

IN THE MISSOURI SUPREME COURT
No. SC100997

State of Missouri, et al.,
Appellants,

v.

League of Women Voters of Missouri, et al.,
Respondents.

On Appeal from the Circuit Court of Cole County
Case No. 22AC-CC04333
Honorable Jon E. Beetem

Respondents' Brief

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INTRODUCTION

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

Respondents in this case successfully challenged four provisions of Missouri House Bill 1878, codified in §§ 115.205.1 and 115.279.2, RSMo, (“HB 1878”), that restrict constitutionally protected political speech and civic engagement activities.¹ The four challenged provisions impose broadly worded and vague restrictions—enforced with criminal penalties—that regulate and, under certain circumstances, prohibit “solicitation” of Missourians to register to vote or request absentee ballot applications. Importantly, a key word in each of the challenged criminal provisions—what it means to “solicit” a person to register to vote or request an absentee ballot—is undefined. While they were in effect, the laws at issue in this case chilled Respondents’ speech and advocacy that encouraged Missourians to participate in the democratic process. The circuit court correctly found that the provisions could not satisfy any potentially applicable level of constitutional scrutiny and entered declaratory and injunctive relief protecting Respondents’ constitutional rights

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

to free speech, expression, association, and due process. For the reasons set out below, that judgment should be affirmed.

STATEMENT OF FACTS

I. Procedural history and Challenged Provisions

Respondents LWVMO and MONAACP—nonpartisan, civic organizations that regularly participate in voter engagement and outreach activities—filed this lawsuit on August 22, 2022, seeking a declaratory judgment and an injunction enjoining four statutory provisions passed in HB 1878. D123.

First, HB 1878 prohibits any person from “be[ing] paid or otherwise compensated for soliciting voter registration applications” (the “Compensation Ban”). § 115.205.1. The statute does not define the terms “otherwise compensated” or “soliciting.” *Id.* The Compensation Ban is a criminal law subjecting offenders to misdemeanor charges, resulting in up to a year of imprisonment and/or a \$2,500 fine. *See* §§ 115.637, 115.641.

Second, HB 1878 requires even uncompensated individuals “who solicit[] more than ten voter registration applications” to register with the Secretary of State as “voter registration solicitors” (the “Unpaid Solicitor Registration Requirement”). § 115.205.1. Registration must be completed every two-year election cycle. *Id.* Under penalty of perjury, solicitors must provide the State with their name, residential address, and mailing address. *Id.*² The statute does not define the terms “solicit” or “voter registration solicitor.” *Id.*

² The Unpaid Solicitor Registration Requirement does not, however, require a solicitor to provide an expedited means for the Secretary of State’s office to contact a solicitor, such as telephone number or email address. *See* § 115.205.2.

Nonetheless, “[a]ny voter registration solicitor who knowingly fails to register with the secretary of state is guilty of a class three election offense.” § 115.205.4. A convicted individual is guilty of a misdemeanor connected with the right of suffrage, which disqualifies the individual from voting in Missouri forever. *See* §§ 115.635, 561.026. Additionally, violators may be imprisoned for up to one year and/or fined \$2,500. *See* §§ 115.635, 561.026.

Third, HB 1878 mandates that every voter registration solicitor be a registered Missouri voter who is at least 18 years old (the “Registered Voter Requirement”). § 115.205.1. This requirement does not define “solicitor,” contains no exceptions, and applies to all “solicitors,” even those who solicit fewer than ten applications per election cycle. The Registered Voter Requirement is a criminal law subjecting offenders to misdemeanor charges, up to a year of imprisonment and/or a \$2,500 fine. *See* §§ 115.637, 115.641.

Fourth, HB 1878 forbids any “individual, group, or party [from] solicit[ing] a voter into obtaining an absentee ballot application” (the “Absentee Ballot Solicitation Ban”). § 115.279.2. The statute does not define “solicit.” Any violation of the Absentee Ballot Solicitation Ban will constitute a strict-liability class one election offense. *See* §§ 115.304, 115.631.23. A class one election offense in Missouri is a “felony connected with the right of suffrage,” punishable by imprisonment for up to five years, a fine of between \$10,000 and \$250,000 dollars, and the permanent loss of the right to vote. §§ 115.631, 115.133.2(3).

Collectively, the foregoing provisions are referred to as the “Challenged Provisions.”

On October 24, 2022, the circuit court issued an order granting Respondents’ motion for preliminary injunction and motion to certify a defendant class of prosecuting attorneys, enjoining Appellants and the defendant class of prosecutors from enforcing the Challenged Provisions until a final judgment was entered and denying Appellants’ motion to dismiss. D141; D142. The parties then took trial depositions, appeared for a bench trial on August 19, 2024, and presented closing arguments on October 21, 2024. D172; D174; Defs. Ex. BA, Bowman Trial Dep.; Defs. Ex. BB, Clark Summers Trial Dep.; Defs. Ex. BC, Dugan Trial Dep.; Defs. Ex. BD, Pener Trial Dep.; Defs. Ex. BE, Turner Trial Dep. The circuit court issued a final judgment and order on November 27, 2024, concluding that “the Challenged Provisions are unconstitutional facially and as applied under the Missouri Constitution and may not be enforced.” D177 COL ¶ 193; App. A74.³

II. Respondents and Their Voter Engagement Activities

A. League of Women Voters of Missouri

LWVMO is a statewide membership organization and the state chapter of the national League of Women Voters. D177 FOF ¶¶ 54-55; App. A8; D170 ¶¶ 62-63. LWVMO is a non-partisan organization with approximately 1,300 members throughout Missouri. D177 FOF ¶ 86; App. A12; Defs. Ex. BC Dugan Trial Dep. 15:8-9. LWVMO was founded in the wake of the women’s suffrage movement, and the right to vote remains a central tenet of the organization. D177 FOF ¶ 88; App. A12; D170 ¶ 67; Defs. Ex. BC

³ References to D177, the final order and judgment entered in this case, contain additional cross references to either the FOF (findings of fact) or COL (conclusions of law) and the relevant paragraphs. These are included for clarity because the paragraph numbers restart at the start of the COL in the judgment.

Dugan Trial Dep. 13:1-16; Dugan Trial Dep. Ex. 3, Dugan Aff. ¶¶ 5, 6. The mission of LWVMO is to safeguard the rights of all qualified voters, especially those from traditionally underrepresented communities, such as first-time voters, non-college youth, new citizens, people of color, seniors, low-income Missourians, voters with disabilities, and women. D177 FOF ¶¶ 59, 87; App. A8, A12; D170 ¶ 67; Defs. Ex. BC Dugan Trial Dep. 13:1-16, 19:8-10, 20:19-22, 54:11-19, 59:6-9.

In furtherance of its mission, LWVMO dedicates significant time and resources to voter outreach through registration drives, training, and legislative analysis, communicating its views on the benefits of voting, including increasing voter registration and access to absentee voting. D177 FOF ¶¶ 60-62, 89-90; App. A8, A12-A13; D170 ¶¶ 68-70; Defs. Ex. BC Dugan Trial Dep. 13:1-16, 18:18-20:22, 19:8-10; Defs. Ex. BE Turner Trial Dep. 14:9-15:1, 19:22-25, 24:4-24, 26:4-13, 27:3-5. LWVMO and its local chapters encourage individuals to register to vote and conduct dozens of voter registration events throughout the state, such as at high schools, colleges, naturalization ceremonies, senior homes, and community events. D177 FOF ¶¶ 56, 60-62; App. A8; D170 ¶¶ 64, 68-70; Defs. Ex. BC Dugan Trial Dep. 19:12-20:22, 22:6-12, 25:22-24. Additionally, LWVMO creates and distributes voter education and outreach materials, Defs. Ex. BC Dugan Trial Dep. 13:3-13, 18:18-19:7, 22:13-23:10, 24:13-25:4, assists voters with applying to vote absentee, D177 FOF ¶ 92; Defs. Ex. BC Dugan Trial Dep. 22:22-23:10; 31:6-20, and encourages eligible voters to do so. D177 FOF ¶ 92; Defs. Ex. BC Dugan Trial Dep. 61:9-20; Defs. Ex. BE Turner Trial Dep. 24:10-24, 25:10-18. Typical voter registration drives involve LWVMO's volunteer members and paid staff who speak with community

members and encourage them to register to vote through various formats. D177 FOF ¶ 91; App. A13; Defs. Ex. BC Dugan Trial Dep. 19:11-20:22, 25:22-24; Dugan Trial Dep. Ex. 3, Dugan Aff. ¶ 15. LWVMO volunteers and staff distribute voter registration forms, explain to prospective voters how to complete the forms, provide tablets to help attendees register to vote on the Secretary of State’s website, display QR codes linked to the Secretary of State’s website so that attendees can fill out an online application for voter registration on their own devices, assist voters with filling out written voter registration applications, answer questions, and ultimately collect completed applications to return to the appropriate election officials. D177 FOF ¶¶ 64, 91; App. A8, A13; D170 ¶ 72; Defs. Ex. BC Dugan Trial Dep. 23:19-24:12, 78:22-80:22; Dugan Trial Dep. Ex. 3, Dugan Aff. ¶ 15; *see also* Defs. Ex. BE Turner Trial Dep. 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 staff and volunteers also provide prospective voters with other information related to voting and elections, including blank absentee ballot applications. D177 FOF ¶¶ 64, 92; App. A8, A13; D170 ¶ 72; Defs. Ex. BC Dugan Trial Dep. 22:22-23:10, 31:6-20, 61:9-20; Defs. Ex. BE Turner Trial Dep. 24:4-24, 25:19-26:3; *see also* Defs. Ex. BE Turner Trial Dep. 27:3-5 (confirming that the LWVMO volunteers who answer phone calls about absentee voting are LWVMO members).

LWVMO's work is conducted by member volunteers,⁴ its paid Executive Director, paid Bookkeeper, and rotating paid interns. D177 FOF ¶¶ 57-58, 62, 108; App. A8, A16; D170 ¶¶ 65-66; 70; Defs. Ex. BC Dugan Trial Dep. 10:5-17, 11:3-6, 16:19-20, 16:24-17:3. Volunteers are reimbursed for their expenses and are often provided with other tokens of appreciation for their work. D177 FOF ¶ 111; App. A17; Defs. Ex. BC Dugan Trial Dep. 41:1-9. The Executive Director's duties include preparing voter guides that not only encourage eligible Missourians to register to vote but also provide educational information on the various ways Missourians can register to vote. D177 FOF ¶ 109; App. A16; Defs. Ex. BC Dugan Trial Dep. 10:5-17, 23:11-25:4. The Executive Director also responds to inquiries, requests for educational materials, and requests for blank voter registration forms and absentee ballot applications, which are sent when requested. D177 FOF ¶¶ 63-64, 109; App. A8, A16; D170 ¶¶ 71-72; Defs. Ex. BC Dugan Trial Dep. 10:5-17, 23:11-25:4. Other paid employees include LWVMO's Bookkeeper and paid student interns; the interns may

⁴ In this brief, the word "volunteer" is used interchangeably with "member" of Respondents' organizations when referring to individuals assisting the organizations who are not paid a salary. *See, e.g.*, Defs. Ex. BC Dugan Trial Dep. 45:13-20 ("Q: So during the time that the unpaid solicitor registration requirement was in effect in 2022 did it change league policies about who could participate in voter registration? A: Yes, the state league issued a new policy and all the local leagues adopted similar policies to say that it's not just that you have to be a member and trained, you have to have done this form with the Secretary of State."); Defs. Ex. BD, Pender Trial Dep. 16:5-14 ("[Members] also participate as volunteers in various events and fundraisers that the units hold, and other community engagement. So they -- they do a lot of work around organizing and just getting the community involved in the efforts of the organization.").

not be registered to vote in Missouri,⁵ but they assist with creating voter guides, social media, and youth outreach for Missouri voters. D177 ¶ 61; App. A8; D170 ¶ 69; Defs. Ex. BC Dugan Trial Dep. 16:19-17:2.

While the Challenged Provisions were in effect from late August 2022 until late October 2022, the law impeded LWVMO's ability to convey its pro-voting message and fulfill its mission. The Challenged Provisions required LWVMO to limit and curtail its speech and activities related to voter registration and absentee voting. D177 FOF ¶¶ 168-69; App. A28; Defs. Ex. BC Dugan Trial Dep. 58:3-20, 59:16-62:18.

The Absentee Ballot Solicitation Ban directly restricted Respondents' speech, preventing them from informing voters of their legal right to cast an absentee ballot and how to apply to do so. *See* Defs. Ex. BE Turner Trial Dep. 50:6-51:20, 52:6-13; Defs. Ex. BC Dugan Trial Dep. 60:2-3 (noting, 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).

In response to the Compensation Ban, LWVMO also ceased all voter registration activities by paid employees and ended reimbursement for expenses of volunteers to comply with the Compensation Ban's unclear language. Defs. Ex. BE Turner Trial Dep. 31:21-32:22. LWVMO's Executive Director, Jean Dugan, was prevented from undertaking many of her normal duties related to administering voter registration efforts. *Id.* at 32:7-

⁵ Former LWVMO paid college interns include Z.D. from Texas, A.W. from Tennessee, and P.A. from Wisconsin, who were registered to vote in their home states, not Missouri, where they attended college. Defs. Ex. BC Dugan Trial Dep. 41:4-52:14.

11; Defs. Ex. BC Dugan Trial Dep. 40:6-8, 40:24-25. As a result, volunteer resources were diverted from directly conducting registration drives and soliciting absentee voting to carrying out what would have normally been Ms. Dugan's administrative staff responsibilities. D177 FOF ¶ 170; App. A28; Pener Trial Dep. Ex. 1, Chapel Aff. ¶ 44; Dugan Trial Dep. Ex. 3, Dugan Aff. ¶¶ 50-52; Defs. Ex. BE Turner Trial Dep. 49:23-51:14, 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”); Defs. Ex. BC Dugan Trial Dep. 92:17-94:24, 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 due to taking on new administrative duties when HB 1878 was in effect. Defs. Ex. BE Turner Trial Dep. 34:8-9 (“I myself went to fewer actual registrations because there was more work to be done behind the scenes.”); Defs. Ex. BC Dugan Trial Dep. 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 [Ms. Dugan] and [paid staff member] Chantal would have

otherwise undertaken.”). By preventing paid employees from engaging in mission-critical voter registration work, the Compensation Ban forced LWVMO to divert its volunteer resources from voter registration and education activities to administrative duties, thereby hampering its ability to fulfill its mission.

The Unpaid Solicitor Registration Requirement and Registered Voter Requirement forced LWVMO to create protocols to track and document volunteer solicitor applications. *See* Defs. Ex. BC Dugan Trial Dep. 44:12-45:12, 39:22-40:10. It also forced the organization to change its policy to limit voter registration activities only to active LWVMO members and could no longer allow spontaneous volunteers to assist with voter registration as they previously had. D177 FOF ¶ 148; Defs. Ex. BC Dugan Trial Dep. 45:13-47:6.

The Registered Voter Requirement additionally reduced the population of available volunteers relied upon by LWVMO, who may be ineligible to vote in Missouri,⁶ including: high school students under the age of eighteen and out-of-state college students who help register fellow students to vote, *see* D177 ¶ FOF 155; local volunteers who live just outside of state borders (for example, LWVMO members who reside in Kansas City, Kansas or East St. Louis, Illinois); and other volunteers who were unwilling or unable to appear on a

⁶ LWVMO has worked with high school interns, such as A.B, who utilized the Rockwood School District’s Partners in Education program to help learn about civic engagement. Defs. Ex. BC Dugan Trial Dep. 53:3-23.

list maintained by the Secretary of State.⁷ Defs. Ex. BC Dugan Trial Dep. 49:22-50:9; 51:4-54:10, 91:9-22. For example, M.T., an LWVMO member who was not registered to vote in Missouri and led the organization's community college voter registration efforts before the Challenged Provisions were enacted, was required to stop her efforts. Defs. Ex. BE Turner Trial Dep. 45:2-46:5. This left the organization's important community college registration drives in a lurch. *Id.*

Ms. Dugan, an LWVMO member and the LWVMO's salaried Executive Director who staffed the organization's office, had previously answered phone calls from voters inquiring about voter registration and absentee voting, and helped coordinate voter registration activities for the organization. Defs. Ex. BC Dugan Trial Dep. 9:20-11:6. After implementation of the Compensation Ban, Ms. Dugan could no longer engage in these staff activities, significantly disrupting office operations and voter registration coordination.

Respondent LWVMO also had to divert resources from regular mission-driven activities to comply with the Challenged Provisions and to respond to questions from members and the community about the implications of HB 1878. For instance, the time and resources needed to educate voters about the new provisions forced LWVMO to put its planned youth outreach program on hold in 2022. Defs. Ex. BC Dugan Trial Dep. 53:11-16. Additionally, LWVMO had to provide members who wished to do voter registration with assistance to register with the state in accordance with the Unpaid Solicitor

⁷ LWVMO college members include A.H. from Oklahoma, who is registered to vote in her home state, not Missouri, where she attended college. Defs. Ex. BC Dugan Trial Dep. 41:4-52:14.

Registration Requirement and document their compliance. *Id.* 54:11-19, 92:15-94:24. This assistance included helping those who did not have access to a printer or scanner to print the application and send the completed form with a “wet” signature to the Secretary of State’s Office. *Id.* at 47:25-48:10, 44:25-45:12. Similarly, volunteer and LWVMO 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. Defs. Ex. BE Turner Trial Dep. 37:15-38:4; *see also* Defs. Ex. BC Dugan Trial Dep. 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. *See* Defs. Ex. BE Turner Trial Dep. 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.

B. Missouri State Conference of the NAACP

MONAACP is a statewide membership organization and the state affiliate of the National Association for the Advancement of Colored People. D177 FOF ¶¶ 44-45; App. A7; D170 ¶¶ 52-53; App. A8. MONAACP is a non-profit organization with approximately 34,000 volunteer members. D177 FOF ¶ 93; App. A13; Defs. Ex. BD Pender Trial Dep. 15:23-16:4. National NAACP was founded in 1909 to call attention to injustices and inequities suffered by African Americans. MONAACP’s mission is “to ensure the political, educational, social, and economic rights of all persons [and to] eliminate race-based

discrimination.” D177 FOF ¶ 48; App. A7; D170 ¶ 56. MONAACP encourages and empowers people to vote by striving to safeguard the right to vote, especially for traditionally underrepresented and underserved communities, including voters of color, low-income Missourians, seniors, young voters, voters with disabilities, citizens returning from incarceration, and other marginalized communities. D177 FOF ¶ 95; App. A13-14; Defs. Ex. BA Bowman Trial Dep. 28:23-29:4; Defs. Ex. BD Pener Trial Dep. 10:21-11:2, 64:17-66:24; Pener Trial Dep. Ex. 1, Chapel Aff. ¶ 5. As MONAACP’s Executive Director, Olivia Pener, testified, “suffrage 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.” Defs. Ex. BD Pener Trial Dep. 40:5-15; *see also id.* at 18:8-15 (explaining further the significance of the term “suffrage” to the organization). Specifically, MONAACP believes “it is important . . . to have [its] membership engaging in voter registration and voter education.” Defs. Ex. BD Pener Trial Dep. 72:12-14.

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,” *Id.* at 10:24-11:02, MONAACP volunteers engage and register eligible Missourians to vote, including through voter registration drives conducted at schools, churches, and other community locations. D177 FOF ¶¶ 49-50, 96; App. A7, A14; D170 ¶¶ 57-58; Defs. Ex. BA Bowman Trial Dep. 14:24-16:2; Defs. Ex. BD Pener Trial Dep. 17:15-18:5; Pener Trial Dep. Ex. 1, Chapel Aff. ¶ 12; *see also* Defs. Ex. BD Pener Dep. 17:5-14 (stating voter registration as a “significant activity” that is key to the MONAACP’s “mission and

purpose”); *see also id.* at 21:13-23, 26:18-27:15, 18:19-22. MONAACP 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. Defs. Ex. BD Pener Trial Dep. 25:2-16, 66:7-24; *see also id.* at 24:21-25:2 (explaining how MONAACP’s absentee voting advocacy helps individuals “participate in the [political] process”). Furthermore, MONAACP volunteers engage in public education, including informing people about their voting rights, how to vote, ballot measures, and candidates for office. D177 FOF ¶¶ 49-50, 53, 96; App. A14; D170 ¶¶ 57-58, 61; *see also* Defs. Ex. BD Pener Trial Dep. 17:5-14, 17:20-24. Volunteers also provide and collect voter registration forms, assist new voters with submitting online voter registration applications, and encourage applicants to apply to vote absentee if they are eligible. D177 FOF ¶ 96; App. A14; Defs. Ex. BA Bowman Trial Dep. 12:14-25; Pener Trial Dep. Ex. 1, Chapel Aff. ¶ 12; Defs. Ex. BD Pener Trial Dep. 24:3-25:16; Pener Trial Dep. Ex. 1, Chapel Aff. ¶ 34. At these events, MONAACP provides volunteers with food, beverages, t-shirts, stickers, pins, pens, clipboards, and other tokens of appreciation. D177 FOF ¶¶ 51-52, 114; App. A7-8, A17-18; D170 ¶¶ 59-60; Defs. Ex. BD Pener Trial Dep. 19:17-20:18, 35:5-36:15. Volunteers are also reimbursed for their mileage and supplies. D177 FOF ¶ 114; App. A17-A18; Defs. Ex. BD Pener Trial Dep. 19:24-20:5, 35:5-36:15; Defs. Ex. BA Bowman Trial Dep. 33:25-34:2.

While the Challenged Provisions were in effect, the law negatively impacted MONAACP’s ability to convey its pro-voting message and fulfill its mission by requiring the organization to limit and curtail its speech and activities related to voter registration

and absentee voting. D177 FOF ¶¶ 168-69; App. A28; Defs. Ex. BD Pener Trial Dep. 27:23-28:8, 47:16-48:9, 49:6-14, 51:3-8; Pener Trial Dep. Ex. 1, Chapel Aff. ¶¶ 39-40, 40, 42, 44.

The Compensation Ban prevented MONAACP's Executive Director from assisting with or coordinating the efforts of unpaid volunteers at voter registration events because she occupied a paid position. D177 FOF ¶¶ 47, 53, 113-14; App. A7-8, A17-18; D170 ¶¶ 55, 61; Defs. Ex. BD Pener Trial Dep. 9:4-6, 15:14-22, 38:8-39:19, 49:23-25, 70:9-71:11; *see also id.* at 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.”).

The Registered Voter Requirement also reduced the population of available volunteers. MONAACP relies 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, local volunteers who may live across state lines, and individuals who are formally incarcerated. Defs. Ex. BA Bowman Trial Dep. 23:4-24; Defs. Ex. BD Pener Trial Dep. 56:6-17, 58:4-60:2. It is important for the NAACP to allow formally incarcerated individuals to participate in voter registration drives, because:

[T]here's a lot of research that shows that when formerly incarcerated individuals are able to participate in -- in events that connect them back with their communities, that it reduces their recidivism rates. And so I want our

members . . . to feel connected to their communities, to develop relationships with the other people that are in their community, and to [] reduce the likelihood that they will reoffend. And allowing them to participate in voter registration contributes to that reduction.

Defs. Ex. BD Pener Trial Dep. 59:11-22. John Bowman, a member of MONAACP, and the organization’s Labor and Industry Committee chair, as well as the president of the MONAACP St. Louis County Unit, had to adjust how he organized voter registration efforts in response to the Unpaid Solicitor Registration Requirement. Defs. Ex. BA Bowman Dep. 9:15-18, 10:9-17, 21:17-19 (explaining that MONAACP “made sure that anyone registering over ten individuals is registered with the Secretary of State’s office as a solicitor”). Finally, the Absentee Ballot Solicitation Ban directly restricts the speech of MONAACP, preventing it or its members from informing voters of their legal right to cast an absentee ballot and how to apply to do so. *See* Defs. Ex. BD Pener Trial Dep. 64:17-20, 67:4-13; Defs. Ex. BA Bowman Trial Dep. 18:3-17.

MONAACP had to divert resources towards administrative compliance and substantive programmatic changes to comply with the Challenged Provisions. D177 FOF ¶ 170; App. A28; Defs. Ex. BD Pener Trial Dep. 70:9-71:11; Pener Trial Dep. Ex. 1, Chapel Aff. ¶¶ 21-22, 28, 43-44. MONAACP 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* Defs. Ex. BD Pener Trial Dep. 71:7-11 (explaining how “compl[iance] with [the Challenged Provisions]” takes time “away from the actual education on the issues and the candidates”), 70:13-71:1 (stating that MONAACP 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 MONAACP 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.” Defs. Ex. BD Pender Trial Dep. 43:19-23. Similarly, the “wet signature” requirement on the solicitor registration forms “create[ed] an additional burden” on MONAACP to “make sure that all of [the organization’s] volunteers [] completed this form.” *Id.* at 42:14-17. Thus, the Challenged Provisions forced MONAACP to reallocate volunteer and staff time and other resources from the organization’s core mission of registering and educating voters, to administrative and compliance activities.

III. Solicitor Registration Process

When the Challenged Provisions were in effect, the solicitor registration process began with an applicant filling out a form with certain identifying information, including name and address, and optionally, phone, email and organizational affiliation. Defs. Ex. BC Dugan Trial Dep. 47:17-18. The applicant must then print a copy of the form, and sign with a “wet” or original signature. D177 FOF ¶ 137; App. A21; Defs. Ex. BC Dugan Dep. 47:18-19, 47:25-48:5; Trial Tr. 110:23-112:12. Upon completion of the form, an applicant must either mail, fax, or scan the form and upload it in an email to the Secretary of State’s office. Defs. Ex. BC Dugan Trial Dep. 47:18-19. Upon receipt of the application, the Secretary of State *did not* review the form for accuracy nor confirm that the applicant is a

qualified registered voter in Missouri but instead entered the solicitor information contained on the form into an Excel spreadsheet. D177 FOF ¶¶ 132, 134-35; App. A21; Trial Tr. 113:22-114:15, 114:12-21, 113:6-113:18 (“We do not take steps to verify . . . We could, but we do not.”). The Secretary of State has never denied any solicitor application. D177 FOF ¶ 131; App. A21; Trial Tr. 113:22-24; 114:12-21. An applicant is not given confirmation that their application has been received, nor is the application formally approved. D177 FOF ¶ 136; App. A21; Trial Tr. 88:10-18. Once placed on the Excel spreadsheet maintained by the Secretary of State’s office, voter registration solicitors are not provided with any formal training, nor are they required to give the Secretary of State’s office any information regarding their registration activities. D177 FOF ¶¶ 138, 142; App. A21-22; Trial Tr. 112:13-23, 115:8-11. Nor is there any way for the Secretary of State to track voter registration activities of registration solicitors. D177 FOF ¶¶ 140, 143; App. A22; Trial Tr. 114:12-115:11, 115:17-116:18.

Voter Registration applications provided directly by the Secretary of State’s Office to third parties typically include a serial number, but there is no way for the state to identify if the same individual who requested the applications is the same person assisting voters with registration on those applications. D177 FOF ¶ 140; App. A22; Trial Tr. 22:21-23:11, 83:21-85:6, 114:12-115:7. The Secretary of State’s office does not have a way to connect a specific voter registration application with the solicitor who assisted them in registering to vote. Trial Tr. 83:21-85:6, 125:21-126:2. Moreover, there are other ways to register to vote that lack any tracking capability, including applications printed directly from the

Secretary of State's website and federal voter registration forms, which do not contain serial numbers. D177 FOF ¶ 141; App. A22; Trial Tr. 127:19-25.

As such, Appellants' contention that "[w]hen a solicitor registers, the Secretary gives them an identification number and that number is attached to every voter-registration application that they submit" is entirely unsupported by the record and contradicted by their citations. App. Br. 22 (citing Trial Tr. 83:21-85:6, 126:3-18, 246:5-25). In sum, there is no accurate way to track any particular voter registration application to the solicitor who provided it to the voter.

IV. State's Asserted Interests

Since the inception of this case, the state's purported interests supporting the Challenged Provisions have morphed and changed. Initially, the state contended that the Challenged Provisions were necessary to prevent election fraud, *see, e.g.*, D130 pp. 2-7; D167 pp. 28-29. Two years later, the state admitted that the Challenged Provisions were at least partially aimed at easing administrative burdens on overworked election officials tasked with processing voter registrations. D167 p. 17; Trial Tr. 137:11-138:16. The state has also asserted a purported compelling interest in "preserv[ing] the sanctity of the absentee ballot process by preventing tampering by outside influences, and plac[ing] 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" and "preserving the integrity of the electoral process [as] vital to the public's trust in the integrity of Missouri's elections." D167 pp. 7, 16. Additional interests asserted include "ensuring that registrations are turned in, ensuring that voters are connected to their local election

authorities directly, increasing or enabling accountability in the voting process, and protecting the privacy of voters and their ballots.” D177 COL ¶ 136; App. A62.

In its closing argument, counsel for the state further adjusted the asserted state interests, settling on: “advancing a compelling interest in 1) removing improper monetary incentives, 2) ensuring registrations are turned in, 3) ensuring electoral integrity, 4) connecting voters to LEAs, and 5) protecting the privacy of voters and their ballots.” Defs. Ex. AQ.⁸ The state’s witness proffered to speak to state interests spoke to only several of the interests on this list.

At trial, the Secretary of State Elections Director Chrissy Peters was offered by the state to speak to the state’s interests in the Challenged Provisions. Ms. Peters testified that incomplete registrations cost election authorities administrative “resources and time spent on managing larger volumes of registration,” including placing incomplete or initially unverifiable applications into incomplete status and following up with the applicant to obtain additional needed information to process the application, and “efficiency lost” due to having to further verify an applicant’s information. Trial Tr. 70:4-25, 74:9-18, 137:11-24. Due to increasingly enhanced voter registration database interfaces with other government agency databases (such as social security, motor vehicle, department of corrections and others), “security measures exist to verify and validate people who want to register in the state.” Trial Tr. 137:4-6. Under these existing procedures, fraudulent or unverifiable registration applicants—regardless of how those applications are procured or

⁸ Contrary to Appellants’ Brief, only the last four digits of a social security number appears on a voter registration application. §§ 115.155.1, 115.158.5(1)(b).

submitted—do not get placed onto the active voter rolls. Trial Tr. 129:14-132:22, 137:1-24 (“Q. So fraudulent applications, registrations don’t make it on to voting rolls? A. That is correct.”), 138:17-21.

The State also testified more particularly to its interests in each of the Challenged Provisions, to wit:

Compensation Ban

With respect to the “Compensation Ban,” Appellants asserted that its “state interest is to remove improper monetary incentives such as paying people to collect voter registrations on a per-registration basis.” D177 COL ¶ 135; App. A62; Trial Tr. 83:4-15; 128:7-9. Since 2006, Missouri law prohibits anyone from being paid on a per-registration basis. § 115.203. In addition, the election authority processes a voter registration application in the same manner whether a solicitor has been paid or not, and mechanisms in the voter registration database interface with other agencies to prevent fraudulent applicants from making it onto the rolls. Trial Tr. 139:6-140:2. At trial, Ms. Peters repeatedly spoke to the administrative burdens on election authorities related to processing “increased” or “more” “volume” of voter registrations and the prospect of incomplete or illegible applications to justify the Compensation Ban, despite testifying that processing registration applications is a central responsibility of election authorities. Trial Tr. 140:3-141:21.

Unpaid Solicitor Registration Requirement

As to the “unpaid solicitor registration requirement,” Ms. Peters testified to the state’s interest in having a list of solicitors who can be contacted if there are problems

reported with their registration activities based on the serial numbers on the registration forms that might be requested by that solicitor. Trial Tr. 83:21-85:3. But Ms. Peters admitted that Secretary of State's office cannot connect a specific voter registration application with the solicitor (if any) who assisted the applicant in registering to vote, Trial Tr. 83:21-85:6, 125:21-126:2, given that organizations can request voter registration applications on behalf of their numerous volunteers, and individual solicitors do not need to provide information about their registration activities to the state. Trial Tr. 115:8-117:1. Moreover, when presented with the possibility of late turned in voter registration cards, the Secretary of State did not reach out, despite purportedly knowing the organization that submitted the late registrations in St. Charles County. Trial Tr. 126:19-127:18.

Registered Voter Requirement

Regarding the state interest in the "Registered Voter Requirement," Ms. Peters testified, without offering a basis for the supposition, that Missouri registered voters are more likely to have an interest in the state, making them more likely to do a better job at voter registration. Trial Tr. 85:7-25. Yet she testified that the state takes no steps to ascertain that a solicitor is in fact a registered voter in Missouri. Trial Tr. 113:11-15 ("We could, but we do not."). Nor does the state offer or require training to solicitors on conducting voter registration. Trial Tr. 112:13-16. Ms. Peters acknowledged that any person submitting a voter registration application on behalf of a voter must submit it within the statutorily mandated legal timeframe, regardless of whether they are registered as a solicitor or not. Trial Tr. 118:15-23. Indeed, Ms. Peters testified that the burden is on the

voter themselves to ensure their application is accurate and complete, submitted, and have the knowledge that their actions are subject to criminal penalties. Trial Tr. 144:3-145:21.

Absentee Ballot Solicitation Ban

Regarding the “Absentee Ballot Solicitation Ban,” Ms. Peters testified to a state interest in avoiding confusion by voters who may receive absentee ballot applications in the mail, if they had already submitted an absentee ballot request. Trial Tr. 86:1-16. The state's interest in this provision is “to keep absentee applications from being sent to individuals to get an absentee ballot,” Trial Tr. 151:4-152:9, specifically a “[p]re-filled absentee ballot to a voter [from] other than the local election authority.” Trial Tr. 152:13-17. Yet Ms. Peters admitted that the provision covers more than just mailing pre-filled applications; it also includes mailing a blank application to a voter, Trial Tr. 152:18-21 (“yes”), and was unsure whether simply handing someone a blank absentee ballot application would count, given that existing law would prohibit the solicitor from submitting a completed absentee ballot application on the voter’s behalf (as a solicitor might with a voter registration application). Trial Tr. 152:22-154:21 (“I am not sure I that I have enough information to necessarily answer that question.”); *see also*, § 115.279.1.

V. Appellants’ Erroneous Statements of Fact

The Statement of Facts in Appellants’ opening brief contains factual errors and misrepresentations, as well as legal argument and other material inappropriate for inclusion in that section. *See* Rule 84.04(c).⁹ Any legal argument advanced in Appellants’ statement

⁹ “The statement of facts shall be a fair and concise statement of the facts relevant to the questions presented for determination *without argument*.” Rule 84.04(c) (emphasis added).

of facts is appropriately addressed in Respondents' argument below, specifically Appellants' disagreement with the circuit court's interpretation of the statute at issue in this case and the standard of review applied. Here, Respondents address the most significant factual errors not already discussed.

First, Appellants' statement of facts claims that "solicit" or "solicitation" have been "unequivocal[ly]" defined by the Secretary of State's office and that such definition by that office decides this case. App. Br. 15, 28-29. Appellants admit that their meaning of "solicit" likely differs between the two Challenged Provisions and Elections Director Peters admitted she would need to seek further clarification from legal counsel. App. Br. 30; Trial Tr. 160:12-21. A term cannot be unequivocally defined if such definition requires "further clarification." And at any rate, no definition applied by the Secretary of State is binding on each county prosecuting attorney in Missouri.

Second, Appellants claim without citation that, "[t]he only thing that Plaintiffs cannot do is pay unregistered employees to collect completed voter registrations for submission to local election authorities." App. Br. 16. Appellants do not specify what they mean by "unregistered." Perhaps they mean "not registered to vote," or perhaps they mean "not registered as a solicitor with the Secretary of State's office." Regardless, under the Challenged Provisions, *none* of Respondents' paid employees can "solicit" voter registration applications, whether or not they are registered in *either* of the above capacities.

Third, Appellants speculate as to what the General Assembly "concluded" and the intended effects of the law. For example, Appellants claim that the General Assembly

“concluded that, if third party solicitors are volunteers, solicitors will be less likely to fabricate voter registration applications,” App. Br. 21, while citing speculative testimony from the Secretary of State’s office. Trial Tr. 83:16-19. Appellants also claim that the “General Assembly reasonably concluded that teenagers and felons should not be handling registration forms.” App. Br. 23. But both teenagers and convicted felons can lawfully register to vote in Missouri. *See* Defs. Ex. J. (the affidavit on the registration application reads, in part, “I am at least seventeen and one half years of age . . . If I have been convicted of a felony or misdemeanor connected with the right of suffrage, I have had the voting disabilities resulting from such conviction removed pursuant to law.”). If the General Assembly concluded what Appellants suggest, the Registered Voter Requirement does not satisfy that conclusion. Moreover, Appellants cite nothing to support that such requirements prevent “irresponsible” solicitation.

Appellants claim in their statement of facts, and without citation, that § 115.205.1 “makes it easier to enforce election laws” because it “imposes a residency requirement, which ensures that offending solicitors will be subject to the jurisdiction of Missouri investigators and prosecutors.” App. Br. 24. Appellants do not cite the record here because the circuit court did not receive evidence about the ease of enforcing election laws, the extent of prosecutorial jurisdiction, nor de facto residency requirements.

Fourth, Appellants claim that the “State’s witnesses testified that Missouri has had trouble with private companies paying solicitors to collect voter registrations so that the companies can mine personal data from the registrations.” App. Br. 21-22. This stretches the actual evidence received by the circuit court beyond recognition. Ms. Clark-Sommers,

County Clerk for a local election authority, testified at her trial deposition about her frustrations with unidentified third-party voter registration websites providing inadequate or inaccurate information. Defs. Ex. BB Clark-Sommers Trial Dep. 66:23-68:5. At trial, Director of Elections Ms. Peters testified that restricting solicitation “remov[es] that third party collecting that private information and having access to the protected information of the voter.” Trial Tr. 141:15-21. Contrary to Appellants’ assertion, the circuit court did not receive evidence regarding any past “trouble” with data mining.

Fifth, Appellants make factual assertions on material outside of the trial record, such as the Carter-Baker Report, D131. App. Br. 26. This document was attached to Appellants’ opposition to Respondents’ motion for preliminary injunction and not offered or admitted as evidence at trial; it is therefore inappropriate for inclusion in the Statement of Facts. Regardless, Appellants misrepresent the findings of that report in claiming that the Absentee Ballot Solicitation Ban “guards against fraudulent mail-in voting.” App. Br. 26. Appellants twist the findings of the report—that third parties should not handle absentee *ballots*—to support the ban on soliciting voters to obtain absentee ballot *applications*.

SUMMARY OF ARGUMENT

Non-partisan civic engagement organizations like Respondents play an essential role in providing education and assistance to encourage and enable eligible Missourians to vote. Respondents’ voter registration activities are inextricably intertwined with core political speech, association, and expression rights that are entitled to stringent protection under the Missouri Constitution. *See* Mo. Const. art. I, §§ 8, 9, 10.

The circuit court correctly enjoined each of the four restrictions that Respondents challenge. *First*, HB1878 prohibits any person from “be[ing] paid or otherwise compensated for soliciting voter registration applications.” § 115.205.1. *Second*, the statute requires even uncompensated individuals “who solicit[] more than ten voter registration applications” to register with the Secretary of State as “voter registration solicitor[s].” *Id.* *Third*, the statute mandates that every voter registration solicitor be at least 18 years old and a registered Missouri voter. *Id.* And *fourth*, the statute forbids any “group, or party [from] solicit[ing] a voter into obtaining an absentee ballot application” § 115.279.2. The statute nowhere defines the meaning of “solicit,” “solicitation” or “compensa[tion].” Violation of any of these restrictions is subject to criminal penalties. Before the circuit court enjoined enforcement of these provisions, Respondents were forced to seriously curtail their voter registration efforts to avoid potential criminal liability.

None of the six reasons that Appellants assert in support of reversal is meritorious.

First, engaging and assisting voters in registering to vote or applying to cast an absentee ballot is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988). Like the circuit court here, numerous courts have correctly recognized that “encouraging others to register to vote” is “pure speech” and “core First Amendment activity” subject to the highest protections. *League of Women Voters of Fla. v. Browning* (“*Browning II*”), 863 F. Supp. 2d 1155, 1158 (N.D. Fla. 2012).

Indeed, this case is no different from *Meyer*, where the Supreme Court unanimously held that Colorado’s ban on paid petition circulators was unconstitutional because it

unnecessarily limited the ability of initiative and referendum supporters to engage in “core political speech,” for which First Amendment protection is “at its zenith.” 486 U.S. at 414, 425. Nor is this case distinguishable from *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999), where the Supreme Court struck down a requirement that petition circulators be registered voters, because that restriction “decreases the pool of potential circulators” and thus limited the ability of circulators to reach voters and engage in political discussion. *Id.* at 194-95.

Appellants erroneously claim that all speech content can and should be read out of regulation by the Challenged Provisions. As such, Appellants contend that “solicitation” must be understood only to regulate conduct and not speech. But this assertion is undermined by their own shifting readings of the statutes’ proscriptions, uncontested principles of statutory interpretation, and black letter law. Appellants themselves previously conceded that “solicit” can be and commonly is understood to include speech, meaning to “entreat, importune, [or] approach [people] with a request or plea.” D130 pp. 17-18. Moreover, context matters. The Challenged Provisions regulate “solicitation” specifically of voter registration forms and absentee ballot applications. It is not possible for organizations like Respondents, their members, volunteers, and staff to “solicit” such forms without engaging in protected political speech. Just as “the circulation of a petition” inherently involves “interactive communication concerning political change,” *Meyer*, 486 U.S. at 421-22, so too here.

Respondents’ efforts to assist eligible Missourians with voter registration and absentee balloting necessarily involve protected political expression, including the

importance of political participation and registering to vote. Indeed, there could be no exchange of voter registration or absentee ballot request forms without protected speech by Respondents’ staff, members, and volunteers. Core political speech is inseparably intertwined with the conduct of any voter registration drive, *including* the acts of giving and *receiving* voter registration and absentee ballot request forms. There is no basis for allowing the state to void core speech protections—and the strict scrutiny that accompanies any regulation of them—based on a reading of “solicitation” in the Challenged Provisions that flaunts ordinary meaning, precedent, and the reality of the infringement of the protected rights at issue.

Second, the circuit court correctly refused to apply the *Anderson-Burdick* test and instead applied strict scrutiny. The *Anderson-Burdick* balancing test does not apply to “limitation[s] on political expression.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345-46 (1995); *see also VoteAm. v. Schwab*, 121 F.4th 822, 840-43 (10th Cir. 2024) (refusing to apply *Anderson-Burdick* to a Kansas law that prohibited third parties from distributing personalized, pre-filled advance mail ballot applications because it “stop[ped] [the plaintiff] from speaking (in the form of mailing prefilled applications to Kansas voters)).”

Third, the circuit court correctly found that the Challenged Provisions unconstitutionally burden Respondents’ expressive association rights. While the challenged provisions were in effect, LWVMO and MONAACP’s paid staff could not take part in voter registration activities—activities that are essential to each organization’s mission and identity. By directly restricting who may participate in Respondents’ voter

engagement activities and events—including paid staff, those under eighteen, and those not eligible to vote in Missouri—the Challenged Provisions “directly interfer[e] with [Plaintiffs’] composition”—precisely the type of infringement that the right of expressive association seeks to prevent. *Miller v. City of Cincinnati*, 622 F.3d 524, 537 (6th Cir. 2010).

Fourth, the *Anderson-Burdick* framework is equally inapplicable to Respondents’ freedom of association challenge. The participation of Respondents’ members and staff in voter registration drives signals that Respondents value the democratic process and believe in the capacity of the popular will to shape the composition and direction of the government. Such expressive association is stringently protected under the Missouri Constitution.

Fifth, there is no merit to Appellants’ claim that Respondents’ injury is self-inflicted and that they do not have standing to lodge a pre-enforcement vagueness challenge. The Challenged Provisions do not define “solicitation,” and instead leave prosecutorial decisions to the discretionary interpretations of the state’s 115 Prosecuting Attorneys. Respondents’ staff, members, and volunteers accordingly faced credible threats of prosecution for engaging in protected voter-engagement activities as a result of the Challenged Provisions. “[P]arties need not subject themselves to a multiplicity of suits or litigation or await the imposition of penalties under an unconstitutional enactment in order to assert their constitutional claim for an injunction.” See *Planned Parenthood of Kan. v. Nixon*, 220 S.W.3d 732, 739 (Mo. banc 2007).

And *sixth*, the circuit court did not err in finding that the Challenged Provisions, which are enforced through criminal penalties, are impermissibly vague. The Secretary of

State’s own shifting attempts to define “solicitation”—admitting only to later deny that it includes speech—emphasize the correctness of the circuit court’s conclusion. By failing to define either “solicitation” or “compensation,” the Challenged Provisions give inadequate notice of what conduct it is that they proscribe. This lack of clarity empowers individual prosecuting attorneys to define what conduct such terms encompass, thus “invit[ing]” the exact “arbitrary enforcement” and prosecution that Due Process forbids. *Johnson v. United States*, 576 U.S. 591, 595 (2015).

STANDARD OF REVIEW

Following a bench-tryed case, “[a]n appellate court must sustain the decree or judgment of the [circuit] court unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.” *Millstone Prop. Owners Ass’n v. Nithyananda Dhyanaheetam of St. Louis*, 701 S.W.3d 633, 640-41 (Mo. banc 2024) (quoting *Furlong Cos., Inc. v. City of Kan. City*, 189 S.W.3d 157, 168 (Mo. banc 2006) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976))). A determination as to whether a law violates the Constitution is a legal question that is reviewed *de novo*. *State v. Sisco*, 458 S.W.3d 304, 312-13 (Mo. banc 2015).

This Court must “defer[] to the trial court’s factual findings and credibility determinations.” *Id.* at 312. An appellate court will “review the evidence in the light most favorable to the trial court’s decision.” *Davis v. Dir. of Revenue*, 346 S.W.3d 319, 322 (Mo. App. E.D. 2011). “All reasonable inferences are drawn in favor of the verdict and all contrary evidence and inferences are disregarded.” *Id.* “If facts are contested, [the appellate

court is] obliged to defer to the trial court's determination of those facts." *Id.* "This includes facts expressly found in the written judgment or necessarily deemed found in accordance with the result reached." *Ivie v. Smith*, 439 S.W.3d 189 (Mo. banc 2014) (citing Rule 73.01(c)).¹⁰ The Court must "presume that all evidence was considered by the trial court and we will not reweigh that evidence, even if doing so could yield a different conclusion." *Bechtold v. Bechtold*, 453 S.W.3d 813, 815 (Mo. App. S.D. 2014). "Standing is a question of law, which is reviewed *de novo*." *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 622 (Mo. banc 2011). "The jurisdiction of the trial court is a question of law." *Lett v. City of St. Louis*, 24 S.W.3d 157, 161 (Mo. App. E.D. 2000).

Moreover, "[t]he trial court's adoption of a party's proposed findings of fact and conclusions of law is not *per se* error." *Klinkerfuss v. Cronin*, 289 S.W.3d 607, 613 (Mo. App. E.D. 2009) (quoting *Grease Monkey Int'l, Inc. v. Godat*, 916 S.W.2d 257, 260 (Mo. App. E.D. 1995)). "Where there are no inconsistencies between the factual findings and the actual facts and where the legal conclusions are sufficiently specific to permit meaningful review, there is no error." *Klinkerfuss*, 289 S.W.3d at 613 (citing *Grease Monkey Int'l*, 916 S.W.2d at 260). Here, while Appellants might disagree with *how* the

¹⁰ There is no claim in this case by Appellants that the judgment is against the weight of the evidence or that it is not supported by substantial or sufficient evidence. Appellants do argue on multiple occasions that evidence was either not reviewed correctly or was overlooked. However, without a claim related to the weight or sufficiency of the evidence, these arguments must be ignored. Moreover, as noted, even when an appellate court is reviewing a point on appeal related to evidentiary findings, all findings are reviewed in favor of the lower court's findings, and any contrary evidence or inferences are disregarded. There is also no claim that the circuit court erroneously declared the law. The only claims on appeal relate to the application of the law and trigger *de novo* review.

circuit court weighed and relied on the facts in the record, there is no argument, nor any evidence cited, indicating that there is an inconsistency between a factual finding and the actual facts. Nor, as noted, do any of the points on appeal turn on evidentiary findings. The legal conclusions are also sufficiently specific and permit meaningful review. Thus, the circuit court’s adoption of proposed findings in this case was not in error.

ARGUMENT

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 Respondents in this case, 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 protection of the Missouri Constitution.

The Challenged Provisions in HB 1878 imposed severe and unprecedented restrictions on Respondents’ constitutionally protected voting engagement expressive

activities. The circuit court correctly held that the Challenged Provisions unlawfully burden Respondents’ rights to speech, expression, and association. That judgment should be affirmed for the reasons explained below. Facial relief is both available and appropriate in this case.

I. The circuit court correctly held that the Challenged Provisions unlawfully burden Respondents’ right to speech, expression, and association as guaranteed by the Missouri Constitution. (Response to Points Relied On I and III)

A. The Missouri Constitution guarantees broad protections for speech, association, and expression.

The Missouri Constitution guarantees fundamental rights of speech, expression, and association. *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”).

This Court has long held that state restrictions that severely burden speech, expression, and association are subject to strict scrutiny. *See Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984). Moreover, because Missouri’s constitutional rights to speech, expression, and association are *at least* as expansive as their equivalents under the federal First Amendment, cases discussing and interpreting First Amendment rights are applicable and persuasive. “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 Lab. & Indus. Rels.*, 599 S.W.3d 157, 162-63 (Mo. banc 2020) (quoting *Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006)).

Given their strongly persuasive nature, the circuit court correctly relied on *Meyer v. Grant*, 486 U.S. 414 (1988), and *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999), to support the application of strict scrutiny in this case. *Meyer* unanimously held that Colorado’s ban on paid petition circulators was unconstitutional because it unnecessarily limited the ability of initiative and referendum supporters to engage in “core political speech,” for which First Amendment protection is “at its zenith.” 486 U.S. at 414, 425. And in *Buckley*, the U.S. Supreme Court struck down restrictions on Colorado’s ballot petition process that “significantly inhibit communication with voters”—including a requirement that petition circulators must be registered voters. 525 U.S. at 183. As the U.S. Supreme Court reasoned in *Buckley*, “[t]he requirement that circulators be . . . registered voters . . . decreases the pool of potential circulators” and thus limits the ability of proponents to reach voters and engage in political discussion. *Id.* at 194-95.

As the circuit court here properly recognized, engaging with and assisting voters in registering or applying for an absentee ballot is likewise “core political speech” where First Amendment protections are at their “zenith.” *Meyer*, 486 U.S. at 414, 425; *Buckley*, 525 U.S. at 183; D177 COL ¶¶ 58, 83-85; App. A47, A52. The circuit court thus properly held that the Challenged Provisions are subject to—and fail—strict scrutiny. Indeed, the Challenged Provisions fail *any* level of scrutiny under the Missouri Constitution.

B. The circuit court correctly held that the Challenged Provisions burden core political speech and expressive conduct. (Response to Point Relied On I)

Engaging and assisting voters in registering to vote or applying to cast an absentee ballot is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer*, 486 U.S. at 421-22. Additionally, whether citizens should participate in the electoral process and should exercise their right to vote by absentee ballot are “matter[s] of societal concern that [Respondents] have a right to discuss publicly without risking criminal sanctions.” *Id.* at 421. Under threat of criminal penalty, each of the Challenged Provisions severely and unjustifiably burdens Respondents’ core political speech regarding voter registration and absentee balloting.

By punitively 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, as the circuit court correctly found, regulate “core political speech.” D177 COL ¶ 67; App. A49. The Challenged Provisions unconstitutionally burden core political speech because they “limit[] the number of voices who will convey [Respondents’] message and the hours they can speak and, therefore, limit[] the size of the audience they can reach.” *Id.* (quoting *Meyer*, 486 U.S. at 422-23). This is true of each of the Challenged Provisions, individually as well as collectively.

Compensation Ban. Just like the statute struck down in *Meyer*, which prohibited payments to ballot initiative circulators, the Compensation Ban here bars voter registration solicitors from “be[ing] paid or otherwise compensated for soliciting voter registration

applications.” § 115.205.1. As the circuit court correctly found, Respondents rely on paid staff and volunteers who are reimbursed, and the inability to provide such reimbursement and rely on paid staff while the statute was in effect reduced the effectiveness and number of persons engaging in pro-voting core political speech. D177 COL ¶¶ 70-73; App. A50. The circuit court further correctly recognized it is well-established that “[a] restriction on the amount of money a person or group can spend on [communications] necessarily reduces the quantity of expression” D177 COL ¶ 71; App. A50 (quoting *Buckley v. Valeo*, 424 U.S. 1, 19 (1976)). By eliminating paid staff, interns and compensated volunteers, the Compensation Ban, as noted plainly limits the number of voices that will carry Respondents’ messages in assisting voters and the size of the audience that they will reach.

Unpaid Solicitor Registration Requirement. This requirement likewise unconstitutionally burdens Respondents’ core political speech by mandating, under threat of criminal penalty (including prison, fines and lifetime loss of voting rights), that Respondents’ members, volunteers, and supporters must pre-register with the State before they are able to engage voter registration activities. Under this requirement, volunteers “who solicit[] more than ten voter registration applications” would no longer be able to freely join in community registration events without previously registering with the State, and Respondents could face criminal prosecution if they allowed such persons to participate in their events without first ascertaining if they are a registered solicitor with the State for that election cycle. This requirement thereby restricts the pool of members able to engage in Respondents’ pro-voting speech. D177 COL ¶¶ 77-80; App. A51. *See supra* SOF Section II.

Registered Voter Requirement. Like the statute struck down in *Buckley*, this requirement mandates that every voter registration solicitor be over the age of eighteen and a Missouri registered voter. This requirement categorically prohibits a wide array of persons—from non-citizen residents to out-of-state visitors, including college and graduate students, local volunteers living across state lines, students under eighteen, and those on probation or parole—from engaging in voter registration. But the “Missouri Constitution does not permit the State to dictate who can and cannot engage in protected speech and expressive conduct.” D177 COL ¶ 84; App. A52. This requirement unjustifiably “decreases the pool of potential [solicitors]” D177 COL ¶ 85; App. A52 (quoting *Buckley*, 525 U.S. at 194), especially given that Respondents frequently partner with both high school students under the age of 18 and college students registered to vote in their home states to lead high school and college campus voter registration drives. *See supra* SOF Section II; D177 COL ¶¶ 86-87; App. A52.

Absentee Solicitation Ban. As the circuit court found, by providing that “no individual, group, or party shall solicit a voter into obtaining an absentee ballot application” or face a felony conviction, incarceration, and lifetime loss of voting rights, the Absentee Ballot Solicitation Ban dramatically stifles and censors speech and expression that encourages absentee voting. D177 COL ¶ 91; App. A53. While the ban was in effect, as the circuit court noted, “LWVMO discarded all of their materials related to how to vote absentee, and removed links and QR codes explaining how to vote absentee” and stopped answering questions about absentee voting. D177 COL ¶ 94; App. A53. The circuit court

correctly found that ban unconstitutionally burdens core political speech and expression. D177 COL ¶ 95; App. A53.

Appellants contest the circuit court’s conclusions with the faulty claim that the Challenged Provisions regulate “conduct and not speech” such that the challenged statutes “do not implicate Article I, Section 8 of the Missouri Constitution.” App. Br. 34. This is in error. “[A] voter registration drive involves more than just accepting and delivering a form like a neutral courier.” *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019). Instead, Respondents’ activities and speech, including those activities directly impacted by the Challenged Provisions, involve “encourag[ing] . . . citizens to register to vote.” *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 698 (N.D. Ohio 2006). “[E]ncouraging others to register to vote” is “pure speech,” and, because that speech is political in nature, it is a “core First Amendment activity.” *Browning II*, 863 F. Supp. 2d at 1158.

Restrictions on voter registration activities are subject to strict scrutiny precisely because they inherently involve protected speech and association. As such, courts have not hesitated to enjoin unjustifiable laws burdening those rights. *See Hargett*, 400 F. Supp. 3d at 721, 723-24 (“The court sees no reason that the First Amendment would treat [discussions about whether to register to vote] as somehow less deserving of protection than, for example, a discussion about whether or not there should be a ballot initiative about property taxes.”); *Blackwell*, 455 F. Supp. 2d at 706 (striking down restrictions on voter registration activity, noting “[t]he interactive nature of voter registration drives is obvious: they convey the message that participation in the political process through voting is

important to a democratic society”); *League of Women Voters of Fla. v. Browning* (“*Browning I*”), 575 F. Supp. 2d 1298, 1321 (S.D. Fla. 2008) (“Undoubtedly, Plaintiffs’ interactions with prospective voters in connection with their solicitation of voter registration applications constitutes constitutionally protected activity.”).

Courts have likewise found that certain regulations of absentee ballot applications involve core political speech. *See VoteAm. v. Schwab*, No. 23-3100, 2024 WL 4751236, at *8-10 (10th Cir. Nov. 12, 2024) (holding that mailing prefilled mail-ballot applications constitutes speech entitled to First Amendment protection); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 224 (M.D.N.C. 2020) (“The court therefore finds that assisting voters in filling out a request form for an absentee ballot is ‘expressive conduct’ which implicates the First Amendment.”); *Priorities USA v. Nessel*, 462 F. Supp. 3d 792, 812 (E.D. Mich. 2020) (holding that distributing absentee ballot applications, among other vote-by-mail operations, “necessarily involve[s] political communication and association”).

In an attempt to avoid this well-established line of case law, which follows directly from *Meyer* and *Buckley*, Appellants argue that the Challenged Provisions can be read narrowly so as to separate out all speech from conduct. They incorrectly claim that §§ 115.205.1 and 115.279.2 “do not regulate speech” at all. App Br. at 40. Appellants base this argument largely on their contention that the word “solicitation” as used in the Challenged Provisions means “asking for and receiving” voter registrations and absentee ballot applications and does not mean “merely encouraging someone to register or to apply

to vote absentee.” App. Br. 41.¹¹ “Solicitation” and “solicit” are, of course, undefined terms in the Challenged Provisions. But the circuit court did not err in declining to adopt the Secretary of State’s current reading of the terms. More importantly, the Secretary of State’s current understanding of “solicitation” is not binding on the prosecutors who are tasked with enforcing the Challenged Provisions at issue in this case. § 56.060 (“Each prosecuting attorney shall commence and prosecute all civil and criminal actions in the prosecuting attorney’s county . . .”); *Missouri v. Comprehensive Health of Planned Parenthood Great Plains, et al.*, No. WD88244, at *24 n.9 (Mo App. W.D. Oct. 14, 2025) (finding that the Attorney General’s opinion as to a statute, “does not bind local prosecuting attorneys. . . . Instead, until such time as a *court* declares a statute unconstitutional or otherwise unenforceable, a local prosecutor is not prohibited from relying upon such statute to charge a person with a crime.”).¹² Appellants’ claim that all speech content can and should be read out of the Challenged Provisions is also undermined by their own shifting readings of the statute’s proscriptions, uncontested principles of statutory interpretation, and black letter First Amendment law.

As Appellants note, “[i]n the absence of a statutory definition, words will be given their plain and ordinary meaning as derived from the dictionary.” *Matthews v. Harley-*

¹² Indeed, prosecutors who willfully or fraudulently violate or neglect their official duties, including willfully failing to prosecute specific laws, may be ousted from office. *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 474 (Mo. banc 2001) (stating that § 106.220 applies to prosecuting attorneys); *State on Inf. of McKittrick v. Graves*, 144 S.W.2d 91, 94 (Mo. banc 1940) (ousting county prosecutor); *State, on Inf. McKittrick v. Wymore*, 132 S.W.2d 979, 986-87 (Mo. banc 1939) (same).

Davidson, 685 S.W.3d 360, 369 (Mo. banc 2024). App. Br. 41. As Appellants also acknowledge, dictionary definitions make plain that to “solicit” something is generally understood to involve speech and expression. In opposing the motion for preliminary injunction and to support their argument that the terms are not vague, Appellants stated the following:

As relevant here, to “solicit” means “[t]o make petition to: entreat, importune; esp. to approach with a request or plea (as in selling or begging),” as in to “*solicit* one’s neighbors for contributions.” *Solicit*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2168 (2002). And a “solicitor” is “one that solicits.” *Id.* To “solicit voter registration applications,” § 115.205, RSMo, therefore, means to “entreat, importune, [or] approach [people] with a request or plea” that they apply to register to vote. WEBSTER’S THIRD at 2168. Likewise, to “solicit a voter into obtaining an absentee ballot application,” § 115.279, RSMo, is to entreat, importune, or approach a voter with a request or plea for them to obtain an absentee ballot application. There is no mystery about the meaning of these phrases.

D130 pp. 17-18. In other words, supported by Webster’s Third Dictionary, Appellants disagreed with the Secretary of State’s definition in their initial briefing, conceding that “solicit” and “solicitation” can be read to involve “entreat[ies],” or “a request or plea” to register to vote or obtain an absentee ballot. Asking and encouraging a citizen to complete a voter registration form or absentee ballot application is an inherent part of “solicitation,” both as a matter of the plain meaning of the term, and in messages conveyed by the voter registration drives actually conducted by Respondents.

Appellants have now switched positions and would prefer a different ordinary meaning of solicitation that involves only conduct and no speech. But requests, entreaties, and communication cannot be conveniently carved out of the definition of solicitation. Nor can the collection and submission of voter registration forms in a voter registration drive

be divorced from communication regarding the importance of registering to vote and participating in electoral democracy. *See also Hargett*, 400 F. Supp. 3d at 720-21 (“As a matter of simple behavioral fact that long pre-dates the enactments at issue here, ‘the collection and submission of’ the applications gathered in a voter registration drive ‘is intertwined with speech and association.’” (quoting *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1334 (S.D. Fla. 2006))). Even if the definition of “solicit” could be limited to collecting forms, the fact that soliciting may include an activity does not magically transform it from speech into non-expressive conduct or eliminate its expressive nature: “Whether government regulation applies to creating, distributing, or consuming speech makes no difference” to First Amendment analysis. *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 792 n.1 (2011).

In other words, collecting and returning forms is itself expressive and considered speech for the purposes of constitutional protection. In addition, the State’s current definition of solicitation as collecting or submitting applications is at odds with the Absentee Ballot Solicitation Ban, given that Missouri law prohibits anyone other than a voter, their guardian, or close relative from collecting or submitting a voter’s absentee ballot application. § 115.279.1.¹³ The State’s witness acknowledged the potential inconsistent definitions of “solicitation” in the absentee ballot context compared to the

¹³ Nor does the fact that § 115.279.2 prohibits a person from prefilling out an absentee ballot application provide any textual clarity to the definition of “solicit.” *See App. Br. 43*. The act of pre-filling out an absentee ballot application is not synonymous with the act of collecting and returning completed absentee ballot applications.

voter registration context. At trial, the Secretary of State’s witness stated that solicitation in the voter registration context occurs only when the solicitor *takes* the voter’s completed application in order to *submit* to the election authority. D177 FOF ¶ 127; App. A20; Trial Tr. 155:5-13. But when presented with the exact same scenario in the absentee ballot application context, the same witness, Ms. Peters, recognized that an absentee ballot application, by law, can be submitted only by the voter or close relative, D177 FOF ¶ 129; App. A20; Trial Tr. 151:15-156:20. Ms. Peters then defined the ban on solicitation to prohibit absentee ballot applications from being *sent* to a prospective absentee voter, not being *taken* or *submitted* on their behalf, as the state would define solicitation in the voter registration context. Trial Tr. 151:15-156:20.

The Secretary of State’s office never provided any formal guidance on the definitions of “solicit” or “compensation.” *Id.* at 96:3-12.

The statute’s lack of clarity and advance notice of the law’s prohibitions is not answered by the Secretary of State’s statements at a conference and at a subsequent Zoom meeting with the LWVMO, in which the state asserted that “solicitation” in the voter registration context covers only taking and submitting the cards on the voter’s behalf. Trial Tr. 97:11-103:1; Defs. Ex. AE. But the fundamental point here is that the statute itself does not define solicit/solicitation. No interpretative gloss by the Secretary of State can change the fact that the statute uses an incredibly broad term that is normally understood to encompass speech, does not define it, and vests authority to impose criminal consequences in individual prosecutors. As the circuit court correctly noted, “it is the responsibility of individual District Attorneys to determine whether they think an individual or organization

has violated one of the Challenged Provisions, such that prosecution would be warranted.” D177 COL ¶ 171; App. A69-A70. The threat of criminal enforcement from one of Missouri’s 115 Prosecuting Attorneys, irrespective of the Secretary of State’s opinions on the law, is chilling and is at the heart of the unconstitutional burden that the Challenged Provisions impose.¹⁴ The circuit court was thus correct in declining to agree with the Secretary of State’s current understanding of “solicitation,” which initially conflicted with the definition proffered by the Office of the Attorney General, or give it dispositive weight.

More fundamentally, Appellants’ attempt to rewrite the Challenged Provisions so that they regulate only conduct and not speech and association cannot be squared with the scope of Respondents’ protected freedoms nor the broad reach the provisions provide. Respondents’ actions here—explaining the importance of voting, encouraging voter registration, assisting fellow citizens in registering to vote, and encouraging voters to vote absentee and requesting an absentee ballot—cannot be sliced and diced to avoid constitutional scrutiny. The core of Appellants’ argument is that accepting a completed voter registration form or providing them with a blank absentee ballot application involves neither speech nor association. But such a cramped view failed in *Meyer* and fails here as well. In *Meyer*, while defendants there argued that the law “did not place any restraint on

¹⁴ A Defendant Class of all Missouri Prosecuting Attorneys was certified in this case on October 24, 2022. D141. That certification was never challenged by State Defendants and the named class representative, Cole County Prosecuting Attorney Locke Thompson, filed a stipulation in this case indicating that he took no official position on the merits and agreed “to be bound by and to follow any ruling of this Court in connection with whether, and to what extent, his office may lawfully file charges under the legislation challenged herein.” D134. The Prosecuting Attorneys are not, nor were they ever, bound by any purported interpretation of the Secretary of State as it relates to the Challenged Provisions.

[plaintiffs'] own expression" because the plaintiffs could speak about the initiative they supported without collecting signatures to qualify it for the ballot, 486 U.S. at 418, the court recognized that this type of interactive political speech cannot be so disaggregated: "[T]he circulation of a petition involves . . . interactive communication concerning political change," *id.* at 421-22; *see also Cobb*, 447 F. Supp. 2d at 1332 (finding restrictive third-party voter registration law "analogous to [the law] in *Meyer*"); *Am. Ass'n of People with Disabilities v. Herrera*, 690 F. Supp. 2d 1183, 1215-16 (D.N.M. 2010), *on reconsideration in part*, No. 08-cv-702, 2010 WL 3834049 (D.N.M. July 28, 2010) (finding "Plaintiffs' public endeavors to assist people with voter registration" involve protected political expression). There is no basis—in either the text of the Challenged Provisions, Respondents' own actions, or the scope of their protected rights—for creating an artificial separation between purportedly unprotected conduct and protected speech and association.

As such, the Challenged Provisions cannot be saved by a court-imposed narrowing construction. The definition of solicitation cannot reasonably be defined to include only unprotected conduct and no protected speech. "[T]he circulation of [voter registration and absentee ballot applications] involves . . . interactive communication concerning political change." *Meyer*, 486 U.S. at 421-22. Moreover, the legislature chose to regulate and criminalize certain pro-voting registration speech using the exceedingly broad, vague, and undefined term of "solicitation." Such content-based restrictions of speech are presumptively unconstitutional. *See Fox v. State*, 640 S.W.3d 744, 750 (Mo. banc 2022). At bottom, any possible understanding of the meaning of "solicit" and "solicitation" in the context of the Challenged Provisions still inherently regulates and burdens speech and

association. This Court cannot rewrite the Challenged Provisions to write the word “solicitation” out of the statutes. *State v. Carpenter*, 736 S.W.2d 406, 408 n.1 (Mo. banc 1987) (explaining that courts must “refrain from any attempt to redraft the statute,” which would invade the prerogatives of the General Assembly).

Finally, the cases that Appellants cite in support of their contention that the Challenged Provisions regulate only unprotected conduct do not support such a reading. To be sure, in *Voting for America, Inc. v. Steen*, 732 F.3d 382, 388, 392 (5th Cir. 2013), the Fifth Circuit stated that “there is nothing ‘inherently expressive’ about receiving a person’s completed application and being charged with getting that application to the proper place.” *Id.* at 392 (quotation omitted). But the Fifth Circuit was not interpreting the specific language of the Challenged Provisions here. To the contrary, the Fifth Circuit reasoned that “solicit” refers to something beyond the mere collection of completed forms. *Steen* made clear that “[s]oliciting, urging and persuading the citizen to vote are the forms of the canvasser’s speech.” 732 F.3d at 390. The decision in *Lichtenstein v. Hargett*, 83 F.4th 575 (6th Cir. 2023), is also inapposite given that the challenged law there did not prohibit “solicitation” but instead prohibited “giv[ing] an application for an absentee ballot to any person.” *Id.* at 604 (White, J., dissenting) (citation omitted).

Peters v. Johns, 489 S.W.3d 262 (Mo. banc 2016), is even further afield. *Peters* involved a candidate ballot access law. Such laws are not generally subject to strict scrutiny. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“[T]he mere fact that a State’s system ‘creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does not of itself compel close scrutiny.’” (citation omitted)). Unlike laws that

govern a candidate's qualifications, the Challenged Provisions do not govern the mechanics of the electoral process, but rather restrict election-related speech, such as the sharing of political ideas about the importance of voting, as well as encouragement to register to vote or apply to vote absentee. This is core political speech. And where that is so, strict scrutiny always applies. *See Buckley*, 525 U.S. at 207 (Thomas, J., concurring) (“When a State’s election law directly regulates core political speech, we have always subjected the challenged restriction to strict scrutiny and required that the legislation be narrowly tailored to serve a compelling governmental interest.”).

C. The circuit court correctly held that the Challenged Provisions burden Respondents’ freedom of association. (Response to Appellants’ Point Relied On III)

Sections 8 and 9 of Article I of the Missouri Constitution “guarantee freedom of . . . association.” *Courtway*, 985 S.W.2d at 352; *see also Turner v. Mo. Dep’t of Conservation*, 349 S.W.3d 434, 448 (Mo. App. S.D. 2011). The First Amendment and the Missouri Constitution both “encompass the ‘right of expressive association,’ *i.e.*, the ‘right to associate for the purpose of speaking.’” *Miller v. City of Cincinnati*, 622 F.3d 524, 537 (6th Cir. 2010) (quoting *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 68 (2006)); *Courtway*, 985 S.W.2d at 352.

The Challenged Provisions prevent Respondents, including their members and staff, from working together to engage potential voters and assist community members in participating in the civic community and the democratic political process through voter registration and absentee voting. This severely burdens Respondents’ expressive association. By directly restricting who may participate in Respondents’ voter engagement

activities and events, the Compensation Ban, Unpaid Solicitor Registration Requirement, and Registered Voter Requirement “directly interfer[e] with [Respondents’] composition”—precisely the type of infringement that the right of expressive association seeks to prevent. *Miller*, 622 F.3d at 537.

Moreover, it is incorrect to say, as Appellants do, that none of the Challenged Provisions “prevent[] anyone from participating in voter registration drives.” App. Br. 70. The Compensation Ban prevented Respondents’ paid staff members from participating in voter registration drives for fear of criminal liability. The Registered Voter Requirement prevented Respondents’ volunteers under the age of eighteen or non-Missouri residents, volunteers who are unable to register, and volunteers in college who vote in other states, from participating in voter registration drives. And those who had not previously complied with the Unpaid Solicitor Registration Requirement were similarly burdened and prevented from participating in a voter registration drive. And each of these restricted the number of voices conveying Respondents’ messages regarding voter registration and voting, limiting their reach.

Appellants are also wrong in arguing that “solicitation of voter registration and absentee-voting does not implicate *expressive* association.” App. Br. 70. Whether a citizen should register and ultimately participate in an election is a “matter of societal concern that [Respondents] have a right to discuss publicly without risking criminal sanctions,” *Meyer*, 486 U.S. at 421, and is intimately intertwined with the whole of Respondents’ speech and associative activities regarding civic participation. The participation of Respondents and their members in voter registration drives signals that they value the democratic process

and believe in the capacity of the popular will to shape the composition and direction of the government. That message is core political speech that is stringently protected under the Missouri Constitution.

II. Because the Challenged Provisions regulate core political speech and association, the circuit court correctly applied strict scrutiny, the *Anderson-Burdick* test is inapplicable, and the Challenged Provisions fail under either standard of review. (Responds to Points Relied On II and IV)

Because there is no basis for reading the Challenged Provisions to regulate only conduct, rather than also reach and restrict core political speech, expression, and association, the circuit court properly applied strict scrutiny. But this is not the only reason that strict scrutiny applies to the Challenged Provisions.

A. The circuit court correctly concluded that the Challenged Provisions are content-based restrictions on expression.

Strict scrutiny was also properly applied because “[t]he Challenged Provisions are unquestionably content-based restrictions on expression. They are not neutral time, place, or manner restrictions on speech but rather govern and tightly regulate (or altogether prohibit) certain speech based on its content.” D177 COL ¶ 98; App. A54. “Laws that regulate speech based on its communicative content ‘are *presumptively* unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.’” *Fox v. State*, 640 S.W.3d 744, 750 (Mo. banc 2022) (quoting *Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2371 (2018)) (emphasis added); *Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984) (“[T]he government may not limit expression because of the message to be conveyed, its ideas, subject matter or content.”).

By targeting speech related only to voter registration and absentee voting, the Challenged Provisions are content-based restrictions that “are presumptively unconstitutional” and subject to strict scrutiny. *Fox*, 640 S.W.3d at 750.

B. Strict scrutiny is further warranted because the Challenged Provisions are viewpoint based.

Viewpoint-based restrictions are also subject to strict scrutiny. *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). Laws that target speech in favor of registering to vote are presumptively unconstitutional viewpoint-based restrictions. *See S.D. Voice v. Noem*, 432 F. Supp. 3d 991, 996 (D.S.D. 2020) (finding a law viewpoint discriminatory because it “specifically applies a burden to the speech of those who ‘solicit’ others to sign ballot measure petitions, but not those who solicit them not to do so”). The circuit court here correctly concluded that the Unpaid Solicitor Registration Ban, Registered Voter Requirement, and Compensation Ban all “restrict only speech that solicits voter registration applicants—that is, speech in favor of registering to vote—and do not restrict speech opposed to voter registration.” D177 COL ¶ 104; App. A55. Likewise, the Absentee Ballot Solicitation Ban prohibits only speech that encourages citizens to apply for an absentee ballot and does not regulate speech opposed to absentee voting. D177 COL ¶ 105; App. A55. Simply put, discouraging a person from registering to vote or voting absentee is not restricted. Yet, encouraging a person to register or vote absentee, and assisting them in doing so, is restricted. This is the definition of a viewpoint-based restriction.

C. The Challenged Provisions fail strict scrutiny.

Because strict scrutiny is the appropriate level of review, the Challenged Provisions “will be upheld only if [they are] narrowly tailored to serve a compelling state interest.” *Priorities USA v. State*, 591 S.W.3d 448, 453 (Mo. banc 2020) (quoting *Peters*, 489 S.W.3d at 273). In their briefing, Appellants do not argue that the Challenged Provisions satisfy strict scrutiny, rather they contend that the Challenged Provisions do not actually restrict speech. And for good reason: The Challenged Provisions can survive neither strict scrutiny nor even the least exacting review available under the *Anderson-Burdick* framework or any level of scrutiny under the Missouri Constitution.

To survive strict scrutiny, the government’s compelling interest must be “paramount, one of vital importance, and the burden is on the government to show the existence of such an interest.” *Elrod v. Burns*, 427 U.S. 347, 362 (1976). As the circuit court recounted, while Appellants have proffered some interests in enforcing the Challenged Provisions, those asserted interests have shifted over time. Specifically, while Appellants initially asserted that the Challenged Provisions were necessary to prevent election fraud, they later conceded that they were aimed “at least partially” at easing the burden on election officials tasked with processing voter registrations. D177 COL ¶ 134; App. A62. Appellants likewise asserted that another “state interest is to remove improper monetary incentives such as paying people to collect voter registrations on a per-registration basis.” D177 COL ¶ 135; App. A62. Additional interests asserted include “ensuring that registrations are turned in, ensuring that voters are connected to their local election authorities directly, increasing or enabling accountability in the voting process,

and protecting the privacy of voters and their ballots.” D177 COL ¶ 136; App. A62. The circuit court correctly held, however, as discussed *supra* SOF Section IV, that none of the Challenged Provisions are sufficiently related let alone tailored to any of these interests.

While combating voter fraud is a recognized compelling state interest, *see Priorities USA*, 591 S.W.3d at 453, the Challenged Provisions are not in fact narrowly tailored to that interest. Instead, as the circuit court correctly concluded, “the State has failed to demonstrate any evidence of election fraud in Missouri that the Challenged Provisions could plausibly address, and much less one that the Provisions could be narrowly tailored to address.” D177 COL ¶ 141; App. A63. To start, numerous checks and balances in voter registration and absentee voting already safeguard against election fraud. These existing protections work to prevent fraud before any votes are cast in Missouri. Moreover, even if existing protections are insufficient—which is not supported by the record—the Challenged Provisions are not rationally related, much less narrowly tailored, to addressing that concern.

Since 2006, Missouri has maintained a central voter registration database, known as MCVR. D177 FOF ¶¶ 12, 171-73; App. A3, A28; Trial Tr. 134:3-9;; *see also* D170 ¶¶ 12-13, 24. The full integration of MCVR in 2009, combined with added integrations with other state databases, including the Social Security Administration, Department of Health and Senior Services, and the Department of Revenue’s driver’s license database, has improved the accuracy of the voter rolls and ensured that invalid or incomplete applications do not make it onto the rolls. D177 FOF ¶¶ 12, 171-74, 177; App. A3, A28-29; Trial Tr. 134:10-22; *see also* D170 ¶¶ 24, 40, 48. This centralization eliminated the patchwork approach,

where each of Missouri's 116 local election authorities maintained their own voter registration lists, and provided election officials with technology to identify fraudulent or problematic voter registrations. D177 FOF ¶¶ 5, 172, 175; App. A3, A28, A29; D170 ¶ 5; Trial Tr. 134:10-22, 137:8-137:10; 138:17-139:5. Consequently, the state conceded at trial that invalid or non-existent applicants are not added to the Missouri voter roll. D177 FOF ¶ 179; App. A29; Trial Tr. 130:19-137:10; *see also* D170 ¶¶ 40, 48. These checks are aided by the text on voter registration applications that instruct applicants not only to print clearly, but also to provide accurate information, as providing false information is an election offense, subject to up to five years in prison and a \$10,000 fine. D177 FOF ¶ 183; App. A30; Trial Tr. 144:12-145:2. And of course, the Challenged Provisions have not been in effect since they were preliminarily enjoined by the trial court in 2022. At trial, the state did not introduce any evidence of adverse consequences that occurred as a result.

There are many election safeguards in state and federal law *predating* the Challenged Provisions. First, § 115.203(1) prohibits “bounty hunting” or paying people “for registering voters based on the number of (1) Voters registered by the other person; (2) Voter registration applications collected by the other person; or (3) Voter registration applications submitted to election officials by the other person.” Second, Missouri’s electoral system already prevents voter fraud with several laws. *See, e.g.*, § 115.503 (requiring verification boards to inspect secured electronic voting machines); § 115.513 (“If any verification board, bipartisan committee, election authority or the secretary of state obtains evidence of fraud or any violation of law during a verification, it shall present such evidence immediately to the proper authorities.”); § 115.553 (“Any candidate for election

to any office may challenge the correctness of the returns for the office, charging that irregularities occurred in the election.”); § 115.583 (requiring a recount where a “court or legislative body hearing a contest finds there is a prima facie showing of irregularities which place the result of any contested election in doubt”); § 115.631 (making voting more than once or voting knowing that the person is ineligible to vote a class-one election offense). While nothing prevents the legislature from adding additional criminal statutes to address the same conduct, the legislature must do so in a manner that is narrowly tailored so as not to infringe on constitutional rights.

The effectiveness of these safeguarding mechanisms is demonstrated by the sheer lack of evidence that nongovernmental actors encouraging people to register to vote or assisting applicants with registration has led to fraudulent voting in Missouri, thus undermining the purportedly compelling nature of the state’s asserted interest in the Challenged Provisions. *See* D177 COL ¶ 145; App. A64. The State presented no evidence that requesting an absentee ballot is connected with fraudulent absentee ballot voting. Moreover, the circuit court correctly found that even if the State had proven a meaningful concern with registration or absentee ballot fraud, the Challenged Provisions are not reasonably, much less narrowly, tailored to combat it. *See* D177 COL ¶ 146; App. A64.

For example, in most cases, the Secretary of State’s office has no way of knowing which Voter Registration Solicitor assisted which voter with a registration. The Challenged Provisions do not change this. Likewise, the Secretary of State does not “assess, review, or qualify someone” submitting a solicitor application. Instead, they are simply added to a list without further review. *See* D177 COL ¶ 148; App. A64. As the circuit court explained,

“[m]aintaining this list and requiring anyone on it to be a registered voter does not do anything to connect a voter directly with their [local election authority], it does not protect the privacy of voters, and it does not ensure that registrations are turned in.” *Id.* Moreover, the Absentee Ballot Solicitation Ban does not prevent absentee voting fraud—it covers applying for an absentee ballot, an application that is fully vetted by the local election authority before they ever send the voter a ballot. While the Absentee Ballot Solicitation Ban bars individuals from encouraging others to vote absentee or assist them in obtaining an application or completing the application process, the provision “does not touch on absentee voting itself.” D177 COL ¶ 149; App. A65; Trial Tr. 240:11-244:4.

The State also failed to show that “HB 1878 reduces fraud by removing improper monetary incentives for third-party registration solicitors.” D177 COL ¶ 151; App. A65. Paying per registration is already illegal in Missouri, and in the proceedings below, Appellants provided “no evidence that improper monetary incentives exist, or that such incentives lead to ‘sloppy registrations,’ ‘fraud’ and ‘convictions’ that they claim plague Missouri’s election administration.” D177 COL ¶ 151; App. A65; Trial Tr. 141:17-18. Nothing in Appellants’ briefing on appeal undermines the correctness of the trial court’s findings about the lack of narrowly tailored fit between the Challenged Provisions and the state’s asserted interests. *See generally* D177 COL ¶¶ 138-58; App. A63-67. Because the Challenged Provisions are not narrowly tailored to achieve the State’s asserted interests—*i.e.*, reducing election fraud—and because administrative convenience cannot justify a burden on constitutional rights to speech, expression, and association, *see Wengler v.*

Druggists Mut. Ins. Co., 446 U.S. 142, 152 (1980), the Challenged Provisions fail strict scrutiny.

D. The Anderson-Burdick framework does not apply to this case.

Appellants contend that, should this Court find that the Challenged Provisions implicate Respondents’ First Amendment rights, the proper standard of review is decided under the *Anderson-Burdick* balancing test. App. Br. 50. But as the circuit court correctly held, D177 COL ¶¶ 123-30; App. A59-61, *Anderson-Burdick* is inapplicable here and would require strict scrutiny in any event.

First, the *Anderson-Burdick* balancing framework is inapplicable because it is reserved for laws that regulate the “mechanics of the electoral process” itself—“ballot-access claims, political-party associational claims, and voting-rights claims.” *VoteAm.*, 121 F.4th at 840-43. It does not apply to “limitation[s] on political expression.” *McIntyre*, 514 U.S. at 345-46. In *VoteAmerica*, the Tenth Circuit refused to apply *Anderson-Burdick* to a Kansas law that prohibited third parties from distributing personalized, pre-filled advance mail ballot applications because it “stop[ped] [the plaintiff] from speaking (in the form of mailing prefilled applications to Kansas voters).” 121 F.4th at 843. Similarly, here, the Challenged Provisions strictly regulate who and how one can “solicit” voter registration applications and prohibit all persons from soliciting a voter into obtaining an absentee ballot application. *See supra* SOF Section I. Thus, the Challenged Provisions “stop[]” Respondents “from speaking []in the form of” sharing political ideas and encouraging others to register to vote or apply to vote absentee. *VoteAm.*, 121 F.4th at 843. As such, the Challenged Provisions are not regulations on the mechanics of the electoral process itself,

nor do they implicate ballot access, political party association, or voting rights issues. Therefore, *Anderson-Burdick* is inapplicable.

To evade strict scrutiny, Appellants attempt to recast the Challenged Provisions as “election regulations” subject to the *Anderson-Burdick* framework. App. Br. 51. But Respondents have never claimed that the Challenged Provisions burden the constitutional right to *vote*, let alone relied on any purported constitutional right to vote absentee in their challenge to HB 1878’s Absentee Ballot Solicitation Ban. Rather, as discussed herein, this case is about free speech and association. Respondents have demonstrated that the Challenged Provisions impede their ability to engage in constitutionally protected speech, expressive activity, and association.

Further, Appellants’ cited authorities are inapposite. The cases they invoke involve circumstances where the First Amendment rights of voters were incidentally affected by regulations of the voting process. *See, e.g.*, App. Br. 50-51. But that is not the case here, where speech and association itself is the object of the regulation. Appellants repeatedly cite *Peters v. Johns*, which applied *Anderson-Burdick* to a candidate’s challenge to the Missouri Constitution’s two-year durational voter registration requirement. 489 S.W.3d 262 (Mo. banc 2016). But *Peters* is readily distinguishable. There, this Court explained that candidacy restrictions may “affect, *to some degree*, the First Amendment associational rights of voters....” *Id.* at 272-73 (emphasis added). By contrast, the Challenged Provisions here do not incidentally touch on voting rights through candidacy or ballot-access restrictions; they directly prohibit Respondents from engaging in protected speech and expressive activity. As such, Appellants’ reliance on *Peters* and similar cases

underscores, rather than undermines, the conclusion that *Anderson-Burdick* is inapplicable. Moreover, Appellants' citation to *Mazo v. N.J. Sec'y of State* is unavailing. 54 F.4th 124 (3d Cir. 2022). While *Mazo* acknowledged that *Anderson-Burdick* can sometimes extend to free-speech claims, it expressly limited that principle to circumstances where "the law primarily regulates the electoral process." *Id.* at 140. In contrast, "if the law does not primarily regulate the electoral process and instead aims at regulating political speech, it is subject to a traditional First Amendment analysis." *Id.* That distinction is critical. The Challenged Provisions primarily regulate political expression—not the mechanics of elections—and therefore must be subject to traditional First Amendment strict scrutiny. Thus, as *Mazo* itself confirms, *Anderson-Burdick* is not the appropriate standard to apply.

Second, even if this Court applied the *Anderson-Burdick* framework, the resulting scrutiny would be nearly identical. The *Anderson-Burdick* framework measures the character and magnitude of the injury to the plaintiffs' rights against the state interests that purportedly justify the burden imposed. *Crawford v. Marion Cnty. Election Bd*, 553 U.S. 181, 190 (2008). When the burden is "severe," the restriction must be "narrowly drawn" to a "state interest of compelling importance." *Id.*; *Peters*, 489 S.W.3d at 273-74. Burdens on core political speech are *per se* severe. *Buckley*, 525 U.S. at 207 (Thomas, J., concurring).

For the reasons discussed above, the Challenged Provisions severely burden Respondents' freedom of speech and association. The Challenged Provisions do not cause incidental or tangential effects on speech flowing from the administration of an election, but are prohibitions aimed squarely at expressive activity. That is precisely the type of

burden *Anderson-Burdick* treats as “severe,” triggering a standard of review that is functionally indistinguishable from strict scrutiny.

In any event, Appellants have not met their burden of justifying the Challenged Provisions even under the least exacting review available under the *Anderson-Burdick* sliding scale. This lesser standard requires Appellants to show that the Challenged Provisions are “justified by a legitimate interest and [are] a reasonable way of accomplishing this goal.” *Peters*, 489 S.W.3d at 273. As discussed previously, Appellants have failed to provide any evidence of their asserted interests. Nor have they shown that the Challenged Provisions are reasonably tailored to advancing those asserted interests. In particular, with respect to Appellants’ primary asserted interest in combatting fraud, they 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 when undertaking voter registration activities, that requiring solicitors to pre-register will assist the State in addressing fraud, or that barring all speech that encourages applying for an absentee ballot will prevent absentee voting fraud. Thus, the Challenged Provisions would not survive even the least exacting scrutiny under *Anderson-Burdick*, much less the strict scrutiny that properly applies.

III. The circuit court correctly held that the Challenged Provisions violate Respondents’ due process rights because they are impermissibly vague. (Responds to Points Relied On V and VI)¹⁵

The Challenged Provisions violate the due process rights guaranteed by the Missouri Constitution. By failing to define “solicitation” and “compensation,” HB 1878 provides inadequate notice of how to avoid criminal penalties and gives prosecutors unfettered discretion to enforce the requirements arbitrarily. *See* Mo. Const. Art. I, § 10. Because Respondents were forced to curtail their voter-engagement activities due to the credible threat of prosecution under the unclear laws, they have standing to assert their Due Process claim.

A. The Challenged Provisions are void for vagueness. (Response to Appellants’ Point Relied On VI)

Article I, Section 10 of the Missouri Constitution provides “[t]hat no person shall be deprived of life, liberty or property without due process of law.” The due process guarantee requires that a statute “give ordinary people fair notice of the conduct it punishes” and not be “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015); *see also State v. Young*, 695 S.W.2d 882, 884 (Mo. banc 1985).

The proscription against vagueness is strictest when a statute (1) “threatens to inhibit the exercise of constitutionally protected rights,” (2) imposes criminal penalties, (3) lacks

¹⁵ Although Appellants mention the overbreadth doctrine in the substance of their argument in point VI, and Respondents therefore also address it herein, Appellants have failed to raise it as a standalone point on appeal or even as part of any point on appeal (e.g., point VI references vagueness only, which requires a due process analysis) and thus they have waived any argument based on Circuit Court’s finding on Respondents’ overbreadth claim.

a scienter requirement, or (4) is noneconomic in nature. *State ex rel. Nixon v. Telco Directory Publ'g*, 863 S.W.2d 596, 600 (Mo. banc 1993) (quoting *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498-99 (1982)). “Criminal statutes require particularly careful scrutiny” for vagueness, the Missouri Supreme Court has warned, “and ‘those that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid *even if they also have legitimate application.*’” *State v. Vaughn*, 366 S.W.3d 513, 518 (Mo. banc 2012) (emphasis added) (quoting *State v. Moore*, 90 S.W.3d 64, 66 (Mo. banc 2002)).

Here, all four considerations call for a more rigorous review of the Challenged Provisions’ constitutionality: The restrictions “threaten[] to inhibit [Respondents’] exercise of constitutionally protected rights” to free speech, expression, and association. Violations of the restrictions are criminal election offenses, and with one exception,¹⁶ result in strict

¹⁶ Only a “knowing[]” failure to register as a voter registration solicitor is a criminal violation. § 115.205(4). However, the relevant statute does not specify whether the individual must know both that she is required to register and that she has not done so or know only that she has not registered. *See id.* If the latter, the scienter requirement does nothing to alleviate the statute’s vagueness, which leaves individuals without fair notice of the need for registration. As Supreme Court justices and legal scholars alike have cautioned, in many cases, the “supposed cure” of a scienter requirement “fixes nothing because one can satisfy a scienter requirement by knowing the *nature* of one’s conduct and the *facts* that make one’s conduct illegal and still not understand that one’s conduct falls within the *law’s* proscription because of *indefinite statutory language.*” Michael J. Zydney Mannheimer, *Vagueness as Impossibility*, 98 TEX. L. REV. 1049, 1053 (2025) (emphasis added); *see also, e.g., Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 345 (1952) (Jackson, J., dissenting) (explaining that knowledge of the relevant facts, which is sufficient to satisfy a statutory scienter requirement, is very different from “knowledge of the law,” which is not necessary to satisfy a statutory scienter requirement, and ascertainment of the *meaning* of a statute is a question of “knowledge of the law”); *Screws v. United States*, 325 U.S. 91, 154 (1945) (Roberts, J., dissenting) (“If a statute does not satisfy the due-process requirement of giving decent advance notice of what it is which, if happening, will be

criminal liability. *See, e.g.*, §§ 115.133; 115.205.4; 115.279.2; 115.631; 115.635. The Challenged Provisions are therefore subject to the most “stringent vagueness test.” *Vill. of Hoffman*, 455 U.S. at 499. And the Challenged Provisions fail this test by leaving undefined key terms “solicitation” and “compensation,” forcing Respondents to guess at what conduct is actually proscribed.

First, the Challenged Provisions do not define the word “solicit,” nor have Appellants offered a consistent definition; even if they had, they nevertheless lack any enforcement authority of the criminal penalties associated with violation of the laws, which is instead left to the discretionary interpretations of the State’s 115 Prosecuting Attorneys. Again, while they have previously asserted that “to solicit voter registration applications” is to “entreat, importune, or approach people with a request or plea that they register to vote,” *see* D130 p. 18, they now claim that the term “does not include merely encouraging someone to register or apply to vote absentee,” but must include “*receiving* voter registrations and absentee-ballot applications.” App. Br. 41. Further muddying the waters, the Secretary of State’s office has implied that “solicit” carries separate meanings when used in the Absentee Ballot Solicitation Ban versus the Voter Registration Solicitation Ban even though both provisions appear in the same statute and carry criminal penalties. *Compare* Trial Tr. 152:11-155:4 *with* 155:5-157:4. This utter lack of clarity forced Respondent organizations, which assist thousands of potential Missouri voters each year,

visited with punishment . . . then ‘willfully’ bringing to pass such an undefined and too uncertain event cannot make it sufficiently definite and ascertainable.”).

to guess between incompatible definitions to determine which of their core activities could result in criminal sanctions.

Second, the Compensation Ban does not define what it means to “be paid or otherwise compensated” in this context. *Cf. Mo. Prosecuting Att’ys v. Barton Cnty.*, 311 S.W.3d 737, 742 (Mo. banc 2010) (noting that the term “compensation” “can have quite varied meanings in different contexts”). Rules of statutory construction require both terms, “paid” and “otherwise compensated” to have their own independent meaning within the statute. *See Fischer v. United States*, 603 U.S. 480, 496 (2024) (statutory constructions creating surplusage are “disfavored”). Since the statute prohibits anyone from being “paid *or* otherwise compensated” (emphasis added), the prohibited conduct must include compensation other than payment, such as providing T-Shirts, food or reimbursement for expenses. It is unclear to Respondents whether the ban on compensation would prohibit individuals from accepting—and organizations from offering—reimbursement for gas and other expenses incurred in conducting voter registration activities, or applies to food, training, gifts, or other benefits Respondent organizations regularly offer their volunteers and staff in connection with voter registration activities.

As such, the Challenged Provisions give inadequate notice by failing to define the conduct they proscribe. This lack of clarity empowers individual District Attorneys who, unlike the Secretary of State’s office, are required to determine how “solicit” or “compensate,” should be defined and what conduct such terms encompass, thus “invit[ing]” the exact “arbitrary enforcement” and prosecution that Due Process forbids. *Johnson*, 576 U.S. at 595.

i. Pre-enforcement challenges are appropriate in the speech context.

Appellants contend that “pre-enforcement vagueness challenges are almost impossible to win.” App. Br. 73. But that is incorrect where—as here—a challenged law “threaten[s] to infringe constitutionally protected conduct.” *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 546 (5th Cir. 2008). Indeed, “[m]any times void-for-vagueness challenges are successfully made when laws have the capacity to chill constitutionally protected conduct, especially conduct protected by the First Amendment.” *Id.* (citing *United States v. Gaudreau*, 860 F.2d 357, 360 (10th Cir. 1988)) (citation modified); *Coates v. City of Cincinnati*, 402 U.S. 611, 615-16 (1971); *Colautti v. Franklin*, 439 U.S. 379, 390-91 (1979); *see also Planned Parenthood of Ind. & Ky., Inc. v. Marion Cnty. Prosecutor*, 7 F.4th 594, 603 (7th Cir. 2021) (explaining that pre-enforcement void-for-vagueness challenges are not discouraged in the First Amendment context); *Dana’s R.R. Supply v. Att’y Gen., Fla.*, 807 F.3d 1235, 1241 (11th Cir. 2015) (same).

ii. A facial challenge is necessary here.

Facial vagueness challenges to statutes burdening speech are not only permitted but essential. The “uncertain meanings” of vague laws cause persons regulated thereby “to ‘steer far wider of the unlawful zone’ than if the boundaries of the forbidden areas were clearly marked.” *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964) (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)). The only way to avoid such a deterrent effect is to challenge the statute’s vagueness on its face and prior to its enforcement. *See Brown*, 564 U.S. at 793 (citing *Winters v. New York*, 333 U.S. 507, 517-19 (1948)); *see also HM Fla.-ORL v. Governor of Fla.*, 137 F.4th 1207, 1225-26 (11th Cir. 2025) (explaining that “[t]he desire

to avoid chilling protected speech animates several related doctrines that can invalidate speech laws on their face,” including “vagueness”). As Justice White observed from his survey of the Court’s First Amendment jurisprudence in *Coates*:

Our cases . . . recognize a different approach where the statute at issue purports to regulate or proscribe rights of speech or press protected by the First Amendment. Although a statute may be neither vague, overbroad, nor otherwise invalid as applied to the conduct charged against a particular defendant, he is permitted to raise its vagueness or unconstitutional overbreadth as applied to others. And if the law is found deficient in one of these respects, it may not be applied to him either, until and unless a satisfactory limiting construction is placed on the statute. The statute, in effect, is stricken down on its face.

402 U.S. at 619-20 (White, J., dissenting) (citing *United States v. Robel*, 389 U.S. 258 (1967); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 604 (1967); *Kunz v. New York*, 340 U.S. 290 (1951); *Dombrowski v. Pfister*, 380 U.S. 479, 491-92 (1965); *United States v. Nat’l Dairy Prods. Corp.*, 372 U.S. 29, 36 (1963)); see also *id.* at 615 (majority opinion) (agreeing that a vague ordinance burdening First Amendment rights is properly invalidated on its face).

Appellants’ contention that there can be no facial vagueness challenges where there is *some* clear application of the statute flouts decades’ worth of U.S. Supreme Court precedent and misstates Missouri law. Appellants assert that “to be void for vagueness, a statute must be unconstitutionally vague in *all* its applications.” App. Br. 76 (citing *Md. Heights v. State*, 638 S.W.3d 895, 899-900 (Mo. banc 2022)). But this Court held nothing of the sort in *Md. Heights*. Rather, it stated that “speculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid in the *vast majority* of its intended applications.” 638 S.W.3d at 899-

900 (citing *Hill v. Colorado*, 530 U.S. 703, 733 (2000) (emphasis added)). Appellants have not established that the Challenged Provisions are valid in the “vast majority” of applications; they cannot even consistently articulate what those applications are. *Compare* Trial Tr. 152:11-155:4 with 155:5-157:4.¹⁷

B. Respondents have standing to assert their vagueness claim. (Response to Appellants’ Point Relied On V)

Faced with an unclear strict-liability statute backed by criminal penalties, Respondents rationally altered their operations to avoid running afoul of the Challenged Provisions while they were in effect. *See Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (“Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.”). Respondents, therefore, met their burden of proof to show that because of the Challenged Provisions’ vagueness, “the statute’s deterrent effect on legitimate expression” is “both real and substantial.” *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50, 60 (1976); *see City of St. Louis v. Kiely*, 652 S.W.2d 694, 702 (Mo. App. E.D. 1983). As a result, Respondents have standing to assert their vagueness claim. “Reduced to its essence, standing roughly means that the parties have some personal stake in the dispute, even if that interest is attenuated, slight or remote.” *Ste. Genevieve Sch. Dist. R-II v. Bd. of Alderman of the City of Ste.*

¹⁷ Appellants’ invocation of the overbreadth doctrine, App. Br. 77, is a red herring with no bearing on Respondents’ vagueness claim. In any event, the circuit court properly found that the Challenged Provisions are unconstitutionally overbroad because they impair a wide swath of constitutionally protected rights of speech, expression, and association. D177 COL ¶¶ 109-13; App. A56-57; *see also State v. Carpenter*, 736 S.W.2d 406, 408 (Mo. banc 1987); *infra* Arg. Section IV.

Genevieve, 66 S.W.3d 6, 10 (Mo. banc 2002). In an action for declaratory judgment, “Missouri courts require that the plaintiff have a legally protectable interest at stake in the outcome of the litigation.” *Id.* “A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff’s interest is conferred by statute.” *Id.* For example, this Court held that Planned Parenthood of Kansas had alleged such an injury-in-fact where a statute created risk that the organization’s First Amendment activities would result in liability. *See Planned Parenthood of Kan.*, 220 S.W.3d at 737 (“Planned Parenthood’s legally protectable interest in the outcome of this litigation is its desire to exercise its First Amendment rights . . . without being subject to civil liability. It has standing to bring the First Amendment and vagueness claims.”).

Respondents here have the same legally protectable interest as Planned Parenthood, and have suffered further injury to their core activities. Since it was unclear whether “compensate” included reimbursing their volunteers’ gas mileage, they chose to stop all reimbursements to avoid the risk of criminal prosecution. Defs. Ex. BC Dugan Trial Dep. 41:1-9; Defs. Ex. BD Pener Trial Dep. 32:14-23. Due to confusion over whether encouraging eligible voters to cast absentee ballots was “soliciting” that constituted a felony offense, they stopped. Pener Trial Dep. Ex. 1, Chapel Aff. ¶¶ 39-41; Defs Ex. BC Dugan Trial Dep. 57:16-63:15; Defs. Ex. BE Turner Trial Dep. 49:23-51:6; Defs. Ex. BD Pener Trial Dep. 62:5-22. These injuries are not “self-inflicted harms,” App. Br. 73, but chill from engaging in constitutionally protected activity.

The U.S. Supreme Court has explained that this exact scenario constitutes injury in fact in the pre-enforcement context: “[A] plaintiff satisfies the injury-in-fact requirement

where he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (internal quotations omitted). Especially in the context of article I, § 8 and the First Amendment, Missouri courts permit a plaintiff to “challenge a statute . . . because of a judicial prediction or assumption that the statute’s very existence may cause others not before the court to refrain from constitutionally protected speech or expression.” *Vaughn*, 366 S.W.3d at 518 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)) (internal quotation marks omitted). Pre-enforcement challenges are permitted in the article I, § 8 context because “[p]arties need not subject themselves to a multiplicity of suits or litigation or await the imposition of penalties under an unconstitutional enactment in order to assert their constitutional claim for an injunction.” *Planned Parenthood of Kan.*, 220 S.W.3d at 739; *see also id.* at 739-40.¹⁸ Moreover, “[t]he loss of First Amendment freedoms, for even

¹⁸ *See also Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 794-95 (8th Cir. 2016) (holding that an association had standing to bring a pre-enforcement challenge to a statute burdening speech rights because it had reasonably “self-censored” for eleven days as a result of the statute’s enactment); *Parents Defending Educ. v. Linn Mar Comm. Sch. Dist.*, 83 F.4th 658, 666 (8th Cir. 2023) (“A plaintiff claiming an abridgment of the right to free speech has standing to seek pre-enforcement review of a policy.”); *Animal Legal Def. Fund v. Reynolds*, 297 F. Supp. 3d 901, 912 (S.D. Iowa 2018) (“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.’” (quoting *Republican Party of Minn., Third Cong. Dist. v. Klobuchar*, 381 F.3d 785, 792 (8th Cir. 2004))).

minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373; accord *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999).

Appellants’ reliance on *Clapper v. Amnesty International* is therefore misplaced. Unlike *Susan B. Anthony List*, *Clapper* did not involve a challenge to a criminal statute. See 568 U.S. 398, 401 (2013). As the Supreme Court has made clear, “a credible threat of prosecution”—entirely absent in *Clapper*—transforms the injury-in-fact analysis. *Susan B. Anthony List*, 573 U.S. at 159.

Because Respondents faced a credible threat of prosecution for engaging in protected voter-engagement activities as a result of the Challenged Provisions, they have standing to bring their Due Process claim. See *Planned Parenthood of Kan.*, 220 S.W.3d at 737.

IV. Any argument by Appellants that the overbreadth doctrine either does not apply or that the challenged statutes are not overbroad was waived when Appellants failed to raise the argument as a point relied on in accordance with Missouri Supreme Court Rule 84.04(d).

The circuit court correctly found that the Challenged Provisions violate Respondents’ constitutional rights under Mo. Const. Art. I, § 8 because they are overbroad. See D177 COL ¶¶ 109-13; App. A56-57. These findings have not been challenged by Appellants, and any argument related to overbreadth has been waived and must be ignored by this Court. Appellants reference overbreadth within Point Relied On VI (a point specifically related to the court’s ruling on void for vagueness) as a way in which Appellants purportedly believe that Respondents may attempt to “rebut” the void-for-vagueness argument. Respondents very clearly raised separate claims in their petition, one

alleging that the Challenged Provisions are void for vagueness and alleging that the Challenged Provisions are overbroad. D123 ¶¶ 158, 182, 184-202. Because an overbreadth analysis is premised on the right to free speech and association, Mo. Const. Art. I, § 8, it was included in Respondents’ Counts I (Violation of the Right to Free Speech Under Article I, Section 8 of the Missouri Constitution) and II (Violation of the Right to Free Association Under Article I, Section 8 of the Missouri Constitution). Count III (Violation of Due Process Under Article I, Section 10, of the Missouri Constitution), on the other hand, included Respondents’ void-for-vagueness claim. Overbreadth does not rebut vagueness. They are two separate constitutional claims.

Missouri Supreme Court Rule 84.04(d) requires appellate briefs to contain “Points Relied On” which (1) identify the challenged court ruling, (2) state the concise legal argument relied on, and (3) summarize how the legal arguments support the challenged court ruling. Rule 84.04 (d). The appellate court will only review the issues that are raised in the points relied on which are presented in the form outlined in Rule 84.04(d). *Young v. Ernst*, 113 S.W.3d 695, 697 (Mo. App. S.D. 2003). Because the rule functions to inform the court of the issues presented for review, a point that “fails to substantially comply with Rule 84.04(d) . . . preserves nothing for [the court’s] review.” *Rosehill Gardens, Inc. v. Luttrell*, 67 S.W.3d 641, 646 (Mo. App. W.D. 2002). Specifically, when points require searching the argument portion of the brief to determine and clarify the point, the point is deficient and does not comply with Rule 84.04(d). *See id.*

Here, Appellants’ Point Relied On VI states “[t]he circuit court erred in holding that §§ 115.205.1 and 115.279.2 are void for vagueness under Article I, § 10, because the terms

‘solicit’ and ‘compensated’ are sufficiently clear in both statutes, in that they are commonly understood and have unambiguous applications.” App. Br. 73. In an attempt to *rebut* a potential argument, Appellants hypothesize that Respondents “may try to rebut this [facially vague] argument by citing the overbreadth doctrine.” *Id.* at 77. Appellants argue that any overbreadth doctrine rebuttal would either not apply or not be violated by §§ 115.205.1 and 115.279.2.

Appellants’ argument regarding the overbreadth doctrine was not properly presented in the Point Relied On VI, or any other point. Appellants’ statement, rebutting a hypothetical overbreadth argument, is used to support their overall argument that §§ 115.205.1 and 115.279.2 are not void or vagueness. Under Rule 84.04(d) this legal support is a required part of the Point Relied On. Because the overbreadth argument is neither stated in Point Relied On VI, nor made its own point relied on, the court was not informed of the legal argument and thus the argument is waived for lack of preservation. Because the overbreadth findings were not challenged, the judgment could be affirmed on this basis alone.

In any event, the Challenged Provisions are unconstitutionally overbroad, as the circuit court correctly concluded. As discussed throughout this brief, the Challenged Provisions impermissibly restrict a wide range of Respondents’ constitutionally protected speech rights. Where a statute implicates speech, “the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted and perceived grievances left to fester because of the possible inhibitory effects of overly broad statutes.” *Broadrick*, 413 U.S. at 612; *see*

also Carpenter, 736 S.W.2d at 408 (a statute is overbroad when it “acts to smother speech otherwise protected by the First Amendment in that ‘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’”) (citing *Gooding v. Wilson*, 405 U.S. 518, 521 (1972)). The Challenged Provisions’ unconstitutional overbreadth is evidenced by Respondents’ actions in restricting and stopping a large portion of their speech related to voter registration and absentee voting because they feared criminal sanctions under the Challenged Provisions.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court affirm the judgment below.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on October 14, 2025, the foregoing brief was filed electronically and a copy of it was served automatically on counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06; (3) contains 21,841 words, in compliance with Rule 84.06(b), as determined using the word-count feature of Microsoft Office Word, which includes all material in the brief other than the cover, certificate of service, and signature block. Finally, the undersigned certifies that electronically filed brief was scanned and found to be virus free.