

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

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

Plaintiffs,

v.

STATE OF MISSOURI

SERVE: Missouri Attorney General's Office
Supreme Court Building 207 West High Street
Jefferson City, Missouri 65102;

JOHN R. ASHCROFT, in his official capacity
as Missouri Secretary of State

SERVE: Capitol Building, Room 208
Jefferson City, Missouri 65101;

and

LOCKE THOMPSON, in his official capacity
as Cole County Prosecuting Attorney and on
behalf of all Missouri Prosecuting Attorneys

SERVE: 311 E High Street, 3rd Floor
Jefferson City, MO 65101;

Defendants.

Case No.

Division:

PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs League of Women Voters of Missouri and Missouri State Conference of the National Association for the Advancement of Colored People hereby allege for this petition for injunctive and declaratory relief:

INTRODUCTION

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

2. These voter outreach efforts played a key role in enabling the State to conduct a 2020 election that Secretary of State John Ashcroft, the State's chief elections official, has repeatedly confirmed was "secure[]"¹ and "successful"² despite the many challenges to voting presented by the COVID-19 pandemic.

3. But rather than encouraging and supporting nonpartisan organizations' voter engagement, Missouri legislators enacted—through a rushed, opaque process that concluded in the final 24 hours of the 2022 legislative session—an omnibus election bill, House Bill 1878, 101st Gen. Assemb., 2d Reg. Sess. (2022) (HB 1878), that, among other burdensome provisions,

¹ Jason Hancock, *Jay Ashcroft Touts Integrity of Missouri's 2020 Election, but Supports an Audit*, MO. INDEP. (Nov. 22, 2021), <https://missouriindependent.com/2021/11/22/jay-ashcroft-touts-integrity-of-missouris-2020-election-but-supports-an-audit>.

² Press Release, John R. Ashcroft, Mo. Sec'y of State, Ashcroft Applauds Missourians for Smooth Election, High Turnout (Nov. 4, 2020), <https://www.sos.mo.gov/default.aspx?PageId=9966>.

imposes severe restrictions on nonpartisan civic engagement activities backed by harsh criminal sanctions.

4. Because HB 1878 chills, restricts, and hobbles Plaintiffs' core political speech, this lawsuit challenges four of those restrictions under the Missouri Constitution.

5. *First*, HB 1878 prohibits any person from “be[ing] paid or otherwise compensated for soliciting voter registration applications” (the “Compensation Ban”). HB 1878, § A (to be codified at § 115.205.1, RSMo).³ *Second*, the bill requires even uncompensated individuals “who solicit[] more than ten voter registration applications” to register with the Secretary of State as “voter registration solicitors” (the “Unpaid Solicitor Registration Requirement”). *Id.* *Third*, the bill mandates that every voter registration solicitor be a registered Missouri voter (the “Registered Voter Requirement”). *Id.* *Fourth*, the bill forbids any “individual, group, or party [from] solicit[ing] a voter into obtaining an absentee ballot application” (the “Absentee Ballot Solicitation Ban”). *Id.* (to be codified at § 115.279.2). Collectively, the foregoing provisions are referred to herein as the “Challenged Provisions.”

6. Individually and collectively, the Challenged Provisions chill and restrict Plaintiffs' and other civic organizations'—as well as their members, volunteers, and staff—constitutionally protected speech. While the restrictions' vague language prevents Plaintiffs from understanding the precise scope of covered speech and activities, Plaintiffs reasonably fear that HB 1878 criminalizes many of their current basic voter outreach efforts. Indeed, any prosecuting attorney or the Secretary of State could interpret the Absentee Ballot Solicitation Ban so broadly as to criminalize Plaintiffs for notifying a voter who will be out of town on Election Day of their

³ All statutory citations are to the Revised Statutes of Missouri, as updated, unless otherwise noted.

eligibility to vote absentee. Regardless of what the Challenged Provisions precisely encompass, they harshly chill and restrict—and criminally sanction—commonplace community-based voter engagement.

7. The Challenged Provisions are unique nationally: no other state has imposed such sweeping restrictions on nonpartisan outreach related to voter registration and absentee voting. And even narrower restrictions have not survived judicial scrutiny; a federal court in Kansas, for example, recently enjoined a more targeted restriction on civic organizations' outreach related to absentee ballot applications under the federal Constitution's First Amendment. *See VoteAmerica v. Schwab*, No. 21-2253, 2021 WL 5918918, at *2–3, *22 (D. Kan. Dec. 5, 2021); *see also League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 719–35 (M.D. Tenn. 2019) (preliminarily enjoining restrictions on voter registration activity).

8. The Challenged Provisions, individually and collectively, violate Plaintiffs' rights under the Missouri Constitution in multiple ways. The restrictions contravene Plaintiffs' right to free speech and expression by burdening Plaintiffs' core political speech and expressive activity on issues of deep societal importance based on that speech's content and viewpoint. The provisions similarly violate Plaintiffs' associational rights by preventing Plaintiffs and their members from associating with one another and with potential voters to express, advocate for, and operationalize their views. *See* MO. CONST. Art. I, §§ 8,9. The restrictions are overbroad and impair a wide swath of constitutionally protected communications, including Plaintiffs' everyday expression supporting voter engagement. *See id.* And the restrictions deny Plaintiffs due process because, despite the threat of severe criminal sanctions, the Challenged Provisions are so vague that Plaintiffs lack fair notice of the conduct proscribed, and Defendants enjoy unfettered discretion to enforce the new requirements arbitrarily. *See* MO. CONST. Art. I, § 10.

9. These constitutional infirmities are all the more troubling because the Challenged Provisions—indeed, appear designed to—obstruct, suppress, and deter Plaintiffs’ efforts to assist Missourians in exercising their fundamental right to vote, a right that is strongly protected by the Missouri Constitution. *See* MO. CONST. Art. I, § 25; *Weinschenk v. State*, 203 S.W.3d 201, 212 (Mo. banc 2006) (“Due to the more expansive and concrete protections of the right to vote under the Missouri Constitution, voting rights are an area where our state constitution provides greater protection than its federal counterpart.”). Absent relief, Plaintiffs (as well as their members, volunteers, and staff) are less able to speak and associate in service of their nonpartisan civic engagement missions, and, as a result, fewer Missourians will be able to cast their ballots.

10. For these reasons, and those that follow, Plaintiffs respectfully request that the Court enter a declaratory judgment and an injunction prohibiting Defendants from enforcing the Challenged Provisions of HB 1878, and allowing Plaintiffs to continue their essential, constitutionally protected voter engagement speech and expressive activities.

JURISDICTION AND VENUE

11. This Court has original subject matter jurisdiction over this action under §§ 478.220, 526.030, and 527.010 and Missouri Supreme Court Rules 87.01 and 92.01.

12. Venue is proper in this Court because Defendants Secretary of State John R. Ashcroft and Cole County Prosecuting Attorney Locke Thompson maintain offices in Cole County, Missouri. *See Talley v. Mo. Dep’t of Corr.*, 210 S.W.3d 212, 215 (Mo. App. W.D. 2006).

PARTIES

A. Plaintiffs

League of Women Voters of Missouri

13. Plaintiff League of Women Voters of Missouri (“LWVMO” or “the League”) is a statewide, nonprofit, nonpartisan membership organization with more than 1,200 members residing throughout the State.

14. The League has nine local League chapters throughout Missouri, which carry out League programs with technical and financial support from the LWVMO. Members of a local League chapter are members of the LWVMO.

15. Rooted in the suffrage movement that secured the right to vote for women, the LWVMO has worked to foster civic engagement and enhance access to the vote since the organization was founded in 1919. The League works to ensure every citizen has the opportunity and information to register and exercise their right to vote.

16. For more than 100 years, the LWVMO has been and continues to be dedicated to ensuring a free, fair, and accessible electoral system for all eligible citizens. Its mission is to safeguard the rights of all qualified voters, including those from traditionally underrepresented or underserved communities, such as first-time voters, non-college youth, new citizens, people of color, seniors, low-income Missourians, and women. These populations stand to be disproportionately impacted by the implementation of HB 1878.

17. The LWVMO is an active member of the Missouri Voter Protection Coalition, which works to secure the rights of all voters in Missouri.

18. The LWVMO conducts substantial voter registration, engagement, training, advocacy, legislative analysis, voter outreach and education work in furtherance of its mission and to

communicate and advance its views about the benefits of and access to voting, including efforts related to voter registration and absentee voting.

19. ***Voter Registration.*** The LWVMO and its local chapters conduct voter registration events throughout the state, including at high schools, colleges, naturalization ceremonies, churches, and community events. The League's Metro St. Louis chapter, for instance, has a longstanding agreement to hold voter registration events for new citizens at naturalization ceremonies at the local federal courthouse; these events take place roughly weekly. In the first six months of 2022, the Metro St. Louis League chapter held 22 registration events at local schools, reaching roughly 1,800 youth. Similar events are held throughout the state. In addition to these regularly scheduled events, the LWVMO allows individuals and groups to request voter registration events through the League's website.

20. At registration events, LWVMO volunteers (who include LWVMO members) sometimes wear buttons or shirts with pro-registration messages, such as "Register Here" or "Ask Me About Voter Registration." Volunteers offer potential voters registration applications, either on paper, through the Secretary of State's website on a League-provided iPad, or by distributing business cards with "QR codes" potential voters can scan using their phones to access the online application. Volunteers may assist applicants in filling out the required information, and typically collect and return any paper applications. If a paper application is missing required information, LWVMO staff or volunteers follow up with the applicant by telephone and assist the applicant with filling in the missing information.

21. The LWVMO's experience shows that this hands-on approach most effectively ensures that voters successfully complete the voter registration process given that missing checkboxes, information, or a signature on the form can lead to rejection of otherwise eligible registrants.

22. In addition to soliciting voter registration applications at events, the League conducts other outreach related to voter registration. The organization distributes brochures with information about voter registration and voting at community events and activities, such as community rallies, trainings, food banks, and back-to-school gatherings.

23. The League does not currently require its voter registration volunteers (all of whom are League members) to be registered to vote in Missouri. Managing a pre-registration requirement for their volunteers would be burdensome and exclusionary, as it would require the League to verify every volunteer's voter registration, necessitate early sign up for all events, and reject any potential volunteer who is ineligible to vote, not yet registered, or registered in another state.

24. The LWVMO routinely reimburses volunteers for parking and mileage expenses associated with participating in voter registration events. It also gives volunteers training and tokens of appreciation, such as pins or bumper stickers, food, and LWVMO paraphernalia like greeting cards or clothing.

25. The League's two paid staff members—an executive director and a bookkeeper—are part-time. They also routinely participate in voter registration activities by organizing and overseeing volunteers' work; acquiring and providing the necessary supplies, including paper application forms; administering reimbursements; answering phone calls related to voter registration; and providing registration assistance. They also occasionally help ensure that paper applications are complete, including responding to calls from voters who had missing information on their registration applications.

26. Because the League always seeks to comply with all applicable laws, it will be forced to significantly modify, suspend, or limit its speech and outreach related to voter registration to comply with the Challenged Provisions introduced by HB 1878.

27. To comply with the Compensation Ban, the League will be forced to muffle the speech of its paid staffers and prohibit them from engaging in the voter registration activity that is part of their current employment duties and core to the mission of the organization. The number and effectiveness of the League's voter registration activities will necessarily be reduced. The LWVMO will be forced to reconfigure its operations and divert volunteer resources from other important work, such as hosting voter registration events. The League also expects to halt its reimbursement program, thereby likely reducing the number of volunteer hours available for League activities related to registration.

28. To comply with the Unpaid Solicitor Registration Requirement, the League will be required to educate and coordinate the registration of all its volunteers as voter registration solicitors and inform them that failing to do so correctly is a punishable criminal offense. The LWVMO will also need to track its volunteers' solicitor registration statuses to ensure that it does not rely on volunteers who have not registered as solicitors with the Secretary of State. Because the League has hundreds of volunteers, this undertaking will impose a significant burden. Moreover, the LWVMO anticipates that some members will not immediately or ultimately register due to reluctance to register; the administrative burden of registering; lack of access to a printer, scanner, fax machine, or other necessary equipment to print and submit the form; and the risk of criminal prosecution. Having fewer volunteers available will reduce the organization's ability to carry out its voter engagement activities. LWVMO volunteers, including its members,

are committed to voting and are afraid they could lose their right to vote if found guilty of an election law offense.

29. Compliance with the Unpaid Solicitor Registration Requirement will severely curtail the League's association and civic engagement activity and deter the organization from encouraging volunteerism among its members due to potential criminal liability for its volunteers. The League encourages all its members to participate and provide assistance during voter registration drives and does not typically require any pre-registration for such individuals to help with events. Encouraging members and volunteers to participate in voter registration activities is an important part of the League's associational activity and its organizational mission. In the League's experience, the more volunteers present to help with a voter registration drive, the more voters they can engage.

30. To comply with the Registered Voter Requirement, the LWVMO will need to restrict volunteer eligibility to only registered Missouri voters, further limiting the pool of potential volunteers and constraining the organization's resources. The League currently does not screen its volunteers based on voter registration nor impose any such requirement on who can volunteer for its activities, though all of its volunteers at League registration events must be members of the League. The League wishes to send a clear message encouraging civic engagement among young people by allowing high school students to participate in voter registration drives. By excluding high school students under 18 or not yet registered, the League will be forced to send a contrary message. To comply with the Registered Voter Requirement, the LWVMO will be required to impose restrictions on who can participate in its activities—excluding high school students, non-citizens, people who have moved and not updated their registrations, students

registered in other states, among other non-eligible individuals—contrary to its associational goals and organizational mission.

31. As a result of these disruptions, individually and collectively, the League expects to have reduced capacity to conduct its voter registration activities if the Challenged Provisions take effect.

32. In order to comply with added burden of the Challenged Provisions, the LWVMO will be required to divert resources away from other key work.

33. **Absentee Voting.** The League also conducts outreach related to absentee voting. The LWVMO believes that absentee voting is an important tool for enabling Missourians to cast their ballots and seeks in its outreach activities to promote and operationalize this view. In particular, many LWVMO members who are senior citizens rely on opportunities to cast absentee ballots by mail to avoid transportation and physical barriers of voting in person.

34. At many LWVMO events—other than registration drives conducted at naturalization ceremonies—volunteers have blank absentee ballot applications available for potential voters. League personnel routinely advise voters of their potential eligibility to vote absentee, encourage them to do so where eligible, and provide blank applications, even if voters have not specifically requested them. Because the absentee voting process in Missouri is complex, League volunteers regularly provide potential absentee voters with information and education about the process and its requirements.

35. The Absentee Ballot Solicitation Ban will impair the League's ability to assist members and voters who most need to vote absentee by mail—particularly elderly voters, low-wage workers, shift workers who cannot take off work to get to the election office to vote absentee in person, those with chronic health conditions, those without access to transportation to the

election office to vote in person, voters with disabilities, and voters with child or elder care responsibilities—and thus will need to obtain, properly complete and submit their absentee ballot applications within strict deadlines in order to cast a ballot. The LWVMO’s membership and constituencies served by the organization includes women, senior citizens, and others in these above categories. Without the LWVMO’s assistance, these voters will lose options for getting help with absentee voting.

36. Moreover, the Absentee Ballot Solicitation Ban is so vague that encouraging and assisting voters to vote via in-person absentee voting—where voters appear in person, apply to vote absentee with an election authority, and vote at the same time—may be considered “soliciting” an absentee ballot application.

37. But for the Absentee Ballot Solicitation Ban, the League had plans to expand its outreach in this area as HB 1878 introduces a new period of no-excuse in-person absentee voting, *see* HB 1878, § A (to be codified at § 115.277.1), and the LWVMO would ordinarily encourage Missourians to take advantage of this opportunity to vote absentee and assist them in doing so.

38. To comply with HB 1878’s Absentee Ballot Solicitation Ban, however, the LWVMO will be forced to curtail, rather than expand, its absentee voting outreach, outreach that will be particularly important to help voters understand and avoid confusion regarding the new changes to absentee voting rules in Missouri. To avoid violating the Absentee Ballot Solicitation Ban, the LWVMO expects to stop offering blank absentee ballot applications or volunteering information about individuals’ eligibility to vote absentee. It also expects to sharply limit its advocacy and education related to early and absentee voting. If it does not make these changes to its activities, its staff, volunteers, and members risk criminal prosecution.

Missouri State Conference of the NAACP

39. Plaintiff Missouri State Conference of the National Association for the Advancement of Colored People (“Missouri NAACP”) is a statewide membership organization whose members reside throughout Missouri.

40. In Missouri, the Missouri NAACP is the chief unit of the National Association for the Advancement of Colored People (“NAACP”), whose mission is: (i) to ensure the political, education, and economic equality of rights of all persons; (ii) to achieve equality of rights and eliminate racial prejudice among the citizens of the United States; (iii) to remove all barriers of racial discrimination through democratic processes; (iv) to seek the enactment of federal, state, and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; (v) to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof; and (vii) to take any other lawful action utilizing the tools available to a 501(c)(4) organization in furtherance of these objectives.

41. Missouri NAACP has thousands of members across the state, divided into more than twenty local units.

42. The mission of the Missouri NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination, particularly in Missouri. Its objectives include seeking enactment and enforcement of laws securing civil rights and educating persons as to their rights.

43. Voting is a foundational value of the Missouri NAACP. The organization believes that enabling all Missourians to exercise their fundamental right to vote is vital to ensuring equal citizenship and achieving the organization’s substantive policy goals.

44. The Missouri NAACP is an active member of the Missouri Voter Protection Coalition, which works to secure the rights of all voters in Missouri.

45. The Missouri NAACP conducts substantial voter engagement and education work in furtherance of its mission, including outreach and activities that communicate and advance its views about the importance of voter registration and access to absentee voting.

46. In conducting this work, the Missouri NAACP focuses on reaching eligible but unregistered voters and marginalized and underserved populations, including communities of color and people experiencing poverty. These populations stand to be disproportionately impacted by the implementation of HB 1878.

47. ***Voter Registration.*** The Missouri NAACP and its members regularly conduct voter registration activities and events throughout the state, including at community events, such as back-to-school backpack drives and holiday celebrations; at events, meetings, and fundraisers; through online appeals, and through canvassing, including door-to-door outreach. One such member is Nimrod Chapel, the President of Missouri NAACP. Mr. Chapel personally engages in voter registration. Through the activities described above, the organization communicates with thousands of eligible Missouri voters.

48. At registration and outreach events, volunteers (including Missouri NAACP members) seek to engage and register as many eligible Missourians as possible. Volunteers seek to capture individuals' attention, ascertain whether they are registered, and persuade them to register if they are not. Volunteers provide the necessary forms, assist individuals with completing those forms, and often collect the forms to return on behalf of the new voters or assist voters submitting them online.

49. The Missouri NAACP's experience shows that this hands-on approach most effectively ensures that voters can successfully complete the registration process.

50. The Missouri NAACP does not currently require potential volunteers to pre-register with the organization to volunteer at voter registration events. Such unpaid volunteers are not currently required to register with the Secretary of State as voter registration solicitors, so the NAACP likewise does not require potential volunteers to be voter registration solicitors.

51. The Missouri NAACP does not require that volunteers participating in voter registration activities be registered Missouri voters. The organization works with volunteers who are not registered in Missouri for a variety of reasons, including age and past criminal convictions.

52. By including young people and returning citizens (those returning from incarceration or state supervision) as volunteers who participate in voter registration activities, the Missouri NAACP intends to convey a particular message: that all persons have a role to play in the ongoing project of strengthening a democratic society and that Missouri NAACP actively supports these volunteers' participation in that effort. Participation in voter registration work enables these volunteers to build familiarity with requirements for registering and voting, develop appreciation for the importance of registering and voting, and serve as models and resources for others in their communities about the importance of registering and voting.

53. As its budget allows, the Missouri NAACP reimburses volunteers for expenses associated with voter registration activities, including for gas or mileage, supplies, copying, and equipment. The organization also pays for and provides food and drinks at voter registration events, in which volunteers are free to partake. In addition, volunteers may receive training; NAACP branded t-shirts; and other materials, such as pens and clipboards, that they may keep.

54. Although the Missouri NAACP does not have any full-time permanent employees, and is largely a volunteer-run organization, it periodically hires short-term staff and receives grants to compensate interns, volunteers, and staff for their time, including time spent on voter registration work. In 2020, for example, the organization hired a temporary staffer to travel throughout the state distributing voter registration materials and assisting eligible Missourians to register. And the Jefferson City Unit of the Missouri NAACP has a longstanding tradition of hiring students from Lincoln University, a historically Black university in Missouri, to serve as paid canvassers; in this role, the students seek to contact and register eligible Missourians to vote.

55. A number of the individuals that the Missouri NAACP compensates in this way would not be able to conduct voter registration work without compensation.

56. Because the Missouri NAACP always seeks to comply with all applicable laws, it will be forced to significantly modify, forego, or limit its speech and outreach related to voter registration to comply with the new restrictions introduced by HB 1878.

57. To comply with the Compensation Ban, the Missouri NAACP will be forced to stop providing reimbursement to its members and to stop paying interns, volunteers, and short-term staff who undertake registration work. The organization will also need to change its policies to forbid volunteers from partaking in food or drinks provided at voter registration events and to stop providing volunteers with t-shirts and other materials.

58. Based on its experience and its understanding of the importance of these forms of compensation to volunteers, the Missouri NAACP expects that eliminating these benefits will drastically shrink the number of volunteers available to conduct the organization's voter registration work, thereby significantly reducing all of its voter registration work.

59. To comply with the Unpaid Solicitor Registration Requirement, the Missouri NAACP will be forced to require all unpaid volunteers to register with the Secretary of State, subject to criminal penalties.

60. The Unpaid Solicitor Registration Requirement will also force Missouri NAACP to begin requiring volunteers to sign up well in advance for voter registration events and activities in order to ensure that all volunteers meet the requirement. Ensuring that all volunteers have met the registration requirement will take additional time and effort from existing volunteers, especially because the forms cannot be submitted online and require a wet signature. Volunteers without ready access to a printer or fax machine or stamps may have difficulty timely submitting the forms before their volunteer shift. The Missouri NAACP will also be forced to advise its volunteers that failure to complete the form correctly in advance of their volunteer shift can result in criminal liability that could result in jail time and loss of their right to vote.

61. Based on the organization's long history of fighting barriers to and retaliation against voter registration in communities of color, and its experience and understanding of its volunteers, including its understanding that many current Missouri NAACP volunteers would be reluctant to register with the Secretary of State or expose themselves to potential criminal prosecution, the Missouri NAACP anticipates that these steps will significantly reduce the number of volunteers and volunteer-hours available to conduct the organization's voter registration work.

62. To comply with the Registered Voter Requirement, the Missouri NAACP will be forced to require that all of its voter registration volunteers be registered voters in Missouri. This will require the organization to exclude from its activities its current volunteers and members who are under 18, registered in another state (e.g., Kansas or Illinois), or unable to register due to a criminal conviction.

63. The organization will also need to develop and implement a process for screening all volunteers to ensure they are registered Missouri voters.

64. Restricting the pool of available volunteers in this way significantly reduces the number of volunteers and volunteer-hours available to conduct the organization's voter registration work. It will also deprive the organization of the unique benefits of including young people and returning citizens in its voter registration work and prevent the organization from effectively communicating its message about who has an important role to play in strengthening our democratic society.

65. Developing and administering a system for tracking volunteer registrations and eligibility to ensure compliance with the Registered Voter Requirement, as well as conducting the training, outreach, and follow-up necessary to enable volunteers to successfully register, will also require the organization to divert and expend its limited resources, including volunteer time, from other work and activities.

66. As a result of these disruptions, individually and collectively, the Missouri NAACP expects to have reduced capacity to conduct its voter registration activities if the Challenged Provisions take effect. The Missouri NAACP also expects to be forced to divert its scarce organizational resources away from its work and toward ensuring compliance with the new restrictions.

67. **Absentee Voting.** The Missouri NAACP conducts outreach related to absentee voting. The organization seeks to enable all eligible Missourians to vote by any lawful means and believes that absentee voting is an important tool for achieving that end, particularly for voters who may face hurdles to voting at their polls on Election Day, who disproportionately include populations served through Missouri NAACP's advocacy and outreach activities. Through legal

and legislative advocacy and outreach and education activities related to absentee voting, it seeks to promote and operationalize this view.

68. The Missouri NAACP and its members and volunteers promote absentee voting, including through speech to potential absentee voters at events, in its written materials, email and newsletters, and social media.

69. The Missouri NAACP and its members and volunteers help eligible voters apply for absentee ballots by providing blank application forms, providing links to an online application form in their materials, offering information about the application and voting process, and driving individuals to clerks' offices to participate in in-person absentee voting.

70. The Absentee Ballot Solicitation Ban will impair the Missouri NAACP's ability to assist voters who most need to vote absentee by mail—particularly low-wage workers and shift workers who cannot take off work to get to the election office to vote absentee in person, those with chronic health conditions, those without access to transportation to vote in person, voters with disabilities, and voters with child or elder care responsibilities—and thus will need to obtain, properly complete, and submit their absentee ballot applications within strict deadlines in order to cast a ballot. The Missouri NAACP's membership and core constituencies include voters of color, young voters, seniors, low-wage workers, and others in these above categories. Without the Missouri NAACP's assistance, these voters will lose options for getting help with absentee voting.

71. Moreover, the Absentee Ballot Solicitation Ban is so vague that encouraging and assisting voters to exercise in-person absentee voting—where voters appear in person, apply to vote absentee with an election authority, and vote at the same time—may be considered “soliciting” an absentee ballot application.

72. But for the Absentee Ballot Solicitation Ban, the Missouri NAACP would expand its outreach in this area to ensure voters can navigate the rules related to absentee voting eligibility and the application process, and to promote the no-excuse in-person absentee voting option created by HB 1878. *See* HB 1878, § A (to be codified at § 115.277.1).

73. Instead, to comply with the Absentee Ballot Solicitation Ban, the Missouri NAACP will be forced to significantly restrict its activities related to absentee voting. To avoid prosecution under the Absentee Ballot Solicitation Ban, the organization expects to stop distributing blank absentee ballot applications, providing access to digital applications, providing information about absentee voting, and encouraging Missourians to vote absentee. If it does not stop, the organization and its staff, volunteers, and members risk criminal prosecution.

B. Defendants

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

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

76. *Locke Thompson and Class of Prosecuting Attorneys.* Defendant Locke Thompson is the Cole County Prosecuting Attorney. He is sued in his official capacity only and as a

representative of a Defendant class of county prosecuting attorneys who enforce Missouri's criminal laws, including §§ 115.304, 115.631.23, and 115.641, which criminalize violations of the Challenged Provisions. *See* §§ 56.060, 115.642.⁴

GENERAL FACTUAL ALLEGATIONS

Voter Registration and Absentee Voting in Missouri

77. ***Voter Registration.*** To cast a ballot in Missouri, an individual must register to vote. *E.g.*, § 115.139.

78. To register, an individual must submit an application containing information about the applicant and their qualifications to register to vote in Missouri. *See* § 115.155. Application forms and an online application tool are publicly available on the Secretary of State's website.⁵

79. Current law already incorporates various safeguards to ensure the accuracy of voter registration applications, including the requirement that applicants must sign and certify the accuracy of their applications under penalty of perjury. § 115.155.2 (to be recodified by HB 1878 at § 115.155.3). Multiple forms of misconduct related to voter registration, including “knowingly or willfully giv[ing] any false information for the purpose of establishing . . . eligibility to register to vote or . . . conspir[ing] with another person for the purpose of encouraging . . . false registration,” constitute felony offenses. § 115.175.

80. Current law allows private individuals and organizations to conduct outreach and advocacy in connection with voter registration, generally without any requirement to register with or report their operations to the State.

⁴ A motion for defendant class certification and suggestions in support is forthcoming.

⁵ *See Register to Vote*, Mo. Sec’y of State, <https://www.sos.mo.gov/elections/goVoteMissouri/register> (last visited August 22, 2022).

81. Under current law operating *before* implementation of HB 1878’s provisions, only individuals who are “paid or otherwise compensated for soliciting more than ten voter registration applications” must register with the Secretary of State as a “voter registration solicitor” for each two-year election cycle. § 115.205.1. Voter registration solicitors must be at least eighteen years old and registered to vote in Missouri. *Id.*

82. Under current law pre-HB 1878, individuals who do not qualify as voter registration solicitors—including uncompensated volunteers and compensated workers who solicit ten or fewer applications—are not required to register. *See id.*

83. Accordingly, prior to implementation of HB 1878’s provisions, these individuals are free to engage in political speech promoting the right to vote by encouraging others to register without restriction. They also are not subject to age, residency, or registered-voter requirements.

84. ***Absentee Voting.*** Current Missouri law permits only certain categories of citizens—such as individuals confined due to illness or disability, persons voting from jail awaiting prosecution, and individuals absent from the jurisdiction in which they are registered to vote on Election Day—to vote by absentee ballot. *See* § 115.277.1 (to be recodified as amended by HB 1878 at § 115.277.2-3).

85. To obtain an absentee ballot, a voter must submit a written application containing certain statutorily required information, including the applicant’s name, address, and reason for voting absentee. *See* § 115.279.2 (to be recodified by HB 1878 at Mo. Rev. Stat. § 115.279.3). A standardized application form is publicly available on the Secretary of State’s website.⁶

⁶ *See Request for Missouri Absentee Ballot*, <https://www.sos.mo.gov/CMSImages/ElectionGoVoteMissouri//AbsenteeBallotrequestformfillable.pdf> (last visited August 22, 2022).

86. Current law already provides various safeguards to ensure the authenticity of absentee ballot applications, including requirements that the application be signed by the voter and submitted by the voter or a close relative, and criminal penalties for submission of a fraudulent application. *See* § 115.279.2, 279.4 (to be recodified by HB 1878 at § 115.279.3, .279.5). The election authority vets and confirms the voter’s information contained on the application before determining whether the voter is entitled to obtain an absentee ballot.

87. Current law permits civic organizations like Plaintiffs and their staff and volunteers to encourage, solicit, and assist individuals to apply for absentee ballots, including by informing Missouri voters about their eligibility to vote absentee and providing absentee ballot applications to voters.

88. The 2020 election saw increased availability and use of absentee voting in Missouri. *See* § 115.277.7 (to be repealed by HB 1878) (expanding eligibility for absentee voting in 2020). Defendant Ashcroft, the State’s chief election official, along with local election authorities, have recognized that the election “was run securely.”⁷

Challenged Provisions and Their Impact

89. On May 12, 2022, the Missouri General Assembly passed House Bill 1878, 101st Gen. Assemb., 2d Reg. Sess. (2022) (HB 1878), which imposes far-reaching restrictions on voter

⁷ Jason Hancock, *Jay Ashcroft Touts Integrity of Missouri’s 2020 Election, but Supports an Audit*, MO. INDEP. (Nov. 22, 2021), <https://missouriindependent.com/2021/11/22/jay-ashcroft-touts-integrity-of-missouris-2020-election-but-supports-an-audit>. *See also* Shane Schoeller and Brianna Lennon: 2020 shows need for change in Missouri election laws, ST. LOUIS POST-DISP., Dec. 30, 2020, https://www.stltoday.com/opinion/columnists/shane-schoeller-and-brianna-lennon-2020-shows-need-for-change-in-missouri-election-laws/article_dc43db6a-db44-56e2-9b64-423ede95b16c.html (“Most importantly, we saw firsthand that increases in absentee voting did not sacrifice the integrity of the election nor the confidence in its results.”).

outreach activities. Governor Mike Parson signed HB 1878 into law on June 29, 2022, and the law will take effect on August 28, 2022.

90. The process preceding HB 1878's passage was opaque and far from ordinary.

91. HB 1878 began as a seven-page bill implementing strict photo-identification requirements for in-person voting and changing the process for casting provisional ballots. In the days before its final passage, HB 1878 grew into a sweeping fifty-eight-page omnibus elections bill that added a multitude of restrictive provisions covering a wide variety of issue areas.

92. In addition to the provisions challenged here, HB 1878's amendments purport to ban absentee-ballot drop boxes, give the Secretary of State broad discretion over voter registration list maintenance, and eliminate Missouri's Presidential Primary elections, among other changes.

93. The rushed additions meant that the Missouri General Assembly held only limited debate and heard no public testimony on many of the new provisions. The bill passed in the final 24 hours of the session, despite widespread confusion about its impacts, including among legislators themselves.

94. HB 1878's effective date, August 28, 2022, lands in the middle of the election cycle—after the August 2, 2022 primary election but before the November 8, 2022 general election.

95. In this litigation, Plaintiffs challenge four provisions of HB 1878: (1) the ban on voter registration solicitation by individuals who are paid or otherwise compensated (the "Compensation Ban"); (2) the requirement that certain unpaid volunteers who solicit voter registration applications register as voter registration solicitors (the "Unpaid Solicitor Registration Requirement"); (3) the requirement that all voter registration solicitors be registered voters in Missouri (the "Registered Voter Requirement"); and (4) the ban on the provision of

unsolicited absentee ballot applications (the “Absentee Ballot Solicitation Ban”) (collectively, the foregoing provisions are referred to as the “Challenged Provisions”).

96. Each of the Challenged Provisions targets Plaintiffs’ core political speech, expressive activity, and freedom of association by restricting their ability to inform, encourage, and assist Missouri voters to engage in the democratic process by registering to vote and applying to vote by absentee ballot.

97. Each of the Challenged Provisions chills Plaintiffs’ and other civic organizations’ protected speech, expressive conduct, and associational activities, prohibiting them from fully engaging with their members and other eligible voters and absentee voters.

98. Because the Challenged Provisions directly target protected political speech and activity on their face, they are facially unconstitutional and cannot be applied in a manner that does not interfere with core protected expression.

99. ***The Compensation Ban.*** HB 1878 prohibits anyone who does not work for a government entity, including Plaintiffs and their members, staff, and volunteers, from being “paid or otherwise compensated for soliciting voter registration applications.” HB 1878, § A (to be codified at § 115.205.1).

100. Compensated work is core to Plaintiffs’ voter registration solicitation programs. Their paid employees, fellows, interns, and consultants consider voter registration assistance core to the job duties and to furthering their civic engagement organizational mission. Paid employees, fellows, interns, and consultants perform important organizational duties as a part of the voter registration solicitation process that are necessary to these programs’ functioning. Under the Compensation Ban, Plaintiffs’ paid employees’ speech will be chilled, and they will be prohibited from engaging in voter registration assistance.

101. Moreover, Plaintiffs offer their unsalaried volunteers reimbursements of mileage, expenses, food, and in-kind gifts. These reimbursements, food, and in-kind gifts encourage increased volunteer participation and ensure that volunteers are not burdened with added expenses for donating their time to the organization. Under the Compensation Ban, Plaintiffs will be forced to halt these reimbursements to their volunteers.

102. HB 1878 also uses vague language and fails to define key terms, leaving the law open for broad interpretation, failing to provide notice of proscribed conduct, and thereby further chilling protected political speech. Specifically, HB 1878 fails to define “compensat[ion]” and “solicit[ation],” failing to give advance notice of its prohibitions.

103. This vagueness leaves parties to guess whether the Compensation Ban applies only to monetary compensation or more broadly to in-kind compensation for food or drink and reimbursement for expenses incurred while engaging in voter registration outreach.

104. For example, as a part of its voter registration activities, the LWVMO offers parking and vehicle mileage reimbursements to volunteers at voter registration events. Under HB 1878, it is unclear whether the LWVMO will be legally permitted to continue with these reimbursements. Because the League reasonably fears that the statute may be interpreted broadly, it expects to discontinue its reimbursement program should the Compensation Ban go into effect.

105. The Missouri NAACP similarly offers volunteers reimbursement for expenses related to voter registration outreach, as well as food, drinks, and other in-kind benefits during events. Because the Missouri NAACP, like the LMVMO, reasonably fears that the Compensation Ban may be interpreted to cover these activities, it expects to stop providing these benefits if the Ban takes effect.

106. It is similarly unclear what voter registration activity is covered by the Compensation Ban. HB 1878 does not specify, for instance, whether solicitation includes the acts of asking someone to register to vote and distributing blank voter registration applications and collecting completed ones or whether it extends more broadly to other activities, such as the distribution of links to the state's online voter registration portal, distribution of voter education materials that encourage recipients to register to vote and inform them of the process to register, or mere verbal encouragement to register and the provision of information on how to register.

107. For example, in addition to providing paper applications, the LWVMO brings iPads to voter registration events that attendees can use to fill out online voter registration forms on the Secretary of State's website. The LWVMO volunteers and members also distribute QR codes to the state's online voter registration form, directing attendees to complete voter registration applications on their own devices. Likewise, volunteers and members at events the LWVMO participates in wear shirts or buttons directing attendees to "Ask [Them] About Voter Registration." LWVMO staff also create and distribute voter education pamphlets encouraging recipients to register to vote and directing them how to do so.

108. Missouri NAACP volunteers also engage in a variety of activities aimed at inducing eligible Missourians to register to vote at registration events, including trying to attract individuals' attention, inquiring about their registration status, offering blank registration forms, assisting in the completion of those forms, and returning completed applications to the election authority.

109. Because the law is vague, it is unclear whether any or all of these activities would be prohibited under the Compensation Ban.

110. Pre-HB 1878 law permits voter registration solicitors to receive payment or compensation for their outreach activity, requiring paid solicitors to register with the state only if they solicit more than ten voter registration applications in an election cycle. There is no evidence that the nature of voter registration outreach by Plaintiffs and other similarly situated persons and organizations has changed such that a ban on compensation is necessary to prevent voter confusion or fraud.

111. Violators of the Compensation Ban will face misdemeanor charges, resulting in up to a year of imprisonment and/or a \$2,500 fine. *See* §§ 115.637, 115.641. As an election offense, it can also result in loss of the right to vote.

112. ***The Unpaid Solicitor Registration Requirement.*** HB 1878 further requires any “voter registration solicitor who solicits more than ten voter registration applications” to register as a voter registration solicitor. HB 1878, § A (to be codified at § 115.205.1). Registration must be completed each two-year election cycle. *Id.* Under penalty of perjury, solicitors must provide the State with their name, residential address, and mailing address.

113. This provision applies to *all* persons who solicit ten or more voter registration applications per election cycle, with no exceptions. Failure to register as a solicitor is a class 3 election offense. As an election offense, it can also result in loss of the right to vote. This threat will deter volunteer participation and impede the organizations’ efforts to encourage volunteerism.

114. The strict Unpaid Solicitor Registration Requirement will also impose severe administrative, financial, and time hurdles upon civic engagement organizations, including Plaintiffs, who conduct voter registration solicitation activities with the assistance of unpaid volunteers, hampering and chilling their ability to engage in this protected political speech.

115. For example, the LWVMO relies on hundreds of volunteers at dozens of voter registration events annually throughout Missouri to conduct its voter registration activities. The League encourages all members and other interested community members to participate. It does not require volunteers to pre-register for events in order to participate.

116. The Missouri NAACP similarly relies on hundreds of volunteers at an array of registration events, encourages attendance to a wide audience, and does not require those volunteers to pre-register.

117. Under the Unpaid Solicitor Registration Requirement, Plaintiffs will be forced to confirm the registration status of each of their hundreds of volunteers, likely through the time-consuming process of requesting that volunteers provide documentary proof that they have registered as voter registration solicitors.

118. Plaintiffs will be forced to divert resources from other work and activities, including actually assisting Missourians to register to vote, toward assisting potential volunteers with registering as voter registration solicitors and toward maintaining a database of volunteers' voter registration solicitor documentation. Currently, the voter registration solicitation form must include a wet signature and must be printed and submitted by fax or U.S. mail.

119. As a result of HB 1878, Plaintiffs' members and volunteers will be chilled from participating in voter registration activities.

120. If HB 1878 goes into effect, organizations, including Plaintiffs, expect to be forced to rethink their voter registration work and develop new processes to ensure member compliance, hampering their ability to engage in protected political speech and expression. HB 1878 will violate Plaintiffs' paid staff's ability to engage in constitutionally protected political speech and expressive activity in favor of exercising the fundamental right to vote.

121. Violation of the Unpaid Solicitor Registration Requirement can result in harsh criminal penalties. Under Missouri law, “[a]ny voter registration solicitor who knowingly fails to register with the secretary of state is guilty of a class three election offense.” § 115.205.4; *see also* § 115.641. If convicted, an individual is guilty of a misdemeanor connected with the right of suffrage and is forever disqualified from voting in Missouri and subject to up to one year of imprisonment and a \$2,500 fine. *Id.* §§ 115.635; 561.026. Plaintiffs and their staff and volunteers will risk these criminal penalties if they continue engaging in voter registration activities and are thereby deterred from encouraging voter registration volunteer activities.

122. **Registered Voter Requirement.** HB 1878 also extends to volunteers the requirement that voter registration solicitors must be at least 18 years of age and registered voters in Missouri. This changes prior law from requiring only paid solicitors to be 18 and registered voters in Missouri to requiring *all* voter registration solicitors to be 18 and registered voters in Missouri, applying to volunteers as well as paid solicitors. HB 1878, § A (to be codified at § 115.205.1).

123. This requirement contains no exceptions and may apply even to solicitors who solicit fewer than ten applications per election cycle.

124. The Registered Voter Requirement will bar certain classes of people from engaging in voter registration activity in Missouri. For example, individuals who are living temporarily in the state, but do not meet the residency requirement for voting in Missouri or vote absentee in their home state, will be barred from soliciting voter registration. Likewise, Missouri residents who are noncitizens, who are under the age of 18, or who have disqualifying criminal convictions will be similarly prohibited from engaging in voter registration solicitation. Missouri students who are registered in other states will be prohibited from volunteering at voter registration drives. Likewise, residents of Kansas or Illinois who may wish to volunteer time in the metro areas (or

elsewhere in the state) that are just across the border in Missouri will be prohibited from engaging in voter registration solicitation.

125. By prohibiting these classes of people from engaging in voter registration solicitation, HB 1878 interferes with their, and Plaintiffs', ability to engage in protected political speech and expression.

126. Moreover, by reducing the pool of available voter registration solicitation volunteers, HB 1878 will hamper organizations' (including Plaintiffs') ability to engage in protected voter registration activities by making fewer individuals available to volunteer and deterring volunteer participation.

127. Plaintiffs are currently able to work with volunteers who are ineligible to register to vote in Missouri but still desire to engage with the political process. Plaintiffs do not currently screen volunteers on their voter registration status. The Missouri NAACP, for example, currently works with volunteers who *cannot* register to vote due to age or past criminal convictions to open avenues for civic participation to these communities. The Missouri NAACP intends to convey a particular message about incorporating such volunteers into the organization's engagement with potential voters: that everyone has a role to play in strengthening our democracy. The Registered Voter Requirement would forbid this work and silence this message. Plaintiffs have an open-door policy for their volunteer events, encouraging members and other interested community members to participate. They do not require volunteers to pre-register for events in order to participate.

128. ***The Absentee Ballot Solicitation Ban.*** HB 1878 also imposes a sweeping ban on absentee voting outreach and engagement activity by prohibiting all "individual[s], group[s], or

part[ies]” other than state or local election officials from “solicit[ing] a voter into obtaining an absentee ballot application.” HB 1878, § A (to be codified at § 115.279.2).

129. Any violation of the Absentee Ballot Solicitation Ban will constitute a strict-liability class one election offense. *See* §§ 115.304, .631.23. A class one election offense in Missouri is a “felony connected with the right of suffrage,” punishable by imprisonment for up to five years, a fine of between \$10,000 and \$250,000 dollars, and permanent loss of voting rights. *Id.* § 115.631; *see id.* § 115.133.2(3).

130. Unlike the Unpaid Solicitor Registration Requirement, the Absentee Ballot Solicitation Ban does not allow Plaintiffs and other civic actors to engage in even small-scale outreach; soliciting just a single voter into obtaining an absentee ballot application would violate the statute and expose Plaintiffs and their volunteers to criminal liability.

131. HB 1878 does not define what it means to “solicit a voter into obtaining an absentee ballot application.” Plaintiffs can only guess at the scope of this restriction: it is unclear, for example, whether the prohibition covers general advocacy or only targeted outreach to particular voters; whether the solicitor must succeed in having a voter obtain an application or merely encourage a voter to do so; and whether abstract advocacy alone violates the statute, or if concrete provision of the application paperwork is required, and if so, whether this is limited to providing a paper application to the voter, or would include providing the voter with a link to the online absentee ballot application on the Secretary of State and local election authority websites.

132. Regardless of the provision’s precise scope, the Absentee Ballot Solicitation Ban will require Plaintiffs to significantly curtail their voter education and engagement related to absentee voting, chilling their speech, expression, and association.

133. For example, although speech, expression, and association encouraging voters to take advantage of opportunities to cast absentee ballots lie at the core of Plaintiff LWVMO's civic mission and are activities they have engaged in with regularity in the past, the League plans to stop offering blank absentee ballot applications to voters who do not request them and volunteering unsolicited information about voters' eligibility to cast absentee ballots. It also expects to limit its advocacy and education related to early and absentee voting.

134. The Missouri NAACP similarly expects to curtail its speech, advocacy, and association related to absentee and early voting. The Missouri also plans to stop offering blank absentee ballot applications and promoting opportunities to vote absentee in its speech and written materials.

135. In other words, as a result of HB 1878, Plaintiffs will not be able to continue associating and communicating with Missouri voters in the manner they have chosen about their potential eligibility for absentee voting. This work is all the more critical in light of HB 1878's absentee voting changes allowing limited in-person no-excuse absentee voting, but not extending no-excuse absentee voting to those needing absentee ballots by mail, who will need to meet eligibility requirements and who will need to obtain and submit absentee ballot applications.

136. These restrictions on Plaintiffs' speech, expression, and association related to absentee voting are particularly onerous because the merit of widespread use of absentee ballots has become a subject of intense public debate. The Absentee Ballot Solicitation Ban thus prevents Plaintiffs and their staff, volunteers, and members from expressing and advocating for their views on a matter of broad societal concern and importance—a matter on which they have particular viewpoints and particular expertise.

137. Educating voters of their ability to vote absentee when they may not be aware of the bases on which this is possible and assisting them in obtaining an absentee ballot increases voter turnout.

138. The State has no compelling, or even legitimate, interest in so severely restricting the content and conveyance of Plaintiffs' political speech, expression, and association in favor of voter registration and absentee voting. Current law provides numerous safeguards to ensure the integrity of voter registration and absentee ballot applications, and there is no substantial evidence of a change in voter registration or absentee voting outreach activity by Plaintiffs or other similar persons or groups that would necessitate such strict and far-reaching restrictions.

DEFENDANT CLASS ALLEGATIONS

139. Defendant Thompson is a member of the class of prosecuting attorneys in Missouri.

140. Defendant Thompson and all prosecuting attorneys throughout the State have the authority to criminally enforce the Challenged Provisions and prosecute any alleged offenders.

141. Any violation of §§ 115.275 to 115.303 (absentee voting) is a class one election offense. § 115.304.

142. A class one election offense is a felony punishable by imprisonment of not more than five years or a fine between \$2,500 and \$10,000, or both. § 115.631.

143. A knowing failure to register as a voter registration solicitor in violation of § 115.205.1 is a class three election offense, which is a misdemeanor connected with the right of suffrage punishable by imprisonment up to one year and a fine up to \$2,500 and the permanent loss of voting rights. *See* § 115.205.4.

144. Any violation of “[a]ny duty or requirement imposed by the provisions of [Chapter 115] which is not fulfilled and for which no other or different punishment is prescribed shall constitute a class four election offense.” § 115.641.

145. A class four election offense is a misdemeanor punishable by imprisonment of not more than one year or a fine of not more than \$2,500, or both. § 115.637.

146. The Absentee Ballot Solicitation Ban will be codified as § 115.279.2. A violation of this provision will be a class one election offense.

147. The Compensation Ban, The Unpaid Solicitor Registration Requirement, and the Registered Voter Requirement will be codified as § 115.205.1. Any violation of these provisions will be a class three or four election offense.

148. Convictions for violating election laws may also cause a person to lose their right to vote.

149. There are 114 counties in Missouri and 115 prosecuting attorney offices, including the Prosecuting Attorney for the City of St. Louis (a city not within a county), which makes the members of the prospective defendant class so numerous that joinder of all members of the class would be impracticable.

150. The Challenged Provisions require the prospective defendant class to engage in conduct implicating Plaintiffs’ constitutional rights such that there is a common nucleus of operative facts and law.

151. Any defenses that could be raised by Defendant Thompson would have the same essential characteristics as the defenses of the defendant class at large.

152. Defendant Thompson will fairly and adequately protect the interests of the prospective defendant class.

153. Defendant Thompson and members of the prospective defendant class have the authority and responsibility to enforce the Challenged Provisions within their respective jurisdictions and, in doing so, will be acting under color of law.

CLAIMS FOR RELIEF

COUNT I

Violation of the Right to Free Speech Under Article I, Section 8 of the Missouri Constitution

154. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if fully set forth herein.

155. Article I, Section 8 of the Missouri Constitution guarantees “[t]hat no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject.”

156. Article I, Section 8 confers a right to free speech at least as expansive as that protected by the federal First Amendment. *See, e.g., Karney v. Dep’t of Lab. & Indus. Rels.*, 599 S.W.3d 157, 162–63 (Mo. banc 2020).

157. The Challenged Provisions are subject to strict scrutiny under Article I, Section 8 for at least three independent reasons: individually and collectively, they (i) burden Plaintiffs’ core political speech and expression and do so based on (ii) the content discussed and (iii) the viewpoint expressed.

158. The restrictions are overbroad and impair a wide swath of constitutionally protected communications, including Plaintiffs’ everyday expression supporting voter engagement.

159. *First*, the Challenged Provisions burden Plaintiffs’ core political speech and expression. *See Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 186–87 (1999); *McIntyre v.*

Ohio Elections Comm’n, 514 U.S. 334, 345–57 (1995); *Meyer v. Grant*, 486 U.S. 414, 420–28 (1988). Engaging and assisting voters in registering to vote or applying to cast an absentee ballot is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer*, 486 U.S. at 421–22. Whether citizens should participate in the electoral process and exercise their right to vote by absentee ballot “is a matter of societal concern that appellees have a right to discuss publicly without risking criminal sanctions.” *Id.* at 421. Each of the Challenged Provisions severely burdens Plaintiffs’ core political speech on these topics.

160. The Compensation Ban severely burdens Plaintiffs’ core political speech by “limit[ing] the number of voices who will convey [Plaintiffs’] message and the hours they can speak, . . . limit[ing] the size of the audience they can reach.” *Meyer*, 486 U.S. at 422–23. Plaintiffs currently rely on paid staff, compensated fellows, and volunteers eligible for reimbursement to spread their pro-registration message. Without the use of paid staff or reimbursement-eligible volunteers as registration solicitors, Plaintiffs will not be able to reach as many potential voters as they currently do; the Compensation Ban thus deprives them of “access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication.” *Id.* at 424; *see also id.* (“The First Amendment protects [speakers’] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.”).

161. The Unpaid Solicitor Registration Requirement also severely burdens Plaintiffs’ core political speech and expression. *See Buckley*, 525 U.S. at 201–04; *see also Meyer*, 486 U.S. at 422–24. The burdensome registration requirements—and the risk of associated criminal penalties—will restrict the pool of volunteers on whom Plaintiffs can rely to promote their pro-

registration message and thus, like the Compensation Ban, “limit[] the number of voices that will convey [Plaintiffs’] message and the hours they can speak,” thereby “limit[ing] the size of the audience [Plaintiffs] can reach.” *Meyer*, 486 U.S. at 422–23. Moreover, even where individuals persist in speaking despite the registration requirements, those requirements will impose new administrative burdens on Plaintiffs, again impeding their core political speech.

162. The Registered Voter Requirement also severely burdens Plaintiffs’ core political speech. *See Buckley*, 525 U.S. at 192–97. “The requirement that [solicitors] be . . . registered voters . . . decreases the pool of potential [solicitors] as certainly as that pool is decreased by the prohibition of payment to [solicitors].” *Id.* at 194. Plaintiffs are currently able to work with volunteers who, either for philosophical reasons, a recent move, or because of ineligibility (for instance, due to age or past criminal convictions, or out of state college students registered elsewhere), are not registered to vote in Missouri. Requiring voter registration solicitors—including volunteer solicitors—to be registered Missouri voters thus again restricts “the number of voices who will convey [Plaintiffs’] message” and “cut[s] down ‘the size of the audience [Plaintiffs] can reach.’” *Id.* at 194–95 (quoting *Meyer*, 486 U.S. at 422–23). By “cut[ting] down the number of message carriers,” *id.* at 197, the restriction severely burdens Plaintiffs’ core political speech.

163. Finally, the Absentee Ballot Solicitation Ban also burdens Plaintiffs’ core political speech. The provision is an outright ban on Plaintiffs’ political speech in favor of absentee voting. This speech is “political” in at least two senses: it “concern[s] political change” in that it seeks to encourage voters to participate in elections, and it takes a stance on a controversial “matter of societal concern”—the propriety and security of absentee voting. *Meyer*, 486 U.S. at 421–22. If

allowed to take effect, the measure would, *by design*, “restrict[] political expression,” *id.* at 422, severely burdening Plaintiffs’ constitutional right to free speech.

164. *Second*, the Challenged Provisions restrict Plaintiffs’ speech based on its content. *See, e.g., Fox v. State*, 640 S.W.3d 744, 750 (Mo. banc 2022) (“Laws that regulate speech based on its communicative content ‘are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.’” (quoting *Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2371 (2018))). The Unpaid Solicitor Registration Ban, Registered Voter Requirement, and Compensation Ban apply only to speech involving voter registration and, more specifically, solicitation of voter registration applications, not to speech involving other topics. Similarly, the Absentee Ballot Solicitation Ban restricts only speech related to absentee ballot applications, and not discussion of other issues.

165. *Third*, the Challenged Provisions target speech based on the viewpoint expressed. *See, e.g., Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828–29 (1995) (remarking that viewpoint discrimination “is presumed to be unconstitutional”). The Unpaid Solicitor Registration Ban, Registered Voter Requirement, and Compensation Ban restrict only speech that solicits voter registration applications—that is, speech in favor of registering to vote. Speakers opposed to voter registration do not face any such restrictions. In the same way, the Absentee Ballot Solicitation Ban prohibits only speech that encourages citizens to vote by absentee ballot; speakers opposed to absentee voting remain free to espouse their views and discourage Missourians from casting absentee ballots.

166. Each of the Challenged Provisions chills protected speech by Plaintiffs and their members, volunteers, and staff.

167. The Challenged Provisions are not narrowly tailored to serve any compelling government interest; indeed, the provisions are not even rationally related to any legitimate regulatory interest and serve little purpose other than to deter civic organizations and individuals from engaging in political speech related to voter registration and absentee voting.

168. Because the Challenged Provisions do not survive strict scrutiny—or, indeed, any level of judicial scrutiny—they violate Plaintiffs’ and their members’, volunteers’, and employees’ right to free speech under the Missouri Constitution.

169. Plaintiffs expressly state that they are not asserting or attempting to assert any claim under the United States Constitution or any federal statute.

COUNT II

Violation of the Right to Free Association Under Article I, Sections 8 and 9 of the Missouri Constitution

170. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if fully set forth herein.

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

172. This associational right is at least as expansive as that protected by the federal First Amendment. See, e.g., *Karney*, 599 S.W.3d at 162–63.

173. The Challenged Provisions directly and severely burden Plaintiffs’ and their members’ associational rights in at least two ways.

174. *First*, the Challenged Provisions prevent the Plaintiff organizations and their members from banding together with one another to engage potential voters and assist community members in participating in the civic community through voter registration and

absentee voting. Encouraging and facilitating individuals' civic participation and exercise of the right to vote is at the core of the Plaintiff organizations' missions: Members of the League, for example, join the organization precisely to engage in collective expressive activities encouraging voting and civic participation. The Challenged Provisions prohibit or impede these civic engagement activities, and thus severely burden Plaintiffs' and their members' expressive association.

175. The Compensation Ban, Unpaid Solicitor Registration Requirement, and Registered Voter Requirement directly restrict who may participate in Plaintiffs' voter registration activities and events and deter participation with the organizations. These provisions thus directly interfere with Plaintiffs' and their members' ability to associate to express their views through advocacy and outreach related to voter registration.

176. *Second*, the Challenged Provisions impede the ability of the Plaintiff organizations and their members to associate with potential voters through outreach related to voter registration and absentee voting. This burden on expressive association manifests in both the short and the long terms. In the short term, the Challenged Provisions prevent Plaintiffs from associating with potential voters and jointly engaging in expressive activities; for example, the Absentee Ballot Solicitation Ban bars Plaintiffs from engaging with potential absentee voters to discuss the merits of absentee voting and educating them on the ability to vote in certain circumstances if they cannot be present at a polling place on election day, and perform the steps necessary to apply for absentee ballots. In the long term, this interference with Plaintiffs' activities prevents Plaintiffs from developing lasting relationships with the potential voters that Plaintiffs assist, hindering Plaintiffs' efforts to increase voter turnout and broaden the base of public participation in and support for their activities. In other words, because of the Challenged Provisions, Plaintiffs will

no longer be able to use their outreach efforts to increase voter turnout in Missouri elections and cultivate connections with potential future members or volunteers, hampering Plaintiffs' civic engagement work—a fundamentally expressive activity.

177. Each of the Challenged Provisions chills protected association by Plaintiffs and their members, volunteers, and staff, prohibiting them from fully engaging with their members and other eligible voters and absentee voters.

178. Together and individually, the Challenged Provisions thus impose a severe burden on Plaintiffs' and their members' freedom of association and are therefore subject to strict scrutiny.

179. The Challenged Provisions do not advance any legitimate government interest—let alone a compelling one—and instead serve only to hinder civic organizations in their efforts to associate with their members and voters concerning voter registration and absentee voting.

180. The Challenged Provisions are not rationally related to any legitimate government interest nor are they narrowly tailored to any compelling interest.

181. Under any level of judicial scrutiny, the Challenged Provisions violate the Missouri Constitution's guarantee of freedom of association.

182. The restrictions are overbroad and impair a wide swath of constitutionally protected association, including Plaintiffs' everyday association with their members, volunteers, and eligible voters supporting voter engagement.

183. Plaintiffs expressly state that they are not asserting or attempting to assert any claim under the United States Constitution or any federal statute.

COUNT III

Violation of Due Process Under Article I, Section 10 of the Missouri Constitution

184. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if fully set forth herein.

185. Article I, Section 10 of the Missouri Constitution provides “[t]hat no person shall be deprived of life, liberty or property without due process of law.”

186. This due process guarantee requires that a statute “give ordinary people fair notice of the conduct it punishes” and not be “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015); *see, e.g., State v. Young*, 695 S.W.2d 882, 884 (Mo. banc 1985).

187. The Challenged Provisions violate due process because they are unconstitutionally vague.

188. The vagueness inquiry is stricter if the statute in question “threatens to inhibit the exercise of constitutionally protected rights,” imposes criminal penalties, lacks a scienter requirement, or is noneconomic in nature. *State ex rel. Nixon v. Telco Directory Publ’g*, 863 S.W.2d 596, 600 (Mo. banc 1993) (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498–99 (1982)). Here, all four considerations call for a more rigorous review of the Challenged Provisions’ constitutionality: The restrictions “threaten[] to inhibit [Plaintiffs’] exercise of constitutionally protected rights” to free speech, expression, and association, *id.*, and lessen Plaintiffs’ ability to assist Missourians in exercising their “fundamental right to vote.” *Priorities USA v. State*, 591 S.W.3d 448, 453 (Mo. banc 2020).

Violations of the restrictions are criminal election offenses, and, with one exception,⁸ result in strict criminal liability. *See, e.g.*, §§ 115.133; 115.205.4; 115.279.2; 115.631; 115.635. And the restrictions do not regulate economic activity by businesses, but political activity by any person or organization. The Challenged Provisions are therefore subject to the most “stringent vagueness test.” *Flipside*, 455 U.S. at 499.

189. The Challenged Provisions are substantially vague and violate Plaintiffs’ right to due process.

190. The Compensation Ban, which requires that “[n]o person shall be paid or otherwise compensated for soliciting voter registration applications,” HB 1878, § A (to be codified at § 115.205.1), is unconstitutionally vague for at least two reasons.

191. *First*, the provision does not define what it means to “be paid or otherwise compensated” in this context. *Cf. Mo. Prosecuting Att’ys v. Barton Cnty.*, 311 S.W.3d 737, 742 (Mo. banc 2010) (noting that the term “compensation” “can have quite varied meanings in different contexts”). It is unclear, for example, whether the ban on “compensat[ion]” prohibits individuals from accepting—and organizations from offering—reimbursement for gas and other expenses incurred in conducting voter registration activities, or applies to food, training, or other benefits organizations might offer to volunteers and staff in connection with voter registration activities.

192. Plaintiffs’ inability to predict the meaning of “compensa[tion]” in this context will force them to substantially alter or curtail their activities to avoid the risk of prosecution. Plaintiff

⁸ Only a “knowing[.]” failure to register as a voter registration solicitor is a criminal violation. § 115.205(4). However, the relevant statute does not specify whether the individual must know both that she is required to register and that she has not done so or know only that she has not registered. *See id.* If the latter, the scienter requirement does nothing to alleviate the statute’s vagueness, which leaves individuals without fair notice of the need for registration.

LWVMO, for example, expects to stop offering reimbursements for gas and mileage to volunteers, and the Missouri NAACP expects to stop offering mileage reimbursements or food, likely reducing the number of volunteer hours available to Plaintiffs.

193. *Second*, the Compensation Ban fails to define what it means to “solicit[] voter registration applications.” This phrase admits of a range of possible readings: Plaintiffs can only guess whether it encompasses, for example, general public-facing endorsements of registering to vote or only more targeted outreach; whether any outreach must actually induce an individual to apply to register; and whether the solicitor must provide and collect an application (and whether that includes only paper applications, or linking to the state’s online registration portal) or whether group-level or generalized advocacy qualifies.

194. This uncertainty, too, forces Plaintiffs to substantially modify their activities to minimize the risk of liability. The League, for example, expects to reorganize its voter registration systems to minimize the role of the paid staff who currently oversee the program, since the organization cannot predict what activities related to voter registration those staffers are allowed to carry out. The Missouri NAACP plans to curtail certain registration activities.

195. The Unpaid Solicitor Registration Requirement and Registered Voter Requirement, which mandate that individuals “who solicit[] more than ten voter registration applications . . . register [as voter registration solicitors] for every election cycle,” and that “voter registration solicitor[s]” be registered Missouri voters, HB 1878, § A (to be codified at § 115.205.1), are also unconstitutionally vague because they, too, offer no guidance as to what it means to “solicit[] . . . voter registration applications” or who qualifies as a “voter registration solicitor,” making it impossible for Plaintiffs to know who must satisfy these requirements. It is similarly unclear when a prospective solicitor’s liability attaches or when one has successfully registered as a voter

registration solicitor, for example, whether a solicitor's status is based upon submission of the registration form, or only upon the state's subsequent review and approval of the form.

196. Because of this vagueness, Plaintiffs must interpret the Challenged Provisions broadly to avoid the risk of prosecution. Plaintiff organizations, for example, expect to have to require all volunteers to be registered both to vote and as voter registration solicitors in advance of volunteering in voter registration work in any capacity, imposing a significant administrative burden on the organization and volunteers and restricting the pool of available workers.

197. Finally, the Absentee Ballot Solicitation Ban, which forbids "solicit[ing] a voter into obtaining an absentee ballot application," HB 1878, § A (to be codified at § 115.279.2), is vague because it similarly fails to define what it means to "solicit" an absentee ballot application. As in the voter registration context, Plaintiffs can only guess whether the statute proscribes general or targeted outreach, unsuccessful or successful encouragements, and abstract advocacy or concrete provision of the application paperwork, and whether that includes assistance obtaining an application that is readily available online.

198. Once again, the statutory vagueness will force Plaintiffs to significantly alter and curtail their expressive activities to limit their potential liability. Plaintiff organizations expect to stop offering voters unrequested absentee ballot applications and restrict certain outreach related to absentee voting.

199. As a result of these ambiguities, the Challenged Provisions fail to provide civic organizations and individuals engaged in voter registration and get-out-the-vote activities, like Plaintiffs, "fair notice of the conduct [the provisions] punish." *Johnson*, 576 U.S. at 595.

200. Moreover, the Challenged Provisions' vagueness gives Defendants broad discretion in interpreting and applying their requirements, thereby "invit[ing] arbitrary enforcement." *Id.*

201. The Challenged Provisions are therefore unconstitutionally vague under the Missouri Constitution's Due Process Clause.

202. Plaintiffs expressly state that they are not asserting or attempting to assert any claim under the United States Constitution or any federal statute.

COUNT IV

Claim for Declaratory Judgment - § 527.010

203. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if fully set forth herein.

204. This claim is brought as an alternative to Counts I through III.

205. This Court has the power to issue a declaratory judgment where the party's legal rights under a statute are in question. § 527.020.

206. The language of the Challenged Provisions make it unclear how they apply to Plaintiffs, as evidenced by the lack of any official guidance despite the clear implications the Challenged Provisions have on Plaintiffs' voter engagement efforts and the harsh criminal sanctions, which presents a justiciable controversy regarding how and when Plaintiffs will be subject to regulation and prosecution under the Challenged Provisions.

WHEREFORE, Plaintiffs pray this Court:

- A. Enter declaratory judgment that the Challenged Provisions in HB 1878 are unconstitutional facially and as applied under the Missouri Constitution and may not be enforced;
- B. Issue a preliminary injunction prohibiting Defendants and anyone acting in concert with them from enforcing the Challenged Provisions;
- C. Issue a permanent injunction prohibiting Defendants and anyone acting on concert with them from enforcing the Challenged Provisions;

- D. Alternatively, enter declaratory judgment defining and clarifying how and when the Challenged Provisions will subject Plaintiffs to regulation and prosecution; and
- E. Allow such other and further relief as is proper under the circumstances.

Respectfully submitted,

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