

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

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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.

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Case No. 20AC-CC04333

Division I

**ORDER GRANTING PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

This matter came before this Court for a hearing on September 23, 2022, on Plaintiffs' Motion for Preliminary Injunction. After hearing testimony and reviewing the evidence, this Court finds as follows:

**FINDINGS OF FACT<sup>1</sup>**

1. 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

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<sup>1</sup> These findings of facts are made for the purposes of ruling on the Motion for Preliminary Injunction and are subject to change should contrary more credible evidence be adduced at a hearing on the merits.

(“Missouri NAACP”), interact with thousands of potential voters, providing the education and assistance necessary for these individuals to exercise their fundamental right to vote. Pet. ¶ 1.

2. In this action, Plaintiffs challenge four provisions of Missouri House Bill 1878, codified in §§ 115.205.1 and 115.279.2, RSMo. (“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 engagement and voter outreach activities they undertake to spread their pro-voter message and increase participation in elections. The Challenged Provisions will likely chill speech and advocacy related to voting and decrease participation in elections. Pet. ¶¶ 3, 5-9, 33, 67; Ex. 1 to Pl.’s Mtn. Prelim. Injunction (Dugan Aff.) ¶ 8; Ex. 2 to Pl.’s Mtn. Prelim. Injunction (Chapel Aff.) ¶ 11.

3. *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 at § 115.205.1, RSMo).<sup>2</sup> *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).

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<sup>2</sup> All statutory citations are to the Revised Statutes of Missouri, as updated, unless otherwise noted.

4. The Challenged Provisions carry severe criminal penalties, including fines, jail time, and loss of voting rights for life, for certain speech and expressive activities related to voter registration and absentee ballot solicitation, enforceable by county prosecutors. *See* §§ 115.304, 115.631.23, and 115.641 (statutory provisions that include the criminal penalties); Pet. ¶ 5; Chapel Aff. ¶ 39.

5. 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.

6. 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 "soliciting" or "compensat[ion]." Plaintiffs have meaningfully curtailed their speech and activities in an effort to comply with the law. Pet. ¶ 6; Dugan Aff. ¶¶ 45, 47-48; Chapel Aff. ¶¶ 39-41.

7. 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. Pet. ¶ 8.

## PARTIES

8. Plaintiff the LWVMO is a statewide nonprofit membership organization with more than 1,200 members throughout Missouri. Pet. ¶ 13. It has nine local league chapters throughout the state. Pet. ¶ 14.

9. 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 Aff. ¶ 6. It is exactly these populations the LWVMO believes will be disproportionately impacted by the Challenged Provisions. *Id.*

10. The LWVMO is rooted in the suffrage movement that secured the right to vote for women. Protecting voter access is a top priority for the LWVMO. Dugan Aff. ¶¶ 5, 6. Pet. ¶ 15. The LWVMO is dedicated to ensuring a free, fair, and accessible electoral system for all eligible voters. *Id.*

11. The LWVMO seeks to encourage civic participation and engage Missourians in the political process. Pet. ¶ 18. 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. *Id.*

12. The LWVMO's voter engagement activities are a critical tool both in furthering its pro-voting message and other priorities. Dugan Aff. ¶ 8.

13. Prior to the effective date of HB 1878, the LWVMO and its local chapters conducted voter registration events throughout the state, including at high schools, colleges, naturalization ceremonies, churches, and community events. Pet. ¶ 19. In the first six months of

2022, the Metro St. Louis League chapter held 22 registration events at local schools, reaching roughly 1,800 youth. *Id.* Similar events are held throughout the state. *Id.* In addition to these regularly scheduled events, the LWVMO allows individuals and groups to request voter registration events through the League's website. *Id.*

14. During these events, LWVMO volunteers encouraged community members to register to vote, distributed voter registration forms, assisted voters with filling out voter registration applications, and collected completed applications to return to election officials. Dugan Aff. ¶ 15. LWVMO members also brought tablets to allow attendees to register to vote on the Secretary of State's website and displayed QR codes linking to the Secretary of State's website so that attendees could fill out an online application for voter registration on their own device. *Id.*

15. Prior to the effective date of HB 1878, the LWVMO assisted voters with applying to vote absentee and encouraged eligible voters to do so. Dugan Aff. ¶¶ 19-23. LWVMO staff, members, and volunteers made absentee ballot applications available in the League's office and at voter registration drives. *Id.*

16. Plaintiff the Missouri NAACP is a statewide membership organization whose members reside throughout Missouri. Pet. ¶ 39, 41.

17. The Missouri NAACP is an affiliate of the NAACP. *Id.* The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. Chapel Aff. ¶ 5; Pet. ¶ 42. Their objectives include seeking enactment and enforcement of laws securing civil rights as well as educating persons as to their rights. *Id.*

18. Voting and encouraging voting are foundational values of the Missouri NAACP. Chapel Aff. ¶ 8. Pet. ¶ 43. The Missouri NAACP believes that enabling all Missourians to exercise their fundamental right to vote is vital to ensuring equal citizenship and achieving our substantive policy goals. *Id.* Protecting voter access for all eligible voters is one of the Missouri NAACP’s top priorities. *Id.* Their mission and work focus on safeguarding the right to vote, especially from 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. *Id.*

19. Prior to the effective date of HB 1878, at registration and outreach events, Missouri NAACP volunteers tried to engage and register as many eligible Missourians as possible. Chapel Aff. ¶ 12. They provided forms, assisted individuals with completing those forms, answered questions about registration rules, deadlines and eligibility, and often collected the forms to return on behalf of the new voters or assist voters submitting them online. *Id.*

20. Missouri NAACP volunteers also commonly encouraged voters to apply to vote absentee if they are eligible. Chapel Aff. ¶ 34.

### ***Compensation Ban***

21. 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 at § 115.205.1, RSMo).

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

23. Compensated work has been critical to Plaintiffs’ voter registration activities.

24. LWVMO employs two paid part-time staffers, including its Executive Director Jean Dugan. 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. Ms. Dugan's work is critical to the League's voter engagement activities. Dugan Aff. ¶ 1.

25. Prior to the effective date of HB 1878, the LWVMO also offered reimbursement and tokens of appreciation to volunteers. Volunteers were eligible to be reimbursed for expenses incurred during voter registration drives, including parking and mileage. They were also often provided tokens of appreciation like buttons, t-shirts, and similar gifts. Dugan Aff. ¶ 12.

26. To comply with the Compensation Ban, the LWVMO has been forced to significantly alter how the organization functions. The LWVMO now prohibits its paid staffers from engaging in the voter registration activity that is part of their current employment duties and core to the mission of the organization. Dugan Aff. ¶ 1, 12; Pet. ¶ 27. Ms. Dugan can no longer perform many of the registration-related activities that were previously central to her job-related duties. *See, e.g.*, Dugan Aff. ¶ 1 (stating that Ms. Dugan's regular duties include administering voter-registration projects). The League's paid staff are no longer permitted to attend voter registration drives. *Id.* ¶ 28.

27. The LWVMO has also halted all reimbursement for volunteers' expenses and no longer provides voter registration volunteers with tokens of appreciation. *Id.* ¶ 32.

28. The Missouri NAACP also previously engaged in actions that fall under the prohibitions of the Compensation Ban as a part of its voter registration work. Pet. ¶ 54; Chapel

Aff. ¶ 15. From time to time, the Missouri NAACP has received grants to compensate interns and staff to register new voters. *Id.* The Missouri NAACP also reimbursed volunteers for expenses like gas, supplies, and copying, and equipment. *Id.* The Missouri NAACP paid for and provided food and drinks for volunteers. *Id.* Furthermore, the Missouri NAACP provided t-shirts, pens, and clipboards to volunteers who would keep them after registration events. *Id.*

29. As a result of the Compensation Ban, the Missouri NAACP has been forced to halt all of these activities. Chapel Aff. ¶¶ 12, 18-20; Pet. ¶ 54. The Missouri NAACP plans to stop paid voter registration work. *Id.* The Missouri NAACP is also ceasing reimbursements and gifts to volunteers because what activities constitute solicitation of voter registration and whether gifts or reimbursements constitute “compensation” are so unclear. *Id.* The organization expects that this will lead to fewer volunteers overall. *Id.*

30. Similarly, the Compensation Ban affects groups like Women’s Voices Raised for Social Justice (“Women’s Voices”). Supp. Exh. 2 to Pl.’s Mtn. Prelim. Injunction (Steinberg Aff.) ¶¶ 5, 7. Part of Women’s Voices’ mission is to mobilize, energize and inspire themselves and others to action; and to work as individuals and in community for social justice. *Id.* They fulfill this mission through education and advocacy. *Id.* Women’s Voices’ voter engagement work advances the organization’s mission because it allows them to mobilize their members into political action, and work in their community to further social justice. *Id.*

31. Solicitation of voter registration applications is an essential part of Women’s Voices’ voter engagement work. Steinberg Aff. ¶ 9. The organization engages community members by encouraging Missourians to register to vote. *Id.* Women’s Voices distributes voter registration packets to their community through volunteers. *Id.* The packets encourage recipients to register to vote and include information about voting along with voter registration forms,



envelopes, and directions on where the new registrants should send their voter registration form or how to register to vote online. *Id.*

32. Compensated work is critical to Women’s Voices’ voter registration activities and Women’s Voices paid staffer Laura Rose was highly involved in this process prior to HB 1878 taking effect. Steinberg Aff. ¶¶ 10-12. Ms. Rose did all the background work to create the packets and ensure they make it to volunteers. *Id.* Specifically, Ms. Rose gathered the relevant information, purchased the materials, printed the materials and ensured the materials were distributed to volunteers. *Id.* Ms. Rose also attended community events, most recently Bans Off Our Bodies earlier this year, where Women’s Voices volunteers solicited voter registration. *Id.* Women’s Voices volunteers would not be able to solicit registration from unregistered Missourians without Ms. Rose’s support. *Id.*

33. Women’s Voices has been forced to halt much of its voter registration work to comply with the Compensation Ban. *Id.*

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

34. 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, RSMo); Pet. ¶ 5.

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

36. 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 Aff. ¶ 14.

37. To comply with the Unpaid Solicitor Registration Requirement, Plaintiffs must track whether their volunteers are registered as solicitors with the State. Dugan Aff. ¶ 38; Chapel

Aff. ¶ 22. Given the hundreds of volunteers, this is a burdensome task and adds significant administrative duties for the organizations, including tracking which volunteers have registered with the State, and helping volunteers who do not have a printer, fax machine, or scanner to send the completed form with a “wet” signature to the Secretary of State’s Office. *Id.* Plaintiffs must divert their limited resources towards compliance. *Id.*

38. The Unpaid Solicitor Registration Requirement also restricts the number of people available to solicit voter registration applications. Dugan Aff. ¶ 39; Pet. ¶ 28. Requiring solicitors to register in advance means that Plaintiffs cannot permit spontaneous volunteers to assist with voter registration. *Id.* Similarly, it prevents individuals who, for political reasons or otherwise, choose not to register with the Secretary of State. *Id.* Having fewer volunteers available will reduce Plaintiffs’ ability to carry out their voter engagement activities. *Id.*

#### ***Registered Voter Requirement***

39. 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, RSMo).

40. Prior to HB 1878 taking effect, Plaintiffs did not require volunteers to be registered Missouri voters.

41. Prior to HB 1878, LWVMO permitted anyone over the age of 16 to volunteer, but did not confirm volunteers’ age, citizenship, or voter registration status. Dugan Aff. ¶ 22. In fact, LWVMO sought 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. *Id.*

42. Likewise, prior to HB 1878’s enactment, the Missouri NAACP did not interrogate volunteers to determine whether they were registered to vote in Missouri. Chapel Aff. ¶ 25.

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.*

43. Indeed, Missouri NAACP specifically sought out certain classes of volunteers who were ineligible to register to vote, including young people and people on probation or parole, because of the unique value it saw having these volunteers carry their message. Chapel Aff. ¶¶ 25, 27.

44. One such Missouri NAACP member is Michelle Smith. Supp. Exh. 1 to Pl.’s Mtn. Prelim. Injunction (Smith Aff.) ¶¶ 8, 15, 17, 30. Ms. Smith would not be eligible to solicit voter registration applications if she were not paid through MADP because of her parole status. *Id.* When soliciting voter registration forms prior to HB 1878, Ms. Smith disclosed her parole status and emphasized that, because she cannot vote, it is more important for others to exercise this precious right. *Id.* Ms. Smith believes that she is an impactful and trusted messenger and voter registration solicitor because she discloses her parole status. *Id.* Now, with HB 1878, she and other Missourians on parole are not able to solicit voter registration forms. *Id.*

### ***Absentee Ballot Solicitation Ban***

45. 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, RSMo). Punishments for violating the Absentee Ballot Solicitation Ban include fines, jail time, and the loss of voting rights for life. Pet. ¶ 5.

46. HB 1878 nowhere defines the term “solicit.”

47. Plaintiffs both consider encouraging eligible voters to apply to vote absentee and helping eligible voters cast absentee ballots a critical part of their missions of increasing voter engagement and voter turnout. Chapel Aff. ¶ 9; Dugan Aff. ¶ 6.

48. During many previous consecutive election cycles, Plaintiffs have encouraged voters to legally cast absentee ballots. Pet. ¶¶ 33, 67; Chapel Aff. ¶ 9; 11; Dugan Aff. ¶ 6; 8. Plaintiffs reach voters at community events, organization events, and through direct person-to-person outreach. *Id.* Plaintiffs' voter engagement work is a core part of their organizational mission, strategy, and activities. *Id.*

49. Absent HB 1878, Plaintiffs would continue to engage in voter engagement and advocacy work related to absentee voting. Pet. ¶¶ 33, 67; Chapel Aff. ¶ 11; Dugan Aff. ¶ 8.

50. However, Plaintiffs have significantly curtailed their activities related to absentee voting in an effort to comply with HB 1878. Chapel Aff. ¶¶ 39-41; Dugan Aff. ¶¶ 45, 47-48. Among other activities related to absentee voting, Plaintiffs have halted public discussion of absentee voting, stopped encouraging eligible voters to cast absentee ballots, stopped providing absentee ballot application forms upon request from voters, and stopped helping eligible voters understand how to cast an absentee ballot in compliance with the law. *Id.*

51. HB 1878's insufficient guidance as to what constitutes "soliciting" of absentee ballot applications under the law required Plaintiffs to curtail their activities. Chapel Aff. ¶¶ 39-41; Dugan Aff. ¶¶ 45, 47-48. The lack of a definition of "soliciting" required Plaintiffs to err on the side of caution and curtail any activity related to absentee voting in an effort to comply. *Id.*

52. The Absentee Ballot Solicitation Ban also limits Plaintiffs' ability to communicate their voter engagement messages while remaining in compliance with the law. Chapel Aff. ¶ 44; Dugan Aff. ¶¶ 50-52.

53. Because Plaintiffs can no longer provide information on absentee voting, voters, including Plaintiffs’ members, have less access to information and guidance about absentee voting from competent non-profit advocacy organizations such as Plaintiffs. Chapel Aff. ¶¶ 39-41; Dugan Aff. ¶¶ 45, 47-49.

54. 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. Chapel Aff. ¶ 44; Dugan Aff. ¶¶ 50-52.

55. The timing of HB 1878’s implementation heightened its effect on Plaintiffs and on the voting system in Missouri. Chapel Aff. ¶ 44; Dugan Aff. ¶ 53.

56. The effective date of HB 1878—August 28, 2022—coincided with an important time for voters, local election authorities, and advocates working on voter engagement and voter turnout. Chapel Aff. ¶ 44; Dugan Aff. ¶ 53. The final months before a midterm election are a time of heightened discussion and consideration of voting methods. *Id.* These months are therefore a critical time for Plaintiffs to communicate their message, strategically deploy resources, and engage voters about absentee voting before the registration deadline. *Id.*

## **CONCLUSIONS OF LAW**

### **I. PLAINTIFFS HAVE STANDING TO CHALLENGE HB 1878**

1. Plaintiffs need not meet a high bar to establish standing. “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. 2002).

2. Standing “must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the

successive stages of the litigation.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992). Thus, at the preliminary injunction stage, Plaintiffs need only demonstrate a likelihood of success for standing.

3. Plaintiffs have adequately pled as well as provided additional facts considered by this Court with the motion now before it to establish standing.

4. Plaintiffs have demonstrated that their protected speech has been chilled by the Challenged Provisions.

5. Plaintiffs have associational standing.

6. Plaintiffs have also 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.

7. In a challenge to the constitutional guarantee of free speech, an injury in fact is established when a plaintiff alleges that a challenged law chills protected speech. *See Animal Legal Defense 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)); *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 v. Nixon*, 220 S.W.3d 732, 739–40 (Mo. banc 2007) (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”” (quoting *Peachlum v. City of New York*, 333 F.3d 429, 434–35 (3d Cir. 2003))).

8. For associational standing, Missouri has adopted the federal *Hunt* framework. *St. Louis Ass’n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 623 (Mo. banc 2011) (citing *Mo. Outdoor Advertising Ass’n, Inc. v. Mo. State Hwy. & Transp. Comm.*, 826 S.W.2d 342, 344 (Mo. banc. 1992)). In *Hunt*, the Supreme Court held that “an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”

9. Plaintiffs have sufficiently alleged and further shown with the affidavits attached to the motion before this Court 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.

10. An organization may also 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).

**A. Plaintiffs Have Suffered an Injury in Fact**

11. HB 1878 made several material changes to the law, including imposing an outright ban on compensation for voter registration activity, prohibiting solicitation of absentee ballot applications, and requiring all people who solicit voter registrations to pre-register with the State, rather than only those who are paid to do so. The obligations now faced by Plaintiffs under the law are not substantially the same as they were before HB 1878 took effect.

12. Defendants contest Plaintiffs’ standing to challenge the Unpaid Solicitor Registration Requirement and Registered Voter Requirement. Defendants assert that under the prior law, Plaintiffs’ volunteers were required to be registered Missouri voters over the age of 18 and register as voter registration solicitors because volunteers were somehow “compensated” and solicited more than ten voter registration applications.

13. Plaintiffs’ Petition and Affidavits make clear that this was not the case. Prior to HB 1878 taking effect, Plaintiffs did not require their volunteers to register as voter registration solicitors with the Secretary of State before assisting with voter registration activities. Now that the requirement applies to all volunteers who expect to solicit more than ten voter registration applications, Plaintiffs will not permit individuals to volunteer with their organizations for the purpose of soliciting voter registration if they have not first registered with the Secretary of State.



14. This hampers Plaintiffs' ability to engage spontaneous volunteers, prevents Plaintiffs from having volunteers who, for political or privacy reasons, wish not to register with the Secretary of State, prevents Plaintiffs from having volunteers who themselves are not registered voters in Missouri, and adds administrative burdens for Plaintiffs and causes them to divert resources toward confirming each volunteer's registration status.

15. Plaintiffs are injured both because the Requirement reduces the pool of potential volunteers who can carry their pro-voter message and because it requires them to dedicate additional resources toward compliance.

16. Plaintiffs similarly did not require their volunteers to be over the age of 18 or registered voters in Missouri, and indeed did so intentionally because of the value in having certain classes of individuals who are not registered voters carry their message.

17. The Missouri NAACP, for instance, intentionally sought volunteers under the age of 18 because of the value they provide engaging youth in the political process. Likewise, the Missouri NAACP has members who are ineligible to register as voters due to a felony sentence, but see voter registration as a way to engage with the political process, despite being unable to vote themselves.

18. The LWVMO similarly had no requirement for their volunteers to be registered voters and worked with volunteers who were not registered to vote in Missouri. 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.

19. Under the Registered Voter Requirement, these individuals 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.

20. Plaintiffs suffer an injury in fact as a result of the Unpaid Solicitor Registration Requirement and the Registered Voter Requirement.

21. Plaintiffs' claims do not rely on a constitutional right to vote absentee, nor do they require Plaintiffs to prove any injury to Missourians' right to vote. Instead, Plaintiffs allege that the Challenged Provisions hamper their ability to engage in constitutionally protected speech, expressive activity, and association and violate their due process rights.

22. As a 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 Missouri Constitution protects Plaintiffs' right to engage in this type of political speech. The Absentee Ballot Solicitation Ban, which bars any person from "solicit[ing] a voter into obtaining an absentee ballot application[.]" prevents them from doing so. Plaintiffs suffer an injury in fact as a result of the Absentee Ballot Solicitation Ban.

23. Defendants do not appear to contest Plaintiffs' standing to challenge the Compensation Ban. Even so, this Court finds that Plaintiffs plainly suffer an injury as a result of the Compensation Ban. Prior to HB 1878 taking effect, Plaintiffs compensated employees and offered grants to their staff and members to carry out voter registration activities.

24. The League, for example, has a paid staff member who previously drafted materials for distribution encouraging Missourians to register to vote and directing them on how to do so and supported the organization's voter registration drives. Because of the Compensation

Ban, she is now barred from these activities. The League's paid staff members also can no longer attend voter registration events.

25. Similarly, the Missouri NAACP previously used grants to pay temporary employees to solicit voter registration but can no longer do so as a result of the Compensation Ban.

26. These activities are critical to Plaintiffs' missions.

27. The Compensation Ban therefore hampers Plaintiffs' ability to carry out their mission by barring critical employees from engaging in mission critical work. Further, it directly burdens the speech of Plaintiffs' members and employees.

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

28. As discussed, Plaintiffs have altered their conduct to comply with the Challenged Provisions. For instance, to comply with the Compensation Ban, Plaintiffs no longer 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 now mandate that all voter registration volunteers be registered Missouri voters and prohibit volunteers who have not registered as solicitors and received confirmation of their registration prior to volunteering. And because of the Absentee Ballot Solicitation Ban, Plaintiffs have halted nearly all speech encouraging voters to apply to vote absentee.

29. These responses to the Challenged Provisions have caused a diversion of resources and reduced Plaintiffs' capacity to engage in protected speech, and in some instance barred it altogether.

30. Plaintiffs' injury is a direct result of their compliance with the Challenged Provisions, which carry criminal penalties for noncompliance.

31. Plaintiffs' injury is therefore traceable to Defendants, who are charged with implementation and enforcement of the Challenged Provisions.

**C. Plaintiffs' Injury is Redressable by an Order of this Court**

32. Plaintiffs request declaratory and injunctive relief, holding that the Challenged Provisions violate the Missouri Constitution, and enjoining Defendants from enforcing them.

33. This is the same type of relief that is often sought and consistently granted in voting rights litigation. Indeed, the Missouri Supreme Court has twice considered challenges to the State's voter identification law seeking similar relief, and both times the Court found declaratory relief appropriate. *See Weinschenk v. State*, 203 S.W.3d 201, 206 (Mo. banc 2006); *Priorities USA v. State*, 591 S.W.3d 448, 458 (Mo. banc 2020), *reh'g denied* (Jan. 30, 2020).

34. This Court rejects both Defendants' framing of the necessary remedy and Defendants' argument that this Court cannot issue the requested relief.

35. This Court has broad discretion to determine whether injunctive relief is required and to craft an appropriate injunction if it is. *See Priorities USA*, 591 S.W.3d at 452.

36. This Court rejects Defendants' argument that it lacks authority to grant relief under the Elections Clause of the U.S. Constitution.<sup>3</sup> U.S. Const. art. I, § 4. The Elections Clause does not bar state court review of state laws governing federal elections under state constitutional provisions. As the Conference of Chief Justices recently wrote in an *amicus* brief to the Supreme Court<sup>4</sup>:

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<sup>3</sup> Defendants raise this argument only in their motion to dismiss—and there only cursorily—but since Defendants incorporated their motion to dismiss into their preliminary injunction opposition, the Court addresses this argument here.

<sup>4</sup> Missouri Chief Justice Paul C. Wilson is a member of the *amicus* review committee and approved the brief.

The Elections Clause requires that state legislatures enact state laws governing federal elections and authorizes Congress to override such state laws. However, the Clause does not otherwise displace the States’ authority to structure their governments, including the process for determining state law. The States’ power to authorize state courts to interpret all state statutes definitively and to determine whether those statutes comply with state constitutions is neither a “power[] ... delegated to the United States by the Constitution, nor [a power] prohibited to the States,” U.S. Const., amend. X. Thus, the States’ power to structure their governments to include judicial review is also protected by the Tenth Amendment.

Brief of *Amicus Curiae* Conference of Chief Justices, *Moore v. Harper*, No. 21-1271, Sept. 6, 2022, available at [http://www.supremecourt.gov/DocketPDF/21/21-1271/237155/20220906161712850\\_Moore%20v%20Harper%20Amicus%20Sept%206\\_FINAL\\_Filed.pdf](http://www.supremecourt.gov/DocketPDF/21/21-1271/237155/20220906161712850_Moore%20v%20Harper%20Amicus%20Sept%206_FINAL_Filed.pdf).

37. Defendants’ cursory analysis fails to overcome the centuries of precedent of state courts interpreting the constitutionality of state enactments under state constitutions, even in the context of election laws.<sup>5</sup>

38. Plaintiffs’ injury is redressable by an order of this Court.

## **II. THE COURT GRANTS PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION.**

39. In deciding a motion for a preliminary injunction, Missouri courts consider four factors: (1) “the movant’s probability of success on the merits”; (2) “the threat of irreparable harm to the movant absent the injunction”; (3) “the balance between this harm and the injury that the injunction’s issuance would inflict on other interested parties[]”; and (4) “the public interest.”

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<sup>5</sup> Because this Court rejects Defendants’ proposed limitation on this court’s power to adjudicate the constitutionality of laws governing federal elections, it need not reach the question of whether the Challenged Provisions—which govern speech, rather than the mechanics of elections—would fall under the ambit of the Elections Clause. However, the Court notes that Secretary Ashcroft has argued elsewhere that the term “manner” in the Elections Clause should be read narrowly. See Brief of *Amicus Curiae* Hon. John R. Ashcroft, *Moore v. Harper*, No. 21-1271, Sept. 2, 2022, available at [http://www.supremecourt.gov/DocketPDF/21/21-1271/236977/20220902131402082\\_Ashcroft%20Am.%20Br.%20-%20Moore%20v.%20Harper%20-%20final.pdf](http://www.supremecourt.gov/DocketPDF/21/21-1271/236977/20220902131402082_Ashcroft%20Am.%20Br.%20-%20Moore%20v.%20Harper%20-%20final.pdf).

*State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) (internal citations omitted).

40. Courts must find that the movants have made “some showing of probability of success on the merits before a preliminary injunction will be issued.” *Id.* Importantly, this does not mean that courts must conclude the movants “will ultimately win” or have “prove[n] a greater than fifty per cent likelihood that [they] will prevail on the merits.” *Jet Midwest Int’l Co., Ltd v. Jet Midwest Grp., LLC*, 953 F.3d 1041, 1044-45 (8th Cir. 2020) (internal citations omitted); see also *Gabbert*, 925 S.W.2d at 839 (observing the preliminary injunction standard “is a well established area of the law[,]” although “[t]here is relatively little Missouri case law” stating this standard). Rather, courts must only find that the movants have demonstrated “a fair chance of prevailing.” *Jet Midwest Grp., LLC*, 953 F.3d at 1045.

41. For the reasons set forth herein, the Court concludes that Plaintiffs have “a fair chance of prevailing” on the merits. *Id.* The Court also finds that Plaintiffs face the “threat of irreparable harm” absent an injunction; and have in their favor both “the balance between [their] harm and the injury that the injunction’s issuance would inflict on other interested parties” and the public interest. *Gabbert*, 925 S.W.2d at 839.

**A. Plaintiffs Have Shown a Probability of Success on the Merits**

**1. The Challenged Provisions Violate Plaintiffs’ Speech and Expression Rights**

**i. The Challenged Provisions Unconstitutionally Burden Plaintiffs’ Core Political Speech**

42. Article I, Section 8 of the Missouri Constitution guarantees “[t]hat 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.”

43. This provision is at least as expansive as the First Amendment of the Federal Constitution. *See Karney v. Dep’t of Lab. & Indus. Rels.*, 599 S.W.3d 157, 162–63 (Mo. banc 2020) (“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.” (quoting *Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006))).

44. 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.

45. 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.

46. 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 others to amplify their pro-voter registration message. Violations of these provisions are backed by harsh criminal penalties.

47. Plaintiffs argue, and Defendants do not contest, that no other state has a restriction on voter engagement speech that even approaches the breadth of this statute.

48. 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.’”).

49. 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 that encouraging or entreating potential voters to register or to obtain an absentee ballot application fall within those narrow categories.

50. 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. American Civil Liberties Union*, 535 U.S. 564, 573 (2002) (internal quotation marks omitted). As such “content-based restrictions on speech [should] be presumed invalid.” *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660 (2004). The Challenged Provisions regulate speech based on its content—whether it involves an “entreaty” to register to vote or apply to vote absentee—and therefore are presumed invalid.

51. 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).



52. Courts have repeatedly held that voter-registration activities, like those regulated by the Challenged Provisions, constitute core political speech 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.”).

53. *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 is core political speech and that is precisely what the Challenged Provisions regulate.

54. Likewise, courts have upheld the core political speech in the absentee-ballot application context. *See, e.g., VoteAmerica v. Schwab*, 576 F. Supp. 3d 862, 875 (D. Kan. 2021) (“[M]ailing the [absentee ballot] application packets is inherently expressive conduct that the

First Amendment embraces.”) (preliminarily enjoining restrictions on distribution of absentee ballot applications); *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 filing 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.”).

55. Restrictions on voting-related advocacy unconstitutionally burden speech if 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.” *Meyer*, 486 U.S. at 422–23.

56. Each of the Challenged Provisions unconstitutionally burdens—and indeed outright prohibits—core political speech.

57. **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.”

58. The Compensation Ban is unlikely to survive scrutiny.

59. Plaintiffs previously relied on both paid staff and volunteers eligible for reimbursement for their voter registration solicitation programs.

60. Since the Compensation Ban took effect, Plaintiffs have been forced to prohibit paid staff from assisting with many of the voter registration-related activities.

61. Plaintiffs must now rely solely on volunteers to perform these duties and will be unable to reimburse volunteers for their expenses, reducing the total quantum of their voter registration speech.

62. 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).

63. As a result of the Compensation Ban, Plaintiffs will have fewer people spreading their pro-registration message and therefore do not expect to reach as many eligible voters as they could prior to the Compensation Ban taking effect.

64. By limiting the availability and assistance of paid staff and reimbursement-eligible volunteers for registration activities, the Compensation Ban impermissibly limits the voices that will convey Plaintiffs' message, the hours they can speak, and the audience reached by Plaintiffs' speech.

65. The Compensation Ban directly chills the speech of Plaintiffs' paid employees and reimbursement-eligible volunteers by prohibiting their participation in voter registration activities. Paid employees, for example, are no longer be permitted to attend Plaintiffs' regularly scheduled voter registration events. And given the sweeping reach of the term "solicit" that the State has proffered, paid employees are muzzled from any speech that might "entreat" others into applying for voter registration.

66. The Compensation Ban therefore unconstitutionally burdens core political speech.

67. ***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, thus shrinking the pool of people eligible to spread Plaintiffs’ message and the number of eligible voters reached.

68. 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.

69. 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.

70. Further, Plaintiffs’ members can no longer encourage—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.

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

72. The Unpaid Solicitor Registration Requirement therefore unconstitutionally burdens core political speech.

73. ***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.

74. The Registered Voter Requirement is unlikely to withstand scrutiny.

75. The Registered Voter Requirement outright prohibits many 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 of encouraging voter registration. The Missouri Constitution does not permit the State to dictate who can and cannot engage in protected speech.

76. 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.

77. As a result of the Registered Voter Requirement, approximately 300,000 voting-eligible Missourians who are not registered to vote will be removed from the pool of people who can engage in constitutionally protected speech by participating in voter registration activities.

78. The Registered Voter Requirement will also remove from the pool of potential solicitors many voting-ineligible Missourians, including Missouri residents who are noncitizens, who are under the age of eighteen, those on probation or parole following a felony conviction, and who are registered to vote in another state.

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

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

81. The Registered Voter Requirement unconstitutionally burdens core political speech.

82. ***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.

83. As a result of the Absentee Ballot Solicitation Ban, Plaintiffs have been forced to cease nearly all speech and association related to absentee voting. Plaintiffs no longer encourage eligible voters to apply to vote absentee during voter registration events and prohibit volunteers from doing so, on their website, on social media, while canvassing, or in printed circulations.

84. As courts have repeatedly held, speech and expressive activities related to absentee voting constitute core political speech. *See, e.g., VoteAmerica*, 576 F. Supp. 3d at 875.

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

86. The Absentee Ballot Solicitation Ban therefore unconstitutionally burdens core political speech.

**ii. The Challenged Provisions Are Impermissible Content-Based Restrictions**

87. “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 Advocs. v. Becerra*, 138 S. Ct. 2361, 2371 (2018)); *see also Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. 1984) (“[T]he government may not limit expression because of the message to be conveyed, its ideas, subject matter or content.”).

88. 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.

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

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

91. By targeting speech related exclusively to voter registration and absentee voting, the Challenged Provisions restrict Plaintiffs’ speech based on content.

92. Defendants failed to prove that the Challenged Provisions are narrowly tailored to serve any compelling state interests.

93. Accordingly, Defendants have failed to overcome the presumption that the Challenged Provisions are unconstitutional content-based restrictions. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660 (2004).

### **iii. The Challenged Provisions Are Impermissible Viewpoint-Based Restrictions**

94. Like content-based restrictions on speech, viewpoint discrimination “is presumed to be unconstitutional,” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828–29 (1995), and therefore subject to strict scrutiny—that is, such discrimination “must be the least restrictive means of achieving a compelling state interest,” *McCullen v. Coakley*, 573 U.S. 464, 478 (2014).

95. 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.

96. 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).

97. 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”).

98. Defendants have failed to prove that the Challenged Provisions are the least restrictive means of achieving any compelling state interest.

99. Thus, Defendants have failed to overcome the presumption that the Challenged Provisions are unconstitutional viewpoint-based restrictions.

#### **iv. The Challenged Provisions Unconstitutionally Restrict Expressive Conduct**

100. “[C]onduct possesses sufficient communicative elements” to warrant First Amendment protection where “[a]n intent to convey a particularized message was present” and “the likelihood was great that the message would be understood by those who viewed it.” *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (quoting *Spence v. State of Wash.*, 418 U.S. 405, 411 (1974)).

101. As discussed, Defendants have conceded that the Challenged Provisions cover speech itself, i.e., any time that a person entreats another person to register to vote or apply to vote absentee. But even applying the Challenged Provisions to not only verbal communications but also the distribution of voter registration and absentee ballot application forms, the



Challenged Provisions target expressive conduct by Plaintiffs related to voter registration and absentee voting.

102. Courts have characterized voting-related activity, including communications involving absentee ballot applications, to implicate expressive conduct protected by the First Amendment. *See, e.g., VoteAmerica*, 576 F. Supp. 3d at 875 (finding that “mailing the application packets is inherently expressive conduct that the First Amendment embraces”); *Democracy N.C.*, 476 F. Supp. 3d at 224 (“assisting voters in filling out a request for an absentee ballot is ‘expressive conduct’ which implicates the First Amendment”); *Nessel*, 462 F. Supp. 3d at 819 (holding that plaintiffs stated a plausible claim that law banning any hired transportation to the polls “is an impermissible burden on expressive activity”).

103. Just as the Challenged Provisions unconstitutionally restrict Plaintiffs’ speech, they impermissibly restrict Plaintiffs’ expressive conduct.

## **2. The Challenged Provisions Are Overbroad**

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

105. “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 v. Oklahoma*, 413 U.S. 601, 611–12 (1973)).

106. 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 v. Oklahoma*, 413 U.S. 601, 612 (1973); *see also*

*State v. Carpenter*, 736 S.W.2d 406, 408 (Mo. banc 1987) (a statute is overbroad when it “acts to smother speech otherwise protected by the First Amendment 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’”) (citing *Gooding v. Wilson*, 405 U.S. 518, 521 (1972)).

107. The Challenged Provisions are unconstitutionally overbroad because Plaintiffs have and will 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.

### **3. The Challenged Provisions Violate Plaintiffs’ Freedom of Association**

108. Sections 8 and 9 of Article I of the Missouri Constitution “guarantee freedom of . . . association.” *Courtway v. Carnahan*, 985 S.W.2d 350, 352 (Mo. App. W.D. 1998); *see also Turner v. Mo. Dep’t of Conservation*, 349 S.W.3d 434, 448 (Mo. App. S.D. 2011).

109. 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.

110. “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.’” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008); *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. Button*, 371 U.S. 415, 430 (1963) (“[S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.”).

111. The First Amendment “encompasses 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 Academic & Institutional Rights, Inc.*, 547 U.S. 47, 68 (2006)).

112. 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.” *Id.* (cleaned up).

113. 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.

114. 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.

115. 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.

116. Because of the Challenged Provisions, Plaintiffs will no longer be able to use their outreach efforts to increase voter turnout in Missouri elections and cultivate connections with potential future members or volunteers, hampering Plaintiffs' civic engagement work.

117. The Challenged Provisions therefore impose a severe burden on Plaintiffs' associational rights.

### **3. The Challenged Provisions Are Subject to Strict Scrutiny**

118. Because the Challenged Provisions impose severe burdens on Plaintiffs' and their members' political speech, expressive activity, and associational rights, the Challenged Provisions are subject to strict scrutiny. *Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984) ("If the legislation does in any way tether free speech, there must be compelling justification for it."); *Geier v. Missouri Ethics Comm'n*, 474 S.W.3d 560, 565 (Mo. banc 2015) ("Regulations that limit speech are subject to 'strict scrutiny,' which requires the government to prove that the regulation furthers a compelling interest and is narrowly tailored to achieve that interest.").

119. Defendants argue that the Challenged Provisions are "elections laws" and urge this Court to apply less exacting scrutiny under the *Anderson-Burdick* balancing test. This Court rejects the State's proposed framework. Defendants' framework would turn traditional First Amendment principles on their head, allowing the State to more tightly regulate speech and expression in the electoral context. In fact, regulation of election-related speech is subject to the greatest scrutiny. *Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984) ("There is no doubt that freedom of speech has expansive and comprehensive scope. . . . This is particularly so as it pertains to political association and advocacy."); *see also Meyer v. Grant*, 486 U.S. 414, 420–28 (1988) (holding that First Amendment protection is "at its zenith" when addressing core

political speech). Labeling a law as an “election law” does not alone dictate lesser constitutional scrutiny.

120. 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 do not severely burden the right to vote, *see, e.g., Peters v. Johns*, 489 S.W.3d 262 (Mo. banc 2016), it is inappropriate here where a law bears directly on pure speech, expressive conduct, and association.

121. Voting is expressive activity, but it is not *solely* expressive activity. While a citizen might use their vote to express their viewpoint on an issue or candidate, voting also determines the makeup of federal, state, and local governments as well as the results of ballot measures leading to changes in the law. As such, courts have recognized that “some regulation of *the voting process*” may be necessary to ensure the orderly operation of elections and indeed “to protect the right to vote itself.” *Priorities USA v. State*, 591 S.W. 3d 448, 453 (Mo. banc 2020) (quoting *Weinschenk v. State*, 203 S.W.3d 201, 212 (Mo. banc 2006)) (emphasis added); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

122. Consequently, when a state seeks to directly regulate the voting process itself, courts employ a sliding scale framework that permits certain burdens on the right to vote when the regulation serves an important state interest. *See Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Taksuhi*, 504 U.S. 428 (1992).

123. Importantly, the Supreme Court has only applied the *Anderson-Burdick* framework to cases that directly regulate access to the ballot for voters and candidates. *See, e.g., Peters v. Johns*, 489 S.W.3d 382, 387 (Mo. banc 2016) (ballot access rules for candidates). The cases Defendants cite that involve voter registration activity involved the collection and

submission of voter registration forms, not mere encouragement to register. And even then, those courts, in applying the Anderson-Burdick sliding scale, acknowledged the First Amendment harms and applied heightened scrutiny.

124. Here, the Challenged Provisions do not bear on the voting process itself but on speech related to voting. 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.<sup>6</sup> In such cases, strict scrutiny always applies. *See Am. Constitutional 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 Commission*, 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”).

125. Even more so than petition signature gathering for ballot initiatives—which necessarily implicates the machinery of counting and verifying signatures and where the Supreme Court has nonetheless applied exacting scrutiny—the Challenged Provisions, which

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<sup>6</sup> Plaintiffs have not made a legal claim in this case that the Challenged Provisions burden the right to vote, and their constitutional challenges do not rest on whether the Challenged Provisions burden Missourians’ ability to cast a ballot or vote absentee.

regulate pure speech in the form of encouragement to register to vote or apply to vote absentee, restrict core political speech.

126. Even if this Court applied the *Anderson-Burdick* framework, the resulting scrutiny would be nearly identical. Even 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.

127. Because the Challenged Provisions directly burden Plaintiffs’ speech, expression, and associational rights, they are subject to strict scrutiny under the Missouri Constitution.

#### **4. The Challenged Provisions Fail Strict Scrutiny or Any Heightened Scrutiny**

128. 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)).

129. 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.*

130. Defendants have not met their burden of demonstrating a compelling interest that the Challenged Provisions are designed to address. 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.<sup>7</sup> *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 make the burdens of the Challenged Provisions necessary.

131. While preventing election fraud is a legitimate and even compelling interest, *see Priorities USA v. State*, 591 S.W.3d 448, 453 (Mo. banc 2020), the State has failed to demonstrate any evidence of election fraud in the State of Missouri that the Challenged Provisions could plausibly address, and much less one the Provisions could be narrowly tailored to address.

132. To the contrary, Defendant Ashcroft has repeatedly confirmed that the 2020 Election was both “secure[]” and “successful.” *See* Pl.’s Mot. at 26.

133. Defendants point to four sources to support the State’s claim that the Challenged Provisions were necessary to combat election fraud. None of these sources provides sufficient evidence of an issue in Missouri’s electoral system that could conceivably be remedied by the Challenged Provisions.

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<sup>7</sup> As noted above, the Court finds that even under an *Anderson-Burdick* review, strict scrutiny would apply because the Challenge Provisions impose severe burdens on political expression.



134. First, Defendants point to a 2005 report of the Carter-Baker Commission, which was convened after the 2000 elections. This report from 17 years ago found the potential for voter registration fraud where individuals are paid by the piece to register voters and a risk of absentee ballot fraud where third parties are permitted to handle a voter's absentee ballot. But the Challenged Provisions do not merely prohibit payment per registration but payment for voter registration solicitation altogether. Likewise, the Challenged Provisions do not restrict handling a voter's absentee *ballot* but rather prohibit encouragement of applying to vote absentee. The Carter-Baker Commission provides no support for the Challenged Provisions.

135. Second, Defendants point to a 2017 manual by the United States Department of Justice on prosecuting election offenses. This report gave similar findings. *Id.* at 12. For the same reasons as above, the 2017 manual cannot support the Challenged Provisions' sweeping restrictions on encouragement of voter participation.

136. Third, Defendants cite prior findings by this Court related to the potential for fraud in absentee voting. *Id.* at 13. Nothing in this Court's prior findings suggest support for a criminal prohibition on mere encouragement of voters to apply to vote absentee.

137. Lastly, Defendants cite a report of the Wisconsin Special Counsel regarding the 2020 Election. This report suggests problems in absentee voting related to "overzealous solicitation." *Id.* However, the report is based on a study of Wisconsin only, the report and its author have been widely discredited, and its findings are contradicted by a nonpartisan audit of the Wisconsin election results. *See e.g.*, Rob Mentzner, Judge revokes ex-Gableman attorneys' right to represent 2020 election inquiry, Wisconsin Public Radio (Aug. 17, 2022), <https://www.wpr.org/judge-revokes-ex-gableman-attorneys-right-represent-2020-election-inquiry>; Lawrence Andrea & Corrine Hess, Robin Vos says Michael Gableman could lose his

law license over 2020 election review, records violations, Milwaukee Journal-Sentinel (Aug. 16, 2022), <https://www.jsonline.com/story/news/politics/2022/08/16/vos-says-gableman-could-lose-law-license-over-2020-election-probe/10339725002/> (“The review has cost state taxpayers more than \$1 million and has turned up no evidence of significant voter fraud.”). In any event, this out-of-state report does not suggest or provide support for the type of restrictions challenged here.

138. This Court thus does not find Defendants’ evidence supporting the need for the Challenged Provisions to address deficiencies in Missouri’s electoral system to be sufficient.

139. Other than this Court’s order related to absentee voting—which, as discussed above provides no support for the Challenged Provisions—Defendants provide no evidence specific to this State, nor do they provide evidence that any potential issues result from nongovernmental actors encouraging others to register to vote or to vote absentee.

140. Even assuming Defendants could prove the type of fraud they allege exists in Missouri, the Challenged Provisions are not reasonably, much less narrowly, tailored to combat it. Defendants provide no evidence that individuals who are compensated (not by the piece) for voter registration activity commit fraud. Defendants provide no evidence that people who are registered to vote in Missouri are less likely to commit fraud than those who are not. And Defendants provide no evidence as to how the solicitor registration requirement will assist them in rooting out fraud. Indeed, Defendants provide no evidence that nongovernmental actors encouraging potential voters to register to vote or assisting eligible voters with registration has led to any fraud in the state of Missouri. And the Challenged Provisions can do nothing to prevent the registrant from providing incorrect or fraudulent information on the publicly available form.

141. Similarly, the Absentee Ballot Solicitation Ban will not prevent absentee voting fraud. 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, and it certainly does not bar third parties from handling absentee ballots.

142. Importantly, Missouri already has effective laws and systems in place to prevent election fraud. *See, e.g.*, RSMo. §§ 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).

143. Because the Challenged Provisions do not address the interests set forth by the State in any meaningful way, they are not meaningfully related to the problems the State raises and are certainly not the least restrictive means of addressing them. They therefore fail strict scrutiny under the Missouri Constitution. Indeed, they would fail under the *Anderson-Burdick* sliding scale analysis as well. This Court therefore finds that Plaintiffs are likely to succeed on the merits of their free speech, expression, and association claims.

##### **5. The Challenged Provisions are Void for Vagueness**

144. 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 a statute “provide a person of ordinary intelligence with adequate notice of the proscribed conduct,” *State v. Young*, 695 S.W.2d 882, 886 (Mo. banc 1985), and not be “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591 (2015); *see also 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).

145. The vagueness inquiry under the Missouri Constitution is stricter where the challenged statute “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 *Village of Hoffman Estates v. Flipside, Hoffman Estates, 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.” *Hill v. Colorado*, 530 U.S. 703, 732 (2000).

146. The Challenged Provisions violate Article I, Section 10 of the Missouri Constitution because they include vague terms that fail to provide ordinary persons adequate notice of what conduct is regulated or proscribed and invite arbitrary enforcement, including by Missouri’s 115 county prosecutors.

147. At the outset, this Court must engage in a more stringent vagueness inquiry. *See Nixon*, 863 S.W.2d at 600. As discussed *supra*, the Challenged Provisions threaten Plaintiffs’ constitutionally protected rights to freedom of speech, expression, and association. Violators of the Challenged Provisions face criminal penalties, including incarceration, fines, the potential permanent loss of voting rights, and misdemeanor or even felony charges in some instances. HB 1878, § A (codified at §§ 115.205.1, 115.279.2); RSMo §§ 115.304, 115.133.2, 115.631, 115.635, 115.637, 115.641, 561.026. Moreover, some of the provisions, including the Absentee

Ballot Application Solicitation Ban, the Compensation Ban, and the Registered Voter Requirement, are strict liability offenses, lacking a scienter requirement. Lastly, the provisions at issue, which regulate voter engagement activity, are noneconomic in nature.

148. The Challenged Provisions are unconstitutionally vague because HB 1878 fails to define “solicitation,” including what activity constitutes “soliciting voter registration” or “solicit[ing] a voter into obtaining an absentee ballot application” or what renders an individual a “voter registration solicitor.” Pl.’s Mot. at 28-30.

149. The Compensation Ban is unconstitutionally vague because it prohibits nongovernmental actors from being “paid or otherwise compensated for soliciting voter registration applications” but fails to define what it means to be “otherwise compensated.” *Id.* at 30-31.

150. Neither term is defined in HB 1878 or anywhere in Missouri’s election code.

151. “Solicit” is a broad term with a potentially dramatic sweep that could include anyone who “entreat[s] or ask[s] a potential voter to register.” *S.D. Voice*, 432 F.Supp.3d at 997.

152. “Solicitation” could potentially cover a wide range of Plaintiffs’ voter engagement activity. For instance, Defendants suggest that “solicit” means “[t]o make petition to; entreat, importune; esp. to approach with a request or plea (as in selling or begging, as in to ‘solicit one’s neighbors for contributions.’” Defs.’ Opp. to Pl’s. Mtn. at 18 (quoting *Solicit*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2168 (2002)).

153. These definitions extend broadly to include verbal encouragement to register to vote or apply to vote absentee as well as the act of distributing voter registration forms or absentee ballot applications in order to encourage voters to register or to vote absentee. Importantly, they encompass many of Plaintiffs’ voter outreach activities, including the

provision of education, advocacy, and information, not simply the provision of voter registration activities.

154. The bounds of what counts as “solicitation” are unclear and undefined by the statute. Plaintiffs and prosecutors are left to guess what speech related to voter registration and applying to vote absentee is covered. When restricting expression and imposing criminal penalties, the Missouri Constitution requires more.

155. “Compensation” is similarly vague and often has varied meanings depending on the context. *C.f., Mo. Prosecuting Att’ys v. Barton Cnty.*, 311 S.W.3d 737, 742 (Mo. banc 2010) (noting that the term compensation “can have quite varied meanings in different contexts”).

156. While it is plain that individuals who are paid to carry out voter registration activities are “compensated,” it is unclear whether the Compensation Ban also extends activities such as reimbursement for volunteers’ expenses or the provision of tokens of appreciation for a volunteer’s time.

157. Given the broad range of activities that might be covered by the terms “solicit” or “compensated,” the Challenged Provisions cannot be said to give an ordinary person reasonable notice of what conduct is prohibited or subject to regulation. The vagueness of the terms invites arbitrary and disparate enforcement by Missouri’s 115 county prosecutors, each of whom has the authority to interpret the statute differently. Consequently, Plaintiffs have been forced modify their voter registration and absentee voting activities to comply with the broadest reading of the statute in order to avoid prosecution.

158. The Challenged Provisions are impermissibly vague, and Plaintiffs are therefore likely to succeed on the merits of their due process claim.

**B. Plaintiffs Face Irreparable Harm Absent Injunctive Relief**

159. Once Plaintiffs have established a likelihood of success on the merits, they must prove that they will suffer irreparable harm absent injunctive relief.

160. “If constitutional rights are threatened or impaired, irreparable injury is presumed.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012). “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); accord *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999).

161. The Eighth Circuit has held 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.” *Child Evangelism Fellowship of Minnesota v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996, 1000 (8th Cir. 2012); see also *Willson v. City of Bel-Nor*, 924 F.3d 995, 999 (8th Cir. 2019); *Traditionalist Am. Knights of Ku Klux Klan v. City of Desloge*, 983 F. Supp. 2d 1137, 1143 (E.D. Mo. 2013), *rev’d sub nom. Traditionalist Am. Knights of the Ku Klux Klan v. City of Desloge*, 775 F.3d 969 (8th Cir. 2014) (“Thus, if Plaintiffs can establish a sufficient likelihood of success on the merits of their First Amendment claim, they will also have established irreparable harm.”).

162. Absent an injunction, Plaintiffs face irreparable harm to their speech, expression, and associational rights. These harms began when HB 1878 took effect, are ongoing, and will not cease absent an injunction barring the enforcement of the Challenged Provisions.

163. Because of the Compensation Ban, Plaintiffs have been forced to alter their voter registration activities by prohibiting paid employees from carrying out their regular duties and ceasing to offer reimbursement and tokens of appreciation to volunteers. As a result, Plaintiffs have been forced to shift limited volunteer resources away from other activities, including voter

registration drives and voter education and assistance, that are crucial to their missions toward completing registration-related tasks that would otherwise be done by paid employees. Because of the Compensation Ban, Plaintiffs will likely have fewer volunteers available to spread their message, causing them to lose opportunities to engage in constitutionally protected speech.

164. The Unpaid Solicitor Registration Requirement and Registered Voter Requirement similarly reduce the pool of people available to transmit Plaintiffs' messages. By requiring pre-planning the Unpaid Solicitor Registration Requirement will prevent spontaneous volunteers (and volunteers who lack ready access to the internet or a printer) from carrying Plaintiffs' message. Similarly, the Registered Voter Requirement will bar Plaintiffs from accepting entire classes of volunteers, including students attending college in Missouri, but who still vote in their home jurisdictions, individuals under the age of 18, Missouri residents who are in the process of becoming citizens, and individuals on parole or probation. These provisions thus reduce the number of persons available to carry Plaintiffs' messages and directly harm Plaintiffs' members who fall into one of the categories of persons prohibited from being a registered voter in the state.

165. The Challenged Provisions also chill volunteers by threatening severe criminal prosecution for violation, despite being vague and difficult for an ordinary person to understand.

166. Overall, the Challenged Provisions burden Plaintiffs' ability to engage in constitutionally protected speech and activities, and as a result, threaten Plaintiffs' missions of promoting civic participation and ensuring access to the right to vote as well as their ability to convey their pro-voting messages among their members and communities.



167. Absent a preliminary injunction, Plaintiffs’ messages will be stifled in the weeks leading up to an election—a crucial moment for the type of voter engagement work Plaintiffs carry out.

168. Plaintiffs will suffer irreparable harm absent a preliminary injunction.

### **C. The Balance of Harms Favors Plaintiffs**

169. Where, as here, Plaintiffs have established a likelihood of success on the merits of their speech, expression, and association claims, this factor is “generally deemed to have been satisfied.” *See Willson*, 924 F.3d at 999 (“When a plaintiff has shown a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied.”).

170. Similarly, courts routinely find this factor has been met where fundamental rights are at stake and Plaintiffs seek injunctive relief against the State. *See, e.g., Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 802 (W.D. Mo. 2020) (holding that where the current law already provided for election integrity protections, the “risk of disenfranchisement” presented by new voting requirements outweighed the “minimal” harm to defendants); *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) (“modest administrative burdens” borne by state in complying with preliminary injunction barring enforcement of voter registration requirement are “no contest” for “the mass denial of a fundamental constitutional right”); *State ex rel. Mack v. Purkett*, 825 S.W.2d 851, 857 (Mo. banc 1992) (holding that mere “administrative inconvenience” is the “weakest justification” for the loss of a right).

171. The Challenged Provisions threaten Plaintiffs’ rights to free speech, expression, association, and due process. Indeed, as the facts in this case demonstrate, Plaintiffs and other

Missourians have already altered, and even ceased, much constitutionally protected voter engagement activity in response to the Challenged Provisions.

172. By contrast, a preliminary injunction will cause minimal harm to Defendants.

173. Indeed, Defendants will be required to take minimal or no action at all in response to the injunction. Instead, an injunction will preserve the status quo from the previous election cycles. Defendants will continue to administer the registration and absentee voting activities covered by the Challenged Provisions under the previous regimen.

174. Moreover, as discussed *supra*, protections already exist to combat the type of harms Defendants predict that Defendants are free to enforce. Defendants have presented no evidence to support a claim that these protections are insufficient. And while a state may suffer harm where it is enjoined from enforcing acts of the legislature, it only suffers this harm “where such acts appear harmonious with the Constitution.” *See Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 909 (8th Cir. 2020) (per curiam).

175. The risk to Plaintiffs’ constitutional rights plainly outweighs any possible minimal harm to Defendants.

**D. A Preliminary Injunction Will Serve the Public Interest**

176. The public interest also weighs in favor of granting an injunction because it will protect the public’s interest in protecting free speech and assembly rights, exchanging political ideas, and encouraging participation in democratic elections.

177. Like the other factors, this factor is generally met where Plaintiffs establish a likelihood of success on the merits of their claim alleging a violation of their constitutional rights because “it is always in the public interest to protect constitutional rights.” *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of*

*Manchester*, 697 F.3d 678 (8th Cir. 2012); *see also Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999) (“the public interest favors protecting core First Amendment freedoms”); *Willson*, 924 F.3d at 999.

178. Plaintiffs have established that the Challenged Provisions threaten rights protected by the Missouri Constitution, including the rights to freedom of speech, association, and expression, and the right to due process.

179. Indeed, not only do the Challenged Provisions burden Plaintiffs’ constitutional rights, Plaintiffs have demonstrated through affidavits that the burdens they face are widespread amongst voter engagement organizations and volunteers throughout the State. *See Steinberg Aff.*; *Smith Aff.*

180. Furthermore, Plaintiffs’ voting advocacy work supports voter participation, especially among vulnerable populations who are most likely to be disenfranchised. The chilling effect of the Challenged Provisions threatens to cause increased voter confusion and decreased voter participation.

181. The public interest weighs in favor of granting injunctive relief.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs’ Motion for Preliminary Injunction is **GRANTED**. Defendants are hereby preliminarily enjoined from enforcing the Challenged Provisions (as identified in paragraph 2 above) until a final judgment of this Court. Defendants’ Motion to Dismiss is **DENIED** and their answer is due within twenty (20) days of this order.

Bond set at Ten dollars (\$10.00) and this preliminary injunction shall be effective upon the posting of the same with the Circuit Clerk.

SO ORDERED this 24<sup>th</sup> day of October, 2022.

A handwritten signature in black ink, appearing to read "Jon E. Beetem". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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HON. JON E. BEETEM, CIRCUIT JUDGE