

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

MISSOURI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE;
LEAGUE OF WOMEN VOTERS OF
MISSOURI; D. RENE POWELL;
KIMBERLY MORGAN; and JOHN
O’CONNOR

Plaintiffs,

v.

STATE OF MISSOURI; JOHN R.
ASHCROFT, in his official capacity as
Missouri Secretary of State;

Defendants.

Case No. 22AC-CC04439

Division I

PLAINTIFFS’ PRETRIAL BRIEF

I. Statement of the Case

Plaintiffs are three Missouri residents and two organizations. They bring this lawsuit against the State of Missouri and the Missouri Secretary of State seeking declaratory judgment and injunctive relief. Plaintiffs challenge a statutory voting system that imposes strict photo ID requirements to cast a regular ballot. The only alternative to casting a regular ballot with a statutorily compliant photo-ID is to cast a provisional ballot that is not counted unless the voter returns on the same day with a compliant photo-ID or their signature is determined to match the signature in their voter file.

The fundamental right to vote and the right to equal protection of the laws are “at the core of Missouri’s constitution,” and provide even greater protection than their federal counterparts.

Weinschenk v. State, 203 S.W.3d 201, 204 (Mo. banc 2006). House Bill 1878 (“HB 1878”), effective August 28, 2022, infringes upon the fundamental right to vote by restricting the identification options that registered voters may present to cast a regular ballot in person at the polls on Election Day or in-person absentee, to limited forms of photographic identification (“photo ID”). For those casting ballots at the polls on Election Day, the statute provides an inadequate alternative for voters without a valid form of photo ID: a provisional ballot. For their vote to be counted, those who cast provisional ballots must either retrieve an approved photo ID and return to the polling place before the close of polls that same day or subject their constitutional right to vote to an entirely subjective and standardless signature-matching process. *See* HB 1878, § A (codified at §§ 115.427, 115.277) (the “Voter ID Restrictions”).¹

The Voter ID Restrictions in HB 1878 eliminated the option of providing one of several forms of secondary ID to cast a regular ballot (e.g., a voter registration or notification card from the local election authority, a Missouri student ID, an out-of-state driver or non-driver license, or a copy of a current utility bill or bank statement), and instead, now require all registered voters in Missouri to either: (1) provide a non-expired or non-expiring, acceptable form of Missouri or federal photo ID, or (2) cast a provisional ballot, which requires the voter to either return the same day with an acceptable Missouri or federal photo ID or rely upon a signature-matching process in order for their vote to count.² The newly enacted Voter ID Restrictions require those

¹ All statutory references are to Missouri Revised Statutes (2016), as updated, unless otherwise noted. Section 115.277 provides that a person may cast an in-person absentee ballot if they meet certain requirements. Section 115.277 further provides that “[a] registered voter casting a ballot under the provisions of this subsection shall provide a form of personal photo identification that is consistent with subsection 1 of section 115.427.” In-person absentee voters without a required photo ID do not have an option to vote provisionally.

² An expired ID can be used to vote in an election if it “expired after the date of the most recent general election,” and meets all of the other statutory requirements. *See* § 115.427(3)(c).

who lack one of the specified forms of photo ID, including the individual Plaintiffs and members of organizational Plaintiffs, to expend time, resources, and effort, all of which constitute heavy burdens, navigating bureaucracies of often multiple government agencies to acquire the requisite underlying documentation and then take the steps to travel to a DMV office to obtain an acceptable form of photo ID to vote. Adding an additional hurdle, not all counties in Missouri have a local DMV office. The counties and the City of St. Louis that currently have a DMV office are not always operational as the License Bureau of the Department of Revenue is forced to temporarily close offices while they attempt to find new contractors³ to run the local DMV office.⁴

For voters whose underlying documentation does not exist, is located in a state that requires a photo ID to obtain it, was lost or destroyed, or contains errors, this burden can be insurmountable. Even when a voter obtains the underlying documentation, voters who lack transportation, cannot get to the DMV or other government agencies during their hours of operation, or have a disability or impairment that prevents them from accessing a DMV, the voter is still unable to surmount the burdens to obtaining a photo ID. The burdens in obtaining the now-required photo ID to vote will be faced by voters who have already overcome the bureaucratic hurdles necessary to register to vote, which already require a voter to prove their identification, and who have been deemed eligible to vote by the State. Moreover, simply because *some* voters may be able to overcome the heavy burdens and obtain the requisite photo

³ DMV contracts are up for rebidding every five years. Moreover, the License Bureau has a pattern and practice of letting contractors out of their contracts early.

⁴ For example, the City Hall Department of Revenue Fee Office in downtown St. Louis has been closed since May 19, 2023, because the License Bureau has been unable to find a new contractor to run that office.

ID ahead of an election, like Plaintiff John O'Connor, that does not mean that the burdens are not and were not substantial (and, therefore, an unconstitutional barrier to voting in Missouri).

Plaintiff Rene Powell is a fifty-three-year-old resident of Columbia, Boone County, Missouri, who was diagnosed with epilepsy as a teenager. Plaintiff Powell suffers from mobility issues due to severe stiffness on the left side of her body, requiring her to use a rollator (a walker with wheels) to move around. Plaintiff Powell's disability also makes it impossible to do a variety of tasks, including driving, climbing ladders, or taking a bath, as those activities put her life at significant risk should she have a seizure while engaging in them.

Plaintiff Powell has a Missouri state non-driver's ID that expired on December 29, 2021. She also has alternative forms of non-photo ID that she could use to vote prior to implementation of the Voter ID Restrictions (e.g., a voter registration or notification card and current utility bills). The only reason that Plaintiff Powell would need to get her expired photo ID renewed is to vote. The Voter ID Restrictions prevent Plaintiff Powell from relying upon her expired state-issued photo ID or alternative forms of identification to cast a regular ballot in elections after the November 2022 General Election and she is now forced to cast a provisional ballot. Plaintiff Powell is an active member of the League of Women Voters of Missouri, and it is important to her to vote in person.

Because Plaintiff Powell lives alone and is unable to drive or easily walk many places, she must rely upon public transportation, costly transportation services, or the assistance of friends to get around. To obtain a new form of ID that complies with HB 1878 and to cast a regular ballot, Plaintiff Powell must undertake significant time, effort, and planning, including arranging transportation, complying with bureaucratic requirements, and making physical efforts to visit and wait at the appropriate agencies. Public transportation to the nearest DMV office

would drop Plaintiff Powell off on a busy roadway with no sidewalks, preventing her from using her rollator. Additionally, Plaintiff Powell is left-handed and has motor difficulties with her left hand. This stiffness in her hand has caused her handwriting and signature to change over time.

Plaintiff Kimberly Morgan is a thirty-six-year-old stay-at-home mother to three young children living in Fenton, Jefferson County, Missouri. Plaintiff Morgan's husband works full-time, and she relies on him to get around because she does not drive. Because of an error, Plaintiff Morgan's birth certificate incorrectly spells her first name as "Kimberley," placing an extra "e" where it does not belong in her name. Her current state-issued non-driver's photo ID also spells her first name incorrectly as "Kimberley," as she had to use her birth certificate to obtain it. Plaintiff Morgan's marriage license also includes the incorrect spelling of her first name. Plaintiff Morgan's social security card has the correct spelling of her name but does not include her date of birth, the date it was issued, or her middle name (only a middle initial). Her children's birth certificates also do not include her full correct name.

In an effort to correct the spelling error on her state-issued documents and comply with the new Voter ID requirements, Plaintiff Morgan filled out a form on the Missouri Secretary of State's website stating that she needed an amended birth certificate so that she could obtain the required form of identification to vote. The Missouri Secretary of State's Office responded that they would not assist Plaintiff Morgan with amending her birth certificate and that she would need to contact the Missouri Vital Records office. Plaintiff Morgan had previously contacted the Missouri Vital Records Office who informed her that to amend her birth certificate, she must submit a notarized affidavit and provide additional documentation that was created at least five years before the date of the application to amend that contains her correct full name, her age or date of birth, and the date the document was prepared. Plaintiff Morgan does not believe that she

has in her possession the required documentation to support an application to amend her birth certificate.

Plaintiff John T. O'Connor is a ninety-year-old resident of Columbia, Boone County, Missouri. Plaintiff O'Connor is largely homebound due to several physical limitations, including glaucoma, complete blindness in one eye, deteriorating vision in the other eye, a hearing impairment, and stability issues that require assistance when walking.

Plaintiff O'Connor's passport has expired, and his Missouri driver's license expired in February 2016. The only reason Plaintiff O'Connor would need to obtain a state-issued ID in Missouri is to vote. Because of the uncertainty with the new Voter ID Restrictions and knowing that he did not have one of the required forms of identification to vote in the November 2022 election, to avoid being disenfranchised, Plaintiff O'Connor took great measures, and spent many hours, with his wife's assistance, gathering all of the forms of identification he could locate. On October 5, 2022, he and his wife went to the DMV office in Columbia, Missouri. Without the assistance of his wife, Plaintiff O'Connor would not have been able to gather all the necessary documents or make it to the DMV office. Even with all the materials he brought, he lacked valid underlying documentation of his identity. To Plaintiff O'Connor's surprise, at the DMV, he was asked for his expired driver's license, a document that—pursuant to the DMV's own online instructions—should *not* be used as proof of identification to obtain an updated ID because it was not within 184 days of expiring;⁵ it was that document which the DMV ultimately accepted as proof of his identity. The heavy burdens that Mr. O'Connor had to overcome to get a photo ID to vote infringed upon his fundamental right. Plaintiff O'Connor is a member of the League of Women Voters of Missouri.

⁵ See <https://dor.mo.gov/driver-license/documents/NONRID.pdf>.

Plaintiffs Powell, Morgan, and O'Connor represent just some of the challenges Missouri voters face as a result of HB 1878 and the Voter ID Restrictions. Plaintiff organizations, Missouri State Conference of the National Association for the Advancement of Colored People ("Missouri NAACP") and the League of Women Voters of Missouri ("LWVMO"), also experienced challenges, diversion of resources, and burdens to their members as a result of the Voter ID Requirements. The Missouri NAACP and the LWVMO serve their purpose and mission by assisting vulnerable populations who disproportionately lack one of the acceptable forms of non-expired photo ID to vote and face significant barriers to obtaining one (e.g., racial minorities, people living in poverty, rural Missourians, students, senior citizens, Missourians with disabilities, Missourians returning from incarceration, and unhoused Missourians). The Missouri NAACP and the LWVMO are now required to expend and divert resources to ameliorate confusion among voters related to what identification will be needed to vote and to assist voters with understanding the complex and sometimes costly processes of how to obtain acceptable forms of identification as well as documentation needed to acquire a non-expired acceptable photo ID. Two additional fact witnesses, Christine Dragonette and Sara Ruiz, both of whom run ID clients in the greater St. Louis area, will testify about the heavy burdens their clients face every day while attempting to obtain a photo ID.

II. Standing

"A declaratory judgment action requires a justiciable controversy." *Mo. Alliance for Retired Ams. v. Dep't of Labor & Indus. Relations*, 277 S.W.3d 670, 676 (Mo. banc 2009). "A justiciable controversy exists where (1) the plaintiff has a legally protectable interest at stake, (2) a substantial controversy exists between the parties with genuinely adverse interests, and (3) that controversy is ripe for judicial determination." *Schweich v. Nixon*, 408 S.W.3d 769, 773 (Mo.

banc 2013) (internal quotation omitted). “The first two elements of justiciability are encompassed jointly by the concept of ‘standing.’” *Id.* No argument has been made that the controversy is not ripe or that the parties do not have genuinely adverse interests. The Voter ID Restrictions went into effect on August 28, 2022, and apply to all elections in Missouri.

“Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote.” *Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002) (citation omitted) (citing *Raines v. Byrd*, 521 U.S. 811, 819 (1997)). To have standing, a plaintiff must allege “a pecuniary or personal interest directly in issue or jeopardy which is subject to some consequential relief, either immediate or prospective.” *Vowell v. Kander*, 451 S.W.3d 267, 271 (Mo. App. W.D. 2014); *see also St. Louis Ass’n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 623 (Mo. banc 2011). “There is no litmus test for determining whether a legally protectable interest exists; it is determined on a case-by-case basis.” *Mo. Alliance for Retired Ams.*, 277 S.W.3d at 676.

As individuals, Plaintiffs Powell, Morgan, and O’Connor are eligible Missouri voters whose right to vote has been denied, burdened, or abridged because of the Voter ID Restrictions. *See, e.g., Weinschenk*, 203 S.W.3d at 206 (discussing the evidence related to people who lack the proper form of identification to vote and the burdens they would face in obtaining the required form of identification); *see also Priorities USA v. State*, 591 S.W.3d 448, 458 (Mo. banc 2020), *reh g denied* (Jan. 30, 2020) (referencing how *Weinschenk* “emphasized that some individuals, due to their personal circumstances, experience hurdles when attempting to obtain photo identification,” and noting that is “a concern that remains relevant in the instant case”). Organizations can establish standing either by showing a diversion of resources or because of the

circumstances of their members. *See infra*. Voting rights are germane to the purpose and mission of both the Missouri NAACP and the LWVMO. The Missouri NAACP and the LWVMO have been and will continue to be forced to divert resources because of the Voter ID Restrictions, and they also have members who are burdened by the Voter ID Restrictions and, therefore, have standing to sue on their behalf. These Plaintiff organizations, therefore, have both associational and organizational standing in this case. Both Plaintiffs Powell and O'Connor are members of the LWVMO.

A. Plaintiffs Ms. Powell, Ms. Morgan, and Mr. O'Connor have standing.

Plaintiff Powell suffers an injury caused by Voter ID Restrictions, and she is personally affected by the law at issue. The fundamental right to vote and the right to equal protection under the law are protected interests. Moreover, the relief sought here would alleviate her injury. In all future elections, she could cast a regular in-person ballot with her expired state-issued photo ID or another form of secondary identification previously allowed under the law. She would also not be required to overcome any of the burdens, of which there are many, associated with obtaining a new state-issued photo ID, or cast a provisional ballot subject to a standardless signature-match process conducted by two lay people at the local election authority. While Plaintiff Powell voted in person in the November 2022 election with a non-driver's license that expired less than 184 days prior to that election, she has since had to cast a provisional ballot in subsequent elections.

The burdens associated with Plaintiff Powell's claims are not *de minimis* but are substantial. Plaintiff Powell suffers from epilepsy and has mobility issues. Her left hand, with which she writes, has caused her signature to change over time. She does not drive and must be very careful where she walks. Her epilepsy and mobility issues are major obstacles for her to overcome. Even assuming Plaintiff Powell could obtain one form of ID at no cost, she would

face severe burdens in procuring it. Because her photo ID has expired, Plaintiff Powell's only option now is to cast a provisional ballot that may or may not be counted depending upon whether two election judges determine her signature on that ballot is a match to her signature on file. This process has occurred already and will continue to occur at each election in which she casts a provisional ballot.

Even if Plaintiff Powell is ever able to overcome the substantial burdens she faces and renew her non-driver's license, and even if she obtains one for free, once it expires, she will have to pay for every subsequent ID until she turns 70 because the State provides just one no-fee ID for life per voter in Missouri. Declaratory and injunctive relief would allow Plaintiff Powell to cast a regular in-person ballot either with her expired non-driver's license or one of the other many forms of secondary identification allowed under the previous version of the law in Missouri. Voting in person is very important to Plaintiff Powell who only has to walk a short distance to her neighborhood polling place.

Likewise, Plaintiff Morgan will have to overcome serious burdens in order to amend her birth certificate and obtain a state-issued photo ID that spells her name correctly and matches the spelling of her name on her voter registration. Plaintiff Morgan does not vote with her current state-issued ID because of the misspelling; she votes with her registration card, which spells her name correctly. It would be entirely up to any given poll worker to decide whether to accept Plaintiff Morgan's inaccurately spelled ID for casting a regular ballot on election day. *See* § 115.427.1(3) (referring to a voter's name that "substantially conforms to the most recent signature in the individual's voter registration record"). This is a risk she is not comfortable taking. It is not uncommon for two different people to have the same or very similar names, with only one letter being the difference (e.g., Sara Johnson and Sarah Johnson). Moreover, using her

current state ID could open Plaintiff Morgan up to investigation of an election offense if a poll worker did not believe that her name substantially conformed to her signature on file. As the record will reflect in this case, Missourians file complaints with the Election Integrity Unit alleging voter fraud for a wide variety of reasons, all of which the State of Missouri claims to take seriously. If Plaintiff Morgan is not permitted to cast a regular ballot, she would have to cast a provisional ballot.

Additionally, correcting the spelling of her name on her birth certificate and state ID is difficult for Plaintiff Morgan. While it is true that a person can submit an affidavit to correct a birth certificate if they have a sufficient form of supporting documentary evidence, a social security card is not sufficient documentary evidence under the cited regulations. As the regulation states, the documentation must show “at a minimum, the correct full name and correct age or date of birth, and shall have been filed at least five (5) years prior to the date of application for the amendment.” 19 C.S.R. 10-10.110(1)(A) (emphasis added). Plaintiff Morgan does not have a document that satisfies these requirements and would, therefore, have to determine what, if any, documents exist that could support her affidavit and then take the time and expense to obtain them. Plaintiff Morgan does not drive, does not have a bank account, and does not have extra income to pay for the documentation needed to amend her birth certificate—documentation that the State of Missouri does not include in the documents it will pay for to assist voters who lack a photo ID.

Plaintiff O’Connor’s right to vote has been abridged by the Voter ID restrictions. Declaratory relief would alleviate his injury and a decision enjoining enforcement of the law would mean that he never has to overcome the burdens to obtain a photo ID again should he lose or misplace his state ID. There is no dispute that Plaintiff O’Connor obtained a photo ID that he

can now use to vote. But he should not have had to and, as the evidence will reflect, he obtained it using identification that the State of Missouri has said should not be acceptable for proving one's identification at a DMV Office—his driver's license that expired in 2016. This is a case in equity. Plaintiff O'Connor's right to vote was abridged when he was forced to overcome serious obstacles to cast a regular ballot and vote in person. A person need not be disenfranchised for their fundamental right to vote to have been violated. *See Brakebill v. Jaeger*, 932 F.3d 671, 676–77 (8th Cir. 2019) (finding that the plaintiffs had standing and affirming the trial court's finding that “[t]he burden of having to obtain and produce an ID [for voting] itself has been found sufficient to confer standing, regardless of whether the Plaintiffs are able to obtain an ID” (quoting the trial court's decision)).

“Declaratory judgment [is an] equitable remed[y]... [and] equitable relief is warranted only where the legal remedies available to a plaintiff are inadequate or incomplete.” *Ballard v. City of Creve Coeur*, 419 S.W.3d 109, 117 (Mo. App. E.D. 2013). “To warrant the intervention of a court of equity, there must be a showing of something in addition to the claim of invalidity which serves to bring the case within one or more of the recognized grounds of equitable jurisdiction.” *Bhd. of Stationary Engineers v. City of St. Louis*, 212 S.W.2d 454, 458 (Mo. App. 1948). HB 1878 imposes severe burdens and has given Plaintiff O'Connor a “personal interest at stake in the dispute” which is sufficient to establish standing “even if that interest is attenuated, slight or remote.” *Ste. Genevieve Sch. Dist. R II*, 66 S.W.3d at 10. In *Priorities USA*, the plaintiffs were able to vote after signing an affidavit that was later found to be unconstitutional. The fact that they voted did not diminish their standing because the law still abridged their right to vote. Moreover, the fact that one of the plaintiffs later obtained a valid photo ID also did not

disqualify her from pursuing her claims.⁶ The fact that Plaintiff O'Connor successfully scaled a proverbial Mount Everest of burdens does not retroactively render those burdens permissible or constitutional. And equitable relief will vindicate this violation of his rights as well as make sure he never has to face these burdens again should he find himself without this new ID in the future. IDs are lost, stolen, or destroyed regularly and without predictability.

Plaintiff O'Connor undoubtedly suffered an injury in the form of time and expense in obtaining an approved voter ID and other hurdles he had to navigate to exercise his right to vote, including expending resources navigating bureaucratic requirements, all of which he could not have done without his wife's assistance. *Weinschenk*, 203 S.W.3d at 208-09. Furthermore, as noted, Plaintiff O'Connor will find himself in the same situation, without an approved photo ID, if he ever loses his ID or simply forgets to bring it with him to the polls, making his injury capable of repetition. *See Comm. for Educ. Equality v. State*, 294 S.W.3d 477, 486 (Mo. banc 2009).

To avoid being disenfranchised in the November 2022 election, Plaintiff O'Connor and his wife searched for many hours to locate the underlying identification needed to obtain a state-issued non-driver's license solely for the purposes of voting. They were ultimately able to locate

⁶ In *Priorities USA*, Defendants filed a motion to dismiss, in part, arguing that "Ms. Gutierrez now has a valid photo ID" and therefore lacked standing. *See Priorities USA v. State*, No. 18AC-CC00226, Motion to Dismiss the First Amended Petition and Suggestions in Support at 25, filed September 4, 2018; *see also Priorities USA v. State*, SC97470, Trial Transcript, pp. 45-52, filed January 31, 2019 (testimony discussing how Plaintiff Gutierrez obtained a photo ID, including the cost in time, effort, and money required for her to do so). The trial court denied Defendant's motion to dismiss (*see Priorities USA v. State*, No. 18AC-CC00226, 2018 WL 6031529, Amended Order and Judgment (Mo. Cir. Oct. 23, 2018), at 6. This decision as it related to the motion to dismiss and Plaintiff Gutierrez's standing was not revisited on appeal. *See generally Priorities USA v. State*, 591 S.W.3d 448 (Mo. banc 2020). Standing is akin to jurisdiction over the subject matter. As such, the question of a party's standing can be raised at any time, including *sua sponte* by a Court. *State ex rel. Mathewson v. Bd. of Election Comm'rs of St. Louis Cnty.*, 841 S.W.2d 633, 634 (Mo. banc 1992).

his birth certificate (which he did not believe they would find), his 2022 Missouri professional engineer's registration card that expired at the end of 2022, a Medicare card with his social security number on it, a recent utility bill, and a voter registration card. Without the assistance of his wife, Plaintiff O'Connor would not have been able to locate these documents, nor would he have been able to get to the DMV office.

On October 5, 2022, Plaintiff O'Connor and his wife went to the DMV in Columbia, Missouri. Here, again, his wife drove him and assisted him. After waiting for his number to be called, Plaintiff O'Connor approached a DMV agent. Because he suffers from both vision and hearing impairments, his wife amplified and repeated the instructions of the DMV agent. Much to his surprise, Plaintiff O'Connor was asked for his expired driver's license, a document that, pursuant to the online instructions, should not be used as proof of identification to obtain the ID because it was not within 184 days of expiring, and it was that document that was ultimately accepted as proof of his identity.

The burdens faced by Plaintiffs Powell, Morgan, and O'Connor are substantial and real. Moreover, aside from the more particularized harm to which they will testify, the provisional ballot alternative does not overcome any constitutional issues with the ID requirements, and the Missouri Supreme Court has already found that such an alternative does not cure the constitutional concerns Plaintiffs are raising here.

Because individual plaintiffs have standing, this Court need not address the standing of organizational Plaintiffs to determine the constitutionality of the Voter ID Restrictions. *See Mo. State Conf. of Nat'l Ass'n for the Advancement of Colored People v. State*, 607 S.W.3d 728, 730, 739 (Mo. banc 2020) (declining to reach the issues of organizational and associational standing

where individual plaintiffs had standing). Nonetheless, these organizational Plaintiffs also have standing, both via their members and because of their stakes in the litigation.

B. The Organizational Plaintiffs have standing.

i. Associational Standing

“Missouri has adopted the [federal] *Hunt* framework for analyzing associational standing.” *St. Louis Ass’n of Realtors*, 354 S.W.3d at 623 (citing *Mo. Outdoor Advertising Ass’n, Inc. v. Mo. State Hwy. & Transp. Comm.*, 826 S.W.2d 342, 344 (Mo. banc. 1992)). In *Hunt*, the Supreme Court held that “an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). This test ensures that those who stand to benefit from the litigation “have a legally protectable interest at stake.” *State ex rel. Chilcutt v. Thatch*, 221 S.W.2d 172, 176 (Mo. banc 1949). It also ensures that there is not a mismatch between the litigation topic and organizational expertise. *St. Louis Ass’n of Realtors*, 354 S.W.3d at 623. The Missouri NAACP and the LWVMO, as membership organizations, can rightfully assert the rights and act on behalf of their members in court based on injuries to their members.

It cannot be disputed that protecting and expanding the right to vote is germane to the missions of both Missouri NAACP and LWVMO. Because individual members of the Missouri NAACP and the LWVMO have the fundamental right to vote, these organizations have standing to litigate an infringement on that right on behalf of their affected members. Members of the Missouri NAACP and the LWVMO do not have an acceptable photo ID that complies with the

Voter ID Restrictions, face burdens to obtaining an acceptable ID to vote, and will be prohibited from voting in future elections or be required to cast a provisional ballot. Additionally, the Voter ID Restrictions create uncertainty and confusion among the organizations' members, which burdens voters and dissuades them from attempting to cast a ballot. As the evidence at trial will show, the Missouri NAACP and LWVMO can identify individual members, which include Plaintiffs Powell and O'Connor, who the Voter ID Restrictions impact.

Missouri courts have found that organizations have associational standing where some, but not all, of their members would have standing to sue in their own right.” *Building Owners and Managers Ass’n of Metropolitan St. Louis, Inc. v. City of St. Louis*, 341 S.W.3d 143, 148 (Mo. App. E.D. 2011); *see also, e.g., Mo. Bankers Ass’n v. Dir. of Mo. Div. of Credit Unions*, 126 S.W.3d 360, 361, 363 (Mo. banc 2003) (holding that an association consisting of 385 commercial banks and savings banks located throughout the state of Missouri had associational standing where 88 members were affected by regulation of credit unions in a specific area code); *Home Builders Ass’n of Greater St. Louis, Inc. v. City of Wildwood*, 32 S.W.3d 612, 614–15 (Mo. App. E.D. 2000) (holding that an association of home builders in the metropolitan St. Louis area had standing to challenge the City of Wildwood’s municipal ordinance); *St. Louis Ass’n of Realtors*, 354 S.W.3d at 624 (holding an argument that because only a small number of members were impacted, there was no standing for the association, “without merit”). In fact, the Missouri Supreme Court has found associational standing to exist when an organization can demonstrate “that at least one of its members would have standing to sue, that the interests the suit seeks to protect are germane to the association’s purpose, and that neither the claim asserted nor relief requested requires the participation of individual members in the lawsuit[.]” *St. Louis Ass’n of Realtors*, 354 S.W.3d at 622.

ii. Organizational Standing⁷

Plaintiffs the Missouri NAACP and the LWVMO also have standing because they have diverted resources as a direct result of the Voter ID Restrictions.

Plaintiffs recognize that this Court has previously found that “Missouri courts have yet to embrace the liberalized federal rule of organizational standing;” and determined that a decision to embrace this rule should be left for the Missouri Supreme Court. *See* Order and Judgment, *Mo. State Conf. of Nat l Ass n for the Advancement of Colored People v. State*, Case No. 17AC-CC00309-01, at 3 (Cole Cnty. Cir. Ct. Apr. 20, 2020). Organizational standing based upon a diversion of resources, however, is recognized by the Supreme Court of the United States. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-379 (1982) (finding organization standing because “the consequent drain on the organization’s resources—constitutes far more than simply a setback to the organization’s abstract social interests”); *see also Nat l Fed n of Blind of Mo. v. Cross*, 184 F.3d 973, 979 (8th Cir. 1999) (establishing that an organization may show standing on its own behalf “when there is a concrete and demonstrable injury to [the] organization’s activities which drains its resources and is more than simply a setback to its abstract social interests”). Moreover, both federal courts and other state courts in voting rights cases have found organizational standing. *See, e.g., Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 798 (W.D. Mo. 2020) (confirming organizational and associational standing of advocacy organizations involved in voter education and protection efforts in challenge to Missouri mail-in ballot rules); *Applewhite v. Com.*, No. 330 M.D. 2012, 2014 WL 184988, at *7 (Pa. Commw. Ct.

⁷ When Plaintiffs refer to “organizational standing” they are referring to the type of standing demonstrated by a diversion of resources as recognized in federal court. Missouri state court cases, at times, refer to associational standing (based upon membership) as organizational standing.

Jan. 17, 2014) (finding that organizational plaintiffs in lawsuit challenging state photo identification restrictions, including the League of Women Voters of Pennsylvania and the National Association for the Advancement of Colored People, had standing on behalf of the members and on their own behalf).

Moreover, in *Priorities USA*, the circuit court denied a motion to dismiss the organization Priorities USA as a plaintiff. *See Priorities USA v. State*, Case No. 18AC-CC00226 (Cole Cnty. Cir. Ct. Oct. 23, 2018). Priorities USA alleged a vested interest in ensuring that Missourians have free access to the right to vote and that the strict voter ID law undermined this core mission. *Id.* The circuit court's standing determination was not an issue on appeal⁸ when the Missouri Supreme Court ruled in favor of plaintiffs, including Priorities USA. *See Priorities USA*, 591 S.W.3d at 448. There was no allegation in *Priorities USA* that the organization had any impacted members—much less any individual membership—or was seeking standing on that basis.

As the Missouri NAACP and LWVMO will demonstrate at trial, the core missions of their respective organizations are closely tied to voter engagement, education, and advocacy throughout Missouri, and the Voter ID Restrictions interfere with these missions while burdening the fundamental voting rights of their members and the communities they represent.

Moreover, the injury that the Missouri NAACP and the LWVMO are responding to—i.e., the burden upon fundamental voting rights imposed by the Voter ID Restrictions—is immediate, concrete, non-speculative, and not “self-inflicted,” as Defendants have suggested, in any way that defeats standing. While individual members of and communities served by the Missouri NAACP

⁸ A Court is “obliged to examine standing *sua sponte* where standing has erroneously been assumed below. If the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it.” *Adarand Constr., Inc. v. Mineta*, 534 U.S. 103, 110 (2001) (cleaned up).

and the LWVMO must immediately react to the Voter ID Restrictions, the Missouri NAACP and the LWVMO have also immediately reacted by diverting resources toward education, training, and outreach to their members and others in the community. These diversions were in direct *response* to questions and issues raised by members and the public that the organizations serve. The Missouri NAACP and the LWVMO are making expenditures and diverting resources based on existing harm because the law has been in effect since August 28, 2022, and the harm is ongoing. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (noting that harm must be “certainly impending” and finding that allegations of possible *future* surveillance were too speculative for Article III standing purposes). Moreover, “[i]mminece as a doctrinal standard is ‘somewhat elastic,’” and “[i]mmediacy requires only that the anticipated injury occur with some fixed period of time in the future.” *Fla. State Conf. of Nat'l Ass'n for the Advancement of Colored People v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008) (internal citations omitted) (finding organizational standing in voting rights case). Here, the certainly impending, imminent, and immediate nature of the injury is clear, has happened, and is also ongoing.

III. Legal Analysis

The Missouri Constitution guarantees that “all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Mo. Const. Art. I, § 25. The Missouri Constitution also clearly defines voter qualifications: “All citizens of the United States, including occupants of soldiers’ and sailors’ homes, over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote at all elections by the people....” Mo. Const. Art. VIII, § 2. The Missouri Constitution further provides that:

[A]ll constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness

and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

Mo. Const. Art. I, § 2. 4. The right to vote and the right to equal protection under the laws “are the core of Missouri’s constitution and, hence, receive state constitutional protections even more extensive than those provided by the federal constitution.” *Weinschenk*, 203 S.W.3d at 212 (noting that the Missouri Constitution’s voting rights provisions are “more expansive and concrete” than parallel provisions in the United States Constitution.). Taken together, “these provisions establish with unmistakable clarity that the right to vote is fundamental to Missouri citizens.” *Id.* at 211.

“If a statute severely burdens the right to vote, strict scrutiny applies, which means the law will be upheld only if it is narrowly tailored to serve a compelling state interest.” *Priorities USA*, 591 S.W.3d at 453. Because a strict photo ID requirement “imposes a severe burden on the right to vote, it can survive strict scrutiny only by showing it is necessary to accomplish a compelling state interest or that it is ‘narrowly drawn to express the compelling state interest at stake.’” *Weinschenk*, 203 S.W.3d at 217 (citing *In re Norton*, 123 S.W.3d 170, 173 (Mo. banc 2003); see also *Weinschenk*, 203 S.W.3d at 215–16 (noting that Missouri courts “have uniformly applied strict scrutiny to statutes impinging on the right to vote”).

Plaintiffs do not dispute that the state has an interest in preserving election integrity and preventing voter fraud. However, though strict scrutiny is the proper standard of review for HB 1878, and the Voter ID Restrictions are not narrowly tailored to further the state’s interests, the law fails to pass even rational basis review. To survive rational basis review, the means chosen by the State to achieve their legitimate interest “must be rationally related to this interest.” *Priorities USA*, 591 S.W.3d at 453. The Voter ID Restrictions are not rationally related to either

preventing voter fraud or promoting election integrity. As previous cases have held and Plaintiff's expert Dr. Lorraine Minnite will confirm, the only kind of voter fraud such restrictions prevent is "in-person voter impersonation fraud at the polling place[,]" *Weinschenk*, 203 S.W.3d at 217, which is so rare that there are no recorded instances of it in Missouri in over twenty years. The Voter ID Restrictions provide no protection against double voting, noncitizen voting, voter mis-registration, or absentee voting fraud. *See id.* (finding that photo ID "does not address absentee voting fraud or fraud in registration."). Nor does it appear to increase public confidence in elections. As Plaintiffs' expert Dr. Kenneth Mayer will testify, HB 1878 makes no contribution to election integrity or the security of the voting process. Because the Voter ID Restrictions offer no discernable protection against voter fraud while imposing significant burdens upon voters—disenfranchising many in the process—there is no rational basis for them; they cannot be upheld under even the most deferential standard, let alone the strict scrutiny that properly applies.

The Voter ID Restrictions are not new in Missouri. The Missouri Supreme Court "made clear that requiring individuals to present photo identification to vote is unconstitutional." *Priorities USA*, 591 S.W.3d at 459. "Obtaining photo identification requires appropriate documentation, time, and the ability to navigate bureaucracies." *Priorities USA*, 591 S.W.3d at 458–59 (citing *Weinschenk*, 203 S.W.3d at 219). "Those things that require substantial planning in advance of an election to preserve the right to vote can tend to 'eliminate from the franchise a substantial number of voters who did not plan so far ahead.'" *Id.* at 459. Moreover, the provisional ballot alternative with a signature-matching requirement does not overcome the constitutional infirmities. *See id.* at 458–59. HB 1878, enacted to replace the prior iteration of § 115.427 (2017), a law found to no longer unconstitutionally burden voters without photo ID after

the affidavit requirement was severed by the holding in *Priorities USA*, is nearly identical to an alternative remedy proposed by the dissent in that case but dismissed by the majority as “nonsensical” because it “poses constitutional concerns and could not have been adopted by this Court.” *Priorities USA*, 591 S.W.3d at 458–59.⁹ HB 1878 is *at least* as constitutionally infirm as that proposal from the dissent in *Priorities USA* for the reasons set forth by the Missouri Supreme Court.

In *Priorities USA*, the court struck down and severed an affidavit requirement tied to the use of alternative, non-photographic identification,¹⁰ finding that the language of the affidavit

⁹ Specifically, the *Priorities USA* court wrote:

In effect, the dissenting opinion’s proposal to sever option two in its entirety would result in individuals having to present government-issued photo identification to ensure their votes are counted. In *Weinschenk*, this Court made clear that requiring individuals to present photo identification to vote is unconstitutional. 203 S.W.3d at 219. *Weinschenk* emphasized that some individuals, due to their personal circumstances, experience hurdles when attempting to obtain photo identification, *id.* at 215, a concern that remains relevant in the instant case. Obtaining photo identification requires appropriate documentation, time, and the ability to navigate bureaucracies. *Id.* “Those things that require substantial planning in advance of an election to preserve the right to vote can tend to ‘eliminate from the franchise a substantial number of voters who did not plan so far ahead.’” *Id.* (quoting *Harman v. Forssenius*, 380 U.S. 528, 539-40 (1965)). For these reasons, the dissenting opinion’s first proposed remedy poses constitutional concerns and could not have been adopted by this Court.

591 S.W.3d at 458–59.

¹⁰ This alternative option allowed otherwise-qualified voters who lacked one of the prescribed forms of ID to vote with a secondary form of ID, including: (1) any ID issued by the state of Missouri or the federal government, a state or federal agency, or a local election authority, (2) ID issued by a university, college, vocational, or technical school within the state of Missouri, or (3) a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the voter’s name and current address. However, a voter using a secondary form of ID was required to sign an affidavit confirming their identity and averring that they “do not possess personal identification approved for voting, are eligible to receive a Missouri nondriver’s license free of charge, and are required to present a form of personal identification to vote.” § 115.427 (2017).

was unconstitutional because it was “misleading and contradictory.” *Id.* at 455. While the court invalidated the affidavit requirement, it maintained alternative secondary ID options despite the State’s objections, determining that voters could present any of the enumerated secondary forms of ID to cast a regular ballot instead of limiting the statute to strict photo ID requirements (e.g., a voter registration card, a student ID, or a copy of a utility bill or bank statement). *Id.* at 458–59.

In severing the affidavit requirement in its entirety, the *Priorities USA* Court explicitly rejected two proposals from the dissent that would have resulted in so-called narrower remedies, the first of which would have discarded the non-photo ID option along with the affidavit requirement, leaving only the exact Voter ID Restrictions, including the alternative provisional ballot option challenged here. This proposal was deemed “nonsensical” by the Court.¹¹

Like HB 1878, the dissent’s proposal in *Priorities USA* left only one option for those without photo ID: casting a provisional ballot and relying on a “signature-matching process [that] could result in an over-rejection of legitimate signatures[,]” thereby leaving some voters disenfranchised on the basis of rejection by local election authorities with inconsistent levels of training, *none* of which are adequate to provide the certainty required to legitimize the process.¹² The Missouri Supreme Court did not consider this kind of uncertainty acceptable, focusing on what is required of voters to “ensure their votes are counted.” *Priorities USA*, 591 S.W.3d at 458. The Court summarized: “In effect, the dissenting opinion’s proposal to sever option two in its entirety would result in individuals having to present government-issued photo identification *to*

¹¹ Any notable differences between the dissent’s proposal and HB 1878, discussed *infra*, and the current version of the law challenged in this case weigh against a finding that the current version is constitutional; those changes worsen some of the burdens and alleviate none.

¹² Dr. Linton Mohammed, the forensic document examiner who testified as an expert witness in *Priorities USA*, will testify in this trial.

ensure their votes are counted. In *Weinschenk*, this Court made clear that requiring individuals to present government-issued photo identification to vote is unconstitutional.” *Id.* (emphasis added). This option, to cast a provisional ballot subject to signature-matching, was insufficient to save the proposed remedy in *Priorities USA*, and it remains insufficient here.

Were HB 1878 merely as burdensome as the solution dismissed by the *Priorities USA* Court, that would be enough to render it unconstitutional. But HB 1878 goes further. The prior version of § 115.427 imposed specific requirements upon the State to ensure that citizens would have sufficient notice of what was going to be required to cast a ballot, which had to include “at a minimum... advertisements and public service announcements in print, broadcast television, radio, and cable television media, as well the posting of information on the opening pages of the official state internet websites of the secretary of state and governor.” § 115.427.5 (2017). The current version of the law now requires only that the State provide notice “on the official state internet website of the secretary of state.” § 115.427.5. Gone are any requirements to provide notice in a variety of media formats, or even beyond a single website. So, too, is the requirement that any notice provided be “calculated to inform the public generally of the requirement for forms of personal identification as provided in this section.” § 115.427.5 (2017).¹³ And gone along with those provisions is the subsection mandating that “all costs associated with the implementation of this section shall be reimbursed from the general revenue of this state by an appropriation for that purpose[,]” and making enforcement of the Photo ID provision contingent on “sufficient appropriation of state funds.” § 115.427.6(3) (2017). With no notice required

¹³ Given that the State’s efforts to provide notice under the prior § 115.427.5 (2017) lead to the dissemination of misleading information and increased the confusion already present, it is not surprising that the lawmakers removed the requirement. *See Priorities USA*, 591 S.W.3d at 459–61 (describing one of the state’s misleading advertisements and affirming the trial court’s order enjoining it).

beyond a single website, and no funding requirement, the number of voters who are unaware of what is required in order to cast a vote—voters who will be forced to cast a provisional ballot subject to an error-prone signature verification process certain to result in some voters being completely disenfranchised by erroneous rejection—will increase. The evidence presented will support this conclusion as the number of provisional ballots cast has, in fact, increased substantially. Voter confusion leads organizations like the Plaintiffs NAACP and LWVMO to have to continue to divert resources to fill the information void caused by the lack of State-provided notice. Many more voters will be disenfranchised, an untenable outcome given that “even one disenfranchised voter... is too many....” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014).

Plaintiffs’ evidence before the Court will include testimony from ten witnesses (including three experts), stipulated facts, designated deposition transcripts, and exhibits. Plaintiffs will offer evidence to demonstrate that the conflict between the Constitution and the challenged law is not theoretical and that Plaintiffs’ legally protectable interests in resolving that conflict are real and substantial.

Plaintiffs O’Connor, Powell, and Morgan, have all experienced severe burdens because of HB 1878’s Voter ID Restrictions. Their experiences represent those of thousands of Missourians impacted by the unconstitutional burdens created by HB 1878. Expert witnesses will demonstrate that the Voter ID Restrictions do nothing to stop voter fraud—in part, because there is none—and serve only to impede and burden the constitutionally protected right to vote in Missouri. Dr. Linton Mohammed, a Forensic Document Examiner and expert in handwriting and signature verification, will speak to how Missouri’s process for accepting or rejecting provisional ballots is flawed and will lead to the rejection of properly cast ballots. Dr. Kenneth Mayer will

also show that the Voter ID Restrictions in HB 1878 place a heavy burden on voters, do not protect election integrity, and do nothing more than confuse Missourians, thereby decreasing voter turnout. Dr. Lorraine Minnite, a political science professor at Rutgers University-Camden and an expert in voter fraud, after reviewing years of complaints submitted to Missouri's Election Integrity Unit and based upon her own research and expertise, will testify about how voter fraud, especially the kind that HB 1878 is purportedly meant to address, is exceedingly rare in Missouri. The Missouri NAACP and the LWVMO will testify about the harm to their members and the diversion of resources and efforts they have had to make to keep vulnerable Missourians, including their members, enfranchised. Sara Ruiz, the executive director of Ashrei Foundation, and Christine Dragonette, the Director of Social Ministries at St. Francis Xavier College Church, will testify regarding their efforts to assist hundreds of voters navigate and attempt to overcome the burdens of obtaining photo ID in Missouri.

IV. Conclusion

HB 1878 has and continues to infringe upon the fundamental right to vote by restricting the identification options that registered voters may present to cast a regular ballot and forcing those who cannot provide the required photo ID to comply with the flawed and inadequate alternative process of casting a provisional ballot. Voters who cast provisional ballots must incur the additional burden of either retrieving an approved photo ID and returning to the polling place that same day or subjecting their constitutional right to vote to an entirely subjective and standardless signature-matching process. There is no guarantee that their vote will count. The Voter ID Restrictions are unconstitutional, and any further enforcement of the law must be enjoined.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 10, 2023, the foregoing was filed electronically and thereby served upon counsel of record for all parties.

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