

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

LEAGUE OF WOMEN VOTERS OF  
MISSOURI and MISSOURI STATE  
CONFERENCE OF THE NATIONAL  
ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,

Plaintiffs,

v.

STATE OF MISSOURI; JOHN R.  
ASHCROFT, in his official capacity as  
Missouri Secretary of State; and LOCKE  
THOMPSON, in his official capacity as Cole  
County Prosecuting Attorney and on behalf of  
all Missouri Prosecuting Attorneys,

Defendants.

Case No. 22AC-CC04333

Division I

**FINAL ORDER AND JUDGMENT GRANTING DECLARATORY AND INJUNCTIVE  
RELIEF**

This matter came before this Court for a bench trial on August 19, 2024, with closing arguments occurring on October 21, 2024. Plaintiffs bring this lawsuit against the State of Missouri and the Missouri Secretary of State seeking declaratory judgment and injunctive relief. Plaintiffs and Defendants presented witnesses through fact and expert trial deposition testimony, joint stipulated facts, and exhibits. In addition, Defendants presented live fact witness testimony. This court accepts all trial deposition testimony as evidence in this case. See Rule 57.07(a) (“Depositions may be used in court for any purpose.”). The Court has received the evidence and

heard arguments from the parties. Having reviewed the record and considered the testimony and evidence, this Court now issues a final judgment and order.

### **INTRODUCTION AND PROCEDURAL HISTORY**

Nonpartisan statewide civic engagement organizations play an essential role in encouraging and enabling all eligible Missourians to participate in our democracy. Every year, these organizations, including Plaintiffs League of Women Voters of Missouri (“LWVMO”) and Missouri State Conference of the National Association for the Advancement of Colored People (“Missouri NAACP”), interact with thousands of potential voters, providing the encouragement, education, and assistance necessary for these individuals to exercise their fundamental right to vote.

In this action, Plaintiffs challenge four provisions of Missouri House Bill 1878, codified in §§ 115.205.1 and 115.279.2 RSMo,<sup>1</sup> (“HB 1878”), that restrict political speech and civic engagement activities, collectively referred to as the “Challenged Provisions.” Each makes it more difficult for non-partisan, non-profit civic organizations such as Plaintiffs to engage in voter outreach and activities they undertake to spread their pro-voter message and increase participation in elections. The Challenged Provisions did, and likely will if they are not permanently enjoined, chill speech and advocacy related to voting and decrease participation in elections. Trial Dep. Ex. 1, Chapel Aff. ¶ 11; Trial Dep. Ex. 3, Dugan Aff. ¶ 8.

Plaintiffs filed a Petition and a Motion for Preliminary Injunction on August 22, 2022. On September 22, 2022, Defendants filed a Motion to Dismiss. The parties appeared for a hearing on Plaintiffs’ Motion for Preliminary Injunction on September 23, 2022. On October 24, 2022, this

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<sup>1</sup> All statutory citations are to the Revised Statutes of Missouri (2016), as updated, unless otherwise noted.

Court granted Plaintiffs' Motion, preliminarily enjoining the challenged statutes and denying Defendants' Motion to Dismiss. This Court certified a Defendant class of prosecutors. On November 29, 2022, Defendants filed an answer. The case then proceeded to a bench trial. All factual findings herein, including the joint trial stipulations, are accurate as of the date of trial.

## **JOINT TRIAL STIPULATIONS<sup>2</sup>**

### **A. General Background Facts**

1. Missouri DOR stands for Missouri Department of Revenue.
2. Missouri DOR includes motor vehicle and licensing divisions.
3. DMV stands for Department of Motor Vehicles.
4. Missouri License offices are sometimes referred to as DMVs. Here, they are referred to as License Offices.
5. There are 116 Local Election Authorities in Missouri.
6. The common acronym for a Local Election Authority is LEA.
7. Of the 116 LEAs in Missouri, 110 are County Clerks and 6 are Boards of Election.
8. There are 114 counties in Missouri and one independent city (Saint Louis).
9. The Missouri Secretary of State is Missouri's chief elections official.
10. The Secretary of State maintains an office in Jefferson City, Cole County, Missouri.
11. The Secretary of State can promulgate rules and issue guidance regarding Missouri's election laws.
12. MCVR stands for the Missouri Centralized Voter Registration Database.
13. The MCVR is administered by the Secretary of State's Office.

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<sup>2</sup> The parties submitted Joint Stipulated Facts on August 8, 2024. These facts are reprinted here with updated citations.

14. LEA staff and the Secretary of State's office have access to the MCVR.
15. Poll workers and election judges do not have access to the MCVR.
16. Missouri held a primary election on August 6, 2024.
17. The last day to register to vote in the Missouri Primary was July 10, 2024.
18. Missouri will hold a general election on November 5, 2024.
19. The last day to register to vote in the 2024 Missouri General Election will be October 9, 2024.
20. To cast a ballot in an election in Missouri, an individual must be registered to vote in Missouri. § 115.139.
21. A person who has not registered to vote by the registration deadline associated with a specific election will be unable to vote on the election associated with that deadline, but will be able to register for future elections.
22. The Missouri Secretary of State publishes registration deadlines for upcoming elections on the SOS website: <https://www.sos.mo.gov/elections/calendar>.
23. Any citizen who is entitled to register and vote shall be entitled to register for and vote in all statewide public elections and all public elections held for districts and political subdivisions within which he or she resides. § 115.137.
24. Registered voter information and documentation is kept in MCVR including, but not limited to, voting history, name, address, mailing address, last four digits of the voter's social security number (if provided), gender (if provided), date of birth, a driver's license number (if provided), party affiliation (if provided), and the voter's scanned signature(s) from the voter's initial registration, absentee ballot requests, name or address changes, party affiliation declarations or changes, and other updates to the voter's record, all of which require a signature.

25. To register to vote, Missourians may complete a voter registration application form in any of the following ways: (1) in person before their local election authority, at a Missouri License Office during any application for or renewal of a Missouri driver's license or non-driver ID, at other social service agencies, as well as most libraries throughout the State, or, for members of the military and their dependents, at any armed services voting office; (2) by mailing a registration application form to their local election authority; or (3) by submitting an electronic registration application form online via the Missouri Secretary of State's website. § 115.151. Voters may also complete registration applications at community voter registration drives or with the assistance of a voter registration solicitor.

26. A voter registration application must be submitted by the fourth Wednesday prior to Election Day in order for the individual to be eligible to vote in that election. § 115.135. Those registering after that deadline can be eligible to vote in future elections.

27. By signing and submitting a completed voter registration application form, the applicant attests under penalty of perjury to the accuracy of the information provided on the form and their eligibility to vote.

28. Knowingly submitting a falsified voter registration application is a class one election offense, punishable by up to five years in prison and/or a fine of up to \$10,000.

29. Voter registration applications are processed by the LEA for the jurisdiction in which the applicant resides.

30. LEAs are responsible for registering voters.

31. Voter registration forms must be submitted to the appropriate LEA before the voter registration deadline for a particular election in order for a voter to be eligible to vote in that election.

32. Upon receipt of a voter registration application, the LEA is responsible for verifying and inputting the information contained on the application into the MCVR, and determining if the applicant is eligible to register to vote.

33. LEAs have processes for verifying voter information provided on registration applications against other government resources that provide data to ensure the accuracy of the information and eligibility of the applicant.

34. When the LEA determines that “such application is accepted and not rejected,” the applicant is deemed registered to vote in future elections in Missouri. § 115.151.

35. Registered Missouri voters who meet the eligibility criteria may vote absentee prior to election day either by mail-in absentee ballot (eligibility requirements apply, as discussed below) or in-person absentee voting.

36. To obtain a mail-in absentee ballot, a voter must submit a signed application containing certain statutorily required information, including the [voter’s]

37. Registered voters may vote by mail-in absentee ballot if they indicate they expect to meet one of the following statutory criteria: absence on election day from the jurisdiction in which the voter is registered; incapacity or confinement due to illness or physical disability, including primary caregivers living at the same address; religious belief or practice; employment as an election worker, healthcare worker, or first responder; incarceration; or participation in the address confidentiality program. § 115.277.

38. Registered voters may request a mail-in absentee ballot from their LEA in person, by mail, by fax, or electronically. § 115.279.

39. Registered voters may obtain absentee ballot application forms on the Missouri Secretary of State’s website, some LEA websites, and LEA offices, among other places.

40. Mail-in absentee ballot applications are processed by LEAs to assess the applicant's eligibility to receive an absentee ballot by mail, and who enter the request into MCVR.

41. If the LEA determines that the applicant is eligible to vote in the jurisdiction, and meets the qualifications to vote absentee, the LEA will mail an absentee ballot to the applicant.

42. LEAs are the only entity in Missouri that may provide ballots to voters.

43. Beginning the second Tuesday prior to an election, Missouri registered voters may apply and vote absentee in-person without providing an excuse, upon presentation of requisite photo ID, at locations designated by the LEA.

### **B. Facts About the Parties**

44. *MONAACP*. In Missouri, the Missouri State Conference of the NAACP is the state affiliate of the National Association for the Advancement of Colored People (“MONAACP” or “Missouri NAACP”), a named organizational Plaintiff in this case.

45. MONAACP is a statewide membership organization.

46. In addition to adult units, MONAACP also includes youth and college chapters, chapters inside Missouri prisons, and Youth Councils for minors.

47. MONAACP's Executive Director is Olivia Pener.

48. The mission of MONAACP is “to ensure the political, educational, social, and economic rights of all persons [and to] eliminate race-based discrimination.”

49. MONAACP facilitates its members to volunteer to assist Missourians in registering to vote.

50. MONAACP's members and volunteers educate Missourians on the process of absentee voting.

51. MONAACP distributes t-shirts, stickers, pins, and other materials to volunteers.

52. MONAACP provides food and/or beverages to its volunteers working at voter registration events.
53. MONAACP's paid employees participate in voter registration events.
54. **LWVMO.** LWVMO stands for The League of Women Voters of Missouri, which is the state chapter of the League of Women Voters, a named organizational Plaintiff in this case ("LWVMO").
  55. LWVMO is a statewide membership organization.
  56. LWVMO is made up of nine local leagues.
  57. LWVMO's Executive Director is Jean Dugan.
  58. LWVMO's Bookkeeper is Chantal Hoffsten.
  59. Encouraging voting is central to LWVMO's mission.
  60. LWVMO organizes voter registration activities including registering voters at schools, universities, and post-naturalization ceremonies.
  61. Paid LWVMO staff participate in facilitating, organizing, conducting, and overseeing voter registration events.
  62. Unpaid LWVMO volunteers participate in voter registration events.
  63. Paid LWVMO staff perform clerical duties such as recordkeeping and answering phone calls and emails.
  64. Paid LWVMO staff respond to inquiries about voter registration and absentee ballot applications.
  65. LWVMO activities related to absentee voting were reduced when the Challenged Provisions were in effect.
  66. **State of Missouri.** Defendant State of Missouri, as of 2022, was home to 4,286,342



voters across its 114 counties and one independent city.

67. **John R. Ashcroft.** Defendant John R. Ashcroft is the Missouri Secretary of State, the State’s chief elections official and is responsible for implementation of laws related to voting, including the Challenged Provisions across the State. *See* 15 CSR 30-1.010; *see also* MO. CONST. art. IV, § 14; § 115.136.1.

68. In addition to overseeing administration of elections in Missouri, Secretary Ashcroft’s office includes an Election Integrity unit which receives complaints; determines whether “reasonable grounds” exist to pursue a complaint; and may refer matters for prosecution to the local prosecutor.

69. **Locke Thompson.** Defendant Locke Thompson is the Cole County Prosecuting Attorney. He is sued in his official capacity only and, pursuant to the Court’s Order of October 24, 2022, as a representative of a Defendant class of Missouri prosecuting attorneys.

**C. Facts about House Bill 1878, RSMO 115.205 & 115.279 (2022) (the “Challenged Provisions”) and Related Statutes**

70. The four voter registration and absentee ballot solicitation provisions contained in HB 1878 and §§ 115.205 & 115.279 are referred to herein as the “Challenged Provisions.”

71. Violation of the Compensation Ban is a Class Four Election offense, a misdemeanor. §§ 115.205, 115.637, 115.641.

72. Violation of the Unpaid Solicitor Registration Requirement is a Class Three Election offense, a misdemeanor. §§ 115.205, 115.635.

73. Violation of the Registered Voter Requirement is a Class Four Election offense, a misdemeanor. §§ 115.205, 115.637, 115.641.

74. Violation of the Absentee Ballot Solicitation Ban is a Class One Election offense, a felony. §§ 115.279, 115.304, 115.631.

75. Before implementation of HB 1878’s provisions, only individuals who were “paid or otherwise compensated for soliciting more than ten voter registration applications” were required to register with the Secretary of State as a “voter registration solicitor” for each two-year election cycle. § 115.205.

76. Class One Election Offenses are deemed felonies connected with [the] exercise of the right of suffrage, penalties for which can include a fine or prison time. § 115.631.

77. Persons convicted of a Class One Election Offense in Missouri “shall [not] be entitled to register or vote.” § 115.133.

78. Class Three Election Offenses are deemed misdemeanors connected with the exercise of the right of suffrage, penalties for which can include a fine or prison time. § 115.635.

79. Class Four Election Offenses are deemed misdemeanors not connected with the exercise of the right of suffrage, penalties for which can include a fine or prison time. § 115.637.

80. Since 2006, Missouri law has prohibited anyone from being paid based on the number of voter registrations they solicit. § 115.203.1

81. Missouri law requires anyone who accepts a voter registration application from another and agrees to submit it on their behalf to deliver the application to the election authority within seven days of accepting it, subject to criminal penalties. § 115.203.3, 4.

### **FINDINGS OF FACT**<sup>3</sup>

82. *First*, HB 1878 prohibits any person from “be[ing] paid or otherwise compensated for soliciting voter registration applications” (the “Compensation Ban”). HB 1878, § A (codified

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<sup>3</sup> On August 7, 2024, the parties filed a Combined Summary of Witnesses and Trial Deposition Objections setting forth objections made during trial depositions, including the bases for and responses to each objection. For any finding of fact made by the Court in this Order that relies upon testimony to which either party objected, that objection is hereby overruled.

at § 115.205.1). *Second*, the statute requires even uncompensated individuals “who solicit[] more than ten voter registration applications” to register with the Secretary of State as “voter registration solicitors” (the “Unpaid Solicitor Registration Requirement”). *Id. Third*, the statute mandates that every voter registration solicitor be at least 18 years old and a registered Missouri voter (the “Registered Voter Requirement”). *Id. Fourth*, the statute forbids any “individual, group, or party [from] solicit[ing] a voter into obtaining an absentee ballot application” (the “Absentee Ballot Solicitation Ban”). *Id.* (codified at § 115.279.2).

83. Plaintiffs have alleged that the Challenged Provisions, individually and collectively, violate their rights under the Missouri Constitution because they infringe upon their rights to free speech and expression by burdening Plaintiffs’ core political speech and expressive activity and are unconstitutionally overbroad, *see* Mo. Const. Art. I, § 8; violate Plaintiffs’ associational rights by preventing Plaintiffs and their members from associating with one another and with potential voters to express, advocate for, and operationalize their views, *see* Mo. Const. Art. I, §§ 8, 9; and deny Plaintiffs due process because they are so vague that Plaintiffs lack fair notice of the conduct proscribed and allow for arbitrary enforcement, *see* Mo. Const. Art. I, § 10.

84. The Challenged Provisions use vague language that creates reasonable and justifiable confusion among Plaintiffs about which, if any, of their voter engagement activities will be deemed “solicit[ation]” or “compensat[ion]” and constitute a criminal violation. During the time that the Challenged Provisions were in effect, Plaintiffs meaningfully curtailed their speech and activities in an effort to comply with the law and avoid criminal prosecution for their voter engagement activities. Dugan Trial Dep. 39:11–44:11, 45:13–46:6, 49:22–50:9, 51:4–54:10, 58:7–20, 60:2–4, 62:10–18, 91:4–24; Trial Dep. Ex. 3 ¶¶ 45, 47–48; Pener Trial Dep. 62:5–22; Bowman

Trial Dep. 21:12–19; Turner Trial Dep. 31:21–32:22, 50:2–13, 50:23–51:6, 52:6–13; Trial Dep. Ex. 1 ¶¶ 39–41.

85. The Challenged Provisions limit the speech and associational activities Plaintiffs may engage around voting and voter engagement, which are both issues of broad social importance.

#### A. PARTIES

##### *Plaintiffs*

86. Plaintiff the LWVMO has more than 1,300 members throughout Missouri. Dugan Trial Dep. 15:8–9.

87. The mission of the LWVMO is to safeguard the rights of all qualified voters, especially those from traditionally underrepresented communities, such as first-time voters, non-college youth, new citizens, people of color, seniors, low-income Missourians, voters with disabilities, and women. Dugan Trial Dep. 13:1–16. It is exactly these populations the LWVMO believes would be disproportionately impacted by the Challenged Provisions. *Id.* at 54:11–19, 59:6–9.

88. The LWVMO is rooted in the suffrage movement that secured the right to vote for women. *See* Dugan Trial Dep. 13:1–13. Protecting voter access is a top priority for the LWVMO. *Id.* at 13:1–16; Trial Dep. Ex. 3 ¶¶ 5, 6. The LWVMO is dedicated to ensuring a free, fair, and accessible electoral system for all eligible voters. *Id.*; Turner Trial Dep. 15:8–16:6.

89. The LWVMO seeks to encourage civic participation and engage Missourians in the political process. Dugan Trial Dep. 13:5–9, 52:15–53:2. The LWVMO conducts substantial voter registration, engagement, training, advocacy, legislative analysis, voter outreach, and education work in furtherance of its mission and to communicate and advance its views about the benefits of

access to voting, including efforts related to voter registration and accessing absentee voting. Dugan Trial Dep. 13:1–16, 18:18–20:22; Turner Trial Dep. 14:9–15:1, 19:22–25, 24:4–24, 26:4–13, 27:3–5.

90. The LWVMO’s voter engagement activities are a critical tool both in furthering its pro-voting message and other priorities. Dugan Trial Dep. 13:1–16, 19:8–19:10, 42:12–24; Turner Trial Dep. 15:8–16:6; Trial Dep. Ex. 3 ¶ 8.

91. During these events, LWVMO volunteers encourage community members to register to vote, distribute voter registration forms, assist voters with filling out voter registration applications, and collect completed applications to return to election officials. Dugan Dep. 19:11–20:22, 22:6–12, 25:22–24; Trial Dep. Ex. 3 ¶ 15. LWVMO members also bring tablets to help attendees register to vote on the Secretary of State’s website and display QR codes linked to the Secretary of State’s website so that attendees can fill out an online application for voter registration on their own devices. Dugan Trial Dep. 23:19–24:12, 78:22–80:22; Trial Dep. Ex. 3 ¶ 15.

92. The LWVMO frequently assists voters with applying to vote absentee and encourages eligible voters to do so. Dugan Trial Dep. 22:22–23:10, 31:6–20, 61:9–20; Turner Trial Dep. 24:4–24, 25:19–26:3. LWVMO staff, members, and volunteers make absentee ballot applications available in the League’s office and at voter registration drives. *Id.*

93. Plaintiff **Missouri NAACP** has approximately 34,000 volunteer members. Pender Trial Dep. 15:23–16:4.

94. The Missouri NAACP is an affiliate of the NAACP. Trial Dep. Ex. 1 ¶ 5.

95. Voting and encouraging voting are foundational values of the Missouri NAACP. Bowman Trial Dep. 13:1–14:23; Pender Trial Dep. 17:3–11, 18:6–15, 40:5–15, 72:12–17; Trial Dep. Ex. 1 ¶ 8. Suffrage was included in the original mission statement of the Missouri NAACP.

Pener Trial Dep. 18:8–15, 40:5–15. The Missouri NAACP focuses on safeguarding the right to vote, especially for traditionally underrepresented and underserved communities, including voters of color, low-income Missourians, seniors, young voters, voters with disabilities, citizens returning from incarceration, and other marginalized communities. Bowman Trial Dep. 28:23–29:4; Pener Trial Dep. 10:21–11:2, 64:17–66:24; Trial Dep. Ex. 1 ¶ 5.

96. Missouri NAACP volunteers try to engage and register as many eligible Missourians as possible at voter registration and outreach events. Bowman Trial Dep. 14:24–16:2; Pener Trial Dep. 17:15–18:5; Trial Dep. Ex. 1 ¶ 12. They provide forms, assist individuals with completing those forms, answer questions about registration rules, deadlines, and eligibility, and often collect the forms to return on behalf of the new voters or assist voters in submitting them online. Bowman Trail Dep. 12:14–25; Trial Dep. Ex. 1 ¶ 12. Missouri NAACP volunteers also commonly encouraged voters to apply to vote absentee if they are eligible. Pener Trial Dep. 24:3–25:16; Trial Dep. Ex. 1 ¶ 34.

### ***Defendants***

97. Defendant John R. Ashcroft, **Missouri Secretary of State**, is the state’s chief elections official, and responsible for implementation of laws related to voting, including the Challenged Provisions, across the State. *See* Mo. Code Regs. Ann. tit. 15, § 30-1.010; *see also* MO. CONST. art. IV, § 14; § 115.136.1. In addition to overseeing administration of elections in Missouri, Secretary Ashcroft receives complaints alleging criminal violations of the state’s election laws; investigates those complaints, including through use of the subpoena power; determines whether “reasonable grounds” exist to pursue each complaint; and refers matters for prosecution, in which he “may aid” the prosecuting attorney. § 115.642.

98. Defendant **Missouri Secretary of State** has issued guidance and rules related to some provisions of HB 1878 but has not issued any guidance related to the Challenged Provisions. Trial Tr. 93:24-96-12; 99:7-100:12.

99. Defendant **Locke Thompson, as the Class Representative of a Class of Prosecuting Attorneys**, is the Cole County Prosecuting Attorney, and is sued in his official capacity only and as a representative of a Defendant class of county prosecuting attorneys who enforce Missouri’s criminal laws, including §§ 115.304, 115.631.23, and 115.641, which criminalize violations of the Challenged Provisions. *See* §§ 56.060, 115.642. Defendant Thompson is one of the 115 Missouri prosecuting attorneys. Each prosecuting attorney is vested with prosecutorial discretion.

100. Defendant **State of Missouri** is the entity responsible for enforcement of Missouri’s voting statutes, including the Challenged Provisions.

## **B. THE CHALLENGED PROVISIONS**

### ***Compensation Ban***

101. The Compensation Ban provides that “[n]o person shall be paid or otherwise compensated for soliciting voter registration applications, other than a governmental entity or a person who is paid or compensated by a governmental entity for such solicitation.” HB 1878, § A (codified as § 115.205.1).

102. The provision does not define “solicitation” or what it means to “be paid or otherwise compensated” in this context.

103. The Secretary of State has not issued guidance explaining what constitutes being paid or “otherwise compensated” for voter registration activities conditioned by HB 1878’s challenged provisions. Trial Tr. 95:23-96:12.

104. At Trial, Ms. Peters testified that the purpose of the Compensation ban is to discourage paying solicitors based on how many registrations they collect, which could incentivize incomplete and ineligible cards. Trial Tr. 128:1-14.

105. Compensated work has been critical to Plaintiffs' voter registration activities. Trial Dep. Ex. 3 ¶¶ 8, 26, 44; Trial Dep. Ex. 1 ¶¶ 8, 16, 20; Pener Trial Dep. 35:5-36:22.

106. Plaintiffs pay, reimburse expenses, and provide other forms of compensation to employees, interns, and their members to carry out voter registration activities. Dugan Trial Dep. 9:23-25, 10:5-17, 11:3-6, 16:17-17:5, 23:11-25:4; Bowman Trial Dep. 18:24-19:3, 39:4-16; Pener Trial Dep. 19:11-23, 32:2-5, 35:5-36:6; Trial Dep. Ex. 3 ¶¶ 1, 11, 12; Trial Dep. Ex. 1 ¶¶ 7, 15.

107. The LWVMO volunteers are eligible to be reimbursed for expenses incurred during voter registration drives, including parking and mileage. Trial Dep. Ex. 3 ¶ 12. They are often provided with tokens of appreciation like buttons, t-shirts, and similar gifts. Dugan Trial Dep. 29:5-30:15, 39:11-41:17, 41:1-9, 87:21-25, 100:6-23; Turner Trial Dep. 32:1-7.31:21-32:22.

108. LWVMO employs two paid part-time staff, Executive Director, Jean Dugan and Bookkeeper, Chantal Hoffsten. Dugan Trial Dep. 10:5-17, 11:3-6, 16:19-20. The LWVMO also frequently employs paid interns. *Id.* at 16:23-17:3.

109. Ms. Dugan's duties include, but are not limited to, preparing voter guides that encourage eligible Missourians to register to vote and educate them on how to do so, maintaining the supply of voter education materials like voter registration cards and informational brochures that are used for voter registration drives, and responding to inquiries and requests for materials, like voter registration forms and absentee ballot applications. Dugan Trial Dep. 10:5-17, 23:11-25:4. Ms. Dugan's work is critical to the League's voter engagement activities. *Id.*



110. To comply with the Compensation Ban, the LWVMO was forced to alter how the organization functioned significantly. When the Challenged Provisions were in effect, the LWVMO prohibited its paid staff from engaging in any part of the voter registration activities core to the organization's mission. *See, e.g.*, Dugan Trial Dep. 10:5–10:17, 39:4–40:25 (stating that Ms. Dugan's regular duties include administering voter-registration projects); Trial Dep. Ex. 3 ¶ 28. This forced LWVMO to divert its volunteers from voter registration and education activities to administrative duties previously carried out by staff and thus hampered its ability to carry out the organization's mission. Dugan Trial Dep. 54:11–19, 92:17–93:19; Turner Trial Dep. 31:21–34:9, 50:2–13, 50:23–51:6, 51:15–20, 52:6–13, 52:14–53:3.

111. The LWVMO also halted all reimbursement for volunteers' expenses and no longer provided voter registration volunteers with tokens of appreciation. Dugan Trial Dep. 41:1–9.

112. The Missouri NAACP's voter registration activities were also impacted by the Compensation Ban. Pener Trial Dep. 15:19–22, 19:8–16, 31:16–36:22, 38:14–39:14; Trial Dep. Ex. 1 ¶ 18.

113. Missouri NAACP has one paid employee, Executive Director Olivia Pener, whose job duties include supporting and engaging in the organization's voter registration work. Pener Trial Dep. 9:4–6, 15:14–22, 49:23–25.

114. From time to time, the Missouri NAACP has received grants to compensate interns and staff to register voters. Trial Dep. Ex. 1 ¶¶ 7; Pener Trial Dep. 19:11–16, 31:16–32:5, 34:3–11, 50:2–4, 80:22–81:3; Bowman Trial Dep. 18:24–19:3, 33:12–21. The Missouri NAACP also reimburses members and volunteers for expenses like gas and supplies and pays for and provides food and drinks for volunteers. Pener Trial Dep. 19:24–20:5, 35:5–36:15; Bowman Trial Dep. 33:25–34:2. Furthermore, the Missouri NAACP provides t-shirts, pens, and clipboards to

volunteers who would keep them after registration events. Pener Trial Dep. 19:17–20:18, 32:14–33:6; Trial Dep. Ex. 1 ¶ 15.

115. When the Compensation Ban was in effect, the Missouri NAACP was forced to halt all such activities. Pener Trial Dep. 32:14–23; 35:10–36:22; Trial Dep. Ex. 1 ¶¶ 12, 18–20. The Missouri NAACP also ceased reimbursing volunteers. Pener Trial Dep. 32:14–23. The organization expects that this would lead to fewer volunteers overall if the Challenged Provisions were not permanently enjoined. Trial Dep. Ex. 1 ¶ 20.

116. When the Challenged Provisions were in effect, Missouri NAACP’s paid staff could not engage in voter registration activities central to the organization’s mission. Pener Trial Dep. 32:14–33:6. Because of the Challenged Provisions, Missouri NAACP was forced to divert resources from its other mission-critical voter outreach and civic engagement activities toward compliance with the Challenged Provisions, including the Compensation Ban, as well as assisting voters in understanding the implications of HB 1878. *Id.* at 70:9–71:11.

117. If the Challenged Provisions are not permanently enjoined, Plaintiffs would again be forced to divert resources in this manner. Trial Dep. Ex. 3 ¶¶ 38, 53; Trial Dep. Ex. 1 ¶¶ 18, 20, 43.

#### ***Unpaid Solicitor Registration Requirement***

118. HB 1878 requires even uncompensated individuals “who solicit[] more than ten voter registration applications” to register with the Secretary of State as a “voter registration solicitor” (the “Unpaid Solicitor Registration Requirement”). HB 1878, § A (codified at § 115.205.1).

119. The law does not define the term “solicit.”

120. The Secretary of State has not issued guidance explaining what constitutes “soliciting” a voter registration application (or an absentee ballot application) as conditioned by HB 1878’s Challenged Provisions. Trial Tr. 99:7–100:12.

121. In response to questions from voter registration groups at a conference including Plaintiffs in this case, the Secretary of State’s office indicated that solicitation was defined in the dictionary. Trial Tr. 99:7–100:12.

122. At that conference, the Secretary of State’s Office indicated that solicitation of voter registration was limited to “handing a voter registration application to an individual and then you are collecting it back and then you are in possession of it, that was soliciting the voter registration application,” but that handing a voter registration application to an individual who submits it themselves or directing applicants how to register online would not constitute solicitation. Trial Tr. 99:24–100:19

123. At the request of LWVMO, the Secretary of State’s office also participated in a recorded Zoom meeting to respond to questions from the organization seeking clarity on what activity was criminalized under the law. Trial Tr. 101:20–103:1.

124. The Secretary of State’s office also internally discussed the meaning of the term “solicit” in advance of the annual LEA conference, stating in an internal email between SOS senior staff that “a solicitor remains in control of the registration applications and will return the registrations to the LEA on behalf of the voter.” Trial Tr. 98:23–24; 100:10–19. 103:22–106:10; Trial Ex. 1 (E-Mail Stream Regarding "Thoughts on what to cover at LEA conference,")

125. The Secretary of State felt that organizations assisting voters in registering to vote using the Secretary of State’s online voter registration portal would not be considered engaging in “solicitation” for purposes of the law. Trial Tr. 116:22–117:1.

126. However, the State’s interpretation of the term “soliciting” has shifted over time. While the Secretary initially took the position that solicitation was limited to the collection of applications, *see supra*, in this litigation, Defendants have also stated that “to solicit” a voter registration or absentee ballot application means to “entreat, importune, [or] approach [people] with a request or plea” that someone register to vote or apply to vote absentee. Defs.’ PI Br. at 18.

127. At trial, the Secretary of State’s position was firm that solicitation of voter registration for purposes of the challenged provisions was limited to those collecting completed registration applications from the prospective voters to return to the election authority. Trial Tr. 155:5–13.

128. The Secretary of State indicated that out of state groups like the Voter Participation Center, which mail voter registration applications to prospective voters, would *not* be considered soliciting voter registration under HB1878 (or required to register as solicitors) “because they are sending it directly to the voter and the voter is sending it to the local election authority, that would not apply to them.” Trial Tr. 52:6–52:23.

129. This definition of “solicit” conflicts with the use of the word “solicit” elsewhere in HB 1878 challenged provisions because prior to HB 1878 a solicitor was already unable to retain and return an absentee ballot application. Trial Tr. 152:2–152:9 (“because an absentee application can only be returned to the local election authority by yourself or within a very small subset, an organization couldn’t collect on behalf of that person to returning them in anyway.”). In contrast to the ban on solicitation for voter registrations – which the state asserts would not prohibit mailing registration applications to prospective voters - the Secretary of State testified that the ban on solicitation of absentee ballot applications *would* prohibit applications from being mailed directly to prospective voters. Trial Tr. 151:15–152:21.

130. Furthermore, the solicitor registration requirement would not apply to those soliciting others *not* to register to vote. Trial Tr. 149:19–22.

131. The Secretary of State does not have any process to review or approve voter registration solicitor applications, nor has the Secretary of State denied any such applications. Trial Tr. 114:12–21.

132. The Secretary of State’s Office does not review, assess, or qualify someone who submits voter registration solicitor applications. Trial Tr. 113:22–114:15. Upon submitting the application, they are simply added to the list without further review. Trial Tr. 114:15–21.

133. The Secretary of State does not check the accuracy of information included in voter registration solicitor applications. Trial Tr. 112:24–113:18.

134. The Secretary of State does not verify that prospective solicitors are registered voters. Trial Tr. 113:11–113:15.

135. Upon receipt of a solicitor application, the Secretary takes no further action other than entering the information into an Excel spreadsheet. Trial Tr. 113:16–113:18.

136. There is no requirement that the SOS confirm receipt of a voter registration solicitor application. Trial Tr. 88:10–18.

137. The information on the voter registration solicitor application can be entered online but requires a prospective applicant's actual wet signature, which “at this time” requires that the application be printed and signed. Trial Tr. 110:23–112:12.

138. The Secretary of State does not provide training to voter registration solicitors. Trial Tr. 112:13–23

139. According to the Secretary of State, the goal of this provision “is to register people who want to solicit voter registration applications in our state, so we have a list.” Trial Tr. 125:16–19.

140. Voter registration applications provided by the Secretary of State’s office include a serial number. Trial Tr. 22:21–23:11. However, if a particular voter registration solicitor does not request voter registration forms from the Secretary of State (in the circumstances, for example, where an organizational representative requests cards for their volunteers), then the Secretary of State cannot connect specific registrations to the solicitor’s activity. Trial Tr. 114:12–115:7.

141. Moreover, voter registration applications obtained elsewhere, such as applications printed from the Secretary of State’s website and the federal voter registration application forms, do not have serial numbers. Trial Tr. 127:19–25.

142. Voter registration solicitors are not required to provide the Secretary of State with information about their voter registration activities. Trial Tr. 115:8–115:11.

143. The Secretary of State’s office has no way of knowing, in most instances, what solicitor assisted which voter with a voter registration card. Trial Tr. 115:17–116:18.

144. A voter’s status as a voter registration solicitor is not included in their voter record within MCVR. Trial Tr. 116:15–116:18.

145. Prior to HB 1878’s implementation, Plaintiffs did not require their volunteers to register as voter registration solicitors with the Secretary of State. *See, e.g.*, Dugan Trial Dep. 45:13–46:6; Trial Dep. Ex. 3 ¶ 14; Trial Dep. Ex. 1 ¶ 21; Pener Trial Dep. 47:16–49:14

146. When the Challenged Provisions were in effect, Plaintiffs were forced to track whether their volunteers were registered as solicitors with the State. Dugan Trial Dep. 45:3–45:12; Trial Dep. Ex. 1 ¶ 22; Bowman Trial Dep. 21:12–19. Given the hundreds of volunteers, this was a

burdensome task and added significant administrative duties for the organizations, including tracking which volunteers were registered with the State, and helping volunteers who do not have a computer, printer, fax machine, or scanner to print, sign and send the completed form with a “wet” signature to the Secretary of State’s Office. Dugan Trial Dep. 46:7–48:10; Pener Trial Dep. 41:3–12, 43:2–44:9. Plaintiffs diverted their limited resources towards compliance. Dugan Trial Dep. 49:7–11; Pener Trial Dep. 70:9–71:11.

147. While the Challenged Provisions were in effect, Plaintiff LWVMO also diverted resources from regular mission-focused activities—including specific voter outreach programs—to ensure that volunteers were registered with the state in compliance with the Unpaid Solicitor Registration Requirement and to respond to questions from members and the community about the implications of all of the Challenged Provisions. Dugan Trial Dep. 54:11–19, 92:15–94:24. Plaintiff LWVMO would be likewise harmed once again if the Challenged Provisions are not permanently enjoined.

148. The Unpaid Solicitor Registration Requirement also restricts the number of people available to solicit voter registration applications. Dugan Trial Dep. 45:13–46:6; Pener Trial Dep. 43:10–47:8; Trial Dep. Ex. 1 ¶¶ 23–24. Requiring solicitors to register in advance means that Plaintiffs cannot permit spontaneous volunteers to assist with voter registration. Dugan Trial Dep. 45:13–46:22; Pener Trial Dep. 43:10–45:11. Similarly, it prevents individuals who, for political reasons or otherwise, choose not to register with the Secretary of State. Dugan Trial Dep. 45:13–46:22; Trial Dep. Ex. 1 ¶ 24. Having fewer volunteers available will reduce Plaintiffs’ ability to carry out their voter engagement activities. Dugan Trial Dep. 45:13–46:22; Pener Trial Dep. 47:16–48:9.

***Registered Voter Requirement***

149. HB 1878 mandates that every voter registration solicitor be a registered Missouri voter and be at least 18 years of age (the “Registered Voter Requirement”). HB 1878, § A (codified at § 115.205.1).

150. The Secretary of State does not verify that voter registration solicitors are in fact registered voters in Missouri. Trial Tr. 113:6–15.

151. Plaintiffs do not require volunteers to be registered Missouri voters. Pener Trial Dep. 22:25–23:2; Bowman Trial Dep. 17:7–13; Trial Dep Ex. 1 ¶ 29.

152. LWVMO permits anyone over the age of 16 to volunteer, but it does not confirm volunteers’ age, citizenship, or voter registration status. Dugan Trial Dep. 28:3–12; Trial Dep. Ex. 3 ¶ 42. In fact, LWVMO actively seeks out young volunteers, including high school students and college students who may be registered in their home states, to help with soliciting voter registration forms. Dugan Trial Dep. 26:18–29:4.

153. The LWVMO has no requirement for their volunteers to be registered Missouri voters and frequently works with volunteers who are not registered to vote in Missouri. Trial Dep. Ex. 3 ¶ 42. For instance, some of the League’s members are part-time Missouri residents, who vote in another state, but volunteer as voter registration solicitors with the LWVMO while living in Missouri or are college students attending school in Missouri but registered to vote in another state. Dugan Trial Dep. 51:4–52:2; Trial Dep. Ex. 3 ¶ 42.

154. For example, the LWVMO worked with Ava Byrd, a 17-year-old student who volunteered with the League as part of the Rockwood School District’s Partners in Education summer program, to help with voter registration and outreach. Dugan Trial Dep. 28:13–24.



155. The LWVMO also frequently hires interns who are Missouri college students registered to vote in their home states, such as Paige Allen, a Missouri student registered in Wisconsin, Alana Werrick, a Missouri student registered in Tennessee, Abigail Hendrick, a Missouri student registered in Oklahoma, and Zack Davis, a Missouri student registered in Texas, who could not participate in the League's core registration work if this provision were in effect. *See Dugan Trial Dep. 51–52:14.* LWVMO also works to organize voter registration activities with Paws to the Polls at Southwest Missouri State University, which has approximately two dozen out-of-state college students who would no longer be able to participate in the campus voter registration program if the law were to go back into effect. *Dugan Trial Dep. 51:20–24; 52:9–14.*

156. Likewise, prior to HB 1878's enactment, the Missouri NAACP did not interrogate volunteers to determine whether they were registered to vote in Missouri. *Bowman Trial Dep. 17:7–10; Pender Trial Dep. 22:25–23:18.* Many volunteers and members are not currently eligible to register to vote themselves, including those who are under 18, registered in another state (e.g., Kansas or Illinois), or unable to register due to a criminal conviction. *Id.*

157. Indeed, Missouri NAACP specifically seeks certain classes of volunteers who were ineligible to register to vote themselves, including young people and people on probation or parole, because of the unique value in having these volunteers carry their pro-voter message. *Bowman Trial Dep. 23:4–24, 25:4–20; Pender Trial Dep. 51:3–25, 58:4–60:2; Trial Dep. Ex. 1 ¶ 29.*

158. One such Missouri NAACP member is Michelle Smith. *Pender Trial Dep. 56:6–11, 108:8–109:4.* Ms. Smith is a formerly incarcerated person who advocates for incarcerated and formerly incarcerated individuals. *Id.* Her experiences allow her to connect with underserved populations in order to encourage voter registration. *Id.* The Registered Voter Requirement prohibits people like Ms. Smith from engaging with potential voters.

***Absentee Ballot Solicitation Ban***

159. HB 1878 further provides that “no individual, group, or party shall solicit a voter into obtaining an absentee ballot application” (“the Absentee Ballot Solicitation Ban”). HB 1878, § A (codified at § 115.205.2). Punishments include fines, jail time, and the loss of voting rights for life.

160. HB 1878 does not define the term “solicit.”

161. According to the Secretary of State, the absentee ballot solicitation ban would not criminalize activity *discouraging* voters from voting absentee. Trial Tr. 151:4–151:7.

162. As set forth, *supra*, the State’s definition of “solicit” in the context of the absentee ballot solicitation ban is different from its understanding of “solicit” in the context of the voter registration solicitation restrictions in HB1878, whereby soliciting voter registration occurs only where the solicitor takes the completed application from the voter, but not in the context of soliciting an absentee ballot application because the law strictly limits who can return a voter’s absentee ballot application to the election authority on behalf of the voter; and whereby soliciting an absentee ballot application prohibits mailing an application to a voter, but mailing a voter registration application to a voter would not constitute soliciting voter registration. Trial Tr. 151:15–153:9.

163. During extensive questioning at trial the Secretary of State was unable to reconcile the state’s differing definitions of “soliciting” a voter registration application versus “soliciting” an absentee ballot application. Trial Tr. 151:4–157:10.

164. Encouraging eligible voters to apply to vote absentee and helping eligible voters apply for absentee ballots is a critical part of Plaintiffs’ missions of increasing voter engagement and voter turnout. Trial Dep. Ex. 1 ¶ 9; Dugan Trial Dep. 31:2–20, 32:12–33:25; 61:21–62:4.

165. During many previous consecutive election cycles, Plaintiffs have encouraged voters to legally cast absentee ballots. Trial Dep. Ex. 1 ¶¶ 9; Trial Dep. Ex. 3 ¶¶ 6, 8 Dugan Trial Dep. 31:2–20, 32:12–33:25. 61:21–62:4; Turner Trial Dep. 24:4–24, 25:10–26:3; Pener Trial Dep. 24:3–25:16. Plaintiffs reach voters at community events, organization events, and through direct person-to-person outreach. *Id.*; Pener Trial Dep. 20:19–21:23, 39:20–40:1. Plaintiffs’ voter engagement work is a core part of their organizational mission, strategy, and activities. Bowman Trial Dep. 27:8–20; Dugan Trial Dep. 13:1–16; Pener Trial Dep. 17:3–11, 18:6–15, 40:5–15, 72:12–17.

166. However, when the Challenged Provisions were in effect, Plaintiffs were forced to significantly curtail their activities related to absentee voting in an effort to comply with HB 1878. Trial Dep. Ex. 1 ¶¶ 39–41; Dugan Trial Dep. 57:16–63:15; Turner Trial Dep. 49:23–51:6; Pener Trial Dep. 62:5–22. Among other activities related to absentee voting, Plaintiffs halted public discussion of absentee voting, stopped encouraging eligible voters to cast absentee ballots, stopped providing absentee ballot application forms upon request from voters, stopped helping eligible voters understand how to cast an absentee ballot in compliance with the law and even had to refuse to speak to callers who asked about absentee voting. *Id.*

167. HB 1878’s insufficient guidance as to what constitutes “soliciting” of absentee ballot applications under the law, along with the severe penalties for doing so, required Plaintiffs to extensively curtail their speech and expression about absentee voting when the provision was in effect. Trial Dep. Ex. 1 ¶¶ 39–41; Dugan Trial Dep. 42:4–11, 43:21–44:11, 49:22–50:9; Pener Trial Dep. 61:2–62:1.

168. The absentee ballot solicitation ban particularly stifled Plaintiffs' expressive activities related to newly enacted expanded absentee voting options that had been made available to voters under other provisions of HB 1878. Dugan Trial Dep. 61:21–62:18.

169. The Absentee Ballot Solicitation Ban also limits Plaintiffs' ability to communicate their pro voter engagement messages while remaining in compliance with the law. Trial Dep. Ex. 1 ¶¶ 39–40, 40, 42, 44; Dugan Trial Dep. 58:3–13, 59:16–61:20.

170. The Challenged Provisions also forced Plaintiffs to divert resources from their core work of engaging voters and increasing voter turnout through all legal methods to cast a ballot in an attempt to comply with the law. Trial Dep. Ex. 1 ¶ 44; Dugan Trial Dep. 92:17–94:24; Pender Trial Dep. 70:9–71:11; Trial Dep. Ex. 3 ¶¶ 50–52; Turner Trial Dep. 49:23–51:14.

### **C. REGISTRATION SAFEGUARDS**

171. Electoral practices in Missouri already incorporate many safeguards into the voter registration and voting process.

172. As of 2006, Missouri has central voter registration database, MCVR. Prior to the full integration of MCVR, each of Missouri's local election authorities maintained their own voter registration lists. Trial Tr. 134:3-9. The full integration of MCVR, combined with added integrations with other state databases have improved the accuracy of the voter rolls and ensure that invalid or incomplete applications don't make it onto the rolls. Trial Tr. 134:10-22.

173. The final election jurisdictions were fully integrated into MCVR in 2009, at least in part due to the incidents that gave rise to the ACORN prosecutions in 2008. Trial Tr. 219:22-220-9.

174. During the time of the incidents that gave rise to the ACORN prosecutions, online voter registration was not available and the state lacked integration with the DMV databases that it has now. 212:4-213:6

175. MCVR gives election officials technological tools to identify fraudulent or problematic voter registrations and ensure they are not processed. These processes were in place prior to the passage of HB 1878. Trial Tr. 137:8–137:10; 138:17–139:5

176. LEAs process and authenticate Missouri voter registration applications and applications for all absentee ballots, regardless of how the voter obtains the application, regardless of whether the application was obtained from someone registered as a voter registration solicitor, regardless of whether the person soliciting the application was a Missouri registered voter, and regardless of whether the solicitor was paid. Trial Tr. 28:19–29:2; 62:15–22; 138:17–140:2.

177. To verify a voter registration application under the updated integrated system, “Missouri voter registration system interfaces with the SSA for Social Security Administration, the Department of Health and Senior Services for deceased records, the Department of Revenue, DMV, for the driver's license number,” which LEAs use to “verify... that each of those fields will match to ensure that the person registering to vote is a person with all of those matching criteria.” Trial. Tr. 49:10–18

178. Every voter registrant is sent a notice regarding the status of their application. Trial Tr. 31:10–12.

179. The state testified that these various database interfaces ensure that invalid or non-existent applications do not make it on the voter rolls. Trial Tr. 130:19–137:10, “Because

our voter registration database has all the interfaces to do the validation of registration, that is where we are able to catch any type of information that may be fraudulent being submitted, but

that is based on entering that registration into the system which takes, which takes the time of the local election authority to get to the validation that it is not a registration of a person.” Trial Tr. 135:5-136:5.

180. The state testified that the cost they seek to avoid with HB 1878’s voter registration provisions is “time spent on managing larger volumes of registrations,” and the time LEA’s spend verifying an applicant’s eligibility. Trial Tr. 70:4–25; 140:16-20.

181. Processing voter registration is a core function of local election authorities. Trial Tr. 140:3-6.

182. Registrations for which the identity cannot be verified are set aside; others are added to the rolls if they ultimately provide the necessary information to verify their identity and eligibility. Trial Tr. 74:20–75:11.

183. Voter registration applications include instructions to print clearly, that providing false information is an election offense, and explains the penalties for falsifying information including up to five years in prison and a \$10,000 fine, which the applicant signs under penalty of perjury. Trial Tr. 144:12-145:21.

#### **D. EXPERT TESTIMONY<sup>4</sup>**

184. Defendants offered testimony from Dr. James G. Gimpel who testified broadly regarding the State’s proffered policy justifications for HB 1878. Gimpel Rep. 1–2; *see also* Def. Pretrial Br. at 12–15.

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<sup>4</sup> Plaintiffs filed a Motion in Limine to exclude the expert testimony of Defendants’ expert, Dr. James Gimpel, on May 24, 2024. Defendants filed a Motion in Limine to exclude the expert testimony of Plaintiffs’ rebuttal expert, Dr. Kenneth Mayer, on May 24, 2024. For the reasons set forth herein, the Court does not credit the opinions of Dr. Gimpel in this case and sustains Plaintiffs’ Motion. Although Dr. Mayer was proffered only as a rebuttal witness in response to Defendants’ expert, the Court credits the testimony and opinions of Dr. Mayer and relies upon those opinions

185. Plaintiffs produced a rebuttal expert, Dr. Kenneth Mayer, who addressed the reliability and relevance of Dr. Gimpel's expert opinions. Dr. Mayer is a Professor of Political Science at the University of Wisconsin-Madison. Mayer Trial Dep. 8:18–19; Mayer Rep. at 2–3. Dr. Mayer has published numerous scholarly articles on and specializes in elections, election administration, redistricting, the presidency, and American government. Mayer Trial Dep. 4:4–25, 5:1–10; Mayer Rep. at 17–19. In this case, he was offered by Plaintiffs as an expert in election administration, including voter registration and absentee voting, election integrity, and voting practices. Mayer Trial Dep. 62:12–16. Dr. Mayer has testified as an expert before this Court in other cases.

186. The Court finds that Dr. Mayer is qualified to provide expert analysis and opinions in this matter, as an expert in election administration, including voter registration and absentee voting, election integrity, and voting practices. Having observed Dr. Mayer's testimony, the Court credits his analysis, opinion, and testimony, and grants them substantial weight. The Court further credits Dr. Mayer's specific critiques of Dr. Gimpel's offered opinions and analysis.

187. Much of Dr. Gimpel's report did not address the issues involved in this litigation, nor did it comment on the specific provisions of HB 1878 at issue here.<sup>5</sup> Mayer Rep. at 1 (referencing Gimpel Rep. at 3–6; discussing generalized lack of trust in institutions); 6–8 (discussing historical registration practices in the Gilded Age and early 20th Century); 8–12 (discussing how HB 1878 is targeted at organizational activity); 8–10 (discussing organized crime, political parties, and interest groups); 14 (discussing electoral fraud in emerging democracies); 7–

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in reaching its decision to exclude the testimony of Dr. Gimpel. The Court, therefore, denies Defendants' Motion to exclude Dr. Mayer's testimony.

<sup>5</sup> Mayer Trial Dep. 13:14–14:10.

8, 13 (discussing state and local budgets and the attitudes of local election administrators), 3–4; Mayer Trial Dep. 13:14–14:10.

188. Dr. Gimpel’s analysis contains fundamental flaws and betrays a lack of any specific expert knowledge focused on HB 1878 in particular. Mayer Rep. at 4. For example, Dr. Gimpel did not identify the specific provisions of HB 1878 about which he offered conclusions, referring only to HB 1878 as “regulating aspects of the election administration process.” Gimpel Rep. at 1–2; Mayer Rep. at 4–5. He also claimed that the voter registration provisions in HB 1878 “take direct aim at preventing fraud instigated by organizations,” even though the registration provisions of the statute apply exclusively to individuals. Gimpel Rep. at 8; Mayer Rep. at 4. Similarly, his report indicated he was not aware that the Challenged Provisions of HB 1878 have been enjoined since October 2022. Gimpel Rep. at 14 (referring to the “implementation of HB 1878,” and arguing that “election campaigns are even now proceeding under the law without their speech being burdened by it”); Gimpel Trial Dep. 128:8–129:9; Mayer Rep. at 4. Dr. Gimpel referred only to “payment” in his report discussing the Compensation Ban, failing to recognize that the Compensation Ban states that no one soliciting voter registration shall be “paid or *otherwise compensated*.” (emphasis added) Gimpel Rep. at 8; Mayer Rep. at 4. Any discussion—or even mention—of the absentee ballot solicitation prohibition is entirely missing from his report. Mayer Rep. at 4. These failings cast doubt on the validity and relevance of his conclusions. Mayer Rep. at 4.

189. Even Defendants conceded that Dr. Gimpel “made oversights in writing his report.” Defs.’ Pretrial Br. at 27.

190. Dr. Gimpel asserted legal conclusions that he is not qualified to make as an expert witness. *See, e.g.*, Gimpel Rep. at 14 (contending that “[T]he passage and implementation of HB



1878 is not a burden on rights guaranteed by the First Amendment. Clearly, no particular content, viewpoint or political party is censored by its enactment. The law leaves open abundant avenues for communication and election campaigns are even now proceeding under the law without their speech being burdened by it.”); Mayer Rep. at 5–6; *State v. Kinder*, 942 S.W.2d 313, 334 (Mo. banc 1996) (“Expert testimony is not admissible on issues of law”).

191. Dr. Gimpel also offered conclusory opinions that were unsupported by his Report or testimony. As to HB 1878’s purposes, Dr. Gimpel asserted that “[p]ractical, policy relevant actions can be taken to restore confidence in election administration. One of these is the passage of HB 1878.” Gimpel Rep. at 6. However, Dr. Gimpel provided no evidence that the Challenged Provisions in HB 1878 do anything to improve voter confidence. Mayer Rep. at 6; Mayer Trial Dep. 31:21–32:7, 23:1–11.

192. Dr. Gimpel asserted HB 1878 seeks to accomplish “[t]he maintenance of orderliness and efficiency in the management of registration.” Gimpel Rep. at 13; Gimpel Trial Dep. 48:4–25, 49:2–17. However, Dr. Gimpel provided no evidence that HB 1878’s provisions are necessary to ease burdens on election officials, nor did he cite any data about how election officials experience administrative burdens. Mayer Rep. 9–10; Mayer Trial Dep. 43:11–44:14, 96:6–22; Gimpel Trial Dep. 121:6–127:18. Additionally, Dr. Gimpel has never done his own research on the administrative burdens of election workers or election officials. Dr. Mayer has conducted this type of research. Mayer Trial Dep. 43:20–44:11.

193. Dr. Gimpel asserted HB 1878 “takes direct aim at preventing fraud instigated by organizations.” Gimpel Rep. at 8. He also claimed that HB 1878 is justified by the risk of election fraud. Gimpel Rep. at 14; *see also* Gimpel Trial Dep. 49:22–50:23 (discussing absentee voting fraud). However, Dr. Gimpel only provided generalized claims about election fraud. Gimpel Rep.

at 5; *see also* Mayer Rep. at 6. He did not provide any data about election fraud specific to Missouri. Mayer Rep. at 6. Specifically, he failed to identify a single example of an improperly registered voter casting a ballot in Missouri, nor any examples of how the Challenged Provisions of HB 1878 would enhance the security of the registration process. Mayer Rep. at 1, 6–8; Gimpel Trial Dep. 130:3–25, 113:15–25.

194. Accordingly, the Court assigns no weight to Dr. Gimpel’s opinions as to the various policy reasons for the passage of HB 1878.

195. In contrast, Dr. Mayer concluded that HB 1878, were it to be in effect, would “do nothing to enhance the security of the election or voting process.” (explaining, for instance, that election fraud is vanishingly rare and that prior to HB 1878 there were already a great number of protections in place, including the fact that voter fraud and electoral fraud was already a serious crime carrying significant punishments) Mayer Trial Dep. 21:3–7, 23:12–23, 24:3–8, 27:6–24.

196. The Court accepts these conclusions of Dr. Mayer as an expert in election administration, including voter registration and absentee voting, election integrity, and voting practices.

## **CONCLUSIONS OF LAW**

### **I. PLAINTIFF ORGANIZATIONS HAVE STANDING TO CHALLENGE HB 1878**

1. Plaintiffs had standing when this Court entered its order granting preliminary injunctive relief and this Court finds that Plaintiffs continue to have standing for the purposes of permanent injunctive and declaratory relief.

2. “Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight

or remote.” *Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002).

3. “A declaratory judgment action requires a justiciable controversy.” *Mo. All. for Retired Ams. v. Dep’t of Labor & Indus. Rels*, 277 S.W.3d 670, 676 (Mo. banc 2009). “A justiciable controversy exists where (1) the plaintiff has a legally protectable interest at stake, (2) a substantial controversy exists between the parties with genuinely adverse interests, and (3) that controversy is ripe for judicial determination.” *Schweich v. Nixon*, 408 S.W.3d 769, 773 (Mo. banc 2013) (internal quotation omitted). “The first two elements of justiciability are encompassed jointly by the concept of ‘standing.’” *Id.* at 744.

4. “There is no litmus test for determining whether a legally protectable interest exists; it is determined on a case by-case basis.” *Mo. All. for Retired Ams.*, 277 S.W.3d at 676.

5. An organizational plaintiff, which seeks to exercise its constitutional rights to speech and association but is prevented from doing so by statute, has standing on its own behalf to challenge the statute as unconstitutional. *See Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 737 (Mo. banc 2007). Plaintiffs have standing to assert their own speech, expression, and associational rights.

6. Plaintiffs seek to exercise constitutionally protected rights but will be inhibited or prevented from doing so by the Challenged Provisions if this Court does not continue to enjoin their enforcement. For the short period of time when the laws were in effect between August 28, 2022, and October 24, 2022, the Challenged Provisions inhibited and violated Plaintiffs’ constitutional rights.

7. An organization may show standing on its own behalf “when there is a concrete and demonstrable injury to [the] organization’s activities which drains its resources and is more

than simply a setback to its abstract social interests.” *Nat’l Fed’n of Blind of Mo. v. Cross*, 184 F.3d 973, 979 (8th Cir. 1999).

8. Plaintiffs have shown that the Challenged Provisions thwart their missions by impacting their members and the communities they serve and requiring them to expend and divert resources. Plaintiffs have organizational standing.

9. An organizational plaintiff also has associational standing to protect the interests of its members if three requirements are met: “[1] its members would otherwise have standing to sue in their own right; [2] the interests it seeks to protect are germane to the organization’s purpose; and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *St. Louis Ass’n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 623 (Mo. banc 2011) (stating that Missouri courts have adopted the three-part test for standing under *Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977)). Plaintiffs have associational standing.

**A. Injury-in-Fact**

10. HB 1878 made several material changes to the law, including imposing an outright ban on compensation for voter registration activity, prohibiting all individuals who are not registered to vote in Missouri from engaging in voter registration activity, making any solicitation of absentee ballot applications unlawful, and requiring all people who solicit voter registrations to pre-register with the State, rather than only those who are paid to do so.

11. During the brief time in which HB 1878 was in effect between August 28, 2022, and October 24, 2022, the law created new and increased obligations and burdens for Plaintiffs that did not exist prior to its enactment and do not exist now because the law is currently enjoined. As the facts herein support, when the Challenged Provisions were in effect, Plaintiffs’ and their

members' abilities to carry out their missions of educating voters and encouraging civic participation were thwarted. Their paid employees were barred from carrying out mission-critical tasks, their ability to engage volunteers was limited, and the pool of volunteers available to solicit voter registration on Plaintiffs' behalf and spread Plaintiffs' pro-voter message was reduced. They were likewise unable to provide information on absentee voting, encourage eligible voters to apply to vote absentee, and provide voters with absentee ballot applications—a critical part of their missions. Were the law enforceable again, Plaintiffs would be faced with additional, burdensome obligations causing them to suffer harm.

12. There can be no dispute in this case that Plaintiffs challenge their own right to free speech, expression, association, and due process. Plaintiffs' members could also bring these challenges but need not do so because the organizations have association standing. In other words, the Plaintiff organizations can assert these constitutional rights on their own behalf and on behalf of their members.

13. The claims in this case are brought under the Missouri Constitution.

14. The Missouri Constitution guarantees freedoms of free speech, expression, and association—rights that Missouri courts have interpreted to be at least as expansive as their equivalents under the federal First Amendment. *See* Mo. Const. art. I, §§ 8–9; *Karney v. Dep't of Lab. & Indus. Rels.*, 599 S.W.3d 157, 162–63 (Mo. banc 2020) (“[P]rovisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions . . .”).

15. Because Missouri's constitutional rights to speech, expression, and association are at least as expansive as their equivalents under the federal First Amendment, cases discussing and interpreting First Amendment rights are applicable and persuasive here.

16. In a challenge to the constitutional guarantee of free speech, an injury in fact is established when a plaintiff shows that a challenged law chills protected speech. *See Animal Legal Def. Fund v. Reynolds*, 297 F. Supp. 3d 901, 912 (S.D. Iowa 2018) (“Because the First Amendment protects against not only direct censorship but the chilling of protected speech, a plaintiff making a First Amendment claim alleges an injury in fact ‘even if the plaintiff has not engaged in the prohibited expression as long as the plaintiff is objectively reasonably chilled from exercising his First Amendment right to free expression in order to avoid enforcement consequences.’” (quoting *Republican Party of Minn., Third Cong. Dist. v. Klobuchar*, 381 F.3d 785, 792 (8th Cir. 2004))); *Parenthood of Kan. v. Nixon*, 220 S.W.3d 732, 737 (Mo. banc 2007) (explaining that a plaintiff, including an organization, who seeks to exercise its constitutional rights to speech and association but is prevented from doing so by a state statute has standing to challenge the statute as unconstitutional); *see also Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 794–95 (8th Cir. 2016) (holding that organization had standing to challenge speech-regulating statute because it had reasonably “self-censored” for eleven days); *State v. Vaughn*, 366 S.W.3d 513, 519 (Mo. banc 2012) (discussing an overbreadth challenge to a criminal statute under both the First Amendment to the United States Constitution and Art. I, § 8, of the Missouri Constitution and describing examples illustrating the law’s possible chilling effect on political and non-political speech); *Planned Parenthood of Kansas*, 220 S.W.3d at 737, 740 (discussing standing and ripeness in a case challenging a state abortion statute and noting that a pre-enforcement challenge premised on free speech rights could proceed where Planned Parenthood could not “continue providing information and counseling to minors without risking liability under the statute” and remarking how “courts have repeatedly shown solicitude for First Amendment claims because of concern that, even in the absence of a fully concrete dispute, unconstitutional statutes or ordinances tend to

chill protected expression among those who forbear speaking because of the law's very existence").

17. As the factual findings above establish, Plaintiffs' adjustments to their operations as a result of the Challenged Provisions are not hypothetical or speculative.

18. This Court's previous findings as well as the findings of fact herein also indicate that Plaintiffs and their members have demonstrated that their protected speech has been chilled by each of the Challenged Provisions. *See, e.g.*, PI order at COL ¶¶ 4, 29, 65, 80, 82, 85, 165. Additional evidence further demonstrates this chilling effect on Plaintiffs as well as on their members, and the likelihood of such effect recurring should the injunction be removed. Dugan Trial Dep. 40:18–25, 45:13–46:22, 50:24–52:14, 61:7–20, 92:17–94:24; Pener Trial Dep. 32:14–33:6, 43:10–47:8, 51:3–54:3, 70:9–71:11; Trial Dep. Ex. 1 ¶¶ 39–40, 42, 44.

19. Plaintiffs and their members are injured by the Compensation Ban. As this Court previously found, Plaintiffs both frequently compensate their members and pay employees who participate in registration-related activities. Therefore, the Compensation Ban hampers Plaintiffs' and their members' ability to carry out their mission by barring critical employees from engaging in mission-critical work. Further, it directly burdens and chills the speech of Plaintiffs' members and employees.

20. Plaintiffs and their members are injured by the Unpaid Solicitor Registration Requirement. Plaintiffs and their members are injured because the Unpaid Solicitor Registration Requirement reduces the pool of potential volunteers who can carry their pro-voter message, requires their members to undergo registration with the state to engage in their pro-voter speech and activities, and burdens Plaintiffs' ability to engage in their pro-voting civic engagement speech and activities.

21. Plaintiffs and their members are injured by the Registered Voter Requirement. Under the Registered Voter Requirement, unregistered individuals, including Plaintiffs' members, cannot solicit voter registration in Missouri on Plaintiffs' behalf. This mutes speech and expressive activity by Plaintiffs' members who are ineligible to vote in the State or who choose not to and reduces the pool of volunteers available to solicit voter registration on Plaintiffs' behalf and spread Plaintiffs' pro-voter message.

22. Plaintiffs and their members are injured by the Absentee Ballot Solicitation Ban. As part of their missions of educating voters and encouraging civic participation, Plaintiffs provide information on absentee voting, encourage eligible voters to apply to vote absentee, and provide voters with absentee ballot applications. The Absentee Ballot Solicitation Ban directly criminalizes much of this activity, including pure core political speech related to absentee voting.

23. The Challenged Provisions have also forced Plaintiffs to divert resources from their core work of engaging voters and increasing voter turnout through all legal methods to cast a ballot in an attempt to comply with the law. As the facts herein support, when the Challenged Provisions were in effect, Plaintiffs were forced to divert significant resources away from their core voter registration and education activities. LWVMO reallocated resources to comply with the Unpaid Solicitor Registration Requirement, modify educational materials due to the Absentee Voting Solicitation Ban, and respond to community concerns. Similarly, Missouri NAACP's paid staff could not engage in voter registration and had to focus on compliance and educating voters about the impacts of the law. If the Challenged Provisions are not permanently enjoined, Plaintiffs would again be forced to redirect resources in this manner. If the Challenged Provisions are not permanently enjoined, Plaintiffs will have to divert additional resources to comply with the law.



**B. Plaintiffs' Injury Is Fairly Traceable to Defendants' Enforcement of HB 1878**

24. Plaintiffs have established that they and their members are “affected or will be imminently affected in an adverse way” by the Challenged Provisions, such that their injuries are fairly traceable to Defendants.

25. During the brief period in which the Challenged Provisions were in effect, Plaintiffs and their members altered their conduct to comply with the Challenged Provisions. For instance, to comply with the Compensation Ban, Plaintiffs did not permit paid employees to conduct many of the voter-registration-related duties they previously carried out. Likewise, to comply with the Registered Voter Requirement and Unpaid Solicitor Registration Requirement, Plaintiffs mandated that all voter registration volunteers, including their member volunteers, be registered Missouri voters and prohibited volunteers who have not registered as solicitors and received confirmation of their registration prior to volunteering. And when the Absentee Ballot Solicitation Ban was in effect, Plaintiffs halted nearly all speech encouraging voters to apply to vote absentee.

26. These responses to the Challenged Provisions caused a diversion of resources and reduced Plaintiffs' capacity to engage in protected speech, in some instances barring it altogether.

27. Plaintiffs' injuries, as well as the injuries to their members, are a direct result of Plaintiffs' compliance with the Challenged Provisions, which carry criminal penalties for noncompliance.

28. Plaintiffs' and their members' injuries are therefore traceable to Defendants, who are charged with implementation and enforcement of the Challenged Provisions.

29. The violation of Plaintiffs' due process rights is also traceable to Defendants' implementation and enforcement of the Challenged Provisions.

30. As discussed more fully, *infra*, the Challenged Provisions are impermissibly vague, and do not “provide a person of ordinary intelligence with adequate notice of the proscribed conduct.” *Young*, 695 S.W.2d at 886; *Johnson v. United States*, 576 U.S. 591, 622 (2015).

31. The Challenged Provisions are unconstitutionally vague because they fail to define key terms, including “solicitation” and “compensation,” and therefore fail to give adequate notice of the proscribed conduct and unconstitutionally invite arbitrary enforcement.

32. Plaintiffs’ testimony in this case showed that the plaintiff organizations not only stopped paid staff from doing any work organizing or coordinating voter registration or absentee voting drives but that they also stopped providing volunteers travel or parking stipends, reimbursements, t-shirts, food or other funds in fear those might constitute “other compensation” banned by the law. They likewise stopped all communications related to absentee voting given the vagueness of the Absentee Ballot Solicitation Ban.

33. The harm incurred by Plaintiffs as a result of the violation of their due process rights is, therefore, directly traceable to the threat of criminal penalties and Defendants’ enforcement of the Challenged Provisions.

**C. Plaintiffs’ Injuries are Redressable by an Order of this Court**

34. Plaintiffs requested declaratory and injunctive relief, including a holding that the Challenged Provisions violate the Missouri Constitution and an order permanently enjoining Defendants from enforcing them.

35. Injunctive and declaratory relief are appropriate in this case.

36. An order declaring the Challenged Provisions unconstitutional and permanently enjoining their enforcement will redress Plaintiffs’ claims that their constitutional rights have been violated by these laws.

**D. Plaintiffs Have Standing to Challenge HB 1878 on Behalf of Their Members**

37. As the findings of fact demonstrate, Plaintiffs have members whose constitutional rights are impacted by the Challenged Provisions. And, while an organization is not required to individually identify any specific number of affected members, Plaintiffs have identified members whose rights have been impacted and who would have standing to bring these claims but whose participation is not necessary in this case.

38. The interests Plaintiffs seek to protect through this lawsuit—protecting and expanding Missourians’ right to vote through voter registration and absentee voting—are germane to the missions of both LWVMO and Missouri NAACP.

39. Plaintiffs seek prospective relief in this case and “requests made by an association [or organization] for prospective relief generally do not require the individual participation of the organization’s members.” *St. Louis Ass’n of Realtors*, 354 S.W.3d at 624 (citing *Home Builders Ass’n v. City of Wildwood*, 32 S.W.3d 612, 615 (Mo. App. E.D. 2000)). As a result, Plaintiffs’ individual members are not required to litigate this case.

40. Plaintiffs have shown that (a) Plaintiffs’ members would otherwise have standing to sue in their own right, as the Challenged Provisions chill their protected speech; (b) Plaintiffs seek to protect interests germane to their missions concerning the promotion of voter registration; and (c) neither the claim nor the requested relief requires the participation of Plaintiffs’ individual members. Thus, the Missouri NAACP and the LWVMO, as membership organizations, have associational standing on behalf of their members.

**E. Plaintiffs’ Claims are Ripe for Adjudication**

41. Plaintiffs’ claims are ripe for adjudication because they have established harms that are not speculative and were, in fact, incurred during the period of time the Challenged Provisions

were in effect, and will occur again if the Challenged Provisions are not permanently enjoined, and Plaintiffs need not prove any attempt by Defendants to enforce or threaten to enforce HB 1878.”

42. Missouri courts have held that “pre-enforcement constitutional challenges to laws [are] ripe when the facts necessary to adjudicate the underlying claims [are] fully developed and the laws at issue [] affect[] the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute.” *Mo. Health Care Ass’n v. Att’y Gen. of the State of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997).

43. In *Planned Parenthood of Kansas v. Nixon*, the Missouri Supreme Court concluded that the plaintiff Planned Parenthood was “directly and adversely affected by” the challenged law because it could not continue providing information and counseling to minors about abortion without risking liability under the statute.” 220 S.W.3d at 737.

44. In this case, as the evidence supports, as a direct result of the Challenged Provisions, Plaintiffs curtailed and even ceased some of their mission-critical speech and expressive and associational activities during the period of time in which these provisions were not enjoined by this Court. In other words, those provisions chilled their protected political speech and forced changes to their organizational activities, negatively impacting Plaintiffs’ ability to carry out their mission.

45. Absent permanent injunctive and declaratory relief, Plaintiffs will once again be forced to reduce and cease engaging in certain protected speech and expressive activities related to promoting voter registration and absentee voting, or face enforcement and criminal penalties, including fines, possible jail time, and possible permanent loss of the right to vote.

46. Plaintiffs' injuries stemming from HB 1878 are, therefore, far from speculative. Rather, they are concrete and imminent such that their claims in this case are ripe for adjudication.

**F. Plaintiffs May Bring a Facial Challenge to HB 1878**

47. Plaintiffs have brought this action to assert their own organizational rights to speech, expression, and association, as well as the rights of their members.

48. Plaintiffs' claims do not rest upon any injury to Missourians' right to vote nor require any showing that the Challenged Provisions burden Missourians' ability to cast a ballot or vote absentee.

49. Plaintiffs have demonstrated that their organizations are injured by HB 1878 and bring this action to remedy that injury.

50. Furthermore, Missouri courts permit parties to "challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Vaughn*, 366 S.W.3d at 518 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)) (internal quotations omitted).

51. A facial challenge is appropriate in this case.

**II. THE CHALLENGED PROVISIONS VIOLATE PLAINTIFFS' RIGHTS TO SPEECH, EXPRESSION, ASSOCIATION, AND DUE PROCESS AS GUARANTEED BY THE MISSOURI CONSTITUTION**

52. The Missouri Constitution guarantees fundamental rights of speech, expression, and association, and due process. *See* Mo. Const. Art. I, § 8 ("no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject"); *Courtway v. Carnahan*, 985 S.W.2d 350, 352 (Mo. App. W.D. 1998) (holding that Article I, Sections 8 and 9 of

the Missouri Constitution “guarantee freedom of . . . association”); Mo. Const. Art. I, § 10 (“no person shall be deprived of life, liberty or property without due process of law”).

53. As noted, *supra*, Missouri’s constitutional freedoms of free speech, expression, and association have been interpreted to be at least as expansive as their equivalents under the federal First Amendment.

54. State restrictions that severely burden any of these rights to speech, expression, and association are subject to strict scrutiny. *See Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984).

55. There are a few narrow categories of speech that the Supreme Court has held fall outside the First Amendment’s protection: e.g., incitement, defamation, “fighting words,” child pornography, and true threats. *United States v. Alvarez*, 567 U.S.709, 717 (2012). The State does not contend, nor could it be true, that encouraging or entreating potential voters to register or to obtain an absentee ballot application falls within any of those narrow categories.

56. The Challenged Provisions are subject to—and fail—strict scrutiny. Indeed, the Challenged Provisions fail *any* level of scrutiny under the Missouri Constitution.

57. The Missouri Supreme Court has interpreted Article I, § 8 of the Missouri Constitution by looking to federal First Amendment case law: “While provisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions, analysis of a section of the federal constitution is strongly persuasive in construing the like section of our state constitution.” *Karney v. Dep’t of Labor & Indus. Rels.*, 599 S.W.3d 157, 162-63 (Mo. banc 2020). The Court has noted that while it may construe similar provisions of the state constitution to provide more expensive protection, it has “consistently construed like provisions similarly.” *Id.* at 163 n.3.

**A. The Challenged Provisions Unconstitutionally Burden Core Political Speech and Expressive Conduct**

58. Engaging and assisting voters in registering to vote or applying to cast an absentee ballot is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech’ . . . an area in which the importance of First Amendment protections is at its zenith.” *Meyer v. Grant*, 486 U.S. 414, 420–28 (1988) (holding that restrictions on initiative petition signature gathering trigger First Amendment speech protections).

59. Courts have repeatedly held that voter-registration activities constitute core political speech and expressive conduct and have struck down far less sweeping regulations of that activity. *See, e.g., League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 721, 723–24 (M.D. Tenn. 2019) (enjoining regulations of voter registration activity) (“The court sees no reason that the First Amendment would treat [discussions about whether to register to vote] as somehow less deserving of protection than, for example, a discussion about whether or not there should be a ballot initiative about property taxes.”); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006) (striking down restrictions on voter registration activity, noting “[t]he interactive nature of voter registration drives is obvious: they convey the message that participation in the political process through voting is important to a democratic society”); *League of Women Voters of Fla. v. Browning (Browning I)*, 575 F. Supp. 2d 1298, 1321 (S.D. Fla. 2008) (“Undoubtedly, Plaintiffs’ interactions with prospective voters in connection with their solicitation of voter registration applications constitutes constitutionally protected activity.”).

60. *Voting for America v. Steen*, 732 F.3d 382 (5th Cir. 2013), lends Defendants no support. In *Steen*, the Fifth Circuit acknowledged that “voter registration drives involve core protected speech” and that “[s]oliciting, urging and persuading the citizen to vote are the forms of the canvasser’s speech,” while holding that collection of *completed* voter registration forms is not

protected expressive conduct. Consistent with *Steen*, soliciting a citizen to register (or vote absentee) is core political speech and that is precisely what the Challenged Provisions regulate.

61. Likewise, courts have found core political speech in the absentee-ballot application context. *See, e.g., VoteAmerica v. Schwab*, No. 23-3100, 2024 WL 4751236, at \*8–10 (10th Cir. Nov. 12, 2024) (holding that mailing prefilled mail-ballot applications constitutes speech entitled to First Amendment protection); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 224 (M.D.N.C. 2020) (“The court therefore finds that assisting voters in filling out a request form for an absentee ballot is ‘expressive conduct’ which implicates the First Amendment.”); *Priorities USA v. Nessel*, 462 F. Supp. 3d 792, 812 (E.D. Mich. 2020) (holding that distributing absentee ballot applications, among other vote-by-mail operations, “necessarily involve[s] political communication and association.”).

62. Defendants do not dispute that the conduct criminalized by Challenged Provisions is speech or expressive activity. To the contrary, Defendants proffer an interpretation of the Challenged Provisions that restricts pure speech.

63. The Challenged Provisions strictly regulate who and how one can “solicit” voter registration applications and prohibit all persons from soliciting a voter into obtaining an absentee ballot application.

64. In other words, the Challenged Provisions prohibit anyone from approaching their fellow citizens to encourage them to apply to vote absentee; prohibit anyone but registered Missouri voters from entreating others to register to vote in Missouri; require any Missouri voter that wants to encourage voter registration to pre-register with the State before engaging in such speech; and prohibit anyone from paying or otherwise compensating others to amplify their pro-voter registration message. Violations of these provisions are backed by harsh criminal penalties.



65. Plaintiffs have pointed out, and Defendants did not contest, that no other state has a restriction on voter engagement speech that even approaches the breadth of this statute.

66. Such direct restraints on pure speech—and core political speech like encouraging political participation in particular—are antithetical to the core tenets of freedom of speech. *Henry v. Halliburton*, 690 S.W.2d 775, 785 (Mo. banc 1985) (citing *Connick v. Myers*, 461 U.S. 138, 145 (1983)) (“The First Amendment ‘was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’”).

67. By strictly limiting who and how one can “solicit” voter registration applications and prohibiting all persons from soliciting a voter into obtaining an absentee ballot application, the Challenged Provisions regulate “core political speech,” as well as expressive conduct that is “characteristically intertwined with informative and perhaps persuasive speech” about the value of registering and voting. *Meyer v. Grant*, 486 U.S. 414, 420–28, 422 n.5 (1988) (citing *Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980)). Indeed, the Challenged Provisions burden core political speech because they “limit[] the number of voices who will convey [Plaintiffs’] message and the hours they can speak and, therefore, limit[] the size of the audience they can reach.” *Id.* at 422–23).

68. **Compensation Ban.** Like the statute struck down in *Meyer*, which outlawed the payment of ballot initiative petition circulators, the Compensation Ban bars voter registration solicitors from “be[ing] paid or otherwise compensated for soliciting voter registration applications.”

69. Plaintiffs rely on both paid staff and volunteers eligible for reimbursement for their voter registration solicitation programs.

70. When the Compensation Ban was in effect, Plaintiffs were forced to rely solely on volunteers to perform these duties and were unable to reimburse volunteers for their expenses, reducing the total quantum of their voter registration speech.

71. It is well-established that a person or organization's expenditure of funds to amplify their communications is protected by free speech protections and "[a] restriction on the amount of money a person or group can spend on [communications] necessarily reduces the quantity of expression . . . ." *Buckley v. Valeo*, 424 U.S. 1, 19 (1976).

72. When the Compensation Ban was in effect, Plaintiffs had fewer people spreading their pro-registration message and, therefore, could not expect to reach as many eligible voters as they could before the Compensation Ban took effect.

73. Moreover, as a result of the Compensation Ban, the LWVMO needed to use their members to cover administrative duties previously completed by paid staff members. This diverted members from participating in voter registration activities.

74. By limiting the availability and assistance of paid staff and reimbursement-eligible volunteers for registration activities, the Compensation Ban limits the voices that will convey Plaintiffs' message and the audience they can reach.

75. The Compensation Ban directly chills the speech and expressive conduct of Plaintiffs' paid employees—such as Executive Directors Jean Dugan and Olivia Pener—and reimbursement-eligible volunteers by prohibiting their participation in voter registration activities. Paid employees, for example, were no longer permitted to attend Plaintiffs' regularly scheduled voter registration events when the Compensation Ban was in effect. And given the sweeping reach of the term "solicit" that the State has proffered, paid employees would be muzzled from any speech or conduct that might "entreat" others into applying for voter registration.

76. The Compensation Ban, therefore, unconstitutionally burdens core political speech.

77. *Unpaid Solicitor Registration Requirement.* The Unpaid Solicitor Registration Requirement unconstitutionally burdens Plaintiffs’ core political speech by dictating that Plaintiffs’ members must register with the State before engaging in core political speech and expressive conduct, thus shrinking the pool of people eligible to spread Plaintiffs’ message and the number of eligible voters reached.

78. Because the Unpaid Solicitor Registration Requirement mandates that even uncompensated individuals “who solicit[] more than ten voter registration applications” register with the Secretary of State as “voter registration solicitors” every election cycle, volunteers will no longer be able to freely join in community registration events without substantial pre-planning (including having access to the internet and a printer), and organizations will no longer be able to admit volunteers to join their events without ascertaining their solicitor registration status.

79. The Unpaid Solicitor Registration Requirement restricts the pool of members and volunteers whom Plaintiffs can rely on to promote their pro-registration messages and thus limits the voices that will convey their messages, the audience they reach, and the hours they can speak.

80. Further, under the State’s proffered definition of solicit, the Unpaid Solicitor Requirement prohibits Plaintiffs’ members from encouraging—even verbally—more than ten members of their community per election cycle (a two-year time period) to register to vote without risking criminal prosecution unless they first inform the Secretary of State’s office of their plans to do so.

81. Such a direct restriction on core political speech is plainly prohibited by the Missouri Constitution.

82. The Unpaid Solicitor Registration Requirement, therefore, unconstitutionally burdens core political speech and expressive conduct.

83. **Registered Voter Requirement.** Like the statute struck down in *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182 (1999), which required ballot-initiative petition circulators to be registered voters, the Registered Voter Requirement mandates that every voter-registration solicitor be a voter registered in the state.

84. The Registered Voter Requirement categorically prohibits a vast array of individuals—from people under 18 to non-citizen residents of Missouri to visitors from out-of-state to people on probation or parole—from engaging in the core political speech and expressive of encouraging, and assisting with, voter registration. The Missouri Constitution does not permit the State to dictate who can and cannot engage in protected speech and expressive conduct.

85. As the U.S. Supreme Court reasoned in *Buckley*, “[t]he requirement that [solicitors] be . . . registered voters . . . decreases the pool of potential [solicitors] . . .” *Id.* at 194.

86. As the both the Missouri NAACP and the LWVMO testified, their organizations frequently partner with high school students under 18 to lead high school voter registration drives; and with student groups that include out-of-state college students to organize voter registration drives knowing that young voters are more likely to respond to those their age. When the Registered Voter Requirement was in effect, both organizations stopped allowing minor teenagers to attend voter registration activities.

87. Likewise, one of the League’s most qualified voter registration volunteers who leads community college voter registration in the metro St. Louis area could no longer help with registration drives, since she was because she was not a registered voter in Missouri. Dugan Trial Dep. 55:1–12.

88. The Registered Voter Requirement thus restricts the number of voices that will convey Plaintiffs’ messages and diminishes the size of the audience that Plaintiffs can reach.

89. It also directly stifles speech and expressive conduct by individuals who are ineligible to become registered voters in Missouri, including Plaintiffs’ members.

90. The Registered Voter Requirement unconstitutionally burdens core political speech and expressive conduct.

91. ***Absentee Ballot Solicitation Ban.*** By providing that “no individual, group, or party shall solicit a voter into obtaining an absentee ballot application,” the Absentee Ballot Solicitation Ban stifles practically *all* speech and expression encouraging absentee voting.

92. As courts have repeatedly held, speech and expressive activities related to absentee voting constitute core political speech. *See, e.g., VoteAmerica*, 2024 WL 4751236, at \*8–10.

93. The Absentee Ballot Solicitation Ban chills Plaintiffs from engaging in any speech or expressive activity encouraging or assisting with absentee voting altogether.

94. In the short period of time in which the Absentee Ballot Solicitation Ban was in effect, the LWVMO discarded all of their materials related to how to vote absentee, and removed links and QR codes explaining how to vote absentee. The organization also adopted a policy of categorically refusing to answer questions related to absentee voting. *Id.*

95. The Absentee Ballot Solicitation Ban, therefore, unconstitutionally burdens core political speech and expressive conduct.

**B. The Challenged Provisions Constitute Impermissible Content-Based Speech Restrictions**

96. At its core, the right to free speech “means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. Am. Civil Liberties Union*, 535 U.S. 564, 573 (2002) (internal quotation marks omitted).

97. “Laws that regulate speech based on its communicative content ‘are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.’” *Fox v. State*, 640 S.W.3d 744, 750 (Mo. banc 2022) (quoting *Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2371 (2018)); see also *Ashcroft*, 542 U.S. at 606 n.2 (“content-based restrictions on speech [should] be presumed invalid”); *Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc1984) (“[T]he government may not limit expression because of the message to be conveyed, its ideas, subject matter or content.”).<sup>6</sup>

98. The Challenged Provisions are unquestionably content-based restrictions on expression. They are not neutral time, place, or manner restrictions on speech but rather govern and tightly regulate (or altogether prohibit) certain speech based on its content. Defendants have not argued otherwise.

99. The Unpaid Solicitor Registration Ban, Registered Voter Requirement, and Compensation Ban apply only to expression involving voter registration—and, more specifically, solicitation of voter registration applications—not to speech involving other topics.

100. Likewise, the Absentee Ballot Solicitation Ban restricts only expression related to absentee ballot applications, not to discussion of other issues.

101. By targeting speech related exclusively to voter registration and absentee voting, the Challenged Provisions are content-based restrictions that “are presumptively unconstitutional” and subject to strict scrutiny. *Fox v. State*, 640 S.W.3d 744, 750 (Mo. banc 2022).

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<sup>6</sup> The presumption of unconstitutionality for “Laws that regulate speech” is a departure from the typical assumption that a law is constitutional. Compare *Fox v. State*, 64- S.W.3d 744, 750 (Mo. banc 2022), with *Pearson v. Koster*, 367 S.W.3d 36, 45 (Mo. banc 2012) (“The purpose behind stating that statutes are ‘presumed’ constitutional is . . . to allocate the burden of proof to the plaintiff for its claim that a statute is unconstitutional.”).

**C. The Challenged Provisions Constitute Impermissible Viewpoint-Based Speech Restrictions**

102. Laws that restrict speech expressing only a particular view or opinion on a given topic are viewpoint-based restrictions that are “presumed to be unconstitutional.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828–29 (1995).

103. Viewpoint-based restrictions are subject to strict scrutiny. *McCullen v. Coakley*, 573 U.S. 464, 478 (2014) (holding that viewpoint-based restrictions “must be the least restrictive means of achieving a compelling state interest.”)

104. The Unpaid Solicitor Registration Ban, Registered Voter Requirement, and Compensation Ban restrict only speech that solicits voter registration applicants—that is, speech in favor of registering to vote—and do not restrict speech opposed to voter registration.

105. Similarly, the Absentee Ballot Solicitation Ban prohibits only speech that encourages citizens to apply to vote by absentee ballot and does not regulate speech opposed to absentee voting (i.e., speech discouraging voters from obtaining applications and casting absentee ballots).

106. By targeting only speech supporting voter registration and absentee voting, the Challenged Provisions restrict speech based on the viewpoint of the speaker. *See S.D. Voice v. Noem*, 432 F. Supp. 3d 991, 996 (D.S.D. 2020) (finding a law viewpoint discriminatory because it “specifically applies a burden to the speech of those who ‘solicit’ others to sign ballot measure petitions, but not those who solicit them not to do so”).

107. Further, the Registered Voter Requirement impermissibly restricts speech and expressive conduct based on *who* is speaking. *See Citizens United*, 558 U.S. at 340 (“[T]he First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. . . .

Speech restrictions based on the identity of the speaker are all too often simply a means to control content.” (internal citations omitted)).

108. Thus, the Challenged Provisions are “presumed to be unconstitutional” and are subject to strict scrutiny. *Rosenberger*, 515 U.S. at 828.

#### **D. The Challenged Provisions Are Unconstitutionally Overbroad**

109. The Challenged Provisions also violate Plaintiffs’ constitutional rights under Art. I, § 8 because they are overbroad and impair a wide swath of constitutionally protected rights of speech, expression, and association.

110. “Overbreadth attacks are allowed where rights of association are ensnared in statutes which, by their broad sweep, might result in burdening innocent associations.” *Turner*, 349 S.W.3d at 448 (citing *Broadrick*, 413 U.S. at 611–12); *State v. Jeffrey*, 400 S.W.3d 303, 308 (Mo. banc 2013) (recognizing that “it is better to invalidate laws that potentially could be construed to punish protected speech, even if those laws might be constitutionally applied rather than to let such a law stand and chill protected speech.”).

111. Where a statute implicates speech, “the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted and perceived grievances left to fester because of the possible inhibitory effects of overly broad statutes.” *Broadrick*, 413 U.S. at 612.

112. A law is unconstitutionally overbroad if it smothers speech otherwise protected by the Constitution in that “persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression.” *State v. Carpenter*, 736 S.W.2d 406, 408 (Mo. banc 1987) (quoting *Gooding v. Wilson*, 405 U.S. 518, 521 (1972)).



113. The Challenged Provisions are unconstitutionally overbroad because Plaintiffs have and, were the Challenged Provisions to go back into effect, would continue to restrict and cease current constitutionally protected activities and communications with their volunteers, members, and communities related to voting—including a large portion of their speech related to voter registration and absentee voting—because they reasonably fear criminal sanctions under the Challenged Provisions.

**E. The Challenged Provisions Burden Plaintiffs’ Freedom of Association**

114. Sections 8 and 9 of Article I of the Missouri Constitution “guarantee freedom of . . . association.” *Courtway*, 985 S.W.2d at 352; *see also Turner v. Mo. Dep’t of Conservation*, 349 S.W.3d 434, 448 (Mo. App. S.D. 2011).

115. Freedom of association under the Missouri Constitution is at least as expansive as the right protected by the federal First Amendment. *See Karney*, 599 S.W.3d at 162–63.

116. “Election regulations that impose a severe burden on associational rights are subject to strict scrutiny, and [courts] uphold them only if they are ‘narrowly tailored to serve a compelling state interest.’” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)); *accord Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) (“Infringements on [the right to associate] may be justified by regulations adopted to serve compelling state interests . . . that cannot be achieved through means significantly less restrictive of associational freedoms.”); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958) (“[S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.”).

117. The First Amendment and the Missouri Constitution, Article I, Section 8, “encompass the ‘right of expressive association,’ i.e., the ‘right to associate for the purpose of

speaking.” *Miller v. City of Cincinnati*, 622 F.3d 524, 537 (6th Cir. 2010) (quoting *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 68 (2006)); *Courtway*, 985 S.W.2d at 352.

118. This right “protects a group’s membership decision and also protects against laws that make group membership less attractive without directly interfering with an organization’s composition, such as requiring groups to disclose their membership lists or imposing penalties based on membership in a disfavored group.” *Miller*, 622 F.3d at 537. (cleaned up).

119. The Challenged Provisions prevent Plaintiffs and their members, volunteers, and staff from working together to engage potential voters and assist community members in participating in the civic community and the democratic political process through voter registration and absentee voting, severely burdening expressive association by Plaintiffs and their members, volunteers, and staff.

120. The Compensation Ban, Unpaid Solicitor Registration Requirement, and Registered Voter Requirement directly restrict who may participate in Plaintiffs’ voter registration and engagement activities and events, directly interfering with Plaintiffs’ group membership by dictating who can participate in their core associational activities.

121. The Challenged Provisions also impede the ability of Plaintiffs and their members to associate with potential voters through outreach related to voter registration and absentee voting in both the short and long terms.

122. The Challenged Provisions, therefore, impose a severe burden on Plaintiffs’ associational rights.

**F. The *Anderson-Burdick* Test Does Not Apply to This Case**

123. Defendants argued that the Challenged Provisions are ‘elections laws’ and urged this Court to apply less exacting scrutiny under the *Anderson-Burdick* balancing test. Answer at 27 (citing *Mo. State Conf. of NAACP*, 607 S.W.3d at 735).<sup>7</sup> Defendants also argued that Plaintiffs failed to state a claim for relief with respect to HB 1878’s absentee ballot provisions because those provisions do not violate a fundamental constitutional right—i.e., the right to vote absentee. *Id.*

124. But Plaintiffs have not claimed that the Challenged Provisions burden the constitutional right to vote, let alone relied on any purported constitutional right to vote absentee in their challenge to HB 1878’s Absentee Ballot Solicitation Ban. Rather, Plaintiffs have demonstrated how the Challenged Provisions hamper their ability to engage in constitutionally protected speech, expressive activity, and association and that the Challenged Provisions violate their due process rights because they are impermissibly vague.

125. Thus, while the State is correct that courts have applied the *Anderson-Burdick* framework to assess the constitutionality of laws that regulate the conduct of elections and found that some do not severely burden the right to vote, *see, e.g., Peters v. Johns*, 489 S.W.3d 262 (Mo. banc 2016) (ballot-access rules for candidates), that framework is inappropriate here because the Challenged Provisions do not bear on the voting process itself but on speech, including core political speech. *VoteAmerica*, 2024 WL 4751236, at \*11–12 (discussing why *Anderson-Burdick* balancing is not the appropriate standard with which to analyze the constitutionality of a law that regulates not the “mechanics of the electoral process” but instead “pure speech”).

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<sup>7</sup> It is of note the Defendants did not mention the *Anderson-Burdick* balancing test in their Pre-trial Brief, although the Court acknowledges the balancing test came up in Defendants’ closing argument.

126. Unlike laws that govern a voter casting a ballot or a candidate’s qualifications, the Challenged Provisions do not govern the mechanics of the electoral process, but rather restrict election-related speech, or the sharing of political ideas and encouragement to register to vote or application to vote absentee. In such cases, strict scrutiny always applies. *See Am. Const. Law Found.*, 525 U.S. at 207 (Thomas, J., concurring) (“When a State’s election law directly regulates core political speech, we have always subjected the challenged restriction to strict scrutiny and require that the legislation be narrowly tailored to serve a compelling governmental interest.”); *Hargett*, 400 F. Supp. 3d at 722 (applying exacting scrutiny where laws “go beyond merely the intersection between voting rights and election administration, veering instead into the area where the First Amendment has its fullest and most urgent application”); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345–46 (1995) (holding the challenged law was no “ordinary election restriction[s]” but rather “involve[d] a limitation on political expression subject to exacting scrutiny”).

127. Even more so than petition signature gathering for ballot initiatives—a process that necessarily implicates the machinery of counting and verifying signatures and where the Supreme Court has nonetheless applied exacting scrutiny—the Challenged Provisions restrict core political speech.

128. At any rate, even if this Court applied the *Anderson-Burdick* framework, the resulting scrutiny would be nearly identical. Under that sliding scale framework, [i]f the burden is severe, strict scrutiny applies.” *Peters v. Johns*, 489 S.W.3d 262, 273–74 (Mo. banc 2016). For the reasons discussed above, this Court finds that the Challenged Provisions severely burden Plaintiffs’ freedom of speech and association. Defendants argue that the burdens are not severe because voters’ access to the ballot is not hampered by the Challenged Provisions. But Defendants’

arguments fail to address the relevant inquiry: the burdens on Plaintiffs as speakers, not Missourians as voters casting ballots.

129. Indeed, Defendants have not met their burden of justifying the Challenged Provisions even under the least exacting review available under the *Anderson-Burdick* sliding scale. *Anderson-Burdick* review always requires a court to “weigh the character and magnitude of the burden the State’s rule imposes on [expressive and associational] rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary.” *Timmons*, 520 U.S. at 358. Defendants have failed to show how the State’s concerns render the burdens of the Challenged Provisions necessary.

130. Accordingly, this court expressly rejects the application of the *Anderson-Burdick* test. Moreover, the court concludes that even if *Anderson-Burdick* were the correct standard, the Challenged Provisions would not survive, as the burden created by the Challenged Provisions is severe and the state has not demonstrated any discernable interest in their enforcement.

### **III. THE CHALLENGED PROVISIONS FAIL STRICT SCRUTINY**

131. Because this Court must invoke strict scrutiny, the Challenged Provisions “will only be upheld if [they are] narrowly tailored to serve a compelling state interest.” *Priorities USA*, 591 S.W.3d at 453 (quoting *Peters v. Johns*, 489 S.W.3d 262, 273 (Mo. banc 2016)).

132. The State’s compelling interest must be “paramount, one of vital importance, and the burden is on the government to show the existence of such an interest.” *Elrod v. Burns*, 427 U.S. 347, 362 (1976). Defendants must provide actual evidence to support the State’s purported interest and demonstrate that the Challenged Provisions would solve existing problems. *See, e.g., Weinschenk*, 203 S.W.3d at 218. “[W]here fundamental rights of Missouri citizens are at stake, more than mere perception is required for their abridgement.” *Id.*

133. Defendants have not met their burden of demonstrating a compelling interest that the Challenged Provisions are designed to address, let alone narrowly tailored to do so.

134. While the State has proffered some interests in enforcing the Challenged Provisions, those asserted interests have evolved and changed throughout the course of this litigation. While initially the state contended that the Challenged Provisions were necessary to prevent election fraud, *see, e.g.*, Defs.’ Pretrial Br. 28–29, they have since admitted, for example, that the Challenged Provisions were at least partially aimed at easing the burden on overworked election officials tasked with processing voter registrations. Trial Tr. 137:11–138:16. This burden exists whether or not the applications are complete and accurate.

135. Another purported state interest is to remove improper monetary incentives such as paying people to collect voter registrations on a per-registration basis. However, this practice is already banned in Missouri by § 115.203(1) which prohibits paying people “for registering voters based on the number of (1) Voters registered by the other person; (2) Voter registration applications collected by the other person; or (3) Voter registration applications submitted to election officials by the other person.”

136. Additional interests identified by the State are ensuring that registrations are turned in, ensuring that voters are connected to their local election authorities directly, increasing or enabling accountability in the voting process, and protecting the privacy of voters and their ballots.

137. As explained more fully below, none of the state interests are addressed by the Challenged Provisions.

**A. The Challenged Provisions Are Not Narrowly Tailored to Address Any of the State’s Interests**

138. The State has claimed that the Challenged Provisions are necessary to combat voter fraud in Missouri. Def. Pretrial Br. 28–29; Trial Tr. 14:7–12; Gimpel Rep. at 8, 14; Gimpel Trial Dep. 49:22–50:23.

139. Combating voter fraud is considered a compelling state interest sufficient to withstand strict scrutiny. *See Priorities USA v. State*, 591 S.W.3d 448, 453 (Mo. banc 2020).

140. However, in order to be upheld under strict scrutiny, the Challenged Provisions must also be narrowly tailored to address the state’s interest in combating voter fraud.

141. The State has failed to demonstrate any evidence of election fraud in Missouri that the Challenged Provisions could plausibly address, and much less one the Provisions could be narrowly tailored to address.

142. State and federal laws *predating* the Challenged Provisions mandate identification and eligibility verification processes of voter registrations.

143. Likewise, Missouri already has effective laws and systems in place to prevent voter fraud. *See, e.g.*, §§ 115.503 (requiring verification boards to inspect secured electronic voting machines); 115.513 (“If any verification board, bipartisan committee, election authority or the secretary of state obtains evidence of fraud or any violation of law during a verification, it shall present such evidence immediately to the proper authorities.”); 115.553 (“Any candidate for election to any office may challenge the correctness of the returns for the office, charging that irregularities occurred in the election.”); 115.583 (requiring a recount where a “court or legislative body hearing a contest finds there is a prima facie showing of irregularities which place the result of any contested election in doubt”); 115.631 (making voting more than once or voting knowing that the person is ineligible to vote a class-one election offense).

144. As a result of these existing verification processes and security measures, fraudulent voter registrations are not added to the voter rolls in Missouri.

145. Defendants provided no evidence that nongovernmental actors encouraging potential voters to register to vote or assisting eligible voters with registration has led to any fraudulent voting in the state of Missouri. Defendants have failed to provide any evidence that paid or “otherwise compensated” solicitors are more likely to commit fraud, that requiring solicitors to register will assist the State in rooting out fraud, or that barring all speech encouraging voters to vote absentee will prevent absentee voting fraud. Nor did they provide evidence, other than the unsupported personal opinion of a LEA, that Missouri registered voters are less likely to commit voter fraud in their registration activities than voters registered in other states, like Kansas or Illinois which border Missouri. Further, Plaintiffs’ expert Dr. Kenneth Mayer, whose opinion this Court credited, concluded that the Absentee Ballot Solicitation Ban would not enhance the security of Missouri elections.

146. Even assuming *arguendo* that Defendants had proven the type of fraud they allege in fact exists, the Challenged Provisions are not reasonably, much less narrowly, tailored to combat it.

147. The Secretary of State’s office has no way of knowing, in most instances, what solicitor assisted which voter with a voter registration card. This is true regardless of the Challenged Provisions. The Secretary of State maintains a list of voter solicitors, nothing more.

148. Nor does the Secretary of State’s Office review, assess, or qualify someone who submits a ‘solicitor’ application. Upon submitting the application, they are simply added to the list without further review. Maintaining this list and requiring anyone on it to be a registered voter



does not do anything to connect a voter directly with their LEA, it does not protect the privacy of voters,<sup>8</sup> and it does not ensure that registrations are turned in.

149. The Absentee Ballot Solicitation Ban will not prevent absentee voting fraud. Trial Tr. 240:11–244:4. Individuals are barred from encouraging voters to apply to vote absentee or assisting them in the application process. This provision does not touch on absentee voting itself.

150. Nor does the Court credit the State’s argument that the Challenged Provisions cut out the “middleman” or connect voters with their LEAs. A hypothetical middleman is still allowed to work with potential voters under HB 1878. Nothing in the challenged provisions encourages voters to directly provide their ballots to an LEA or to only register via the SOS website. In any event, such a motive—to use the criminal law to block private citizens from promoting voting because the State would prefer voters interact with government officials rather than community members—is inconsistent with the principles of free speech and expression.

151. Likewise, Defendants cannot support their contention that HB 1878 reduces fraud by removing improper monetary incentives for third-party registration solicitors. Indeed, they provide no evidence that improper monetary incentives exist, or that such incentives lead to “sloppy registrations,” “fraud,” and “convictions” that they claim plague Missouri’s election administration. Trial Tr. 141:17–18. At trial, one of Defendants’ witnesses merely testified that she has “seen issues with that in the past” without elaboration. Trial Tr. 21:5–6. But she later admitted that “maybe [HB 1878] doesn’t address that particular concern.” Trial Tr. 142:24–25.

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<sup>8</sup> Nor did the State provide compelling evidence how HB 1878 would prevent the “harvesting” of voter data. However, even assuming HB 1878 did somehow prevent the “harvesting” of voter data, HB 1878 is not the narrowest means by which to protect the privacy of voters. And at any rate, much voter data is available by other means: Missouri law provides that the “names, year of birth, addresses, and political party affiliations of voters,” among other information, may be requested by the public for a fee. 115.157.

152. Furthermore, Defendants' claim that HB 1878 will somehow ensure access to elections and prevent disenfranchisement defies logic. While Defendants have asserted that HB 1878 "is designed to prevent . . . problems" created by third-party groups doing "things like . . . collect[ing] voter registration cards and . . . turn[ing] them in after registration deadlines," they fail to offer any discernable argument that the Challenged Provisions would address this purported disenfranchisement as opposed to say, a requirement that third-party groups turn in voter registration forms promptly. Moreover, as the facts herein support, the Challenged Provisions *hindered* Plaintiffs from being able to provide voters with education, information, and critical access points to the democratic process.

153. Defendants have similarly provided no support for their assertion that HB 1878 protects the privacy of voters and their ballots. At trial, Chrissy Peters testified only that the law keeps personally identifying information provided on the registration form confidential by "trying to remove the middleman." Trial Tr. 23:12–20. As previously discussed, however, a hypothetical middleman can still assist potential voters. HB 1878 only prevents them from being paid to do so and requires them to be a Missouri voter.

154. Finally, this Court heard from the State's two witnesses that they are concerned with inaccurate mailers being sent to voters. When pressed on cross how the provisions of HB 1878 would address inaccurate mailers being sent to voters, the witnesses admitted that this interest is not addressed by the Challenged Provisions.

**B. The State's Asserted Interest in Administrative Convenience Is Not a Compelling Interest Sufficient to Withstand Strict Scrutiny**

155. The State has indicated that its interest in the Challenged Provisions is at least partially rooted in easing the burden on overworked election officials tasked with processing voter registrations.

156. After considering the State’s proffered testimony, the Court concludes that the State did not offer compelling or credible evidence that the Challenged Provisions would meaningfully reduce administrative burdens on election officials.

157. In any event, administrative convenience is not a compelling state interest and cannot be used to justify restrictions on First Amendment rights. *See Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 152 (1980) (collecting cases); *see also Prosperity Found. v. Bonta*, 594 U.S. 595, 597–98 (2021). Thus, the Challenged Provisions cannot survive strict scrutiny on the basis of the state’s interest in administrative convenience.

158. Because they are not narrowly tailored—or even related—to reducing election fraud, and because administrative convenience cannot justify a burden on constitutional rights to speech, expression, and association, the Challenged Provisions fail strict scrutiny.

#### **IV. THE CHALLENGED PROVISIONS VIOLATE PLAINTIFFS’ RIGHT TO DUE PROCESS BECAUSE THEY ARE IMPERMISSIBLY VAGUE**

159. Article I, Section 10 of the Missouri Constitution provides “[t]hat no person shall be deprived of life, liberty or property without due process of law.” Mo. Const. art. I, § 10. Due process requires that statutes give “fair notice” of prohibited conduct and must “contain sufficient standards to prevent arbitrary and discriminatory enforcement.” *State v. Schleiermacher*, 924 S.W.2d 269, 275 (Mo. Banc 1996) (internal quotations omitted); *accord* Mo. Const. art. I, § 10. *See also Young*, 695 S.W.2d at 886 (due process requires that a statute “provide a person of ordinary intelligence with adequate notice of the proscribed conduct”) *Johnson v. United States*, 576 U.S. 591 (2015) (due process requires that a statute not be “so standardless that it invites arbitrary enforcement”); *U.S. v. Lanier*, 520 U.S. 259, 267 (1997); *Vetter v. King*, 691 S.W.2d 255, 257 (Mo. banc 1985); *State v. Mahan*, 971 S.W.2d 307 (Mo. banc 1998).

160. This proscription against vagueness is even more robust where—as is the case here—a statute, *inter alia*, “threatens to inhibit the exercise of constitutionally protected rights,” imposes criminal penalties, lacks a scienter requirement, or is noneconomic in nature. *State ex rel. Nixon v. Telco Directory Publ’g*, 863 S.W.2d 596, 600 (Mo. banc 1993) (quoting *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498–99 (1982)). “If, for example, the law interferes with the right of free speech or association, a more stringent vagueness test should apply.” *Vill. of Hoffman Ests.*, 455 U.S. at 499.

161. The Challenged Provisions are unconstitutionally vague because they fail to define key terms whose scope could sweep broadly, including “solicitation” and “compensation,” and therefore fail to give adequate notice of the proscribed conduct and unconstitutionally invite arbitrary enforcement, including by Missouri’s 115 county prosecutors.

162. The term “solicit” is not defined as it relates to the Challenged Provisions.

163. At trial, the Secretary of State’s office could not offer any consistent definitions of “solicit” and testified that the word carries a different meaning when used in the Absentee Ballot Solicitation Ban compared to the Voter Registration Solicitation Ban, even though the Challenged Provisions appear in the same statute and carry the same criminal penalties. This demonstrates the issue of vagueness.

164. Given that even the Secretary of State’s office was unable to define “solicit” in the context of the Absentee Voting Solicitation Ban, it is unreasonable to expect Plaintiffs to understand its meaning and consequent implications for their voter outreach activities.

165. The term “compensation” is likewise not defined as it relates to the Challenged Provisions.

166. Defendants have likewise placed different meaning on “compensation” throughout the litigation.

167. Originally, the defendants supplied a Webster’s dictionary definition for “compensation”: “entails that no person shall take any money or another thing of value as compensation for conducting that activity.” Defs.’ Opp. to Pl’s. Mtn. at 18. But Defendants’ pre-trial brief failed to address Plaintiffs’ challenge to the word “compensate” and instead confused the issue and attempted to define the terms “income” and “paid.” Defs.’ Pretrial Br. at 24. But, even if Defendants could provide a consistent definition, it is not Defendants who are charged with defining statutory terms.

168. Rules of statutory construction require both terms, “paid” and “otherwise compensated” to have their own independent meaning within a statute. *See Fischer v. United States*, 603 U.S. 480, 496 (2024) (statutory constructions creating surplusage are “disfavored”).

169. Since the statute prohibits anyone from being “paid *or* otherwise compensated” (emphasis added), the prohibited conduct must include compensation other than payment.

170. Plaintiffs’ testimony in this case revealed that the plaintiff organizations not only stopped paid staff from doing any work organizing or coordinating voter registration or absentee voting drives but that they also stopped providing volunteers travel or parking stipends, reimbursements, t-shirts, food or other funds in fear those might constitute “other compensation” banned by the law.

171. Moreover, regardless of the Secretary of State’s opinions as to the meaning of various unclear terms in the Challenged Provisions, it is the responsibility of individual District Attorneys to determine whether they think an individual or organization has violated one of the Challenged Provisions, such that prosecution would be warranted. This requires individual District

Attorneys to determine how unclear terms in the Challenged Provisions, such as “solicit” or “compensate,” should be defined, and what conduct such terms encompass.

172. For all of these reasons, the Court finds that the Challenged Provisions are impermissibly vague and violate Plaintiffs’ due process rights.

## **V. PLAINTIFFS ARE ENTITLED TO A PERMANENT INJUNCTION**

173. “The elements of a claim for permanent injunction include: (1) irreparable harm, and (2) lack of adequate remedy at law.” *City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258, 265 (Mo. App. W.D. 2010), *as modified* (Mar. 30, 2010).

174. Plaintiffs have demonstrated that they will suffer irreparable harm absent a permanent injunction and that no adequate remedy exists at law, and they are thus entitled to a permanent injunction.

### **A. Plaintiffs Face Irreparable Harm Absent Injunctive Relief**

175. “When constitutional rights are threatened or impaired, irreparable injury is presumed.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *accord Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999); *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996, 1000 (8th Cir. 2012) (holding that, where plaintiffs demonstrate a “high likelihood of success on the merits of a First Amendment claim,” that is “likely enough, standing alone, to establish irreparable harm”).

176. Plaintiffs have established that the Challenged Provisions violate the Missouri Constitution. Thus, “irreparable injury is presumed.”

177. Even without this presumption, Plaintiffs face irreparable harm to their constitutional rights that will not cease absent an injunction barring the enforcement of the Challenged Provisions. To comply with the Provisions, Plaintiffs were forced to alter their voter registration activities and reallocate limited volunteer resources away from mission-critical work. The Challenged Provisions also threaten to reduce the pool of volunteers available to spread Plaintiffs' message, thereby diminishing the quantum of speech in which Plaintiffs are able to engage, and to chill the speech of Plaintiffs' volunteers who are faced with the prospect of prosecution for violating the unconstitutionally vague Provisions.

178. Plaintiffs will suffer irreparable harm if the Challenged Provisions are reinstated.

**B. No Adequate Remedy Exists at Law**

179. “[D]amages cannot replace the loss of protected First Amendment rights.” *Indep. Inst. v. Gessler*, 936 F. Supp. 2d 1256, 1281 (D. Colo. 2013) (citing *See Nat’l People’s Action v. Vill. of Wilmette*, 914 F.2d 1008, 1013 (7th Cir. 1990) (“[I]njunctive relief is especially appropriate in the context of first amendment violations because of the inadequacy of money damages . . . .”)); *accord Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011) (direct penalization of First Amendment rights is an injury “that could not be remedied absent an injunction”); *Karney v. Dep’t of Lab. & Indus. Rels.*, 599 S.W.3d 157, 167 (Mo. 2020) (affirming issuance of permanent injunction where, in the absence of injunctive relief, Plaintiff would be forced to forfeit a right to speech that he previously held and exercised).

180. Plaintiffs have demonstrated that the Challenged Provisions violate their protected speech, association, and due process rights.

181. Thus, no adequate remedy for the loss of those protected constitutional rights to free speech and association exists at law.

182. Having established that they will suffer irreparable harm in the absence of a permanent injunction and that no adequate remedy exists at law, Plaintiffs are therefore entitled to a permanent injunction.

## **VI. PLAINTIFFS ARE ENTITLED TO DECLARATORY JUDGMENT**

183. “A declaratory judgment action has been found to be a proper action to challenge the constitutional validity of a [] statute or ordinance.” *Tupper v. City of St. Louis*, 468 S.W.3d 360, 368 (Mo. banc 2015).

184. A plaintiff seeking declaratory judgment as to the constitutionality of a statute must show: (1) “a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation”; (2) “a controversy ripe for judicial determination”; (3) “a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief”; and (4) “an inadequate remedy at law.” *Id.*

185. Plaintiffs have shown that all four elements are met here.<sup>9</sup>

### **A. This Case Represents a Justiciable Controversy Requiring Specific Relief**

186. A justiciable controversy involving the constitutionality of a statute exists between [a] plaintiff and the state official charged with the duty to enforce that law.” *Baker v. Crossroads Acad.-Ctr. St.*, 648 S.W.3d 790, 799 (Mo. App. W.D. 2022) (quotation omitted); *see also Schweich*, 408 S.W.3d at 773 (articulating the justiciable controversy requirements).

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<sup>9</sup> As discussed herein, Plaintiffs claims are ripe for determination.



187. As Plaintiffs here have sued the state officials charged with enforcing statutory provisions that Plaintiffs asserted are unconstitutional, the instant action is a justiciable controversy.

188. Further, this case does not present a hypothetical situation, but a concrete controversy that requires specific relief. But for the preliminary injunction issued by this Court, the Challenged Provisions would currently be in effect and enforced today. Prior to the issuance of the preliminary injunction in this matter, the Challenged Provisions forced Plaintiffs to alter their voter engagement activities, curtail their speech, restructure their operations, and divert resources to comply with the law. If the Challenged Provisions became enforceable once more, Plaintiffs would be faced with the same obligations and burdens which they were when the law was in effect.

#### **B. Plaintiffs' Interests Are Legally Protectable**

189. Plaintiffs have legally protectable interests at stake – namely, their desire to continue to engage in activity encouraging and assisting with voter registration and absentee voting.

190. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373.

191. In *Planned Parenthood of Kansas*, 220 S.W.3d at 737, the Missouri Supreme Court held that a plaintiff who seeks to exercise its constitutional rights but is prevented from doing so by a state statute has standing to challenge the statute as unconstitutional. There, Planned Parenthood of Kansas, the plaintiff, sought declaratory judgment that a statute that prohibited any person or entity from providing information and counseling to minors about abortion was unconstitutional. *Id.* The Missouri Supreme Court concluded that “Planned Parenthood’s legally

protectable interest in the outcome of this litigation is its desire to continue to engage in out-of-state conduct that may aid or assist Missouri minors to obtain an abortion without being subjected to civil liability in Missouri. Planned Parenthood has standing to bring its Commerce Clause and due process claims.” *Id.*

192. Plaintiffs likewise seek to protect their constitutional rights to speech, expression, association, and due process, whose exercise is threatened by the Challenged Provisions.

193. Having established all four elements of a declaratory judgment action, Plaintiffs are therefore entitled to a judgment declaring that the Challenged Provisions are unconstitutional facially and as applied under the Missouri Constitution and may not be enforced.

### **FINAL ORDER AND JUDGMENT**

IT IS THEREFORE ORDERED, ADJUDGED, DECLARED, AND DECREED, Plaintiffs’ request for Permanent Injunction is **GRANTED**. This Court’s preliminary injunction entered on October 24, 2022, now becomes permanent.

Plaintiffs’ request for Declaratory Judgment is **GRANTED**.

It is **DECLARED** that the Challenged Provisions in HB 1878 are unconstitutional facially and as applied under the Missouri Constitution and may not be enforced.

Defendants and their agents, servants, representatives, employees, attorneys, and those in active concert or participation with them are hereby **PERMANENTLY ENJOINED** from enforcing the Challenged Provisions of HB 1878.

Any other pending motions not addressed herein by this Court are **DENIED**.

The Court retains jurisdiction after judgment for the purposes of issuing further appropriate injunctive relief if the Court’s declaratory judgment or permanent injunction are violated.

SO ORDERED, ADJUDGED, DECLARED, AND DECREED.

A handwritten signature in black ink, appearing to read "Jon E. Beetem". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Date: 11-27-2024

HON. JON E. BEETEM, CIRCUIT JUDGE