IN THE MISSOURI SUPREME COURT

No. SC100965

Missouri State Conference of the National Association
for the Advancement of Colored People, et al.,
Appellants,

v.

State of Missouri, et al.,
Respondents,

On Appeal from the Circuit Court of Cole County
Case No. 22AC-CC04439
Honorable Jon E. Beetem

Opening Brief of Appellants

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JURISDICTIONAL STATEMENT

Article V, § 3 of the Missouri Constitution provides that this Court has exclusive jurisdiction over "the validity … of a statute or provision of the constitution of this state[.]" This case in its entirety challenges the constitutional validity of state laws. All counts challenge the validity of portions of House Bill 1878, effective August 28, 2022, codified as § 115.427, RSMo., and § 115.277, RSMo. (the "Voter ID Restrictions" or "HB 1878").[1] Count I of the First Amended Petition contends that the Voter ID Restrictions violate the fundamental right to vote under article I, § 25 of the Missouri Constitution because the Restrictions burden the fundamental right to vote without narrow tailoring to a sufficiently compelling state interest. Count II contends that the Voter ID Restrictions unduly burden the fundamental right to vote in violation of the Equal Protection Clause, article I, § 2, of the Missouri Constitution.

[1] All statutory references are to Missouri Revised Statutes (2016), as updated, unless otherwise noted. All Rule references are to Missouri Supreme Court Rules, as updated, unless otherwise noted.

INTRODUCTION

For nearly 20 years, Missouri lawmakers have attempted to enshrine strict photo ID requirements to vote in Missouri, only to be rejected by this Court due to the burdens they impose on the right to vote. In August 2022, the Voter ID Restrictions eliminated several voter identification options acceptable to cast a regular ballot in-person in Missouri (e.g., a voter registration card, a Missouri student ID, an out-of-state driver's or non-driver's license, or a copy of a current utility bill or bank statement), and instead, Missouri voters are now required to either (1) provide a non-expired or non-expiring, acceptable form of Missouri or federally issued photo ID, or (2) cast a provisional ballot, which requires the voter to either return to the poll the same day with an acceptable photo ID or rely upon the local election authority ("LEA") to determine whether to count their ballot based on a signature-match.[2]

Appellants do not contest that identification can be required to vote. Rather, the issue is how strictly the law limits the forms of acceptable ID. When limited as HB 1878 does to a strict photo ID requirement, this Court has concluded the scheme infringes on the fundamental right to vote and equal protection in violation of Missouri's Constitution. As this Court noted, it is not just the financial cost of obtaining an ID or the underlying documents necessary to get a state photo ID (such as a certified birth certificate, naturalization papers, or social security card), but also the time, transportation, legal and

[2] A recently expired photo ID can be used to vote in an election if it "expired after the date of the most recent general election," and meets all of the other statutory requirements. *See* § 115.427(3)(c); App. A086.

bureaucratic hurdles. *Priorities USA v. State*, 591 S.W.3d 448, 458-59 (Mo. banc 2020), *reh'g denied* (Jan. 30, 2020), citing *Weinschenk v. State*, 203 S.W.3d 201, 215 (Mo. banc 2006) ("Obtaining photo identification requires appropriate documentation, time, and the ability to navigate bureaucracies.")

HB 1878 places the greatest burdens on those least likely to bear them: the poor, the elderly, the disabled, and minorities. The State's own data shows that between 220,000 and 337,000 Missourians lack a valid Missouri state ID. Trial Tr. 481:16-484:4. Pls.' Ex. 54, p. 2 ¶ 4 (Mayer Expert Report). Many of these people lack internet access or cell phones, and many do not drive.

In *Weinschenk* and *Priorities*, this Court confirmed the fundamental right to vote under the Missouri Constitution and struck down laws nearly identical to the challenged provisions eliminating forms of acceptable identification and mandating specific forms of valid Missouri or federal government photographic identification ("photo ID") to cast a regular ballot in person.

Even after passage of Amendment 6 in 2016, which authorized the legislature to require voters to present identification that could include government photo ID, this Court "made clear that requiring individuals to present photo identification to vote is unconstitutional." *Priorities*, 591 S.W.3d at 458 (citing *Weinschenk*, 203 S.W.3d at 219) (referring to limiting acceptable identification to specific current Missouri and federal ID, known as "strict" photo ID). A provisional ballot alternative with a signature-matching requirement does not overcome the constitutional infirmities. *See Priorities*, 591 S.W.3d at 458-59. What is abundantly clear is that this Court, time and again, has affirmed that

limiting forms of acceptable identification to only current or non-expiring Missouri or federal photo ID violates the Missouri Constitution. In fact, the Voter ID Restrictions, passed after *Priorities*, not only contravene the decision in *Priorities*, but are even more restrictive by eliminating mandatory state notification to voters about the requirements, which was present in the law struck by *Priorities*.

For some, traversing to a license office might not be a substantial burden; but for voters with disabilities, those without transportation, or seniors, this trek can be difficult, dangerous, and inaccessible, as the testimony of Appellant D. Rene Powell demonstrates. Those with errors in underlying documents, like Appellant Kimberly Morgan, must additionally undertake bureaucratic complexities of officially amending a birth certificate necessary to obtain an accurate non-driver photo ID, an ID that she will be unable to afford to renew.

Appellant John O'Connor's experience illustrates the particularly acute burdens HB 1878 imposes on elderly voters with expired IDs.[3] To secure the non-driver photo ID he needed only to vote, Mr. O'Connor and his elderly spouse undertook an arduous search for multiple underlying documents—birth certificates, utility bills, and professional credentials required to get a state ID—a process that demanded substantial time and logistical hardships, particularly onerous at Mr. O'Connor's advanced age.

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3 During oral arguments before this Court in *Weinschenk*, senior Judge Charles Blackmar, sitting by designation, noted that he no longer drove and his expired driver's license would not allow him to cast a regular ballot under the law. *See* Associated Press, "Voter ID law gets grilling from Missouri justices," St Louis Public Radio, Oct. 4, 2006, *see* https://www.stlpr.org/other/2006-10-04/voter-id-law-gets-grilling-from-missouri-justices.

The restrictions imposed by HB 1878 create barriers for low-income Missourians in every stage of obtaining a qualifying photo ID—from financial hardship due to the costs associated with obtaining an ID to difficulties accessing the information and underlying documentation needed to qualify for an ID. The education gaps are exacerbated by the elimination of the state's advance notice requirements. Direct state assistance to those struggling to navigate these complicated processes is inadequate. Instead, those savvy enough to research other options for help are forced to rely on a limited number of nonprofit ID clinics, such as the ones run by trial witnesses Christine Dragonette and Sara Ruiz, to access the logistical and financial support needed to overcome their barriers. Even with their help, many Missourians are still unable to obtain the free non-driver ID to vote that they are entitled to due to inconsistencies in eligibility standards and administration across Department of Motor Vehicle ("DMV") offices that have resulted in qualifying individuals being rejected.

In response, the State casts the specter of exceedingly rare in-person voter fraud. The court heard testimony from the nation's leading voter fraud expert, who reviewed every state Election Integrity Unit complaint and found not a single documented case of voter impersonation that could be addressed with a photo ID requirement. The challenged restrictions are not even rationally related to a legitimate government interest, much less narrowly tailored to a compelling government interest as required by this Court's precedent. *Priorities*, 591 S.W.3d at 453; *Weinschenk*, 203 S.W.3d at 217.

Our Constitution and this Court have repeatedly protected Missourians from this type of interference with the fundamental right to vote and the undue burden the Voter ID

Restrictions impose. Nor does a 2016 Constitutional Amendment, predating this Court's decision in *Priorities,* eradicate the fundamental right to vote found in three separate provisions of Missouri's Constitution. *See* Mo. Const. art. I, § 25; App. A072; Mo. Const. art. VIII, § 2; App. A078; Mo. Const. art. I, § 2; App. A057. A finding otherwise would grant the General Assembly license to pass just about any law relating to voter identification—including for example, that all voters present U.S. passports to vote or that all voters must present a military ID—a result that was neither conveyed to voters when Missourians voted in 2016, nor endorsed by the Amendment's plain language.

STATEMENT OF FACTS

I. Procedural History

In 2022, HB 1878 amended the statutory voter identification requirements left in place after this Court's decision in *Priorities*, which invalidated an affidavit requirement for voters presenting non-photo IDs. HB 1878 restricts the identification options that registered voters may present to vote in person, both on Election Day, and during in-person absentee voting. The Voter ID Restrictions eliminate the option of providing a form of secondary ID (e.g., a voter registration or notification card from a voter's LEA, a state-issued student ID, an out-of-state ID, a Missouri student ID, or a copy of a current utility bill or bank statement), and require all registered voters in Missouri to either: (1) provide a non-expired/expiring acceptable Missouri or federal photo ID, or (2) cast a provisional ballot, which requires the voter to either return the same day with an acceptable Missouri

or federal photo ID or rely upon a signature-matching process in order to count. *See* § 115.427; App. A086; § 115.277; App. A083.[4]

Appellants filed a petition challenging the constitutionality of the Voter ID Restrictions on August 23, 2022. D2. Respondents filed a motion to dismiss on September 9, 2022. D3. On October 12, 2022, the trial court dismissed the petition without prejudice for a lack of standing and allowed Appellants to file an amended petition. D14. On November 4, 2022, Appellants filed their First Amended Petition, adding a named plaintiff as well as additional factual allegations. D15. On December 5, 2022, Respondents filed an Answer. D19. This case proceeded to a five-day bench trial. Following the trial, the trial court denied Appellants' request for injunctive relief and declaratory judgment and found that (1) Appellants lacked standing and, (2) despite finding Appellants lack standing, the trial court found further on the merits that HB 1878 was passed in response to a 2016 constitutional amendment authorizing voter ID and is therefore constitutional. *See* D77 pp. 13, 33; App. A001; *see also* Mo. Const. art. VIII, § 11; App. A080.

II. Appellants

Appellants are three individuals, D. Rene Powell, Kimberly Morgan, and John O'Connor, as well as two organizations, Missouri State Conference of the National Association for the Advancement of Colored People ("Missouri NAACP"), and the League

[4] Section 115.277 provides that a person may cast an in-person absentee ballot if they meet certain requirements. App. A083. Section 115.277 further provides that "[a] registered voter casting a ballot under the provisions of this subsection shall provide a form of personal photo identification that is consistent with subsection 1 of section 115.427." In-person absentee voters without a required photo ID do not have an option to vote provisionally.

of Women Voters of Missouri ("LWVMO") (collectively, "Organizational Appellants"). The Organizational Appellants brought suit on their own behalf as well as on behalf of their members.

A. D. Rene Powell

Ms. Powell is a registered voter who lives in Columbia, Missouri. Trial Tr. 415:24-25, 419:1-2; D37 ¶¶ 40-41; App. A040. She is a member of LWVMO. Trial Tr. 419:22-25; D37 ¶ 42; App. A040. Ms. Powell's Missouri non-driver photo ID expired in 2021. Trial Tr. 425:25-426:2; D37 ¶ 46; App. A040. Ms. Powell suffers from epilepsy, a chronic seizure disorder, which was first diagnosed when she was fourteen years old. Trial. Tr. 429:4-19, 431:4-9. Ms. Powell has had part of her temporal parietal and frontal lobes of her brain removed to help reduce her seizure activity. *Id.* at 438:18-25. At the time of trial, she had a forthcoming brain surgery scheduled to remove her insular cortex. *Id.* 439:24-440:5. In addition to undergoing these surgical interventions, Ms. Powell treats her epilepsy with three medications and a vagus nerve stimulator. *Id.* at 430:1-3. Nonetheless, she still suffers from breakthrough seizures. *Id.* at 440:17-19. Ms. Powell's seizures sometimes result in a loss of consciousness. *Id.* at 430:19-431:3. In 2022, Ms. Powell had a seizure that resulted in a head injury and required stitches. *Id.* at 440:20-441:3. Other seizures have resulted in a broken nose, ankle, wrist, rib, and vertebra, *id.* at 433:4–8, 434:13-14, in addition to more shoulder dislocations than Ms. Powell can count: "[Y]ou get super human strength from the seizures and it just pulls the shoulder out a socket." *Id.* at 432:20-433:1.

Due to her condition, Ms. Powell has not driven since she was seventeen or eighteen, after she experienced a seizure while driving. D37 ¶ 43; App. A040; Trial Tr. 423:24-424:8,

424:11-13. Following an accident that dislocated her shoulder, Ms. Powell no longer rides a bicycle. *Id.* at 435:24-436:6. Though Ms. Powell does walk short distances with the aid of a rollator, *id.* at 463:6-12, walking is not without peril: she has experienced a seizure while crossing the street to the public library, and another while waiting at a bus stop. *Id.* at 436:7-20, 437:11-22. In light of these risks, Ms. Powell endeavors to use "pedestrian friendly" routes. *Id.* at 438:1-10.

Fortunately, the walking routes to Ms. Powell's doctor's appointments and monthly meetings for the local Disabilities Commission on which she serves are both "pedestrian friendly." *Id.* at 442:16-443:2, 443:11-18. Ms. Powell is also comfortable walking to her polling location, which is located just "a couple of blocks" from her residence. *Id.* at 448:7-11. By contrast, Ms. Powell feels unsafe making the journey to her nearest license office. The walking route to the license office requires her to cross at least one "dangerous" street, which she described as a "barrier." *Id.* at 446:14-22, 463:13-464:1-3. The bus route, meanwhile, would require her to walk a number of blocks to wait for a bus that comes just once every ninety minutes, *id.* at 447:5-15, disembark on the shoulder of a "very busy" and "dangerous" street with no sidewalk, *id.* at 445:1-8, 465:11-16, and, finally, undertake a second walk that entails crossing a "scary" [5] and "fast moving" street, *id.* at 445:16-25. Both routes are untenable options given that, as discussed, Ms. Powell has suffered seizures while crossing the street and while waiting at a bus stop. *Id.* at 436:7-20, 437:11-22.

[5] The transcript misspells "scary" as "scarey."

Ms. Powell lives alone and has no family in Columbia, *id.* at 416:4-7, and generally, she does not feel comfortable requesting rides from others. *Id.* at 444:10-18. Barring particular exceptions, including "extreme circumstances," *id.*, she has a personal "policy" per which she waits for her friends to offer rides. *Id.* at 468:5-8. Ms. Powell employs rideshare services minimally, mostly due to cost. *Id.* at 444:2-6, 470:12-15. Since Ms. Powell's disability prevents her from working, *id.* at 416:19-22, she receives Supplemental Security Income, which totals just $932 a month, or under $11,000 a year. *Id.* at 417:1-15. Ms. Powell counts herself "lucky" if she has any leftover money at the end of the month for non-necessity items. *Id.* at 417:21-25.

Ms. Powell is unable to procure a photo ID without facing significant burdens. Either she must pay for a rideshare service beyond her means, rely on others for rides which she is not comfortable doing, or expose herself to physical peril—that is, to the risk of having a seizure and falling unconscious in the middle of a busy street or on the shoulder of a busy road. Even if Ms. Powell could obtain a free ID—a questionable proposition given the evidence about license offices failing to comply with the free ID for voting requirement, *see infra*—procuring it is far from costless, and she would still need to get to the office in person. Ms. Powell has no need for a renewed photo ID, other than for voting. *Id.* at 426:10-12. Her expired ID has served her sufficiently well in her day-to-day life, allowing her to schedule medical appointments, open a bank account, and renew her housing certification. *Id.* at 426:3-9.

Though Ms. Powell can cast a provisional ballot without a photo ID, in doing so she subjects herself to the arbitrary signature-matching process. Ms. Powell, like other voters

with physical and neurological impairments, has reason to worry that she will face enhanced problems with signature matching. Ms. Powell's neurological condition has resulted in dystonia, causing stiffness in her left leg, and causing her left arm to remain poised at a ninety-degree angle. *Id.* at 441:8-24. Ms. Powell testified that since she is left-handed, *id.*, the dystonia causes her hand to feel different, which could affect the way she writes and the appearance of her signature. *Id.* at 442:2-4, 449:4-15. Ms. Powell signs her name as both Dawn Rene Powell, her full name, and Rene Powell, the name she goes by. *Id.* at 415:21-23, 427:16-21.

Voting is important to Ms. Powell because she wants to "participat[e] in democracy and hav[e] [her] voice heard." *Id.* at 419:8-10. Voting *in person* is also important to Ms. Powell. Given her understanding that people with disabilities have low voter turnout, she feels it is "important ... to encourage voter turnout among people who look like [her]" by "show[ing] up as a disabled person." *Id.* at 419:11-21.

B. Kimberly Morgan

Ms. Morgan is a stay-at-home mother to her three young children. Trial Tr. 254:1-4, 269:24-25. Ms. Morgan does not drive and does not have a driver's license. *Id*. at 253:20-21; D37 ¶ 52; App. A040. Her non-driver state ID card misspells her name ("Kimberley," rather than Kimberly) because it copies verbatim the incorrect spelling found on Ms. Morgan's birth certificate ("Kimberley"). Trial Tr. 253:6-13; 261:12-19; 285:11-18; D37 ¶ 54; App. A040. Ms. Morgan lives in Fenton, Missouri, with her husband and children, where there is no access to public transportation, the streets are not walkable (there are often no sidewalks), and she has no one to rely on for transportation other than her husband.

Trial Tr. 258:6-25; D37 ¶ 50; App. A040; Morgan Dep. Tr. 10:16-20. Moreover, her husband—who is paid by the hour—is not compensated for time spent driving his family to and from their commitments. Trial Tr. 276:15-17.

To obtain an ID card listing her correctly spelled name, Ms. Morgan must amend her birth certificate. Trial Tr. 262:12-263:8; Pls.' Ex. 39 (Morgan Email to Vital Records re Amending BC). This, in turn, requires Ms. Morgan to provide several forms of identifying documents to the Bureau of Vital Records—a difficult task, because all of the department's "suggested documents" that could be used to correct the birth certificate's mistake contain the same incorrect spelling of her name. *Id*. at 266:1-10; 303:7-12; Pls.' Ex. 42 (BC Amendment Instructions). Additionally, correcting Ms. Morgan's birth certificate would require a $15.00 fee—a prohibitively expensive requirement for a family of five surviving on, at most, seven hundred dollars per week. *Id*. at 266:11-18; 255:16-25; 256:4-6. Without these amended documents, Ms. Morgan cannot obtain a state-issued photo ID that correctly spells her name. The process to obtain a corrected state-issued photo ID was confirmed by the State. Straub Dep. Tr. 143:8-148:21; Pls.' Exs. 39 (email to Morgan from Vital Records Info), 43 (email to Morgan from Straub).

These difficulties are compounded by Ms. Morgan's lack of phone access (she is unable to pay her phone bill). Trial Tr. 256:13-25. She is thus forced to share her husband's phone, which is unavailable to her while her husband is at work (approximately forty hours per week). *Id*. at 303:13-22. Ms. Morgan's lack of access to a phone during normal working hours inhibits her ability to obtain records from other agencies, such as schools or doctors' offices. *Id*. at 290:2-4.

While Ms. Morgan is a registered Missouri voter, Trial Tr. 272:15-17; D37 ¶ 51; App. A040, since HB 1878 was passed in Missouri, Ms. Morgan has not voted in fear of being "mistaken for voting fraudulently or being turned away" due to her name's misspelling on her non-driver ID. Trial Tr. 274:14-24. Ms. Morgan also fears using a provisional ballot because she is concerned that her signature would not "match what is on file for voting." *Id*. at 275:17-20. This is because Ms. Morgan provided a digital signature at the time she registered to vote, where her name is spelled correctly. *Id*. at 275:19-276:5. Before the Voter ID Restrictions, Ms. Morgan was able to, and did, vote with her voter registration card, which spells her name correctly. *Id.* at 273:16–23; D37 ¶ 55; App. A040.

C. John O'Connor

Mr. O'Connor, who died before this appeal could be heard, was a registered Missouri voter residing in Columbia, Missouri, and an accomplished engineer and academic professional, having served as Chair of the Department of Civil Engineering at the University of Missouri–Columbia for seventeen years before founding a local engineering consultancy firm contributing extensively to community infrastructure and welfare. O'Connor Dep. Tr. 5:10-13:12.

Mr. O'Connor historically voted at a neighborhood polling location within walking distance of his home, where the poll workers knew him. *Id.* at 14:1-7. Voting in person represented both his personal dignity and his civic responsibility as an engaged citizen. *Id.* at 16:10–17. Throughout his many years of voting, he presented his voter registration card. *Id*. at 48:5-13. His Missouri driver license expired in February 2016, which he no longer renewed because of his progressively declining vision; after this, he found himself

effectively disenfranchised. *Id*. at 26:14–17. By this time, Mr. O'Connor was suffering from glaucoma and was completely blind in one eye, with severely compromised vision in the other. *Id*. at 27:8–11; D15 ¶ 109.

To comply with HB 1878, Mr. O'Connor was compelled to obtain a new Missouri nondriver photo ID, a process that imposed significant hardship. He and his wife devoted many hours to locating and assembling the required underlying documentation—including his birth certificate, recent utility bills, and professional engineering registration card—and then navigating the motor vehicle office's procedures. *Id*. at 30:1–6. Despite these hurdles, they ultimately succeeded in securing his nondriver ID in October 2022, a testament to the real and tangible obstacles HB 1878 imposes on elderly and disabled voters. *Id*. at 28:1–3; 31:2–5.

III. Organizational Appellants

A. Missouri NAACP

The Missouri NAACP is a statewide membership organization and the state affiliate of the National Association for the Advancement of Colored People. D37 ¶¶ 36-37; App. A040. The National NAACP was founded in 1909 to call attention to injustices and inequities suffered by African Americans. Trial Tr. 696:3-15. Missouri NAACP and its members are aware of and concerned about the disproportionate impact photo identification requirements for voting have on communities of color. *Id.* at 704:4-706:1. Missouri NAACP and its members are also concerned with the lack of clear communication from the Secretary of State's office about how HB 1878 would be

implemented and what each Missourian had to do in order to vote. *Id.* at 720:6-722:5, 723:4-20.

Missouri NAACP is a nonpartisan organization whose members reside throughout Missouri and are members of both Missouri NAACP and one of the twenty-seven member units throughout the state. *Id.* at 696:16-22, 697:6-8, 699:4-6. It is particularly important to Missouri NAACP to speak on behalf of their members due to the history of intimidation and violence against members of the African American community who spoke up about violations of their rights. *Id.* at 727:9-728:6. It is also of particular importance to the Missouri NAACP for all members to have the right to vote in person because "[t]hey want to participate in the democracy like every other American does . . . ." *Id.* at 753:7-14.

Missouri NAACP members include eligible Missouri voters who seek to vote but lack a qualifying photo ID. *Id.* at 724:5-22. For example, Missouri NAACP member Nakishia Jackson, a registered voter from Kansas City, was turned away from the polls during the November 2023 election for failing to have a valid photo ID. *Id.* at 724:18-2, 725:16-726:5, 747:6-19, 749:15-18. Due to the combined impact of identity theft and the similarity of her name to those of her fellow quadruplet siblings (who share the same birthday), she had tremendous difficulty getting the underlying documents needed for a Missouri photo ID. *Id.* at 725:16-726:5. Ms. Jackson was not allowed to cast a provisional ballot. *Id.* at 731:15-16. Elayne Enyard, a Missouri NAACP member from Kansas City and a registered voter, was born out of state and was unable to obtain a copy of her birth certificate. *Id.* at 724:18-22, 726:6-8, 1235:15-1237:24; Pls.' Ex. 112 (Elayne Enyard Voter Registration Record). Millie Mouton is a Missouri NAACP member who did not have the

necessary underlying documents to obtain a valid photo ID. Trial Tr. 724:18-22, 726:23-727:4.

Missouri NAACP is funded by donations, membership dues, and grants and staffed almost exclusively by volunteers. *Id.* at 706:25-707:2, 709:16-24. The organization has diverted a significant amount of financial and volunteer resources from its typical daily activities to focus on issues related to navigating HB 1878. *Id.* at 708:13-709:10, 716:24-717:13. For example, instead of spending a $10,000 Voter Engagement Grant on general voter education and voter engagement efforts central to their mission, the Missouri NAACP spent $6,550.45 educating its members on their voting options under HB 1878 and responding to the general confusion caused by HB 1878. *Id.* at 708:13-709:15, 712:1-20, 712:11-720:4; Pls.' Exs. 85 (Financial Report), 86 (Presentation).

B. LWVMO

LWVMO is a statewide membership organization and the state chapter of the National League of Women Voters. D37 ¶ 38-39; App. A040. LWVMO is a non-partisan organization with approximately 1,400 members throughout the state of Missouri. Trial Tr. 635:19-20, 637:23-24. LWVMO was founded out of the women's suffrage movement and the right to vote is a central tenet of the organization. *Id.* at 633:8-16. The mission of LWVMO includes empowering voters and defending democracy, as the organization wants every eligible voter to be able to cast a ballot freely and fairly. *Id.* at 635:23-25.

LWVMO received calls and requests for assistance directly from its members and members of the public who were confused about the changes to voter ID requirements implemented by HB 1878 and who sought help complying with the law. *Id.* at 645:25-

646:18, 655:18-656:2. LWVMO sent letters to the Governor of Missouri and the Director of the Department of Revenue expressing concerns over HB 1878 and access to proper IDs and did not receive a response to either letter. *Id.* at 643:3-16, 644:5-7, 18-22, 645:12-14; Pls.' Exs. 76 (Letter to Governor), 77 (Letter to Department of Revenue).

LWVMO member Abigail Hardwick, a student at Missouri State University, is registered to vote in Missouri but has a driver's license from Oklahoma that is still valid and that she does not want to relinquish. Trial Tr. 668:13-25, 670:7-21. Another member of LWVMO, Tracy Heath, moved back to Missouri from Florida and did not have access to her underlying documentation needed to obtain a photo ID. She wanted to vote in person but could not because of HB 1878's voter identification mandates. *Id.* at 670:24-671:10. LWVMO's outreach to young voters was one of the issues that received fewer resources and less time because of the resources diverted to its HB 1878 work. *Id.* at 692:6-15.

LWVMO has limited staff and relies heavily on volunteers. *Id.* at 638:18-22. Voting identification requirements are a priority for LWVMO. *Id.* at 640:16-19. After HB 1878 went into effect, LWVMO's work had to pivot from other mission-driven work to inform voters of the new ID requirements in the brief amount of time between when HB 1878 went into effect in August and the upcoming general election that November. *Id.* at 646:19-647:4.

In the August 2022 election held just before HB 1878's implementation, LWVMO ran advertisements focused on getting out the vote, but after HB 1878's enactment, its ads changed to focus solely on the type of ID that voters would need. *Id.* at 647:5-21. LWVMO changed its publications, websites, social media, and advertising to address the change

created by HB 1878. *Id.* at 647:22-648:8. The law caused LWVMO to shift how it allocated its funds, such that other issues and activities received less attention and resources. *Id.* at 648:9-22. LWVMO expended significant staff time and organizational resources to develop social media, handouts, and informational materials to educate people about the new voter ID requirements. *Id.* at 649:25-650:7.

LWVMO incurred costs and staff time to create, print, and distribute materials, including to educate senior voters about the impact of HB 1878, which the organization deemed it necessary to prepare because of questions it received and to provide information on the significant changes brought by HB 1878 that may impact people. *Id.* at 658:1-10, 658:18-659:10. LWVMO put considerable time and money toward this work on HB 1878 that would have otherwise been directed to voter guides and specific ballot-related issues. *Id.* at 659:11-21.

IV. Provisional Ballots, Signature Matching, and Expert Testimony of Dr. Linton Mohammed

Under HB 1878, registered Missouri voters who appear in person on Election Day without a qualifying photo ID may cast a provisional ballot. § 115.427; App. A086; § 115.277; App. A083; D37 ¶ 24; App. A040. There are two types of provisional ballots in Missouri: blue provisional ballots and yellow provisional ballots. D37 ¶ 25; App. A040. Yellow provisional ballots, also known as HAVA ballots because they are mandated by

the Help America Vote Act of 2002, are used when there is a question about a voter's eligibility.[6] D37 ¶ 32; App. A040; § 115.430; App. A092.

In contrast, under § 115.427, in Missouri, a "blue provisional ballot" is specifically available to voters who are registered to vote and are listed on the voter rolls, but who do not present an acceptable photo ID at their polling place on Election Day. These ballots are colloquially known as "blue provisional ballots" because the voters' ballots are placed in a blue envelope to be reviewed later. The outside of the blue provisional envelope contains an affidavit requiring identifying information for the voter to fill out and sign. *See* § 115.427.3; App. A086. The ballot envelope also includes a section for two poll workers of different political parties to sign. D37 ¶ 26; App. A040. By signing the appropriate place on the blue provisional ballot envelope, the voter attests to their identity by stating "I do solemnly swear that I am the person identified above and the information provided is correct." D37 ¶ 26; App. A040. The blue provisional ballot envelope also includes places where the voter must write in their name, address, city, state, zip code, date of birth, and the last four digits of their social security number. D37 ¶ 28; App. A040.

Only registered voters casting ballots in person on Election Day are eligible to cast a blue provisional ballot if they appear without qualifying ID. D37 ¶ 30; App. A040. Registered voters without a form of acceptable ID may not cast a blue provisional when they appear to vote in-person absentee (though the ID requirements apply to in-person

[6] A HAVA provisional ballot is available to all in-person voters whose eligibility cannot be immediately established when they appear to vote in person either on Election Day or during in person absentee voting.

absentee voters), or by mail-in absentee ballot because blue provisional ballots are available only for in-person voting on Election Day. Pls.' Ex. 54 p. 30 (Mayer Expert Report).

In November 2022, the first general election following HB 1878's implementation, voters cast four times as many blue provisional ballots compared to the 2020 presidential elections, even though the total number of votes cast decreased by twenty percent. Trial Tr. 496:14-25, 518:8-23; Pls.' Ex. 54 p. 15 (Mayer Expert Report), D37 ¶¶ 91-92, 98-102; App. A040.

A blue provisional ballot is counted only if the voter returns to their polling place by close of polls on the same Election Day with an acceptable form of photo ID; or if, after Election Day, the LEA verifies that the voter's signature on their provisional ballot envelope matches the voter signature on file with the LEA. D37 ¶ 29; App. A040. Voters are not informed whether their provisional ballot was accepted or rejected, and there is no process to cure or contest a rejected ballot. Pls.' Ex. 54 p. 30 (Mayer Expert Report).[7] Provisional ballots must be cast at a voter's correct polling place to count. §§ 115.430.2(1), 115.430.5(1)(a)(b); App. A092. The information provided by the voter on the provisional

[7] In contrast, voters who cast yellow provisional ballots will have their provisional ballot counted if, after Election Day, the LEA is able to verify the voter's registration. A signature match is *not* undertaken. Pursuant to federal law, yellow provisional ballot voters are given a tollfree number where they can check to see if their ballot was counted. And, unlike blue provisional voters, yellow provisional voters "may provide additional information to further assist the election authority in determining eligibility," and election officials are required to follow up on that information. *See* § 115.430 *et seq*.

ballot envelope must be complete and accurate for the ballot to count. § 115.430.5(d); App. A092.

In the November 2022 general election, of the 3,561 voters who cast blue provisional ballots, only 1.6% returned to the polling place that day with a qualifying ID. Pls.' Ex. 54 p. 15 (Mayer Expert Report). Notably, 116 blue provisional ballots were rejected due to signature mismatch. Trial Tr. 521:12-23; Pls.' Ex. 54 p. 15 (Mayer Expert Report).

Each of Missouri's 116 LEAs is responsible for processing and counting provisional ballots cast in their respective election jurisdiction, and each carries out this duty in its own way. Fey Dep. Tr. 30:11-30:25; 34:4-34:7; Lennon Dep. Tr. 109:4-8. There is no statewide standardized method or written guidelines for signature matching. Brown 2023 Dep. Tr. 79:21-23; Schoeller Dep. Tr. 112:4-113:12. The state does not require training of LEAs on signature verification, Trial Tr. 835:17-25, and training practices "vary substantially from county to county." Fey Dep. Tr. 32:4-33:11. The rate at which blue provisional ballots are rejected due to signature mismatch varies widely from one jurisdiction to another—from a 0.6% rejection rate (Clay County) to a 9.21% rejection rate (Jackson County) to a 31.25% rejection rate (Randolph County) during the 2022 general elections. Trial Tr. 523:10–524:1; Pls.' Ex. 54 p. 29; *see also* D37 ¶¶ 92, 97, 102; App. A040.

Dr. Linton Mohammed is a board-certified Forensic Document Examiner with extensive academic and professional experience in the field of document examination. Trial Tr. 570:25-573:2; Pls.' Ex. 68 (Mohammed CV). As a leading expert on signature comparison, Dr. Mohammed's expert testimony has been accepted in over two hundred

cases, including *Priorities*. Trial Tr. 567:19-568:2, 570:11-19; *see also* Pls.' Ex. 65 (Mohammed Testimony Listing).[8] Dr. Mohammed testified about the unreliability and inadequacy of the provisional ballot and signature verification processes under HB 1878. Trial Tr. 568:5-8; Pls.' Ex. 64 (Mohammed Expert Report).

Dr. Mohammed's review of Missouri's provisional ballot process concluded that the signature verification procedure is unreliable because Missouri "do[es] not set forth sufficient standards for determining reasonably whether a signature on a voter's provisional ballot envelope matches the voter signature(s) displayed in the election authority's voter registration file." Pls.' Ex. 64 ¶ 24 (Mohammed Expert Report); *see also* Trial Tr. 608:7-609:9. Having viewed the only training video ever provided to LEAs in Missouri, as well a presentation given to some LEA officials at a conference, Dr. Mohammed concluded that this training was insufficient to guard against erroneous signature matching. Trial Tr. 605:5-607:15; *see also* Pls.' Exs. 73 (Training Video), 74 (Signature Verification Training Presentation Slides). Dr. Mohammed testified that with respect to signature examination, election officials are laypersons, whose error rate is around twenty-six percent. Pls.' Ex. 64 ¶ 35; Trial Tr. 622:6-17.

Moreover, Dr. Mohammed testified that the lack of adequate time and multiple signatures for comparison is "likely to lead to additional errors," Pls.' Ex. 64 ¶ 29

[8] Motions in limine regarding Dr. Mohammed and Dr. Minnite were filed by Respondents and taken with the case. The motions were not granted, and Dr. Mohammed's testimony was cited and discussed by the court. *See* D77 pp. 17-18; App. A001. Any position Respondents had on the expert qualifications or testimony is therefore waived. *See infra* note 10. As discussed, *infra*, the trial court erred in failing to give the proper weight to his testimony.

(Mohammed Expert Report), which skew toward over-rejection of legitimate signatures. Trial Tr. 580:19-581:15. The Secretary of State has provided no guidance to election authorities on how long the signature matching process should take. Schoeller Dep. Tr. 122:17-21. Election staff commonly spend "less than a minute" per signature verification. Trial Tr. 837:1-10; *see also* Fey Dep. Tr. 82:25-83:3 (testifying that election staff spend "no[] more than a minute" per signature); Lennon Dep. Tr. 107:3-5 (testifying that signature matches take "no more than three or four minutes"). In Dr. Mohammed's opinion, even a highly skilled and qualified professional forensic document examiner such as himself could not sufficiently perform the signature matching required of Missouri local election officials within one minute, or even five. Trial Tr. 606:4-606:8; Pls.' Ex. 64 ¶ 51 (Mohammed Expert Report).

Other issues result from comparison of different signature types. Dr. Mohammed explained that it would be impossible to determine whether two signatures came from the same person if they were of different styles. Trial Tr. 609:21-610:6. A voter's signature can be affected by age, disability, or medication, causing significant variations that a layperson would have difficulty analyzing "with any degree of accuracy." *See* Pls.' Ex. 64 ¶¶ 45-47 (Mohammed Expert Report); *see also* Mohammed Dep. Tr. 72:2-73:12; Trial Tr. 626:12-22. Furthermore, those who register to vote online may have provided only a digital signature for comparison, which can look quite different from their "wet" signature on a provisional ballot envelope. *See* Trial Tr. 840:24-841:6; *see also* Brown 2022 Dep. Tr. 94:14-95:7 ("Almost 100 percent of the time, if they're not counted because the signature did not match, it was because they registered online … [a]nd their signature looks nothing

like what it does pen to paper."). Dr. Mohammed testified that comparing a wet signature to a digital, stylus, or photocopied version is difficult and unreliable. Trial Tr. 599:8-600:13.

V. Expert Testimony of Dr. Loraine Minnite and Dr. Kenneth Mayer

Dr. Lorraine Minnite is a Professor of Public Policy and Administration at Rutgers University-Camden and a published author of books, book chapters, and peer-reviewed journal articles on the subject of voter fraud. She has studied voter fraud in Missouri for over twenty years. Trial Tr. 313:6-315:21; *see also* Pls.' Exs. 45 (Minnite Expert Report), 46 (Minnite CV). Dr. Minnite testified about her extensive research into allegations of voter fraud in Missouri and provided expert conclusions as to the incidence of fraudulent voting in the state and the adequacy of pre-HB 1878 laws to prevent voter fraud. Trial Tr. 318:6-24.

Dr. Minnite reviewed numerous quantitative, qualitative, and archival sources, including news reports, databases, compilations, court opinions, and instances of alleged voter fraud produced by Defendants. *Id.* at 319:8-321:25, 336:20-338:4; *see also* Pls.' Ex. 45 pp. 20-35 (Minnite Expert Report). She also examined comprehensive data provided by the Secretary of State's Elections Integrity Unit ("EIU") of all submitted complaints dating from January 2018 to March 2023. Trial Tr. 339:18-344:24; *see also* Pls.' Ex. 49 (EIU Complaints). Of the 396 complaints received by the EIU, only thirty alleged election or voter fraud, none of which was determined to be an actual instance of fraud. Trial Tr. 346:19-348:12; *see also* Pls.' Ex. 50 (Minnite Expert Report Tables).

Indeed, in all the materials reviewed by Dr. Minnite, she found only a single instance of voter impersonation in Missouri, which was perpetrated through a mail-in absentee ballot rather than in-person voting. Trial Tr. 350:25-351:6. But as Dr. Minnite testified, the only kind of voter fraud that the voter identification requirements of HB 1878 could address is *in-person* voter impersonation at a polling location. *Id.* at 328:3-10; *see also id.* at 408:16-411:5 (describing types of electoral and voter fraud not impacted by HB 1878).[9] Dr. Minnite found *no* recorded instances of in-person voter impersonation in Missouri over the past twenty years. *Id.* at 351:13-21; Pls.' Ex. 45 p. 35 (Minnite Expert Report). As a result, she concluded that the voter identification requirements of HB 1878 would not reduce the incidence of voter fraud in Missouri. Trial Tr. 351:9-12.

Dr. Minnite also found that the regulations in place prior to HB 1878's enactment were sufficient to deter and prevent voter fraud, as evidenced by the lack of observable fraud. *Id.* at 355:9-356:3; Pls.' Ex. 45 p. 39 (Minnite Expert Report). To reach this conclusion, Dr. Minnite reviewed all current Missouri statutes related to elections and voter fraud, noting that voter fraud is already illegal and punishable by up to five years in prison. Trial Tr. 356:8-358:4; Pls.' Ex. 45 pp. 39-40 (Minnite Expert Report). She also reviewed the depositions of four local election officials, who agreed that prior to HB 1878, "they already possessed the tools they needed to detect voter fraud, and specifically, voter

[9] At trial, Respondents' expert, Dr. Jeffrey Milyo, agreed that the challenged photo ID requirements contained in HB 1878 would not prevent a non-citizen with a valid Missouri photo ID from voting; would not prevent a felon who has not had their civil rights restored from voting, nor would HB 1878's photo ID requirements prevent a person from voting in two different jurisdictions. Trial Tr. 1249:17-12:50:2.

impersonation, and that they had no record of voter fraud in recent elections … .” Trial Tr. 358:9-359:17; Pls.’ Ex. 45 p. 40-49 (Minnite Expert Report). Finally, Dr. Minnite found no evidence to suggest that HB 1878 was passed to address an extant voter impersonation problem in Missouri. Trial Tr. 354:3-20; Pls.’ Ex. 45 p. 39 (Minnite Expert Report). She accordingly characterized it as “a redundant rule … just making it harder for some people to comply with identification requirements.” Trial Tr. 359:25-360:2.

Dr. Kenneth Mayer is a Professor of Political Science at the University of Wisconsin-Madison with decades of experience researching elections and voting. *Id.* at 473:21-475:7; *see also* Pls.’ Ex. 55 (Mayer CV). He is an expert in election administration, voting rights, voter fraud, and voting identification, having authored dozens of peer-reviewed articles on these and related subjects. Trial Tr. 475:8-476:9; *see also* Pls.’ Ex. 55 (Mayer CV). Dr. Mayer testified about the burdens HB 1878 imposes on Missouri voters and the inadequacy of measures to alleviate those burdens. Trial Tr. 477:13-24. The trial court recognized Dr. Mayer as an expert. *Id.* at 525:16-18.

Dr. Mayer testified that HB 1878’s voter identification provisions impose a severe burden on thousands of Missouri voters. *Id.* at 479:2-25; Pls.’ Ex. 54 pp. 1-3 (Mayer Expert Report). As a strict photo identification law, Dr. Mayer testified, HB 1878 is likely to reduce turnout by preventing otherwise qualified individuals from voting. Trial Tr. 480:22-481:15, 487:18-488:3; *see also* Pls.’ Ex. 54 pp. 5-6 (Mayer Expert Report). Hundreds of thousands of Missourians lack a driver’s license or state ID, which are the most common forms of acceptable photo ID possessed by voters. Trial Tr. 481:16-484:4; Pls.’ Ex. 54 pp. 6-7 (Mayer Expert Report). Based on data collected from St. Louis, Jackson, and Boone

counties between 2018 and 2022, Dr. Mayer found that over 243,000 voters in those counties cast ballots using IDs no longer acceptable to vote. Trial Tr. 489:11-16, 495:13-20; Pls.' Ex. 54 p. 14 (Mayer Expert Report).

Moreover, Dr. Mayer concluded that voters lack information, resources, and alternatives to overcome the barriers imposed by HB 1878. Trial Tr. 504:4-505:8; Pls. Ex. 54 pp. 16-24 (Mayer Expert Report). Dr. Mayer reviewed the websites of each of Missouri's 116 LEAs and found that only thirteen presented accurate information on acceptable forms of voter identification. Trial Tr. 505:9-507:6; Pls.' Ex. 54 pp. 18-19 (Mayer Expert Report). The Secretary of State's free ID program requires would-be voters to navigate several bureaucratic hurdles in order to exercise their right to vote. Trial Tr. 513:17-514:13; Pls.' Ex. 54 pp. 24-26 (Mayer Expert Report). Dr. Mayer further explained that the provisional ballot process does little to protect voters' franchise due to the subjective nature of signature matching; with ballot rejection rates varying from 0.6% to 31.25% depending on the county. Trial Tr. 516:14-524:1; Pls.' Ex. 54 p. 29 (Mayer Expert Report). This variance, Dr. Mayer concluded, could only be attributed to subjectivity and a lack of uniform standards, which has and will continue to result in the rejection of eligible voters' ballots. Trial Tr. 517:21-518:3, 523:19-524:8; Pls.' Ex. 54 pp. 28-30 (Mayer Expert Report).

VI. Photo ID Clinics and the Process of Obtaining a Photo ID

The process of obtaining a qualifying photo ID imposes a burden on voters. Pls.' Ex. 54 p. 24 (Mayer Expert Report). In order to obtain a Missouri nondriver's license individuals must present the following: (1) proof of identity, such as a U.S. birth certificate

or an unexpired passport, (2) proof of lawful status, such as a certificate of citizenship or unexpired permanent resident card, (3) a document with their social security number, such as a social security card or a W-2 form, and (4) proof of Missouri residency, which requires documents such as a utility bill, government correspondence, or housing documents that contain the individual's name and Missouri address. In order to obtain a Missouri nondriver's license individuals must present the following: (1) proof of identity, such as a U.S. birth certificate or an unexpired passport, (2) proof of lawful status, such as a certificate of citizenship or unexpired permanent resident card, (3) a document with their social security number, such as a social security card or a W-2 form, and (4) proof of Missouri residency, which requires documents such as a utility bill, government correspondence, or housing documents that contain the individual's name and Missouri address. Pls.' Ex.21 (DOR List of Acceptable Documents). If an individual's name has to be verified or changed, they must present documentation of their legal name, such as a certified marriage license or amended birth certificate. *Id*. To successfully navigate the State's free ID program, individuals must coordinate their efforts between and navigate the bureaucracies of the Secretary of State's office, the Department of Revenue License Offices, the Department of Health and Senior Services, and potentially others. Trial Tr. 513:17–514:13; Pls.' Ex. 54 p. 24 (Mayer Expert Report). After the passage of HB 1878 many voters faced challenges in learning about and accessing a qualifying photo ID for voting. Trial Tr. 173:3-15. In response to these challenges, nonprofit photo ID clinic programs have been created or expanded to facilitate access to IDs for individuals who experience barriers to obtaining them. *Id.* at 48:10-16. These programs provide logistical

and financial assistance for individuals seeking a non-driving photo ID or a birth certificate needed to obtain a state ID. *Id.* at 171:24-172:2, 173:1-2. Currently, there are only about ten to fifteen photo ID clinic programs across Missouri providing this service for their communities. *Id.* at 93:23-94:4. Without these clinics, many individuals would be left with no means of obtaining an ID. *Id.* at 235:23-25.

Christine Dragonette, who oversees St. Francis Xavier College Church's ID and birth certificate clinic in St. Louis, testified about the challenges that the clinic's clients have experienced in attempting to navigate the process of obtaining a qualifying photo ID. *Id.* at 46:13-15, 47:8-12, 47:23-24. A substantial portion of the clinic's work involves assisting guests who need an ID for voting purposes. *Id.* at 54:19-21, 55:5-7; Pls.' Ex. 5 (Program Survey Results) (discussing how 100 out of 250 ID program guests surveyed indicated that they needed an ID for voting purposes). Ms. Dragonette's testimony was based on situations that she directly observed working with clients, as well as surveys the clinic has done of guests. Trial Tr. 50:13-15, 55:24.

Sara Ruiz, who runs the North City Photo ID Clinic Program in St. Louis, testified about the difficulties her clients have faced in attempting to obtain a qualifying photo ID. *Id.* at 167:11-20, 174:15-16, 211:3-6. The program was created specifically due to passage of the voter ID provisions in HB 1878. *Id.* at 173:20-174:6. The barriers to obtaining a state ID disproportionately fall on the most vulnerable and marginalized people in Missouri. *Id.* at 236:22-25. Independently navigating the state's free ID process requires a level of privilege that many take for granted. *Id.* at 210:8-9. Ms. Dragonette and Ms. Ruiz identified the primary types of barriers that their clients face when trying to obtain an ID.

The costs associated with obtaining an ID pose a significant barrier for many low-income individuals. The ID itself costs eighteen dollars, which many low-income Missourians cannot afford. *Id.* at 211:23-212:2. Many low-income individuals do not have the necessary underlying documents needed to obtain an ID and cannot afford to pay for copies of those documents. *Id.* at 56:3-9. Even those who are eligible for a free ID to vote (which is a non-driver, non-Real ID) may still experience financial hardship when attempting to obtain an ID because the cost of getting an ID is not limited to the costs of these documents. *Id.* at 56:9-10. For many, getting an ID requires them to travel to three different locations—an ID clinic, an office where they can get their birth certificate, and the DMV to actually apply for their ID. *Id.* at 186:16-20. Many individuals can barely manage the costs of getting to even one of these locations. *Id.* at 186:20-21. Ms. Dragonette has had clients who were unable to get an ID even with help obtaining underlying documents, simply because they could not afford to get to the appropriate office. *Id.* at 186:3-15. Going to these locations may require taking unpaid time off work or finding childcare. *Id.* at 212:9-10, 134:3-6. Many offices are not open evenings or on weekends. *See* D37 ¶¶ 123-30; App. A040. These indirect costs often far exceed the cost of the ID itself and many low-income individuals cannot afford to get even the free ID to which they are entitled. *Id.* at 212:14-15.

Many low-income individuals struggle to access the information necessary to navigate obtaining an ID. Ms. Dragonette and Ms. Ruiz testified that many of their clients lack internet access. *Id.* at 134:12-135:7, 233:7-10. The state's free ID program is difficult for many low-income individuals to navigate independently because the only information

provided by the Secretary of State regarding the program and its requirements is online. *Id.* at 233:1-10. There are no signs nor pamphlets at license offices—the only place to obtain a state ID—that inform voters they can request an ID at no cost. *Id.* at 233:19-20. The program is so under-publicized that Ms. Dragonette testified that none of her clients has ever known about the free ID to vote program prior to coming to her clinic. *Id.* at 102:16-18.

Establishing proof of identity and Missouri residency to obtain a state ID can be challenging; many individuals do not have any of the acceptable identity documents required to get a state ID. *Id.* at 86:5-6. Obtaining a birth certificate, for instance, is an additional application process that comes with additional burdens. *Id.* at 223:5-7. For those born outside of Missouri, states have broadly varying requirements for obtaining a certified birth certificate; numerous states require a photo ID to get a copy of one's birth certificate, and many require applying by mail. *Id.* at 64:4-6, 89:14-18; Pls.' Ex. 11 (Out-of-State BC Requirements). The processing time for these applications can range anywhere from weeks to months depending on locality—a timeline that delays the ID application. Trial Tr. 225:3-23. Some circumstances, such as an incorrect name or a typo on a birth certificate or someone not having a birth certificate on file, are so complex that even ID clinics struggle to successfully resolve them. *Id.* at 87:5-12. Ms. Dragonette testified that there have been instances where her clinic has tried multiple times, even over the course of multiple years, to help a client obtain accurate identity documents, but they are unable to get that person a copy of their birth certificate. *Id.* at 87:16-19.

Missourians experiencing housing instability often lack traditional forms of proof of residency necessary to obtain a state ID, such as a lease in their name, bank statement or utility bill that has been mailed to a current address. *Id.* at 61:4-8, 61:13-14, 62:11-13. They often lack a stable address to receive mail, including receiving the ID itself. *Id.* at 61:7-12, 62:15-18. Theoretically, unhoused individuals can use Missouri's recent Form 5862 exception, which allows them to list a service provider's address. *Id.* at 61:18-25, 62:1. However, many Missourians are unaware that this exception process even exists because it is not listed on the official non-driver ID documentation requirement checklist. *Id.* at 62:8-9.

Accessibility of license offices is also an issue; at minimum, getting a state ID requires physically going in person to a license office. *Id.* at 213:4-8. Not every county in Missouri has a license office. *Id.* at 186:12-20. Many of the clinics' clients lack transportation and must rely on public transportation, which is not affordable for many people, or walking. *Id.* at 133:20-24, 186:13-14. Even in a city like St. Louis, the various offices can be at least an hour walk from one another, and many individuals do not have the time or physical ability to access them. *Id.* at 213:13-20. These in-person visits are difficult to avoid. Missouri does allow online or mail-in application for a birth certificate. *Id.* at 223:2-3. But those are not viable options for individuals who lack internet access or a stable address where they can receive mail. *Id.* at 62:15-18, 134:12-14. Individuals who go to an ID clinic may need to return if their situation requires further assistance or if the clinic has reached capacity. *Id.* at 63:18-20, 58:13-17. Unlike government offices, these nonprofit ID clinics only have the resources and capacity to operate on a very limited

schedule. *Id.* at 51:4. Both Ms. Dragonette's and Ms. Ruiz's ID clinics are open only once a week, leaving a narrow window to access for help. *Id.* at 50:23-51:4.

Inconsistent access to the state's free ID program has resulted in the program being a barrier to obtaining an ID rather than a tool. *Id*. at 226:17-22. Though any eligible voter in Missouri is entitled to receive a free ID to vote, the program is not uniformly administered across license offices—some offer the program and others have turned individuals away. *Id.* at 102:15-103:19; Pls.' Ex. 15 (Go Vote Missouri DOR Office Notes).[10] Inconsistencies in practices and standards across the license offices, such as whether individuals can receive replacement IDs, have resulted in people being rejected for a free ID. *Id.* at 106:14-19. Additionally, there is a discrepancy between the Department of Revenue and Secretary of State regarding whether the free ID to vote program covers replacement IDs. *Id.* at 118:12-20. The Department of Revenue says that anyone can receive a free ID to vote, regardless of whether they have received one previously, while

[10] At trial, Respondents objected to the testimony of employees of the DMV offices that purport to issue the free non-driver licenses. Respondents also objected to Exhibit 15 that reflected this information. Appellants responded that it was admissible because they were admissions of a party opponent. The trial court reserved ruling on the objections and invited post-trial briefing on the issue, which was submitted by both Appellants and Respondents. *See* D72, D75. However, the court never ruled on the objections nor specifically addressed them in its final Judgment. *See* D77; App. A001. "It is the objecting party's responsibility to insure [sic] that the trial court has heard and ruled on every objection." *Rouse v. Cuvelier*, 363 S.W.3d 406, 419-20 (Mo. App. W.D. 2012) (internal quotation and citation omitted). "The objecting party's failure to obtain a ruling on an objection preserves nothing for appellate review." *Id.* at 420 (internal quotation and citation omitted). Further, when a party fails to obtain a ruling on its objection, the objection is deemed to have been abandoned. *Id.* Respondents never obtained a ruling on their objections to this testimony or Exhibit 15 and have, therefore, abandoned the objections and failed to preserve the issue for appellate review. While Appellants submit that the trial court failed to properly consider this evidence, it is deemed accepted and a part of the trial court record.

the Secretary of State maintains that the free ID to vote program allows Missourians to obtain an ID once in their lifetime without cost and that anyone needing a replacement ID is responsible for covering the cost themselves. *Id.* at 119:4-18; Pls.' Ex. 23 (email with SOS employee). This inconsistency has made using the free ID to vote program a non-viable option for many low-income individuals for whom cost is a barrier in obtaining an ID. Trial Tr. 226:7-9, 17-22. Many low-income Missouri voters lack the ability to dedicate time and resources to gathering their documents and going to a license office only to be rejected for a free ID to vote. *Id.* at 227:13-14.

POINTS RELIED ON

I. The trial court erred in finding that the individual Appellants lacked standing, because it misapplied the law, in that Appellants established through sufficient evidence at trial that they had their fundamental right to vote denied, burdened, or abridged, thereby demonstrating a personal interest directly at stake that is subject to relief.

- *Ste. Genevieve Sch. Dist. R II v. Bd. of Alderman of City of Ste. Genevieve*, 66 S.W.3d 6 (Mo. banc 2002)
- *Weinschenk v. State*, 203 S.W.3d 201 (Mo. banc 2006)
- *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620 (Mo. banc 2011)
- *Priorities USA v. State*, 591 S.W.3d 448 (Mo. banc 2020)

II. The trial court erred in finding that the Organizational Appellants lacked standing, because it misapplied the law, in that Organizational Appellants demonstrated at trial that they diverted organizational resources to address the effects of the Voter ID Restrictions sufficient to establish organizational standing.

- *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)
- *Nat'l Fed'n of Blind of Mo. v. Cross*, 184 F.3d 973 (8th Cir. 1999)
- *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620 (Mo. banc 2011)
- *Clapper v. Amnesty Intern. USA*, 568 U.S. 398 (2013)

III. The trial court erred in finding that the Organizational Appellants lacked standing, because it misapplied the law, in that Organizational Appellants identified at trial that at least one of their individual members would otherwise have standing to sue in their own right thereby meeting the standard for associational standing.

- *Hunt v. Washington State Apple Advert. Com'n*, 423 U.S. 333 (1977)
- *Mo. Bankers Ass'n v. Dir. Of Mo. Div. of Credit Unions*, 126 S.W.3d 360 (Mo. banc 2003)
- *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620 (Mo. banc 2011)

IV. The trial court erred in excluding testimony of representatives of the Organizational Appellants and finding it to be inadmissible hearsay because the trial court abused its discretion and erroneously declared the law in that the testimony was not hearsay because a representative of an organization can

testify on behalf of the organization as to the organization's knowledge as to all matters, including its members.

- *State v. Kemp*, 212 S.W.3d 135 (Mo. banc 2007)
- *State ex rel. Reif v. Jamison*, 271 S.W.3d 549 (Mo. banc 2008)

V. The trial court erred in entering any decision on the merits after finding that the Appellants lacked standing because the court erroneously declared and applied the law in that a matter is not justiciable if no party has standing to bring it and advisory opinions are not permitted.

- Mo. Const. art. V, § 14
- *Farmer v. Kinder*, 89 S.W.3d 447 (Mo. banc 2002)
- *Peachtree Apartments v. Pallo*, 317 S.W.3d 189 (Mo. App. E.D. 2010)
- *Millstone Prop. Owners Ass'n v. Nithyananda Dhyanapeetam of St. Louis*, 701 S.W.3d 633 (Mo. banc 2024)

VI. The trial court erred in finding that it could not grant facial relief, as-applied relief, or a universal injunction, because it erroneously declared and applied the law, in that standing and scope of relief are different legal concepts, Appellants raised both facial and as-applied claims, and the court had the authority to grant universal relief.

- Mo. Const. art. I, § 14
- Mo. Const. art. V, § 4
- *Weinschenk v. State*, 203 S.W.3d 201 (Mo. banc 2006)
- *City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258 (Mo. App. W.D. 2010)
- *Moody v. NetChoice, LLC*¸ 603 U.S. 707 (2024)
- *Trump v. CASA, Inc.*, 145 S.Ct. 2540 (2025)

VII. The trial court erred in finding that Missouri Constitution, article VIII, § 11 authorizes the strict Voter ID Restrictions because the constitutional amendment relied on by the trial court does not sanction the Voter ID Restrictions in that it did not constitutionally require a specific form of photo ID and did not weaken the fundamental right to vote or equal protection in Missouri as recognized in *Weinschenk* and *Priorities*.

- Mo. Const. art. I § 2
- Mo. Const. art. I § 10
- Mo. Const. art. I § 25
- Mo. Const. art. III § 50
- Mo. Const. art. VIII § 2

- Mo. Const. art. VIII § 11
- Mo. Const. art. XII § 2(b)
- § 115.427, RSMo.
- *Weinschenk v. §State*, 203 S.W.3d 201 (Mo. banc 2006)
- *State v. Sisco*, 458 S.W.3d 304 (Mo. banc 2015)
- *Priorities USA v. State*, 591 S.W.3d 448 (Mo. banc 2020)

VIII. The trial court erred in not giving proper weight to testimony of an expert on signature matching and finding the provisional ballot alternative acceptable because in doing so it erroneously declared and applied the law in that the provisional ballot process with a signature-matching requirement does not overcome the constitutional infirmities of the photo ID requirement as set forth in *Priorities* and *Weinschenk*.

- §115.427, RSMo.
- *Weinschenk v. §State*, 203 S.W.3d 201 (Mo. banc 2006)
- *City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258 (Mo. App. W.D. 2010)
- *Priorities USA v. State*, 591 S.W.3d 448 (Mo. banc 2020)

ARGUMENT

POINT I: The trial court erred in finding that the individual Appellants lacked standing, because it misapplied the law, in that Appellants established through sufficient evidence at trial that they had their fundamental right to vote denied, burdened, or abridged, thereby demonstrating a personal interest directly at stake that is subject to relief.

I. Standard of Review and Preservation of Error

"Standing is a question of law, which is reviewed *de novo*." *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 622 (Mo. banc 2011). "Standing requires that a party seeking relief has some legally protectable interest in the litigation so as to be affected directly and adversely by its outcome, even if that interest is attenuated, slight or remote." *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 484 (Mo. banc 2009) (internal quotation and citation omitted). "To properly raise a constitutional question, plaintiffs are required to: (1) raise the constitutional question at the first available opportunity; (2) designate specifically the constitutional provision claimed to have been violated, such as by explicit reference to the article and section or by quotation of the provision itself; (3) state the facts showing the violation; and (4) preserve the constitutional question throughout for appellate review." *Callier v. Dir. of Revenue*, *State*, 780 S.W.2d 639, 641 (Mo. banc 1989).[11] No post-trial motions were required, and the issue is preserved.

[11] All of Appellants constitutional claims were raised at the earliest possible time, in the Petition (D2) as well as the First Amended Petition (D15). The constitutional claims were specifically designated in those pleadings, sufficient factual allegations were presented, and the case went to trial on the constitutional claims raised.

II. Argument

The individual Appellants Powell and Morgan are eligible Missouri registered voters whose right to vote has been denied, burdened, or abridged because of the Voter ID Restrictions. Appellant O'Connor, now deceased, was a registered Missouri voter whose right to vote was burdened and abridged due to the Voter ID Restrictions. The burdens faced by Appellants here significantly mirror those faced by the plaintiffs in *Weinschenk* and *Priorities. See Weinschenk*, 203 S.W.3d at 206 (discussing the evidence related to people who lack the proper form of identification to vote and the burdens they face in obtaining the required form of identification); *Priorities*, 591 S.W.3d at 458 (discussing how *Weinschenk* "emphasized that some individuals, due to their personal circumstances, experience hurdles when attempting to obtain photo identification," and that is "a concern that remains relevant in the instant case").

"Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote." *Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002). A plaintiff must have "a pecuniary or personal interest directly in issue or jeopardy which is subject to some consequential relief, either immediate or prospective." *Vowell v. Kander*, 451 S.W.3d 267, 271 (Mo. App. W.D. 2014). "There is no litmus test for determining whether a legally protectable interest exists; it is determined on a case-by-case basis." *Mo. All. for Retired Ams. v. Dep't of Lab. & Indus. Rels.*, 277 S.W.3d 670, 676 (Mo. banc 2009).

The trial court noted that it dismissed the first petition for failure to sufficiently allege standing, *see* D77 pp. 1, 6, 16, 19; App. A001, but by referencing this in the final judgment the court substantially neglected the additional factual allegations included in the first amended petition and proven at trial. The trial court's finding that individual Appellants lacked standing is contradicted by record evidence and uncontradicted trial testimony showing clear, specific, material burdens experienced by Appellants Powell, Morgan, and O'Connor.

A. D. Rene Powell has standing.

Ms. Powell is an eligible Missouri voter whose right to vote has been burdened because of the Voter ID Restrictions. As noted in the statement of facts, Ms. Powell suffers from epilepsy, serious mobility issues, and a medical condition resulting in stiffness in her left arm and leg. Her left arm, with which she writes, is poised at a ninety-degree angle, making it difficult to sign her name consistently. She does not drive and, when she walks, she uses a rollator for assistance. Ms. Powell has suffered seizures for most of her life, has broken several bones as a result, and has had multiple brain surgeries. Her epilepsy and mobility issues present major obstacles that she has to overcome to live her daily life. Even assuming Ms. Powell could obtain one form of photo ID at no cost, her testimony demonstrated that she faces severe and significant burdens in procuring it. It is dangerous for Ms. Powell to take the bus and then walk to the nearest license office. She would have to navigate a dangerous and busy intersection. She is on a very fixed income, does not have extra money for rideshares, and does not feel comfortable asking for rides from friends and

acquaintances. Moreover, Ms. Powell has suffered seizures while waiting at a bus stop and even crossing the street.

Requiring her to navigate the city to obtain an ID to vote is a significant burden. *See Priorities*, 591 S.W.3d at 458 n.17 ("[D]ifficulties such as lack of transportation or time could prevent access to photo identification. '[M]any voters who are elderly, disabled, or have certain physical or mental problems simply cannot navigate that process or any long waits successfully.'" (quoting *Weinschenk*, 203 S.W.3d at 215)); *Weinschenk*, 203 S.W.3d at 208 ("Mr. William Kottmeyer has limited mobility, making it difficult for him to gather the necessary documents to obtain a non-driver license and to stand in line at the Department of Revenue. Mr. Robert Pund has a physical condition that requires him to arrange transportation to and from the Department of Revenue and to employ an attendant to assist him in order to obtain a non-driver's license.").

Because her photo ID is expired, Ms. Powell's only option to vote in person is to cast a provisional ballot that may or may not be counted depending on whether the LEA determines her signature on that ballot is a match to her signature on file. While her provisional ballot has been counted in at least one previous election, there is no guarantee that it will be counted in future elections. Trial Tr. 428:15-19, 449:1-15 (Ms. Powell's dystonia affects her ability to grip a pen, and she fears her disability will cause signature-matching issues); *compare* Trial Tr. 449:4-15 (when discussing her signature, Ms. Powell expressed concern because "I think my hand and grip [] has been changing. . . my hand feels different, so I think it could change my signature if my hand feels different."), *with Priorities*, 591 S.W.3d at 458 n.15 ("As Respondents' forensic document examiner expert,

Dr. Linton Mohammed, explained, a number of factors, such as age and illness, can impact an individual's signature. Indeed, Gutierrez testified that, due to a health condition that causes tremors, her signature can differ significantly from one day to the next, and 'there is no way that an ordinary person could look at that and match it.'"); *Weinschenk*, 203 S.W.3d at 208 (declaring that in Missouri "no exception to the signature match requirement is made for Missourians who are unable, because of disability or age, to make a signature or whose signature has changed due to disability or the passage of time since they made their original signature when they initially registered to vote."). As the evidence reflects, since the passage of HB 1878, significantly more provisional ballots are being cast by registered voters, and many are rejected because of a signature mismatch. *See* Defs.' Ex. AH (Powell voting information). As Exhibit AH indicates, at least two provisional ballots were rejected because of inconclusive signatures. The signature matching process is standardless and therefore the provisional ballot is an insufficient failsafe to casting a regular ballot for registered voters who appear on the rolls.

Even if Ms. Powell is ever able to overcome the significant burdens she faces and renew her non-driver license, and even if she obtains one for free, once it expires, she will have to pay for every subsequent ID (every six years at a cost of eighteen dollars) until she turns seventy because, as of the date of trial, the State provides only one no-fee ID per voter for life in Missouri. *Priorities*, 591 S.W.3d at 458 n.16 ("[E]ach individual is afforded only one free photo identification. As a result, with the exception of individuals older than 70 whose photo identifications do not expire, prospective voters, in future elections, will be required to pay a fee to obtain photo identification."). Declaratory and injunctive relief

would allow Ms. Powell to cast a regular in-person ballot either with her expired non-driver ID or one of her other forms of valid identification allowed under the previous version of the law. Voting in person is very important to Ms. Powell, who serves on Columbia's Disability Commission, and is able to walk the short distance to her neighborhood polling place on safe pedestrian-friendly streets.

The trial court ignored all of the evidence of Ms. Powell's epilepsy and mobility issues, including specific allegations in the amended petition that were proven at trial, which demonstrate the significant burdens she faces as a result of the Voter ID Restrictions. *See* D15 ¶¶ 50-58, 69-71; Trial Tr. 429:1-442:15. Though she perhaps theoretically "can" obtain a photo ID, *see* D77 p. 21; App. A001, her physical conditions make it difficult and dangerous for her to do so. *See* D15 ¶¶ 51-53; *see also* Trial Tr 436:7-437:22 (describing the risks Ms. Powell faces navigating streets, sidewalks, and public spaces). Because of her seizures, which have caused broken bones and hospitalizations, Powell avoids unnecessary risks and tries to limit how often she leaves her home. Trial Tr. 437:23-438:13; *see also* D15 ¶¶ 70-71. Obtaining a photo ID from the license office would not be "a *de minimis* administrative burden" for Ms. Powell, *see* D77 p. 21; App. A001, but a difficult, frightening, and unsafe endeavor. And no one should be forced by the State to be on a disabled voter list. Ms. Powell prefers to vote in person when she can, and she should not face substantial burdens in doing so. None of Ms. Powell's burdens are *de minimis*.

All of these facts that were not controverted at trial, and were ignored in the trial court's Judgment, establish that Ms. Powell has standing.

B. Kimberly Morgan has standing.

Ms. Morgan would also have to overcome serious logistical and financial burdens in order to amend her birth certificate and obtain a state-issued photo ID that spells her name correctly. She does not vote with her current state-issued ID because of the misspelling; she prefers to vote with her registration card, which spells her name correctly. It would be entirely up to any given poll-worker to decide whether to accept Ms. Morgan's inaccurately spelled ID for casting a regular ballot on Election Day. *See* Trial Tr. 834:8-11 (LEA agreeing that "[i]t is within the discretion of a poll worker checking someone in to determine whether their name matches their ID"); *see also* § 115.427.1(3); App. A086 (referring to a voter's name that "substantially conforms to the most recent signature in the individual's voter registration record"). This is a risk she is not comfortable taking—nor should she be forced to take it. It is not uncommon for two different people to have the same or very similar names, with only one letter being the difference (e.g., Sara Johnson and Sarah Johnson); *see also Weinschenk*, 203 S.W.3d 201 ("Ms. Amanda Mullaney was born in Kentucky, and her current name does not match the name on her birth certificate."). Moreover, using her current state ID could open Ms. Morgan up to investigation of an election offense if a poll worker did not believe that her name conformed to that on file. The record in this case includes thousands of pages of complaints filed with the state's Election Integrity Unit, all of which the State of Missouri claims to take seriously and investigate. If Ms. Morgan is not permitted to cast a regular ballot, she would have to cast a provisional ballot and be subjected to the flawed signature-matching process in order for her vote to count.

Correcting the spelling of her name on her birth certificate and state ID is difficult for Ms. Morgan, who struggles financially and does not drive. *See* Trial Tr. 262:12–266:18 (discussing Ms. Morgan's communications with Vital Records and her inability to obtain the requested documentation to change her Birth Certificate or pay the $15 fee for a new birth certificate); Pls.' Ex. 39 (Email Exchange with Vital Records); Trial Tr. 267:13-269:17 (discussing Ms. Morgan's communication with the Secretary of State's office about obtaining assistance with procuring a new photo ID); Pls.' Ex. 43 (Email Exchange with Secretary of State's Office).

On October 18, 2022, Ms. Morgan reached out to the Secretary of State's Office free ID program for assistance in correcting the misspelling of her name on her photo ID. D37 ¶ 57; App. A040. Instead, Ms. Straub directed Ms. Morgan to the website for the Department of Vital Records. *Id.* Ms. Morgan offered a social security card to support her request for an amended birth certificate, but it was not accepted and Ms. Morgan lacks other qualifying documents.[12] She would also have to pay a fee to amend her birth certificate, which she cannot afford. Trial Tr. 266:11-18; *cf. Weinschenk*, 203 S.W.3d at 209, 214 (discussing the "substantial costs" both financially, practically, **and** bureaucratically a person would have to incur to change their documentation). To amend her birth certificate she must provide documentation that shows "at a minimum, the correct full name and correct age or date of birth, and shall have been filed at least five (5) years

[12] *See* Trial Tr. 269:18-272:3 (Ms. Morgan testifying that she does not have a passport, military ID, or a document with the correct spelling of her name that is at least five years old).

prior to the date of application for the amendment." 19 C.S.R. 10-10.110(1)(A) (emphasis added). Ms. Morgan does not have a document that satisfies this requirement. Ms. Morgan does not drive, lacks access to public transportation, does not have a bank account, cannot afford her cell phone bill, and does not have extra income to pay for the documentation needed to amend her birth certificate—documentation that the State of Missouri does not include in the documents it will pay for to assist voters who lack a photo ID.

The trial court found that Ms. Morgan's misspelled photo ID "substantially conforms" to her correctly spelled voter registration record and is therefore legally sufficient for her to vote. D77 pp. 16, 20; App. A001. But the decision of whether to accept Ms. Morgan's misspelled photo ID will be up to the sole discretion of a poll worker on Election Day. Trial Tr. 834:8-11. Additionally, the trial court's legal conclusions on this point do nothing to address the actual burdens experienced by Ms. Morgan as a result of the Voter ID Restrictions. As Ms. Morgan testified, she has not voted since the law was enacted because she is afraid she would "be mistaken for voting fraudulently or be[] turned away." Trial Tr. 274:14-24; *see also* D15 ¶¶ 93, 103. And the trial court erred in failing to consider Ms. Morgan's uncontradicted testimony of the substantial bureaucratic, practical, and financial barriers she must overcome to correct the name on her photo ID. *Compare* D77 pp. 20-21; App. A001 (dismissing the burden without explanation or discussion of her testimony), *with* Trial Tr. 262:1-272:2, *and* D15 ¶¶ 94-100. None of Ms. Morgan's burdens are *de minimis*.

All of this record evidence that was not controverted at trial, and was ignored in the trial court's Judgment, establish that Ms. Morgan has standing.

C. John O'Connor has standing.

The trial court's finding that Mr. O'Connor's burdens in procuring a state ID were *de minimis*, D77 pp. 19-20; App. A001, is contradicted by evidence of significant difficulties Mr. O'Connor endured in order to exercise his right to vote under HB 1878. *See* D15 ¶¶ 109-124; O'Connor Dep. Tr. 28:19-29:12, 31:13-35:21.[13] Mr. O'Connor faced serious physical barriers to obtaining a photo ID, including vision loss, hearing loss, and mobility issues, and he needed many hours of assistance collecting documents, traveling to the DMV, and completing the appointment. D15 ¶¶ 109-112, 116-121, 124; O'Connor Dep. Tr. 27:1-11, 44:18-45:1. Notwithstanding the trial court's assertion to the contrary, *see* D77 p. 16; App. A001, Mr. O'Connor only undertook these hardships because the new law required him to do so. D15 ¶ 115; O'Connor Dep. Tr. 42:14-22, 45:17-46:7, 47:2-4. Although Mr. O'Connor was ultimately able to obtain a non-driver ID and vote, O'Connor Dep. Tr. 48:14-15, the Voter ID Restrictions substantially burdened his exercise of a constitutional right that he had theretofore exercised unimpeded for many years. *See* D15 ¶ 108; O'Connor Dep. Tr. 48:5-13. The fact that Mr. O'Connor was ultimately able to obtain the ID and vote is immaterial.

[13] Mr. O'Connor was unable to testify at trial and the parties relied on designated testimony from his deposition. The trial court questioned the credibility of Mr. O'Connor's deposition testimony based on a handful of brief exchanges in which Mr. O'Connor expressed his frustration after decades of voting at being forced to undergo what he viewed as an unnecessary ordeal to obtain a new ID to exercise his right to vote. D77 p. 5; App. A001; *see, e.g.*, O'Connor Dep. Tr. 52:4-14. But the trial court's finding that Mr. O'Connor's burdens were *de minimis* can be based only on this same testimony, suggesting that it was at least partially credited. Further, the facts of the testimony itself were never controverted.

In *Priorities*, the individual plaintiffs were able to vote after signing an affidavit that was later found unconstitutional. The fact that they voted did not diminish their standing because the law still abridged their right to vote. Moreover, the fact that one of those plaintiffs, Ms. Gutierrez, was able to navigate the bureaucratic barriers imposed by the State and obtain a valid photo ID (like Mr. O'Connor here) did not disqualify her from pursuing her claims.[14] Like that plaintiff in *Priorities*, Mr. O'Connor undoubtedly suffered an injury in the form of time and expense in obtaining an approved voter ID and other hurdles he had to overcome to exercise his right to vote. He expended resources navigating bureaucratic requirements and experienced distress feeling like his right to vote was infringed. *Weinschenk*, 203 S.W.3d at 208-09.

Mr. O'Connor had significant problems with his vision, as well as mobility issues. On the eve of the November 2022 general elections, Mr. O'Connor overcame significant obstacles to obtain a non-driver license for voting and did so only because he had the assistance of his wife and a DMV staffer who accepted his invalid underlying ID. Without

[14] In *Priorities*, Defendants filed a motion to dismiss, in part, arguing that "Ms. Gutierrez now has a valid photo ID" and therefore lacked standing. *See Priorities USA v. State*, Case No. 18AC-CC00226, Motion to Dismiss the First Amended Petition and Suggestions in Support at 25, filed September 4, 2018; App. A148; *see also Priorities USA v. State*, Case No. 18AC-CC00226, Trial Tr. 45-52; App. A181 (testimony discussing how Plaintiff Gutierrez obtained a photo ID, including the cost in time, effort, and money required for her to do so). The trial court denied Defendant's motion to dismiss. *See Priorities USA v. State,* No. 18AC-CC00226, 2018 WL 6031529, Amended Order and Judgment (Mo. Cir. Oct. 23, 2018), at 6; App. A142. This decision as it related to the motion to dismiss and Plaintiff Gutierrez's standing was not revisited on appeal. *See generally Priorities USA v. State*, 591 S.W.3d 448 (Mo. banc 2020). Standing is akin to jurisdiction over the subject matter. As such, the question of a party's standing can be raised at any time, including *sua sponte* by a Court. *State ex rel. Mathewson v. Bd. of Election Comm'rs of St. Louis Cnty*., 841 S.W.2d 633, 634 (Mo. banc 1992).

that assistance, he would not have been able to locate his underlying documents, get to the DMV, or navigate the bureaucracy facing him. To demonstrate his identity, Mr. O'Connor provided his driver's license that expired in 2016, which was more than 180 days expired and thereby an unacceptable identity document, but a sympathetic staffer allowed it. O'Connor Dep. Tr. 26:14-19, 32:20-33:2; D15 ¶ 122. A person need not be disenfranchised for their right to vote to have been abridged. *See Brakebill v. Jaeger*, 932 F.3d 671, 676-77 (8th Cir. 2019) (finding that the plaintiffs had standing and affirming the trial court's finding that "'[t]he burden of having to obtain and produce an ID [for voting] itself has been found sufficient to confer standing, regardless of whether the Plaintiffs are able to obtain an ID'" (quoting the trial court's decision)).

D. John O'Connor's claim survives because the public interest exception to mootness applies.

Mr. O'Connor was a 90-year-old resident of Columbia, Missouri, at the time he testified. Mr. O'Connor had been voting in Missouri for many years using his voter registration card. O'Connor Dep. Tr. 48:5-13. Before the 2022 election, Mr. O'Connor overcame severe burdens to obtain a state-issued ID after both his passport and driver license expired so that he could cast a regular ballot in the election; his only need for a new ID was to vote. O'Connor Dep. Tr. 30:1-6; 31:2-5. O'Connor voted in person for the 2022 election. O'Connor Dep. Tr. 15:9-20, 48:14-21; D15 ¶ 116. After this case had been tried and fully briefed, including proposed findings filed with the trial court, Mr. O'Connor passed away at the age of ninety-one.

Despite his death, Mr. O'Connor's claims are not moot. The public interest exception to mootness permits appellate review when three elements are satisfied: (1) the question implicates matters of general public concern; (2) the controversy is capable of repetition; and (3) the controversy will likely evade effective appellate review. *Vernon Cnty. Republican Comm. v. Lee*, 692 S.W.3d 439, 443 (Mo. App. W.D. 2024). All are present here. To determine whether a matter is of public concern, Missouri courts examine (1) the governmental system implicated by the challenged law, (2) the breadth and scope of its actual impact, and (3) the purely legal, as opposed to fact-dependent, nature of the issue presented. *See State ex rel. Mo. Pub. Defender Comm'n v. Waters*, 370 S.W.3d 592, 603 (Mo. banc 2012); *State ex rel. KCP & L Greater Mo. Operations Co. v. Mo. Pub. Serv. Comm'n*, 408 S.W.3d 153, 160 (Mo. App. W.D. 2013). The present matter meets this test.

The Voter ID Restrictions of HB 1878 implicate Missouri's election system, a core governmental function, and questions relating to the administration and integrity of elections have been deemed to inherently implicate matters of significant public concern. *See No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 489 n.9 (Mo. banc 2022) (finding questions related to ballot initiative procedures "central to democratic self-government"); *State ex rel. Dienoff v. Galkowski*, 426 S.W.3d 633, 639 (Mo. App. E.D. 2014) (finding that issues regarding election procedures implicate statewide electoral governance). The Voter ID Restrictions control which registered voters are permitted to cast regular ballots, thereby affecting the heart of the democratic process itself. Consequently, HB 1878 unequivocally implicates a governmental system that Missouri courts have categorically recognized as constituting a matter of profound public concern. Further, HB 1878's

uniform application affects every registered voter in Missouri. There is no doubt about HB 1878's extensive statewide impact and, therefore, the element of general public concern is satisfied. *See Carter v. Frederickson*, 568 S.W.3d 898, 901 (Mo. App. E.D.); *Dienoff*, 426 S.W.3d at 639.

The present controversy also involves a purely legal question regarding the constitutionality of HB 1878's Voter ID Restrictions. Litigation involving facial statutory challenges or broad constitutional questions consistently satisfies this analytical step. *See Dienoff*, 426 S.W.3d at 639 (finding that purely legal statutory construction questions satisfied public interest requirement); *Waters*, 370 S.W.3d at 603 (holding that constitutional implications inherent in public defender caseload disputes supported public interest finding).

The ongoing and permanent nature of the statutory scheme make it capable of recurrence, supporting the public interest exception. HB 1878 is not subject to temporal or conditional expiration, amendment, or repeal in any foreseeable timeframe. Absent legislative or judicial intervention, HB 1878's identification requirement will govern every Missouri election for the indefinite future. The continuing and permanent nature of the statutory regime makes it capable of recurrence. *See Dienoff*, 426 S.W.3d at 639; *Waters*, 370 S.W.3d at 603-04. Its permanent and enduring presence within Missouri's electoral infrastructure ensures the inevitability of recurring litigation, particularly challenges identical to that presented here—voters asserting constitutional claims when confronted with burdensome identification requirements.

Empirical and demographic data suggest a high likelihood of repetition. *See Waters*, 370 S.W.3d at 603 (using caseload data to demonstrate ongoing and recurrent nature of disputes); *Dienoff*, 426 S.W.3d at 639 (relying on statistical data as empirical support for recurrence); *see also Nichols v. McCarthy*, 609 S.W.3d 483, 491 (Mo. App. W.D. 2020). The demographic evidence is compelling. The record shows that between 220,000 and 337,000 Missourians lack a non-expired Missouri state ID, Trial Tr. 481:16-484:4. Pls.' Ex. 54, p. 2 ¶ 4 (Mayer Expert Report), and with limited exceptions, those who hold them must periodically get them renewed. As these IDs expire on a rolling six-year or three-year basis (depending on the person's age), each election cycle inevitably sees thousands of voters facing precisely the same identification burdens Mr. O'Connor confronted. This empirical reality establishes beyond speculation that challenges to HB 1878 are not isolated or unique, but rather inherently recurring.

This is a purely legal controversy. Missouri courts decline to find recurrence where the underlying controversies turn significantly on individualized, unique factual circumstances unlikely to repeat. *See Friends of the San Luis, Inc. v. Archdiocese of St. Louis*, 312 S.W.3d 476, 485 (Mo. App. E.D. 2010). However, disputes involving purely legal questions and statutory interpretation, which are not predicated upon unique factual variations, inherently recur. *See Dienoff*, 426 S.W.3d at 639 (purely legal ballot-title procedures guaranteed recurrence). Here, the controversy centers on a facial challenge to the constitutionality of HB 1878's Voter ID Restrictions, which inherently recurs with each election for Missouri voters like Mr. O'Connor.

Finally, the public interest exception is warranted where the controversy inherently terminates or expires prior to the completion of effective appellate review. *Bernhardt v. McCarthy*, 467 S.W.3d 348, 351 (Mo. App. W.D. 2015); *Lee*, 692 S.W.3d at 443. Controversies arising from elderly voters like Mr. O'Connor's challenge to the Voter ID Requirements evade appellate review.

In the instant case, the relevant temporal limitation arises neither from statute nor court order but from demographic realities. Elderly litigants like Mr. O'Connor, who was eighty-nine when he testified, face a substantially increased risk of death within a twelve-month period before receiving appellate resolution. Actuarial data published by the Centers for Disease Control and Prevention indicate that the one-year mortality rate for eighty-nine-year-old males in the United States is approximately 14.1%. *See* Elizabeth Arias et al., U.S. Dep't of Health & Hum. Servs., Ctrs. for Disease Control & Prevention, Nat'l Ctr. for Health Stat., *United States Life Tables, 2021*, 72 Nat'l Vital Stat. Rep., no. 12, at tbl.2 (Nov. 7, 2023). Given that Missouri's mortality rates for elderly males have consistently trended slightly higher than national averages, a reasonable actuarial estimate for Missouri males in this cohort would place the twelve-month mortality risk at or just above eighteen percent. *See* Human Life-Table Database, *United States Life Tables, Missouri—Males (2020)*, https://www.lifetable.de/Country/Country?cntr=USA (last visited July 24, 2025) (reporting an 18.0099% one-year mortality rate for eighty-nine-year-old males). Thus, the practical realities of elderly voters who are disproportionately burdened by the restrictions' elimination of expired licenses and voter registration cards, allows the restrictions to

inherently and systematically evade effective appellate review, satisfying the third element of the exception.

The burdens faced by Appellants Powell, Morgan, and O'Connor are substantial and real, and the trial court erred in concluding they lack standing.

POINT II: The trial court erred in finding that the Organizational Appellants lacked standing, because it misapplied the law, in that Organizational Appellants demonstrated at trial that they diverted organizational resources to address the effects of the Voter ID Restrictions sufficient to establish organizational standing.

I. Standard of Review and Preservation of Error

The standard of review is the same as for Point I ("Standing is a question of law, which is reviewed *de novo*." *City of Ferguson*, 354 S.W.3d at 622). Because individual Appellants have standing, this Court need not address Organizational Appellants' standing to determine the constitutionality of the Voter ID Restrictions. *See Mo. State Conf. of Nat'l Ass'n for the Advancement of Colored People v. State*, 607 S.W.3d 728, 730, 739 (Mo. banc 2020) (declining to reach the issues of organizational and associational standing where individual plaintiffs had standing); *see also, e.g.*, *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 486 (Mo. banc 2009) (addressing merits because "at least one plaintiff has standing as to each claim"); *see also Cope v. Parson*, 570 S.W.3d 579, 584 (Mo. banc 2019) ("[I]n light of the holding that [an individual plaintiff] has standing to proceed, the question of [] associational standing need not be addressed."); *Mo. Coal. for Env't v. Joint Com. on Admin.*, 948 S.W.2d 125, 132 (Mo. banc 1997) ("Because we have found that the individual relators have personal standing, the question of whether the coalition can assert such 'associational 'standing is moot and need not be addressed." (citation omitted)).

Nonetheless, Organizational Appellants also have standing, both via their members and because of their stakes in the litigation. No post-trial motions were required, and the issue is preserved.

II. Argument

Both the MONAACP and the LWVMO diverted organizational resources to address the unconstitutional effects of the Voter ID Restrictions.

Organizational standing based upon a diversion of resources is recognized under U.S. Supreme Court precedent, but Missouri caselaw is silent on the concept. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982) (finding organizational standing because "the consequent drain on the organization's resources [] constitutes far more than simply a setback to the organization's abstract social interests"); *see also Nat'l Fed'n of Blind of Mo. v. Cross*, 184 F.3d 973, 979 (8th Cir. 1999) (establishing that organizations may show standing on 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").

Additionally, lower federal courts and other state courts have found such organizational standing in other voting rights cases. *See, e.g.*, *Org. for Black Struggle v. Ashcroft*, 493 F.Supp.3d 790, 798 (W.D. Mo. 2020) (confirming organizational and associational standing of advocacy organizations involved in voter education and protection efforts in challenge to Missouri's mail-in ballot rules); *Applewhite v. Com.*, No. 330 M.D. 2012, 2014 WL 184988, at *7 (Pa. Commw. Ct. Jan. 17, 2014) (finding that

organizational plaintiffs challenging state photo ID restrictions had standing on behalf of their members and their own behalf).

In this case, the trial court heard evidence that appellants Missouri NAACP and LWVMO reacted to the passage of the Voter ID Restrictions by diverting resources from ballot education and get out the vote efforts to education, volunteer training, and outreach related to the voter ID requirements. *See* Trial Tr. 648:9-17, 665:21-666:5, 709:11-15 (testimony of organizational representatives regarding diverted resources). These diversions were in direct response to the concerns raised by the organizations' members and the public. *See* Trial Tr. 649:2-659:10 (testimony of organizational representative regarding the various efforts taken in response to or because of the Voter ID Restrictions). This diversion of their resources is ongoing as long as the Voter ID Restrictions remain in effect. These diversions affect the organizational appellants' ability to engage in other mission-driven work, such as promoting accessibility at the polls for disabled voters or educating voters about ballot items. *See* Trial Tr. 659:11-660:18, 690:1-11, 715:19-716:17 (testimony of organizational representatives discussing voter education efforts and how resource diversion affected organizational activities). Both organizations have made expenditures and diverted resources from mission critical work solely due to the Voter ID Restrictions.

As a result, the injury responded to by appellants is immediate, concrete, non-speculative, and not self-inflicted, and the court below erred in concluding otherwise. Its reliance on *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013), for the proposition that the Organizational Appellants cannot establish organizational standing because the

harm experienced is "self-inflicted," D77 p. 24; App. A001, is misplaced. There, in support of organizational standing, plaintiffs offered expenditures incurred due to the threat of government surveillance that was permitted under the challenged law. *Clapper*, 568 U.S. at 415. This instant case is not analogous.

In *Clapper*, the Court found that the alleged harm was not certainly impending, i.e., imminent, because the plaintiffs' theory of standing relied on a "highly attenuated chain of possibilities." *Id*. at 410 (for example, whether or not the government would target a specific communication or contact, invoke the authority of the challenged law, approve the requested surveillance, successfully intercepted targeted communications, etc.). This challenge does not rely on such a highly attenuated series of circumstances. The record shows both appellant organizations have diverted organizational resources to address the restrictions' impact on their members and constituencies they serve.

In *Clapper*, the Court found that even before the surveillance law in question was enacted, the plaintiff organizations had "similar incentive" to incur the same or similar expenses. *Id*. at 417. Here, Organizational Appellants testified that they significantly modified their work to address the Voter ID Restrictions due to concerns raised by their membership. While they do engage in voter education as a regular activity, the passage of the Voter ID Restrictions necessitated the shifting of that education away from voter engagement and matters on the ballot, to educating their members and the public about the photo ID restrictions.

The trial court acknowledged that Organizational Appellants diverted resources due to HB 1878's voter ID requirements but concluded the diversion was caused by the

elimination of advance notice requirements. D77 p. 26; App. A001. The court found that the section of HB 1878 which "lowered the number of methods the Secretary of State had to use to educate voters about the Voter ID provisions, and took away automatic funding of that education," is the specific change in the law that resulted in and caused the Appellant organizations "to divert resources to educate the public about photo ID." D77 pp. 26-27; App. A001. Yet the court below concluded: (1) Appellants did divert resources to address the Voter ID Restrictions, but that (2) such diversion was resultant from the Legislature's defunding of advance notice requirements, rather than the Voter ID Restrictions themselves. The trial court erred.

The only authority cited for this proposition is *California v. Texas*, 593 U.S. 659 (2021). In that case, several States challenged the minimum coverage provision of the Affordable Care Act. The States argued that they would suffer indirect injury due to the provision requiring greater enrollment in state-operated medical insurance programs and direct injury in the form of increased administrative costs required by the challenged provision and other provisions they alleged were interwoven with it. *Id*. at 674. For both arguments, the Court found that any injury possibly incurred was too speculative and not sufficiently traceable to the enforcement of the challenged provision to establish standing. Here the trial court appears to liken Organizational Appellants' arguments to the States' indirect injury argument such that the educational requirements of Section 115.427 are interwoven with the Voter ID Requirements. But Appellants make no such argument.

Appellants' diversion of resources was directly tied to the implementation of the Voter ID Restrictions.[15]

Because both Organizational Appellants diverted their resources as a direct result of the passage of the Voter ID Restrictions, they have standing.

POINT III: The trial court erred in finding that the Organizational Appellants lacked standing, because it misapplied the law, in that Organizational Appellants identified at trial that at least one of their individual members would otherwise have standing to sue in their own right thereby meeting the standard for associational standing.

I. Standard of Review and Preservation of Error

The standard of review and preservation of error for this Point on Appeal are the same as for Points I and II. As with Point II, the question of associational standing need not be reached because the individual Appellants have standing.

II. Argument

Missouri courts have recognized that "[a]n association that itself has not suffered a direct injury from a challenged activity nevertheless may assert 'associational standing' to protect the interests of its members if certain requirements are met." *City of Ferguson*, 354 S.W.3d at 623. An "entity has associational standing if: 1) its members would otherwise have standing to bring suit in their own right; 2) the interests it seeks to protect are germane

[15] An organizational plaintiff proceeded to a final ruling in this Court in *Priorities*. There, the trial court denied a motion to dismiss Priorities USA as an organizational plaintiff. *See Priorities USA v. State*, Case No. 18AC-CC00226 (Cole Cnty. Cir. Ct. Oct. 23, 2018); App. A142. Priorities USA alleged a vested interest in ensuring that Missourians have free access to the right to vote and that the strict voter ID law undermined this core mission. The trial court's standing determination was not an issue on appeal when this Court ruled in favor of appellants, including Priorities USA. *See Priorities*, 591 S.W.3d at 448.

to the organization's purpose; and 3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977); *Mo. Bankers Ass'n v. Dir. of Mo. Div. of Credit Unions*, 126 S.W.3d 360, 363 (Mo. banc 2003). This test ensures that those who stand to benefit from the litigation "have a legally protectable interest at stake." *State ex rel. Chilcutt v. Thatch*, 221 S.W.2d 172, 176 (Mo. banc 1949). It also ensures that there is not a mismatch between litigation topic and organizational expertise. *City of Ferguson*, 354 S.W.3d at 623.

Appellants have established associational standing because the record reflects that both MONAACP and LWVMO have members who would otherwise have standing to bring this suit in their own right. It is undisputed that MONAACP and LWVMO are membership organizations whose members are of voting age and intend to vote in upcoming elections. In addition, both organizations' representatives testified specifically about the burdens their members face related to obtaining limited forms of acceptable photo identification.

Missouri courts have found associational standing where some, but not all, of the organization's members would have standing to sue in their own right. *Bldg. Owners and Managers Ass'n of Metro. St. Louis, Inc. v. City of St. Louis*, 341 S.W.3d 143, 148 (Mo. App. E.D. 2011); *see also, e.g.*, *Mo. Bankers Ass'n v. Dir. of Mo. Div. of Credit Unions*, 126 S.W.3d 360, 361, 363 (Mo. banc 2003) (holding that an association consisting of 385 commercial banks and savings banks located throughout the state of Missouri had associational standing where eighty-eight members were affected by regulation of credit

unions in a specific area code); *Home Builders Ass'n of Greater St. Louis, Inc. v. City of Wildwood*, 32 S.W.3d 612, 614-15 (Mo. App. E.D. 2000) (holding that an association of home builders in the metropolitan St. Louis area had standing to challenge the City of Wildwood's municipal ordinance); *City of Ferguson*, 354 S.W.3d at 624 (concluding there was no merit to an argument that because only a small number of members were impacted, there was no standing for the association). In fact, the Missouri Supreme Court has held that associational standing exists when an organization can demonstrate "that at least one of its members would have standing to sue, that the interests the suit seeks to protect are germane to the association's purpose, and that neither the claim asserted nor relief requested requires the participation of individual members in the lawsuit[.]" *City of Ferguson*, 354 S.W.3d at 622. Missouri NAACP and LWVMO have each identified at least one member who would have standing, and the organizations have therefore established that they have associational standing.

Ms. Powell is a member of LWVMO, and Mr. O'Connor was also a member at the time of trial. As discussed in Point I, *supra*, both of these individual Appellants have standing and are each at least one identifiable member of Appellant LWVMO to establish its associational standing. Alternatively, both organizations provided evidence at trial of specific members impacted by the Voter ID Restrictions and who would otherwise have standing to bring this suit in their own right.[16]

[16] At trial, Respondents objected to the testimony of the organization representatives, Ms. McLeod and Mr. Chapel, concerning the circumstances of their members as hearsay, and the parties submitted post-trial briefing on these objections. In its Judgment, the trial court

Members of the Missouri NAACP include eligible voters in Missouri who seek to vote, but currently do not have a photo ID. Trial Tr. 724:5-22. Missouri NAACP member Ms. Jackson, a registered voter from Kansas City, was turned away from the polls during the November 2023 election for failing to have a valid photo ID. Trial Tr. 724:18-22,725:16-726:5; 747:6-19, 749:15-18. Due to the combined impact of identity theft and the similarity of her name to those of her fellow quadruplet siblings born on the same date, she had difficulty getting accurate underlying documents needed for a Missouri photo ID. Trial Tr. 725:16-726:5. Elayne Enyard, a Missouri NAACP member from Kansas City and a registered voter, was born out of state and was unable to obtain a copy of her birth certificate. Trial Tr. 724:18-22, 726:6-8, Trial Tr. 1235:15-1237:24, Pls.' Ex. 112. Millie Mouton is a Missouri NAACP member who did not have the necessary underlying documents to obtain a valid photo ID. Trial Tr. 724:18-22, 726:23–727:4.

LWVMO member Abigail Hardwick, a student at Missouri State University, is registered to vote in Missouri but has a driver license from Oklahoma that is still valid and that she has no desire to relinquish—something she would be required to do in order to obtain a Missouri state ID necessary to vote in person. Trial Tr. 668:13-25, 670:7-21. Another LWVMO member, Tracy Heath, moved back to Missouri from Florida and did not have access to her underlying documentation needed to obtain a photo ID and wanted

found this testimony to be inadmissible hearsay, D77 p. 29; App. A001, and ruled that the organizational Appellants could not establish standing through that testimony. This is the basis of a separate error that is addressed in Point on Appeal IV, *infra*.

to vote in person but could not because of the Voter ID Restrictions. Trial Tr. 670:24-671:10.

Missouri courts have recognized evidence of this nature as sufficient for satisfying the first prong of the associational standing test. *See, e.g.*, *City of Ferguson*, 354 S.W.3d at 624 (finding "the association" had adequately shown associational standing where "the government affairs director of the association testified that there are other owner-members [who would have standing in their own right], although she could not state their number"). With respect to the second and third prongs of the associational standing test, the record reflects that the purposes and missions of both organizations encompass working to protect voting rights in Missouri, and the Organizational Appellants seek a prospective remedy only, so the participation of their individual members is not needed. *See, e.g.*, *Home Builders Ass'n of Greater St. Louis, Inc. v. City of Wildwood*, 32 S.W.3d 612, 615 (Mo. App. E.D. 2000).

For each of these reasons, the trial court erred in finding that the Organizational Appellants lack associational standing.

POINT IV: The trial court erred in excluding testimony of representatives of the Organizational Appellants and finding it to be inadmissible hearsay because the trial court abused its discretion and erroneously declared the law in that the testimony was not hearsay because a representative of an organization can testify on behalf of the organization as to the organization's knowledge as to all matters, including its members.

I. Standard of Review and Preservation of Error

"A trial court has broad discretion to admit or exclude evidence at trial." *State v. Kemp*, 212 S.W.3d 135, 145 (Mo. banc 2007). "This standard of review compels the

reversal of a trial court's ruling on the admission of evidence only if the court has clearly abused its discretion." *Id.* "[D]iscretion is abused when a ruling is clearly against the logic of the circumstances and is so unreasonable as to indicate a lack of careful consideration." *Id.* Post-trial briefing on this issue was provided as requested; however, no post-trial motion was required as the trial court made its determination of the issue in the final judgment and this issue is therefore preserved.

II. Argument

Nimrod Chapel and Marilyn McLeod were each designated as "corporate representatives"[17] for the Missouri NAACP and LWVMO, respectively, and testified on behalf of their organizations and the organizations' members. *See* Trial Tr. 694:21-695:2. At trial, Defendants raised objections to any testimony that related to the circumstances of the organizations' members, arguing that it was inadmissible hearsay for the organizational representatives to testify about the organization's knowledge as to members. Rule 57.03(b)(4) contemplates that the designee will "testify as to matters known or reasonably available *to the organization*." (emphasis added). As the Missouri Supreme Court has recognized in the context of a deposition, "the testimony of the corporate representative designated pursuant to Rule 57.03(b)(4) is not the deposition of that individual for his or her personal recollections or knowledge but is instead 'the deposition of the corporate

[17] While "corporate representative" is a term of art, the Missouri NAACP and LWVMO are nonprofit corporations that designated Mr. Chapel and Ms. McLeod to testify on their behalf. For example, Rule 57.03(b)(4) permits depositions of "a public or private corporation or a partnership or association or governmental agency," as discussed herein.

defendant.'" *State ex rel. Reif v. Jamison*, 271 S.W.3d 549, 551 (Mo. banc 2008) (quoting *Annin v. Bi-State Dev. Agency*, 657 S.W.2d 382, 386 (Mo. App. E.D. 1983)).

Missouri courts have explicitly extended these principles to trial testimony.[18] In *Brummett v. Burberry Ltd.*, 597 S.W.3d 295 (Mo. App. W.D. 2019), the Western District reiterated its position that a corporate representative could appropriately testify at trial as to matters beyond their personal knowledge. Indeed, even if not designated as corporate representatives, "[c]orporate employees are free to testify within the scope and course of their employment concerning matters within the scope and course of their employment," including as to matters "beyond the scope of [their] knowledge." *Id.* at 309 (quoting *Lunceford v. Houghtlin*, 326 S.W.3d 53, 73 (Mo. App. W.D. 2010)). Therefore, a corporate representative need not have "personal knowledge" about the facts to which they testify. *Id.* at 310. Thus, their testimony to matters beyond their knowledge is not considered hearsay. Instead, it is for the court, as the trier of fact, to assign the weight given to the testimony of a corporate representative. *Id.* (holding that any doubts about a corporate representative's lack of personal knowledge go to "the weight to be afforded their testimony and not to its admissibility").

[18] Missouri courts have also admitted deposition testimony of a corporate representative at trial as an admission of a party opponent. *See Payne v. Cornhusker Motor Lines, Inc.*, 177 S.W.3d 820, 839 (Mo. App. E.D. 2005) (finding testimony of corporate representative was admissible because, even though corporate representative was not personally involved in investigation of accident, he had knowledge as to the results of the investigation and the corporation's subsequent determination as to cause of accident).

Nor are Missouri Courts alone in allowing corporate representatives to testify at trial to matters beyond the representative's personal knowledge.[19] *See Kirk v. Schaeffler Grp. USA, Inc*., No. 3:13-CV-5032-DGK, 2016 WL 593813, at *1 (W.D. Mo. Feb. 12, 2016) (finding that a corporate representative may testify at trial about matters within a corporate defendant's knowledge, even if the witness lacks first-hand knowledge of these matters); *see also Brazos River Auth. v. GE Ionics, Inc*., 469 F.3d 416, 434 (5th Cir. 2006) ("[I]f a rule 30(b)(6) witness is made available at trial, he should be allowed to testify as to matters within corporate knowledge to which he testified in deposition ... [and] he should be able to present [the company's] subjective beliefs ... as long as those beliefs are based on the collective knowledge of [the company's] personnel.")); *Univ. Healthsystem Consortium v. UnitedHealth Grp., Inc*., 68 F. Supp 3d. 917, 921 (N.D. Ill. 2014) (noting that there is "little principled distinction" between allowing a Fed. R. Civ. P 30(b)(6) witness to testify at trial without personal knowledge and allowing him to testify at deposition or via affidavit without personal knowledge).

The ability of a corporate representative to testify to matters beyond their personal knowledge benefits both parties in litigation. *State ex rel. Reif*, 271 S.W.3d at 551 ("If the representative can state simply that he or she has no personal knowledge of the matter, then a party engaged in litigation against a corporation would be placed at a significant

[19] To the extent there is a split amongst the federal courts, the Western District of Missouri noted that "federal precedent is not binding on our construction of Missouri's Rules of Civil Procedure." *Brummett v. Burberry Ltd.*, 597 S.W.3d 295 at 309 (Mo. App. W.D. 2019) (citing *Joel Bianco Kawasaki Plus v. Meramec Valley Bank*, 81 S.W.3d 528, 533 (Mo. banc 2002)). Moreover, Missouri does not have codified rules of evidence and, therefore, contrary federal case law that depends on Fed. R. of Evid. 602 is not applicable. *Id.*

disadvantage, subject to deposition by the corporate defendant but left with little access to what knowledge could be imputed to the corporation."); *see also Sara Lee Corp. v. Kraft Foods Inc*., 276 F.R.D. 500, 503 (N.D. Ill. 2011) (declining to limit 30(b)(6) testimony strictly to matters within the witness's personal knowledge because "[w]hen it comes to using Rule 30(b)(6) depositions at trial, strictly imposing the personal knowledge requirement would only recreate the problems that Rule 30(b)(6) was created to solve. For example, a party might force a corporation to 'take a position' on multiple issues through a Rule 30(b)(6) deposition, only to be left with the daunting task of identifying which individual employees and former employees will have to be called at trial to establish the same facts.").[20]

The purpose of a corporate representative mirrors, in many respects, the purposes of associational standing. In cases where organizations sue on behalf of their members, "it is manifest that [the constitutional] right is properly assertable by the Association. . . [The association] is the appropriate party to assert that rights, because it and its members are in

[20] *See also M.B.A.F B. Fed. Credit Union v. Cumis Ins. Soc., Inc*., 681 F.2d 930, 932 (4th Cir. 1982) (explaining that statement about observations would not be based on personal knowledge only if the "witness could not have actually perceived or observed that which he testifies to"); *Ava Acupuncture P.C. v. State Farm Mut. Auto. Ins. Co*., 592 F. Supp. 2d 522, 529 & n.49 (S.D.N.Y. 2008) (holding that statements by an insurance company manager about the amount of denied claims was not inadmissible hearsay as it was based on her personal knowledge, formed "after a review of the records"); *Mora v. Harley-Davidson Credit Corp*., 1:08-CV-01453OWWGSA, 2009 WL 464465, at *4 n.1 (E.D. Cal. Feb. 24, 2009) (holding that the company manager's declaration was not hearsay, as he was "competent to speak to the account records based on his experience, position within the company, access to account records, and personal knowledge based on the review he initiated of [] account data").

every practical sense identical." *See NAACP v. Alabama*, 357 U.S. 449, 460 (1958). An organization 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." *City of Ferguson*, 354 S.W.3d at 623 (quoting *Hunt*, 432 U.S. at 343). To require each member of an association to testify to their own personal experiences would defeat the purpose of associational standing.

Thus, because Rod Chapel and Marilyn McLeod were testifying as "corporate representatives," their testimony concerning information about the organizations' members was not hearsay, and the Court erred in finding that it was. *See* D77 p. 29; App. A001.

POINT V: The trial court erred in entering any decision on the merits after finding that the Appellants lacked standing because the court erroneously declared and applied the law in that a matter is not justiciable if no party has standing to bring it and advisory opinions are not permitted.

I. Standard of Review and Preservation of Error

Following a bench-tried case, "[a]n appellate court must sustain the decree or judgment of the [circuit] court unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Millstone Prop. Owners Ass'n*, 701 S.W.3d at 640-41 (cleaned up). No post-trial motion was required. This issue was raised at the earliest possible time, was fully briefed, and is preserved.

II. Argument

A. If this Court agrees that no Appellant had standing, then any decision on the merits must be vacated.

After finding that the Appellants lacked standing, the trial court issued a decision on the merits affirming the constitutionality of the Voter ID Restrictions. However, under Missouri law, if no party has standing, the court lacks jurisdiction to decide the merits. The Missouri Constitution confers jurisdiction upon the circuit courts over "cases and matters." Mo. Const. art. V, § 14(a); App. A077. "Article V of the Missouri Constitution governs subject-matter jurisdiction, which is the court's authority to render a judgment in a particular category of case." *Peachtree Apartments v. Pallo*, 317 S.W.3d 189, 192 (Mo. App. E.D. 2010); *see also Mo. Soybean Ass'n v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 21 (Mo. banc 2003) ("Subject-matter jurisdiction concerns 'the nature of the cause of action or the relief sought' and exists only when the court 'has the right to proceed to determine the controversy or question in issue between the parties, or grant the relief prayed.'" (citations omitted)). The Missouri Constitution "requires a case to be justiciable in order for the circuit court to have subject-matter jurisdiction over it." *Pallo*, 317 S.W.3d at 192; *see also B.S. v. State*, 966 S.W.2d 343, 344 (Mo. App. E.D. 1998). In other words, if there was no "case[] or matter" within the meaning of Article V, § 14 of the Missouri Constitution, App. A077, any judgment on the merits must be vacated and the case dismissed without prejudice.

B. Standing is a threshold jurisdictional issue that must be resolved before the merits.

Missouri courts are constitutionally prohibited from resolving issues that do not involve a real and justiciable controversy. *See State ex rel. Mo. Parks Ass'n v. Mo. Dep't of Nat. Res.*, 316 S.W.3d 375, 384 (Mo. App. W.D. 2010) ("Missouri courts do not issue opinions that have no practical effect and that are only advisory as to future, hypothetical situations."). The Missouri Supreme Court has repeatedly held that "[w]here, as here, a question is raised about a party's standing, courts have a duty to determine the question of their jurisdiction before reaching substantive issues." *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. banc 2002). If standing is lacking, "the court must dismiss the case because it does not have jurisdiction of the substantive issues presented." *Id.* When standing is absent, the court's judgment has no legal effect and it has no jurisdiction to issue a ruling. *State ex rel. Bird v. Weinstock, 864 S.W.2d 376, 380* (Mo. App. E.D. 1993).

C. The trial court found that no Plaintiff had standing.

Appellants respectfully maintain they have standing to challenge HB 1878, and that the trial court erred in finding to the contrary. However, the trial court concluded otherwise. D.77, pp. 1, 3–30. Assuming the trial court's standing analysis was correct—which Appellants do not concede—the Court had no authority to then reach the merits once it found Appellants lacked standing. A judgment rendered without a justiciable controversy is void and must be vacated. *See Weinstock*, 864 S.W.2d 376, 380 (Mo. App. E.D. 1993); *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013).

D. Missouri courts reject rulings that have no "practical effect."

Missouri courts cannot issue decisions that have no practical effect on the parties before them. *See Kinsky v. Steiger*, 109 S.W.3d 194, 195 (Mo. App. E.D. 2003); *Armstrong v. Elmore*, 990 S.W.2d 62, 64 (Mo. App. W.D. 1999). If the trial court was correct in holding that Appellants lacked standing, then its only proper course was to dismiss the case. Merits rulings issued in the absence of standing are not simply premature, they are ultra vires and must be vacated. *See Schweich*, 408 S.W.3d at 774 ("[S]tanding is a prerequisite to the court's authority to address substantive issues."); *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 227 (Mo. banc 1982).

Because the Court proceeded to enter a constitutional ruling on the merits after finding no plaintiff had standing, its judgment must be vacated. If this Court agrees with the trial court's standing analysis, it should vacate any decision on the merits and dismiss the case without prejudice for lack of standing.

POINT VI: The trial court erred in finding that it could not grant facial relief, as-applied relief, or a universal injunction, because it erroneously declared and applied the law, in that standing and scope of relief are different legal concepts, Appellants raised both facial and as-applied claims, and the court had the authority to grant universal relief.

I. Standard of Review and Preservation of Error

"The standard of review in a court-tried equity action is the same as for any court-tried case; the trial court's judgment will be sustained unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258, 263 (Mo. App. W.D. 2010), as modified (Mar. 30, 2010) (citing *Murphy v. Carron,* 536

S.W.2d 30, 32 (Mo. banc 1976)). "To the extent that a trial court's grant of injunctive relief involves weighing the evidence presented, determining the credibility of witnesses, and formulating an injunction of the appropriate scope, this court reviews for abuse of discretion." *Id.* "Questions of law, however, are reviewed de novo, and no deference is given to the trial court." *Id.* No post-trial motion was required and this issue is preserved for appeal.

II. Argument

A. Standing and scope of relief are separate legal concepts and universal or statewide relief is available in this case.

As addressed fully *supra*, Appellants have standing because they suffer an injury that can be redressed by a ruling in their favor. *St. Louis Cnty. v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014). Here, they brought both facial and as-applied claims to the Voter ID Restrictions, as the trial court recognized. D77 p. 30; App. A001. Whether the court can or should issue a particular remedy is not the same as whether a party has standing to request that relief. Here, however, an order blocking enforcement of the Voter ID Restrictions is appropriate because it is necessary to remedy the constitutional infirmities that caused Appellants' harm. In finding that it could not grant any of the requested relief, the trial court's decision ignores the request for as-applied relief and overextends federal and state precedent in its analysis of the proper test for facial challenges.

The trial court, citing to *State v. Kerr*, 905 S.W.2d 514, 515 (Mo. banc 1995), found that Appellants were not entitled to relief based upon their facial challenge because they could not meet the purported "no set of circumstances" test. D77 p. 30; App. A001; *Kerr*,

905 S.W.2d at 515. In *Kerr*, a criminal defendant was charged with second-degree assault of a police officer and challenged the statute as overbroad in violation of equal protection. 905 S.W.2d at 514-15. After finding that the statute met the rational basis standard, this Court, relying entirely on the language in *United States v. Salerno*, 481 U.S. 739 (1987), and without additional analysis, found that a "facial challenge" could not be made. *Kerr*, 905 S.W.2d at 514-15. Kerr did not allege that he was a member of a protected class, nor did he claim violation of a fundamental right. *Id.* at 515 n.2. The trial court erred in both its understanding and application of *Salerno* and this test.

First, the proper test for a facial claim encompasses both *Salerno*'s "no set of circumstances" test, as well as whether a challenger "shows that the law lacks a 'plainly legitimate sweep.'" *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)). Indeed, since *Salerno*, the U.S. Supreme Court has instructed that "[i]n determining whether a law is facially invalid, [a court] must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange*, 552 U.S. at 449-50. Appellants are not asking this Court to speculate as to any hypothetical or imaginary cases. Appellants have demonstrated that they face substantial burdens in obtaining the required photo ID to vote, as discussed *supra*. In voting rights cases in Missouri, this is sufficient for a facial claim and statewide relief. *See Weinschenk*, 203 S.W.3d at 221-22 (enjoining the photo ID law challenged in that case).

Second, the U.S. Supreme Court has explained in its jurisprudence since *Salerno*, that "[t]he proper focus of the constitutional inquiry is the group for whom the law is a

restriction, not the group for whom the law is irrelevant." *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015) (emphasis added); *see also Weinschenk*, 203 S.W.3d at 206 (holding that, though only three to four percent of Missourians lack the requisite photo ID, that did not preclude statewide relief on a facial claim brought by six individuals and an organization). This is precisely the test that is relevant and has been applied in voting rights cases. While the burden is viewed as it applies to the individuals who brought the claims for the purposes of standing to challenge the law, the evidence in the record demonstrates a burden for thousands of Missourians similarly situated to appellants who lack the required ID to vote, and, as in *Weinschenk* and *Priorities*, the relief can be statewide in order to be complete. No one disputes that a small percentage of the total population lacks a required photo ID and is burdened by the process of obtaining one, compared to the population at large. (Even then, impacted Missourians are estimated to count in the hundreds of thousands). Moreover, that fact that the impacted community is a small subset of the larger population has not defeated these types of claims or the relief sought in the past. Nor should it today. If one does not face a substantial burden in obtaining a photo ID as required for voting, the law is irrelevant. Further, where, as here, the parties bringing the challenge affirmatively seek to have a law declared unconstitutional and are part of the class burdened by the law, Missouri courts adjudicate constitutional claims seeking facial declaratory and injunctive relief without requiring that the plaintiff meet the "no set of circumstances" standard. *See, e.g.*, *No Bans on Choice*, 638 S.W.3d at 491-92 (reviewing constitutional provision under applicable constitutional standard rather than the "no set of circumstances" test).

Most notably and relevant to the claims in this case are the decisions in *Weinschenk* and *Priorities*. As noted, in *Weinschenk*, six individuals and one organization brought a petition for declaratory and injunctive relief challenging (both facially and as applied) the constitutionality of a photo ID law passed in 2006. *See Weinschenk v. State*, Case No. 06AC-CC00656 (Cole Cnty. Cir. Ct. 2006) (First Amended Petition filed August 17, 2006, available on case.net); App. A457. The six individuals and organizational plaintiff in *Weinschenk* sought relief under the same constitutional provisions—the fundamental right to vote and equal protection—as the Appellants in this case. *See Weinschenk*, 203 S.W.3d at 204-05 (affirming a trial court decision placing a statewide injunction on a law requiring photo ID to vote because it was subject to strict scrutiny and not narrowly tailored to meet the state's interest in preventing voter fraud). In *Priorities*, two individuals and two organizations brought a petition for declaratory and injunctive relief challenging (both facially and as applied) the constitutionality of a photo ID law passed in 2016. *See Priorities USA v. State*, Case No. 18AC-CC00226 (Cole Cnty. Cir. Ct. 2018) (First Amended Petition filed August 3, 2018); App. A105. Like in *Weinschenk*, and after the passage of the 2016 constitutional amendment addressed herein, the two individuals and organizational plaintiffs brought claims under the same constitutional provisions as Appellants. *Id.* In *Priorities*, this Court ultimately invalidated an affidavit requirement and enjoined its enforcement statewide. 591 S.W.3d at 460-61. In other words, in these precedential cases, a limited number of plaintiffs brought challenges to similar laws and this Court enjoined their enforcement not just as applied to the named parties, but across the state. *See, e.g.*, *Priorities*, 591 S.W.3d at 461 (affirming the order and "enjoining the

State form requiring individuals who vote under the non-photo identification option provided in section 115.427.2(1) to execute the affidavit [and] enjoining [the State] from disseminating materials indicating photo identification is required to vote"); *Weinschenk*, 203 S.W.3d at 221-22 (enjoining enforcement of the photo ID provision for all Missouri voters).

Indeed, "there is no one test that applies to all facial challenges." *Doe v. City of Albuquerque*, 667 F.3d 1111, 1124 (10th Cir. 2012). In *Citizens United v. FEC*, the U.S. Supreme Court determined that "the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge." 558 U.S. 310, 331 (2010). Instead, the distinction "goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Id.* Thus, even with a facial challenge like the one brought in this case, such a claim "does not automatically compel the application of a specific test, much less the *Salerno* formulation." *City of Albuquerque*, 667 F.3d at 1124. "The idea that the Supreme Court applies the 'no set of circumstances' test to every facial challenge is simply a fiction, readily dispelled by a plethora of Supreme Court authority." *Id.*; *see also Berkley v. United States*, 287 F.3d 1076, 1090 n.14 (Fed. Cir. 2002) (noting that "in equal protection cases involving facial challenges, the Supreme Court has thus far not discussed or applied the *Salerno* test"). In a case like this one, "the claimed constitutional violation inheres in the terms of the statute, not its application." *Ezell v. City of Chicago*, 651 F.3d 684, 698 (7th Cir. 2011); *see also No Bans on Choice*, 638 S.W.3d at 491.

The proper question is whether the Voter ID Restrictions are unconstitutional under the Missouri Constitution's fundamental right to vote and equal protection clauses. This case, like *Weinschenk* and *Priorities* before it, is not about third-party standing and the claims brought by Appellants are consistent with this Court's and U.S. Supreme Court's cases that have "repeatedly considered facial challenges simply by applying the relevant constitutional test to the challenged statute without attempting to conjure up whether or not there is a hypothetical situation in which application of the statute might be valid." *City of Albuquerque*, 667 F.3d at 1124 (collecting cases); *see also No Bans on Choice*, 638 S.W.3d at 492 (holding "the standard for determining if a law violates [the fundamental right to referendum] is whether the law 'interferes with or impedes' the *right* of referendum, not whether it 'interferes with or impedes' any particular referendum effort"); *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515 (Mo. banc 1991).

Additionally, the standard Appellants must meet to succeed is not whether they could cast a ballot by *some* measure. The test is whether they suffered a substantial burden to their fundamental right to vote. As discussed herein, the fact that Mr. O'Connor overcame his substantial burdens to obtain his photo ID in order to vote, like Ms. Guitierrez in *Priorities*, does not defeat a claim that one's fundamental right to vote has been burdened. Likewise, the fact that Ms. Powell can and has cast a provisional ballot does not defeat her claims that her right to vote is unconstitutionally burdened by the Voter ID Restrictions. Ms. Morgan's burdens in correcting the spelling of her name are also substantial and were entirely overlooked by the trial court. These burdens are real and substantial, which demonstrates these individuals have standing to challenge the law at

issue, and the declaratory and injunctive relief they seek will remedy their harms as well as those of other similarly situated Missourians faced with the burdens imposed by the Voter ID Restrictions.

B. CASA v. Trump does not apply and does not change this analysis; even if it did apply, statewide injunctive relief in this case is appropriate because it is the only remedy that would redress the harms of Appellants.

The Supreme Court's recent decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025), does not alter this analysis.[21] For one thing, *CASA* addresses the power "that Congress has granted to the federal courts." *Id.* at 2548. The case has nothing to say about the power the Missouri Constitution has given to the Missouri state courts.

Indeed, the relief that can be ordered by Missouri courts, particularly Missouri appellate courts, is far broader than the sort of relief that can be ordered by federal courts under the Federal Judiciary Act. At least two provisions of the Missouri Constitution—the open-courts provision and the superintendence-authority provision—suggest that the right of the people to obtain remedies, and the power of courts to issue them, inhere in the Missouri Constitution itself and, unlike in federal court, do not hinge on the willingness (or unwillingness) of the legislature to confer upon the judiciary the authority to issue relief that reaches third parties. *See, e.g.*, Mo. Const. art. I, § 14; App. A070 ("That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale,

[21] In its decision, the trial court relies on and cites the Fourth Circuit's decision in *CASA, Inc. v. Trump*, 971 F.3d 220 (4th Cir. 2020). Because that case has since been decided by the U.S. Supreme Court, that decision is addressed here.

denial or delay."); Mo. Const. art. V, § 4; App. A075 ("The supreme court shall have general superintending control over all courts and tribunals. Each district of the court of appeals shall have general superintending control over all courts and tribunals in its jurisdiction. The supreme court and districts of the court of appeals may issue and determine original remedial writs. Supervisory authority over all courts is vested in the supreme court which may make appropriate delegations of this power.").

More fundamentally, *CASA* is about the *power* of *federal* courts to issue remedies, not the *standing* of plaintiffs to request them or the scope of relief available to a state supreme court. The *CASA* Court vacated the injunctions in that case "only to the extent that the[y] [were] broader than necessary to provide complete relief to each plaintiff with standing to sue." *CASA*, 145 S. Ct. at 2562-63. In other words, the case itself recognized that plaintiffs may have "standing to sue" even if federal courts lack the power to grant all of the relief that plaintiffs seek. Here, for complete relief, the Voter ID Restrictions must be enjoined permanently.

What is more, Justices of the Supreme Court (including Justice Barrett, who authored the *CASA* majority opinion) have recognized that certain facial claims may "present[] [their] own doctrinal complexities about the scope of relief" making them "an imperfect vehicle for considering the general question of whether a district court may enjoin a government from enforcing a law against non-parties to the litigation." *Griffin v. HM Fla.-ORL, LLC*, 144 S. Ct. 1, 2 (2023) (Kavanaugh., J.,). In *Griffin*, the plaintiffs challenged a state obscenity law as unconstitutionally overbroad in violation of the First Amendment. Because overbreadth claims require showing that the law prohibits a

substantial amount of protected speech statewide, *see United States v. Williams*, 553 U.S. 285, 292 (2008), only a statewide remedy would redress the statute's harm.

For the same reasons, statewide relief is available in facial challenges to state laws that unconstitutionally burden the right to vote, like the Voter ID Restrictions. Like overbreadth claims, a court evaluating a burden-on-the-right-to-vote claim must consider "the extent of the burden th[e] statute imposes on the right to vote" across the state on those who will be burdened by it, not just on the named plaintiffs. *Weinschenk*, 203 S.W.3d at 212. Consider, for example, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008). There, the U.S. Supreme Court considered a facial challenge under the federal constitution to an Indiana voter ID law. *See id.* at 198 (plurality op.). Even as the Court ruled against the plaintiffs on the merits, it did not question whether a facial claim was available—much less that its availability was relevant to the plaintiffs' standing. *See id.* at 202 (analyzing on the merits the plaintiffs' "facial challenge" to the statute).[22] Nothing in *CASA* upends this well-established line of cases.

Finally, even if *CASA* were relevant, it would support statewide relief in this case. There, the Court recognized that broad relief may be appropriate when "it is all but impossible for courts to craft relief that is complete and benefits only the named plaintiffs." *CASA*, 145 S. Ct. at 2557 n.12. Here, the organizational appellants operate statewide and so it is impossible to redress their harms without enjoining enforcement of the Voter ID

[22] *Crawford* is cited herein as an example of a voting rights case in federal court where a facial claim was reviewed and not questioned and for no other purpose. Because this case brings claims under the Missouri constitution and its more protective right to vote, *Crawford* is otherwise inapplicable.

Restrictions statewide. Missouri courts must provide relief consistent with state constitutional requirements.

POINT VII: The trial court erred in finding that Missouri Constitution, article VIII, § 11 authorizes the strict Voter ID Restrictions because the constitutional amendment relied on by the trial court does not sanction the Voter ID Restrictions in that it did not constitutionally require a specific form of photo ID and did not weaken the fundamental right to vote or equal protection in Missouri as recognized in *Weinschenk* and *Priorities*.

I. Standard of Review and Preservation of Error

Because the determination of whether a law violates the constitution is a legal question, it is reviewed *de novo*. *State v. Sisco*, 458 S.W.3d 304, 312 (Mo. banc 2015). Challenges to the constitutionality of the Voter ID Restrictions were raised at the earliest possible time, no post-trial motion was required, and this issue is preserved for appeal.

II. Argument

The Missouri Constitution guarantees that "all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Mo. Const. art. I, § 25; App. A072. Additionally, "citizens of the United States … over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote at all elections by the people …." Mo. Const. art. VIII, § 2; App. A078. The right to vote and the right to equal protection under the laws "are the core of Missouri's constitution and, hence, receive state constitutional protections even more extensive than those provided by the federal constitution." *Weinschenk*, 203 S.W.3d at 212. Taken together, "these provisions establish with unmistakable clarity that the right to vote is fundamental to Missouri citizens." *Id.* at

211. This right is still fiercely protected in Missouri even after passage of Amendment 6, as this court recognized in *Priorities*. *See* 591 S.W.3d at 453 ("If a statute severely burdens the right to vote, strict scrutiny applies, which means the law will be upheld only if it is narrowly tailored to serve a compelling state interest.")

The trial court erred in concluding that the 2016 constitutional amendment permits the *strict* photo ID provisions at issue here. Both before and after passage of Amendment 6, the Missouri Supreme Court affirmed that the severe burdens to voters imposed by strict photo ID requirements like those here run afoul of the Missouri Constitution's fundamental right to vote and equal protection provisions, which were not altered by the amendment. In short, while Amendment 6 allow the legislature to require some form of voter identification, "which *may* include valid government-issued photo identification[,]" Mo. Const. art. VIII, § 11; A080, lawmakers cannot do so in a way that contravenes the constitution's right to vote and equal protection provisions, as strict photo ID has been found to do.

A. Weinschenk still controls even after passage of Amendment 6.

In 2016, Amendment 6 passed establishing a new section in article VIII. It reads:

> A person seeking to vote in person in public elections **may** be required by general law to identify himself or herself and verify his or her qualifications as a citizen of the United States of America and a resident of the state of Missouri by providing election officials with a form of identification, which **may include** valid government-issued photo identification. Exceptions to the identification requirement may also be provided for by general law.

Mo. Const. art. VIII, § 11; App. A080 (emphasis added). Lawmakers then amended § 115.427 to require voters to present either (1) a state issued photo ID, or (2) a secondary

ID (like a student ID or voter registration card) and sign an affidavit; or to cast a blue provisional ballot. Four years after the passage of Amendment 6, the Missouri Supreme Court examined whether § 115.427 unconstitutionally burdened Missourians' right to vote. *Priorities,* 591 S.W.3d at 451. Specifically, this Court held that the affidavit requirement in §§ 115.427.2(1) and 115.427.3 was misleading and contradictory and, therefore, unconstitutional. *Id.* This requirement was enjoined from all enforcement. *Id.* The Court concluded that "[a]lthough the State has an interest in combatting voter fraud, requiring individuals voting under option two to sign a contradictory, misleading affidavit is not a reasonable means to accomplish that goal." *Id.* at 455. However, after declaring this statutory provision unconstitutional, this Court was faced with the question of the appropriate remedy. *Id.*

Several options were examined. First, the State argued that the circuit court should have allowed the Secretary of State to modify the affidavit's language to address the trial court's constitutional concern. *Id.* This option was rejected because the Secretary of State lacked authority to alter the affidavit language. *Id.* at 456. Next, this Court considered whether it could sever the affidavit requirement. *Id.* This Court ultimately concluded that removing the objectionable language in the affidavit was futile because:

> all voters are required to sign a precinct register establishing the voter's identity and qualification to vote. *See* section 115.427.8 ("I hereby certify that I am qualified to vote at this election by signing my name and verifying my address by signing my initials next to my address."). The precinct register further provides notice that "[i]t is against the law for anyone to vote, or attempt to vote, without having a lawful right to vote." *Id.* Because the modified version of the affidavit would essentially replicate the information in the precinct register that every voter must sign, the legislature would not have enacted the modified affidavit.

Id. at 457. Finally, two additional alternatives suggested by the State and discussed in the dissenting opinion were considered. First, the dissenting opinion suggested that the trial court should have severed § 115.427.2 in its entirety (thereby eliminating Option 2 non-photo IDs), rather than severing only the affidavit requirement language. *Id.* at 458.[23] This Court rejected the dissenting opinion's suggestion because:

> In effect, the dissenting opinion's proposal to sever option two in its entirety would result in individuals having to present government-issued photo identification to ensure their votes are counted. **In *Weinschenk*, this Court made clear that requiring individuals to present photo identification to vote is unconstitutional. 203 S.W.3d at 219.** Weinschenk emphasized that some individuals, due to their personal circumstances, experience hurdles when attempting to obtain photo identification, *id*. at 215, a concern that remains relevant in the instant case. Obtaining photo identification requires appropriate documentation, time, and the ability to navigate bureaucracies. *Id*. "Those things that require substantial planning in advance of an election to preserve the right to vote can tend to 'eliminate from the franchise a substantial number of voters who did not plan so far ahead.'" *Id*. (quoting *Harman v. Forssenius*, 380 U.S. 528, 539-40, 85 S. Ct. 1177, 14 L.Ed.2d 50

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[23] This Court noted further in *Priorities* that:

> As the dissenting opinion notes, if option two – the non-photo identification option – is severed, two options for voting remain, option one and option three. *See* sections 115.427.1; 115.427.4. Under option one, an individual cannot vote without showing a government-issued photo identification. Section 115.427.1. Under option three, an individual's vote will not be counted unless (1) the voter returns to the polling place during the polling hours and provides an approved form of photo identification under option one, or (2) the election authority compares the individual's signature with the signature on the election authority's file and confirms the individual is eligible to vote at that particular polling place. Section 115.427.4. The record reflects the signature-matching process could result in an over-rejection of legitimate signatures, as there is no training or uniform standards election officials follow.

Id. at 458.

> (1965)). For these reasons, the dissenting opinion's first proposed remedy poses constitutional concerns and could not have been adopted by this Court.

Id. at 458-59. (emphasis added). This Court further clarified:

> The dissenting opinion attempts to distinguish section 115.427 from the unconstitutional statute in *Weinschenk*, suggesting section 115.427 would be constitutional after severing section 115.427.2 in its entirety because section 115.427.6(1) provides that an individual can receive a photo identification free of charge. Op. at 463–64. This is not sufficient distinction for two reasons. First, the dissenting opinion disregards that, in holding the statute unconstitutional, the Court in *Weinschenk* emphasized **not only the cost of photo identification** but also the **potential difficulties individuals experience when attempting to obtain photo identification.** *Weinschenk*, 203 S.W.3d at 213-15. Second, despite the dissenting opinion's assertion, photo identification obtained for the purpose of voting is not always free of charge under section 115.427. The record reflects that some individuals attempting to obtain photo identification, including Gutierrez, were required to pay a fee. Further, pursuant to section 115.427.6(1), each individual is **afforded only one free photo identification**. As a result, with the exception of individuals older than 70 whose photo identifications do not expire, prospective voters, in future elections, will be required to pay a fee to obtain photo identification.

Id. at 458 n.16 (emphasis added).

In sum, the trial court here erred when it declared that *Priorities* "did *not* find that Voter ID provisions were facially unconstitutional, only that an earlier version of a voter ID statute was unconstitutional due to confusing language of an affidavit it required voters to sign if they did not have an ID." D77 p. 34; App. A001 (citations omitted). Instead, *Priorities* reaffirmed that in "*Weinschenk*, this Court made clear that requiring individuals to present photo identification to vote is unconstitutional." 591 S.W.3d at 458-59 (citing *Weinschenk*, 203 S.W.3d at 219). As such, despite Amendment 6, *Weinschenk* remains controlling law in evaluating the constitutionality of photo ID laws in Missouri like the Voter ID Restrictions challenged in this case.

B. Neither the plain language nor legislative history of Mo. Const., art. VIII, § 11 supports the trial court's reasoning that the people voting for this amendment intended to override their fundamental right to vote in such a manner that strict photo ID would be required.

If there remains any doubt post-*Priorities* that *Weinschenk* still controls the constitutionality of a strict photo ID requirement, the plain text of Amendment 6 makes it clear that while it does *allow* for some form of identification to be required at the polls, it did not fundamentally alter the constitutional rights of Missouri citizens and does not sanction strict photo ID laws. If the legislature wanted voters to consider an amendment that *required* strict photo ID, thereby altering how the fundamental right is interpreted, it could have, as the prior proposed amendment was drafted to do. But that is not what it did with Amendment 6.

i. Plain text.

The trial court's reliance on Amendment 6 is especially flawed because it strays from the amendment's plain language. Amendment 6 states that a voter "*may* be required . . . to identify himself or herself . . . by providing election officials with *a* form of identification, which *may include* valid government-issued photo identification." Mo. Const. Art. VIII, § 11; App. A080 (emphasis added). The plain and ordinary meaning of this clause is that the "require[ment]" refers solely to the voter's need to identify himself or herself. And the phrase "which may include valid government-issued photo identification" refers to the phrase immediately before it and describes one of the types of identification that the voter may provide to establish his or her identity. *See id.* Notably, the amendment does not mandate *only* photo ID, but instead provides constitutional

permission to lawmakers to enact legislation relating to voter identification requirements generally, which may include government-issued ID—not specifically the federal or Missouri government. This interpretation is supported by rules of construction, which require that "qualifying phrases are applied to the phrase immediately preceding" them and not to phrases that are more remote. *Thompson v. Comm. on Legis. Rsch.*, 932 S.W.2d 392, 395 n.3 (Mo. banc 1996), superseded on other grounds by § 116.175, RSMo. Thus, the phrase, "which may include valid government-issued photo identification" refers to the forms of identification that a voter may present (which is the immediately preceding phrase); it neither imposes nor sanctions a strict photo ID requirement requiring only non-expired Missouri or federally issued IDs for voting.

In construing Amendment 6, the Court's "fundamental purpose... is to give effect to the intent of the voters who adopted the Amendment." *State v. Shanklin*, 534 S.W.3d 240, 242 (Mo. banc 2017) (citation omitted). For that reason, the "[w]ords used in constitutional provisions" are interpreted in accordance with "their plain, ordinary, and natural meaning," *id.* (citation omitted), which is presumptively the meaning conveyed to voters. *Boone Cnty. Ct. v. State*, 631 S.W.2d 321, 324 (Mo. banc 1982), abrogated on other grounds by Mo. Const. Art. VI, § 11. In other words, the issue before the Court is not "how [Amendment 6] was understood by its framers but how it was understood by the people adopting it." *Id.* at 324 n.2. Thus, the plain language of Amendment 6 does not give the General Assembly license to impose undue and unnecessary burdens on the right to vote. It may require voter identification, but not in a manner that this Court has already found conflicts with other provisions in our constitution.

ii. Legislative history.

While canons of interpretation dictate that this Court need not look to the legislative history of Amendment 6, if this Court were to consider the amendment's history, previous unsuccessful attempts to pass similar constitutional amendments relating to voter identification further illustrate that the absence of any explicit reference to a strict photo ID "requirement" was intentional and strategic. In 2012, in *Aziz v. Mayer*, the Cole County Circuit Court held that a summary statement accompanying a similar previous proposed constitutional amendment failed "to accurately inform citizens as to the subject matter on which they are asked to vote." Case No. 11AC-CC00439 (Cole Cnty. Cir. Ct. 2012), Judgment at 6; App. A504. The proposed constitutional amendment at issue in *Aziz*, proposed for the ballot by legislators in 2011, was nearly identical to Amendment 6, but it included one key distinction: it stated that a voter "may be **required** . . . to identify himself or herself . . . by providing election officials with a form of identification, which may include requiring government-issued photo identification." *See* S.J.R. 2, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011); App. A102 (emphasis added). The Cole County Circuit Court held that the proposed amendment, which included the word "requiring" immediately before the phrase "government-issued photo identification," would indeed *require* government-issued photo identification, but that the summary statement asserted only that the amendment would *allow* the General Assembly to set photo identification requirements for voters, and it was therefore insufficient and unfair. *See Aziz*, Judgment at 5-6; App. A504. With the summary statement struck, the proposed amendment did not appear on the ballot in 2012.

The next time the General Assembly placed a proposed constitutional amendment regarding voter identification on the ballot (passing a resolution that became Amendment 6 in 2016), rather than include more explicit language in the summary statement to make clear that the amendment would require voters to present only government-issued photo ID, the General Assembly **removed** the word "requiring" from the phrase "which may include [**deleted**] government-issued photo identification." *Compare* Art. VIII, § 11; App. A080, *with* H.J.R. 53, 98th Gen. Assemb., 2nd Reg. Sess. (Mo. 2016) ("H.J.R. 53"); App. A100. This is the version that voters passed in 2016. In other words, the General Assembly, after the ruling in *Aziz*, revised the language in a way that would not lead to the conclusion that it explicitly sanctioned a strict "government-issued photo identification" requirement only. The trial court erred in concluding otherwise.

If it was the General Assembly's intent to strip away Missouri voters' options for verifying their identity at the polls by mandating *only* government-issued photo ID (and even more narrowly, those issued by the Missouri or federal government), that intention **was not** in the text of Amendment 6 nor the summary statement seen by voters. *See* H.J.R. 53; App. A100. Nor was there any indication that Amendment 6 attempted to overturn or abridge a Missouri Supreme Court decision and three separate existing core provisions of Missouri's constitution. *See* Mo. Const. art. I, § 25; App. A072; Mo. Const. art. VIII § 2; App. A078; Mo Const. art. I, § 2; A057; *see generally Weinschenk,* 203 S.W.3d. 201. Without passing express language to that effect, there is no basis to support that lawmakers or voters intended Amendment 6 to allow the General Assembly to pass voter identification requirements that have already been found to violate constitutional protections. *See* Mo.

Const. art. I, § 25; App. A072; Mo. Const. art. VIII § 2; App. A078; Mo Const. art. I, § 2; A057.

Amendment 6 did not abrogate any of those provisions of the Missouri Constitution and thus must be read in harmony with them. Amendment 6 gives lawmakers authority to require voter identification that may *include* a form of government-issued photo ID, but cannot do so in a way that otherwise violates the Missouri Constitution, such as limiting acceptable options to *only* a current Missouri or federally issued ID. Government-issued ID could also include a driver's or non-driver's license from another state, an expired photo ID (which had been state or federally issued), a government employee ID, or a government-issued student ID. Nothing in Amendment 6 requires this Court to abdicate its authority to ensure that the Voter ID Restrictions do not compromise fundamental rights guaranteed by the Missouri Constitution. This Court should decline the invitation to do so here.

C. If Amendment 6 was intended to overturn Weinschenk, it needed to expressly identify the existing constitutional provisions that are in direct conflict with or are irreconcilably repugnant to Amendment 6.

The trial court erroneously concludes that as a matter of law, voter ID laws—and strict photo ID requirements in particular—are now immune from legal challenges in Missouri; that the constitutional right to vote no longer imposes any constraints on the General Assembly's authority to impose qualifications for voting as long as they can be characterized as forms of "voter identification"; and that courts must now look the other way when a law imposes significant burdens on hundreds of thousands of voters' access to the franchise.

In 2016, Missourians voted based on the following summary statement drafted by lawmakers who placed the proposal on the ballot:

> Shall the Constitution of Missouri be amended to state that voters may be required by law, which may be subject to exception, to verify one's identity, citizenship, and residence by presenting identification that may include valid government-issued photo identification?

See H.J.R. 53; App. A100. This language failed to alert voters that this could require the **strict** photo ID requirements implemented by HB 1878 that *eliminate* a whole host of government-issued IDs. A fair summary statement "promote[s] an informed understanding by the people of the probable effects of the proposed amendment" and "prevent[s] a self-serving faction from imposing its will upon the people without their full realization of the effects of the amendment." *Aziz*, Judgment at 4 (quoting *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 11-12 (Mo. banc 1981)). Here, the trial court's interpretation of Amendment 6, which it adopted from the State's proposed findings, presents a novel interpretation of Amendment 6 that voters were not aware of and could not have possibly ascertained when they voted in 2016, and one that this Court did not adopt four years later in *Priorities*.

The suggestion that Amendment 6 trumps foundational constitutional rights violates long-held rules of constitutional construction, which require that "harmony . . . should prevail" whenever possible, *State ex. Inf. McKittrick v. Bode*, 113 S.W.2d 805, 808 (Mo. banc 1938); that "an amended Constitution must be read as a whole, as if every part of it had been adopted at the same time and as one law"; and that a new constitutional provision "should not be construed as intended to abolish the former system." *Id*. Amendment 6, therefore, should be read in harmony and not in conflict with the express, constitutional

right to vote in Missouri. Indeed, this Court did just that in *Priorities* when it concluded that the applicable constitutional provisions and precedent remained in force. There is no authority to support the State's contention that Amendment 6 should override Missouri's equal protection clause, Mo. Const. art. 1 § 2; App. A057, and Missouri's constitutional guarantee of the right of its qualified, registered citizens to vote. App. A057; Mo. Const. art. VIII § 2; App. A078. Without an express statement to the contrary, this Court should not presume that Amendment 6 overturned a Missouri Supreme Court decision interpreting three separate provisions of Missouri's Constitution by implication. *Compare* Mo. Const. art. III, § 50; App. A073; *Coleman v. Ashcroft*, 696 S.W.3d 347, 352 (Mo. Banc. 2024) ("[A] petition proposing a constitutional amendment to identify those existing sections of the constitution utterly inconsistent and irreconcilable with the proposed amendment."); *Buchanan*, 615 S.W.2d at 15; *Moore v. Brown*, 165 S.W.2d 657, 663 (Mo. banc 1942), *with* Mo. Const. art. XII, § 2(b); App. A081. The constitutional rights articulated in *Weinschenk* stem from different articles of the Constitution, and each needed to be referenced for the Court's interpretation of Amendment 6 to prevail.

Under the trial court's theory, after Amendment 6, the General Assembly has authority to pass just about any law relating to voter identification—including a requirement, for example, that all voters present U.S. passports or that all voters present a military ID—a result that was neither conveyed to voters, nor is endorsed by the Amendment's plain language. The Amendment, however, does not authorize the General Assembly to demand, as the only "approved" form of voter identification, specific types of

documentation that hundreds of thousands do not possess, nor does it abrogate the constitutional right to vote.

Ultimately, there is no reason to believe that the voters of Missouri had an intent that was not enshrined in the plain text of Amendment 6, which neither overrules *Weinschenk* nor exempts voter ID laws from judicial review.

D. Amendment 6 did not substantially alter the existing legal landscape and cannot survive strict scrutiny or rational basis analysis.

Because Amendment 6 is silent as to its effect on other constitutional guarantees, we must presume that it, like all other constitutional provisions and laws, can be read in harmony with the remainder of the Missouri Constitution. *McKittrick*, 113 S.W.2d at 808 ("[H]armony in constitutional construction should prevail whenever possible"). Amendment 6, therefore, does not exempt voter identification laws from the constraints of the fundamental right to vote, Mo. Const. art. I, § 25; App. A072; to equal protection of the laws, Mo. Const. art. I, § 2; App. A057; or to due process, Mo. Const. art. I, § 10; App. A060. The General Assembly has always had broad plenary power to legislate, even after this Court struck down the photo ID law in *Weinschenk*, Missouri courts have continued to ensure that voter ID laws that are passed comport with basic constitutional guarantees. *Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1, 4 (Mo. banc 1992) (citing *Marbury v. Madison*, 5 U.S. 137, (1803)). Amendment 6 does not alter those longstanding principles. *McKittrick*, 113 S.W.2d at 808 ("A new constitutional provision adopted by a people already having well-defined institutions and systems of law should not be construed as intended to abolish the former system ....").

Amendment 6 allows the General Assembly to pass laws requiring some forms of voter identification; it does not, however, overrule the protections established in *Weinschenk*, as this Court already explicitly recognized in *Priorities*. And while plenty of voter identification laws could pass constitutional muster under *Weinschenk*, HB 1878 is not one of them. Amendment 6 confirmed in the constitution that the legislature has authority to adopt voter ID laws that may include government issued photo IDs, but it does not sanction any such law passed as other provisions in the constitution still apply.

In any event, as this Court recognized, "perceptions are malleable," and "where the fundamental rights of Missouri citizens are at stake, more than mere perception is required for their abridgment." *Weinschenk*, 203 S.W.3d at 218. Missouri already has a voter ID law that seeks to verify voter identity and eligibility, the vast majority of which was undisturbed by the trial court's ruling. The State's inability to show that voter impersonation at the polls is anything other than a largely imaginary problem demonstrates that this law is not narrowly tailored to a compelling interest.

Because the record demonstrates that a strict photo ID requirement "imposes a severe burden on the right to vote, it can survive strict scrutiny only by showing it is necessary to accomplish a compelling state interest or that it is 'narrowly drawn to express the compelling state interest at stake.'" *Weinschenk*, 203 S.W.3d at 217 (citing *In re Norton*, 123 S.W.3d 170, 173 (Mo. banc 2003)); *see also id.* at 215-16 (noting that Missouri courts "have uniformly applied strict scrutiny to statutes impinging on the right to vote"); *Priorities*, 591 S.W.3d at 453 ("If a statute severely burdens the right to vote, strict scrutiny applies ....").

Appellants do not dispute that the State has an interest in preserving election integrity and preventing voter fraud. Nevertheless, the Voter ID Restrictions are not narrowly tailored to further the State's interests. The record reflects that the only infirmity a strict photo ID law may prevent is in-person impersonation of others at the polls. However, the record here also reflects that poll workers are not checking a voter's photo carefully and expert testimony confirming that voter impersonation fraud is exceedingly rare. Moreover, the law fails to pass even rational basis review. To survive rational basis, the means chosen by the State to achieve its legitimate interest "must be rationally related to this interest." *Priorities*, 591 S.W.3d at 453. The Voter ID Restrictions are not rationally related to preventing voter fraud or promoting election integrity. Because the Voter ID Restrictions offer no discernable protection against voter fraud while imposing significant burdens upon voters—disenfranchising many in the process—there is no rational basis for them; they cannot be upheld under even the most deferential standard, let alone the strict scrutiny that properly applies.

POINT VIII: The trial court erred in not giving proper weight to testimony of an expert on signature matching and finding the provisional ballot alternative acceptable because in doing so it erroneously declared and applied the law in that the provisional ballot process with a signature-matching requirement does not overcome the constitutional infirmities of the photo ID requirement as set forth in *Priorities* and *Weinschenk*.

I. Standard of Review and Preservation of Error

The standard of review and preservation of error are the same as for Point VI.

II. Argument

The record demonstrates that the provisional ballot alternative with a signature-matching requirement cannot overcome the constitutional infirmities of the photo ID requirement in the current law. *See id.* at 458-59. The trial court failed to give appropriate weight to the expert testimony of Dr. Mohammad, who has credibly testified about the nearly identical provisional ballot provisions in prior iterations of Missouri's photo ID schemes, and the failures of the provision's signature matching provisions. The current Voter ID Restrictions, enacted to replace the prior iteration of § 115.427 (2017), a law that survived after the affidavit requirement was severed by *Priorities*, is now virtually identical to one of the alternative remedies proposed by the dissent in *Priorities* but dismissed by the majority there as "nonsensical" because it "poses constitutional concerns and could not have been adopted by this Court." *Priorities*, 591 S.W.3d at 458-59. The Voter ID Restrictions here are *at least* as constitutionally infirm as that proposal from the dissent in *Priorities* for the reasons set forth by this Court, making the legitimacy of the provisional ballot signature matching process all the more critical to ensuring that registered voters can cast a ballot that counts.

Dr. Mohammed, who also credibly testified as an expert in *Priorities*, testified in this case that the signature-matching process for provisional ballots under the Voter ID Restrictions is inadequate and unreliable. As the testimony reflects, a ballot cast by a registered voter who appears on the voter rolls cannot be subject to a lay person's untrained determination in just a couple minutes, or less, as to whether their signature matches a signature on file. As Dr. Mohammad's testimony and expert report demonstrate, the

process is unreliable, leaving a person's vote to the sole discretion of an untrained staff person on time constraints, resulting in an insufficient remedy for registered voters without qualifying ID. This runs afoul of this Court's findings in *Priorities*, e.g., finding that eliminating Option 2 IDs would leave only one option: casting a provisional ballot and relying on a "signature matching process [that] could result in over rejection of legitimate signatures." *Priorities*, 591 S.W. 3d at 458. The provisional ballot alternative was insufficient in *Priorities* and remains so here. This case is not about LEA's processes for verifying initiative petition signatures, which do not implicate the fundamental right to vote as the Voter ID Restrictions do.

Priorities found that "the signature-matching process could result in an over-rejection of legitimate signatures, as there is no training or uniform standards election officials follow." 591 S.W.3d at 458. There, this Court credited the testimony of Dr. Mohammed, who explained that "a number of factors, such as age and illness, can impact an individual's signature." *Id.* at 458 n.15. *Weinschenck* adopted this reasoning, as well (noting a voter's "signature may change over time or due to disability or age") in rejecting the provisional ballot remedy, finding "no exception to the signature match requirement is made for Missourians who are unable, because of disability or age, to make a signature or whose signature has changed due to disability or the passage of time since they made their original signature when they initially registered to vote." 203 S.W.3d at 207.

Based on his testimony, *Priorities* concluded that the uncertainties of the signature match process meant the only way for registered voters "to ensure their votes are counted,

[is to] show photo identification." *Id.* at 458. This was not a "speculative" concern, but an objective truth backed by the record. *Cf.* D77 p. 18; App. A001.

In this case, Dr. Mohammed stated that his expert testimony in *Priorities* is "very similar" to what he wrote in his Expert Report (Pls.' Ex. 64) and testified to at trial here: "[T]he signature matching technique used by the State of Missouri may result in egregious errors and orders of disenfranchise." Trial Tr. 567:19-568:8.[24] As Dr. Mohammed testified,

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[24] Here, the trial court finds, without citation that "even Dr. Mohammed admitted that individuals such as clerks at a bank do remarkably well at distinguishing a matching from a fraudulent signature" D77 p. 18; App. A001. This statement lacks any support in the record. During Dr. Mohammad's deposition, the following exchange occurred:

> Q. Is it your opinion that any signature review ever performed by anyone besides the certified document examiner is not reliable?
>
> A. No. Most people can recognize genuine signatures. I've seen people in the banks who – a signature got past a teller, but there is a secondary inspector in the bank that caught it, which is pretty good because they were good simulations, but they were caught because they had more specimens to look at and more time to look at it in the bank. So, yeah, there are people who can – they have no training but if they have enough specimens, enough time, they would be good at recognizing genuine signatures. The problem is when you have dissimilarities that you can't account for, based on limited specimens and limited time, then that's when you're going to start getting errors.
>
> Q. When you say limited time, what specifically are you referring to? Are you referring to limited time to evaluate this batch of signatures or limited time to become good at evaluating signatures?
>
> A. Yeah, limited time to evaluate the signatures.
>
> Q. Got it. So you're saying like the pressure of election night, basically, and the pressure of having to go through all of them is going to make –
>
> A. Right, yes.

a study out of Drexel University in 2001 showed that the error rate for layperson signature matching was twenty-six percent. Trial Tr. 622:6-17. Lay people tend to focus on eye-catching features of signatures. Trial Tr. 593:25-594:23. Eye-catching features, such as the first letter of their first name and first letter of their last name, can be problematic if that is the basis on which a lay person accepts a signature as valid and would be a "very unreliable examination." Trial Tr. 593:25-594:23; *see also* Brown 2022 Dep. Tr. 93:4-20 (describing Tammy Brown's use of the exact method Dr. Mohammed states is unreliable).

There is no standardized process, though often LEAs compare a digital image of a voter's wet signature on their blue provisional ballot against only a digital image of one other signature in the voter's registration file. *Id.* at 599:8-600:13; *see also id.* at 837:1-838:2 (Ms. Brown testifying that it takes her team less than one minute to compare a provisional ballot wet signature with a scanned registration card of electronic signature). In fact, Ms. Brown "encourage[s] people not to use online voter registration because their signatures tend to not match." Brown 2023 Dep. Tr., at 27:6-13; *see also* Trial Tr. 840:24-

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Mohammed Dep. Tr. 80:9-81:12.

Proper inferences and conclusions that can be drawn from this exchange include Dr. Mohammed disagreeing with Defendant's counsel that "***any*** signature review ***ever*** performed by ***anyone*** besides the certified document examiner is not reliable" *Id.* at 80:9-12 (emphasis added). As well as his disagreement that a layperson presented with limited signature samples and under time constraints presented during an election would be unable to verify signatures without errors. *Id.* at 80:9-81:12. What cannot be concluded from this exchange is that Dr. Mohammed contradicted his prior deposition conclusion that "the signature matching technique used by the State of Missouri may result in egregious errors and orders of disenfranchise." Trial Tr. 568:6-8.

841:25 (Ms. Brown testifying that in her experience, provisional ballots are rejected when compared to digital signatures of voters who register to vote online).

Dr. Mohammed also reviewed the only training video that has ever been provided to Missouri LEAs and concluded that it was insufficient for purposes of signature matching. Trial Tr. 605:5-16; *see also* Pls.' Ex. 73 (training video). When asked if the video was "sufficient training for local election officials to do the matching process in Missouri[,]" Dr. Mohammed responded, "Not in the least." Trial Tr. 605:8-16.

The record shows that ballots of registered voters have been rejected due to a signature mismatch, but that rejection rates vary dramatically from one county to another. D37 ¶ 100; App. A040.

Despite nearly twenty years of precedent regarding the unreliability of signature matching, and Dr. Mohammed's testimony, the trial court failed to give Dr. Mohammad's testimony the credibility and weight it warranted. The inadequacy of Missouri's provisional ballot signature matching process—and the failure of the trial court to incorporate the credible expert testimony of Dr Mohammad—goes directly to the stringent tailoring required by the Missouri Constitution to assess the constitutionality of the Voter ID Restrictions.

CONCLUSION

This Court should reverse the trial court's judgment and enter a judgment in favor of Appellants on all counts and permanently enjoin the Voter ID Restrictions. In the event this Court finds that Appellants lacked standing, it should vacate any judgment on the merits and dismiss the case without prejudice. *See* Rule 84.14.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on July 25, 2025, the foregoing brief was filed electronically and a copy of it was served automatically on counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06; (3) contains 30,680 words, in compliance with Rule 84.06(b), as determined using the word-count feature of Microsoft Office Word, which includes all material in the brief other than the cover, certificate of service, signature block, and separately filed appendix. Finally, the undersigned certifies that electronically filed brief was scanned and found to be virus free.

/s/ *Gillian R. Wilcox*