IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

LEAGUE OF WOMEN VOTERS OF MISSOURI and MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Plaintiffs, v. STATE OF MISSOURI; JOHN R. ASHCROFT, in his official capacity as Missouri Secretary of State; and LOCKE THOMPSON, in his official capacity as Cole County Prosecuting Attorney and on behalf of all Missouri Prosecuting Attorneys, Defendants.	Case No. 22AC-CC04333 Division I

PLAINTIFFS' PRETRIAL BRIEF

I. STATEMENT OF THE CASE

Plaintiffs League of Women Voters of Missouri ("LWVMO") and Missouri State Conference of the National Association for the Advancement of Colored People ("Missouri NAACP") (collectively, "Plaintiffs")—nonpartisan, civic engagement organizations that engage in voter engagement and voter outreach activities—filed this lawsuit against Defendants State of Missouri; John R. Ashcroft, in his official capacity as Missouri Secretary of State; and Locke Thompson, in his official capacity as Cole County Prosecuting Attorney and on behalf of all Missouri Prosecuting Attorneys (collectively, "Defendants"), seeking declaratory and injunctive relief from four challenged provisions of House Bill 1878, 101st Gen. Assemb., 2d Reg. Sess. (Mo.

2022) [hereinafter HB 1878], for violations of Plaintiffs' speech, expression, association, and due process rights under the Missouri Constitution.

The Missouri Constitution guarantees fundamental rights of speech, expression, association, and due process. *See* Mo. Const. Art. I, § 8 ("no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject"); *Courtway v. Carnahan*, 985 S.W.2d 350, 352 (Mo. App. W.D. 1998) (holding that Article I, Sections 8 and 9 of the Missouri Constitution "guarantee freedom of . . . association"); Mo. Const. Art. I, § 10 ("no person shall be deprived of life, liberty or property without due process of law").

Nonpartisan civic engagement organizations, including Plaintiffs, play an essential role in providing education and assistance to encourage and enable eligible Missourians to vote. These activities not only help facilitate fundamental voting rights, *see Weinschenk v. State,* 203 S.W.3d 201, 211 (Mo. banc 2006), but also constitute core political speech and expression entitled to the full protections of the Missouri Constitution. HB 1878 imposes numerous unprecedented and severe restrictions upon Plaintiffs' constitutionally protected voting engagement activities.

On August 22, 2022, before the challenged law was to take effect, Plaintiffs filed this lawsuit seeking declaratory and injunctive relief from four challenged provisions of HB 1878 for violations of Plaintiffs' speech, expression, association, and due process rights under the Missouri Constitution. *First*, HB 1878 prohibits any person from "be[ing] paid or otherwise compensated for soliciting voter registration applications" (the "Compensation Ban"). HB 1878, § A (to be codified at § 115.205.1, RSMo).[1] *Second*, the bill requires even uncompensated individuals "who

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

solicit[] more than ten voter registration applications" to register with the Secretary of State as "voter registration solicitors" (the "Unpaid Solicitor Registration Requirement"). *Id. Third*, the bill mandates that every voter registration solicitor be a registered Missouri voter (the "Registered Voter Requirement"). *Id. Fourth*, the bill forbids any "individual, group, or party [from] solicit[ing] a voter into obtaining an absentee ballot application" (the "Absentee Ballot Solicitation Ban"). *Id.* (to be codified at § 115.279.2). Collectively, the foregoing provisions are referred to as the "Challenged Provisions." The Challenged Provisions do not define the terms "solicit" or "solicitor," nor do they define "compensate" or "compensation."

On October 24, 2022, this Court issued an order granting Plaintiffs' motion for preliminary injunction and motion to certify a defendant class, enjoining Defendants from enforcing the Challenged Provisions until a final judgment is entered, and denying Defendants' motion to dismiss. The parties now appear for a bench trial in the case on August 19, 2024. Plaintiffs respectfully request that this Court declare that the Challenged Provisions are unconstitutional and permanently enjoin Defendants and those acting in concert with them from enforcing them.

II. JOINT STIPULATED FACTS

Plaintiffs refer to and hereby incorporate the joint Statement of Uncontroverted Facts, also filed with this Court.

III. STANDING

Plaintiffs have standing to bring these claims. "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." P.I. Order, at COL ¶ 1 (quoting *Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. 2002)). "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.

"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); *Brehm v. Bacon Twp.*, 426 S.W.3d 1, 5 (Mo. banc 2014) (quoting *State v. Young*, 362 S.W.3d 386, 396 (Mo. banc 2012)). "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. A plaintiff, including an organization, who seeks to exercise its constitutional rights to speech and association but is prevented from doing so by a state statute has standing to challenge the statute as unconstitutional. *See Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 737 (Mo. banc 2007). Organizations can also establish standing either by showing a diversion of resources or because of the circumstances of their members. Although Missouri's standing doctrine is distinct from doctrine applied in federal courts, Missouri courts have looked to federal case law for guidance on organizational standing. *See St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 623 (Mo. banc 2011) (stating that Missouri courts have adopted the three-part test for standing under *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

Here, there is no colorable argument that Plaintiffs lack standing to bring this action. Like the plaintiff in *Planned Parenthood of Kansas*, Plaintiffs have provided credible evidence that they seek to exercise constitutionally protected rights but would be inhibited or prevented from doing so by the Challenged Provisions. *See Planned Parenthood of Kansas*, 220 S.W.3d at 737. In fact, Plaintiffs have provided credible evidence that they frequently exercise these rights but were inhibited and prevented from doing so when the Challenged Provisions were in place. Moreover, this Court has already found that the Plaintiffs have standing to pursue these claims, and the facts developed do not change that finding; if anything, the facts in this case provide additional support for this Court's previous findings related to standing.

A. Organizational Speech

Plaintiff organizations have standing because the Challenged Provisions chill their constitutionally protected speech.

"Because the First Amendment protects against not only direct censorship but the chilling of protected speech, a plaintiff making a First Amendment claim alleges an injury in fact 'even if the plaintiff has not engaged in the prohibited expression as long as the plaintiff is objectively reasonably chilled from exercising his First Amendment right to free expression in order to avoid enforcement consequences.'"[2] *Animal Legal Defense Fund v. Reynolds*, 297 F. Supp. 3d 901, 912 (S.D. Iowa 2018) (quoting *Republican Party of Minn., Third Cong. Dist. v. Klobuchar*, 381 F.3d

[2] The Missouri Supreme Court has interpreted Article I, § 8 of the Missouri Constitution by looking to federal First Amendment caselaw: "While provisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions, analysis of a section of the federal constitution is strongly persuasive in construing the like section of our state constitution." *Karney v. Dep't of Labor & Indus. Rels.*, 599 S.W.3d 157, 163 (Mo. 2020). The Court noted that while it may construe similar provisions of the state constitution to provide more expensive protection, it has "consistently construed like provisions similarly." *Id.* at 163 n.3.

785, 792 (8th Cir. 2004)); *accord Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 794–95 (8th Cir. 2016) (holding that organization had standing to challenge speech-regulating statute because it had reasonably "self-censored" for eleven days); *State v. Vaughn*, 366 S.W.3d 513, 519 (Mo. banc 2012) (discussing an overbreadth challenge to a criminal statute under both the First Amendment to the United States Constitution and Art. I, § 8, of the Missouri Constitution and describing examples illustrating the law's possible chilling effect on political and non-political speech); *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 739–40 (Mo. banc 2007) (discussing standing and ripeness in a case challenging a state abortion statute and noting that a pre-enforcement challenge premised on free speech rights could proceed where Planned Parenthood could not "continue providing information and counseling to minors without risking liability under the statute" and remarking how "'courts have repeatedly shown solicitude for First Amendment claims because of concern that, even in the absence of a fully concrete dispute, unconstitutional statutes or ordinances tend to chill protected expression among those who forbear speaking because of the law's very existence'" (quoting *Peachlum v. City of New York*, 333 F.3d 429, 434–35 (3d Cir. 2003)).

The Challenged Provisions chill and restrict Plaintiff organizations' speech. The Compensation Ban prevents all paid employees and otherwise compensated members from participating in voter registration or absentee voting solicitation and imposes costs on any volunteers otherwise eligible while discouraging potential volunteers from participating at all. LWVMO ceased voter registration activities by paid employees and even restricted reimbursement for expenses of volunteers to comply with the Compensation Ban's unclear language. Turner Dep. at 31:21-32:22.[3] And Ms. Pener was unable to assist with or coordinate the efforts of unpaid

[3] Plaintiffs' trial depositions will be provided to the Court as evidence.

volunteers for the Missouri NAACP because she was paid. Pener Dep. at 38:8-39:19. The Unpaid Solicitation Registration Requirement similarly shrinks the pool of legally permitted registration solicitors and imposes burdens on volunteers and staff; LWVMO was forced to create protocols to track and document volunteer solicitor applications; could not fully staff events, and both organizations faced difficulties recruiting volunteers willing or able to register with the Secretary of State. *See* Dugan Dep. at 49:22–50:9; Pener Dep. at 47:16–49:14; *see also* P.I. Order, at COL ¶ 15. The Registered Voter Requirement also reduces the population of available volunteers, as both organizations rely on volunteers ineligible to vote in Missouri, including, but not limited to, high school students under the age of eighteen and out-of-state college students who help register fellow students on campus. Dugan Dep. at 51:4–54:10, 91:9–22; Bowman Dep. at 23:4–24; Pener Dep. 58:4–60:2; *see also* P.I. Order, at COL ¶¶ 16–20. Finally, the Absentee Ballot Solicitation Ban directly restricts the speech of the Plaintiff organizations, preventing them from informing voters of their legal right to cast an absentee ballot and how to apply to do so. *See* Turner Dep. at 50:7–13, 51:15–20, 52:12–13; Dugan Dep. at 60:2–3; Pener Dep. at 64:17–20, 67:4–13; Bowman Dep. at 18:3–17 (for example, LWVMO removed all educational materials about absentee voting from its office and had to turn away its members and the public who called with questions about how to obtain an absentee ballot).

It is clear that all four Challenged Provisions in this case chill and restrict Plaintiffs' constitutionally-protected speech. As such, Plaintiffs have standing to bring this lawsuit.

B. Associational Standing

As this Court correctly found in this action, "Plaintiffs have associational standing." P.I. Order, at COL ¶ 5.

"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 Advert. Ass'n, Inc. v. Mo. State Highways & Transp. Comm'n*, 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 both ensures that those who stand to benefit from the litigation "have a legally protectable interest at stake" and that there is not a mismatch between the litigation topic and organizational expertise. *State ex rel. Chilcutt v. Thatch*, 221 S.W.2d 172, 176 (Mo. banc 1949); *accord St. Louis Ass'n of Realtors*, 354 S.W.3d at 623. The Missouri NAACP and the LWVMO, as membership organizations, can assert the rights and act on behalf of their members based on injuries to their members.

First, as the evidence shows, the Missouri NAACP and LWVMO can identify individual members whose constitutional rights the Challenged Provisions impact. For example, before the Challenged Provisions passed, LWVMO had voter registration volunteers under the age of eighteen and volunteers who were not registered to vote in Missouri. Turner Dep. at 43:5–44 (describing at least one community college volunteer and multiple Washington University in St. Louis student-volunteers who were registered out of state). Specifically, Mary Toy was a LWVMO member who was not registered to vote in Missouri and led the organization's community college voter registration efforts before the Challenged Provisions passed, requiring her to stop those efforts. Turner Dep. at 45:2–46:5. And Jean Dugan, the LWVMO executive director and a LWVMO member, is paid by LWVMO and had previously answered phone calls from voters

about voter registration and absentee voting, and helped coordinate voter registration activities for the organization. Dugan Dep. at 9:20–11:6. She no longer took part in these activities when the Compensation Ban was in effect. John Bowman, a member of Missouri NAACP, the organization's Labor and Industry Committee chair, and the president of the organization's St. Louis County Unit, had to adjust how he organized voter registration efforts in response to the Unpaid Solicitor Registration Requirement. Bowman Dep. at 9:15–18, 10:9–17 (explaining that Missouri NAACP "made sure that anyone registering over ten individuals is registered with the Secretary of State's office as a solicitor"). Olivia Pener, Missouri NAACP's acting executive director, is paid and is involved in the organization's voter registration efforts. Pener Dep. at 9:5–6, 15:14–22, 18:16–19:10 ("[S]ince many [college students] are young people who are engaging in voting activities for the first time, a lot of them need additional support in learning the processes, learning how to register themselves, learning how to help their fellow classmates register . . . I do a lot as far as coordination is concerned. And sometimes providing like on-site support."). Additionally, Missouri NAACP's membership "include[s] a lot of individuals who" need to vote using an absentee ballot. Pener Dep. at 65:17–23.

Second, it cannot be disputed that protecting and expanding Missourians' right to vote through voter registration is germane to the missions of both Missouri NAACP and LWVMO. LWVMO conducts extensive voter registration efforts with the help of voter registration volunteers, most of whom are LWVMO members. Turner Dep. at 14:9–15:1; 19:22–25 (discussing events at which LWVMO "help[s] people fill out the [voter] registration applications" and explaining that "the majority" of LWVMO voter registration volunteers are LWVMO members). LWVMO members also answer the many calls LWVMO gets from voters about how to obtain and apply for absentee ballots. Turner Dep. at 27:3–5 (confirming that the LWVMO volunteers who

answer phone calls about absentee voting are LWVMO members). Similarly, helping people vote is core to Missouri NAACP's mission. Pener Dep. at 40:5–15 ("[S]uffrage was included in . . . the original mission statement when the organization was chartered . . . And so we try to make sure that everyone is eligible to register to vote is registered to vote and has access to the ballot."). Specifically, Missouri NAACP believes "it is important . . . to have [its] membership engaging in voter registration and voter education." Pener Dep. at 72:12–14.

Third, since Plaintiffs seek prospective relief in this case and "requests made by an association [or organization] for prospective relief generally do not require the individual participation of the organization's members," individual members are not required to litigate this case. *St. Louis Ass'n of Realtors*, 354 S.W.3d at 624 (citing *Home Builders Ass'n v. City of Wildwood*, 32 S.W.3d 612, 615 (Mo. App. E.D. 2000)).

Notably, "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 Metro. St. Louis, Inc. v. City of St. Louis*, 341 S.W.3d 143, 148 (Mo. App. E.D. 2011); *see also, e.g., Mo. Bankers Ass'n v. Dir. of Mo. Div. of Credit Unions*, 126 S.W.3d 360, 361, 363 (Mo. banc 2003) (holding that an association consisting of 385 commercial banks and savings banks located throughout the state of Missouri had associational standing where 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. Missouri NAACP and LWVMO have met these factors as they have demonstrated that many of their members would have standing in their individual capacities.

C. Diversion of Resources

As this Court has already recognized at the preliminary injunction stage, the Missouri NAACP and LWVMO have been and will be forced to divert resources as a direct result of the Challenged Provisions. P.I. Order, at FOF ¶¶ 37, 54; P.I. Order, at COL ¶¶ 6, 14–15, 29, 61, 163.

The Supreme Court of the United States has conferred standing where an organization has diverted its resources in response to a challenged law or practice. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982) (finding organizational standing where "the consequent drain on the organization's resources" stemming from Defendants' actions "constitute[d] 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 has standing "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"). Federal courts in Missouri have also recognized standing as a result of an organization's diversion of resources. *See, e.g., Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 798 (W.D. Mo. 2020) (finding that advocacy organizations "involved in efforts to promote voter registration and education" had standing to challenge Missouri's mail-in ballot rules where they had diverted resources "from other core work").

1. Plaintiff LWVMO diverted organizational resources when HB 1878 was in effect and will be forced to do so again if it becomes enforceable once more.

Plaintiff LVWMO has diverted—and will again be forced to divert—resources in direct response to the Challenged Provisions in this case. Further, such diversion of resources constitutes "far more than just simply a setback to the organizations' abstract social interests." *Nat'l Fed'n of Blind of Mo.*, 184 F.3d at 979.

LWVMO seeks to encourage civic participation and engage Missourians in the political process. Turner Dep. at 15:19–22. In furtherance of this mission and in order to communicate and advance its views about the benefits of access to voting, LWVMO and its local chapters encourage individuals to register to vote and conduct dozens of voter registration events throughout the state, including at high schools, colleges, naturalization ceremonies, senior homes, and community events. Dugan Dep. at 19:12–20:22, 22:6–12, 25:22–24. Additionally, LWVMO creates and distributes voter education and outreach materials, Dugan Dep. at 13:3–13, 18:18–19:7, 22:13–23:10, 24:13–25:4, assists voters with applying to vote absentee, *id.* at 22:22–23:10; 31:6–20, and encourages eligible voters to do so. *Id.* at 61:9–20; Turner Dep. at 24:10–24, 25:10–18. LWVMO has two part-time paid staffers, including Executive Director Jean Dugan. Dugan Dep. at 9:23–25; 11:3–6; 16:17–17:3. Ms. Dugan's duties include, but are not limited to, handling internal and external communications, managing the organization's website, social media, and online voter guide, answering phone calls and inquiries, keeping track of volunteers participating in registration activities, maintaining the supply of and packing voter education materials like voter registration cards and informational brochures that are used for voter registration drives, and providing other registration support. Dugan Dep. at 10:5–17, 23:11–25:4. Other paid employees include LWVMO's bookkeeper, Chantal Hoffsten, who handles financial matters, and paid interns who assist with creating voter guides, social media, and youth outreach. Dugan Dep. at 16:19–17:2.

During the brief time in which HB 1878 was in effect, the Compensation Ban prevented Ms. Dugan from undertaking many of her normal duties related to LWVMO's registration efforts. Turner Dep at 32:7–11; Dugan Dep. at 40:6–8, 40:24–25. As a result, volunteer resources were diverted from conducting registration drives and soliciting absentee voting to carrying out what would have normally been Ms. Dugan's staff responsibilities. Turner Dep. at 32:11–13 ("[W]e had to change our process to have volunteers do all the kind of admin bits and bubs that the paid staff would normally do"), 33:18–21 (stating that this took up "time that those volunteers might have been otherwise undertaking other volunteer activities in the community"); Dugan Dep. at 43:8–20 (stating that "volunteers took over many of the staff duties" as a result of HB 1878, which "impact[ed] those volunteers' abilities to volunteer for LWVMO in other capacities," since "they couldn't be out at voter registration events" when "they were preparing for future events" or "taking care of the postage or ordering envelopes or cards or doing other things in the office."); 41:10–23. Such impacted volunteers included LWVMO member Victoria Turner, whose ability to partake in registration events was reduced as a result of taking on new administrative duties when HB 1878 was in effect. Turner Dep. at 34:8–9 ("I myself went to fewer actual registrations because there was more work to be done behind the scenes"); Dugan Dep. at 39:11–40:10 ("We had another volunteer, Victoria Turner, keep an Excel list of everyone who is a voter registrar with the State and made sure that she verified with different event chairs that the people were going to be eligible to do it," which were "activities that [Dugan] and [paid staff member] Chantal would have otherwise undertaken"). Thus, by barring paid employees from engaging in mission critical work, the Compensation Ban forced LWVMO to divert its volunteer resources from voter registration and education activities to administrative duties, thereby hampering Plaintiffs' ability to carry out their mission.

Further, Plaintiff LWVMO also diverted resources from regular mission-focused activities to comply with the Challenged Provisions and respond to questions from members and the community about the implications of HB 1878. For instance, the need to educate voters about the new provisions forced LWVMO to put its planned youth outreach program on hold in 2022. Dugan Dep. at 53:11–16. Additionally, many members needed assistance from LWVMO volunteers in registering with the state in accordance with the Unpaid Solicitor Registration Requirement, including helping those who did not have a printer or scanner to send the completed form with a "wet" signature to the Secretary of State's Office. Dugan Dep. at 47:25–48:10, 44:25–45:12. Similarly, volunteer and member Victoria Turner spent significant time creating and managing a system to ensure that individuals taking part in LWVMO's registration efforts were properly registered as solicitors with the State. Turner Dep. at 37:15–38:4; *see also* Dugan Dep. at 49:7–11 (collecting and verifying solicitor forms took "a lot of volunteer time"). LWVMO was forced to "rework" and "reprint" its educational materials to remove instructions about how to vote absentee to comply with the Absentee Voting Solicitation Ban. Turner Dep. at 50:6–15. All of these adjustments added administrative burdens that left volunteers less able to undertake their regular registration and outreach efforts and generally diverted resources from LWVMO's mission-critical work to compliance with the Challenged Provisions.

Were the Challenged Provisions to become enforceable again, LWVMO would be forced to divert resources as it had during the period in 2022 when they were in effect. Just as they had during that brief interval, volunteers would need to reduce or stop attending voter registration drives and conducting voter outreach due to the need to take on administrative responsibilities from paid staff. *See* Dugan Dep. at 54:11–19 ("We know that [HB 1878] diverted resources in 2022 and it would if they take effect again"), 94:21–24 (stating that these laws "would definitely .

. . cause us to have to, again, divert resources and shift a lot of [Dugan's] current duties to volunteers," thereby "stretch[ing] [the LWVMO's] volunteers very thin"). In particular, certain programs which have been expanded in recent months would likely need to be scaled back were the organization forced to divert volunteer and other resources toward compliance with the Challenged Provisions. *See* Dugan Dep. at 54:11–19 (stating that the LWVMO's "expanded youth outreach program with voter registration events at schools" would be particularly affected by the need to divert resources as the organization had done in 2022.)

2. Plaintiff Missouri NAACP diverted organizational resources when HB 1878 was in effect and will be forced to do so again if it becomes enforceable once more.

Because of the Challenged Provisions, Plaintiff Missouri NAACP also diverted organizational resources to an extent greater than "simply a setback to the organization's abstract social interests." *Nat'l Fed'n of Blind of Mo.*, 184 F.3d at 979. If HB 1878 goes back into effect, Missouri NAACP will again be forced to divert resources in the same manner.

In order to further the organization's mission of "ensur[ing] the political, educational, social, and economic rights of all persons" and "eliminat[ing] race-based discrimination," Pener Dep. at 10:24–11:02, Missouri NAACP volunteers engage and register eligible Missourians to vote, including through registration drives conducted at schools, churches, and other community locations. Pener Dep. at 17:5–14 (listing voter registration as a "significant activity" that is key to the Missouri NAACP's "mission and purpose"); *see also* Pener Dep at 21:13–23, 26:18–27:15, 18:19–22. Missouri NAACP volunteers also commonly inform individuals that absentee voting is an option, "guid[e] them through how to apply for an absentee ballot," and sometimes provide transport to turn in an absentee ballot application. Pener Dep. at 25:2–16, 66:7–24; *see also* Pener Dep. at 24:21–25:2 (explaining how Missouri NAACP's absentee voting advocacy helps

individuals "participate in the [political] process"). Furthermore, Missouri NAACP voters engage in public education, including informing people about their voting rights, how to vote, ballot measures, and candidates for office. Pener Dep. at 17:5–14, 20–24. Missouri NAACP has one full-time paid staff member—its acting Executive Director, Olivia Pener—and receives grants in order to pay individuals to conduct voter registration and other civic engagement activities. Pener Dep. at 15:19–22, 19:13–16, 32:2–5. Ms. Pener's duties include coordination of events, on-site assistance, and administrative work in support of Missouri NAACP's registration activities. Pener Dep. at 19:8–10, 38:14–39:14.

During the period in which the Challenged Provisions were in effect, Missouri NAACP was forced to expend time and resources to comply with and assist voters in understanding the implications of HB 1878, thereby diverting those resources from the "work [the organization] set out to do," such as voter registration and education. *See* Pener Dep. at 71:7–71:11 (explaining how "compl[iance] with [the Challenged Provisions]" takes time "away from the actual education on the issues and the candidates"), 70:17–71:01 (stating that Missouri NAACP had to "expend resources" in order to "make the adjustments" required by HB 1878, including using "funds," "time," and "energy" "educating people on the language that's in [HB 1878] and . . . how to navigate it appropriately" instead of "on voter registration directly"). In particular, the Unpaid Solicitor Registration Requirement forced the Missouri NAACP to "create a system so that [the organization could] confirm whether or not everyone who is volunteering to do voter registrations has completed the form, has submitted the form," and has "been cleared by the Secretary of State's office." Pener Dep. at 43:19–23. Similarly, the "wet signature" requirement on the solicitor registration forms "create[ed] an additional burden" on Missouri NAACP to "make sure that all of [the organization's] volunteers [] completed this form." Pener Dep. at 42:14–17. Thus, the

Challenged Provisions forced Missouri NAACP to move volunteer and staff time and resources away from the organization's core mission of registering and educating voters and toward administrative and compliance activities.

If the Challenged Provisions were to become enforceable once more, Plaintiff Missouri NAACP will be forced to divert its organizational resources in the same fashion again. For example, the Compensation Ban would "block[]" paid staff such as Ms. Pener "from being able . . . to assist [Missouri NAACP's] units in coordinating [registration efforts]," which are critical to the organization's work, thereby "hamper[ing] [the organization's] ability" to "fulfill [its] mission and purpose." Pener Dep. at 38:8–39:19. Additionally, the Unpaid Solicitor Registration Requirement would force Missouri NAACP to "have every single volunteer" "fill out one of [the solicitor registration] forms" in order to continue providing voter registration assistance to the Missouri community. Pener Dep. at 46:5–12. As they did previously, the Challenged Provisions will again divert resources from Missouri NAACP's mission-critical work of voter registration and public education toward ensuring compliance with HB 1878 on the part of the organization, its members, and inquiring voters and individuals.

Thus, Plaintiffs sufficiently demonstrate an injury-in-fact because they have diverted—and would again divert—organizational resources from their regular activities to responding to and complying with the Challenged Provisions, and such a resource drain constitutes more than a mere setback to their abstract social interests. Further, as this Court has already recognized, Plaintiffs' diversion of resources was and would be necessitated solely and completely by the Challenged Provisions, making Plaintiffs' injuries directly traceable to Defendants' enforcement of HB 1878. P.I. Order, at COL ¶¶ 30–31. Finally, this injury is redressable by a favorable decision by this court because this Court has authority to issue Plaintiffs' requested injunctive and declaratory relief, *see*

Priorities USA v. State, 591 S.W.3d 448, 452 (Mo. banc 2020), and such relief would prevent Plaintiffs from needing to divert resources as they did when the law was briefly in effect in 2022. As such, Plaintiffs also have standing to challenge the Challenged Provisions based on the diversion of resources.

IV. LEGAL ARGUMENT

A. Elements of Relevant Claims

Plaintiffs seek a permanent injunction prohibiting Defendants and anyone acting in concert with them from enforcing the Challenged Provisions. Pet. at 47. Plaintiffs also seek a judgment declaring that the Challenged Provisions violate their (1) right to free speech and expression, *id.* ¶¶ 154–169, (2) right to free association, *id.* ¶¶ 170–183, and (3) right to due process, *id.* ¶¶ 184–202, under the Missouri Constitution, *id.* ¶¶ 203–206.

As discussed below, Plaintiffs have established that the Challenged Provisions violate the Missouri Constitution and are therefore unconstitutional. Plaintiffs have further shown that they are entitled to a permanent injunction prohibiting the enforcement of the Challenged Provisions as well as a judgment declaring, *inter alia*, that the Challenged Provisions are unconstitutional. As such, Plaintiffs' requested relief is proper.

B. The Challenged Provisions Are Unconstitutional

As discussed below, Plaintiffs have shown that the Challenged Provisions violate their constitutional rights to free speech, expression, association, and due process. The Challenged Provisions are subject to—and fail—strict scrutiny, but in any event fail *any* level of review under the Missouri Constitution.

1. The Challenged Provisions Violate Plaintiffs' Rights to Free Speech, Expression and Association

a. The Challenged Provisions Are Subject to Strict Scrutiny

The Missouri Constitution guarantees freedoms of free speech, expression, and association—rights that Missouri courts have interpreted to be at least as expansive as their equivalents under the federal First Amendment. *See* Mo. Const. art. I, §§ 8–9; *Karney v. Dep't of Lab. & Indus. Relations*, 599 S.W.3d 157, 162–63 (Mo. banc 2020) ("[P]rovisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions . . . ."). State restrictions that severely burden any of these rights are subject to strict scrutiny. *See Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984).

As this Court correctly held previously in this case, because the Challenged Provisions severely burden Plaintiffs' rights to political speech, expression, and association, the Provisions are subject to strict scrutiny. P.I. Order, at COL ¶ 118 (citing *Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984), and *Geier v. Missouri Ethics Comm'n*, 474 S.W.3d 560, 565 (Mo. banc 2015)).

First, by strictly regulating who and how one can "solicit" voter registration applications and prohibiting all persons from soliciting voters into obtaining absentee ballot applications, the Challenged Provisions, this Court reasoned, regulate "core political speech." P.I. Order, at COL ¶¶ 45, 51–54 (citing, *inter alia*, *Meyer v. Grant*, 486 U.S. 414, 420–28 (1988)). The Challenged Provisions unconstitutionally burden core political speech because they "limit[] the number of

voices who will convey [Plaintiffs'] message and the hours they can speak and, therefore, limit[] the size of the audience they can reach." *Id*. at ¶ 55 (quoting *Meyer*, 486 U.S. at 422–23).[4]

Second, just as other courts have stated that voting-related activity, such as communications involving absentee ballot applications, constitutes expressive conduct that is protected by the First Amendment, this Court concluded that the Challenged Provisions substantially burden Plaintiffs' right to expression and are therefore subject to strict scrutiny. *Id.* ¶¶ 100–103 (citing *Texas v. Johnson*, 491 U.S. 397, 404 (1989); *VoteAmerica v. Schwab*, 576 F. Supp. 3d 862, 875 (D. Kan. 2021); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 224 (M.D.N.C. 2020); *Priorities USA v. Nessel*, 462 F. Supp. 3d 792, 812 (E.D. Mich. 2020)).

Third, by directly restricting who may participate in Plaintiffs' voter engagement activities and events, the Compensation Ban, Unpaid Solicitor Registration Requirement, and Registered Voter Requirement "directly interfer[e] with [Plaintiffs'] composition"—precisely the type of law that the right of expressive association seeks to protect. *Miller v. City of Cincinnati*, 622 F.3d 524, 537 (6th Cir. 2010). As this Court held, "the Challenged Provisions also impede the ability of Plaintiffs and their members to associate with potential voters through outreach related to voter registration and absentee voting." P.I. Order, at COL ¶ 115. The Provisions, therefore, severely burden Plaintiffs' associational rights.

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[4] As this Court held, the Challenged Provisions are also subject to strict scrutiny on the grounds that (1) because they apply only to speech involving voter registration or absentee ballot applications—and not to speech involving other topics—they are content-based restrictions that "are presumptively unconstitutional," P.I. Order, at COL ¶ 87 (quoting *Fox v. State*, 640 S.W.3d 744, 750 (Mo. banc 2022)), and (2) because the Provisions only apply to speech encouraging citizens to register to vote or to apply to vote by absentee ballot—and not speech discouraging citizens from doing either—they are viewpoint-based restrictions that are "presumed to be unconstitutional," *id.* ¶ 94 (quoting *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995)).

Given that these rights are "particularly" "expansive and comprehensive" where they "pertain[] to political association and advocation," as is the case here, the Challenged Provisions are subject to, as this Court put it, "the greatest scrutiny." P.I. Order, at COL ¶ 119 (quoting *Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984)).

b. The Challenged Provisions Cannot Survive Strict Scrutiny

Under strict scrutiny review, the Challenged Provisions "'will only be upheld if [they are] narrowly tailored to serve a compelling state interest.'" *Priorities USA*, 591 S.W.3d at 453 (quoting *Peters v. Johns*, 489 S.W.3d 262, 273 (Mo. banc 2016)). To salvage the Provisions, Defendants must provide actual evidence corroborating the State's purported interests and demonstrating that the Challenged Provisions would solve existing problems. *See, e.g., Weinschenk*, 203 S.W.3d at 218.

This Court properly held that the Challenged Provisions cannot survive strict scrutiny or, indeed, "even [] the least exacting review available under the *Anderson-Burdick*[*v. Celebrezze*, 460 U.S. 780 (1983)] sliding scale." P.I. Order, at COL ¶ 130.[5] Rejecting the evidence that Defendants offered in opposition to Plaintiffs' motion for preliminary injunction, this Court correctly found that "the State has failed to demonstrate any evidence of election fraud in the State of Missouri that the Challenged Provisions could plausibly address, and much less one the

[5] "Defendants argue that the Challenged Provisions are 'elections laws' and urge this Court to apply less exacting scrutiny under the *Anderson-Burdick* balancing test . . .While the State is correct that courts have applied the *Anderson-Burdick* framework to assess the constitutionality of laws that regulate the conduct of elections and do not severely burden the right to vote, *see, e.g.*, *Peters v. Johns*, 489 S.W.3d 262 (Mo. banc 2016), it is inappropriate here where a law bears directly on pure speech, expressive conduct, and association." P.I. Order, at COL ¶¶ 119, 120. This court explicitly rejected application of the *Anderson-Burdick* test in paragraphs 118-125 in the PI opinion. In paragraph 126, it holds that, even assuming *arguendo* that *Anderson-Burdick* applied, the result would be the same.

Provisions could be narrowly tailored to address." *Id.* ¶ 131; *see also id.* ¶¶ 133–138 (rejecting four sources of evidence offered by Defendants); *id.* ¶ 139 ("Defendants provide no evidence specific to this State, nor do they provide evidence that any potential issues result from nongovernmental actors encouraging others to register to vote or to vote absentee."); *see also, e.g.*, Mayer Dep. at 21:3–7 (concluding that the Absentee Ballot Solicitation Ban would not enhance the security of Missouri elections).

This Court further concluded that, even assuming *arguendo* that Defendants could prove the type of fraud they allege in fact exists, "the Challenged Provisions are not reasonably, much less narrowly, tailored to combat it," where Defendants have failed to provide any evidence that paid solicitors are more likely to commit fraud, that registered Missouri voters are less likely to commit fraud, that requiring solicitors to register will assist the State in addressing fraud, or that barring all speech encouraging voters to vote absentee will prevent absentee voting fraud. *Id.* ¶¶ 140–41; *accord id.* ("Indeed, Defendants provide no evidence that nongovernmental actors encouraging potential voters to register to vote or assisting eligible voters with registration has led to any fraud in the state of Missouri").

Accordingly, the Challenged Provisions fail strict scrutiny—and *any* level of review under *Anderson-Burdick*—under the Missouri Constitution.[6]

[6] The Court also concluded that the Challenged Provisions are unconstitutionally overbroad because they "act[] to smother speech otherwise protected by the First Amendment" where, as is the case here, "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression." P.I. Order, at COL ¶ 106 (quoting *State v. Carpenter*, 736 S.W.2d 406, 408 (Mo. banc 1987)).

2. The Challenged Provisions Violate Plaintiffs' Right to Due Process

Due process requires that statutes give "fair notice" of prohibited conduct and must "contain sufficient standards to prevent arbitrary and discriminatory enforcement." *State v. Schleiermacher*, 924 S.W.2d 269, 275 (Mo. Banc 1996) (internal quotations omitted); *accord* Mo. Const. art. I, § 10.

This proscription against vagueness is even more robust where—as is the case here—a statute, *inter alia*, "threatens to inhibit the exercise of constitutionally protected rights," imposes criminal penalties, lacks a scienter requirement, or is noneconomic in nature. *State ex rel. Nixon v. Telco Directory Publ'g*, 863 S.W.2d 596, 600 (Mo. banc 1993) (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498–99 (1982)); *accord* P.I. Order, at COL ¶ 147 (noting that all four of these circumstances are present here, warranting "a more stringent vagueness inquiry").

This Court held that the Challenged Provisions are unconstitutionally vague because they fail to define key terms whose scope could sweep broadly, including "solicitation" and "compensation," and that the Provisions, therefore, fail to give adequate notice of the proscribed conduct and unconstitutionally invite arbitrary enforcement. P.I. Order, at COL ¶¶ 148–57. Both LWVMO and the Missouri NAACP have had issues structuring their conduct to comply with the Challenged Provisions' vague language. *See, e.g.*, Dugan Dep. at 147:14–148:2 (confusion about the definition of "compensation"); Pener Dep. at 42:3–6 ("We don't actually know what—who the term 'solicitor' is referring to, because it's not clearly defined in the language.")

C. Plaintiffs Are Entitled to A Permanent Injunction

"The elements of a claim for permanent injunction include: (1) irreparable harm, and (2) lack of adequate remedy at law." *City of Greenwood v. Martin Marietta Materials, Inc.*, 311

S.W.3d 258, 265 (Mo. App. W.D. 2010), *as modified* (Mar. 30, 2010). Because Plaintiffs have demonstrated that they will suffer irreparable harm absent a permanent injunction and that no adequate remedy exists at law, they have established that they are entitled to a permanent injunction.

1. Absent A Permanent Injunction, Plaintiffs Will Suffer Irreparable Harm

In the absence of a permanent injunction, it will be possible for the Challenged Provisions to be enforced, threatening Plaintiffs with irreparable harm.

"If constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *accord Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999); *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996, 1000 (8th Cir. 2012) (holding that, where plaintiffs demonstrate a "high likelihood of success on the merits of a First Amendment claim," that is "likely enough, standing alone, to establish irreparable harm"). Thus, given that Plaintiffs have more than adequately demonstrated that they are entitled to a judgment declaring that the Provisions unconstitutionally violate their constitutional rights, "irreparable injury is presumed."

Even without this presumption, this Court correctly found ample evidence that Plaintiffs face irreparable harm to their constitutional rights that "will not cease absent an injunction barring the enforcement of the Challenged Provisions." P.I. Order, at COL ¶ 162. As discussed *supra*, to comply with the Provisions, Plaintiffs were forced to alter their voter registration activities and reallocate limited volunteer resources away from mission-critical work. *Id.* ¶ 163. The Provisions also threaten to reduce the pool of volunteers available to spread Plaintiffs' message, diminishing

the quantum of speech in which Plaintiffs are able to engage, and to chill the speech of Plaintiffs' volunteers, faced with the prospect of prosecution for violating the unconstitutionally vague Provisions. *Id.* ¶¶ 164–65.

In sum, having demonstrated that the Challenged Provisions violate their constitutional rights and having provided corroborating evidence, Plaintiffs have also established that they will suffer irreparable harm if the Provisions are reinstated.

2. No Adequate Remedy Exists at Law

Plaintiffs have established that no adequate remedy at law exists because "damages cannot replace the loss of protected First Amendment rights." *Indep. Inst. v. Gessler*, 936 F. Supp. 2d 1256, 1281 (D. Colo. 2013) (citing *See Nat'l People's Action v. Vill. of Wilmette,* 914 F.2d 1008, 1013 (7th Cir. 1990) ("[I]njunctions are especially appropriate in the context of first amendment violations because of the inadequacy of money damages . . . .")); *accord Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011) (direct penalization of First Amendment rights is an injury "that could not be remedied absent an injunction"); *Karney v. Dep't of Lab. & Indus. Relations*, 599 S.W.3d 157, 167 (Mo. 2020) (affirming issuance of permanent injunction where, in the absence of injunctive relief, Plaintiff would be forced to forfeit a right to speech that he previously held and exercised).

Having established that they will suffer irreparable harm in the absence of a permanent injunction and that no adequate remedy exists at law, Plaintiffs are therefore entitled to a permanent injunction.

D. Plaintiffs Are Entitled to Declaratory Judgment

Plaintiffs are also entitled to a judgment declaring, *inter alia*, that the Challenged Provisions are unconstitutional.

"A declaratory judgment action has been found to be a proper action to challenge the constitutional validity of a [] statute or ordinance." *Tupper v. City of St. Louis*, 468 S.W.3d 360, 368 (Mo. banc 2015). A plaintiff seeking declaratory judgment as to the constitutionality of a statute must show: (1) "a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation"; (2) "a controversy ripe for judicial determination"; (3) "a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief"; and (4) "an inadequate remedy at law." *Id.* Plaintiffs have shown that all four elements are met here.

First, Plaintiffs have established that a justiciable controversy—a real, substantial, and presently existing controversy—exists here. A justiciable controversy involving the constitutionality of a statute exists between [a] plaintiff and the state official charged with the duty to enforce that law." *Baker v. Crossroads Acad.-Ctr. St.*, 648 S.W.3d 790, 799 (Mo. App. W.D. 2022) (quotation omitted); *see also Schweich*, 408 S.W.3d at 773 (articulating the justiciable controversy requirements).

As Plaintiffs here have sued the state officials charged with enforcing statutory provisions that Plaintiffs assert are unconstitutional, the instant action is clearly a justiciable controversy. This case does not present a hypothetical situation, but a concrete controversy that requires specific relief. But for the preliminary injunction issued by this Court, the Challenged Provisions would currently be in effect and enforced today. Prior to the issuance of the preliminary injunction in this matter, the Challenged Provisions forced Plaintiffs to alter their voter engagement activities, curtail their speech, restructure their operations, and divert resources to comply with the law. *See, e.g.*, Turner Dep. at 31:21–32:22; Dugan Dep. at 43:8–20; Pener Dep. at 38:8–39:19.

Second, this action presents a controversy ripe for judicial adjudication. As discussed *supra*, but for this Court's issuance of a preliminary injunction, the Challenged Provisions would currently be in effect and enforced today. Plaintiffs seek to protect their rights guaranteed by the Missouri Constitution and, given the threat of enforcement and criminal penalties thereto (including fines, possible jail time, and possible permanent loss of the right to vote) in the absence of permanent injunctive and declaratory relief, "their claims are ripe for judicial determination." *Mo. State Conf. of NAACP v. State*, 601 S.W.3d 241, 247 (Mo. banc 2020) ("The petitioners seek to protect their right to vote guaranteed by the Missouri Constitution, and, given the upcoming August and November elections, their claims are ripe for judicial determination.").

Plaintiffs need not face prosecution under the Challenged Provisions to challenge their constitutionality, as the chilling effect on their constitutional rights and the forced alteration of their activities constitute present injuries. *See Mo. Health Care Ass'n v. Attorney Gen. of the State of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997) (holding that even "pre-enforcement constitutional challenges to laws [are] ripe when the facts necessary to adjudicate the underlying claims [are] fully developed and the laws at issue [] affect[] the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute").

Third, as discussed extensively *supra* § III, Plaintiffs have shown that they have legally protectable interests at stake. *See Elrod*, 427 U.S. at 373 ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.")

In *Planned Parenthood of Kansas*, 220 S.W.3d at 737, the Missouri Supreme Court held that a plaintiff who seeks to exercise its constitutional rights but is prevented from doing so by a state statute has standing to challenge the statute as unconstitutional. There, Planned Parenthood of Kansas, the plaintiff, sought declaratory judgment that a statute that prohibited any person or

entity from providing information and counseling to minors about abortion was unconstitutional. *Id.* The Missouri Supreme Court concluded that "Planned Parenthood's legally protectable interest in the outcome of this litigation is its desire to continue to engage in out-of-state conduct that may aid or assist Missouri minors to obtain an abortion without being subjected to civil liability in Missouri. Planned Parenthood has standing to bring its Commerce Clause and due process claims." *Id.* Plaintiffs here are no different. They likewise seek to protect their constitutional rights to speech, expression, association, and due process, whose exercise is threatened by the Challenged Provisions.

Fourth, as discussed *supra*, Section IV.C., Plaintiffs have established that no adequate remedy at law exists here—that is, the Challenged Provisions' infringement of their constitutional rights cannot be adequately remedied by monetary damages. *See Vickland v. The Am. Royal Ass'n, Inc.*, No. 08-0758-CV-W-DGK, 2008 WL 4748184, at *8 (W.D. Mo. Oct. 23, 2008) ("[N]o adequate remedy at law" exists where "an award of damages cannot compensate the movant for the harm").

Here, "[P]laintiffs have no adequate remedies at law because damages cannot replace the loss of protected First Amendment rights." *Indep. Inst.*, 936 F. Supp. 2d at 1281 (D. Colo. 2013); *accord Elrod*, 427 U.S. at 373.

In *Missouri State Conference of Nat'l Ass'n for Advancement of Colored People*, 601 S.W.3d at 243, for example, amidst the rise of the COVID-19 pandemic, the plaintiffs challenged aspects of Missouri's absentee voting statute in effect at the time, which limited the availability of vote-by-mail to a subset of registered voters, most of whom "needed to have their absentee ballots acknowledged in person before returning them by mail." The plaintiffs brought suit, seeking "injunctive and declaratory relief to secure the ability to exercise their constitutional right to vote—

but to do so without leaving their homes to reduce the risk of contracting or spreading COVID-19 during the process." *Id.* Concluding that their "petition sufficiently states claims for declaratory judgment," the Missouri Supreme Court reasoned that "[a]side from seeking declaratory judgment to determine their rights under Missouri's absentee voting statute, the [plaintiffs] have no adequate remedy under the law." *Id.* at 247. Plaintiffs here are similarly situated—no adequate remedy at law exists to compensate them for the loss of their constitutional rights.

Having established all four elements of a declaratory judgment action, Plaintiffs are therefore entitled to a judgment declaring that the Challenged Provisions are unconstitutional facially and as applied under the Missouri Constitution and may not be enforced.

E. Defendants' Affirmative Defenses Fail

As an initial matter, this Court has already considered and rejected Defendants' affirmative defenses.[7] In the Court's Order Granting Plaintiffs' Motion for Preliminary Injunction, the Court properly found that the Challenged Provisions have chilled Plaintiffs' protected speech, P.I. Order, at COL ¶¶ 4, 29, 65, 80, 82, 85, 165; Plaintiffs altered and even ceased mission-critical conduct to comply with the Challenged Provisions, *id.* at FOF ¶¶ 6, 26–27, 29, 50–51; *id.* at COL ¶¶ 28, 163, 171; and Plaintiffs diverted resources as a result of the Challenged Provisions, *id.* at FOF ¶¶ 37,

[7] In their Answer, Defendants present several affirmative defenses. In their first five affirmative defenses, Defendants attempt to argue that Plaintiffs lack standing to bring this lawsuit. According to Defendants, Plaintiffs lack standing because (1) Plaintiffs have not alleged a chilling effect or cognizable injury with respect to either their voter registration or absentee ballot solicitation activities; (2) they have merely alleged "hypothetical and speculative" adjustments to their operations insufficient to confer standing; (3) they have failed to allege that they are "affected or will be imminently affected in an adverse way" by the Challenged Provisions, thus meaning that their injuries are not fairly traceable to Defendants; (4) "[o]nly the Missouri General Assembly has authority to regulate [federal] elections," thus Plaintiffs' "requests for declaratory and injunctive relief cannot be granted" - and their injury is not redressable - by this Court; and (5) as part of their facial challenge, Plaintiffs assert rights of and request relief that will extend to non-parties (specifically, Missouri voters). Answer at 24-27.

54; *id.* at COL ¶¶ 6, 14–15, 29, 61, 163. Thus, Plaintiffs have suffered an injury-in-fact sufficient to confer standing. *See id.* at COL ¶¶ 20, 22–23.

Further, despite Defendants' claims to the contrary, this Court found that Plaintiff's injury is a "direct result of their compliance with the Challenged Provisions, which carry criminal penalties for noncompliance," meaning that they are "traceable to Defendants, who are charged with implementation and enforcement of the Challenged Provisions." *Id.* at COL ¶¶ 30–31.

This Court also rejected the nonsensical claim that it did not have authority to grant Plaintiff's requested declaratory and injunctive relief, *id.* at COL ¶¶ 34, 36–38, pointing out that such relief "is often sought and consistently granted in voting rights litigation," including by the Missouri Supreme Court. *Id.* at COL ¶ 33 (citing *Weinschenk*, 203 S.W.3d at 206; *Priorities USA*, 591 S.W.3d at 458). Indeed, this Court has "broad discretion to determine whether injunctive relief is required and to craft an appropriate injunction if it is." P.I. Order, at COL ¶ 35 (citing *Priorities USA*, 591 S.W.3d at 452). Thus, the injury suffered by Plaintiffs as a result of the Challenged Provisions is fully redressable by an order of this Court. *Id.* at COL ¶ 38.

Finally, this Court recognized that Plaintiffs have brought this action to assert their own rights and the rights of their members, not the rights or obligations of Missouri voters writ large. *Id.* at COL ¶¶ 7–10, 21. In particular, this Court pointed out that "Plaintiffs' claims" do not "require Plaintiffs to prove any injury to Missourians' right to vote." *Id.* at COL ¶ 21; *accord id.* at COL ¶ 124 n. 6 ("[Plaintiffs'] constitutional challenges [d]o not rest on whether the Challenged Provisions burden Missourians' ability to cast a ballot or vote absentee"). Thus, since Plaintiffs have demonstrated that they are themselves injured by HB 1878 and bring this action to remedy that injury, Defendants' claim that Plaintiffs cannot bring a facial challenge to HB 1878 fails.

While this Court has already found that Plaintiffs have standing to challenge HB 1878, the record in this case also demonstrates that Defendants' claims to the contrary are without merit. As discussed above, Plaintiffs have First Amendment standing because the Challenged Provisions chill their protected political speech by reducing—and to some degree, outright preventing—their ability to advocate in favor of registering to vote, voting absentee, and voting writ large. *See supra* Section III.A.

Plaintiffs also have associational standing because the Challenged Provisions injure their members by preventing them from engaging in protected speech and expressive conduct related to voter registration and absentee voting, activities which are germane to Plaintiffs 'interests, and their individual participation is not required in this lawsuit. *See supra* Section III.B.

Additionally, Plaintiffs have sufficiently demonstrated that they have diverted resources in responding to and complying with the Challenged Provisions, and that such diversion of resources constitutes more than merely "a setback to [Plaintiffs'] abstract social interests." *Nat'l Fed'n of Blind of Mo.*, 184 F.3d at 979. *See supra* Section III.C.

Finally, Plaintiffs' injuries are solely and completely caused by the Challenged Provisions and would be remedied were this Court to issue Plaintiffs' requested injunctive and declaratory relief (which is now, as it has always been, plainly within the bounds of its judicial authority),[8] meaning that they are both traceable to Defendants, who are charged with the implementation and enforcement of the Challenged Provisions, and redressable by a favorable decision by this Court. Thus, just as this Court rejected Defendants' first five affirmative defenses at the preliminary injunction stage, these defenses remain without merit today.

[8] Contrary to Defendants' claims, *see* Answer at 27, "[t]he Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review." *Moore v. Harper*, 600 U.S. 1, 22 (2023).

In an unsupported attempt to shoehorn Plaintiffs' First Amendment claims into less exacting scrutiny—one that this court has already rejected, Defendants also argue that Plaintiffs fail to state a claim for relief with respect to HB 1878's absentee ballot provisions because those provisions do not violate a fundamental constitutional right—i.e., the right to vote absentee. Answer at 27 (citing *Mo. State Conf. of NAACP*, 607 S.W.3d at 735). But as this Court has already recognized, Plaintiffs do not claim that the Challenged Provisions burden the right to vote, let alone rely on a constitutional right to vote absentee in their challenge to HB 1878's Absentee Ballot Solicitation Ban. P.I. Order, at COL ¶ 21 ("Plaintiffs' claims do not rely on a constitutional right to vote absentee . . . ."); *see also id.* at COL ¶ 124 n.6. Rather, just as they did at the preliminary injunction stage, Plaintiffs allege that and have demonstrated how "the Challenged Provisions hamper their ability to engage in constitutionally protected speech, expressive activity, and association and violate their due process rights." P.I. Order, at COL ¶¶ 21; Bowman Dep. at 18:3–17, 23:4–24; Dugan Dep. at 33:2–11, 49:22–50:9, 51:4–54:10, 58:7–20, 60:2–3, 61:9–20, 63:16–24, 91:9–22; Pener Dep. at 47:16–49:14, 58:4–60:2, 64:17–20, 67:4–13; Turner Dep. at 31:21–32:22, 50:2–13, 50:23–51:6, 51:15–20, 52:6–13, 52:14–53:3. Accordingly, this court expressly rejected application of the *Anderson-Burdick* test, and moreover, concluded that even if it did apply, the result would be the same. P.I. Order, at COL ¶¶ 119–123; 126.

In their seventh and final affirmative defense, Defendants incorrectly argue that Plaintiffs' claims are not ripe for adjudication because they "have alleged only speculative harms and not sufficient facts that any harms are imminent," and "have not alleged any attempt by Defendants to enforce or threaten to enforce HB 1878." Answer at 27. Missouri law and the record in this case make clear that this argument is without merit. Missouri courts have held that "pre-enforcement constitutional challenges to laws [are] ripe when the facts necessary to adjudicate the underlying

claims [are] fully developed and the laws at issue [] affect[] the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute." *Mo. Health Care Ass'n*, 953 S.W.2d at 621.

For example, in *Planned Parenthood of Kansas v. Nixon*, the Missouri Supreme Court concluded that the plaintiff Planned Parenthood was "directly and adversely affected by" the challenged law because it could not continue providing information and counseling to minors about abortion without risking liability under the statute." 220 S.W.3d at 737. This is the exact scenario Plaintiffs have encountered in this case. As a direct result of the Challenged Provisions, Plaintiffs curtailed and even ceased some of their mission-critical speech and expressive and associational activities during the period of time in which these provisions were not enjoined by this Court. Bowman Dep. at 18:3–17; Dugan Dep. at 51:4–54:10, 58:7–20, 60:2–3, 62:10–18; Turner Dep. at 31:21–32:22, 50:2–13, 50:23–51:6, 52:6–13.

Thus, as discussed above, Plaintiffs have demonstrated that while the Challenged Provisions were in effect, those provisions chilled their protected political speech and forced changes to their organizational activities, negatively impacting Plaintiffs' ability to carry out their mission. If the Challenged Provisions are permitted to go into effect again, Plaintiffs will once again be forced to reduce and cease engaging in certain protected speech and expressive activities related to promoting voter registration and absentee voting. Bowman Dep. at 23:4–9; Dugan Dep. at 49:22–50:9, 63:16–24, 91:9–22; Pener Dep. at 47:16–49:14, 58:4–60:2; 64:17–20; 67:4–13; Turner Dep. at 52:14–53:3. As such, Plaintiffs' injuries stemming from HB 1878 are far from speculative, but are instead concrete and imminent such that their claims in this case are ripe for adjudication.

For these reasons, Defendants' affirmative defenses lack merit and pose no bar to judgment in favor of Plaintiffs.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court enter judgment in favor of Plaintiffs (1) declaring that the Challenged Provisions in HB 1878 are unconstitutional facially and as applied under the Missouri Constitution and may not be enforced and (2) permanently enjoining Defendants and those acting in concert with them from enforcing the Challenged Provisions of HB 1878.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2024, the foregoing was filed through the Court's electronic filing system to be served on all counsel of record.

/s/ Kristin M. Mulvey