IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,	)	
Plaintiffs,	)	
v.	)	No. 20AC-CC00169-01
STATE OF MISSOURI, et al.,	)	
Defendants.	)	

DEFENDANTS' PRETRIAL BRIEF

TABLE OF CONTENTS

INTRODUCTION

On September 19, 2005, the bipartisan Commission on Federal Election Reform released a series of recommendations for improving confidence in the United States' election system. Foremost among its recommendations—it appears in a signed letter from the Commission's co-chairs, President Carter and former Secretary of State James Baker, prefacing the report—was a recommendation for "a photo ID system for voters . . . ." Comm'n on Fed. Election Reform, *Building Confidence in U.S. Elections* ii (2005). Even if "[t]here is no evidence of extensive fraud in U.S. elections or of multiple voting," the Commission said, both voter fraud and multiple voting indisputably occurred. *Id.* at 18. "In close or disputed elections, and there are many, a small amount of fraud could make the margin of difference." *Id.* Furthermore, "the perception of possible fraud contributes to low confidence in the system," while "[a] good ID system could" prevent fraud "and thus . . . enhance confidence." *Id.* at 18–19. The Commission therefore recommended that States use photo ID "for voting purposes." *Id.* at 19–20.

Plaintiffs in this lawsuit seek forward looking injunctive relief against the State of Missouri's lawfully enacted voter ID Law, enacted as House Bill 1878 (hereinafter "HB 1878"). That law requires voters to show a state or federal government issued form of Photo Identification (hereinafter "photo ID") in order to vote, or in the alternative, to vote a provisional ballot which involves a signature verification process before the ballot is counted.

Plaintiffs—the Missouri State Conferences of the NAACP ("NAACP"), the League of Women Voters of Missouri ("League of Women Voters"), Dr. John O'Connor, Ms. D. Rene Powell, and Ms. Kimberly Morgan—disagree with that bipartisan recommendation. They have brought this challenge to provisions of HB 1878 that require voters to provide a photo ID to vote,

or otherwise to vote a provisional ballot.[1] Their challenge to a measure to enhance the State's election security, however, does not properly invoke the Court's jurisdiction.

This Court agreed with that statement, and dismissed this case on 12 October 2023, finding in its Order and Judgment that both the organizational and individual Plaintiffs have failed to allege either standing or a legally protectable interest. Plaintiff O'Connor joined this suit via an amended complaint filed by the Plaintiffs on November 4, 2022 and is subject of Defendants outstanding October 25, 2023 motion to dismiss as he, too, lacks standing or a legally protectable interest: he has a non-expiring non-driver ID provided to him for free by the state of Missouri which he has used and will be able to continue to use to vote.

Moreover, the facts relating to the original Plaintiffs have not materially changed for Plaintiffs since the court's dismissal: despite the parties having robustly explored those claims through the discovery process and a total of nineteen (19) depositions, Plaintiffs still fall massively short of proving their required burden for this dual "facial" and "as applied" challenge to HB 1878 – they cannot prove that this duly enacted law is unconstitutional as it applies to them, still less surmount the much higher burden they bear of showing that there is no set of circumstances under which it is constitutional.

The Court should enter judgment for the Defendants on both Counts in the Amended Petition, for three reasons:

I. All Plaintiffs lack standing to bring either facial or as applied challenges to HB 1878 as all can all vote and all have photo IDs;

   a. The *de-minimis* harms they allege do not outweigh the state's compelling government interests in protecting the integrity of the election system advanced

[1] Challenges to other portions of HB 1878 are pending in Case No. 22AC-CC04333.

by HB 1878 and certainly do not justify the forward looking relief they seek by requesting the injunction of the statute, and

b. To the extent that there is any minimal burden to obtaining a photo ID, such burden is not even solely attributable to the need to obtain photo ID for voting: photo ID is required for many areas of modern life; on the other hand, the state alleviates provides photo IDs and underlying documentation to voters for free and assists voters in obtaining the same;

c. Plaintiffs cannot legally seek facial relief on behalf of individuals who are not Plaintiffs in this litigation.

II. HB 1878 was passed in response to a 2016 Missouri Constitutional Amendment authorizing voter ID[2] (which the Plaintiffs do not challenge) and is therefore constitutional, particularly because the Missouri Constitution should be construed so as not to contradict itself;

a. Plaintiffs' Count I fails because HB 1878 does not violate the right to vote under the Missouri Constitution, in fact, it protects the integrity of that right; and

b. Plaintiffs' Count II fails because HB 1878 does not violate the equal protection clause of the Missouri Constitution: it imposes a universally applicable *de minimis* requirement to show a Missouri or federal government issued photo ID, or in the alternative, to show no such ID and vote via a provisional ballot.

III. The 2016 Missouri Constitutional Amendment authorizing voter ID overrules the portions of *Weinshenk* on which Plaintiffs rely;

[2] MO. CONST. art. 8 § 11.

IV. Both counts fail under any level of constitutional scrutiny, particularly under rational basis analysis which is appropriate here.

a. There is not a severe burden on the right to vote as the State has gone to great lengths to help voters obtain IDs, and IDs are now needed in many areas of modern life; moreover, the plaintiffs cannot show one instance of more than a hypothetical harm of a provisional ballot being rejected for an improper signature mismatch;

a. The portions of the two precedents on which the Plaintiffs heavily rely, *Weinschenk* and *Priorities USA*, are either factually distinguishable or superseded by a Constitutional Amendment; in response to *Priorities USA*, the legislature passed HB 1878 to remove the previous problematic affidavit language and "clean up" the statute;

This court should once again dismiss this entire suit for lack of standing, and if it reaches the merits on any issue, should dismiss both counts for their fatal legal and factual deficiencies.

BURDEN OF PROOF

As movant in this case, Plaintiffs bear the burden of proving, by a preponderance of the evidence, that there is no set of circumstances under which HB 1878 is constitutional. Moreover, as plaintiff's facially challenge this Missouri statute, their burden is even higher: "In order to mount a facial challenge to a statute, the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *Donaldson v. Missouri State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. 2020) quoting *Artman v. State Bd. of Registration for the Healing Arts*, 918 S.W.2d 247, 251 (Mo. banc 1996) (internal quotation marks omitted). "It is not enough to show that, under some conceivable circumstances, 'the statute might operate

unconstitutionally.'" *Ibid*. "When seeking declaratory relief, a legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question. The party seeking relief has the burden of establishing that they have standing." *World Wide Tech., Inc. v. Off. of Admin*., 572 S.W.3d 512, 519 (Mo. Ct. App. 2019)

FACTUAL BACKGROUND

I. The voter ID provisions at issue.

On May 12, 2022, the Missouri General Assembly passed HB 1878; Governor Parson signed HB 1878 into law on June 29, 2022; and the law went into effect on August 28, 2022. Pet. ¶¶100–102. As relevant to this case, *see* Pet. ¶¶100–120, HB 1878 amended § 115.427, RSMo. As amended, the law requires individuals who wish to vote to present *either* an acceptable form of personal photo ID, *or* to cast a provisional ballot. *See* § 115.427.1.[3] Prior to the amendment, the law permitted individuals to vote using a broader array of documents in lieu . *See* § 115.427.2 (2020 supp.). Voters who do not have an acceptable photo ID may cast a provisional ballot, which can be counted in two different ways. *See* § 115.427.2. For a provisional ballot to count, *either* the voter must "return[ ] to the polling place" while the polling place is open and "provide[ ] a form of" of valid photo ID, *or* "[t]he election authority verifies the identity of the individual by comparing that individual's signature to the signature on file with the election authority and determines that the individual was eligible to cast a ballot at the polling place where the ballot was cast." § 115.427.4(1).

HB 1878 incorporates those photo ID requirements into in-person absentee voting. The bill amended § 115.277 to require that an individual who votes absentee in person must "provide a form of personal photo identification that is consistent with subsection 1 of section 115.427."

[3] Citations refer to the current version of the Revised Statutes unless otherwise noted.

§ 115.277.1. HB 1878 also authorizes no-excuse early in-person voting for the first time in Missouri, up to two weeks prior to Election Day. § 115.277.1, RSMo ("Beginning on the second Tuesday prior to an election, a reason listed under subsection 3 of this section shall not be required…"). The statute contains a non-severability clause expressing the Legislature's express intention that the two weeks of early in-person voting are not severable from the photo-ID requirement: "Beginning on the second Tuesday prior to an election, a reason listed under subsection 3 of this section shall not be required, provided that, the provisions of section 1.140 to the contrary notwithstanding, this sentence and section 115.427 shall be nonseverable, and if any provision of section 115.427 is for any reason held to be invalid, such decision shall invalidate this sentence." *Id.* Early in-person voting under HB 1878 commenced in the City of St. Louis, on August 30, 2022, for a special election to be held on September 13, 2022. *See, e.g.,* Joe Millitzer, *Anyone Can Vote Two Weeks Before a Missouri Election*, Fox2Now.com (Sept. 8, 2022), *at* https://fox2now.com/news/missouri/anyone-can-vote-two-weeks-before-a-missouri-election/. Missouri voters have been exercising their right to vote by the new "no excuse" early voting procedures under the current law since that election.

II. Background of this lawsuit.

A. A. Plaintiffs file their initial lawsuit challenging HB 1878

On August 23, 2022, Plaintiffs—two organizations, the NAACP and the League of Women Voters, and two individuals, Ms. Powell and Ms. Morgan—filed this lawsuit. Raising only state constitutional claims, they alleged that requiring a photo ID to cast a non-provisional ballot violates the right to vote of the Constitution (Count I) and the guarantee of equal protection in Article I, § 2 (Count II). Pet. ¶¶ 149–165. The analysis under the two were essentially the same. *See Priorities USA v. State*, 591 S.W.3d 448, 452–53 (Mo. banc 2020).

On September 9, 2022, Defendants moved to dismiss Plaintiffs' petition for failure to plead a legally protectable interest and lack of subject-matter jurisdiction based on Plaintiffs' lack of standing under Mo. Sup. Ct. R. 55.27(a)(1). The motion addressed five standing deficiencies with Plaintiffs' suit, which can be summarized as follows (*see* Defendant's Motion to Dismiss at pages 1-2): (1) Individual Plaintiffs Ms. Powell and Ms. Morgan had not suffered an injury to a protectable interest because they were still able to vote either with or without their existing IDs (Ms. Powell has a recently expired Missouri non-driver ID, Ms. Morgan has a Missouri driver's license with her first name misspelled by one letter); moreover, their claims of needing significant time and effort to get a compliant ID are speculative. (2) The organizational Plaintiffs lacked standing because they do not identify a single member who would have standing to challenge HB 1878, simply speculating that such a person exists, and any "harms" to the organizations resulting from the law are self-inflicted. (3) The Plaintiffs facial claim requested relief that could not be granted by this court as they cannot represent the rights of unnamed potential voters not parties to this suit. (4) As it relates to federal elections, this court has no jurisdiction to interfere with the procedures set for federal elections by the state legislature as required by the federal constitution. (5) Finally, courts do not generally interfere last minute with election procedures, and the requested injunction relating to the soon to occur November 2022 election would have brought a significant risk of voter and election administrator confusion and resulting harms.

B. B. This Court dismisses Plaintiffs' suit.

On October 12, 2022, this Court granted the Defendants motion and dismissed Plaintiffs' suit, entering judgment in favor of the Defendants. *Order and Judgment*, October 12, 2022 (Cole County) (hereinafter *Order and Judgment*). This Court held for Defendants stating regarding Ms.

Morgan: "[t]his allegation does not establish any non-speculative injury to Ms. Morgan . . . [b]y its plain terms, the statute permits Ms. Morgan to vote with that photo ID [which contains her name, containing an extra "e", as it is misspelled on her current copy of her birth certificate], and any allegation that she might be prevented to vote by the extra "e" is entirely speculative." (*Order and Judgement*, at ¶10). Likewise the court held regarding Ms. Powell that she: "does not allege any non-speculative injury from the photo ID law. Ms. Powell alleges that she needs to get a photo ID to vote because her Missouri state non-driver's ID expired on December 29, 2021." (*Order and Judgement* at ¶11).

This Court's dismissal of this action in the earlier *Order and Judgment* recognized that the first two individual Plaintiffs have not suffered an injury to a protectable interest, as they have been and will continue to remain able to vote and lacked standing for similar reasons as now re-alleged in the Amended Petition regarding themselves and the newly-added plaintiff, Dr. O'Connor.

This Court found that neither Plaintiff Powell nor Plaintiff Morgan had

> "alleged facts sufficient to establish standing or a legally protectable interest in the case, because they fail to allege any meaningful 'threatened or actual injury resulting from the putatively illegal action.' *Id.* at ¶ 23 (quoting *Harrison v. Monroe County*, 716 S.W.2d 263, 266 (Mo. banc 1986).

Moreover, this Court found that:

> "Missouri voters do not have a legally protectable interest in avoiding the everyday burdens of getting an expired license renewed." *Order and Judgement* at ¶16.

This Court continued:

> "individuals do not have a right to be free from '[b]urdens of [the] sort arising from life's vagaries [that] are neither so serious nor so frequent as to raise any question about the constitutionality of the Voter ID provisions." *Ibid.* (brackets kept) (quoting *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008)). The reason for this Court's holding is that: "[s]uch burdens as the administrative efforts required to renew a license or a photo ID—which virtually all Missourians must undergo periodically—are not a specific,

concrete non-speculative injury or legally protectable interest in challenging the photo ID requirement." *Id.* at ¶17.

Finally, this Court stated regarding the provisional ballot alternative to voting without a photo ID:

> "Further, even if Ms. Powell or Ms. Morgan had alleged a non-speculative obstacle to voting with a photo ID, both would have the option of casting a provisional ballot under HB 1878. . . . [N]either Ms. Powell nor Ms. Morgan alleges facts that would establish a specific, concrete, non-speculative risk of erroneous rejection [of any provisional ballot they might cast] as to themselves specifically." *Id.* at 19.

On November 4, 2022, Plaintiffs filed a First Amended Petition, adding Dr. O'Connor as a named plaintiff (hereinafter Amd. Pet.). According to the Amended Petition, Plaintiff John O'Connor is 89 years old and lives with his wife in Columbia Missouri. Amd. Pet. at page 15. Plaintiff O'Connor, referred to throughout the Plaintiffs' Amended Petition as Mr. O'Connor, made clear to counsel during a break in his deposition for this case that because he has a doctorate in engineering, he prefers to be called Dr. O'Connor. Consequently, this brief refers to him as such. According to the Amended Petition, Dr. O'Connor "is largely homebound because of his physical limitations [glaucoma, blindness in one eye, deteriorating vision in the other, hearing impairment, stability issues]; one of the reasons he does leave his home is to vote." *Id.* at pages 15-16. The Amended Petition further alleges that, on October 5, 2022, Dr. O'Connor, who had an expired passport and expired driver's license at that point, with the assistance of his wife, collected a number of required documents and went to the local DMV; there he was provided a temporary non-driver ID, the permanent version being later mailed to his home. *Id.* at pages 16-17.

C. C. Plaintiffs' First Amended Petition

On December 5, 2022, Defendants answered the First Amended Petition. Under "Affirmative Defenses" on page 28 of the Defendant's Answer, ¶3, Defendants state: "Plaintiff O'Connor lacks standing because he has alleged that he has a photo ID that is valid to vote in Missouri elections under HB 1878." (Referencing Am. Pet. ¶123).

There have been nineteen total depositions taken in this case. Last year, three local election authorities were deposed. During the months of September and October 2023, counsel for the Defendants deposed the three individual Plaintiffs, organizational representatives for both the National Associations for the Advancement of Colored People and the League of Women Voters, as well as the three experts which plaintiffs Plaintiffs may call, and two fact witnesses who operate voter ID clinics in Saint Louis. Counsel for Plaintiffs deposed five potential witnesses for Defendants: two organizational representatives for the Department of Revenue, one organizational representative for the Secretary of State's office, one of the originally deposed election authorities was deposed a second time and a fourth Local Election Authority was deposed for the first time. The parties have exchanged initial designations on Wednesday November 10, 2023 in accord with the scheduling order and will be finalizing counter designations next week, also in accord with the scheduling order.

ARGUMENT

I. All Plaintiffs lack standing to bring a facial challenge to HB 1878 as all can all vote and all have photo IDs.

A. Applicable Principles of Standing

Lack of standing cannot be waived and can be raised at any time, including *sua sponte* by the court. *See e.g. Foster v. Dunklin Cnty.*, 641 S.W.3d 421, 423 (Mo. Ct. App. 2022) citing *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. banc 2002), and *Aufenkamp v. Grabill*, 112 S.W.3d 455, 458 (Mo. App. 2003). The Defendants have repeatedly raised the issue of Plaintiffs' lack of standing throughout this lawsuit, including in defendants motion to dismiss dated September 9th 2022, more recently as an affirmative defense in the Answer to the Amended Complaint (See *Answer* page 28 ¶ 3, December 5, 2022, and most recently in the motion to dismiss Dr. O'Connor filed last month.

"Dismissal for lack of subject-matter jurisdiction is appropriate when it appears, by suggestion of the parties or otherwise, that the court is without jurisdiction." *Mo. Soybean Ass'n v. Mo. Clean Water Comm'n,* 102 S.W.3d 10, 22 (Mo. banc 2003). "The quantum of proof necessary is not high; it must only appear by a preponderance of the evidence that the court is without jurisdiction." *Id.* "In determining whether it has subject-matter jurisdiction, the trial court may consider the facts alleged in the petition and evidence adduced by affidavits, oral testimony, depositions, and exhibits." *Arbogast v. City of St. Louis*, 285 S.W.3d 790, 795–96 (Mo. Ct. App. 2009).

Standing is "a matter of justiciability, that is, of a court's authority to address a particular issue when the party suing has no justiciable interest in the subject matter of the action." *Schweich v. Nixon*, 408 S.W.3d 769, 774 n.5 (Mo. banc 2013). Standing is a principle that, like the constitutional grant of jurisdiction (*see* Mo. Const. art. I, § 14; *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253–54 (Mo. banc 2009)) affects a court's ability to hear any particular case, *see*, *e.g.*, *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 737 (Mo. banc 2007) (requiring Plaintiffs to have standing to bring a declaratory judgment action); *Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (requiring Plaintiffs to have standing to bring declaratory judgment actions: concrete legal issues, presented in actual cases, not abstractions are requisite. This is as true of declaratory judgments as any other field.") (internal quotations omitted). "Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action." *Lee's Summit License, LLC v. Office of Admin.*, 486 S.W.3d 409, 416 (Mo. Ct. App. 2016) (quoting *E. Mo. Laborers Dist. Council v. St. Louis County*, 781 S.W.2d 43, 45–46 (Mo. banc 1989)).

That is so because the requirement of standing serves constitutional values. The doctrine derives, in part, from article V, § 14, of the Constitution, which vests "original jurisdiction over all cases and matters, civil and criminal" in the circuit courts, *Harrison* 716 S.W.2d at 266 (quoting Mo. Const., art. V, § 14); *see also Schweich*, 408 S.W.3d at 774, who then exercise "judicial power," Mo. Const. art. V, § 1. Like its federal counterpart, *see*, *e.g.*, *Corozzo v. Wal-Mart Stores, Inc.*, 531 S.W.3d 566, 573–74 (Mo. Ct. App. 2017) (noting that the both state and federal courts require standing), the requirement of standing is "founded in concern about the proper—and properly limited—role of the courts in a democratic society," *Warth v. Seldin*, 422 U.S. 490, 498 (1975), and alleviates that concern "by preventing advisory opinions" by limiting the exercise of judicial authority just to "'those issues which affect the rights of the parties present,'" *Trenton Farms RE, LLC v. Hickory Neighbors United, Inc.*, 603 S.W.3d 286, 293 (Mo. banc 2020) (quoting *Williams v. Marsh*, 626 S.W.2d 223, 227 (Mo. banc 1982)).

Standing therefore exists if "the plaintiff 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation" of a circuit court's jurisdiction. *Harrison*, 716 S.W.2d at 266 (quoting *Warth*, 422 U.S. at 498–99). That "generally depends upon whether the plaintiff can allege 'some threatened or actual injury resulting from the putatively illegal action.'" *Id.* (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973). That is, the plaintiff must have suffered an injury caused by the defendant's actions. *See*, *e.g.*, *W.R. Grace & Co. v. Hughlett*, 729 S.W.2d 203, 206 (Mo. banc 1987) ("For a party to have standing to challenge the constitutionality of a statute, he must demonstrate that *he* is '*adversely affected by the statute in question* . . . .'") (first emphasis added) (quoting *Ryder v. County of St. Charles*, 552 S.W.2d 705, 707 (Mo. banc 1977)). That injury must be "specific and legally cognizable" to confer standing. *Metro Auto Auction v. Dir.*, 707 S.W.2d 397, 400 (Mo. banc 1986); *see also Ste. Genevieve Sch. Dist. R II v.*

Bd. of Aldermen of City of Ste. Genevieve, 66 S.W.3d 6, 10 (Mo. banc 2002) ("Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute."). "'[T]he generalized interest of all citizens in constitutional governance' does not invoke standing." *Mo. Coal. for Env't v. State*, 579 S.W.3d 924, 927 (Mo. banc 2019) (brackets kept) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 160 (1990) (quoting another source)). Finally, the plaintiff must seek relief that would remedy the injury. "If the plaintiff's grounds for relief and remedy sought cannot alleviate the alleged injury, then, by necessity, the litigation cannot vindicate the plaintiff's alleged personal interest or stake in the outcome of the litigation. If that is the case, then the plaintiff has no standing to bring the claims he or she alleges." *St. Louis County v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014).

In sum, standing exists if a plaintiff (1) suffered an injury to a cognizable interest (2) caused by the defendant that (3) a court order would redress. Whether those conditions exists is a burden the plaintiff must bear. *See*, *e.g.*, *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). Moreover, because "standing is not dispensed in gross," each "plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) (quoting *Davis v. F.E.C.*, 554 U.S. 724, 734 (2008) (quoting other sources)). Thus, standing is analyzed separately for each plaintiff. *See*, *e.g.*, *Ste. Genevieve Sch. Dist. R II*, 66 S.W.3d at 10–11 (analyzing separately the standing of each plaintiff); *Mo. Coal. for Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 131–32 (Mo. banc 1997) (analyzing separately each Plaintiffs' standing for each claim for relief they brought).

B. Plaintiffs Lack Standing

All Plaintiffs in this case lack standing on both counts, meaning this Court should again dismiss all of the Plaintiffs for lack of standing as it has done once before, including the new plaintiff, Dr. O'Connor, for the same reason all others were previously dismissed. Any factual

difference between the original and amended complaints do not materially change the reality that no plaintiff, individual or organizational, has articulated a harm as a matter of law – they or their members can vote, and the integrity of their votes are protected by HB 1878.

Moreover, the hypothetical *de minimis* harms they allege do not outweigh the state's compelling government interests in protecting the integrity of the election system advanced by HB 1878 and certainly do not justify the forward looking relief they seek by requesting the injunction of the statute. Finally, to the extent that there is any minimal burden to obtaining a photo ID, such burden is not even solely attributable to the need to obtain photo ID for voting: photo ID is required for many areas of modern life; on the other hand, the state alleviates provides photo IDs and underlying documentation to voters for free and assists voters in obtaining the same.

All individual Plaintiffs have voted and are able to continue to vote: Ms. Morgan and Dr. O'Connor can vote using the non-expired photo IDs they currently possess. Dr. O'Connor has voted since HB 1878 using his newly obtained, non-expiring photo ID. Ms. Morgan is entirely able to vote using her current, non-expired ID: as this court has already held, a one letter difference in the spelling of her first name on her non-expired photo ID does not legally prevent her from using it to vote as her name on her ID "substantially conforms" to her name as it appears in her voting record. Similarly, Ms. Powell can obtain a renewed photo ID as she has done several times throughout her adult life, most recently in 2015 – this time due to changes in the voter ID law, it can be provided to her at no cost by the state of Missouri, or can vote a provisional ballot, as she has done since the passage of HB 1878.

C. Four Key Standing Defects

There are four key standing defects with the Plaintiffs' claims:

1. The individual Plaintiffs have failed to establish an injury to any protected interest. They claim that the Voter ID provisions in HB 1878 violate their fundamental right

to vote by imposing a substantial burden on the right. Not so. Under HB 1878, they may cast a provisional ballot even without photo ID. Their claim that their provisional ballots may be rejected is purely speculative. Given that, their fundamental right to vote remains intact regardless of the requirement that they must show a photo ID to vote under HB 1878. Regardless, their claim that significant time, effort, and planning are needed to get a compliant photo ID is speculative and baseless—it contradicts the text of the Voter ID provisions of HB 1878 and the actual ease of getting such an ID, including the one hour Dr. O'Connor spent at the DMV, returning with a non-expiring non-driver ID.

2. The NAACP and the League of Women Voters do not have organizational standing and the Voting ID provisions did not cause the injury to their proprietary interests of which the organizations complain.
3. The Plaintiffs cannot bring a facial challenge to the Voter ID provisions since the required remedy—a universal injunction—is unavailable to them and requires them to bring claims on behalf of third parties not before the court.
4. Under the U.S. Constitution, this Court lacks authority to alter state rules pertaining to federal elections, which means the Plaintiffs cannot receive a remedy as to federal elections.

This Court has already analyzed these standing deficiencies and found each of the original plaintiffs fail to establish standing. The addition of Dr. O'Connor changes nothing.

1. Ms. Powell, Ms. Morgan and Dr. O'Connor have not shown an injury to a protectable interest and so lack standing.

The individual plaintiffs have not established that the Voter ID provisions will impair a protectable interest of theirs.

Standing is keyed to the "nature and source of the claim asserted." *Warth*, 422 U.S. at 500. Here, that is the individuals' right to avoid a "more than *de minimis* burden on their suffrage." *Weinschenk v. State*, 203 S.W.3d 201, 213 (Mo. banc 2006) (per curiam). However, they do not have a right to be free from "[b]urdens of [the] sort arising from life's vagaries are neither so serious nor so frequent as to raise any question about the constitutionality of" the Voter ID provisions. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008); *see Priorities USA v. State*, 591 S.W.3d 448, 459 n.18 (Mo. banc 2020) (distinguishing *Crawford* because the record there "failed to demonstrate that voters experienced difficulties obtaining photo identification," while "Respondents in the instant case have demonstrated that requiring photo identification burdens their right to vote").

Here, for both Count I and Count II, the individual plaintiffs point to two ways the Voter ID provisions burden their protected right to vote. *See* Pet. ¶ 152 and Amd. Pet. ¶216, 227.[4]

The first burden Ms. Morgan and Powell pointed to in the original petition is the claim that, as a result of the Voter ID provisions in HB 1878 they may have to cast a provisional ballot. *See* Pet. ¶ 152. That harms their right to vote, they say, because the "arbitrary review process" involved in determining whether to count a provisional ballot means there is a "risk of rejection" of their ballot. Pet. ¶ 152; *see* § 115.427.4(1)(b) (providing the process for determining whether to count a provisional ballot using signature matching).[5]

[4] The amended petition makes clear the harms alleged are essentially the same for both counts. Amd. Pet. ¶ 216 alleges the harms associated with Count I. Amd. Pet. ¶ 227, addressing Count II mirrors the language of Count I. Legally, that makes sense since the equal protection analysis and analysis under Missouri's constitutional provisions protecting the right to vote are the same; that is, equal protection is the vehicle by which voters vindicate their right to vote. *See Priorities USA*, 591 S.W.3d at 452–53. However, by the same token, both sets of alleged harms fail for lack of standing.

[5] No plaintiff claims harm involving the process set forth § 115.427.4(1)(a).

That is just assertion and it runs completely counter to the available facts. Neither Ms. Powell nor Ms. Morgan provide any reason to believe that there is such a risk to them. Ms. Powell has already voted a provisional ballot, and has no information her vote was not counted. *Deposition of Rene Powell*, Sept. 29, 2023 at pp. 120-128. Moreover, the county clerk for Boone County, the county in which Columbia, MO is located[6] and where Ms. Powell lives, testified in her deposition last year that she was not aware of a case where a Boone county ballot had been rejected for a signature mismatch from April 2018 through August of 2022:

> Q. And would it surprise you, or do you agree that if you go through the blue tab of every single one of those exhibits, it does not reflect a single time when the vote was not counted because of signature mismatch?
> A. That does not surprise me at all.
> Q. In fact, that's your expectation because your testimony earlier was you don't believe they've ever done it, and that's what the data – the documents you gave us reflect. Correct?
> A. Correct.
> Q. That all of those documents reflect that your team -- the bipartisan team of election judges has never rejected a ballot and said it doesn't count because of signature mismatch. Fair to say?
> A. Yes. That's correct.
> Q. Now, obviously, there's other reasons they've been rejected, like you're not registered to vote and the yellow reasons -- those are reflected in your -- in your spreadsheets for the blue ballots for some -- for some cases?
> A. Yeah.
> Q. Never a signature mismatch. That's not a reason; right?
> A. Correct.
> *Deposition of Ms. Brianna Lennon,* September 21, 2022, p. 165-66; see also pages 18-25 for date ranges of exhibits discussed April 2018-August 2022.

Ms. Lennon also testified that when conducting signature matching, she has instructed her bi-partisan team that, when in doubt, they should always err in favor of the voter. *Id* at 107.

It is not enough to claim, in openly speculative terms, that "the signature-matching process *could* result in an over-rejection of legitimate signatures." *Priorities USA*, 591 S.W.3d at 458 (emphasis added). Such speculation fails to satisfy standing's requirement of concrete,

[6] For the location of Columbia within Boone County, see, e.g. https://www.showmeboone.com/.

particularized injury. And even if it were true, Plaintiffs provide no reason to believe that Ms. Powell or Ms. Morgan is among the class of people whose provisional ballots would be rejected (and this question is even less applicable to Dr. O'Connor, who already has his non-expiring Missouri photo ID). Courts "do not recognize the concept of 'probabilistic standing' based on a non-particularized 'increased risk'—that is, an increased risk that equally affects the general public." *Shrimpers & Fishermen of RGV v. Tex. Comm'n on Envtl. Quality*, 968 F.3d 419, 424 (5th Cir. 2020). Ms. Powell and Ms. Morgan fail to show how the risk of rejection of their provision ballot is any different than the risk to the general public; that is, their injury is not "particularized," *id.*, or "specific" to them, *Metro Auto Auction*, 707 S.W.2d at 400. They instead seek to advance the public's "generalized interest" in having the State follow the law. *Mo. Coal. for Env't*, 579 S.W.3d at 927 (quotations omitted). That they cannot do. Moreover, even if they showed a risk of rejection specific to them, the Plaintiffs would still need to demonstrate a "substantial risk that" their provisional ballot will be rejected. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting another source)). Again, Plaintiffs demonstrate no such risk of rejection of any of their ballots.

This Court has already rightly ruled that such an injury does not confer standing because "the claimed harm that casting a provisional ballot has on [the Plaintiffs'] right to vote 'is speculative at best' and 'mere speculation' does not 'confer standing.' *Order and Judgment* at 22, citing "*City of Slater v. State*, 494 S.W.3d 580, 589 (Mo. Ct. App. 2016) (alterations omitted) (second quote from *State ex rel. Parsons v. Bd. of Police Comm'rs of Kan. City*, 245 S.W.3d 851, 854 (Mo. Ct. App. 2007)); *see also*, *e.g.*, *Laird v. Tatum*, 408 U.S. 1, 13 (1972) (concluding that 'speculative apprehensiveness' about future government wrongdoing does not establish injury)."

That ends the case as far as the individual Plaintiffs are concerned. Because they fail to allege that there is any risk any of their ballots will not count, whether they show photo ID or not, they fail to establish that they "*must* show photo identification" under HB 1878 "to ensure their votes are counted." *Priorities USA*, 591 S.W.3d at 458 (emphasis added). Indeed, their other claimed harm—the "significant time, effort and advance planning" they would have to do to acquire a photo ID—is a function of their fear that their votes will not count if they cast provisional ballots. Because Ms. Powell and Ms. Morgan do not show that there is a risk that their ballots will be rejected, that injury is an attempt to "manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper v. Amnesty Int'l, USA*, 568 U.S. 398, 416 (2013).

This deficiency in their standing appears on the face of both the original and first amended petitions—their own allegations are insufficient to establish standing. But their allegations are also *factually* deficient, because neither Dr. O'Connor nor Ms. Morgan faces any significant obstacle to voting with their current photo IDs, and Ms. Powell's refusal to renew her ID at her local DMV which is less than a mile from her house is simply a thinly veiled attempt to manufacture standing. Contrary to their allegations, acquiring a compliant photo ID to vote without casting a provisional ballot does not require "significant time, effort, and advance planning." Pet. ¶152.

Contrary to the allegations in both petitions, acquiring a compliant photo ID to vote without casting a provisional ballot did not require "significant time, effort, and advance planning." Amd. Pet. ¶192. Rather, it took "maybe an hour" at the DMV. Exh. A. page 39 lines 8-14. But such backwards looking complaints are also completely irrelevant to the forward looking remedy sought from this Court. Since the law expressly permits all Missouri voters to obtain a non-driver's

license, for free if requested for the purpose of voting, *see* § 115.427.6, and Dr. O'Connor, for one, did so after about an hour in the DMV – any remaining potential injury is truly speculative and thus insufficient to stablish a cognizable injury. *See*, *e.g.*, *City of Slater*, 494 S.W.3d at 589.

And Ms. Powell's clam that renewing her ID "to cast a regular ballot in elections after the November 2022 General Election" is a great burden, Pet. ¶¶ 55–56, is speculative at best. As Plaintiffs admit in the Petition—and the law provides—an individual may receive "one free copy of a non-driver's license," Pet. ¶ 124 (emphasis omitted); *see* § 115.427.6—*i.e.*, the ID that Ms. Powell needs to comply with § 115.427.1, *see* Pet. ¶¶ 46, 50, 52.

The issue, per the Petition, is that "the statute does not provide specific guidance on how an individual may make or the Secretary of State may fulfill such a request . . . ." Pet. ¶ 124. That is, the Petition admits that Ms. Powell *does not know* what time, effort, or planning is necessary to get a non-driver's license—and thus implicitly concedes that any injury to her is speculative. That the law expressly permits her to get a non-driver's license for free, *see* § 115.427.6, means her allegation that it would take great effort to acquire it is truly speculative and thus insufficient to stablish a cognizable injury. *See*, *e.g.*, *City of Slater*, 494 S.W.3d at 589; *see also* Vincent Aff. ¶ 5 & Ex. A (attached as Exhibit 1) (demonstrating that Ms. Powell is eligible to obtain her free photo-ID).

Dr. O'Connor similarly has no standing because, having replaced his expired driver's license with a state ID which allows him to vote, he cannot claim he will suffer: "an 'onerous procedural requirement which effectively handicaps exercise of the franchise.'" *Weinschenk*, 203 S.W.3d at 215 (quoting *Lane v. Wilson*, 307 U.S. 268, 275 (1939)). In short, the burden that the voter ID provisions imposed on Dr. O'Connor's right to vote were insubstantial, going forward are non-existent, and are therefore no harm at all, see, e.g., *Weinschenk*, 203 S.W.3d at 213. Thus,

he lacks standing, for he fails to establish any meaningful "threatened or actual injury resulting from the putatively illegal action." *Harrison*, 716 S.W.2d at 266 (quotations omitted).

Similarly, Ms. Morgan claims injury from the fact that her non-driver's photo ID "spells her first name incorrectly" as "Kimberley," Pet. ¶64, while her voter registration spells her first name correctly as "Kimberly," with no "e," Pet. ¶73. Thus, she claims, "she cannot use her state-issued ID with the name misspelling" to vote, and she "will have to engage in significant time, effort, and planning" to obtain "a photo ID with the correct spelling of her name" to vote—which would include obtaining "a corrected birth certificate." Pet. ¶¶78–79.

An extra "e" is no injury, as this Court has already found . Section 115.427.1(3) permits use of a document that "contains the name of the individual to whom the document was issued, and the name *substantially conforms* to the most recent signature on the individual's voter registration record." (*Order and Judgement*, at ¶10). This Court has already found that the difference of an "e" counts as substantial conformity. (*Order and Judgement*, at ¶10) Interpreting the law to include such a requirement is consistent with the rule that statutes are construed in context, *see*, *e.g.*, *Dickemann v. Costco Wholesale Corp.*, 550 S.W.3d 65, 68 (Mo. banc 2018); the canon that statutes are to be read to avoid constitutional issues, *see*, *e.g.*, *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838–39 (Mo. banc 1991); and the principle that "[t]he law does not concern itself with trifles," *Capital City Motors, Inc. v. Thomas W. Garland, Inc.*, 363 S.W.2d 575, 579 (Mo. 1962). This is exactly what this Court has already found regarding Ms. Morgan:

> This allegation does not establish any non-speculative injury to Ms. Morgan. Section 115.427.1(3) permits use of a document if it "contains the name of the individual to whom the document was issued, and the name *substantially conforms* to the most recent signature on the individual's voter registration record." § 115.427.1(3), RSMo (emphasis added). A difference of an "e" constitutes substantial conformity, especially since Ms. Morgan does not allege any other significant variation between her photo ID and her voter registration record. By its plain terms, the statute permits Ms. Morgan to vote with that photo ID, and any allegation that she might be prevented to vote by the extra "e" is entirely speculative. (*Order and Judgement*, at ¶10)

But even if that were not the case, Ms. Morgan, just as the other plaintiffs, would still not have standing because the burden on her to correct her name is not "an 'onerous procedural requirement which effectively handicaps exercise of the franchise.'" *Weinschenk*, 203 S.W.3d at 215 (quoting *Lane v. Wilson*, 307 U.S. 268, 275 (1939)). The issue, per Ms. Morgan, is that her birth certificate spells her name wrong—and that misspelling appears on her non-driver's photo ID. Pet. ¶¶63–64. So, she says, she would have to amend her birth certificate and then use that to get a non-driver's photo ID with the correct spelling of her name. *See* Pet. ¶71. That is not as hard as Ms. Morgan says it is. *See* Pet. ¶¶71, 79. A minor change in a person's name—like dropping an errant "e"—can easily be done within two weeks after Ms. Morgan provides the Bureau of Vital Records with a signed affidavit. 19 C.S.R. 10-10.110(1)(A).[7] Ms. Morgan has no issues generating signed affidavits, as she provided one which was attached to the amended petition which she signed on September 17, 2022 in an attempt to further manufacture standing; in that affidavit she tacitly acknowledges the irony of writing an affidavit about how hard it would be to write an affidavit by discussing the notary she used being at the local library. *Affidavit of Kimberly Morgan*, September 17, 2022 at para 5. Moreover, Ms. Morgan even expressed a willingness to try to correct her name again, during her deposition on September 28, 2023, and a desire to do so as it will have benefits for her peace of mind in numerous other areas of her life, not the least of which will be her ability to finally change her last name to that of her husband of approximately four years. *Kimberly Morgan Deposition Transcript*, September 28, 2023 at p. 64.

[7] Ms. Morgan does not provide any facts suggesting she would need to go through a more complicated process. *See* 19 C.S.R. 10-10.110(2) (noting the need for a court order to fix major deficiencies in a vital record).

Because Ms. Morgan has admitted to possessing a social security card with the correct spelling of her name, Pet. ¶68, she has sufficient "documentary evidence" of the correct spelling of her name. *See* 19 C.S.R. 10-10.110(1)(A) (discussing the proof requirements). Thus, she can easily get a corrected birth certificate and, thus, a corrected non-driver's ID.

* * *

In short, the burden that the Voter ID provisions impose on Ms. Powell's, Ms. Morgan's and Dr. O'Connor's right to vote is insubstantial—and are therefore no harm at all, *see*, *e.g.*, *Weinschenk*, 203 S.W.3d at 213—and speculative. Thus, none of the individual plaintiffs has standing, for they fail to establish any meaningful "threatened or actual injury resulting from the putatively illegal action." *Harrison*, 716 S.W.2d at 266 (quotations omitted).

2. *The NAACP and the League of Women Voters lack organizational standing and the Voter ID provisions do not cause any harm to their proprietary interests.*

The NAACP and the League of Women Voters rest their standing on two theories. First, both organizations appear to claim standing to "sue as representative for [their] members." *Mo. Health Care Ass'n v. Att'y Gen.*, 953 S.W.3d 617, 620 (Mo. banc 1997). Second, both organizations claim standing based on putative harms the Voter ID provisions of HB 1878 inflict on them. The two claims fall short. Moreover, the affidavits attached to their amended petition only allege hypothetical fears that the individuals who wrote them may struggle to update their government issued photo IDs because they need to collect or re-obtain some underlying documents before doing so. Such hypothetical fears similarly fall short.

"Where, as here, plaintiffs are associations of individuals, standing must be predicated, *inter alia,* on the fact that the association members would have standing to bring their claims individually." *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 88 (Mo. banc 2008). The NAACP and the League of Women Voters fail to do so.

Both organizations made the same, generalized allegations pertaining to members who they claim have been harmed by HB 1878 in the initial petition. *In toto*, the relevant allegations from that petition are:

- "Upon information and belief, members of the Missouri NAACP and the LWVMO do not have acceptable photo ID that complies with the Voter ID Restrictions and will be prohibited from voting in future elections." Pet. ¶133.
- "Upon information and belief, members of the Missouri NAACP and the LWVMO face uncertainty and confusion about the scope and requirements of the Voter ID Restrictions and will be dissuaded from exercising their right to vote." Pet. ¶134.
- "The Voter ID Restrictions burden fundamental voting rights … by eliminating the option to provide certain alternative non-photographic forms of ID to vote, and requiring qualified Missouri voters, including … members of the Missouri NAACP and the LWVMO, to either: (i) present a limited form of photo ID, which requires significant time, effort, and advance planning to obtain; or (ii) cast a provisional ballot, which will be subject to an arbitrary review process and the risk of rejection." Pet. ¶152.
- That the Voter ID provisions of HB 1878 burden the fundamental right to vote of members of the NAACP and League of Women Voters. Pet. ¶¶159–160.

Missing from those allegations is identification of *even one member* of the NAACP or the League of Women Voters who has standing. Indeed, the fact that they plead injuries to their members "on information and belief" highlights that they were unable to identify a single member with specific, concrete, particularized injuries from the photo-ID law.

To establish organizational standing, "plaintiff-organizations [must] make specific allegations establishing that at least one *identified* member has suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added).[8] Case law requires them to do this. For example, the organization in *Citizens for Rural Preservation, Inc. v. Robinett*, 648 S.W.2d 117 (Mo. Ct. App. 1982), was found to establish organizational standing to challenge the issuance of a permit to a company to conduct quarry and rock-crushing operations because "its members either own property or reside in the area of the quarry site and would be adversely affected by the" the operations. *Id.* at 133–34. That is, the organization specifically identified that all of its members would be affected by the putatively unlawful action. *See also Summers*, 555 U.S. at 498–99 (showing that "*all* members of the organization are affected by the challenged activity" is sufficient).

This Court dismissed the original complaint for, in part, this foundational lack of organizational standing, holding (*Order and Judgment* at 24-30):

> 24. The Petition names two organizational Plaintiffs—the Missouri State Conference of the National Association for the Advancement of Colored People ("NAACP") and the League of Women Voters ("LWV"). The Court holds that the Petition fails to allege facts establishing standing or a legally protectable interest of these Plaintiffs as well.
>
> 25. Two years ago, in similar litigation involving the same parties, the Court held that the same Plaintiffs, NAACP and LWV, lacked standing to challenge the signature-notarization requirement for mail-in ballots. *See* Findings of Fact, Conclusions of Law, and Final Judgment in *Mo. State Conference of the NAACP v. State*, No. 20AC-CC00169-01 (Sept. 24, 2020), *at* ¶¶ 74-82 ("*NAACP II*"). The Court comes to the same conclusion today, for similar reasons.
>
> 26. The NAACP and the LWV rest their standing on two theories. First, both organizations appear to claim standing to "sue as representative for [their] members." *Mo. Health Care Ass'n v. Att'y Gen.*, 953 S.W.3d 617, 620 (Mo. banc 1997). Second, both organizations claim standing based on putative harms the voter ID provisions of HB 1878 inflict on them. The Petition's allegations are insufficient to support standing or a legally protectable interest on either theory.

[8] Missouri law incorporates federal standards for organizational standing. *See Mo. Outdoor Advert. Ass'n, Inc. v. Mo. State Highways & Transp. Comm'n*, 826 S.W.2d 342, 344 (Mo. banc 1992).

27. First, as to representational standing: "Where, as here, plaintiffs are associations of individuals, standing must be predicated, *inter alia,* on the fact that the association members would have standing to bring their claims individually." *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 88 (Mo. banc 2008).

28. Here, Plaintiffs do not identify any specific members adversely affected by the challenged law. Instead, they merely allege that "*[u]pon information and belief*, members of the Missouri NAACP and the LWVMO do not have acceptable photo ID that complies with the Voter ID Restrictions and will be prohibited from voting in future elections," Pet. ¶133, and that "*[u]pon information and belief*, members of the Missouri NAACP and the LWVMO face uncertainty and confusion about the scope and requirements of the Voter ID Restrictions and will be dissuaded from exercising their right to vote." Pet. ¶134 (emphases added).

29. Conspicuously absent from these statement is any specific factual allegation about any specific human being who is a member of NAACP or LWV and who will be harmed by the photo ID requirement. Indeed, other than Ms. Powell and Ms. Morgan, the NAACP and LWV fail to identify even one member who allegedly has standing to sue.

30. These allegations are insufficient to establish representational standing. To establish representational standing, "plaintiff-organizations [must] make specific allegations establishing that at least one *identified* member has suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added). As this Court stated in its prior judgment, "Plaintiffs … lack associational standing because they fail to identify any member of their organizations who has direct standing to challenge the laws at issue, other than the named Plaintiffs who are already participating in the case." *NAACP II*, ¶ 77.

31. NAACP's and LWV's decision to allege facts about their own members "upon information and belief" demonstrates the speculative nature of these allegations. Counsel have an obligation to conduct a reasonable investigation before making allegations in a Petition, and NAACP and LWV have privileged access to facts about their own members. If they had any members who faced a non-speculative obstacle to voting from the photo ID requirement, there would be no need to make such generic allegations "upon information and belief."

Although, along with the amended complaint the plaintiffs did attach a number of affidavits from both the individual plaintiffs and a few other members of the organizations, those individual allege speculatively harms regarding potential future concerns regarding obtaining an ID.

3. The NAACP and the League of Women Voters failed to show that they have standing based on harms to their proprietary interests.

The NAACP and the League of Women Voters also cannot establish standing based on putative proprietary injuries. The organizations claim proprietary injury from having to "divert resources to education and assist their members and eligible voters throughout Missouri to address confusion, uncertainty, and compliance with the" Voter ID provisions. Pet. ¶165. Plaintiffs are

the party bearing the burden of establishing their standing, *see*, *e.g.*, *Manzara*, 343 S.W.3d at 659, and their failure to meet that burden is fatal to their case. The organizations lack standing to seek relief under Count I and Count II because they cannot trace the alleged injury (the diversion of resources) to the Voter ID provisions for two reasons.

First, the diversion is a self-inflicted harm based on the organization's speculation about how third parties will react to the Voter ID provisions. *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), provides on-point guidance. That case involved a challenge to the FISA Amendments Act of 2008—specifically 50 U.S.C. § 1881a—which authorized federal surveillance of people outside the United States. *Clapper*, 568 U.S. at 404–05. Such surveillance is "subject to statutory conditions, judicial authorization, congressional supervision, and compliance with the Fourth Amendment." *Id.* at 404. The plaintiffs were attorneys and organizations who worked with people who, they alleged, "are likely targets of surveillance under § 1881a," *id.* at 406, and one of their standing theories was that the "risk of surveillance under § 1881a requires them to take costly and burdensome measures to protect the confidentiality of their communications." *Id.* at 415.

The Supreme Court rejected that theory. It noted that the plaintiffs failed to show that the risk of "their communications with their foreign contacts will be intercepted under § 1881a at some point in the future" was too speculative. *Id.* at 410. Thus, the costs they incurred to avoid surveillance was an attempt "to manufacture standing … by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id.* at 416. Those costs where, therefore, not the product of the surveillance statute but of their subjective fear that there may be such surveillance. *See id.* at 417.

Missouri jurisprudence is no different. The *Clapper* Court relied on *Laird v. Tatum*, 408 U.S. 1 (1972), noting that case rejected the claim that "being 'chilled by the mere existence, without more, of [the Army's] investigative and data-gathering activity'" did not show traceability. *Clapper*, 568 U.S. at 417 (alterations in original) (quoting *Laird*, 408 U.S. at 10). "Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Id.* at 418 (quoting *Laird*, 408 U.S. at 13–14). They are, instead, "the product of [a] fear of" government malfeasance. *Id.* at 417.

The Court of Appeals has also relied on that portion of *Laird* to reject a similar standing theory in *Sckorhod v. Stafford*, 550 S.W.2d 799 (Mo. Ct. App. 1977). There, police photographed and videotaped a protest. *Id.* at 800–01. The protestors sued, claiming that the "the retention, and possible future dissemination of the photographs and videotapes, would 'chill' the exercise of their constitutional rights of free speech and assembly." *Id.* at 803. The Court of Appeals rejected jurisdiction. The "allegation[ ] of a subjective 'chill' [is] not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Id.* at 804 (quoting *Laird*, 408 U.S. at 13–14). Absent such a harm, there is no "a direct injury as the result" of government action, and thus no jurisdiction. *Id.* at 804 (quoting *Laird*, 408 U.S. at 13) (quotations omitted).

So too here. The Petition contains no facts showing that there is actually confusion, uncertainty, or issues with voters determining how to comply with the Voter ID provisions. Properly read, those claims describe the NAACP's and the League of Women Voters' *belief* that the law confuses voters. That is speculative at best; indeed, the organizations make the allegation "[u]pon information and belief." Pet. ¶134. Simply put, nothing in the Petition establishes that such confusion and uncertainty *has* or *will* result. Indeed, because duly-enacted laws are presumptively constitutional, *see*, *e.g.*, *Board of Education of City of St. Louis v. State*, 47 S.W.3d

366, 368–69 (Mo. banc 2001), it would be improper to assume that such confusion exists, since that would render the Voter ID provisions in HB 1878 constitutionally suspect, *see*, *e.g.*, *City of Maryland Heights v. State*, 638 S.W.3d 895, 899 (Mo. banc 2022) (discussing void-for-vagueness). Thus, in the absence of a specific showing of confusion, the presumption should be that the law is clear. And, of course, the law *is* clear on its face. *See* § 115.427, RSMo.

Thus, the alleged harm—the diversion of resources—is "the product" of pure speculation and subjective belief. *Clapper*, 568 U.S. at 416, 417. It is not the result of the Voter ID provisions, and so the organizations fail to show that the law caused their injury. *See id.* at 417–18; *Sckorhod*, 550 S.W.2d at 804; *see also F.E.C. v. Cruz*, 142 S. Ct. 1638, 1647 (2022) (noting the plaintiffs' manufactured injury in *Clapper* failed to establish standing because plaintiffs "could not show that they had been or were likely to be subjected to that policy").

Second, the Petition admits that the division of resources to educate voters about the Voter ID provisions does not stem from the Voter ID provisions themselves but from another part of HB 1878. As the Petition says, HB 1878 did not just amend Missouri's voter ID laws, the bill also amended the Secretary of State's duty to "provide 'advance notice' of personal identification requirements" through print, broadcast, television, radio, cable, and internet advertisements and announcements. Pet. ¶114; *see* § 115.427.5, RSMo (2020). Now, the law requires the Secretary just to "provide notice of the personal photo identification requirements described in subsection 1 of this section on the official state internet website of the secretary of state." § 115.427.5, RSMo (2022); *see also* Pet. ¶115. Moreover, HB 1878 removed "language providing for appropriation of implementation costs"—including costs to provide the public notice of the photo ID requirements—"from the general revenue of state funds." Pet. ¶116. *Compare* § 115.427.6(3), RSMo (2020) (containing the appropriation provision), *with* § 115.427.6, RSMo (2022) (lacking

it). Thus, HB 1878 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.

It is clear from the Petition that it is that change, not the new Voter ID provisions in subsections (1) and (2), which is causing the NAACP and the League of Women Voters to divert resources to educate the public about photo ID. Paragraph 117 of the Petition says, "*As a result* of the elimination of State outreach and funding requirements under HB 1878, the Missouri NAACP and the LWVMO have been and will continue to shift their resources to provide education and assistance to their members and the public regarding the Voter ID Restrictions."

That logically cannot, and legally does not, show that the NAACP and the League of Women Voters have been "adversely affected by the" the provisions of HB 1878 they challenge—*i.e.*, the requirement that voters show photo ID to vote. *Mo. Coal. for Env't*, 579 S.W.3d at 927 (quoting *W.R. Grace*, 729 S.W.2d at 206 (quotations and emphasis omitted)). This case therefore mirrors *California v. Texas*, 141 S. Ct. 2104 (2021). There, a coalition of States challenged constitutionality of 26 U.S.C. § 5000A, which required that individuals have a minimum essential health insurance coverage. *Id.* at 2113. The Court held that the States could not base standing on obligations and costs that statutes besides § 5000A imposed on them because the harms those statutes imposed were "not fairly traceable to the enforcement of" § 5000A. *Id.* at 2119. Likewise, the NAACP and League of Women Voters claim one provision of HB 1878 has harmed them, yet challenge the validity of a *separate* provision. So here, as in *California*, the organizations failed to establish the necessary link between the putative harm to their interests and the challenged law.

This Court's Order and Judgement holds for the Defendants that diversion of the Plaintiff's resources was a legally meritless and self-inflicted harm (*Order and Judgment* at 32-35):

> 32. NAACP and LWV also fail to allege facts to support organizational standing based proprietary interests. The organizations claim proprietary injury from having to "divert

resources to education and assist their members and eligible voters throughout Missouri to address confusion, uncertainty, and compliance with the" voter ID provisions. Pet. ¶165.

33. This alleged diversion of resources is a self-inflicted harm based on the organizations' speculation about how third parties will react to the Voter ID provisions, which establishes neither standing nor a legally protectable interest. *See, e.g., Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). Plaintiffs cannot "manufacture standing ... by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id.* at 416; *see also Sckorhod v. Stafford*, 550 S.W.2d 799 (Mo. Ct. App. 1977).

34. As this Court stated in its prior judgment, "This 'diversion-of-resources' theory of organizational standing fails as a matter of law.… Missouri courts have yet to embrace the liberalized federal rule of organizational standing. Plaintiffs cannot manufacture injury simply by choosing to spend money fixing a problem that otherwise would not affect the organization at all." *NAACP II*, ¶ 82 (citations and quotation marks omitted).

35. Further, the Petition alleges that the diversion of resources to educate voters about the new law does not stem from the voter ID requirements themselves, but from another part of HB 1878. The Petition alleges: "*As a result* of the elimination of State outreach and funding requirements under HB 1878, the Missouri NAACP and the LWVMO have been and will continue to shift their resources to provide education and assistance to their members and the public regarding the Voter ID Restrictions." Pet. ¶117. But Plaintiffs have not challenged the validity of the "elimination of State outreach and funding requirements under HB 1878." *Id.* Thus, they do not allege that they are "adversely affected by" the provisions of HB 1878 they challenge—*i.e.*, the requirement that voters show photo ID to vote. *Mo. Coal. for Env't*, 579 S.W.3d at 927 (quoting *W.R. Grace*, 729 S.W.2d at 206 (quotations and emphasis omitted)); *see also California v. Texas*, 141 S. Ct. 2104 (2021).

* * *

Thus, neither the NAACP nor the League of Women Voters has standing to challenge the Voter ID provisions. Both organizations fail to identify a member who would have standing to challenge the law, which means they do not have organizational standing. Although the plaintiffs have, since the order, identified a handful of individuals who provided affidavits, such affidavits do not manufacture standing – and the content of the affidavits simply alleges further hypothetical harms in an attempt to manufacture standing. However, if such attempts are insufficient to manufacture standing for individual as this court has already found for Ms. Morgan and Ms. Powell as this court has already once found, how much less would even more vague and hypothetical harms manufacture standing for the organization those individuals are part of. Moreover, the propriety harm they allege

is self-inflicted and caused, per their own Petition, by a separate provision of HB 1878, not by the Voter ID provisions.

4. This Court has already held that the Plaintiffs lack standing to bring a facial challenge because the Court cannot grant the requested universal relief since the named plaintiffs cannot press the claims of third parties.

Plaintiffs bring facial as well as as-applied challenges to the Voter ID provisions. *See* Pet., at 28 and Amd. Pet. ¶17. They lack standing to bring a facial challenge, and thus they can seek an order that, at most, would exempt just the two of them from the photo-ID requirements, and no other voter.

A facial challenge brings with it an incredibly high burden of proving that there are *no circumstances* where HB 1878 would be valid; the plaintiffs lacks standing to assert that this law is unlawful in their own circumstances, still less that it would be unlawful in every possible circumstance. Lacking individual standing, the plaintiffs also lack standing to bring such a facial challenge on behalf of third parties.

Our Supreme Court has held that: "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that *no set of circumstances* exists under which the Act would be valid." *State v. Kerr*, 905 S.W.2d 514, 515 (Mo. banc 1995) (quoting *United States. v. Salerno*, 481 U.S. 739, 745 (1987)) (emphasis added, quotations omitted); see also, *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 491 (Mo. banc 2022), and *Donaldson v. Missouri State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. banc 2020) (reaffirming "no set of circumstances" test and stating, "[i]t is not enough to show that, under some conceivable circumstances, 'the statute might operate unconstitutionally'"). Dr. O'Connor cannot allege that there are no set of circumstances in which this law would be valid, particularly because it is valid in his own set of circumstances. The law does not restrict any

plaintiff's ability to vote, as Dr. O'Connor has already done last November, after the voter ID law became effective. He can continue to use his non-expiring state issued photo ID to vote in future elections, and HB 1878 therefore provides no impediment to his right to vote.

Moreover, as the Missouri Supreme Court has noted, a facial challenge implicates standing issues because it "seeks relief on behalf of others not before [the] Court ... ." *Geier v. Mo. Ethics Comm'n*, 474 S.W.3d 560, 569 (Mo. banc 2015). That is plainly true in this case. This facial challenge seeks improper universal relief—that is, a declaration that the voter ID provisions "may not be enforced" as to anyone in Missouri and an injunction of the same scope. See Amd. Pet., at Prayer for Relief (page 40). Thus, this Petition seeks relief on behalf of individuals who are not parties here. That is inconsistent with the traditional equitable requirement that any "remedy must be limited to the inadequacy that produced the injury in fact that the plaintiff has established[.]" *Lewis v. Casey*, 518 U.S. 343, 344 (1996).

Such a remedy is also prohibited by Missouri's common-law limits on remedies. See § 1.010.1, RSMo (making the Common Law, when not repugnant to or inconsistent with the Constitutions of Missouri or the United States and the current statutes of Missouri the "rule of action and decision in this state"); *State ex rel. McKittrick v. Mo. Pub. Serv. Comm'n*, 175 S.W.2d 857, 861 (Mo. banc 1943) ("This section evidently has been construed as adopting . . . the common–law rights and remedies of litigants."); *State ex rel. Nat'l Refining Co. v. Seehorn*, 127 S.W.2d 418, 424 (Mo. 1939) (denying a remedy that did not exist at common law). But "[t]he English system of equity did not contemplate universal injunctions." *Trump v. Hawaii*, 138 S. Ct. 2392, 2427 (2018) (Thomas, J., concurring) (gathering sources). And American courts, while sometimes open to enjoining total enforcement of a municipal law, did not do so against state laws.

See *Samuel L. Bray, Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 427 (2017) (giving the relevant history).

Yet that is what the plaintiffs seek. Because it is a remedy they cannot receive, they lacks standing to bring such a facial challenge. *See, e.g., St. Louis County v. State*, 424 S.W.3d at 453 (concluding that a plaintiff lacks standing if a court cannot provide a remedy for his or her claimed harm, in that case, plaintiff's failure to identify a violation of a "'legally protectable' interest.").

Bolstering that conclusion is the rule that "a plaintiff generally must assert his own legal rights and interests and cannot base a claim for relief on the legal rights of third parties." *Bannum, Inc. v. City of St. Louis*, 195 S.W.3d 541, 545 (Mo. Ct. App. 2006); see also *Trump v. Hawaii*, 138 S. Ct. at 2427-28 (Thomas, J., concurring) (saying third-party standing rules prohibit universal injunctions); *Arizona v. Biden*, 40 F.4th 375, 395–96 (6th Cir. 2022) (Sutton, C.J., concurring) (making the same point). An injunction barring the State from enforcing the voter ID provisions as to any person addresses the voting procedures of every person in Missouri subject to the law—not just the Plaintiffs. *See CASA de Md., Inc. v. Trump*, 971 F.3d 220, 259 (4th Cir. 2020), vacated for reh'g en banc ("But by requesting a nationwide injunction, a plaintiff is by definition seeking to vindicate the legal rights of all third-parties who may be subject to the challenged policy."). That is doctrinally improper.

The requested relief is also unnecessary and potentially impedes the rights of other voters. This suit involves "a small number of voters who may experience a special burden under" the voter ID provisions. *Crawford*, 553 U.S. at 200 (holding that that Indiana's interests in requiring government issued photo identification to vote were sufficiently weighty to justify the limitation they imposed on voters). Nothing prevents the "the actual holders of" the right to vote from exercising their right to seek judicial relief from any burden on that right, see Mo. Const. art. I, §

4, if they so choose. *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 89 (Mo. banc 2008). Universal relief, however, takes that right away from them.

For these reasons, the Missouri Supreme Court has made clear that "claims of equal protection rights generally may not be raised by third parties." *Comm. for Educ. Equality v. State*, 294 S.W.3d 477, 486 (Mo. banc 2009) (citing *Committee for Educational Equality v. State*, 878 S.W.2d 466, 450 n.3 (Mo. banc 1994)). Since a claim that a State law trenches on the fundamental right to vote is an equal protection claim, *see Priorities USA*, 591 S.W.3d at 453; *Weinschenk*, 203 S.W.3d at 211–12, that means that these five plaintiffs lack standing to bring a facial challenge to assert the rights of third-parties across the state.

Here, too, this Court has already held in favor of the Defendants:

> 36. In addition, Plaintiffs lack standing to pursue a facial challenge. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *State v. Perry*, 275 S.W.3d 237, 243 (Mo. banc 2009); *see also Artman v. State Bd. of Registration for Healing Arts*, 918 S.W.2d 247, 251 (Mo. banc 1996). A successful facial challenge, therefore, would require a showing that the photo ID requirement is unconstitutionally burdensome for *every* voter in Missouri. *Id.*
>
> 37. Here, Plaintiffs cannot pursue a facial challenge because "a plaintiff generally must assert his own legal rights and interests and cannot base a claim for relief on the legal rights of third parties." *Bannum, Inc. v. City of St. Louis*, 195 S.W.3d 541, 545 (Mo. Ct. App. 2006).
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> 38. The Supreme Court has made clear that "claims of equal protection rights generally may not be raised by third parties." *Comm. for Educ. Equality v. State*, 294 S.W.3d 477, 486 (Mo. banc 2009) (citing *Comm. for Educ. Equality v. State*, 878 S.W.2d 466, 450 n.3 (Mo. banc 1994)). Since a claim that a State law impairs the fundamental right to vote is an equal protection claim, *see Priorities USA*, 591 S.W.3d at 453; *Weinschenk*, 203 S.W.3d at 211–12, plaintiffs—like Plaintiffs in this case—lack standing to bring a facial challenge to assert the rights of third parties.

Thus, the Court should once again dismiss all facial challenges to the voter ID provisions because plaintiffs lack standing to assert them on behalf of others. The Amended Petition adds nothing material to the standing-related allegations in the original Petition. This Court has already

addressed and decided the standing of these parties based on indistinguishable allegations, and this Court correctly rejected their claims of standing.

II. HB 1878 was passed in response to a 2016 Missouri Constitutional Amendment authorizing voter ID[9] (which the Plaintiffs do not challenge) and is therefore constitutional, particularly because the Missouri Constitution should be construed so as not to contradict itself;

A 2016 Constitutional Amendment authorizing voter ID undercuts all of Plaintiffs' Constitutional arguments, including the portions of *Weinschenk* on which they rely, as the 2006 holding in that case long pre-dates and is superseded by this Constitutional Amendment. Thus, even if the Plaintiffs were able to manufacture standing, their Constitutional argument would fail on the merits.

Much like the cannon of statutory interpretation *in pari materia*,[10] provisions of the Missouri Constitution must be read in a in a way that does not create an inherent conflict between them – they must be interpreted harmoniously with other constitutional provisions. *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991). Likewise, "a constitutional provision should never be construed to work confusion and mischief unless no other reasonable construction is possible." *Ledbetter*, 387 S.W.3d at 363-64. In determining whether certain practices violate the Missouri Constitution, this Court also considers statutes that historically have coexisted with the constitutional right without violating it. *See, e.g., Dortch v. State*, 531 S.W.3d 126, 129 (Mo. banc 2019) (citing favorably *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008), for the proposition that the Second Amendment's right to bear arms does not invalidate "longstanding prohibitions on the possession of firearms by felons and the mentally ill" or regulations of concealed weapons). In doing so, this Court's practices are in line with United States Supreme

[9] MO. CONST. art. 8 § 11.
[10] *See, e.g. Powerex Corp v. Reliant Energy Servs.*, 127 S. Ct. 2411 (2007).

Court practice. *See, e.g., Roth v. United States*, 354 U.S. 476, 482-83 (1957) (finding libel unprotected by the First Amendment based on laws prohibiting libel in place at the time the First Amendment was ratified); *id*. at 483-85 (finding obscenity unprotected by the First Amendment based on laws passed from 1789 to 1843).

Perhaps because they realize the problems it creates for them, the Plaintiffs amended complaint is devoid of all analysis or even a single reference to Mo. Const. Art. VIII *Suffrage and Elections*, § 11, which is Missouri's 2016 Constitutional authorization for the legislature to pass just such a voter ID law as it did in HB 1878. This is even more surprising given that Plaintiffs brief cites Mo. Const. Art. VIII § 2 half a dozen times in arguing that HB 1878 violates Mo. Const. Art. VIII § 2. Yet the law is clear – the two provisions must be read together. The Voter ID provision of the constitution, Mo. Const. Art. VIII, § 11, was adopted by Missouri's voters on November 8, 2016 and states:

> **Section 11. Voter identification, authorized to identify voter and verify citizenship and residency—photo identification permitted.—**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.
> (Adopted November 8, 2016)

This Constitutional Amendment authorizing voter ID passed in Missouri's 2016 general election with a 63% majority, and for good reason.[11] As the Court will hear in testimony from the expert for the Defendants, Dr. Jeffry Milyo, support for voter ID nationwide is perennially strong, perhaps because it is a common sense reform which deters difficult to detect forms of voter fraud, such as

[11] See "Missouri Passes Constitutional Amendment To Allow Voter ID" Lawyers Democracy Fund, available at https://lawyersdemocracyfund.org/2016/11/09/missouri-passes-constitutional-amendment-to-allow-voter-id/ and underlying data listed in Official Election Returns State of Missouri - 11/08/2016 2016 General Election, Tuesday, November 08, 2016 Constitutional Amendment 6 on page 42 ("Yes: 63.0%; No 37.0%"), located at https://www.sos.mo.gov/CMSImages/ElectionResultsStatistics/2016GeneralElection.pdf.

double voting where one person votes in place of another voter. The Missouri Constitution authorizes such a safeguard of the integrity of our voting system in Art. VIII, § 11, ensuing the efficacy each voter's franchise by helping preventing and detect some of the most difficult to detect forms of election fraud.

Moreover, the Plaintiffs reliance on the portions of *Priorities USA* in support of a critique of voter ID laws generally is similarly misplaced, as the holding of Priorities was narrowly tailored to address problems with a version of the statute which HB 1878 replaced. Importantly, *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 the confusing language of an affidavit it required voters to sign if they did not have an ID. *Priorities*, 591 S.W.3d at 454. HB 1878 removes that confusing requirement, and rectifies all of the problems the *Priorities USA* court had with the statute, and by cleaning up various other provisions of the state's voter ID law.

Additionally, even if the Plaintiffs could establish standing, this Court should enter Judgment for Defendants on Counts I and II because the voter ID provisions of HB 1878 do not violate the fundamental right to vote or the equal protection clauses of the Missouri Constitution: on the contrary, stemming from a Constitutional amendment, they protect the fundamental right to vote by deterring difficult to detect forms of voter fraud. And, as discussed further in the next section, the photo ID requirement does not impose a "severe" burden under Weinschenk, and is narrowly tailored to advance what even *Weinschenk* admits is the State's compelling interest in deterring voter ID fraud. Moreover, as discussed further in the next section, any burden of obtaining ID is not even fully attributable to HB 1878.

III. HB 1878 Weathers any Level of Scrutiny under the Fundamental Rights and Equal Protection Analyses, but Rational Basis Review is Appropriate

Courts undertake a two-part analysis to determine the constitutionality of a statute under either the state or federal Equal protection clauses; the first step is to determine whether the statute implicates a suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution. *Etling v. Westport Heating & Cooling Services., Inc.*, 92 S.W.3d 771, 774 (Mo. Banc 2003); accord *Kadramas v. Dickinson Public Schools*, 487 U.S. 450, 457-58, 108 S.Ct. 2481, 101 L.Ed.2d 399 (1988). If so, the classification is subject to strict scrutiny." *Etling*, 92 S.W.3d at 774. If not, then the classification will be subject to rational basis review. Next, courts must apply the appropriate level of scrutiny to the challenged statute. To overcome strict scrutiny, a limitation on a fundamental right must serve a compelling state interest and must be narrowly tailored to meet those interests. *Komosa v. Komosa*, 939 S.W.2d 479, 482 (Mo. App. E.D.1997). *Weinschenk* has already found that preserving the integrity of our voting system is "significant, compelling, and important." *Weinschenk v.* 203 S.W.3d 201, 217. Yet the state has made great strides in making it easier to obtain ID since *Weinschenk*, and the need for a photo ID in modern life has become far more ubiquitous, making Rational Basis review the appropriate standard here.

Moreover, HB 1878 equally applies to all individuals within the state, fairly ensuring that each registered voter is allowed one vote per election for the candidate or cause of his or her choosing. Plaintiffs attempt to allege that the law will have some sort of hypothetical impact on certain classes of individuals, yet they are and will remain unable to provide any more than speculative evidence of any such impact. On the other hand, the representative from the Secretary of State's office will testify that there is an extremely low rejection rate for provisional ballots (the fallback option if a voter does not show ID) based on signature mismatching – they are seldom rejected for that reason. Moreover, Local Election Authorities, two of whom will testify, report that, when in doubt, they instruct their staffs to err in favor of acceptance of a voter's signatures.

In some cases, as that of Boone County addressed above in the deposition of Ms. Lennon, the LEA cannot even remember one case of a rejection of a provisional ballot due to signature mismatch. Moreover, the fact that the plaintiffs will be unable to provide evidence that a single voter's ballot has been improperly rejected on signature grounds. This being the case, the plaintiffs cannot articulate any harm resulting from HB 1878; voters must verify that they are who they say they are, and then they are able to vote.

A. The appropriate level of scrutiny is Rational Basis, and HB 1878 meets that standard

The Missouri Supreme Court has long held that "some regulation of the voting process is necessary to protect the right to vote itself." *Weinschenk v. State*, 203 S.W.3d at 212. "Missouri's broad interests in preserving the integrity of the election process and combating voter fraud are significant, compelling, and important. *Weinschenk v.* 203 S.W.3d 201, 217 (Mo. banc 2006). To determine the level of scrutiny that is to be applied in voting rights cases, Missouri courts must "evaluate the extent of the burden imposed by the statute." Id.

If a statute severely burdens the right to vote, strict scrutiny applies, meaning the law "will be upheld only if it is narrowly tailored to serve a compelling state interest." *Peters v. Johns*, 489 S.W.3d 262, 273 (Mo. banc 2016). Conversely, when the law does not impose a heavy burden on the right to vote, it is subject to the less stringent rational basis review. *Weinschenk*, 203 S.W. 3d at 215-16. Here, since the Plaintiffs cannot show any severe burden on the right to vote, particularly in light of the efforts the Secretary of State's office has undertaken to ensure every eligible voter can obtain a photo ID at no cost.

When, as here, courts apply a rational-basis review standard, the court presumes that a statute has a rational basis, and the party challenging the statute must overcome this presumption by a "clear showing of arbitrariness and irrationality." *Foster v. St. Louis County*, 239 S.W.3d 599,

602 (Mo. banc 2007). Rational-basis review does not question "the wisdom, social desirability or economic policy underlying a statute," and a law will be upheld if it is justified by any set of facts. *Comm. for Educ. Equality*, 294 S.W.3d at 491. Instead, rational basis review requires the challenger to "show that the law is wholly irrational." *City of St. Louis v. State*, 382 S.W.3d 905, 913 (Mo. banc 2012).

Missouri courts have found that reasonable regulations of the voting process and of registration procedures are necessary to protect the right to vote; so long as those regulations do not impose a heavy burden on the right to vote, they will be upheld provided they are rationally related to a legitimate state interest. *Weinschenk v. State*, 203 S.W.3d 201, 215 (Mo. 2006).

Moreover, as this case is so factually dissimilar from *Weinschenk*, that the appropriate level of scrutiny remains an open question for this court to decide based on the facts of this case. The Court declined to assess which level of scrutiny a voter ID law fit into in *Priorities* as the affidavit in that case was so confusing and contradictory that a level of scrutiny analysis was unnecessary; yet importantly, and at the same time, it *did* reaffirm that the state's stated interest in combating voter fraud through a voter ID law. Moreover, the *Priorities* court even held that the interest was "Legitimate – and even compelling" *Priorities* citing *Weinschenk*, 203 S.W.3d at 217. HB 1878 is factually significantly different from *Priorities* (as further addressed below) given the special care the legislature has taken in using the 2022 version of the statute to remedy the contradictory portions of the text relating to the affidavit which was at issue in the *Priorities* decision by entirely removing the offending language from the statute.

B. Moreover, HB 1878 is factually dissimilar from the realities present in *Priorities* and *Weinschenk*

The portions of the two precedents on which the Plaintiffs heavily rely, *Weinschenk* and *Priorities USA*, are either factually distinguishable or superseded by a Constitutional Amendment.

The 2016 Missouri Constitutional Amendment authorizing voter ID overrules the portions of *Weinschenk* on which Plaintiffs rely, and in response to *Priorities USA*, the legislature passed HB 1878 to remove the previous problematic affidavit language and "clean up" the statute.

Even if we ignore the Plaintiffs complete lack of standing and the insurmountable constitutional hurdles their arguments face, the factual distinctions between *Weinschenk* and Priorities are so fundamental as to make their holdings entirely inapplicable to HB 1878.

For one thing, since *Weinschenk*, in 2006 the need for photo ID as a part of modern life, where the mantra of trusting but verifying a person's identity has become nearly ubiquitous, the costs of obtaining an ID can no longer be ascribed solely to a voter ID requirement. Rather, the court must consider the benefit of photo IDs to Missouri voters – photo IDs, which, the court will hear testimony on, to include from fact witnesses for the defendants who may testify about the Voter ID clinics they run – the purpose of which is only partly to enable voting access. The other part of the reason why these entities exist is that the photo ID helps open doors for people – even a person who is homeless may need one to obtain basic necessities like medical care, medications, housing, or employment.

A number of witnesses for both the plaintiffs and defendants will testify to the reality that photo ID has become important in modern life. Having a photo ID enables access to benefits across nearly all areas of life, including health insurance, medical care, obtaining medications, housing, employment and travel. To add voting to this list means that the court must evaluate any *de-minimis* administrative cost of obtaining an ID against the benefits possessing such an ID provides to Missourians. And, the court must also consider, that, as a part of the Voter ID initiative initially passed in 2017, and which remains in effect to this day, the state of Missouri provides both IDs and the underlying documents associated with them to plaintiffs.

Moreover, if any voter wishes assistance in obtaining a photo ID for the purpose of voting, an ID which can be used not only for voting but in all of the other areas of one's life, free access to that ID has been facilitated by the state since 2017. The court will hear testimony from Ms. Patricia "DeeDee" Straub, whose daily job at the office of the MO Secretary of State is to assist voters in obtaining a photo ID in order to vote. She will testify about the lengths to which she and the state of Missouri will go to assist voters in obtaining not only free photo IDs, but also all of the underlying documents required to obtain one.

Non-driver IDs are provided to every voter - for free. And, as Ms. Straub will testify, if the voter needs underlying documents (such as a birth certificate) from the Missouri Department of Vital Records, those will be provided for free by the department. Moreover, if the voter needs help obtaining any out of state underlying documents, the Secretary of State's office will assist the voter, and pay for those underlying documents from any jurisdiction outside of the state of Missouri, no matter the cost. DeeDee (or one of her co-workers) is the person voters will typically talk to if they need help obtaining a *free,* non-driver ID for the purpose of voting – a non-driver ID they can use for anything in life. If a homeless Missourian wants to get help obtaining an ID because it will allow him or her to get temporary housing, medicine, a job or anything else along those lines, DeeDee can help them as long as they say they also want to get registered to vote. And the court will hear DeeDee talk about the lengths she will go to in order to ensure that she clears away any roadblock the person may face in obtaining those underlying documents needed to get an ID, to include working with the voter to figure out requirements from out of state entities to obtain any of the person's own underlying documents from those entities. These documents could be things like: divorce decrees, immigration documents, marriage licenses, birth certificates – if

the voter needs it, the Secretary of State's office will help them get it, and the State of Missouri will pay for it.

During his deposition, the Plaintiffs "administrative burden" expert (Dr. Mayer) was not aware of all of the resources and lengths DeeDee and the state of Missouri will go to in order to assist voters obtain underlying documents for free, so the voter can receive the voter ID for free. Your Honor will hear directly from DeeDee who will tell you all about the incredible program she runs and all of the benefits it has to voters across the state – how sometimes a voter has even called her back years after helping her just to touch base and ask a question, or thank her again for her help.

This program is also a great example of one of the benefits of HB 1878 in ensuring not only integrity and security of elections, but also access to them: DeeDee will testify that if a non-voter Missouri resident calls and asks for assistance in obtaining an ID, she will ask them if they are registered to vote. If they are, she can immediately start helping them. If they are not, she will explain her program to them, and they will typically say, yes, I want to register to vote and I want your help getting a free ID or the underlying documents I need to get a free ID. The court will hear testimony that because the state has decided to require voter ID in HB 1878 (and that bill's voter ID law predecessor), the state has invested many resources in ensuring Missourians know what is required (you will hear that the state spend $100,000 on advertising to educate the public on the requirements of HB 1878 after its passage), and that Missourians have access to free IDs in order to vote. This is a significant benefit to the state, to the integrity of our elections, and to the voters who can now get a free ID, along with help and funds from the Secretary of State's office to obtain their own personal documents if they don't have access to them.

DeeDee will testify that the program she now runs has assisted thousands of voters across the state to obtain ID since its inception in 2017, and that there is no known limit to how much the state will pay for underlying documents: does a voter have three out of state divorce decrees they need to track down copies of? Not a problem, she'll testify she will help and the state will pay to get copies of those. A $550 proof of naturalization as a US Citizen? Not a problem, the State will pay for that, too. In fact, she will testify that in the years she has worked in her position, the state has never said no to a request from a voter for underlying documents: she has yet to find a court or official document that a voter needs to obtain an ID that the state will not pay for in order to assist a voter. Now of course, this doesn't mean the voter is magically provided the documents without having to help DeeDee help themselves – if a voter simply doesn't return her call or email after she sends them resources on the next steps they need to take to get their ID or documents, she will reasonably assume the voter doesn't need her help any more. But as long as they are willing to work with her to get their own documents, DeeDee will work with voters as long as they need the help – even sending them postage paid envelopes with the documents they need to send to another state or the federal government in order to get their underlying documents.

This program alone is a massive factual difference between the administrative burdens discussed by the court in *Weinschenk* and the current realities facing Missouri citizens. A voter can now walk into their local DMV with underlying documents, paid for by the state of Missouri, and obtain a free non-driver ID by simply asking for one (on this point Ms. Gina Wisch will testify as one of the DOR organizational representatives). The underlying reality faced by voters in *Weinschenk* is therefore so factually dissimilar as to completely invalidate Plaintiffs reliance on its holdings regarding any administrative burdens of obtaining an ID. To compare such a system where voters access to no cost non-driver IDs is actively facilitated by the state, and where the

benefits of having an ID throughout a voter's daily life are many, with the reality faced by voters in 2006 under *Weinschenk* strains credulity.

Similarly, *Priorities USA* is factually dissimilar – there the court found solely that the law was unconstitutional because of the confusing nature of the affidavit requirement, which has now been removed. Failing that factual similarity, *Priorities*' holding is now so narrow as to be all but inapplicable here, as it's holding of unconstitutionality applies only to portions of the MO voter ID law which no longer exist. The Court must therefore revert to the constitutional analysis described in the previous section, as Mo. Const. Art. VIII, § 11 expressly authorizes a voter ID law such as HB 1878.

CONCLUSION

After considering the evidence, this Court should enter judgment in favor of Defendants on both Counts in the Amended Petition, as the Plaintiffs have failed to manufacture standing to challenge HB 1878 either under the robust requirements of their facial challenge, or even their narrower "as applied" challenge. But even if they were able to establish standing, HB 1878 is constitutional, enacted in response to a 2016 MO Constitutional Amendment, and it advances compelling government interests of election integrity and security (recognized as not in dispute since the time of *Weinschenk*). There are now also factual benefits to Missouri voters, who can obtain an ID and all underlying documents for free, with the help of the Secretary of State's office, and any burdens of getting an ID are not even attributable solely to the voter ID requirements of this law given the near ubiquity of the need for photo ID in modern life. These realities are now so factually distinct from the realities faced by MO Voters in *Weinschenk* and *Priorities* that the Court should easily rule for Defendants on the Constitutional merits of the law.

Dated: November 10, 2023 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2023, the foregoing was filed on the Missouri CaseNet e-filing system, which will send notice to all counsel of record.

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