whether it is legislative or administrative, because if it is administrative, the City may properly withhold the proposed ordinance from the ballot.

When determining whether an ordinance is legislative or administrative, courts considers four non-determinative factors: (1) whether the proposed ordinance creates new law or executes existing law; (2) whether the proposed ordinance involves acts that declare public purpose and provide ways and means to accomplish that purpose (generally legislative), or acts that deal with a small segment of an overall policy question (generally administrative); (3) whether the decisions affected require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice; and (4) whether the proposed subject is of statewide concern, in which the State legislature has delegated decision-making to the local governing body as the designated agent for local implementation of state policy. *McAllister v. City of Fairway, Kansas*, 289 Kan. 391, 403-05, 212 P.3d 184, 194-95 (2009).

Defendants' position is that the City's verified petition does not constitute an affidavit and cannot be considered as substantial competent evidence of their position. The City argues the petition is sufficient to find in their favor. The Court

need not determine whether the petition constitutes an affidavit because it is authorized by statute to consider the pleadings. See K.S.A. 60-5320(d) (“the court *shall* consider the pleadings...”)(emphasis added).

Addressing the four *McAllister* factors, the City asserts the proposed ordinance is administrative for the following reasons:

- It alters existing (zoning) law by categorically defining specific property a nuisance which would require administrative action to enforce;
- It lacks a general public purpose in favor of a narrow portion of overall policy because the City controls land use through zoning laws, and the categorial exclusion of one type of use disregards the zoning laws and the rights of property owners;
- Enforcing the ordinance would require specialized municipal knowledge because the City would have to determine water and power use or any proposed data centers, and this determination would be difficult because “the City would supply neither [water nor power] in the area where data centers would be built;”
- It does not address a matter of statewide concern, because the State counts on “local governments to tailor [nuisance] rules and enforcement to their needs.”

Index# 1, ¶30. These unsupported legal conclusions fail to rise to the level of substantial competent evidence in support of their claims. The City alleged no specific facts or authority speaking to the impact of the ordinance on the City’s existing zoning laws and regulations; whether or why the ordinance impacts a small portion of overall policy; how determining water and electricity use requires specialized municipal knowledge; or why the ordinance does or does not impact a statewide concern. The City’s unsupported assertion that they simply do not have the authority to do much of what the proposed ordinance requires them to do is not enough for this Court to conclude that it has met its step two burden.

In sum, the City's evidence—to the extent they bring it—is a conclusory, verified pleading, and therefore insufficient at this stage. See *Doe* at 146 (a petition, by itself, does not constitute substantial competent evidence to support a prima facie case that a party is likely to prevail on its claims.)

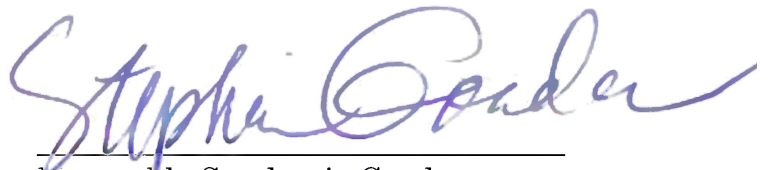
Having failed to satisfy its burden under step two of the KPSPA, Defendants' motions to strike are **GRANTED**. The Court grants each defendants' motion to strike because the arguments are substantially the same.

Counsel conceded at oral argument that defendant Twente's motion for discovery was filed only to address the possibility that the City came forward with substantial competent evidence supporting their claim. Because the City has failed to do so, the Court determines discovery as to defendant Twente, whose claims are substantially similar to the other defendants, is no longer at issue.

IV. Conclusion

The Court **GRANTS** defendants' motions to strike under the Kansas Public Speech Protection Act, K.S.A. 60-5320(d) and **DENIES** defendant Twente's motion for discovery. Counsel for defendants is hereby ordered to submit the appropriate affidavit which will enable the Court to evaluate *reasonable* attorney fees pursuant to K.S.A. 60-5320(g).

IT IS SO ORDERED.



Honorable Stephanie Goodenow
Johnson County District Court
Division # 20

NOTICE OF ELECTRONIC SERVICE

Pursuant to KSA 60-258, as amended, copies of the above and foregoing ruling of the court have been delivered by the automatic notification electronically generated upon filing of the same by the Clerk of the District Court to the e-mail addresses provided by counsel of record in this case. Counsel for the parties so served shall determine whether all parties have received appropriate notice, complete service on all parties who have not yet been served, and file a certificate of service for any additional service made.

/s/ Corey Jobe
