IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,	)	
Plaintiffs,	)	
v.	)	No. 22AC-CC04439
STATE OF MISSOURI, et al.,	)	
Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT

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INTRODUCTION

Plaintiffs in this case challenge provisions in the State of Missouri's voter ID Law, enacted as House Bill 1878 (hereinafter "HB 1878"). Broadly speaking, that law requires voters to show a state or federal government issued form of Photo Identification (hereinafter "photo ID") in order to vote, or in the alternative, to vote a provisional ballot which involves a signature verification process before the ballot is counted. After trial on the merits, the Court holds that Plaintiffs have failed to prove their case and enters judgment for Defendants, for five principal reasons. *First*, each Plaintiff lacks standing to bring this case, as the individual voter Plaintiffs have not provided sufficient evidence that they are harmed by HB 1878's voter ID provisions and the organizational plaintiffs have not satisfied the test for organizational standing or harm to their proprietary interests. *Second*, even if Plaintiffs did have standing, HB 1878 was passed in response to a 2016 Missouri constitutional amendment authorizing voter ID, and the law is consistent with that constitutional provision. *Third*, the evidence in this case shows that HB 1878 satisfies rational basis scrutiny, and even if rational basis did not apply, HB 1878 survives any level of scrutiny.

The Court notes that it previously dismissed this case on October 12, 2023, holding that both the organizational and individual Plaintiffs have failed to allege either standing or a legally protectable interest. Plaintiff O'Connor joined this suit via an Amended Petition filed on November 4, 2022 and is subject of Defendants' outstanding October 25, 2023 motion to dismiss.

FINDINGS OF FACT

The Court makes the following findings of fact, and makes other findings of fact which are referenced in the conclusions of law presented below as they are relevant. All facts not specifically referenced are found to be consistent with and supportive of the judgment entered herein. The Court also incorporates herein the parties' joint trial stipulations filed on December 6, 2023, and finds the facts as stated in those stipulations.

1. Plaintiffs Morgan and O'Connor can vote using the non-expired photo IDs they currently possess, and Plaintiff Powell has voted successfully by provisional ballot in the past and has sufficient documents to obtain a non-driver identification for free from the State of Missouri that can be used for the purposes of voting.

2. Plaintiff Morgan's name is spelled one way on her birth certificate that contains an extra letter "e" in her name, but her other identity documents do not have that extra letter "e." (Tr. 259-262; Ex. A; Ex. 36 - 38).

3. Plaintiff Morgan is able to vote using her current, non-expired ID. This Court has already held that a one letter difference in the spelling of her first name on her non-expired photo ID does not legally prevent her from using it to vote, and makes a factual finding to the same here. The name on her ID substantially conforms to her name as it appears in her voting record.

4. The Missouri Secretary of State's Office has provided information to Plaintiff Morgan on how to contact the State Department of Health and Senior Services' Vital Records staff to fix spellings of her name. (Tr. 262-263, 268-270; Ex. 39, 40, 42, 43). Vital Records were unable to assist Plaintiff Morgan because she does not access to the documents required and will more than likely require a judicially ordered name change.

5. Plaintiff O'Connor has a current photo identification. (Ex. AF; O'Connor Dep. 36).

6. Plaintiff O'Connor has voted since the challenged provisions of HB 1878 were passed using a newly-obtained, non-expiring photo ID. (O'Connor Dep. 48).

7. Plaintiff O'Connor obtained a temporary identification at a state license office and then later received the permanent identification. (Tr. 31-34). Plaintiff O'Connor did not pay any money for that identification. (Tr. 35). The identification has a photo of him. (Tr. 36). The identification does not have an expiration date. (Tr. 49-50). The Court finds that Plaintiff O'Connor's Photo ID meets the requirements of the law in order to be able to vote.

8. Though Plaintiff O'Connor did not testify at trial, the Court has reviewed his testimony as designated from his deposition and based on that finds that his testimony about his alleged injuries from the law are not credible, due to his combative responses to reasonable questions and refusals to answer certain reasonable questions. (Tr. 53-57). The Court also finds that any burdens on him in obtaining his non-expiring Photo ID were *de minimis* at best.

9. At the time of trial, Plaintiff Powell had a non-drivers photo identification that expired in December 2021. (Tr. 422; Ex. 51). Plaintiff Powell can obtain a renewed photo ID at any time. Plaintiff Powell has done so several times throughout her adult life, most recently in 2015 from a motor vehicle licensing location. (Tr. 451-452, 458-459). She renewed her licensed after she stopped driving because she wanted as form of identification, and then later switched to a non-driver identification. (*Id.*).

10. Plaintiff Powell is aware of Missouri's permanently disabled voting list. (Tr. 452-453). That list provides ways for individuals to vote without a license if the individual is permanently disabled. Based on the information adduced at trial about Plaintiff's disability, she qualifies for placement on Missouri's permanently disabled voting list if she were to apply.

11. Plaintiff Powell voted in the 2022 federal election by using her expired non-driver's identification. (Tr. 454).

12. Plaintiff Powell voted in the municipal election in 2023 by provisional ballot and her vote was counted. (Tr. 455-456).

13. Plaintiff Powell provided no evidence of her signature being rejected in voting or other circumstances, such as financial institutions. (Tr. 456-458).

14. Plaintiff Powell has documents that would entitle her to receive a non-driver's license for the purpose of voting, such as a birth certificate, social security card, and bills that show her address. (Tr. 456-461).

15. Plaintiff Powell lives less than a mile from a license facility, she walks to other locations that are more than a mile from her house, and she takes the bus and has friends that drive her to other places that are further away. (Tr. 462-469).

16. Any burdens Plaintiff Powell may suffer with respect to obtaining a qualifying photo identification for use in future elections is speculative and *de minimis* based on her testimony and evidence in the record.

17. The individual Plaintiffs and/or Missouri voters generally do not have a legally protectable interest in avoiding the everyday burdens of getting an expired license renewed. Any of the individual Plaintiffs' alleged injuries in this regard are generalized grievances shared by the population as a whole.[1]

18. None of the individual voter Plaintiffs have had their ballots rejected at an election for issues with signature matching or validity.

[1] This Court made these findings of fact in its October 12, 2022 Judgement dismissing this case, and finds they remain true today based on the testimony and evidence adduced at trial.

19. The organizational plaintiffs have not sufficiently identified members adversely affected by the challenged law, such as those who do not have acceptable photo identification that complies with the restrictions in HB 1878 and that their ballots will be rejected if they vote by provisional ballot.

20. As this Court found in its previous October 12, 2022 judgment, the organizational plaintiffs' diversion of resources is a self-inflicted harm that promotes existing missions and objectives to educate voters and provide assistance. Any evidence that the organizational plaintiffs adduced at trial about their expenditures was not incurred as a result of the challenged provisions in HB 1878.

21. The Missouri Secretary of State's Office has invested resources in ensuring Missourians know what is required to vote, including spending $100,000 on advertising to educate the public on the requirements of HB 1878 after its passage. (Ex. O, Q, W, AL, AM, AN).

22. The burdens alleged by Plaintiffs to obtain a qualifying photo identification to vote are at most *de minimis*. These burdens do not present a substantial or severe burden upon the right to vote.

23. Rejection rates for signature non-matching has not been a significant basis for rejecting provisional ballots in recent elections.[2] (Jt. Stip. ¶¶ 73-102; Ex. M, N, P; Tr. 827-829).

[2] Plaintiff MO-NAACP was unaware until the time of trial that any member of its organization has had a provisions ballot rejected. At trial, the organizations' representative testified being aware of one member was not given a provisional ballot when attempting to vote in a recent election. (Tr. 731-732). While the Court did not strike this testimony at trial, the Court finds that this testimony and evidence was does not demonstrate that the one member's provisional ballot was rejected for signature mismatching, and there is insufficient evidence of the circumstances why she would not have been given a provision ballot. The Court assigns little weight to this testimony.

24. The State of Missouri provides free photo identification to individuals, who wish to obtain it for the purpose of voting. There was no evidence that any of the individual voter Plaintiffs were asked to pay money to obtain a qualifying photo identification from the State after asking for a photo ID in order to vote.

25. The Secretary of State's Office has trained local election authorities on signature matching and the photo ID requirements in HB 1878. (Ex. 73; Ex. O; Tr. 816-818).

26. Local election authorities have had experience prior to HB 1878 on signature matching due to ballot initiative signature counting and matching. (Tr. 771-775, 816-820).

27. Disputes about signature matching are resolved by a bipartisan team within local election authorities, which generally agree on the decision and generally err on the side of the voter's vote being counted. (Tr. 769-772, 818-820).

28. There was evidence that possible voter impersonation has been brought to the attention of local election authorities. (Tr. 828-829). However, no credible evidence was adduced of any voter impersonation which would have been prevented by requiring photo ID.

29. Requiring photo identification at the polls is a reasonable way to deter potential voter impersonation.

30. It is not irrational or arbitrary for the State to enact laws that can deter voting fraud, such as voter impersonation.

31. The State also has a compelling interest in the same.

32. HB 1878 furthers the State's interest in deterring voter fraud, such as voter impersonation.

33. The State of Missouri has a compelling interest in promoting confidence among the electorate that the people who have voted in an election are the individuals who are registered and presented themselves to the polls.

STANDARD OF REVIEW

As they raise a facial challenge to a statute, Plaintiffs bear the burden of proving, by a preponderance of the evidence, that there is no set of circumstances under which the challenged provisions in HB 1878 are constitutional. "In order to mount a facial challenge to a statute, the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *Donaldson v. Missouri State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. 2020) (quoting *Artman v. State Bd. of Registration for the Healing Arts*, 918 S.W.2d 247, 251 (Mo. 1996)) (internal quotation marks omitted). "It is not enough to show that, under some conceivable circumstances, 'the statute might operate unconstitutionally.'" *Ibid.* "When seeking declaratory relief, a legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question. The party seeking relief has the burden of establishing that they have standing." *World Wide Tech., Inc. v. Off. of Admin.*, 572 S.W.3d 512, 519 (Mo. Ct. App. 2019). So long as there are any "circumstances in which [the statute] can be applied constitutionally, it is not facially invalid." *State v. Perry*, 275 S.W.3d 237, 243 (Mo. 2009) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

CONCLUSIONS OF LAW

A. The voter ID provisions at issue.

On May 12, 2022, the Missouri General Assembly passed HB 1878; Governor Parson signed HB 1878 into law on June 29, 2022; and the law went into effect on August 28, 2022. Pet. ¶¶100–102. As relevant to this case, *see* Pet. ¶¶100–120, HB 1878 amended § 115.427, RSMo.

As amended, the law requires individuals who wish to vote to present *either* an acceptable form of personal photo ID, *or* to cast a provisional ballot. *See* § 115.427.1.[3] Prior to the amendment, the law permitted individuals to vote using a broader array of documents in lieu of identification. *See* § 115.427.2 (2020 supp.). Voters who do not have an acceptable photo ID may cast a provisional ballot, which can be counted in two different ways. *See* § 115.427.2. For a provisional ballot to count, *either* the voter must "return[] to the polling place" while the polling place is open and "provide[] a form of" of valid photo ID, *or* "[t]he election authority verifies the identity of the individual by comparing that individual's signature to the signature on file with the election authority and determines that the individual was eligible to cast a ballot at the polling place where the ballot was cast." § 115.427.4(1).

HB 1878 incorporates those photo ID requirements into in-person absentee voting. The bill amended § 115.277 to require that an individual who votes absentee in person must "provide a form of personal photo identification that is consistent with subsection 1 of section 115.427." § 115.277.1. HB 1878 also authorizes no-excuse early in-person voting for the first time in Missouri, up to two weeks prior to Election Day. § 115.277.1, RSMo ("Beginning on the second Tuesday prior to an election, a reason listed under subsection 3 of this section shall not be required…"). The statute contains a non-severability clause expressing the Legislature's express intention that the two weeks of early in-person voting are not severable from the photo-ID requirement: "Beginning on the second Tuesday prior to an election, a reason listed under subsection 3 of this section shall not be required, provided that, the provisions of section 1.140 to the contrary notwithstanding, this sentence and section 115.427 shall be nonseverable, and if any provision of section 115.427 is for any reason held to be invalid, such decision shall invalidate this

[3] Citations refer to the current version of the Revised Statutes unless otherwise noted.

sentence." *Id.* Missouri voters have been exercising their right to vote by the new "no excuse" early voting procedures under the current law since that election.

B. Background of this lawsuit.

On August 23, 2022, Plaintiffs—two organizations, the NAACP and the League of Women Voters, and two individuals, Plaintiff Powell and Plaintiff Morgan—filed this lawsuit. Raising only state constitutional claims, they alleged that requiring a photo ID to cast a non-provisional ballot violates the right to vote of the Constitution (Count I) and the guarantee of equal protection in Article I, § 2 (Count II). Pet. ¶¶ 149–165. The analysis under the two were essentially the same. *See Priorities USA v. State*, 591 S.W.3d 448, 452–53 (Mo. 2020).

On September 9, 2022, Defendants moved to dismiss Plaintiffs' petition for failure to plead a legally protectable interest and lack of subject-matter jurisdiction based on Plaintiffs' lack of standing under Mo. Sup. Ct. R. 55.27(a)(1). The motion addressed five standing deficiencies with Plaintiffs' suit, which can be summarized as follows (*see* Defendant's Motion to Dismiss at pages 1-2): (1) Individual Plaintiffs Plaintiff Powell and Plaintiff Morgan had not suffered an injury to a protectable interest because they were still able to vote either with or without their existing IDs (Plaintiff Powell has a recently expired Missouri non-driver ID, Plaintiff Morgan has a Missouri driver's license with her first name misspelled by one letter); moreover, their claims of needing significant time and effort to get a compliant ID are speculative. (2) The organizational Plaintiffs lacked standing because they do not identify a single member who would have standing to challenge HB 1878, simply speculating that such a person exists, and any "harms" to the organizations resulting from the law are self-inflicted. (3) The Plaintiffs facial claim requested relief that could not be granted by this court as they cannot represent the rights of unnamed

potential voters not parties to this suit. (4) As it relates to federal elections, this court has no jurisdiction to interfere with the procedures set for federal elections by the state legislature as required by the federal constitution. (5) Finally, courts do not generally interfere last minute with election procedures, and the requested injunction relating to the November 2022 election would have brought a significant risk of voter and election administrator confusion and resulting harm.

On October 12, 2022, this Court granted Defendants' motion and dismissed Plaintiffs' suit, entering judgment in favor of the Defendants. *Order and Judgment*, October 12, 2022 (Cole County) (hereinafter *Order and Judgment*). This Court held for Defendants stating regarding Plaintiff Morgan: "[t]his allegation does not establish any non-speculative injury to Plaintiff Morgan . . . [b]y its plain terms, the statute permits Plaintiff Morgan to vote with that photo ID [which contains her name, containing an extra "e", as it is misspelled on her current copy of her birth certificate], and any allegation that she might be prevented to vote by the extra "e" is entirely speculative." (*Order and Judgement*, at ¶10). Likewise the Court held regarding Plaintiff Powell that she: "does not allege any non-speculative injury from the photo ID law. Plaintiff Powell alleges that she needs to get a photo ID to vote because her Missouri state non-driver's ID expired on December 29, 2021." (*Order and Judgement* at ¶11).

This Court found that neither Plaintiff Powell nor Plaintiff Morgan had:

> "alleged facts sufficient to establish standing or a legally protectable interest in the case, because they fail to allege any meaningful 'threatened or actual injury resulting from the putatively illegal action.' *Id.* at ¶ 23 (quoting *Harrison v. Monroe County*, 716 S.W.2d 263, 266 (Mo. 1986).

Moreover, this Court found that:

> "Missouri voters do not have a legally protectable interest in avoiding the everyday burdens of getting an expired license renewed." *Order and Judgment* at ¶16.
>
> "individuals do not have a right to be free from '[b]urdens of [the] sort arising from life's vagaries [that] are neither so serious nor so frequent as to raise any question about the

> constitutionality of the Voter ID provisions." *Ibid.* (brackets kept) (quoting *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008)). The reason for this Court's holding is that: "[s]uch burdens as the administrative efforts required to renew a license or a photo ID—which virtually all Missourians must undergo periodically—are not a specific, concrete non-speculative injury or legally protectable interest in challenging the photo ID requirement." *Id.* at ¶17.

Finally, this Court stated regarding the provisional ballot alternative to voting without a photo ID:

> "Further, even if Ms. Powell or Ms. Morgan had alleged a non-speculative obstacle to voting with a photo ID, both would have the option of casting a provisional ballot under HB 1878. . . . [N]either Ms. Powell nor Ms. Morgan alleges facts that would establish a specific, concrete, non-speculative risk of erroneous rejection [of any provisional ballot they might cast] as to themselves specifically." *Id.* at 19.

On November 4, 2022, Plaintiffs filed a First Amended Petition, adding Plaintiff O'Connor as a named plaintiff (hereinafter Amd. Pet.). On December 5, 2022, Defendants answered the First Amended Petition. Under "Affirmative Defenses" on page 28 of the Defendant's Answer, ¶3, Defendants state: "Plaintiff O'Connor lacks standing because he has alleged that he has a photo ID that is valid to vote in Missouri elections under HB 1878." (Referencing Am. Pet. ¶123). On October 25, 2023, Defendants filed a motion to dismiss Plaintiff O'Connor for lack of standing. This Court took that motion with the case.

C. Plaintiffs lack standing.

i. Applicable Principles of Standing

Lack of standing cannot be waived and can be raised at any time, including *sua sponte* by the court. *See e.g. Foster v. Dunklin Cnty.*, 641 S.W.3d 421, 423 (Mo. App. S.D. 2022) (citing *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. 2002) and *Aufenkamp v. Grabill*, 112 S.W.3d 455, 458 (Mo. App. W.D. 2003)). "Dismissal for lack of subject-matter jurisdiction is appropriate when it appears, by suggestion of the parties or otherwise, that the court is without jurisdiction." *Mo. Soybean Ass'n v. Mo. Clean Water Comm'n,* 102 S.W.3d 10, 22 (Mo. 2003). "The quantum of proof necessary is not high; it must only appear by a preponderance of the evidence that the court

is without jurisdiction." *Id.* "In determining whether it has subject-matter jurisdiction, the trial court may consider the facts alleged in the petition and evidence adduced by affidavits, oral testimony, depositions, and exhibits." *Arbogast v. City of St. Louis*, 285 S.W.3d 790, 795–96 (Mo. App. E.D. 2009).

Standing is "a matter of justiciability, that is, of a court's authority to address a particular issue when the party suing has no justiciable interest in the subject matter of the action." *Schweich v. Nixon*, 408 S.W.3d 769, 774 n.5 (Mo. 2013). Standing is a principle that, like the constitutional grant of jurisdiction (*see* Mo. Const. art. I, § 14; *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253–54 (Mo. 2009)) affects a court's ability to hear any particular case, *see, e.g.*, *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 737 (Mo. 2007) (requiring Plaintiffs to have standing to bring a declaratory judgment action); *Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (requiring Plaintiffs to have standing to bring declaratory judgment actions: concrete legal issues, presented in actual cases, not abstractions are requisite. This is as true of declaratory judgments as any other field.") (internal quotations omitted). "Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action." *Lee's Summit License, LLC v. Office of Admin.*, 486 S.W.3d 409, 416 (Mo. App. W.D. 2016) (quoting *E. Mo. Laborers Dist. Council v. St. Louis County*, 781 S.W.2d 43, 45–46 (Mo. 1989)).

That is so because the requirement of standing serves constitutional values. The doctrine derives, in part, from article V, § 14, of the Constitution, which vests "original jurisdiction over all cases and matters, civil and criminal" in the circuit courts, *Harrison* 716 S.W.2d at 266 (quoting Mo. Const., art. V, § 14); *see also Schweich*, 408 S.W.3d at 774, who then exercise "judicial power," Mo. Const. art. V, § 1. Like its federal counterpart, *see, e.g.*, *Corozzo v. Wal-Mart Stores, Inc.*, 531 S.W.3d 566, 573–74 (Mo. App. W.D. 2017) (noting that the both state and

federal courts require standing), the requirement of standing is "founded in concern about the proper—and properly limited—role of the courts in a democratic society," *Warth v. Seldin*, 422 U.S. 490, 498 (1975), and alleviates that concern "by preventing advisory opinions" by limiting the exercise of judicial authority just to "'those issues which affect the rights of the parties present,'" *Trenton Farms RE, LLC v. Hickory Neighbors United, Inc.*, 603 S.W.3d 286, 293 (Mo. 2020) (quoting *Williams v. Marsh*, 626 S.W.2d 223, 227 (Mo. 1982)).

Standing therefore exists if "the plaintiff 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation" of a circuit court's jurisdiction. *Harrison*, 716 S.W.2d at 266 (quoting *Warth*, 422 U.S. at 498–99). That "generally depends upon whether the plaintiff can allege 'some threatened or actual injury resulting from the putatively illegal action.'" *Id.* (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973). That is, the plaintiff must have suffered an injury caused by the defendant's actions. *See, e.g.*, *W.R. Grace & Co. v. Hughlett*, 729 S.W.2d 203, 206 (Mo. 1987) ("For a party to have standing to challenge the constitutionality of a statute, he must demonstrate that *he* is '*adversely affected by the statute in question* . . . .'") (first emphasis added) (quoting *Ryder v. County of St. Charles*, 552 S.W.2d 705, 707 (Mo. 1977)). That injury must be "specific and legally cognizable" to confer standing. *Metro Auto Auction v. Dir.*, 707 S.W.2d 397, 400 (Mo. 1986); *see also Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. 2002) ("Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute."). "'[T]he generalized interest of all citizens in constitutional governance' does not invoke standing." *Mo. Coal. for Env't v. State*, 579 S.W.3d 924, 927 (Mo. 2019) (brackets kept) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 160 (1990) (quoting another source)). Finally, the plaintiff must seek relief that would remedy the injury. "If the plaintiff's grounds for relief and remedy sought cannot

alleviate the alleged injury, then, by necessity, the litigation cannot vindicate the plaintiff's alleged personal interest or stake in the outcome of the litigation. If that is the case, then the plaintiff has no standing to bring the claims he or she alleges." *St. Louis County v. State*, 424 S.W.3d 450, 453 (Mo. 2014).

ii. The Individual Plaintiffs Lack Standing.

This Court proceeded to trial on the merits, but the Court finds that, the allegations in the petition are subject to dismissal, once again, on the basis of standing—as a jurisdictional element to proceed further in this case. The evidence presented in the case, as well, confirms that Plaintiffs lack standing.

At the outset, the hypothetical *de minimis* harms Plaintiffs allege (and testified to at trial) do not outweigh the State's compelling government interests in protecting the integrity of the election system advanced by HB 1878 and do not justify the forward-looking relief they seek by injunction of the statute. Finally, to the extent that there is any minimal burden to obtaining a photo ID, such burden is not solely attributable to the need to obtain photo ID for voting: photo ID is required for many areas of modern life; on the other hand, the State alleviates those burdens and provides photo IDs and underlying documentation to voters for free and assists voters in obtaining the same.

All individual Plaintiffs have voted and are able to continue to vote: Plaintiff Powell has voted and her vote has been counted without issue since her ID expired. Plaintiff Morgan and Plaintiff O'Connor can vote using the non-expired photo IDs they currently possess. Plaintiff O'Connor has voted since HB 1878 using his newly obtained, non-expiring photo ID. Plaintiff Morgan is able to vote using her current, non-expired ID: as this Court has already held, a one letter difference in the spelling of her first name on her non-expired photo ID does not legally

prevent her from using it to vote as her name on her ID "substantially conforms" to her name as it appears in her voting record.

The individual Plaintiffs have failed to establish an injury to any protected interest. They claim that the Voter ID provisions in HB 1878 violate their fundamental right to vote by imposing a substantial burden on the right. Not so. Aside from the ability to obtain a free photo ID at any license office in the state, and the utility of having a photo ID in modern life, under HB 1878, they may cast a provisional ballot even without photo ID. Their claim that their provisional ballots may be rejected is purely speculative. In addition, the evidence at trial confirms that rejection rates for provisional ballots are low, and the rates specifically for signature-mismatch are exceedingly low. Plaintiffs did not introduce any credible evidence of any single Missouri voter's ballot not being counted due to a wrong decision by a local election authority on signature matching. The Court concludes that there is no evidence of arbitrary review processes that have been performed or will be performed for signature matching. The Court finds and concludes that local election authorities have a sufficient process in place, through bipartisan review teams that err on the side of counting votes when possible. § 115.427.4(1)(b) (providing the process for determining whether to count a provisional ballot using signature matching).[4] These teams generally agree on the decisions that they reach in the rare circumstances when there are disputes about signature validity. Moreover, the Court finds unpersuasive the testimony of Plaintiffs' expert Dr. Linton Mohammed on forensic signature matching. Dr. Mohammed's standard of signature matching requires hours of analysis per signature is impractical and unworkable. The standard used by Missouri's local election authorities is not that of a forensically trained signature reviewer—it is a standard that, when in doubt, errs in favor of the voter and Plaintiffs have not introduced evidence of incorrect decisions

[4] No plaintiff claims harm involving the process set forth § 115.427.4(1)(a).

from local election authorities that wrongly excluded a specific voter, let alone any of the voters to this lawsuit. The U.S. Court of Appeals for the Fifth and Ninth Circuit Courts have held that "the absence of notice and an opportunity to rehabilitate rejected signatures imposes only a minimal burden on plaintiffs' rights." *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 238 (5th Cir. 2020) (quoting *Lemons v. Bradbury*, 538 F.3d 1098, 1104 (9th Cir. 2008))." The Sixth Circuit is similar. In *Memphis A. Philip Randolph Inst. v. Hargett*, 978 F.3d 378, 387 (6th Cir. 2020), the Court emphasized that local election officials watch a training video and that election officials start from the presumption that a signature is valid and "look for ways to accept rather than reject each ballot." The same is true based on the evidence in this case. Just as important, Dr. Mohammad was the plaintiffs' expert in *Memphis A. Philip Randolph Institute*, and the Sixth Circuit gave little weight to his testimony. This Court does the same here as his theories are similar in that case as they are in this case.

Moreover, the Court credits the testimony from the local election officials who testified about the experience they have with signature matching, such as through trainings and through the ballot initiative process. Signature comparison is something which can be successfully done by appropriately trained election authorities; even Dr. Mohammed admitted that individuals such as clerks at a bank do remarkably well at distinguishing a matching from a fraudulent signature. The Court did not receive any evidence that any election official is not adequately trained on signature-matching or, even if they were, that there has been any identifiable instance of a voter's ballot not being counted due to an errant decision on signature matching.

It is not enough to claim, in openly speculative terms, that "the signature-matching process *could* result in an over-rejection of legitimate signatures." *Priorities USA*, 591 S.W.3d at 458 (emphasis added). Such speculation fails to satisfy standing's requirement of concrete,

particularized injury, and Plaintiffs did not present credible evidence of what an over-rejection rate is or that Missouri has experienced or almost certainly will experience such rate.

Courts "do not recognize the concept of 'probabilistic standing' based on a non-particularized 'increased risk'—that is, an increased risk that equally affects the general public." *Shrimpers & Fishermen of RGV v. Tex. Comm'n on Envtl. Quality*, 968 F.3d 419, 424 (5th Cir. 2020). Plaintiff Powell and Plaintiff Morgan fail to show how the risk of rejection of their provision ballot is any different than the risk to the general public; that is, their injury is not "particularized," *id.*, or "specific" to them, *Metro Auto Auction*, 707 S.W.2d at 400. They instead seek to advance the public's "generalized interest" in having the State follow the law. *Mo. Coal. for Env't*, 579 S.W.3d at 927 (quotations omitted). That they cannot do. Moreover, even if they showed a risk of rejection specific to them, the Plaintiffs would still need to demonstrate a "substantial risk that" their provisional ballot will be rejected. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting another source)). Plaintiffs did not present sufficient evidence that they "*must* show photo identification" under HB 1878 "to ensure their votes are counted." *Priorities USA*, 591 S.W.3d at 458 (emphasis added).

The Court reaffirms its ruling from its October 2022 Judgment dismissing the case, and also concludes that even if the allegations in the Amended Petition were sufficient to allege standing, the evidence in the record is that they are not sufficiently harmed by HB 1878.

Plaintiff O'Connor replaced his expired driver's license with a state ID which allows him to vote and therefore has not nor will not suffer "an 'onerous procedural requirement which effectively handicaps exercise of the franchise.'" *Weinschenk*, 203 S.W.3d at 215 (quoting *Lane v. Wilson*, 307 U.S. 268, 275 (1939)). In short, the burden that the voter ID provisions imposed

on Plaintiff O'Connor's right to vote were *de minimis*, going forward are non-existent, and are therefore no harm at all. *See id.* at 213-215. Thus, he lacks standing, for he fails to establish any meaningful "threatened or actual injury resulting from the putatively illegal action." *Harrison*, 716 S.W.2d at 266 (quotations omitted).

Plaintiff Morgan claims injury from the fact that her non-driver's photo ID "spells her first name incorrectly" as "Kimberley," Pet. ¶64, while her voter registration spells her first name correctly as "Kimberly," with no "e," Pet. ¶73. Thus, she claims, "she cannot use her state-issued ID with the name misspelling" to vote, and she "will have to engage in significant time, effort, and planning" to obtain "a photo ID with the correct spelling of her name" to vote—which would include obtaining "a corrected birth certificate." Pet. ¶¶78–79. An extra "e" is no injury, as this Court has already found, and it is not any of the present Defendants' fault that this occurred. And the Court emphasized that Section 115.427.1(3) permits use of a document that "contains the name of the individual to whom the document was issued, and the name *substantially conforms* to the most recent signature on the individual's voter registration record." (Emphasis added). The difference of an "e" counts as substantial conformity. Interpreting the law to include such a requirement is consistent with the rule that statutes are construed in context, *see, e.g.*, *Dickemann v. Costco Wholesale Corp.*, 550 S.W.3d 65, 68 (Mo. 2018); the canon that statutes are to be read to avoid constitutional issues, *see, e.g.*, *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838–39 (Mo. 1991); and the principle that "[t]he law does not concern itself with trifles," *Capital City Motors, Inc. v. Thomas W. Garland, Inc.*, 363 S.W.2d 575, 579 (Mo. 1962). Plaintiff Morgan does not have standing or a sufficient injury based on the evidence because the burden on her to correct

her name is not "an 'onerous procedural requirement which effectively handicaps exercise of the franchise.'" *Weinschenk*, 203 S.W.3d at 215 (quoting *Lane v. Wilson*, 307 U.S. 268, 275 (1939)).[5]

Plaintiff Powell can obtain a renewed photo ID as she has done several times throughout her adult life, most recently in 2015 – this time due to changes in the voter ID law, it can be provided to her at no cost by the state of Missouri, or can vote a provisional ballot, as she has done since the passage of HB 1878. The Court has considered her testimony about her inability to drive and her disability, and concludes that HB 1878 does not present any more than a *de minimis* burden on her. The Court is cognizant of her circumstances and concludes that she has several ways to vote. She can vote either by provisional ballot, and she has presented no evidence that her signature will not be properly counted or has not been counted for other situations. The Court also concludes that even considering her circumstances, obtaining a photo identification for free from a license office is a *de miminis* administrative burden. In addition, the Court concludes that she would qualify on the permanent disability list if she applied.

iii. The organizational Plaintiffs lack standing and the Voter ID provisions do not cause any harm to their proprietary interests.

The NAACP and the League of Women Voters do not have organizational standing and the Voting ID provisions did not cause the injury to their proprietary interests of which the organizations complain. The NAACP and the League of Women Voters appear rest their standing on two theories. First, both organizations appear to claim standing to "sue as representative for [their] members." *Mo. Health Care Ass'n v. Att'y Gen.*, 953 S.W.3d 617, 620

[5] In addition, a minor change in a person's name—like dropping an errant "e"—can be done within two weeks after Plaintiff Morgan provides the Bureau of Vital Records with a signed affidavit. 19 C.S.R. 10-10.110(1)(A).

(Mo. 1997). Second, both organizations claim standing based on putative harms the Voter ID provisions of HB 1878 inflict on them.

"Where, as here, plaintiffs are associations of individuals, standing must be predicated, *inter alia,* on the fact that the association members would have standing to bring their claims individually." *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 88 (Mo. 2008). To establish organizational standing, "plaintiff-organizations [must] make specific allegations establishing that at least one *identified* member has suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added).[6] For example, the organization in *Citizens for Rural Preservation, Inc. v. Robinett*, 648 S.W.2d 117 (Mo. Ct. App. 1982), was found to establish organizational standing to challenge the issuance of a permit to a company to conduct quarry and rock-crushing operations because "its members either own property or reside in the area of the quarry site and would be adversely affected by the" the operations. *Id.* at 133–34. That is, the organization specifically identified that all of its members would be affected by the putatively unlawful action. *See also Summers*, 555 U.S. at 498–99 (showing that "*all* members of the organization are affected by the challenged activity" is sufficient).

This Court dismissed Plaintiffs' original Petition for, in part, lack of organizational standing:

> 24. The Petition names two organizational Plaintiffs—the Missouri State Conference of the National Association for the Advancement of Colored People ("NAACP") and the League of Women Voters ("LWV"). The Court holds that the Petition fails to allege facts establishing standing or a legally protectable interest of these Plaintiffs as well.
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> 25. Two years ago, in similar litigation involving the same parties, the Court held that the same Plaintiffs, NAACP and LWV, lacked standing to challenge the signature-notarization requirement for mail-in ballots. *See* Findings of Fact, Conclusions of Law, and Final Judgment

[6] Missouri law incorporates federal standards for organizational standing. *See Mo. Outdoor Advert. Ass'n, Inc. v. Mo. State Highways & Transp. Comm'n*, 826 S.W.2d 342, 344 (Mo. banc 1992).

in *Mo. State Conference of the NAACP v. State*, No. 20AC-CC00169-01 (Sept. 24, 2020), *at* ¶¶ 74-82 ("*NAACP II*"). The Court comes to the same conclusion today, for similar reasons.

26. The NAACP and the LWV rest their standing on two theories. First, both organizations appear to claim standing to "sue as representative for [their] members." *Mo. Health Care Ass'n v. Att'y Gen.*, 953 S.W.3d 617, 620 (Mo. 1997). Second, both organizations claim standing based on putative harms the voter ID provisions of HB 1878 inflict on them. The Petition's allegations are insufficient to support standing or a legally protectable interest on either theory.

27. First, as to representational standing: "Where, as here, plaintiffs are associations of individuals, standing must be predicated, *inter alia,* on the fact that the association members would have standing to bring their claims individually." *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 88 (Mo. 2008).

28. Here, Plaintiffs do not identify any specific members adversely affected by the challenged law. Instead, they merely allege that "*[u]pon information and belief*, members of the Missouri NAACP and the LWVMO do not have acceptable photo ID that complies with the Voter ID Restrictions and will be prohibited from voting in future elections." Pet. ¶133, and that "*[u]pon information and belief*, members of the Missouri NAACP and the LWVMO face uncertainty and confusion about the scope and requirements of the Voter ID Restrictions and will be dissuaded from exercising their right to vote." Pet. ¶134 (emphases added).

29. Conspicuously absent from these statement is any specific factual allegation about any specific human being who is a member of NAACP or LWV and who will be harmed by the photo ID requirement. Indeed, other than Plaintiff Powell and Plaintiff Morgan, the NAACP and LWV fail to identify even one member who allegedly has standing to sue.

30. These allegations are insufficient to establish representational standing. To establish representational standing, "plaintiff-organizations [must] make specific allegations establishing that at least one *identified* member has suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added). As this Court stated in its prior judgment, "Plaintiffs … lack associational standing because they fail to identify any member of their organizations who has direct standing to challenge the laws at issue, other than the named Plaintiffs who are already participating in the case." *NAACP II*, ¶ 77.

31. NAACP's and LWV's decision to allege facts about their own members "upon information and belief" demonstrates the speculative nature of these allegations. Counsel have an obligation to conduct a reasonable investigation before making allegations in a Petition, and NAACP and LWV have privileged access to facts about their own members. If they had any members who faced a non-speculative obstacle to voting from the photo ID requirement, there would be no need to make such generic allegations "upon information and belief."

(*Order and Judgment* at 24-30).

The Court concludes that the Amended Petition suffers from the same defects, and further that the evidence at trial demonstrates that they do not have sufficient injury from HB 1878.

The organizational Plaintiffs also cannot establish standing based on putative proprietary injuries. The organizations claim proprietary injury from having to "divert resources to education and assist their members and eligible voters throughout Missouri to address confusion, uncertainty, and compliance with the" Voter ID provisions. Pet. ¶165. Plaintiffs are the party bearing the burden of establishing their standing, *see, e.g.*, *Manzara*, 343 S.W.3d at 659. The organizations lack standing to seek relief under Count I and Count II because they cannot trace the alleged injury (the diversion of resources) to the Voter ID provisions for two reasons.

First, the diversion is a self-inflicted harm based on the organization's speculation about how third parties will react to the Voter ID provisions. *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). In *Clapper*, organizations brought a challenge to the FISA Amendments Act of 2008—specifically 50 U.S.C. § 1881a—which authorized federal surveillance of people outside the United States. *Clapper*, 568 U.S. at 404–05. Such surveillance is "subject to statutory conditions, judicial authorization, congressional supervision, and compliance with the Fourth Amendment." *Id.* at 404. The plaintiffs were attorneys and organizations who worked with people who, they alleged, "are likely targets of surveillance under § 1881a," *id.* at 406, and one of their standing theories was that the "risk of surveillance under § 1881a requires them to take costly and burdensome measures to protect the confidentiality of their communications." *Id.* at 415.

The Supreme Court rejected that theory. It noted that the plaintiffs failed to show that the risk of "their communications with their foreign contacts will be intercepted under § 1881a at some point in the future" was too speculative. *Id.* at 410. Thus, the costs they incurred to avoid surveillance was an attempt "to manufacture standing … by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id.* at 416. Those costs

where, therefore, not the product of the surveillance statute but of their subjective fear that there may be such surveillance. *See id.* at 417.

The *Clapper* Court relied on *Laird v. Tatum*, 408 U.S. 1 (1972), noting that case rejected the claim that "being 'chilled by the mere existence, without more, of [the Army's] investigative and data-gathering activity' " did not show traceability. *Clapper*, 568 U.S. at 417 (alterations in original) (quoting *Laird*, 408 U.S. at 10). "Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Id.* at 418 (quoting *Laird*, 408 U.S. at 13–14). They are, instead, "the product of [a] fear of" government malfeasance. *Id.* at 417.

The Missouri Court of Appeals has also relied on that portion of *Laird* to reject a similar standing theory in *Sckorhod v. Stafford*, 550 S.W.2d 799 (Mo. Ct. App. 1977). There, police photographed and videotaped a protest. *Id.* at 800–01. The protestors sued, claiming that the "the retention, and possible future dissemination of the photographs and videotapes, would 'chill' the exercise of their constitutional rights of free speech and assembly," *id.* at 803. The Court of Appeals rejected jurisdiction. The "allegation[] of a subjective 'chill' [is] not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Id.* at 804 (quoting *Laird*, 408 U.S. at 13–14). Absent such a harm, there is no "a direct injury as the result" of government action, and thus no jurisdiction. *Id.* at 804 (quoting *Laird*, 408 U.S. at 13) (quotations omitted).

So too here. The Amended Petition contains no facts showing that there is actually confusion, uncertainty, or issues with voters determining how to comply with the Voter ID provisions. Properly read, those claims describe the NAACP's and the League of Women Voters' *belief* that the law confuses voters. That is speculative at best; indeed, the organizations make the

allegation "[u]pon information and belief." Pet. ¶134. The Court has considered the testimony and evidence from trial and accords it little weight as to confusion about the photo identification provisions in HB 1878.

Thus, the alleged harm—the diversion of resources—is "the product" of pure speculation and subjective belief. *Clapper*, 568 U.S. at 416, 417. It is not the result of the Voter ID provisions, and so the organizations fail to show that the law caused their injury. *See id.* at 417–18; *Sckorhod*, 550 S.W.2d at 804; *see also F.E.C. v. Cruz*, 142 S. Ct. 1638, 1647 (2022) (noting the plaintiffs' manufactured injury in *Clapper* failed to establish standing because plaintiffs "could not show that they had been or were likely to be subjected to that policy"). Nothing in HB 1878 mandates that the organizational plaintiffs take any action.

Second, the Petition admits that the division of resources to educate voters about the Voter ID provisions does not stem from the Voter ID provisions themselves but from another part of HB 1878. HB 1878 also amended the Secretary of State's duty to provide notice of personal identification requirements through print, broadcast, television, radio, cable, and internet advertisements and announcements. §115.427.5, RSMo (2020). Now, the law requires the Secretary just to "provide notice of the personal photo identification requirements described in subsection 1 of this section on the official state internet website of the secretary of state." §115.427.5, RSMo (2022). Moreover, HB 1878 removed "language providing for appropriation of implementation costs"—including costs to provide the public notice of the photo ID requirements—"from the general revenue of state funds." *Compare* §115.427.6(3), RSMo (2020) (containing the appropriation provision), *with* §115.427.6, RSMo (2022) (lacking it). Thus, HB 1878 lowered the number of methods the Secretary of State had to use to educate voters about the Voter ID provisions, and took away automatic funding of that education.

That change, not the new Voter ID provisions in subsections (1) and (2), appears to be the alleged causing the NAACP and the League of Women Voters to divert resources to educate the public about photo ID. That logically cannot, and legally does not, show that the NAACP and the League of Women Voters have been "adversely affected by the" the provisions of HB 1878 they challenge—*i.e.*, the requirement that voters show photo ID to vote. *Mo. Coal. for Env't*, 579 S.W.3d at 927 (quoting *W.R. Grace*, 729 S.W.2d at 206 (quotations and emphasis omitted)). This case therefore mirrors *California v. Texas*, 141 S. Ct. 2104 (2021). There, a coalition of States challenged constitutionality of 26 U.S.C. § 5000A, which required that individuals have a minimum essential health insurance coverage. *Id.* at 2113. The Court held that the States could not base standing on obligations and costs that statutes besides § 5000A imposed on them because the harms those statutes imposed were "not fairly traceable to the enforcement of" § 5000A. *Id.* at 2119. Likewise, the NAACP and League of Women Voters claim one provision of HB 1878 has harmed them, yet challenge the validity of a *separate* provision. So here, as in *California*, the organizations failed to establish the necessary link between the putative harm to their interests and the challenged law.

This Court's Order and Judgement holds for the Defendants that diversion of the Plaintiff's resources was a legally meritless and self-inflicted harm (*Order and Judgment* at 32-35):

> 32. NAACP and LWV also fail to allege facts to support organizational standing based proprietary interests. The organizations claim proprietary injury from having to "divert resources to education and assist their members and eligible voters throughout Missouri to address confusion, uncertainty, and compliance with the" voter ID provisions. Pet. ¶165.
>
> 33. This alleged diversion of resources is a self-inflicted harm based on the organizations' speculation about how third parties will react to the Voter ID provisions, which establishes neither standing nor a legally protectable interest. *See, e.g., Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). Plaintiffs cannot "manufacture standing ... by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id.* at 416; *see also Sckorhod v. Stafford*, 550 S.W.2d 799 (Mo. Ct. App. 1977).

34. As this Court stated in its prior judgment, "This 'diversion-of-resources' theory of organizational standing fails as a matter of law.... Missouri courts have yet to embrace the liberalized federal rule of organizational standing. Plaintiffs cannot manufacture injury simply by choosing to spend money fixing a problem that otherwise would not affect the organization at all." *NAACP II*, ¶ 82 (citations and quotation marks omitted).

35. Further, the Petition alleges that the diversion of resources to educate voters about the new law does not stem from the voter ID requirements themselves, but from another part of HB 1878. The Petition alleges: "*As a result* of the elimination of State outreach and funding requirements under HB 1878, the Missouri NAACP and the LWVMO have been and will continue to shift their resources to provide education and assistance to their members and the public regarding the Voter ID Restrictions." Pet. ¶ 117. But Plaintiffs have not challenged the validity of the "elimination of State outreach and funding requirements under HB 1878." *Id.* Thus, they do not allege that they are "adversely affected by" the provisions of HB 1878 they challenge—*i.e.*, the requirement that voters show photo ID to vote. *Mo. Coal. for Env't*, 579 S.W.3d at 927 (quoting *W.R. Grace*, 729 S.W.2d at 206 (quotations and emphasis omitted)); *see also California v. Texas*, 141 S. Ct. 2104 (2021).

The Court reincorporates its conclusions of law here. Plaintiffs cannot "manufacture the injury by … simply choosing to spend money fixing a problem that otherwise would not affect the organization at all." *La Associacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010).

Finally, both organizations fail to identify a member who would have standing to challenge the law, which means they do not have organizational standing. Vague, unspecific, conclusory allegations about the supposedly affected members of the organizational plaintiffs are insufficient to establish standing to sue. The U.S. Supreme Court addressed a similar situation in *Summers*. In *Summers*, the organizational plaintiffs were environmental organizations who sought to enjoin certain U.S. Forest Service regulations permitting the sale of timber from fire-damaged land in California. 555 U.S. at 490-92. In holding that these plaintiffs lacked standing, the Supreme Court rejected the argument that the "statistical probability that some of those members are threatened with a concrete injury" was sufficient to establish organizational standing. *Id.* at 497. The Supreme Court held that a mere "probable" injury to "some (unidentified) members" of the plaintiff organizations did not grant them associational standing. *Id.* The Court stated: "This novel

approach to the law of organizational standing would make a mockery of our prior cases, which have required plaintiff-organizations to make *specific* allegations establishing that at least one *identified* member had suffered or would suffer harm." *Id.* at 498 (emphases added). The allegations of the organizational plaintiffs here suffer from exactly the same defect that was fatal in *Summers*—both the NAACP and the LWV fail to provide any "specific allegations establishing that at least one identified member had suffered or would suffer harm." *Id.*

In the trial testimony in this case, Plaintiffs attempted to cure their pleading deficiencies by providing a handful of hearsay anecdotes about their alleged members through the testimony of their corporate representatives, such as the NAACP's representative's testimony about an individual named Nakishia Jackson. Plaintiffs did not, however, attempt to address the sufficiency of these standing allegations through direct, admissible evidence, such as testimony from the members themselves—other than the members who are already participating as named Plaintiffs in this case. Standing is a constitutional requirement, and Plaintiffs, not Defendants, have the burden of establishing their own standing in this case. The Court finds that Plaintiffs' attempt to establish standing through hearsay anecdotes instead of direct evidence falls short of Plaintiffs' burden of establishing associational standing here.

Plaintiffs' theory of associational standing, and their reliance on hearsay anecdotes instead of direct testimony from their members, fails for another reason as well. Plaintiffs' theory of injury to its voter-members rests on subjective states of mind about fears about their provisional ballots not being counted if they do not have the proper photo identification at the polls. As the Court noted above, rejection rates are low for provisional ballots and Plaintiffs have not identified any instance of a local election authority failing to count a vote due to an errant signature mismatch decision.

iv. This Court has already held that the Plaintiffs lack standing to bring a facial challenge because the Court cannot grant the requested universal relief since the named plaintiffs cannot press the claims of third parties.

Plaintiffs bring facial as well as as-applied challenges to the Voter ID provisions. *See* Pet., at 28 and Amd. Pet. ¶17. They lack standing to bring a facial challenge, and thus they can seek an order that, at most, would exempt just the two of them from the photo-ID requirements, and no other voter. A facial challenge brings with it an incredibly high burden of proving that there are *no circumstances* where HB 1878 would be valid; the plaintiffs lacks standing to assert that this law is unlawful in their own circumstances, still less that it would be unlawful in every possible circumstance. Lacking individual standing, the plaintiffs also lack standing to bring such a facial challenge on behalf of third parties.

The Missouri Supreme Court has held that: "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that *no set of circumstances* exists under which the Act would be valid." *State v. Kerr*, 905 S.W.2d 514, 515 (Mo. 1995) (quoting *United States. v. Salerno*, 481 U.S. 739, 745 (1987)) (emphasis added, quotations omitted); see also, *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 491 (Mo. 2022), and *Donaldson v. Missouri State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. 2020) (reaffirming "no set of circumstances" test and stating, "[i]t is not enough to show that, under some conceivable circumstances, 'the statute might operate unconstitutionally'").

No Plaintiff has demonstrated that there are no set of circumstances in which HB 1878 would be valid. The law does not restrict any plaintiff's ability to vote, and the newly-added Plaintiff O'Connor has already done last November, after the voter ID law became effective. He

can continue to use his non-expiring state issued photo ID to vote in future elections, and HB 1878 therefore provides no impediment to his right to vote.

Moreover, as the Missouri Supreme Court has noted, a facial challenge implicates standing issues because it "seeks relief on behalf of others not before [the] Court ... ." *Geier v. Mo. Ethics Comm'n*, 474 S.W.3d 560, 569 (Mo. 2015). Plaintiffs' facial challenge seeks improper universal relief—that is, a declaration that the voter ID provisions "may not be enforced" as to anyone in Missouri and an injunction of the same scope. See Amd. Pet., at Prayer for Relief (page 40). Thus, the Amended Petition seeks relief on behalf of individuals who are not parties here. That is inconsistent with the traditional equitable requirement that any "remedy must be limited to the inadequacy that produced the injury in fact that the plaintiff has established[.]" *Lewis v. Casey*, 518 U.S. 343, 344 (1996).

Such a remedy is also prohibited by Missouri's common-law limits on remedies. See § 1.010.1, RSMo (making the Common Law, when not repugnant to or inconsistent with the Constitutions of Missouri or the United States and the current statutes of Missouri the "rule of action and decision in this state"); *State ex rel. McKittrick v. Mo. Pub. Serv. Comm'n*, 175 S.W.2d 857, 861 (Mo. 1943) ("This section evidently has been construed as adopting . . . the common–law rights and remedies of litigants."); *State ex rel. Nat'l Refining Co. v. Seehorn*, 127 S.W.2d 418, 424 (Mo. 1939) (denying a remedy that did not exist at common law). But "[t]he English system of equity did not contemplate universal injunctions." *Trump v. Hawaii*, 138 S. Ct. 2392, 2427 (2018) (Thomas, J., concurring) (gathering sources).

By seeking a universal injunction, Plaintiffs are seeking a remedy they cannot receive given that none of them have sufficiently demonstrated standing or proven an injury of constitutional magnitude to themselves, the lacks standing to bring such a facial challenge. *See, e.g., St. Louis*

County v. State, 424 S.W.3d at 453 (concluding that a plaintiff lacks standing if a court cannot provide a remedy for his or her claimed harm, in that case, plaintiff's failure to identify a violation of a "'legally protectable' interest.").

Bolstering that conclusion is the rule that "a plaintiff generally must assert his own legal rights and interests and cannot base a claim for relief on the legal rights of third parties." *Bannum, Inc. v. City of St. Louis*, 195 S.W.3d 541, 545 (Mo. App. E.D. 2006); *see also Trump v. Hawaii*, 138 S. Ct. at 2427-28 (Thomas, J., concurring) (reasoning that third-party standing rules prohibit universal injunctions); *Arizona v. Biden*, 40 F.4th 375, 395–96 (6th Cir. 2022) (Sutton, C.J., concurring) (same). An injunction barring the State from enforcing the voter ID provisions as to any person addresses the voting procedures of every person in Missouri subject to the law—not just the Plaintiffs. *See CASA de Md., Inc. v. Trump*, 971 F.3d 220, 259 (4th Cir. 2020), vacated for reh'g en ("But by requesting a nationwide injunction, a plaintiff is by definition seeking to vindicate the legal rights of all third-parties who may be subject to the challenged policy.").

The requested relief is also unnecessary and potentially impedes the rights of other voters. This suit involves "a small number of voters who may experience a special burden under" the voter ID provisions. *Crawford*, 553 U.S. at 200 (holding that that Indiana's interests in requiring government issued photo identification to vote were sufficiently weighty to justify the limitation they imposed on voters). Nothing prevents the "the actual holders of" the right to vote from exercising their right to seek judicial relief from any burden on that right, see Mo. Const. art. I, § 4, if they so choose. *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 89 (Mo. 2008). Universal relief, however, takes that right away from them.

For these reasons, the Missouri Supreme Court has made clear that "claims of equal protection rights generally may not be raised by third parties." *Comm. for Educ. Equality v. State*,

294 S.W.3d 477, 486 (Mo. 2009) (citing *Committee for Educational Equality v. State*, 878 S.W.2d 466, 450 n.3 (Mo. 1994)). Since a claim that a State law trenches on the fundamental right to vote is an equal protection claim, *see Priorities USA*, 591 S.W.3d at 453; *Weinschenk*, 203 S.W.3d at 211–12, that means Plaintiffs in this suit lack standing to bring a facial challenge to assert the rights of third-parties across the state, as this Court reasoned in its earlier Judgment dismissing the case.

The evidence introduced at trial is insufficient for Plaintiffs to prove their case on injuries to themselves or un-pleaded third-parties.

D. On the merits of the case, HB 1878 was passed in response to a 2016 Missouri Constitutional Amendment authorizing voter ID and is therefore constitutional, particularly because the Missouri Constitution should be construed so as not to contradict itself;

A 2016 Constitutional Amendment authorizing voter ID undercuts all of Plaintiffs' constitutional arguments. That Amendment is now codified at MO. CONST. art. 8 § 11. It provides that:

> A person seeking to vote in person in public elections may be required by general law to identify himself or herself and verify his or her qualifications as a citizen of the United States of America and a resident of the state of Missouri by providing election officials with a form of identification, which may include valid government-issued photo identification. Exceptions to the identification requirement may also be provided for by general law.

HB 1878 is a constitutionally authorized "general law" requiring voters to "identify himself or herself" and their status as a "resident of the state of Missouri." The provision specifically authorizes "valid government-issued photo identification" to satisfy this requirement.

A constitutional provision should never be construed to work confusion and mischief unless no other reasonable construction is possible." *Ledbetter*, 387 S.W.3d at 363-64. In

determining whether certain practices violate the Missouri Constitution, this Court also considers statutes that historically have coexisted with the constitutional right without violating it. *See, e.g., Dortch v. State*, 531 S.W.3d 126, 129 (Mo. 2019) (citing favorably *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008), for the proposition that the Second Amendment's right to bear arms does not invalidate "longstanding prohibitions on the possession of firearms by felons and the mentally ill" or regulations of concealed weapons). In doing so, this Court's practices are in line with United States Supreme Court practice. *See, e.g., Roth v. United States*, 354 U.S. 476, 482-83 (1957) (finding libel unprotected by the First Amendment based on laws prohibiting libel in place at the time the First Amendment was ratified); *id.* at 483-85 (finding obscenity unprotected by the First Amendment based on laws passed from 1789 to 1843).

Priorities USA is distinguishable here, as the holding of that case was narrowly tailored to address problems with a version of the statute which HB 1878 replaced. Importantly, *Priorities USA* did *not* find that voter ID provisions were facially unconstitutional, only that an earlier version of a voter ID statute was unconstitutional due to the confusing language of an affidavit it required voters to sign if they did not have an ID. *Priorities USA*, 591 S.W.3d at 454. HB 1878 removes that requirement, and rectifies all of the problems the *Priorities USA* court had with the statute, and by cleaning up various other provisions of the state's voter ID law.

The voter ID provisions of HB 1878 do not violate the fundamental right to vote or the equal protection clauses of the Missouri Constitution: on the contrary, stemming from a Constitutional amendment, they protect the fundamental right to vote by deterring difficult to detect forms of voter fraud. The photo ID requirement does not impose a "severe" burden under *Weinschenk*, and is narrowly tailored to advance what even *Weinschenk* admits is the State's

compelling interest in deterring voter ID fraud. Moreover, as discussed further in the next section, any burden of obtaining ID is not even fully attributable to HB 1878.

HB 1878 weathers any level of scrutiny under the fundamental rights and equal protection analyses, but rational basis review is appropriate. Courts undertake a two-part analysis to determine the constitutionality of a statute under either the state or federal equal protection clauses; the first step is to determine whether the statute implicates a suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution. *Etling v. Westport Heating & Cooling Services., Inc.*, 92 S.W.3d 771, 774 (Mo. 2003); accord *Kadramas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1988). If so, the classification is subject to strict scrutiny." *Etling*, 92 S.W.3d at 774. If not, then the classification will be subject to rational basis review. Next, courts must apply the appropriate level of scrutiny to the challenged statute. To overcome strict scrutiny, a limitation on a fundamental right must serve a compelling state interest and must be narrowly tailored to meet those interests. *Komosa v. Komosa*, 939 S.W.2d 479, 482 (Mo. App. E.D. 1997). *Weinschenk* has already found that preserving the integrity of our voting system is "significant, compelling, and important." *Weinschenk v.* 203 S.W.3d 201, 217. HB 1878 demonstrates that obtaining a photo identification is even easier since *Weinschenk*, and the burdens testified to by the Plaintiffs are *de minimis* at best, as noted above. Thus, rational basis review is the appropriate standard here.

HB 1878 equally applies to all individuals within the state, fairly ensuring that each registered voter is allowed one vote per election for the candidate or cause of his or her choosing. A representative from the Secretary of State's Office and local election authorities testified that there is an extremely low rejection rate for provisional ballots (the fallback option if a voter does

not show ID) based on signature mismatching – they are seldom rejected for that reason. And, as noted already, none of the Plaintiffs have had their signatures mismatched and they have not identified anyone that this Court can credibly believe will not have their ballots counted due to signature-matching issues.

Weinschenk specifically noted that "some regulation of the voting process is necessary to protect the right to vote itself." 203 S.W.3d at 212. "Missouri's broad interests in preserving the integrity of the election process and combating voter fraud are significant, compelling, and important. *Id.* at 217. To determine the level of scrutiny that is to be applied in voting rights cases, Missouri courts must "evaluate the extent of the burden imposed by the statute." *Id.* If a statute severely burdens the right to vote, strict scrutiny applies, meaning the law "will be upheld only if it is narrowly tailored to serve a compelling state interest." *Peters v. Johns*, 489 S.W.3d 262, 273 (Mo. 2016). Conversely, when the law does not impose a heavy burden on the right to vote, it is subject to the less stringent rational basis review. *Weinschenk*, 203 S.W.3d at 215-16. Here, since the Plaintiffs cannot show any severe burden on the right to vote, particularly in light of the efforts the Secretary of State's Office has undertaken to ensure eligible voters can obtain a photo ID at no cost.

When, as here, courts apply a rational-basis review standard, the court presumes that a statute has a rational basis, and the party challenging the statute must overcome this presumption by a "clear showing of arbitrariness and irrationality." *Foster v. St. Louis County*, 239 S.W.3d 599, 602 (Mo. 2007). Rational-basis review does not question "the wisdom, social desirability or economic policy underlying a statute," and a law will be upheld if it is justified by any set of facts. *Comm. for Educ. Equality*, 294 S.W.3d at 491. Instead, rational basis review requires the

challenger to "show that the law is wholly irrational." *City of St. Louis v. State*, 382 S.W.3d 905, 913 (Mo. 2012).

Missouri courts have found that reasonable regulations of the voting process and of registration procedures are necessary to protect the right to vote; so long as those regulations do not impose a heavy burden on the right to vote, they will be upheld provided they are rationally related to a legitimate state interest. *E.g.*, *Weinschenk*, 203 S.W.3d at 215.

The Missouri Court declined to assess which level of scrutiny a voter ID law fit into in *Priorities USA* as the affidavit in that case was so confusing and contradictory that a level of scrutiny analysis was unnecessary; yet importantly it *did* reaffirm that the State's interest in combating voter fraud through a voter ID law. Moreover, the *Priorities USA* court held that the interest was "Legitimate – and even compelling." 203 S.W.3d at 217.

The Court has evaluated the *de minimis* burdens of obtaining a photo ID to vote under HB 1878 with the benefits that having photo ID has, in general, such as necessities like medical care, medications, housing, travel, or employment. The Courts gives weight to the testimony of State of Missouri employees about their efforts to help individuals obtain access to the free photo identification. The Court has considered the testimony of Plaintiffs' expert, Dr. Mayer, on the administrative burdens of obtaining identifications, and the Court finds that any of those concerns are not borne out by the testimony of actual voters and the plain text of the law. The testimony of Plaintiffs' expert does not countermand the State's interests as articulated by the Missouri Supreme Court, the plain text of the law, the efforts of State of Missouri employees to provide access to qualifying identification, and the lack of evidence of any Plaintiff that has suffered anything more than *de minimis* burdens in obtaining identification. Nor does it countermand Article VIII, Section

11, of the Missouri Constitution, which specifically authorizes government-issued photo identification.

The Court also concludes that even if Plaintiffs have suffered an injury of constitutional magnitude, the State of Missouri has interests in preventing voter fraud and promoting election integrity. There is sufficient evidence in the record that a fear of voter impersonation affects voters' having confidence in election results. The Court finds the testimony of the various experts to be otherwise of little value.

The Court does not need to find that there have been hundreds of thousands of documented instances of voter impersonation to conclude that HB 1878 is a valid "general law" requiring government-issued photo identification. The Constitution already authorizes the law and, in any event, there is merit to the general aim of verifying that a voter is who he or she says they are when presenting at the polls to vote.

Even if strict scrutiny is applied, the evidence is such that the State has a compelling interest in HB 1878's photo identification provisions, an interest that the *Priorities USA* court suggested behind the bill at issue in that case. The evidence in the record here, noted above, only supports the State's compelling interest. Moreover, the plain text of Article VIII, Section 11 confirms that the State of Missouri *can* enact a photo-identification requirement, and this Court will not read one constitutional provision (like Article VIII, Section 11) in conflict with another (like the equal protection clause) to the extent there is any tension between the two. The Court also concludes that HB 1878 is narrowly tailored to further the State's interests, as the government-issued photo identification—again, authorized by Article VIII, Section 11—is provided for free to Missouri voters, voters without identification can still vote by provisional ballot, and there is nothing more than *de minimis* burdens to obtain the identification. The interests of the State include deterring

voter fraud and promoting integrity in election outcomes. Implementing a constitutionally-authorized photo-identification requirement is necessarily narrowly tailored by virtue of the Constitution authorizing that requirement in the first place. Even absent Article VIII, Section 11, the Court concludes that HB 1878 is an appropriate means to accomplish the State's ends.

CONCLUSION

Judgment is hereby entered against Plaintiffs and in favor of Defendants on all Counts in the Amended Petition. Plaintiffs' requests for declaratory and injunctive relief are denied. The parties are to bear their own costs.

SO ORDERED

Dated: 11/25/24 Signed: _____

Jon E. Beetem, Circuit Judge – Division I