

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

LEAGUE OF WOMEN VOTERS OF)
MISSOURI, *et al.*,)

Plaintiffs,)

v.)

Case No. 22AC-CC04333

STATE OF MISSOURI, *et al.*,)

Defendants.)

DEFENDANTS' PRETRIAL BRIEF

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
INTRODUCTION.....	4
FACTS BEFORE THE COURT.....	7
I. The Government’s Witnesses and Evidence.....	7
Ms. Tammy Brown, Election Director for Jackson County, MO (in-person).....	8
Ms. Cara Clark Summers, County Clerk for Cape Girardeau County (via pre-recorded video-recorded trial deposition).....	10
Dr. James Gimpel, expert witness, (pre-recorded).....	12
Ms. Chrissy Peters, Director of Elections, Missouri Secretary of State (in person).....	16
Summary of Witnesses and Evidence to be Presented.....	17
II. Analysis: The General Assembly Enacted HB 1878 to Strengthen the Integrity of Missouri Elections, Including Registration and Absentee Ballot-Solicitation Activities.....	17
III. Analysis: the Plaintiffs Lack Standing.....	24
IV. Analysis: the Plaintiffs Will Fail to Meet Their High Burden: “no set of circumstances.”.....	25
CONCLUSION.....	30
CERTIFICATE OF SERVICE.....	31

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Artman v. State Bd. of Registration for Healing Arts</i> , 918 S.W. 2d 247 (Mo. 1996).....	6, 26, 30
<i>Brown v. Hamid</i> , 856 S.W.2d 51 (Mo. 1993).....	26
<i>Clapper v. Amnesty International USA</i> , 568 U.S. 398 (2013).....	25
<i>DeLaporte v. Robey Bldg. Supply, Inc.</i> , 812 S.W.2d 526 (Mo. App. E.D. 1991).....	26
<i>Sckorhod v. Stafford</i> , 550 S.W.2d 799 (Mo. Ct. App. 1977).....	25
<i>State v. Perry</i> , 275 S.W. 3d 237 (Mo. Banc 2009)	26
<i>United States v. Salerno</i> , 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)	26
<i>Weinschenk v. State</i> , 203 S.W.3d 201 (Mo. banc 2006).....	27
<i>Wilkerson v. Prelutsky</i> , 943 S.W.2d 643 (Mo. 1997).....	26
Statutes	
§ 115.205, RSMo.....	18
§ 115.279.2, RSMo.....	19

INTRODUCTION

Tomorrow, voters across the state will go to the polls to vote on critical issues and candidates. Some will go for the first time. If past elections are any indication, some of those first time voters will not be able to vote—not because of anything they or the state did wrong, but because a third party solicitor failed to turn in their registrations to the proper local election authority by the registration deadline. Or because they thought they had registered on the website of a third party solicitor, only to find that what looked like a registration form was only a method for collecting their personal data for the database of some out-of-state interest. And that the fine print on that website said they still needed to input the same information on the Secretary of State's website to actually get registered with their local election authority.

The quality control reforms enacted in HB 1878 seek to prevent such practices. To improve the quality of third party voter registration efforts so that when Missouri voters are registered to vote, it is done by someone who actually cares about them registering for the right reasons. Someone who is either part of local government, or is at least another Missouri voter. Someone who is registered to vote in our state and is therefore more likely to care about our state and its issues. The Court will hear evidence that out of state third

party organizations such as ACORN¹ have a history of preventing Missouri's voters from voting, due to negligence, sloppiness, or downright greed.

The citizens of Missouri rightfully expect better. They expect a high standard of integrity and honesty in their election process, and local election authorities are at the forefront of keeping our elections safe and secure. HB 1878 seek to fix these problems by giving them a few more tools to do just that.

In this case the Court will hear testimony from four witnesses for Defendants: an expert witness, two local election authorities, and a representative of the Secretary of State. These witnesses will testify regarding the examples and impacts of third party voter registration and absentee ballot efforts gone wrong, and how HB 1878 gives those authorities tools to better serve Missouri's voters.

¹ The Association of Community Organizations for Reform Now (ACORN), <https://www.loc.gov/item/lcwaN0003181/>, as briefed below and further addressed during the testimony of Ms. Brown, active largely during 2007-2009 paid voter registration solicitors in the state of MO and across the nation by the registration. This created a perverse incentive for solicitors to submit registrations for voters who did not exist, something that had a significant impact on the ability of local election authorities to juggle all of their responsibilities in the lead-up to crucial elections, as they had to sort through mountains of fraudulent registrations to find some that were not. This led to an FBI investigation and several notable criminal convictions for election offenses across the state. The Court will hear testimony from Ms. Tammy Brown, a local election authority during that time who is still in that role today about the impact this had on her office, and how HB 1878 addresses those concerns.

Plaintiffs are two organizations who share, with the local election authorities and the SOS, the laudable goal of getting all voters who wish to vote to the polls. Their challenge to a measure to enhance the State's election security, however, does not properly invoke the Court's jurisdiction. And even if it did, Plaintiffs have failed to meet their exceedingly high burden: they cannot show "that ***no set of circumstances*** exists under which the Act would be valid." See, e.g., *Artman v. State Bd. of Registration for Healing Arts*, 918 S.W. 2d 247, 251 (Mo. 1996). This Court will hear from County Clerks, a representative of the Secretary of State's office, the Defendants' expert, Dr. Gimpel, and even from some of the Plaintiffs' own witnesses that there are, in fact, many sets of circumstances under which the law is valid. The brief addresses some of the key examples which support the lawful purpose of these challenged provisions. These circumstances validate the lawful purpose of the law and the Plaintiffs therefore fail to meet their burden.

FACTS BEFORE THE COURT

I. The Government's Witnesses and Evidence

By the close of evidence the Court will have before it the testimony of two local election authorities (election director for Jackson County Tammy

Brown, and County Clerk for Cape Girardeau Kara Clark Sommers), an expert witness (Dr. James Gimpel), and a representative of the Secretary of State (Ms. Chrissy Peters). All of these witnesses and the evidence they present speak to the various compelling state interests served by HB 1878, which seeks to preserve the sanctity of the absentee ballot process by preventing tampering by outside influences, and places quality controls on the process for registering voters in an effort to ensure every voter registration is timely and accurately submitted to the appropriate LEA.

The Court will hear from the following witnesses for Defendants:

Ms. Tammy Brown, election director for Jackson County, MO (in-person).

Ms. Brown will testify about the effects of various third party voting scams, most notably of ACORN (see footnote 1 *supra*), on the operations of her office. She will discuss how her office has a duty to process every voter registration application—and does so. But she will also discuss the drag processing fraudulent registrations has on her office when it occurs, taking staff away from other duties which would otherwise better serve the voters of Jackson County. Ms. Brown will provide examples of fraudulent registration cards, a subset of the materials her office originally submitted to the FBI as a part of their investigation into ACORN voter registration fraud in Jackson County. She will discuss the process of referring voter fraud cases to local prosecutors.

She will also discuss concerns about undue influence on senior voters in both the registration and absentee voting processes and the steps her office has taken to mitigate some of those concerns by sending her staff to “vote” these nursing home-bound voters. She will also testify, however, that Jackson County is unable to bring such a mobile polling place to smaller nursing homes or locations with only a few voters due to simply not having enough manning to do so.

Therefore, concerns regarding undue influence on vulnerable populations such as home-bound senior voters, addressed by HB 1878's restrictions on solicitation of absentee ballots, remain even for older voters in a larger county like Jackson County with the resources to send out staff to "vote" them. The Court should deduce, based on evidence of the differences between large and small Missouri counties, that these concerns would be even greater in smaller counties with fewer resources to dedicate to such laudable efforts.

Ms. Cara Clark Summers, County Clerk for Cape Girardeau County

(via pre-recorded video-recorded trial deposition).²

Ms. Clark Summers (also referred to at various points in the transcript simply as Ms. Clark) has been county clerk for Cape Gerardo County for approximately two decades. In that role she has witnessed the effects of third party registration efforts gone wrong. Her testimony recounts voter registration drives and third party registration websites that target college students at the nearby college in her county. Her recorded trial deposition recounts how, all too often, those sites take down voters' information in what would appear to a first time voter to be a voter registration application. What

² By agreement of the parties and for efficiency with the Court's docketed time, various witnesses testified via video re-corded depositions. These recordings will not be played, but will be provided to the Court as evidence in the case. For the Defendants, these depositions include that of Dr. Gimpel, the Government's expert, and that of Ms. Cara Clark Summers, County Clerk for Cape Girardeau County. The testimony of those witnesses was structured as it would have been at trial: direct by counsel for defendants, followed by cross examination by counsel for Plaintiffs with appropriate follow-up via re-direct and or re-cross, etc. Objections to testimony on which the parties still wish to stand have been exchanged between the parties and will be filed in a summarized table with the Court. To allow the Court, in its role as finder of fact, to evaluate the demeanor of a witness where appropriate, videographers captured both audio and video of these depositions, and that video can be viewed "synced" with the transcripts provided to the Court. Specific citations to particularly relevant portions of the transcript will be provided to the Court in post-trial briefing.

the voters do not know is that the organization is simply collecting the voter's information, and not sending it on to the LEA for registration.

Ms. Clark Summers testified that she has also witnessed at least one case of registration cards being left in a person's trunk after a registration drive, only to be turned in weeks or months later. If such a delay results in the submission of a registration card for the registration deadline for an upcoming election, the voter would not be able to vote in that next election. As a result of these problems with third party voter registration solicitors, in every major election Ms. Summers testified she has had the heart-wrenching job of telling voters who thought they properly registered that the third party registration entity who should have helped them register actually prevented them from voting—either by downright fraud or careless indifference. She has to tell those voters they can't vote this election because of a mistake they did not make—some third party, perhaps an out of state entity with more interest in collecting data than getting people registered to vote—never provided their registration to the LEA.

Dr. James Gimpel, expert witness,

(via pre-recorded video-recorded trial deposition).

As discussed in the motions in limine pending before the Court, Dr. Gimpel, the State's expert, has a history of testifying in election-related matters; he has published many times in peer reviewed journals on political science topics, and has been qualified by courts in various election cases in which he has been proffered as an expert and testified.

As recounted in his CV, an exhibit to his deposition, Dr. Gimpel is a Professor of Political Science in the Department of Government at the University of Maryland, College Park. He received a Ph.D. in political science at the University of Chicago in 1990. His areas of specialization include political behavior, voting, political geography, geographic information systems, and population mobility, with publication including papers in well-regarded peer reviewed political science journals (AJPS, APSR, JoP, QJPS), journals in other social science fields, as well as several books relating to the same subjects. He has consulted and provided testimony in previous court cases related to election reform and redistricting. Ex. B - Report of Dr. Gimpel at page 1.

In preparing his report and for his recorded testimony, Dr. Gimpel surveyed underlying available data on Missouri voter registration issues, including but not limited to cases of overt fraud; he reviewed the pleadings,

and wrote an initial report (Ex. E) which counsel for the State provided to Plaintiffs counsel on the deadline for submission of the same. The video recording of his deposition will be provided to the Court.

Dr. Gimpel explores the various policy reasons for HB 1878. For instance, during his testimony, he argues that one purpose of the law is to ensure orderly operation of registration of voters: "I think the point -- as I understand the law, the point of the law is to channel voter registration down some well-accepted paths . . . that will not only facilitate ultimately adding people to the rolls but adding real people to the rolls. They're trying to channel the voter registration process, . . . in a rational way so that it's --that it's orderly and prevents . . . the sloppiness that we see with operations like ACORN, . . . where there isn't any kind of quality control, . . . over what's being submitted." Ex. E. at page 48 lines 4-25.

Dr. Gimpel continued discussing the burdens false registrations, such as those submitted during Missouri's ACORN scandals, causes for local election officials: "these election administrators have these hundreds of ridiculous names that they have to go through and figure out, you know, gee, you know, is there really a Donald Duck, you know, that lives in Unionville, right? . . . Q. · But that elections official would still need to go confirm whether or not that Donald Duck lives in Unionville, Missouri? A. · Well, I mean, yeah, because it's kind of crazy to think that you might have a surname of Duck, but that's

entirely possible. I could probably go to the phonebook and find some people who have the surname of Duck. It wouldn't surprise me." Ex. E. page 49 lines 2-17.

Dr. Gimpel's testimony further discussing the concerns motivating quality controls on absentee voting fraud: "Q. And, Dr. Gimpel, I believe earlier in your testimony, you testified that absentee ballots and solicitation is even more of a problem. Could you expand on that a little bit, please? A. Oh, you know, I don't think this is a secret. You know, we have nasty Republican cases in North Carolina of absentee -- you know, of ballot fraud. You know, that election that was overturned in 2016 in North Carolina was a result of bogus absentee ballots that the candidate paid a campaign worker to collect. Very ugly case, egregious, terrible case, okay, of election fraud committed by Republicans. Okay. And, you know, that election was overturned. All right. And, you know, this has come up in a number of other states, you know, on both sides. It has to do with the trafficking of the absentee ballots and campaign workers filling them out themselves, you know, rather than the voters. And, you know, the Missouri law is aimed squarely at trying to hold that in check and get some control. So, yes, I think that we're beginning to see, you know, more prosecutions for that and more evidence of that happening. And, . . . again, I think if we consult, . . . the work of Professor Hasen, . . . he's pretty convincing on this point. And not coming from a viewpoint congenial to

president -- former President Trump at all, right, so he seems to be credible, at least.” Ex. E at page 49 line 22 through page 50 line 23.

These three vignettes are representative of the many areas of helpful analysis discussed by Dr. Gimpel throughout his recorded trial deposition testimony.

Ms. Chrissy Peters, Director of Elections, Missouri Secretary of State

(in person)

As one of the key personnel tasked with providing guidance and support to all of the state's LEAs, Ms. Peters oversees the election division for the Secretary of State where she ensures compliance with Missouri's election laws, implements and oversees the Missouri voter registration database, regularly communicates with and trains Local Election Authorities on their responsibilities under Missouri law, and oversees certification of candidates ballot language, and elections.

She has been involved as the official organizational representative of the Missouri Secretary of state in various election cases and testified on the operations of Missouri elections a number of times before. Ms. Peters will speak to the compelling state interests addressed by the challenged provisions of HB 1878: preventing undue influence by out of state third parties in both the absentee voting and registration processes, ensuring the integrity of the absentee voting process, and ensuring that every voter who registers to vote is timely registered. She will discuss how the State's compelling interests in preserving the integrity of the electoral process are vital to the public's trust in the integrity of Missouri's elections. She will also address the typical training provided to voter registration solicitors She will discuss the intended benefits of the law in bringing clarity and integrity to the registration and

absentee voting procedures, discuss some of the concerns that motivated a change in the law, and address any questions the court may have on the same.

Summary of Witnesses and Evidence to be Presented

It is uncontested that while voters have many locations they are able to apply to vote, LEAs are the only entity in the state that directly register voters (even the Secretary of State will send applications submitted through its site to the LEA where a voter lives). Under the guidance of the SOS, they must do their best with their limited resources to ensure that every voter is timely registered, and every voter is free to cast their ballot (be it absentee or in person) without coercion. The challenged provisions of HB 1878 aim to do just that. Filtering through fraudulent registrations pushed through by third party solicitors with nothing more than a passing commercial interest in the state of Missouri is something Missouri's legislature was right to try to correct. And any measure aimed at reducing undue pressures on those voting via absentee ballot should be lauded rather than scorned by those who treasure the right to vote. The evidence will show that these are compelling interests furthered by the challenged provisions of HB 1878.

II. Analysis: The General Assembly Enacted HB 1878 to Strengthen the Integrity of Missouri Elections, Including Registration and Absentee Ballot-Solicitation Activities.

Until recently, Section 115.205 provided that “[a]ny person who is paid or otherwise compensated for soliciting more than ten voter registration

applications ... shall be registered with the secretary of state as a voter registration solicitor.” House Bill 1878, Ex. C. at 18 (former version of § 115.205, RSMo,³ reflected in strikethrough and non-bold text). The most recent version also provided that “[a] voter registration solicitor shall register for every election cycle,” and that “[a] voter registration solicitor shall be at least eighteen years of age and shall be a registered voter in the state of Missouri.” *Id.* On May 12, 2022, the Missouri General Assembly passed HB 1878; Governor Parson signed HB 1878 into law on June 29, 2022; and the law went into effect on August 28, 2022. Pet. ¶ 89.

On June 29, 2022, Missouri enacted HB 1878. See House Bill 1878, Truly Agreed and Finally Passed (Ex. C). As relevant here, HB 1878 amended § 115.205 in a few ways. First, it now provides that “[n]o person shall be paid or otherwise compensated for soliciting voter registration applications.” *Id.* Second, it provides that any voter registration solicitor “who solicits more than ten voter registration applications shall register for every election cycle . . .” *Id.* It leaves intact the requirements that “[a] voter registration solicitor shall be at least eighteen years of age and shall be a registered voter in the state of Missouri,” *id.*, and these now apply, not to paid solicitors, but to unpaid solicitors who solicit more than ten voter registration applications.

³ § 115.205. All citations refer to the current version of the Revised Statutes unless otherwise noted.

In addition, HB 1878 added a new subsection 2 to § 115.279. This new subsection provides: “Notwithstanding section 115.284, no individual, group, or party shall solicit a voter into obtaining an absentee ballot application. Absentee-ballot applications shall not have the information pre-filled prior to it being provided to a voter. Nothing in this section shall be interpreted to prohibit a state or local election authority from assisting an individual voter.” *Id.* at 27 (§ 115.279.2, RSMo) (emphasis added) Ex C. at page 27.

Under the previous statutory regime, notable abuses of the voter registration process had occurred. For example:⁴

- In 2001, Operation Big Vote, an effort to register black voters, led to a scheme to register prominent dead local politicians to vote. Nonaresa Montgomery, an Operation Big Vote employee, was convicted of perjury for lying to a grand jury investigating thousands of fraudulent voter registration cards turned in before the 2001 mayoral primary. Six others pleaded guilty to dozens of election law violations in connection with the scheme. Montgomery received two years of probation.
- In 2006 Michelle Robinson pleaded guilty to 13 counts of election law violations in connection with a fraudulent voter registration scheme.

⁴ Missouri Voter Fraud Cases available at:
https://www.heritage.org/voterfraud/search?combine=&state=MO&year=&case_type=All&fraud_type=24505.

Robinson worked for Operation Big Vote, an initiative aimed at boosting the participation of black voters in the 2001 St. Louis mayoral election. She submitted 13 voter registration cards made out in the names of dead former city aldermen. Robinson was simultaneously convicted on drug charges and her combined sentence was four years of probation, 180 hours of community service, and mandatory training in transcendental meditation.

- In 2007 Kwaim Stenson, a registration recruiter employed by ACORN, pleaded guilty to a count of submitting a false voter registration application to the Kansas City Board of Election Commissioners. Stenson was sentenced to four months and five days' imprisonment.

- In 2007 Carmen Davis, (also known as Latisha Reed), who worked for the community organizing group, ACORN, plead guilty to voter registration fraud in Kansas City for filing false paperwork. Davis was sentenced to 120 days in a halfway house.

- Also in 2007 Kwaim Stenson, a registration recruiter employed by ACORN, pleaded guilty to a count of submitting a false voter registration application to the Kansas City Board of Election Commissioners. Stenson was sentenced to four months and five days' imprisonment.

- In 2008, eight St. Louis voter registration workers pleaded guilty to election fraud for submitting false registration cards in the 2006 election in St. Louis. The workers were employed by the community organizing group, ACORN.
- In 2010, In order to assist their nephew in his razor-close 2010 democratic primary for the 40th District in Missouri, Clara and John Moretina falsely registered a Kansas City address so they could vote for their nephew, John Joseph Rizzo. Rizzo won that primary election by a single vote. John Moretina pleaded guilty to a federal charge of voter fraud in connection with the 2010 election. He was sentenced to five years' probation. Clara Moretina was not charged in the federal case, but was convicted by the state of Missouri, and both she and her husband were fined \$250 and barred from ever voting again in Missouri.
- In 2015, Deidra Humphrey, a former recruiter for the Missouri Progressive Vote Coalition, plead guilty to mail fraud after she submitted false and forged voter registrations to Missouri Pro-Vote, which unknowingly submitted them to elections boards in St. Louis city and St. Louis county. Maximum penalties for the offenses include 20 years in prison and a fine of up to \$250,000.

- In 2017, Kevin Williams, a Nigerian citizen and an illegal immigrant, voted in both the 2012 and 2016 elections illegally in St. Louis, Missouri; he also committed tax refund fraud in the amount of \$12 million from a scheme using stolen school public employee IDs, among other nefarious actions. He had been deported in 1995 but illegally reentered into the United States in 1999. He pleaded guilty and was sentenced to 6 and a half years (78 months) in prison for voting fraudulently and other crimes including mail fraud, aggravated identity theft, and illegally re-entering the United States. In addition to his prison sentence, he was ordered to pay restitution in the amount of \$889,712 to the Internal Revenue Service. He also faces deportation.

These concerns continue to this day; the Court will has before it testimony in the trial deposition of Cara Clark Sommers, that in every election during which she has been a county clerk over close to two decades, she has witnessed issues with voters being unable to vote due to issues with third party organizations who tried but failed to help Missouri voters register to vote. Victoria Turner, a witness for Plaintiffs and member of the League of Women voters, also testified in her recorded trial deposition that in her experience (regularly fielding calls from Missouri voters), the presence of such third-party

organizations has been on the rise in recent years in Missouri, and she was aware of two instances where it directly impacted Missouri voters.

Missouri's local election authorities have also been concerned about undue influence in the absentee voting process on elderly voters and other such vulnerable populations. For example, as discussed above, Tammy Brown,⁵ will testify regarding the process her office has implemented of taking her bipartisan teams to nursing homes to allow elderly residents to vote in-person in order to avoid undue influence by any third party on voters in casting their ballots. Ms. Clark similarly testified about some of the same concerns she has witnessed in her county. Although slightly less publicized, and more difficult to detect, there have also been convictions of individuals who have committed voter fraud by absentee ballot, for example:

In 2008 Joel Neal, of St. Louis, Missouri, voted twice in the 2008 primary election: once in person for himself, and once via absentee ballot in the name of his deceased mother. He pleaded guilty and was sentenced to one month of home confinement and was ordered to pay a \$2,000 fine.

In response to these types of concerns about the integrity of the voting process, as well as concerns of local election authorities, the Missouri

⁵ Ms. Brown also testified last fall before this Court in the Plaintiffs challenge to the Voter ID provisions of HB 1878.

legislature passed the provisions of HB 1878 challenged in the present action. The Plaintiffs have challenged the voter registration quality control portions of HB 1878, the requirement that a voter registration solicitor may not be paid, and the limitations on solicitation of absentee ballots.

III. Analysis: the Plaintiffs lack standing.

Since the Plaintiffs in this case lack standing on all counts, this Court should dismiss their claims on that basis. The Plaintiffs have failed to show a harm which is fairly traceable to the challenged provisions. They claim a newfound confusion about clearly defined and easy to understand terms such as “solicitor”, many of which have been a part of Missouri election law long before the passage of HB 1878. They claim confusion about the definition of the term “paid,” and claim that snacks constitute payment even though, when asked, all of their witnesses indicate that they would not report snacks as part of income when filing their annual tax returns.

Plaintiffs discuss at length the changes they allegedly made in response to the passage of HB 1878, including shifting duties that paid staff might otherwise have done to volunteers. These are self-imposed, manufactured concerns. And regardless, they can easily be resolved by this Court through a clear set of definitions, drawn, in most cases from the dictionary or easily available sources such as the tax code as to what it means to “solicit” someone to vote, or what constitutes “income.”

Yet even if these harms were not entirely self-imposed or manufactured, this Court has previously held (in initially dismissing some of the same Plaintiffs' challenge to the Voter ID provisions of HB 1878) that the diversion of resources theory of standing holds no water:

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

As this Court stated in its prior judgment, "This 'diversion-of-resources' theory of organizational standing fails as a matter of law.... Missouri courts have yet to embrace the liberalized federal rule of organizational standing. Plaintiffs cannot manufacture injury simply by choosing to spend money fixing a problem that otherwise would not affect the organization at all." NAACP II, ¶ 82 (citations and quotation marks omitted). No. 22AC-CC04439, Order and Judgment, 12 October 2023 at ¶¶ 33-34.

Plaintiffs made a choice to divert resources in the manner they allege. That does not make HB 1878 unconstitutional.

IV. Analysis: the Plaintiffs will fail to meet their high burden: "no set of circumstances."

On the merits of the Plaintiffs claim, they are unable to meet their high burden. Knowing their burden is insurmountable, they have tried, for instance, during Dr. Mayer's rebuttal-only to make an end-run around the required standard by implying that the burden is on the state to prove that

every application of the challenged law is unconstitutional. This, as the Court knows, is simply false. *State v. Perry*, 275 S.W. 3d 237, 243 (Mo. Banc 2009) (“A facial challenge to a legislative Act, is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.”), quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987); see also *Artman v. State Bd. Of Registration for Healing Arts*, 918 S.W. 2d 247, 251 (Mo. Banc 1996).

As briefed in motions in limine pending in this case, the Court need not consider the sound and fury of the plaintiffs rebuttal expert, Dr. Ken Mayer. As the Court may remember, this is the same Dr. Mayer who yelled at his own counsel last fall during the challenge to HB 1878, demanding that he be allowed to answer a question his counsel had objected to.

A ruling on a motion in limine is a “preliminary expression of the court’s opinion as to the admissibility of evidence.” *Brown v. Hamid*, 856 S.W.2d 51, 55 (Mo. 1993) (internal quotation marks and citations omitted). “[A] trial court has broad discretion” in “excluding testimony on the basis of nondisclosure in interrogatories.” *DeLaPorte v. Robey Bldg. Supply, Inc.*, 812 S.W.2d 526, 533 (Mo. App. E.D. 1991); *Wilkerson v. Prelutsky*, 943 S.W.2d 643, 647–48 (Mo. 1997) (“The trial court has broad discretion to control discovery . . . [t]his discretion extends to the trial court’s choice of remedies in response to the non-

disclosure of evidence or witnesses during the discovery.”). No expert is perfect, and the Defendant’s expert Dr. Gimpel, acknowledged during his testimony that he made oversights in writing his report. If there is any utility in the testimony of Dr. Mayer, it is in pointing out those oversights in his rebuttal report—oversights Dr. Gimpel corrected during his testimony and likely would have done even without prompting by Dr. Mayer. The Court has all of the testimony of Dr. Gimpel recorded and transcribed and can take from it whatever useful conclusions the court finds helpful in its case. In so doing, the Court can consider Dr. Mayer’s anger at disagreeing with Dr. Gimpel for what it’s worth—very little.

Since the Court cannot consider the testimony of Dr. Mayer on the merits, this leaves the Plaintiffs with only their fact witness and organizational representatives. These other witnesses, members of both the League of Women Voters, and the NAACP all sing a similar tune. They care about voting and they don’t like things that restrict it. This is a laudable sentiment and one shared by the State, but within reason. It does not help them demonstrate that these requirements, aimed at ensuring the integrity of the electoral process, have no constitutional application. And it does not mean that any restriction on the right to vote is unconstitutional. *Weinschenk v. State*, 203 S.W.3d 201, 213 (Mo. banc 2006) (per curiam). (an individual must show “more than de minimis burden on their suffrage”).

True, it would be less restrictive on the right to vote if, for instance, any voter could vote at any polling place in the state. Though convenient for the voters, it would come at the cost of being completely unmanageable for the LEAs who would have to keep copies of all 117 sets of ballots for each voting jurisdiction and party affiliation variation. No one asks for that because it's impractical at best and insecure at worst. To ensure the integrity of the electoral process certain concessions of convenience are necessary. HB 1878 attempts to balance those concessions with things such as early "no excuse" absentee voting.

Moreover, the hypothetical de minimis harms they allege do not outweigh the state's compelling government interests in protecting the integrity of the election system advanced by HB 1878 and certainly do not justify the forward looking relief they seek by requesting the injunction of the statute. Finally, to the extent that there is any minimal burden in, for instance, requiring solicitors to register with the secretary of state's office, such burden does not rise to the level of a constitutional limitation on the right to vote.

Nothing Plaintiffs have presented enables them to surmount what is, for them an insurmountable burden. That burden of showing "no set of circumstances" is insurmountable because there are many applications of the challenged provisions of HB 1878 which are valid because they serve the

interests of the state and its people: ensuring integrity of both the registration and absentee voting processes.

CONCLUSION

For the foregoing reasons, this Court should find that the Plaintiffs have failed to meet their high burden. Although they may show some de-minimis burden caused by a shift in organizational resources, this is far from sufficient to invalidate a lawfully enacted statute. Not only will they be unable to show that there is “no set of circumstances under which the Act would be valid” *Artman*, 918 S.W. 2d at 251, they will similarly fail to show the contrary—that there are any unconstitutional burdens placed on any plaintiff or witness who comes before this Court. The Court should find that these quality controls on the process for registration and absentee voting further the compelling government interests of ensuring the integrity of the absentee and registration processes.

Dated: August 5, 2024

Respectfully submitted,

ANDREW BAILEY
ATTORNEY GENERAL

/s/ Peter F. Donohue Sr.

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2024, the foregoing Motion in Limine was filed on the Missouri CaseNet e-filing system, which will send notice to all counsel of record.

/s/ Peter F. Donohue Sr.

Peter F. Donohue Sr.