SC101308

In the Supreme Court of Missouri

SEAN SOENDKER NICHOLSON,

Appellant/Cross-Respondent,

vs.

STATE OF MISSOURI, et al.,

Respondents/Cross-Appellants.

Appeal from the Circuit Court of Cole County
The Honorable Daniel R. Green

BRIEF OF RESPONDENTS/CROSS-APPELLANTS

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JURISDICTIONAL STATEMENT

Notwithstanding Nicholson's lack of standing, this Court has jurisdiction because this appeal addresses whether S.B. 22 is procedurally and substantively valid under the Missouri Constitution. Under article V, section 3 of the Missouri Constitution, this Court has "exclusive appellate jurisdiction in all cases involving the validity … of a statute … of this State." *Alderson v. State*, 273 S.W.3d 533, 535 (Mo. banc 2009). "[W]here any party properly raises and preserves in the trial court a real and substantial (as opposed to merely colorable) claim that a statute is unconstitutional, this Court has exclusive appellate jurisdiction over any appeal in which that claim may need to be resolved." *Boeving v. Kander*, 496 S.W.3d 498, 503 (Mo. banc 2016).

Appellant Sean Nicholson brought this action in the circuit court, arguing, among other things, that S.B. 22 violated article III, sections 21 and 23 of the Missouri Constitution and that § 526.010 violated article I, section 2 of the Missouri Constitution. (D2.) On September 23, 2025, the circuit court held § 526.010 unconstitutional under article 1 section 2 of the Missouri Constitution but upheld the remainder of S.B. 22 as procedurally constitutional. (D32.) Nine days later, on October 2, the circuit court amended the judgment on its own motion. (D30.) On the same day, Nicholson filed a timely notice of appeal from the amended judgment finding S.B. 22 procedurally constitutional. (D31); Rules 78.07(d), 81.04(a). Six days later, on

October 6, the defendants filed a timely notice of appeal from the amended judgment finding § 526.010 unconstitutional. (D39; Rule 81.04(c).

INTRODUCTION

This case arrives with a demanding premise: Nicholson seeks to overturn a duly enacted state statute, despite Missouri law's strong presumption that statutes are constitutional and may be invalidated only when they "clearly and undoubtedly" violate the constitution in a way that "palpably affronts fundamental law." *Cedar Cnty. Comm'n v. Parson*, 661 S.W.3d 766, 771 (Mo. banc 2023) (internal citation omitted); *State v. Richard*, 298 S.W.3d 529, 531 (Mo. banc 2009). He accordingly bears the burden to prove such a clear and undoubted constitutional violation, and the Court must resolve all doubt in favor of the statute's validity, making every reasonable intendment to sustain it. *State v. Faruqi*, 344 S.W.3d 193, 199 (Mo. banc 2011). And where, as here, the claims include procedural attacks on the legislative process under Article III, sections 21 and 23, this Court cautions that such challenges are "not favored," which weighs the scales even more heavily against the challenger. *Calzone v. Interim Comm'r of Dep't of Elementary and Secondary Educ.*, 584 S.W.3d 310, 315 (Mo. banc 2019).

Against that legal backdrop, Nicholson's claims falter both at the threshold and on the merits. Standing is a prerequisite to judicial review; the party seeking relief must demonstrate a personal, legally protectable interest that is directly and adversely affected and subject to immediate or prospective

consequential relief—mere generalized grievances or speculative "some day" intentions will not suffice.

Nicholson's procedural theories likewise collide with Missouri's settled approach on these disfavored procedural challenges: courts assess original-purpose and single-subject claims with deference to the normal legislative process, upholding enactments where amendments are germane to an overarching purpose and provisions fairly relate to the bill's stated subject. Here, SB 22's provisions—governing judicial review criteria for ballot summaries, procedures for challenges, and appellate mechanisms for certain preliminary injunctions—fit comfortably within its original purpose. And each of these provisions falls within the single subject of judicial proceedings—which S.B. 22 clearly expresses in its title. The circuit court properly rejected these claims.

But the circuit did not properly apply this Court's equal protection precedent. Nicholson failed to make the threshold showing that he is similarly situated in all relevant respects to the group of persons allegedly disadvantaged by § 526.010—the necessary threshold question for an equal protection analysis. This ends this claim. But if that were not enough, he did not even allege that § 526.010 impinges upon a fundamental right—similarly dooming his claim. Even if Nicholson had properly raised his equal protection challenge below, the reality remains that § 526.010 does not impinge upon a

fundamental right. The right to access the courts—the right the circuit court found § 526.010 impinged—only requires that plaintiffs be allowed to bring valid and recognized claims. Not only does § 526.010 require a plaintiff to have brought a valid and recognized claim, it requires that the plaintiff *succeed* on their claim before the State can appeal.

Because § 526.010 does not impinge upon a fundamental right, it is subject to rational basis review. The State has legitimate interests in not being improperly enjoined from implementing and enforcing its law, in protecting and preserving the health and welfare of its citizens, and in limiting litigation costs borne by the State and its officials. Accelerated review of preliminary injunctions against the State reasonably relates to each of these interests.

Even under strict scrutiny, the State has a compelling interest in protecting the health and welfare of its citizens. The circuit court's conclusion that the State has no compelling interest in whether its own laws are preliminarily enjoined is clearly erroneous. It is axiomatic that the State has a compelling interest in enforcement of its laws, and this is exactly what § 526.010 is aimed to achieve. Further, § 526.010 is narrowly tailored to achieve this interest. Section 526.010's application affects only those cases in which the State is improperly enjoined from enforcing its laws; properly granted injunctions will be upheld. This ensures that § 526.010's effect is limited to circumstances in which the State's compelling interest is wrongly

frustrated. It is narrowly tailored. This court must reverse the circuit court's grant of relief on this ground.

Finally, despite its error in holding portions of the law unconstitutional, the circuit court, to the extent its ruling was correct, properly severed § 526.010 from the remainder of S.B. 22. This Court has long deferred to the General Assembly's stated desire that its laws be severed when the remainder of the enactment is capable of execution. This is clearly the case here. Nicholson claims that S.B. 22 is presumptively non-severable because it was found procedurally unconstitutional. This grossly misreads the circuit court's judgment upholding S.B. 22 against his meritless procedural attacks. The circuit court applied the correct legal standard and properly severed § 526.010 from the remaining provisions of S.B. 22.

The circuit court properly found that S.B. 22 violated none of the Missouri Constitution's procedural limitations—this court should affirm this ruling. But it erred in finding § 526.010 unconstitutional under equal protection. It erred in reaching the merits, in finding that it impinges upon a fundamental right, and in that it did not survive strict scrutiny. This Court should reverse the circuit court's judgment on Count IV.

STATEMENT OF FACTS

I. Passage of S.B. 22

On January 8, 2025, Senator Brattin introduced Senate Bill 22, "[An act t]o repeal section 116.160, RSMo, and to enact in lieu thereof one new section relating to ballot summaries prepared by the general assembly." (D18 at 2; D19 at 1.) The bill added a new subsection, 116.160.2. (D19 at 2.) This subsection amended the process for judicial review of ballot summary statements by providing that only the Secretary of State or the General Assembly could revise the statement if the court found it insufficient or unfair. (D19 at 2.) The rest of § 116.160, relating to the approval of summary statements by the Secretary of State and Attorney General and the rules for the form and contents of summary statements, remained unchanged. (D19.)

S.B. 22 proceeded to the Senate Committee on Local Government, Elections, and Pensions. (D18 at 2.) The Committee passed the Senate Committee Substitute for S.B. 22 and reported it to the full Senate. (D18 at 2.) The Committee Substitute retained the amendment to § 116.160.2 and amended § 116.160.3 to increase the word limit for official summary statements written by the Secretary of State to one-hundred words. (D20 at 2-3.) It also amended § 116.160.4 which, similarly to the amendment to § 116.160.2, removed the authority of a court to rewrite the summary statement for initiative petitions, giving that authority to the Secretary of

State. (D20 at 4.) Finally, the Committee Substitute amended § 116.155 to increase the word limit for summary statements written by the General Assembly to one-hundred words, in line with summary statements authored by the Secretary of State. (D20 at 1.)

On February 12, Senator Brattin offered Senate Substitute No. 1 for S.B. 22. (D18 at 2.) On February 25, he withdrew the substitute bill and offered Senate Substitute No. 2. (D18 at 2; D21.) The substitute bill retained the amendments to §§ 116.155 and 116.160.3. (D21 at 1.) The substitute revised § 116.160.2 to state that a summary statement adopted by the General Assembly shall appear on the ballot unless it is challenged under § 116.190, in which case the provisions of that section apply. (D21 at 2.)

The amendments to § 116.190 overhauled the procedure for judicial review of summary statements. Subsection one requires the action to be brought within ten days of the Secretary of State certifying the ballot title for initiative petitions and no later than the twenty-second Tuesday before the election for all other statewide ballot measures. (D21 at 3.) Under the amended subsection 4, the circuit court must certify the original summary statement to the Secretary of State if it is "sufficient and fair." (D21 at 4.) If the circuit court finds the summary statement to be insufficient or unfair, it must order the Secretary of State to revise it, but may offer its own suggestions to remedy the legal flaws. (D21 at 4.) If the revised summary statement is still insufficient or

unfair, the process repeats itself. If the third revised summary statement is insufficient or unfair, the circuit court must revise the summary statement and order the Secretary to place the revised statement on the ballot. (D21 at 5.) The case remains open through the revision process, and the non-prevailing party may only appeal orders requiring the Secretary to place a summary statement on the ballot. (D25 at 5.) Any action challenging a statewide ballot measure must be resolved prior to the printing of ballots for the election. (D21 at 5-6.) The amended subsection five shortens the deadline for resolution of these cases to seventy days before the election, subject to an extension for good cause. (D21 at 6.)

The Senate adopted two floor amendments to Senate Substitute No. 2. The first amendment modified § 116.334.2 to provide that signatures collected for an initiative petition whose title is found to be insufficient or unfair are not invalid solely based on the court ordering the title changed. (D22 at 1-2.) The second amendment modified § 526.010 to allow the Attorney General to appeal a preliminary injunction blocking the State or a statewide officer from "implementing, enforcing, or otherwise effectuating any provision of the Constitution of Missouri, any Missouri statute, or any Missouri regulation." (D23 at 1.) The Senate amended S.B. 22's title to clarify that its contents "related to judicial proceedings." (D24 at 1.)

On February 27, the Senate third read and passed the amended S.B. 22. (D18 at ¶13-14.) The Senate sent S.B. 22 to the House of Representatives. (D18 at ¶15.) After approval by the House Elections Committee, the House voted to truly agree to and finally pass S.B. 22. (D18 at ¶16-18; D27.) On April 24, Governor Kehoe signed S.B. 22 into law. (D18 at ¶20.)

II. Procedural History

On April 25, Nicholson petitioned the circuit court for declaratory and injunctive relief declaring S.B. 22 procedurally and substantively unconstitutional. (D2.) Procedurally, he argued that S.B. 22 violated article III, section 21's original purpose rule and article III, section 23's single subject and clear title rules. (D2 at 7-9.) On substantive grounds, Nicholson, as relevant to this appeal, claimed that § 526.010 violated article I, section 2's equal protection provision. (D2 at 9-11.)

Respondents moved to dismiss the action for lack of standing. (D37.) They argued that Nicholson lacked direct standing to challenge S.B. 22 because he failed to allege any pecuniary or personal interest subject to consequential relief. (D37 at 7-15.) Respondents further claimed that Nicholson lacked taxpayer standing because he did not establish that S.B. 22 would cause the direct expenditure of taxpayer funds. (D37 at 15-22.) The circuit court denied the motion. (D38.)

Nicholson testified at trial that he works on ballot campaigns. (Tr. at 9.) This included collecting signatures to put measures on the ballot and working with groups to defeat the passage of ballot measures. (Tr. at 9.) Nicholson was meeting with policy experts and considering potential language for a ballot initiative regarding redistricting. (Tr. at 9-10.) He believed that S.B. 22 would delay the initiative process and make it more expensive for him to put initiatives on the ballot because of the multiple rounds of revision by the Secretary of State. (Tr. at 11.)

Nicholson was not a party to, or otherwise involved with, any other litigation against the State. (Tr. at 12.) He did not have any intention of seeking a preliminary injunction against any specific state law or regulation. (Tr. at 12-13.) Nicholson had no knowledge of any expenditure made by the Attorney General in connection with S.B. 22, aside from the costs of defending the instant action. (Tr. at 13.) Nor could he identify any expenses the Secretary of State would incur beyond costs associated with staffing, litigation, and drafting ballots. (Tr. at 14.)

Nicholson argued at trial that S.B. 22 violated the original purpose, single subject, and clear title requirements of the Missouri Constitution. (Tr. at 17-25.) He did not argue any his substantive constitutional claims at trial. Respondents claimed that S.B. 22 satisfied all of article III, sections 21 and 23's procedural requirements. (Tr. 26-37.) Moving to Nicholson's equal

protection challenge, Respondents argued that he failed to present any evidence that he is similarly situated to those whom he alleged receive different treatment, the impingement of any fundamental right, or that § 526.010 is not reasonably related to a legitimate state interest. (Tr. 42-46.)

The circuit court held that S.B. 22 does not violate the Missouri Constitution's original purpose, single subject, or clear title rules. (D30 at 1.) But the court held § 526.010 unconstitutional under article I, section 2—reasoning that, while no Missouri court had clearly decided the issue, the right to appeal is a part of the fundamental right of access to courts. (D30 at 1-2.) It further found that § 526.010 violates equal opportunity by denying plaintiffs the opportunity to appeal the denial of their motion for a preliminary injunction. (D30 at 2.) In so ruling, the court held that "[t]here is no compelling governmental interest achieved in allowing only the Attorney General to appeal a preliminary injunction where a court has concluded that a challenged state law is flawed and granted injunctive relief." (D30 at 2.)

The circuit court next considered whether to sever § 526.010 from the remainder of S.B. 22. Following § 1.140, the court determined that the invalidation of § 526.010 did not impact the execution of the remaining provisions. (D30 at 2-3.) Having so found, it severed the provision. (D30 at 3.)

POINTS RELIED ON

I. The circuit court erred in finding that Nicholson had standing to challenge S.B. 22 because Nicholson cannot establish standing to challenge S.B. 22 in that he does not have direct standing to challenge S.B. 22 because he failed to prove any pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief, and does not have taxpayer standing to challenge S.B. 22 because he failed to prove that it will result in a direct expenditure of public funds generated through taxation.

- *Missouri Coal. for the Env't v. State*, 579 S.W.3d 924 (Mo. banc 2019).
- *Manzara v. State*, 343 S.W.3d 656 (Mo. banc 2011).
- *Schweich v. Nixon*, 408 S.W.3d 769 (Mo. banc 2013).

II. The circuit court erred in finding that section 526.010 RSMo violates article I, section 2 of the Missouri Constitution because Nicholson did not establish that the law violates equal protection in that Nicholson cannot make the threshold showing he is similarly situated in all relevant respects to the class whom he alleges receive different treatment under section 526.010, section 526.010 does not impinge upon a fundamental right explicitly or implicitly protected by the Missouri Constitution and therefore does not implicate equal protection, section 526.010 is reasonably related to a legitimate government interest and survives rational basis review, and even if section 526.010 impinged on a fundamental right, the statute is narrowly tailored to achieve a compelling state interest and is therefore constitutional.

- *Coyne v. Edwards*, 395 S.W.3d 509 (Mo. banc 2013).
- *City of St. Louis v. State*, 682 S.W.3d 387, 407 (Mo. banc 2024).
- *Ambers-Philips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901 (Mo. banc 2015).

ARGUMENT

RESPONSE TO APPELLANT'S APPEAL ON COUNTS I-III

I. SB 22 satisfies article III, section 21 of the Missouri Constitution's original purpose rule. (Response to Plaintiff's Point Relied on 1)

Nicholson argues that S.B. 22's purpose was improperly modified from amending the laws related to ballot summaries to amending the law regarding judicial proceedings. (App. Br., 18-20.) He claims that the amendments to § 526.010 deviate from this original purpose, while the remaining provisions still relate to it. (App. Br., 19-20.) But this argument fails because S.B. 22's original purpose *was* to amend the process for judicial review of proposed or enacted state laws and regulations—which all provisions relate to. The circuit court properly found that S.B. 22 satisfies the original purposes requirement of the Missouri Constitution—a conclusion made all the more clear by the disfavor which courts view procedural challenges. This Court should affirm.

A. This Court narrowly construes the procedural limitations of the original purpose rule.

Article III, section 21 of the Missouri Constitution prevents the General Assembly from amending a bill "in its passage through either house as to change its original purpose." This constitutional limitation "function[s] in the legislative process to facilitate orderly procedure, avoid surprise, and prevent 'logrolling,' in which several matters that would not individually command a majority vote are rounded up into a single bill to ensure passage." *Missouri*

Ass'n of Club Executives v. State, 208 S.W.3d 885, 888 (Mo. banc 2006) (quoting *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997). But, this "was not designed to inhibit the normal legislative process in which bills are combined and additions necessary to comply with the legislative intent are made." *City of St. Louis v. State*, 682 S.W.3d 387, 401 (Mo. banc 2024) (internal quotation omitted).

A bill's original purpose is determined by its "earliest title and contents" at the time of its introduction. *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012) (quoting *Club Executives*, 208 S.W.3d at 888). A bill's "purpose" for the purposes of article III, section 21 is its overarching purpose, not the mere details by and through which the General Assembly achieves it. *Calzone*, 584 S.W.3d at 317. While this Court "need not look beyond the title" when a bill's title clearly states its purpose, *Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98, 102 (Mo. banc 1994), "a bill's original purpose is not limited to what is stated in the bill's original title, which can be changed without violating article III, section 21." *Jackson Cnty. Sports Complex Authority v. State*, 226 S.W.3d 156, 160 (Mo. banc 2007). If a bill's purpose is not clear from its title, the Court may determine its subject from the Missouri Constitution and the contents of the bill as originally filed. *Carmack v. Dir., Missouri Dept. of Ag.*, 945 S.W.2d 956, 960 (Mo. banc 1997).

Once this Court determines a bill's original purpose, it compares the bill as enacted to the original version to determine if the end result is "germane to the original object of the legislation." *City of St. Louis*, 682 S.W.3d at 402. A bill's enacted purpose is germane to its original purpose if it is "in close relationship, appropriate, relative, pertinent, relevant or closely allied." *Calzone*, 584 S.W.3d at 317. To that end, this Court "has consistently rejected 'original purpose' challenges … in cases in which the content of the introduced bill remained substantially intact throughout the legislative process as germane amendments were added." *Id.* (internal quotation omitted).

A trial court's decision on the constitutionality of a state statute is reviewed de novo. *Hodges v. City of St. Louis*, 217 S.W.3d 278, 279 (Mo. banc. 2007). This Court similarly reviews a trial court's interpretation of the Missouri Constitution de novo. *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 899 (Mo. banc 2006).

B. The enacted version of S.B. 22 furthers the bill's original purpose.

S.B. 22 satisfies the original purpose rule. When introduced, S.B. 22's title stated that it related "to ballot summaries prepared by the general assembly." (D19 at 1). The bill amended § 116.160.2 to change the procedures used in the judicial review of proposed state laws by removing the finality of a circuit court's initial holding that a summary statement is insufficient or

unfair. (D19 at 2). S.B. 22 "related to ballot summaries prepared by the general assembly" by amending the procedure by which courts reviewed them. Therefore its overarching purpose at that time was to amend the process for judicial review of state laws proposed or enacted by the General Assembly.

Section 526.010's furtherance of this purpose is made clear when compared to the original S.B. 22's amended § 116.160.2. Before S.B. 22, a circuit court's initial rejection of a summary statement was final and the Secretary of State was required to use the court's revised language absent reversal by the Court of Appeals or this Court. § 116.190.4 (2015). The original S.B. 22 enacted § 116.160.2 to modify this procedure to remove the circuit court's authority to rewrite the summary statement and vested the sole authority to so in the Secretary of State. (D19 at 2.) Put another way, § 116.160.2 removed the finality of the circuit court's initial determination that a ballot summary statement is insufficient or unfair.

Similarly, prior to S.B. 22's enactment the State did not have the ability to appeal a preliminary injunction against the enforcement of its laws. *See State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) ("preliminary injunction[s] … are interlocutory and generally not appealable."). The circuit court's initial determination that a preliminary injunction was warranted was therefore final until a permanent injunction was entered or denied. Section 526.010 modified this general rule to give the State,

through its Attorney General, the ability to appeal preliminary injunctions blocking the effectuation of any provision of Missouri law by the State or its officers. (D27 at 8.) This is simply an extension of the original § 166.160.2 to challenges to State laws after they are enacted—it removes the finality of the circuit court's initial determination of illegality. Both § 526.010 and the original § 116.160.2 remove the finality of a limited class of circuit court decisions. Section 526.010 is germane to the purpose of the original § 116.160.2.

S.B. 22's original content remained largely intact through the legislative process. S.B. 22's original provision amended the procedures applied in judicial proceedings challenging ballot summary statements prepared by the General Assembly. (D19 at 2.) Each amendment was germane to this provision. The Senate amended S.B. 22 to include changes to the criteria applied by the court and the effect of the court's judgment in ballot summary cases. (D20-22.) Finally, the Senate decided to apply a similar rule to what was then in § 116.190 to preliminary injunctions. (D23.) Because "the content of the introduced bill remained substantially intact throughout the legislative process as germane amendments were added," this Court should reject the original purpose challenge. *Calzone*, 584 S.W.3d at 317.

Nicholson argues that S.B. 22's original purpose was merely "ballot summaries prepared by the general assembly." (App. Br, 18.) He cites this

Court's decision in *Legends Bank* to argue that the bill's original purpose is its title when first introduced. (App. Br., 18.) But this is not what *Legends Bank* requires—that case explicitly stated that a bill's original purpose comes from its "earliest title *and contents*" when the bill is introduced. 361 S.W.3d at 386 (emphasis added). This rule makes sense given the multitude of ways a bill could be titled. A bill with the original purpose of amending the procedure for sentencing a criminal defendant could be said to "relate to" public safety, judicial proceedings, corrections, criminal procedure, or courts. Similarly, the General Assembly could have picked a number of potential titles for the original S.B. 22 based on its contents, including ballot summaries and judicial proceedings. After amending the bill, the Senate decided that "judicial proceedings" was a better descriptor for S.B. 22's original purpose—which it is allowed to do. *Jackson Cnty. Sports*, 226 S.W.3d at 160. After all, germane alterations, especially those adding new matter, often necessarily result in different titles. *See, e.g., C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 329 (Mo. banc 2000). Nicholson's tunnel vision view of S.B. 22's original title (perhaps intentionally) misses the actual purpose of the bill—amending the criteria reviewed by courts in judicial proceedings. Section 526.010 is germane to the original purpose of the bill. *See City of St. Louis*, 682 S.W.3d at 403 (holding amendments added to a bill to modify various taxes, gambling regulations, and "programs administered by the department of public safety"

were all germane to the original purpose of a bill because they all "sufficiently relate[d] to protecting or safeguarding the lives and property of Missouri citizens."). Nicholson's original purpose challenge, therefore, must fail. This Court should affirm.

II. SB 22 satisfies article III, section 23 of the Missouri Constitution's single subject requirement. (Response to Plaintiff's Point Relied on 2)

Nicholson argues that S.B. 22 violates article III, section 23 of the Missouri Constitution's single subject requirement. (App. Br., 21.) He claims that S.B. 22 contains two subjects—judicial proceedings and ballot summaries prepared by the General Assembly. (App. Br., 22-25.) But this is incorrect. Every provision of S.B. 22 fairly relates to judicial proceedings and is a means to accomplish that subject by determining the procedure applied or the criteria reviewed, before, during, and after certain judicial proceedings. The circuit court properly found that S.B. 22 satisfies the single subject requirement of the Missouri Constitution. This Court should affirm.

A. A bill's subject includes all matters that reasonably relate to its general core purpose.

Article III, § 23 of the Missouri Constitution prevents bills from having "more than one subject which [is] clearly expressed in its title." A bill's title must clearly express its subject so its readers are informed of the matters it addresses. *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 147 (Mo.

banc 1998). This rule ensures that the General Assembly and the public are fairly apprised of a bill's contents. *Hammerschmidt*, 877 S.W.2d at 101-02.

A bill with multiple provisions will survive a single subject challenge "[s]o long as the matter is germain, connected and congruous." *Calzone*, 584 S.W.3d at 321 (quoting *State v. Matthews*, 44 Mo. 523, 527 (1869)). "[T]he test for whether a bill addresses a single subject is not how the provisions relate to each other, but whether the provisions are germane to the general subject of the bill." *Giudicy v. Mercy Hosps. E. Cmtys.*, 645 S.W.3d 492, 499 (Mo. banc 2022) (internal quotation and emphasis omitted).

A bill's subject includes "all matters that fall within or reasonably relate to the general core purpose of the proposed legislation." *Mo. Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 351 (Mo. banc 2013). To determine a bill's subject, this Court first looks to its title. *Calzone*, 584 S.W.3d at 321. If "the bill's title is not too broad or amorphous to identify the single subject of the bill, then the bill's title serves as the touchstone for the constitutional analysis." *Mo. Health Care Ass'n v. Atty. Gen. of Mo.*, 953 S.W.2d 617, 622 (Mo. banc 1997). After this, the Court looks to the challenged provisions to see if they "fairly relate to, have a natural connection with, or are a means to accomplish the subject of the bill as expressed in the title." *Fox v. State*, 640 S.W.3d 744, 756 (Mo. banc 2022) (cleaned up).

B. All provisions of S.B. 22 relate to judicial proceedings and are a means to accomplish this subject.

As enacted, S.B. 22's title states that it "relates to judicial proceedings." (D28.) Therefore S.B. 22's subject is "judicial proceedings," and every provision must "fairly relate to, have a natural connection with, or [be] a means to accomplish" this subject. *Fox*, 640 S.W.3d at 756. S.B. 22 passes this test.

Starting with §§ 116.155 and 116.160.3, these sections set the criteria courts apply in judicial proceedings to review ballot titles. These provisions are germane to judicial proceedings. *See Dotson v. Kander*, 464 S.W.3d 190, 193–94 (Mo. banc 2015) (beginning discussion of a challenge to a ballot title with the provisions of § 116.155).Next, § 116.160.2 provides that an official summary statement prepared by the General Assembly "shall appear on the ballot, unless it is challenged pursuant to section 116.190, in which case the provisions of that section shall apply." (D27 at 2.) Put another way, this section gives the default rule unless the ballot summary is challenged in a judicial proceeding, in which case it triggers the application of another section. This relates to judicial proceedings. *See Missouri State Med. Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837, 841 (Mo. banc 2001) (affirming a bill's single subject of "relating to health services" where statutes related to "[h]ealth insurance, medical records, and standard information are (at least) incidents or means to health services.").

Moving to § 116.190, subsection 1 sets the deadline to file an action challenging a ballot title certified by the Secretary of State. (D27 at 3.) Subsection 2 then sets out a thorough procedure for the adjudication of ballot title challenges—most notably allowing the Secretary of State to revise the ballot title three times before the circuit court certifies its own language. (D27 at 4-6.) Subsection 3 allows the non-prevailing party in an action brought under subsection 2 to appeal the decision to this Court. (D27 at 6.) Finally, subsection 5 extinguishes any action brought under this section that is not fully and finally adjudicated within 180 days of filing and more than seventy days prior to the election. (D27 at 7.) This relates to judicial proceedings.

S.B. 22 next amends § 116.334.2. The subsection states that a court order changing the ballot title for an initiative petition, by itself, does not invalidate signatures collected prior to the title change. (D27 at 7-8.) This provision clarifies the legal effect of a circuit court's ruling. It is therefore germane to judicial proceedings. The final provision, § 526.010, creates a narrow exception to the general rule that a preliminary injunction is not appealable. (D27 at 8.) The exception allows the Attorney General to appeal a preliminary injunction against the State or its officers preventing them from enforcing or effectuating any provision of Missouri law. (D27 at 8.) This law is related to judicial proceedings.

Each and every provision of S.B. 22 relates to judicial proceedings. Sections 116.115 and 116.160.3 provide substantive rules governing a judicial proceeding and the criteria through which the adequacy of a challenged summary statement is judged.[1] Section 116.160.2 states what happens if a certain judicial proceeding is or is not brought. Section 116.190 creates new procedural rules for a judicial proceeding, including the relief the court is authorized to grant. Section 116.334 clarifies the legal effect of that relief. Finally, Section 526.010 governs judicial procedures relating to preliminary injunctions. S.B. 22 changes the rules for how certain judicial proceedings are adjudicated, the rules that apply in those proceedings, and what happens after a court issues an order. It relates to judicial proceedings. *See Corvera Abatement Techs., Inc. v. Air Conservation Comm'n*, 973 S.W.2d 851, 862 (Mo. banc 1998) (bill satisfies the single subject of "environmental control" where the challenged statute "includes both substantive provisions that directly regulate environmental hazards and administrative provisions that allow for the enforcement of these and other provisions that protect the environment.").

[1] Indeed, plaintiffs wishing to challenge ballot titles in judicial proceedings will sometimes invoke § 116.155.2 in an attempt to argue that the ballot title should be rewritten for failing to meet statutory criteria. *See, e.g.*, Petition, *Rogers v. Hoskins*, Case No. 25AC-CC07983, at 9–10 (action challenging a ballot summary statement as, among other things, purportedly "violat[ing] § 116.155.2.").

Nicholson's argument that, aside from § 526.010, "all other sections relate to ballot summaries," (App. Br., 24), is fundamentally flawed. The standard this Court applies is whether the provisions "fairly relate to, have a natural connection with, or are a means to accomplish the subject of [judicial proceedings]." *Fox*, 640 S.W.3d at 756 (cleaned up). How the individual provisions relate to each other is simply not relevant. Each provision of S.B. 22 has a natural connection to judicial proceedings by determining the criteria applied by courts, the procedural rules applied by the courts, and the effect of certain judgments. The fact that most provisions relate to a specific judicial proceeding as opposed to another is a red herring. This Court should affirm.

III. SB 22 satisfies article III, section 23 of the Missouri Constitution's clear title requirement. (Response to Plaintiff's Point Relied on 3)

Nicholson's final procedural challenge alleges that S.B. 22 violates article III, section 23's clear title rule. (App. Br., 26.) He alleges that the bill's title is underinclusive because only §§ 116.190 and 526.010 relate to judicial proceedings, while every provision except for § 526.010 relates to ballot summaries prepared by the General Assembly. (App. Br., 27.) But S.B. 22's title adequately indicates everything the bill contains. Every provision of S.B. 22 relates to judicial proceedings, whether by affecting the procedural or substantive laws applied or else relating to the criteria applied in judicial proceedings reviewing a ballot summary. The circuit court therefore properly

found that S.B. 22 satisfies the clear title requirement. This Court should affirm.

A. A bill's title need only indicate its general contents.

Article III, § 23 of the Missouri Constitution requires all bills to "clearly express" its subject in its title. This allows the legislature and public to know what matters the bill addresses. *St. Louis Healthcare Network v. State*, 968 S.W.2d 145, 147 (Mo. banc 1998). A bill's title "need not give specific details" to survive a clear title challenge, "but need indicate only generally what the act contains." *Id.* When analyzing a bill's title, words are given their common and ordinary meaning. *Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d 267, 271 (Mo. banc 2002).

The "touchstone" of the clear title rule is that a bill's title cannot be under-inclusive. *C.C. Dillon Co.*, 12 S.W.3d at 329. While the bill's title "need only indicate the general contents of the act," *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. banc 1984), it cannot "be so general that it tends to obscure the contents of the act." *St. Louis Health Care Network*, 968 S.W.2d at 147.

B. S.B. 22's title is not underinclusive.

"Judicial proceedings" indicates the general contents of the act. Sections 116.155 and 116.160.3 modify the criteria applied by the court when reviewing a summary statement. (D27 at 1-3.) In tandem with those provisions,

§§ 116.160.2 and 116.190 provide the procedures used if an action is filed against the Secretary of State to prevent him from certifying the ballot title. (D27 at 2-7.) Next, § 116.334.2 provides a rule for the legal effect of a court finding that the ballot language is legally insufficient. (D27 at 8-9.) Finally, § 526.010 modifies the procedural rules when a preliminary injunction is issued. (D27 at 9.) "Relating to judicial proceedings" indicates the general contents of S.B. 22. The bill's title is not underinclusive.

The lack of any mention of ballot summary statements in S.B. 22's title does not violate the clear title rule. "Relating to judicial proceedings" includes, rather than excludes, the provisions relating to ballot summary statements prepared by the General Assembly. The ballot summary related provisions of S.B. 22 become operative when a summary statement is challenged in circuit court—word limitations, rules for judicial review, and rules for the effect of a judgment only apply in judicial proceedings. "The title need not describe every detail contained in the bill." *Fust v. Atty. Gen. for the State of Mo.*, 947 S.W.2d 424, 429 (Mo. banc 1997). "Relating to judicial proceedings" need not mention every affected judicial proceeding. S.B. 22's title is clear.

Nicholson's argument that S.B. 22's title is "affirmatively misleading" because it does not tell a reader that the bill impacts ballot summaries (App. Br., 27) is fundamentally flawed. This claim ignores this Court's precedents which make clear that a bill's title "need only indicate the general contents of

the act." *Westin Crown*, 554 S.W.2d at 6. The title of a bill concerning judicial proceedings need not describe every judicial proceeding it affects, just as the title of a bill governing "state purchases of land" need not list every State agency empowered to do so. *See Missouri Coal. for the Env't v. State*, 593 S.W.3d 534, 541–42 (Mo. banc 2020). Article III, section 23's clear title rule only requires that a bill's title clearly express the bill's general contents—not every provision included therein.

"Relating to judicial proceedings" clearly expresses S.B. 22's contents—modifications to substantive and procedural rules in judicial proceedings. This satisfies the clear title rule. *See, e.g., Id.* at 542 ("A title avoids being underinclusive . . . by stating the overall subject of the bill more generally in a manner that encompasses the act's subject as a whole."); *C.C. Dillion*, 12 S.W.3d at 329 (the title of "transportation" was not underinclusive of the subject of "billboard regulation" because federal transportation funds are tied to "the state's billboard regulations."). This Court should affirm.

IV. The trial court properly severed § 526.010 from the remainder of S.B. 22 after finding the provision unconstitutional. (Response to Plaintiff's Point Relied on 4).

For the above reasons stated, S.B. 22 does not violate Article I, section 2 of the Missouri Constitution. This point is now moot because there is no offending provision to sever. *See Grzybinski v. Dir. of Revenue*, 479 S.W.3d 742,

745 (Mo. App. E.D. 2016) ("When an event occurs that makes a court's decision unnecessary …, the [issue] is moot").

Mootness notwithstanding, to the extent the Court believes that the circuit court correctly ruled for Nicholson on Count IV, the trial court properly severed § 526.010 from the remainder of S.B. 22. The circuit found § 526.010 substantively unconstitutional under article I, section 2 of the Missouri Constitution but upheld it against Nicholson's procedural attacks under article III, sections 21 and 23. (D30.) "[T]his Court applies a different severance analysis for procedurally unconstitutional statutes than it does for substantively unconstitutional statues." *Mo. Roundtable*, 396 S.W.3d at 353. *All* substantively unconstitutional statutory provisions are severable unless "it cannot be presumed that the legislature would have enacted the valid provisions without the void one[] or unless … the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." § 1.140.

Because severability turns on the interpretation of a statute, the circuit court's decision is reviewed de novo. *See Byrd v. State*, 679 S.W.3d 492, 494 (Mo. banc 2023). This Court "presume[s] that the legislature intended to give effect to the remaining valid provisions." *Wilson v. City of St. Louis*, 662 S.W.3d 749, 758 (Mo. banc 2023). To that end, "[s]tatutes are presumptively

severable." *Gen. Motors Corp. v. Dir. of Revenue*, 981 S.W.2d 561, 568 (Mo. banc 1998); *see also* § 1.140 ("The provisions of every statute are severable").

Here, the circuit court properly severed §526.010 from the remainder of S.B. 22. The court invalidated § 526.010 under Article I, section 2 of the Missouri Constitution—making the provision substantively unconstitutional. D33 at 3. Severance is therefore analyzed using the § 1.140 standard under which it is presumed severable. *State v. Hart*, 404 S.W.3d 232, 245 (Mo. banc 2013).

It is presumed that the General Assembly would have passed S.B. 22 without § 526.010 because the remaining provisions are capable of execution without it. Sections 116.155, 116.160, 116.190, and 116.334 provide the criteria applied by the court, the procedure used by the court, and the effect of the court's judgment in a specific judicial proceeding. This is a complete scheme for how the circuit court hears judicial proceedings specifically related to ballot title challenges. The remainder of S.B. 22 is fully capable of execution without § 526.010. Therefore the General Assembly's default rule that "[t]he provisions of every statute are severable" applies. § 1.140. The circuit court properly severed § 526.010.

Nicholson's arguments to the contrary are unpersuasive. His main contention—that the State failed to meet the high bar for procedural severance—patently misreads the circuit court's judgment. The circuit court

concluded that "the bill satisfies procedural requirements," but invalidated § 526.010 on the *substantive* ground that it "impinge[d] on a fundamental right." D30 at 1. Therefore S.B. 22 need only meet the criteria in § 1.140 to be severed. *See Mo. Roundtable*, 396 S.W.3d at 353. Nicholson's reliance on *Byrd v. State* is misplaced, because the *Byrd* court declared TAFP HB 1606 unconstitutional under Article III, section 23 of the Missouri Constitution—a *procedural* violation distinct from any substantive violation. 679 S.W.3d 496-97. *Byrd* itself notes this distinction. *Id.* at 496 n. 7. Nicholson has failed to overcome the presumption that § 526.010 is severable. This Court should affirm.

CROSS-APPEAL ON COUNT IV

I. **The circuit court erred in finding that Nicholson had standing to challenge S.B. 22 because Nicholson cannot establish standing to challenge S.B. 22 in that he does not have direct standing to challenge S.B. 22 because he failed to prove any pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief, and does not have taxpayer standing to challenge S.B. 22 because he failed to prove that it will result in a direct expenditure of public funds generated through taxation. (Point Relied on 1)**

The circuit court erred in finding that Nicholson has standing to challenge S.B. 22. Nicholson presented no evidence before, during, or after trial showing that he has a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief. Nor did he present evidence proving that S.B. 22 has or will result in a direct expenditure of

taxpayer funds. This Court should vacate the circuit court's judgment and remand the case to be dismissed for want of jurisdiction.

A. Preservation and standard of review.

Preservation is not required because standing is a jurisdictional issue that cannot be waived. *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. banc 2002). Nevertheless, Respondents argued that Nicholson lacked standing in their motion to dismiss and pretrial brief and at trial. (D37 at 7-22; D29 at 3-16; Tr. 47-48.) The circuit court denied the motion to dismiss (D38.) The court did not address standing in its judgment, but implicitly found standing. (D33); Rule 73.01(c).

This Court reviews the issue of standing de novo. *Missouri Coal. for the Env't v. State*, 579 S.W.3d 924, 926 (Mo. banc 2019). "Litigation of a claim requires plaintiffs to show that they have standing by demonstrating a personal interest in the litigation arising from a threatened or actual injury." *St. Louis Cnty. v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014) (cleaned up). When the plaintiff's standing is challenged on appeal, the appellate court "must rely on the evidence adduced at trial." *Brannum v. City of Poplar Bluff*, 439 S.W.3d 825, 829 (Mo. App. S.D. 2014).

B. Standing is a threshold jurisdictional issue that must be determined before a court can reach the merits.

"Standing is a threshold issue and a prerequisite to court's authority to address substantive issues." *Byrne & Jones Enters. v. Monroe City R-1 Sch. Dist.*, 493 S.W.3d 847, 851 (Mo. banc 2016) (internal quotation omitted). "Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action." *E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 45-46 (Mo. banc 1989). To have standing, the party seeking relief must have "a legally cognizable interest" and "a threatened or actual injury." *Id.* at 46. The party seeking relief has the burden of establishing standing based on the evidence presented at trial. *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013); *Brannum*, 439 S.W.3d at 829.

Direct standing for claims seeking declaratory and injunctive relief "requires a petitioner to demonstrate a personal stake in the outcome of the litigation, meaning 'a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief.'" *Missouri Coal. for the Env't*, 579 S.W.3d at 926 (quoting *Schweich*, 408 S.W.3d at 775). This Court "requires that plaintiffs have a legally protectable interest in the litigation so as to be directly and adversely affected by its outcome," which exists only "if the plaintiff is directly and adversely affected by the action in question or if the plaintiff's interest is conferred by statute." *Weber v. St. Louis Cnty.*, 342

S.W.3d 318, 323 (Mo. banc 2011) (cleaned up). To that end, "the generalized interest of all citizens in constitutional governance" is insufficient to invoke standing. *Missouri Coal. for the Env't*, 579 S.W.3d at 927 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 160 (1990)).

Taxpayers can have standing to bring an action only under limited circumstances. "[T]he mere filing of a lawsuit does not confer taxpayer standing upon the plaintiff." *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). Instead, the taxpayer bears the burden of proving at trial one of three conditions: "(1) the direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality." *Id.* (citing *E. Mo. Laborers*, 781 S.W.2d at 47). The purpose of taxpayer standing is to ensure "government officials conform to the dictates of law *when spending public money*." *Ste. Genevieve Sch. Dist. R-II v. Bd. of Aldermen of the City of Ste. Genevieve*, 66 S.W.3d 6, 11 (Mo. banc 2002) (emphasis added).

C. Nicholson does not have direct standing to challenge S.B. 22 because he failed to prove any pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief.

Nicholson does not have direct standing to challenge any provision S.B. 22. As to his claims on Counts I-III, the trial evidence and stipulations established that he works on ballot initiatives, has previously submitted such

measures, and is "actively working on" a possible new ballot measure. (Tr. 9-10.) Nicholson's "active work" on the potential petition only consisted of pre-filing policy and drafting discussions—with no commitment to actually moving forward with it. (Tr. 10.) But the asserted harms he claims S.B. 22 would purportedly cause—delay, added costs, and uncertainty as to the final ballot language (Tr. 10-12)—are merely general and hypothetical, rather than present or specific, injuries. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992) ("Such 'some day' intentions—without any description of concrete plans, or indeed even any specification of when the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require"). Nicholson's cross examination confirms that S.B. 22 has no present or imminent effect on his interests. He testified that he is not involved in any ballot title litigation—or any other litigation—involving the State. (Tr. 12.) He does not have direct standing to bring Counts I-III.

Nor does Nicholson have standing to bring Count IV. He testified at trial that he is not involved in any litigation against the State aside from this case. (Tr. 12.) Nor does he even have any intention of seeking a preliminary injunction against the enforcement of any specific state law or regulation. (Tr. 13.) Based on the trial evidence there is no possibility that § 526.010 will have any direct impact on Nicholson. In fact, he does not even allege that it will—his petition, pre-trial brief, and argument at trial are devoid of any allegation

that § 526.010 will directly injure him in any way. Nicholson does not have direct standing to challenge § 526.010.

Nicholson cannot obtain "immediate or prospective consequential relief" on any of his claims because he has no "legally protectable interest in the litigation so as to be directly and adversely affected by its outcome." *Missouri Coal. for the Env't.*, 579 S.W.3d at 926; *Weber*, 342 S.W.3d at 323. At best, Nicholson has only shown "the generalized interest of all citizens in constitutional governance," which is insufficient to invoke standing. *Mo. Coal. for the Env't.*, at 927. Because Nicholson identifies no direct, particularized, or imminent injury and relies on speculative future harms, he has failed to prove his direct standing challenge S.B. 22.

D. Nicholson does not have taxpayer standing to challenge S.B. 22 because he failed to prove that it will result in a direct expenditure of public funds generated through taxation.

Nicholson similarly failed to establish taxpayer standing to challenge S.B. 22. He could only possibly have taxpayer standing under the first *Manzara* factor because S.B. 22 does not increase taxes or involve transactions by municipalities. *See* 343 S.W.3d at 659. But Nicholson failed to show any direct expenditures connected with Counts I-III. He could not identify expenditures by the Secretary of State aside from staffing costs. (Tr. 13-14.) But these "general operating expenses" are insufficient to confer taxpayer standing. *State*

ex rel. Missouri Auto. Dealers Ass'n v. Missouri Dep't of Revenue, 541 S.W.3d 585, 593 (Mo. App. W.D. 2017) (collecting cases); *see also Manzara*, 343 S.W.3d at 660 (no direct expenditure where there is "an[] intervening agency or step"). This is especially true given that the Secretary of State's office dedicated staff time to drafting summary statements before S.B. 22's enactment. Nicholson does not have taxpayer standing to bring Counts I-III.

Nicholson similarly lacks taxpayer standing to challenge § 526.010 in Count IV. He testified at trial that he could not identify *any* specific expenditures made by the Attorney General besides the Attorney General's Office defending against his lawsuit. (Tr. at 13-14.) No evidence at trial even showed that the Attorney General had filed an appeal of a preliminary injunction, much less that any appeal resulted in the expenditure of funds. Even if Nicholson could identify a specific expenditure by the Attorney General, he could not carry his burden of proving the existence of a direct expenditure because there is "an[] intervening agency or step"—the attorney general filing the appeal—between the State obtaining the revenue and its payment. *Manzara*, 343 S.W.3d at 660; *see also Missouri Automobile Dealers Ass'n*, 541 S.W.3d at 593 (no taxpayer standing based on general operating expenses). He does not have taxpayer standing to bring Count IV.

No evidence presented at trial shows a "direct expenditure of funds generated through taxation" caused by any provision of S.B. 22. *Manzara*, 343

at 659. Nicholson could not even identify any specific expenditures caused by the act. Nor can he point to general operating expenses by the Secretary of State or Attorney General's Office because those do not confer taxpayer standing. Nicholson lacks taxpayer standing to challenge any provision of S.B. 22. It was error for the circuit court to reach the merits of his claims.

* * *

Nicholson failed to prove that he has standing to challenge any provision of S.B. 22. He has not proven any direct, ongoing injury from any portion of S.B. 22 that may be immediately redressed by an order from this Court. This is especially true with regards to § 526.010 due to Nicholson's express testimony that he has no intention to seek a preliminary injunction against any specific state law or regulation. Nor does any evidence from trial show a "direct expenditure of funds generated through taxation." *Manzara*, 343 S.W.3d at 659. The circuit court therefore lacked any authority to reach the merits of his claims. *Byrne & Jones Enters.*, 493 S.W.3d at 851. Because "[a] party who lacks standing may not seek a declaratory judgment action," *State ex rel. Nixon v American Tobacco Co.*, 34 S.W.3d 122, 132 (Mo. banc 2000), this Court should vacate the judgment below and remand with instructions to dismiss for want of jurisdiction.

II. The circuit court erred in finding that section 526.010 RSMo violates article I, section 2 of the Missouri Constitution because Nicholson did not establish that the law violates equal protection in that Nicholson cannot make the threshold showing he is similarly situated in all relevant respects to the class whom he alleges receive different treatment under section 526.010, section 526.010 does not impinge upon a fundamental right explicitly or implicitly protected by the Missouri Constitution and therefore does not implicate equal protection, section 526.010 is reasonably related to a legitimate government interest and survives rational basis review, and even if section 526.010 impinged on a fundamental right, the statute is narrowly tailored to achieve a compelling state interest and is therefore constitutional. (Point Relied on 2).

The circuit court erred in holding that § 526.010 violates the Missouri Constitution's equal protection provision. Nicholson failed to make the threshold showing that he is similarly situated in all relevant respects to the class of persons whom he alleges receives unequal treatment under § 526.010. This alone is fatal to his claim. What's more, he fares no better on the merits. Section 526.010 does not operate to the disadvantage of a suspect class or impinge on a fundamental right. It therefore only need be reasonably related to a legitimate state interest—a requirement which is satisfied several times over. Even under strict scrutiny, § 526.010 is narrowly tailored to achieve the State's compelling interest in enforcing constitutional laws related to public safety. The circuit court's finding that the State has no compelling interest in appealing an erroneous preliminary injunction prohibiting it from enforcing

state law renders one of the State's most compelling interests a dead letter. This Court should reverse.

A. Preservation and standard of review

This claim is preserved for appellate review because Respondents argued it in their pretrial brief and at the bench trial. (D29 at 33-60; Tr. 42-46.) Respondents did not need to file a post-trial motion to preserve the claim. Rules 73.01, 78.07(a).

A trial court's decision on the constitutionality of a state statute is reviewed de novo. *Hodges*, 217 S.W.3d at 279. This Court similarly reviews a trial court's interpretation of the Missouri Constitution de novo. *StopAquila.org*, 208 S.W.3d at 899.

B. Nicholson cannot make the threshold showing he is similarly situated in all relevant respects to the class whom he alleges receive different treatment under section 526.010.

Nicholson failed to carry his burden to establish the threshold showing for an equal protection analysis, and the circuit court therefore should not have reached the merits of Nicholson's equal protection claim. Before this Court may engage in an equal protection analysis, a plaintiff must provide evidence demonstrating that he is similarly situated to those whom he alleges receive different treatment. *Coyne v. Edwards*, 395 S.W.3d 509, 519 (Mo. banc 2013). "The similarly situated standard is a rigorous one requiring proof that the two

classes were *similarly situated in all relevant respects*." *Id.* (cleaned up) (emphasis added). A plaintiff who fails to make such a showing does not preserve his constitutional claim for appellate review. *Fletcher v. Young*, 689 S.W.3d 161, 168 (Mo. banc 2024).

But Nicholson failed to satisfy this threshold requirement. Nowhere in his petition does Nicholson even identify the class that he alleges is disadvantaged by § 526.010, much less show that he is similarly situated to this class in all relevant respects. (D2.) His pretrial brief argues, without any support, that the party seeking the preliminary injunction against the State is similarly situated to the Attorney General in all relevant respects. (D14 at 11.) But Nicholson did not even argue that *he* is similarly situated to this group, the showing that this Court actually requires. *See Coyne*, 395 S.W.3d at 519.

In fact, Nicholson's own testimony cements that he is not similarly situated to this group. He confirmed that he has no intention to seek a preliminary injunction against the enforcement of any state law or regulation. (Tr. at 13.) Nicholson conceded that he cannot be disadvantaged by § 526.010 because he will never even *attempt* to obtain a preliminary injunction that the State could appeal.

Nicholson has failed to even allege that he is similarly situated in all relevant respects to the class allegedly disadvantaged by § 526.010. This should end the Court's analysis. *See Coyne*, 395 S.W.3d at 519; *also City of St.*

Louis, 682 S.W.3d at 407-08. The circuit court erred by reaching the merits of Nicholson's claim.

C. Section 526.010 does not impinge upon a fundamental right explicitly or implicitly protected by the Missouri Constitution and therefore does not implicate equal protection

Notwithstanding Nicholson's failure to make the required threshold showing, he also failed to show that § 526.010 implicates the Missouri Constitution's equal protection provision. In determining whether a statute violates article I, section 2, this Court first "determines whether the statute contains a classification that operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution." *Ambers-Philips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901, 909 (Mo. banc 2015) (cleaned up). To aid in this analysis, Missouri's equal protection clause is interpreted to "provide[] the same protections as the United States Constitution." *In re Care and Treatment of Coffman*, 225 S.W.3d 439, 445 (Mo. banc 2007).

Here, Nicholson waived any claim that § 526.010 impinges a fundamental right. *Nowhere* in his petition, pre-trial briefing, or argument at trial did he argue that § 526.010 impinges any fundamental right, or even for that matter identify any fundamental rights. This bars him from even arguing that § 526.010 impinges upon a fundamental right. *Callier v. Dir. of Revenue*,

780 S.W.2d 639, 641 (Mo. banc 1989) ("To properly raise a constitutional question, plaintiffs are required to," among other things, "(1) raise the constitutional question at the first available opportunity; [and] (2) designate specifically the constitutional provision claimed to have been violated."). The circuit court erred by granting relief on a claim not properly raised before it. *Cf. Pointer v. Dir. of Revenue*, 891 S.W.2d 876, 878 (Mo. App. E.D. 1995) ("we have held the circuit court's grant of relief improper where it was based upon grounds not raised in the petition").

Waiver notwithstanding, § 526.010 does not impinge any fundamental rights. The circuit court held that § 526.010 impinges "[a]ccess to courts, including the right to appeal, [which] is a fundamental right for the purposes of [Article I, section 2]." (D30 at 2.) While not cited, this appears to rely on article I, § 14 of the Missouri Constitution's guarantee of access to courts. This Court has held that "the right of access to the courts set out in [Art. I, § 14] of the Missouri Constitution 'means simply the right to pursue in the courts the causes of action the substantive law recognizes." *Ambers-Phillips*, 459 S.W.3d at 909-10 (quoting *Harrell v. Total Health Care, Inc.*, 781 S.W.2d 58, 62 (Mo. banc 1989)). Therefore an open courts violation only exists when an arbitrary or unreasonable restriction "bars a plaintiff from bringing a valid and recognized claim." *Id.* (cleaned up); *see also Snodgras v. Martin & Bayley, Inc.*,

204 S.W.3d 638, 640 (Mo. banc 2006); *Kilmer v. Mun*, 17 S.W.3d 545, 548-50 (Mo. banc 2000) (collecting cases).

Section 526.010 does not bar plaintiffs from bringing valid and recognized claims. Section 526.010 does nothing to prevent a plaintiff from pursuing a cause of action recognized by substantive law, which is all article I, section 14 requires. *Ambers-Phillips*, 459 S.W.3d at 909-10. It does not violate the right to access to the courts, or any other fundamental right implicitly or explicitly protected by the Missouri Constitution. Nicholson failed to even allege that § 526.010 implicates the equal protection provision of the Missouri Constitution. The circuit court erred in holding otherwise.

D. Section 526.010 is reasonably related to a legitimate government interest and survives rational basis review.

Because section 526.010 does not impinge the right to open access to the courts, this Court will "presume the statute is constitutional and appl[y] a rational basis test." *City of St. Louis*, 682 S.W.3d at 407. Under this test a statute is constitutional so long as it bears a reasonable relationship to a legitimate state purpose. *Ambers-Philips*, 459 S.W.3d at 909. This Court will only invalidate a law under this standard if the plaintiff can show "that the classification has no reasonable basis and is purely arbitrary." *State v. Pike*, 162 S.W.3d 464, 471 (Mo. banc 2005).

Section 526.010 bears a reasonable relationship to multiple legitimate state interests. The State has a legitimate interest in not being improperly enjoined from implementing and enforcing Missouri law. The strong state interest at play here is clearly established by this Court's precedent. *See, e.g.*, *State v. Emery*, 701 S.W.3d 585, 599 (Mo. banc. 2024) (noting that the State has a strong interest in individuals acting "within the framework state law prescribes."). Because of its sovereign interest in enforcing Missouri law, the State necessarily occupies a unique position compared individual litigants. For this reason, this Court has recognized, in the equal protection context, that it is "self-evident" that "[t]he legislature could rationally conclude that, because the State represents the interest of all citizens," a statute may establish different procedural options for relief available only to the State. *Estate of Overbey v. Chad Franklin National Auto Sales North, LLC*, 361 S.W.3d 364, 378 (Mo. banc 2012).

The rational basis for § 526.010 is made exceptionally clear by its limited application. Section 526.010 only allows an appeal where the State or a statewide officer is preliminarily enjoined from effectuating or enforcing a provision of state law. (D27 at 8.) What's more, the full extent of the statute is to offer a pathway for appellate review. If the preliminary injunction is affirmed by the appellate courts then the result is the same—the State is enjoined from enforcing its law. It is only when the State is wrongfully enjoined

and the appellate courts vacate the preliminary injunction that § 526.010 has an effect on the litigation. This narrow procedural rule is reasonably related to the State's rational interest in not being improperly or erroneously enjoined from enforcing its own laws. *Emery*, 701 S.W.3d at 559.

Section 526.010 is also reasonably related to the State's legitimate interest in protecting and preserving the health and welfare of its citizens. This Court has long permitted laws that create classifications when it is for the purpose of protecting the public health and welfare. *See Mahoney v. Doerhoff Surgical Services, Inc.*, 807 S.W.2d 503, 512 (Mo. banc 1991) (finding early disposition of frivolous medical malpractice lawsuits related to public health and welfare); *also City of St. Louis*, 682 S.W.3d at 408 ("[m]aintaining law enforcement agencies is a legitimate state purpose"). By creating a mechanism for timely review of preliminary injunctions preventing the State from enforcing laws designed to protect the health and welfare of its citizens, § 526.010 ensures that the State is able to effectuate this interest to the fullest extent of the law. *See State ex rel. Koster v. Olive*, 282 S.W.3d 842, 847 (Mo. banc 2009) ("The function of [Missouri's] police power has been to promote the health, welfare, and safety of the people by regulating threats harmful to the public interest"). This is a sufficient basis for § 526.010.

Finally, § 526.010 is reasonably related to the State's legitimate interest of reasonably limiting litigation costs borne by the State and its officials.

Among the factors considered by the circuit court when deciding to issue a preliminary injunction is "the movant's probability of success on the merits" of their claim. *Minana v. Monroe*, 467 S.W.3d 901, 907 (Mo. App. E.D. 2015). In cases without clearly controlling precedent, a speedy appeal of a preliminary injunction allows the appellate courts to settle disputed issues of law, providing clarity to the parties and circuit court. Such appeals would often preserve public funds and limit litigation costs by providing an early resolution to cases where preliminary injunctions are erroneously issued. This Court has regularly affirmed that this interest satisfies the rational basis test. Clearly, the "legislature must have the power to preserve public funds and insure that the State provides its citizenry appropriate services." *Winston v. Reorganized Sch. Dist. R-2, Lawrence Cnty.*, 636 S.W.2d 324, 328 (Mo. banc 1982). As such, a statue which "intended to balance the need for protection of government funds" against parties obtaining relief contained a rational basis sufficient to defeat an equal protection challenge. *Id.* Section 526.010 allows appellate courts to quickly correct erroneous rulings where necessary and appropriate—this bears the same rational relationship to a legitimate state interest.

The State has legitimate interests in allowing for expeditious review of preliminary injunctions prohibiting the enforcement of its laws. Section 526.010 reasonably relates to these interests by allowing the appellate courts to quickly determine the propriety of the injunction. This allows the State to

enforce its valid laws, protect the health and safety of its people, and saves the taxpayers money by decreasing litigation costs. The General Assembly had a rational basis for enacting § 526.010.

E. Even if section 526.010 impinged on a fundamental right, the statute is narrowly tailored to achieve a compelling state interest and is therefore constitutional.

Even if § 526.010 impinged upon a fundamental right (and it does not), the statute is still constitutional. If a state statute challenged under equal protection "curtails the exercise of a fundamental right, then strict scrutiny applies." *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 331 (Mo. banc 2015). Under strict scrutiny, "the state must justify the law by showing it is necessary to accomplish a compelling state interest." *Dodson v. Ferrara*, 491 S.W.3d 542, 559 (Mo. banc 2016). "[S]trict scrutiny is generally satisfied only if the law at issue is narrowly tailored to achieve a compelling interest." *Dodson v. Kander*, 464 S.W.3d 190, 197 (Mo. banc 2015).

Section 526.010 is narrowly tailored to achieve the State's compelling interest in enforcing laws enacted for the health and safety of its citizens. Missouri law recognizes that the State has a compelling interest in enforcement of its laws—especially laws enacted for the health and safety of its citizens. *See, e.g.*, *State v. Meritt*, 467 S.W.3d 808, 814 (Mo. banc 2015) ("The State has a compelling interest in ensuring public safety."). When the State is wrongly enjoined from effectuating these laws, the harms extend beyond the

courtroom, putting the public at large at risk. Prior to § 526.010's enactment, this risk could last for years until final judgment is entered and the appellate courts could reverse. Section 526.010 ensures the achievement of this compelling interest by allowing for timely review of preliminary injunctions against enforcement of state laws.

Section 526.010 is narrowly tailored to achieve this compelling interest. The law only allows a narrow class of appeals—allowing appeals in cases where the State or a statewide official is "preliminarily enjoined from implementing, enforcing, or otherwise effectuating any provision of the Constitution of Missouri, any Missouri state statute, or any Missouri regulation"—and vests authority for such appeals solely in the Attorney General. (D27 at 8.) This limits the Attorney General's right to appeal to cases where the State's most compelling interest—protecting its citizens—is at risk. And these appeals *only* affect cases where the State is wrongfully enjoined from enforcing its laws—under § 526.010 the State remains enjoined unless and until an appellate court rules that the preliminary injunction was improper. This law is narrowly tailored to achieve the State's compelling interest in enforcing laws to protect public safety.

The circuit court's order fails to appreciate the seriousness of the State's interest in enforcing laws to protect public safety. The court held that "[t]here is no compelling governmental interest achieved in allowing only the Attorney

General to appeal a preliminary injunction where a court has concluded that a challenged state law is flawed and granted injunctive relief." (D30 at 2.) But this fails to appreciate the State's interest in enforcing its valid laws. The State suffers an irreparable harm if it is improperly enjoined from enforcing a valid law or regulation. *See Labrador v. Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring in grant of stay); *also Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury" (alteration in original)). A law whose only effect is to minimize an irreparable harm is narrowly tailored to achieve a compelling state interest.

Conversely, a plaintiff who is denied a preliminary injunction suffers relatively little harm. The purpose of the preliminary injunction is to preserve the status quo until the plaintiff is given the opportunity to prove the challenged statute unconstitutional. *State ex rel. Myers Mem. Airport Comm., Inc. v. City of Carthage*, 951 S.W.2d 347, 350 (Mo. App. S.D. 1997). If a court properly denies a preliminary injunction then the plaintiff suffers no harm because they had no entitlement to "such an extraordinary remedy." *Gabbert*, 925 S.W.2d at 839. While the improper denial of a preliminary injunction will harm the plaintiff, the harm is localized to the plaintiff and only lasts until the court grants a permanent injunction or other relief on the merits. The General

Assembly recognized that an extraordinary remedy preventing the State from advancing one of its most compelling interests counsels for immediate appellate review. Section 526.010 is narrowly tailored to achieve this compelling interest.

* * *

The circuit court erred in holding § 526.010 unconstitutional under article I, section 2 of the Missouri Constitution. Nicholson failed to make the threshold showing that he is similarly situated to the class allegedly disadvantaged by the law, foreclosing any chance of relief. He also failed to preserve his constitutional claim for trial by failing to plead the violation of a specific fundamental right. Because § 526.010 does not impinge upon any fundamental right it is subject to rational basis review—which it easily survives. Even under strict scrutiny the law is narrowly tailored to achieve the State's compelling interest in preventing the irreparable harm of being wrongly enjoined from enforcing laws related to public safety. This Court should reverse.

CONCLUSION

Nicholson does not have standing to challenge S.B. 22. On the merits, he has failed to show that S.B. 22 is procedurally or substantively unconstitutional. The circuit court therefore erred in holding that § 526.010 violates article I, section 2 of the Missouri Constitution. The circuit court's judgment should be vacated and the case remanded for dismissal. In the alternative, it should affirm the judgment with respect to Counts I, II, and III and reverse the judgment with respect to Count IV.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed and served electronically via Missouri CaseNet on November 21, 2025 to all counsel of record.

The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 13,769 words.

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