SUPREME COURT OF MISSOURI
en banc

STATE OF MISSOURI; DENNY L. HOSKINS, in his official capacity as Secretary of State; and LOCKE THOMPSON, in his official capacity as Cole County Prosecuting Attorney and on behalf of all Missouri Prosecuting Attorneys, Appellants, v. LEAGUE OF WOMEN VOTERS OF MISSOURI and MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Respondents.	)	*Opinion issued March 24, 2026* No. SC100997

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY
The Honorable Jon E. Beetem, Judge

The State of Missouri and Denny L. Hoskins, in his official capacity as secretary of state, (collectively, "State") appeal from a judgment declaring sections 115.205.1 and 115.279.2 constitute facially unconstitutional restrictions on speech, association, and due

process.[1] On appeal, the State claims the circuit court erred in entering a declaratory judgment in favor of the League of Women Voters of Missouri ("LWVM") and the Missouri State Conference of the National Association for the Advancement of Colored People ("Missouri NAACP"), asserting the plain language of sections 115.205.1 and 115.279.2 do not restrict core political speech and are mere *de minimus* burdens on speech and voting rights.

The plain language of sections 115.205.1 and 115.279.2 expansively restricts the "solicitation of voter registration" and completely prohibits "solicit[ing] a voter into obtaining an absentee ballot." These provisions are facially unconstitutional restrictions on core political speech, violating article I, section 8 of the Missouri Constitution. The judgment is affirmed.

Background

In 2022, the Missouri General Assembly passed, and the governor signed, a new law altering provisions relating to the solicitation of voter registration applications and absentee ballot applications, specifically sections 115.205.1 and 115.279.2.

LWVM[2] and Missouri NAACP[3] (collectively, "Respondents") filed suit, petitioning for declaratory and injunctive relief against the State of Missouri and Jay

[1] Unless otherwise noted, all statutory references are to RSMo Supp. 2022.
[2] LWVM encourages individuals to vote by organizing voter registration drives. LWVM has paid staff members who organize, execute, and oversee these registration events and volunteers, including volunteers younger than 16 years of age or registered to vote in other states.
[3] Missouri NAACP is the state affiliate of the National Association for the Advancement of Colored People and has chapters for Missouri minors, college students, and prisoners.

Ashcroft, in his official capacity as secretary of state, seeking a declaration that sections 115.205.1 and 115.279.2 are facially unconstitutional restrictions on speech, association, and due process.[4]

Respondents challenged the constitutional validity of four provisions: three requirements within section 115.205.1 and one prohibition in section 115.279.2. Section 115.205.1 provides:

> No person shall be paid or otherwise compensated for soliciting voter registration applications, other than a governmental entity or a person who is paid or compensated by a governmental entity for such solicitation. A voter registration solicitor who solicits more than ten voter registration applications shall register for every election cycle that begins on the day after the general election and ends on the day of the general election two years later. A voter registration solicitor shall be at least eighteen years of age and shall be a registered voter in the state of Missouri.

Consisting of three restrictions, this provision (1) prohibits payment or compensation for the "solicitation" of voter registration applications, (2) requires any "voter registration solicitor" who "solicits" more than 10 voter registration applications to register with the state, and (3) requires any "voter registration solicitor" be at least 18 years of age and a registered Missouri voter. Section 115.279.2 establishes a complete ban on "soliciting" one into obtaining an absentee ballot application, providing:

> Notwithstanding section 115.284, no individual, group, or party shall solicit a voter into obtaining an absentee ballot application. Absentee ballot

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Missouri NAACP facilitates its paid employees and volunteers to aid Missourians in registering to vote and to provide information about absentee voting.

[4] Denny Hoskins was elected secretary of state in November 2024, replacing Ashcroft in the suit. Respondents also sued Locke Thompson, in his official capacity as the Cole County prosecuting attorney. After the circuit court certified a defendant class of prosecuting attorneys, Respondents also sued him as a representative of all Missouri prosecuting attorneys. Thompson did not appeal the circuit court's judgment.

> applications shall not have the information prefilled prior to it being provided to a voter. Nothing in this section shall be interpreted to prohibit a state or local election authority from assisting an individual voter.

In the circuit court, Respondents sought a declaration the four challenged provisions within sections 115.205.1 and 115.279.2 violate their rights to free speech pursuant to article I, section 8 of the Missouri Constitution.[5] They alleged these restrictions unconstitutionally restrict core political speech, are content-based and viewpoint-based restrictions on speech, and are unconstitutionally overbroad. They also contended these provisions violate their rights to free association pursuant to article I, section 9 of the Missouri Constitution and violate their rights to due process pursuant to article I, section 10 of the Missouri Constitution in that the provisions are unconstitutionally vague. Respondents moved for a preliminary injunction against the enforcement of the four challenged provisions, and the State moved to dismiss the

[5] The dissenting opinion emphasizes section 115.205.1 has required "voter registration solicitors" to register with the state, be registered Missouri voters, and be at least 18 years of age since 2007. Sec. 115.205.1, RSMo 2016. While this is true, the passage of time has no bearing on the constitutional validity of a statute. *See, e.g., Salamun v. Camden Cnty. Clerk*, 694 S.W.3d 424, 431 (Mo. banc 2024) (holding several tax provisions that had been in place since 1993 were unconstitutional).

Further, the 2022 amendment made several significant changes to section 115.205.1. From 2007 until 2022, only those who were paid or otherwise compensated for soliciting more than 10 voter registration applications qualified as "voter registration solicitors." Sec. 115.205.1, RSMo 2016. Under the new legislation, *anyone* who solicits more than 10 voter registration applications is a "voter registration solicitor" and must satisfy those restrictions. Sec. 115.205.1, RSMo Supp. 2022. As such, the number of individuals impacted by the restrictions in section 115.205.1 increased substantially in 2022. Additionally, there was no compensation ban for voter registration solicitors until 2022. *Compare* sec. 115.205.1, RSMo 2016, *with* sec. 115.205.1, RSMo Supp. 2022.

lawsuit. After a hearing, the circuit court sustained Respondents' motion for a preliminary injunction and overruled the State's motion to dismiss.

The parties entered into a joint stipulation of facts at trial. Although the State referenced the age restriction, it offered no evidence defending or justifying the restriction at trial.[6] The circuit court entered judgment, permanently enjoining the enforcement of sections 115.205.1 and 115.279.2 and declaring the provisions unconstitutional, facially and as applied under the Missouri Constitution.[7] The court found these provisions restricted core political speech, were content-based and viewpoint-based restrictions on speech, and overbroad, and the State failed to show the provisions were narrowly tailored to a compelling governmental interest. The court found the parties did not dispute that "no state has a restriction on voter engagement speech that even approaches the breadth" of these challenged provisions. The provisions were held to be unconstitutional restrictions on Respondents' rights to free speech under the Missouri Constitution. Finally, the court found the provisions were unconstitutional restrictions on Respondents' associational rights and due process rights in that the provisions were unconstitutionally vague.

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[6] The State did contend the age restriction was not constitutionally suspect in its Suggestions in Opposition to Motion for Preliminary Injunction and Proposed Findings of Fact and Conclusions of Law. These assertions, however, were made in the context that the provisions were mechanics of an election subject to the *Anderson-Burdick* test, as opposed to its relevance to core political speech.

[7] Article I, section 8 of the Missouri Constitution expounds in relevant part, "That no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject, being responsible for all abuses of that liberty …"

The State appeals.[8]

Standard of Review

This Court reviews challenges to the constitutional validity of statutes *de novo*. *Ramirez v. Mo. Prosecuting Att'ys' & Cir. Att'ys' Ret. Sys.*, 694 S.W.3d 432, 435 (Mo. banc 2024). When conducting this review, a statute is presumed valid "unless it clearly contravenes a constitutional provision," and this Court avoids interpretations that will limit or cripple legislation any further than the law requires. *City of St. Louis v. State*, 682 S.W.3d 387, 396 (Mo. banc 2024) (internal quotations omitted). The challenger bears the burden to establish the challenged statutes are unconstitutional. *Id.* "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. Mo. State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. banc 2020) (alteration in original) (internal quotations omitted). It is not enough to show the statute may be unconstitutional under some conceivable circumstances. *Id*.

When interpreting a statute, this Court gives effect to the legislative intent as reflected in the plain language of the statute. *C.S. v. Mo. State Highway Patrol Crim. Just. Info. Serv.*, 716 S.W.3d 264, 268 (Mo. banc 2025). If the language of a statute is plain and unambiguous, this Court must apply the language as written and "may not resort to canons of construction." *State ex rel. Bailey v. Fulton*, 659 S.W.3d 909, 912

[8] This appeal is taken directly from the circuit court because it is within this Court's exclusive appellate jurisdiction, implicating the validity of Missouri statutes. Mo. Const. art. V, sec. 3; *see also Comprehensive Health of Planned Parenthood Great Plains v. State*, No. SC101176, ---S.W.3d ----, 2025 WL 2346611, at *3 (Mo. banc Aug. 12, 2025).

(Mo. banc 2023). "The canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction; and the canon functions as a means of choosing between them." *Goodman v. Saline Cnty. Comm'n*, 699 S.W.3d 437, 440 n.5 (Mo. banc 2024) (emphasis and internal quotation omitted). This Court will not rely upon *any* canon of construction, including the canon of constitutional avoidance, when the statutory language is unambiguous. *See State ex rel. Hillman v. Beger*, 566 S.W.3d 600, 605 (Mo. banc 2019); *Planned Parenthood of Kan. v. Nixon*, 220 S.W.3d 732, 741 (Mo. banc 2007) ("A narrowing construction, however, is only appropriate if it is not inconsistent with legislative intent.").

The dissenting opinion contends this Court must give the secretary of state's definition of "solicit" special weight because that official is tasked with enforcing the challenged provisions. The dissenting opinion relies on cases from more than half a century ago to support its proposition that special weight is given to an official's interpretation of a statute.[9] More recently, this Court has declined to give special weight to the secretary of state's interpretation of challenged provisions.[10] *See, e.g., Mo. State*

[9] Moreover, "the plain and unambiguous language of a statute cannot be made ambiguous by [an official's] interpretation and thereby given a meaning which is different from that expressed in a statute's clear and unambiguous language." *Wolff Shoe Co. v. Dir. of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988).

[10] *See also Treasurer of State v. Penney*, 710 S.W.3d 498, 500-03 (Mo. banc 2025) (holding an appellant's occupational disease did not qualify as a preexisting disability, interpreting the definition of a preexisting disability *de novo*, with no special weight afforded to the treasurer's interpretation); *Coleman v. Ashcroft*, 696 S.W.3d 347, 358-63 (Mo. banc 2024) (holding the Missouri Constitution's requirement to provide the "full text" of a proposed constitutional amendment did not demand the proponent list every

Conf. of NAACP v. State, 607 S.W.3d 728, 732-34 (Mo. banc 2020) (holding absentee voting was limited to those who were ill or physically disabled during the COVID-19 pandemic, interpreting the statute *de novo*, with no special weight afforded to the secretary of state's interpretation).[11]

Analysis

The issue in this case is whether sections 115.205.1 and 115.279.2 are facially invalid because they restrict core political speech in violation of article I, section 8 of the Missouri Constitution.[12] The State asserts the circuit court erred in declaring sections

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statute that could be declared unconstitutional, rejecting the secretary of state's contrary interpretation); *Walmart Starco LLC v. Dir. of Revenue*, 667 S.W.3d 522, 524-25 (Mo. banc 2023) (holding the Respondent's products qualified under the definition in a tax exemption provision, rejecting the director of revenue's interpretation of the provision); *State ex rel. Fitz-James v. Bailey*, 670 S.W.3d 1, 6-13 (Mo. banc 2023) (holding the attorney general did not have statutory authority to estimate and summarize an initiative petition's fiscal impact, interpreting the statute *de novo*, with no additional weight afforded to any state official's interpretation).

[11] The dissenting opinion emphasizes that the secretary of state has never interpreted "solicit" as the plain language requires. As discussed below, this is untrue. *See* State's Suggestions in Opposition to Motion for Preliminary Injunction at 17-18. Regardless, the legislative branch, as the governmental branch tasked with making laws, could have defined "solicit" but declined to do so. Mo. Const. art. III, sec. 1. The executive branch does not have the authority to interpret the law and declare its meaning, as that responsibility resides in the judiciary. Mo. Const. art. II, sec. 1; *id*. art. V, sec. 1.

Additionally, giving special weight to a state official's interpretation could create problematic incentives. Because a state official is tasked with enforcing statutes, giving special weight to an official's interpretation could be subject to abuse by officials who interpret their enforcement powers broadly at the cost of constitutional protections.

[12] The State raises six points of error on appeal, challenging the circuit court's findings that the provisions restrict core political speech, are content-based and viewpoint-based restrictions on speech, are vague, violate their associational rights, and are overbroad. If this Court determines the provisions are unconstitutional on any ground, it need not reach the alternate findings of constitutional invalidity. *See, e.g., Nicholson v. State*, No. SC101308, -- S.W.3d --, 2026 WL 202013, at *6 n.5 (Mo. banc Jan. 23, 2026) (holding, because the challenged bill violated one provision of the Missouri Constitution and was

115.205.1 and 115.279.2 unconstitutional because it argues the word "solicit," as used in these provisions, has a narrowed definition, which includes distributing *and* collecting applications and, as such, creates a mere *de minimus* burden on Respondents' speech and voting rights.

The definition of "solicit"

The newly amended provisions in chapter 115 prohibit payment for "soliciting" voter registration applications, restrict who may be a "voter registration solicitor," require solicitors to register with the State, and prohibit anyone from "solicit[ing] one into obtaining an absentee ballot application." Sections 115.205.1; 115.279.2. Chapter 115, however, does not define the word "solicit."

When this Court seeks to determine the plain or ordinary meaning of a statute and the statute does not define an operative word, the word's ordinary meaning is derived from the dictionary. *C.S.*, 716 S.W.3d at 267. "Solicit" is defined as "to disturb, agitate, move, entreat," "to make petition to: entreat, importune … [especially] to approach with a request or plea," to "move to action," and "to strongly urge." *Solicit*, *Webster's Third New International Dictionary* (1961).

The State acknowledged the breadth of "solicitation" in its briefing in the circuit court, citing the broad dictionary definition of "solicit."[13] Before the circuit court, the State defined "solicit" as "[t]o make petition to: entreat, importune; esp. to approach with

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dispositive, the remaining issues were moot and did not need to be addressed by the Court).

[13] The State provided this definition of "solicit" only when responding to the claim that the provisions were unconstitutionally vague.

a request or plea (as in selling or begging)," as in to "solicit one's neighbors for contributions." The State incorporated this definition into the challenged provisions and explained "soliciting" voter registration applications, "therefore, means to 'entreat, importune, [or] approach [people] with a request or plea' that they apply to register to vote." "Likewise, to 'solicit a voter into obtaining an absentee ballot application,' … is to entreat, importune, or approach a voter with a request or plea for them to obtain an absentee ballot application."

Despite acknowledging this clear definition in the circuit court, the State contends a narrowed definition of "solicit" is appropriate, causing these provisions to regulate only conduct, not speech, and not implicating article I, section 8 of the Missouri Constitution. The State claims "solicit," as used in the provisions, means someone who provides a voter registration application or absentee ballot application, and also *collects* the completed application for submission to a local election authority. In support of this contention, the State cites section 115.205.4, which provides, "Voter registration applications shall be accepted by the election authority if such applications are otherwise valid, even if the voter registration solicitor who *procured* the applications fails to register with or submits false information to the secretary of state." Sec. 115.205.4 (emphasis added). Emphasizing the provision's implicit acknowledgement that a voter registration solicitor collects applications, the State argues collection of applications is an implied requirement of the provisions' definition of "solicit."

This argument is unpersuasive for multiple reasons. In the event a solicitor fails to register or submits false information, this subsection provides protection for a voter

whose application is collected by that solicitor. This added protection, however, is not a limitation on the definition of "solicit."[14] While section 115.205.4 clearly contemplates a solicitor procuring or collecting applications, acknowledgement that a solicitor ***may*** collect applications does not imply one ***must*** collect applications to be considered a solicitor. The dictionary definition of "solicit" is broad and does not necessarily include the collection of applications. By definition, "soliciting" also encompasses mere speech, "entreating," "importuning," or "strongly urging" a person to register to vote.[15] This Court declines to treat section 115.205.4 as a limitation on the definition of "solicit" when the legislature declined to treat it as such.

Language in section 115.279.2 also reinforces using this broad definition of "solicit," describing the ban on soliciting absentee ballot applications as "solicit[ing] a voter into ***obtaining*** an absentee ballot application." Sec. 115.279.2 (emphasis added). Explicitly describing solicitation as merely *giving* a person a document, this provision rebuts the State's contention that one solicits only when *collecting* applications, in

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[14] The dissenting opinion incorrectly contends using the dictionary definition of "solicit" renders section 115.205.4 superfluous. Because this provision provides additional protection to applicants, it not superfluous.

[15] There are numerous statutory uses of "solicit" and "solicitation" elsewhere in Missouri statutes that consistently align with its dictionary definition. It is the act of persuasion that defines solicitation, not the success of the act. *See, e.g.*, sec. 567.030.1(3), RSMo Supp. 2025 (defining the crime of solicitation); sec. 407.453(6), RSMo 2016 (defining "charitable solicitation" for purposes of the Missouri Merchandising Practices Act); sec. 375.012(2)(16) (defining solicit in the insurance sales context as "attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company"); sec. 571.063.2(1) (defining the crime of fraudulent purchase of a firearm to including soliciting, persuading, encouraging, or enticing that sale). Though it is true one who solicits an objective may see it achieved, that person still "solicits" if the person is unsuccessful in the endeavor to obtain it.

support of which it cites only a potential implication of secondary language in section 115.205. Likewise, if one "solicits" by merely giving a person an absentee ballot application, so, too, does one "solicit" when giving a person a voter registration application. *See Cook v. Newman*, 142 S.W.3d 880, 892 (Mo. App. 2004) (en banc) (holding a word is presumed to have the same meaning when used in multiple places throughout the same statutory chapter). The presumption that words used several times in the same chapter have the same definition is even stronger when the word was used several times in the same act of legislation, as they are here. *See State v. Knapp*, 843 S.W.2d 345, 347 (Mo. banc 1992).

The dissenting opinion criticizes this Court for failing to read section 115.205.1 alongside 115.205.4, contradictorily, however, it refuses to read section 115.205.1 alongside section 115.279.2. While the dissenting opinion is correct that a court must review each challenged provision separately when determining whether that provision restricts core political speech, a court may still use tools of statutory interpretation prior to this analysis in discerning the plain meaning of each provision. *See Walden v. Kosinski*, 153 F.4th 118, 129-30, 136-39 (2d Cir. 2025) (holding the challenged provisions did not implicate core political speech but, first, determining the plain language of the challenged provisions by using tools of statutory interpretation). One such tool of statutory interpretation is the presumption that a word used several times in the same statutory chapter has the same definition. *Cook*, 142 S.W.3d at 892. This Court must read section 115.205.4 alongside section 115.279.2, which further supports using the dictionary definition of "solicit."

Just as the State said in the circuit court, "There is no mystery about the meaning of these phrases." *See* State's Suggestions in Opposition to Motion for Preliminary Injunction. "Solicit" as used in sections 115.205.1 and 115.279.2 means to "entreat," "importune," or "strongly urge" a person to register to vote or apply for an absentee ballot. The circuit court properly declined to follow the State's definition of "solicit," a strained definition that was varied throughout litigation and is unsupported by the plain language of the statutes.

Further, while the State now contends this Court should interpret "solicit" in conjunction with the canon of constitutional avoidance to limit the definition of solicit, the canon is used only when a statute is susceptible to multiple constructions.[16] *Goodman*, 699 S.W.3d at 440 n.5. If, as here, there is no ambiguity in the challenged provision, this Court cannot "*avoid*" the constitutional question; rather, the Court must face it head-on. *Id*. There is only one possible construction of "solicit" when interpreting the plain language of the challenged provisions, and the canon should not be used. Any use of the canon of constitutional avoidance in this case, when the statutory language is unambiguous, would amount a judicial overreach, rewriting the challenged provisions. *See Boland v. Saint Luke's Health Sys., Inc.*, 471 S.W.3d 703, 709 (Mo. banc 2015) ("We are forced to construe the ***cold, clear words of the statute***, and if its scope is to be

[16] When applying the canon of constitutional avoidance, a court faced with competing plausible interpretations of a statute should avoid interpreting the statute in a manner that risks the statute being found unconstitutional. *Clark v. Martinez*, 543 U.S. 371, 381 (2005). This canon rests on the presumption that the legislative branch did not intend to establish an unconstitutional law. *Id*.

enlarged we feel that ***the remedy is legislative, not judicial***." (emphasis added) (internal quotations omitted)). The canon of constitutional avoidance does not have special dispensation. It cannot be used when statutory language is unambiguous. *Goodman*, 699 S.W.3d at 440 n.5. The plain language definition of "solicit," as defined in the dictionary, governs this Court's analysis.

Core political speech

After determining the definition of "solicit," the next question is whether, using this definition, the plain language of the challenged provisions restricts core political speech.

The United States Supreme Court defined core political speech in *Meyer v. Grant*, 486 U.S. 414, 422 (1988), as "interactive communication concerning political change."[17] In *Meyer*, the Supreme Court reviewed the constitutional validity of a Colorado law prohibiting payment of initiative petition circulators. *Id*. at 416-17. The Supreme Court evaluated whether the speech regulated was "core political speech," which would be entitled to the "zenith" of constitutional protection. *Id*. at 420-25.

The Supreme Court held circulating an initiative petition was core political speech because the matter about which the challengers were petitioning was a matter of societal

[17] The parties challenge these provisions as violating of article I, section 8 of the Missouri Constitution. "While provisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions, analysis of a section of the federal constitution is strongly persuasive in construing the like section of our state constitution." *Karney v. Dep't of Lab. & Indus. Rels.*, 599 S.W.3d 157, 162-63 (Mo. banc 2020) (internal quotations omitted).

concern and circulating a petition involves speech relating to political change, expressing desire for that change and discussing the merits of that change. *Id*. at 421-22. The Supreme Court continued, explaining how the ban on paying petition circulators restricted core political speech:

> First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

Id. at 422-23 (footnote omitted). It was immaterial the challengers had other means by which to disseminate their ideas. *Id*. at 424. The First Amendment protected the challengers' right to advocate as well as to select what they believed to be the most effective means for doing so. *Id*.

Meyer recognized core political speech involves expression about matters of societal concern and is often intertwined with the electoral process. *Id*. at 421. This speech must also call for political change and will often require a speaker to discuss of the merits of such change. *Id*. at 421-22. Because speech relating to the electoral process is at the core of First Amendment freedoms, protection of this speech "is at its zenith." *Id*. at 425 (internal quotation omitted).

This standard for core political speech was reaffirmed in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 192-204 (1999), in which the Supreme Court again held petition circulation was core political speech. The restrictions on this speech, including requiring circulators to be registered voters in the state and wear a badge bearing their identification at the time of circulation, as well as obligating

proponents to submit personally identifying information of paid petition circulators, were subject to exacting scrutiny. *Id*. The Supreme Court's opinion followed "the now-settled approach that state regulations impos[ing] severe burdens on speech ... [must] be narrowly tailored to serve a compelling state interest." *Id*. at 192 n.12 (alterations in original) (internal quotations omitted). Numerous circuits for the United States Court of Appeals have interpreted this "exacting scrutiny" as strict scrutiny.[18] *See, e.g.*, *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1028 (10th Cir. 2008).

Likewise, restrictions on the solicitation of voter registration applications and the prohibition on the solicitation of absentee ballot applications naturally involve core political speech. *See infra* n.20. Solicitation requires one to speak to a person regarding an issue of societal concern—participation in the democratic process—and involves advocacy for political change. *Meyer*, 486 U.S. at 421-22.

Section 115.205.1 restricts the solicitation of voter registration applications and section 115.279.2 prohibits the solicitation of absentee ballot applications. Any solicitor aiming to convince a person to apply for either voter registration or an absentee ballot would have to communicate with and persuade that person of the merits of voting.[19]

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[18] *See also Libertarian Party of Va. v. Judd*, 718 F.3d 308, 316-17 (4th Cir. 2013); *Nader v. Blackwell*, 545 F.3d 459, 474 (6th Cir. 2008); *Nader v. Brewer*, 531 F.3d 1028, 1036 (9th Cir. 2008); *Wilmoth v. Sec'y of N.J.*, 731 F.App'x 97, 99, 103 (3d Cir. 2018); *Voting for America, Inc. v. Andrade*, 488 F.App'x. 890, 895 (5th Cir. 2012).

[19] Because sections 115.205.1 and 115.279.2 restrict *speech* relating to registering to vote, these provisions are not mere regulations of conduct that would be without constitutional protection. *See Peters v. Johns*, 489 S.W.3d 262, 271 (Mo. banc 2016) (holding the act of registering to vote is not inherently expressive conduct that would implicate the First Amendment).

Encouraging others to vote is pure speech and, as core First Amendment activity, is entitled to the same protection as the circulation of an initiative petition. Discussion of whether to register to vote and participate in the democratic process is a matter of societal concern. *See Lichtenstein v. Hargett*, 83 F.4th 575, 586 (6th Cir. 2023) ("To be sure, the Plaintiffs' underlying get-out-the-vote activities—that is their speech to convince voters to vote absentee—qualifies as core political speech entitled to rigorous First Amendment protection.").[20]

This speech also closely relates to political change, with solicitors expressing their desire for broader political participation in elections and discussing the merits of making one's voice heard in the ballot box. Just as in *Meyer*, the challenged provisions in Chapter 115 place added restrictions on this speech, prohibiting solicitors from being paid, requiring solicitors to be registered Missouri voters and at least 18 years of age, obligating them to register with the state, and prohibiting soliciting a person to apply to vote absentee. In *Meyer*, 486 U.S. at 424, the Supreme Court held Colorado's restrictions

[20] Other courts have also found solicitors seeking voter registration are entitled to the same protection as initiative petition circulators. *See, e.g., League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 721, 723-24 (M.D. Tenn. 2019) (finding speech encouraging one to register to vote will "often bear on fundamental questions at the heart of the political system" and is entitled to the same First Amendment protection as speech relating to an initiative petition); *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1163 (N.D. Fla. 2012) (finding soliciting a voter registration application is core First Amendment speech); *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1321 (S.D. Fla. 2008) (finding interactions with prospective voters when soliciting voter registration applications is constitutionally protected activity); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006) (finding participation in a voter registration drive, specifically interactive communication at those drives, is clearly protected by the First Amendment).

on speech—prohibiting initiative petition circulators from being paid—restricted the challengers' core political speech and were subject to exacting scrutiny. The provisions at issue here similarly restrict core political speech and are subject to "exacting," or strict, scrutiny.

As seen in the record, these challenged provisions limit the number of voices that may convey Respondents' message and make it less likely their message will become the topic of widespread discussion. As testified to by representatives of both Missouri NAACP and LWVM, compensated work is critical to Respondents' voter registration activities, and, without the opportunity for compensation, Missouri NAACP anticipates it will have less solicitors to convey its message. Violating this compensation ban is a class four election offense, and the violator would be subject to up to a year in prison, a $2,500 fine, or both. Secs. 115.637, 115.641.

Similarly, requiring those who solicit more than 10 voter registration applications to register with the State also reduces the number of individuals willing and/or eligible to solicit on behalf of Respondents. LWVM's executive director testified the registration requirement restricts the number of people available to solicit because it prevents Respondents from accepting spontaneous volunteer solicitors and disallows participation from anyone who refuses to comply with this registration requirement for political reasons. A voter registration solicitor who knowingly fails to register with the state is guilty of a class three election offense. Sec. 115.205.4. As this misdemeanor is connected to the right of suffrage, conviction of this offense would disqualify the individual from voting in Missouri forever. Secs. 115.635, 561.026. The individual

could also be imprisoned for up to one year, fined $2,500, or both. Secs. 115.635, 561.026.

In addition, requiring a solicitor be both at least 18 years of age and a registered Missouri voter substantially limits the number of individuals eligible to solicit on behalf of Respondents. When evaluating the constitutional validity of restrictions on petition circulators, the Supreme Court stated in *Buckley*, 525 U.S. at 194-95, that requiring one to be a registered voter in the state decreases the pool of potential speakers just as much as a prohibition against paying speakers. As such, this restriction on core political speech was subject to, and failed to satisfy, strict scrutiny. *Id*. at 192 n.12; *Nader*, 545 F.3d at 474. LWVM actively seeks out young individuals to volunteer, allowing anyone older than 16 years of age, regardless of their voting status, to volunteer. Missouri NAACP also works with solicitors who are younger than 18 years of age, registered in another state, or ineligible to vote due to a criminal conviction. This restriction prohibits any of these solicitors from expressing Respondents' voting message. An individual who solicits, but is not at least 18 years of age and or a registered Missouri voter, would be guilty of a class four election offense, and the violator would be subject to up to a year of imprisonment, a $2,500 fine, or both.[21] Secs. 115.637, 115.641.

[21] For example, a high school student who participates in a school voter registration drive, encouraging fellow students turning 18 years of age to register to vote, would be subject to criminal sanctions for such activity. If the student fails to register with the state before speaking to at least 10 people about registering, the student could permanently lose the right to vote, before even gaining that right. Sec. 115.205.4; secs. 115.635, 561.026, RSMo 2016.

Finally, Respondents' message about the merits of absentee voting is completely silenced due to section 115.279.2's ban on soliciting absentee ballot applications.[22] Respondents provide individuals with information regarding absentee voting and promote its benefits to those who may be eligible. Section 115.279.2 completely eliminates any speech conveying this message. Violating the absentee ballot solicitation ban constitutes a strict-liability class one election offense, a felony, and is punishable by imprisonment for up to five years, a fine of $10,000 to $250,000, and permanent loss of the right to vote. Sec. 115.304, RSMo 2016; Sec. 115.631.

All of these challenged provisions restrict Respondents' core political speech relating to voter registration, significantly reducing the number of people able to convey Respondents' message about the merits of voting. *See Henry v. Halliburton*, 690 S.W.2d 775, 784-85 (Mo. banc 1985) ("The First Amendment was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. [S]peech concerning public affairs is more than self-expression; it is the essence of self-government." (alteration in original) (internal quotations omitted)). Individuals who violate any of these provisions could be subject to harsh criminal penalties, further disincentivizing individuals from speaking about voter registration and absentee voting. As succinctly stated in the circuit court's judgment:

> [T]he Challenged Provisions prohibit anyone from approaching their fellow citizens to encourage them to apply to vote absentee; prohibit anyone but

[22] Courts have found various acts encouraging absentee voting are entitled to speech protection. *See, e.g.*, *VoteAmerica v. Schwab*, 121 F.4th 822, 836-39 (10th Cir. 2024); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 224 (M.D.N.C. 2020); *Priorities USA v. Nessel*, 462 F. Supp. 3d 792, 812 (E.D. Mich. 2020).

> registered Missouri voters from entreating others to register to vote in Missouri; require any Missouri voter that wants to encourage voter registration to pre-register with the State before engaging in such speech; and prohibit anyone from paying or otherwise compensating others to amplify their pro-voter registration message. Violations of these provisions are backed by harsh criminal penalties … . Plaintiffs have pointed out, and Defendants did not contest, that no other state has a restriction on voter engagement speech that even approaches the breadth of this statute.

Because the speech at issue relates to a matter of societal concern and involves expression related to political change, it is core political speech entitled to "the zenith" of constitutional protection. *Meyer*, 486 U.S. at 425.

Strict Scrutiny Analysis

Traditionally, the constitution's protection for core political speech is subject to strict scrutiny. *See Buckley*, 525 U.S. at 192 n.12; *Nader*, 545 F.3d at 474. When a law is subject to strict scrutiny, the government bears the burden to prove the law furthers a compelling state interest and is narrowly tailored to achieve that interest. *Geier v. Mo. Ethics Comm'n*, 474 S.W.3d 560, 565 (Mo. banc 2015).

The State contends the challenged provisions serve the compelling interests of guarding election integrity and preventing voter fraud, preventing disenfranchisement of voters, protecting voting rights, and promoting voter privacy. While these may be legitimate interests the State can serve through the passage and implementation of legislation, the State has failed to demonstrate in the record that these provisions are narrowly tailored toward those interests.

In regard to the first challenged provision—prohibiting one from being paid or otherwise compensated for soliciting voter registration applications—the State asserts

"bounty hunting," or paying solicitors per application, is a substantial problem and a blanket prohibition on payment is the best way to completely root out this practice. In addition, the State contends private businesses frequently harvest the personal data of individuals registering to vote and prohibiting compensation limits this harm.

Even if this challenged provision seeks to remedy these alleged harms, a complete prohibition against paying solicitors is not narrowly tailored toward remedying them. The challenged provision prohibits paying or otherwise compensating *anyone* who "solicits" a person to register to vote. Sec. 115.205.1. In doing so, this provision limits substantially more speech than necessary to achieve its ends of preventing "bounty hunting" and improper personal data collection, restricting solicitors' speech even if they do not collect an application. *Meyer*, 486 U.S. at 422-23. As Respondents pointed out, "bounty hunting" is already illegal in Missouri and has been since 2006. *See* sec. 115.203, RSMo 2016. In *Meyer*, 486 U.S. at 426-27, the Supreme Court held a state could not demonstrate its compensation ban satisfied exacting scrutiny when one of the state's asserted interests was preventing circulator fraud when signature forgery was already criminalized. The complete ban on compensation is not narrowly tailored toward the State's alleged interests, and the provision fails to satisfy strict scrutiny.

The second challenged provision requires any solicitor who solicits more than 10 voter registration applications to register with the State. Sec. 115.205.1. The State asserts this registration requirement makes it easier for local election authorities to investigate and correct erroneous voter registrations as well as to detect fraudulent solicitors. Again, even assuming this provision works towards a compelling state

interest, the registration requirement restricts far more speech than necessary. This provision mandates *any* individual who "solicits" at least 10 people to register to vote to register with the state. This requirement applies not only to those who actively help others fill out voter registration applications but also to any individual who merely advocates for such registration. Collecting personal information from *all* individuals who advocate for voter registration is not narrowly tailored toward remedying erroneous registration applications and preventing voter application fraud. The second provision fails to satisfy strict scrutiny.

The third challenged provision requires any voter registration solicitor to be a registered Missouri voter and at least 18 years of age. Sec. 115.205.1. The State contends requiring solicitors to be registered Missouri voters ensures any solicitor acting illegally would be subject to law enforcement in state courts. It also argues these requirements operate as a "minimum indicia of reliability" for solicitors. But the State did not provide evidence in the record of its interest in enforcing the election laws. Even if it had, this provision limits far more speech than necessary toward that end, requiring solicitors to be registered Missouri voters, not just Missouri residents. *See Buckley*, 525 U.S. at 196-97 (holding a state's requirement that petition circulators be registered voters in the state was not warranted because the interest in policing could be achieved by a state residence requirement, and the state had contact information for all circulators). Additionally, while describing these two limitations as "indicia of reliability," the State does not explain how restricting speech based on an age requirement and voter

registration status are narrowly tailored toward any of their asserted interests.[23] The State comments restricting eligibility to solicit to those at least 18 years of age is logical because individuals are entitled to vote only after reaching 18 years of age.[24] It fails to explain, however, why such a substantial restriction on core political speech is necessary to achieve any of the State's asserted interests, nor does it show these restrictions are narrowly tailored toward any interest. The third provision fails to satisfy strict scrutiny.

The fourth challenged provision entirely prohibits the solicitation of absentee ballot applications. Sec. 115.279.2. The State claims there is a serious risk of fraud in absentee voting in particular and a blanket ban on soliciting absentee ballots is the best way to limit the risk of fraud.[25] The State also emphasizes there is a substantial amount of private voter information within an absentee ballot application that should be safeguarded, such as the last four digits of one's social security number and a copy of a personal identification card. Even if absentee ballot applications are "uniquely prone to fraud," as the State alleges, the State does not explain or demonstrate how a complete ban on "soliciting" a person to apply to vote absentee, without aiding a person in applying to

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[23] The State also asserts the three challenged provisions in section 115.205.1, as a whole, uphold Missouri's interests in preventing fraud, preserving voting rights, and guarding voter privacy by incentivizing potential solicitors to "cut out the middle man" and encourage voters to register on their own. These provisions are not narrowly tailored toward that end, significantly limiting speech favoring voter registration, even if it does not result in a person registering to vote.

[24] While the State makes such assertions in its briefing before this Court, it offered no evidence or argument in the circuit court justifying the age requirement. *See infra* "Preservation of 18 years of age requirement."

[25] While in its brief, the State relies on the Carter-Baker Commission's Report on federal election reform, this report was not admitted into evidence in the circuit court and is not a part of the record before this Court.

vote absentee, guards against such fraud. This provision sweeps far wider than the State's asserted interest, banning substantial speech that is unrelated to any threat of fraud or theft of personal information. This provision fails to satisfy strict scrutiny.

All of the challenged provisions fail to satisfy strict scrutiny. The State has failed to show any of these provisions are narrowly tailored toward its asserted interests. These provisions capture substantial amounts of core political speech unrelated to any compelling interest.

Preservation of the 18 years of age requirement

Included in the third challenged provision is a requirement that a solicitor be at least 18 years of age, section 115.205.1, which only one court has addressed. In *Meyer*, the United States Court of Appeals for the 10th Circuit held, while "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," the 18 years of age requirement for circulating an initiative petition was not subject to exacting scrutiny and was reasonably related to ballot integrity as a proxy for maturity.[26] *Am. Const. Law*

[26] Only one federal circuit has made this finding, and this Court is not bound to follow lower federal court decisions. *See State v. Mack*, 66 S.W.3d 706, 710 (Mo. banc 2002) ("[G]eneral declarations of law made by lower federal courts do not bind this Court."). To the extent the 10th circuit suggests the age restriction would be subject to only a rational basis review, that holding is incorrect. Circulation of an initiative petition, like soliciting one to register to vote, directly implicates core political speech and speech protections that attach to everyone, not just adults. *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 795 (2011) ("Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." (internal quotation omitted). This provision, therefore, would be subject to exacting, or strict, scrutiny. *Meyer*, 486 U.S. at 420-25.

Found., Inc. v. Meyer, 120 F.3d 1092, 1101 (10th Cir. 1997) (internal quotation omitted).[27]

The State, however, provided no evidence in the circuit court justifying the 18 years of age requirement. The State offered testimony from four witnesses in support of the constitutional validity of the challenged provisions. Although the circuit court excluded the expert testimony by Dr. James Gimpel, the court considered testimony from the Cape Girardeau County clerk and local election authority, the director of the Jackson County board of election commissioners, and the director of elections for the secretary of state. None of these witnesses were asked about the requirement that a solicitor be at least 18 years of age, nor did they provide any testimony this requirement was a proxy for maturity. Even though the third challenged provision contains both a registered voter requirement and an age requirement, the only times the State questioned witnesses about the third challenged provision, counsel described it as "requir[ing] every voter registration solicitor to ***be a registered Missouri voter***," omitting reference to the additional age requirement in that provision. Because the State did not contend in the circuit court this provision is subject to or satisfies any other scrutiny standard, it is unpreserved. *See Barkley v. McKeever Enters., Inc.*, 456 S.W.3d 829, 839 (Mo. banc 2015) ("Appellate courts are merely courts of review for trial errors, and there can be no

[27] The United States Supreme Court denied a cross-petition for certiorari in *Buckley*, 525 U.S. at 191 n.10, on the issue of the 18 years of age requirement for circulating an initiative petition. When the United States Supreme Court denies certiorari, it "expresses no opinion on the merits of the case." *Schiro v. Indiana*, 493 U.S. 910, 910 (1989).

review of a matter which has not been presented to or expressly decided by the trial court." (internal quotation omitted)).

The circuit court's judgment also did not address section 115.205.1's age requirement in particular, nor did it make any holding regarding this restriction. Rather, the judgment incorporated the age requirement into the "Registered Voter Requirement" section within the conclusions of law.[28] It is clear the circuit court treated the registered Missouri voter requirement and age requirement together and found the provision, as a whole, burdened speech. The judgment is silent as to whether, ***despite the age requirement's burden on speech***, the requirement was not subject to strict scrutiny or satisfied a lower scrutiny standard. Because the circuit court made no specific findings about this claim in its judgment, that fact issue is considered as having been found in accordance with the result reached. If the State believed the circuit court erred in failing to consider this claim in its judgment, it was obligated to request an amended judgment. Rule 78.07(c).

Finally, the State has not challenged in its points relied on that the circuit court erred in finding the age restriction was an unconstitutionally restricted core political

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[28] There, the circuit court devoted significant time explaining why the registered voter requirement restricts core political speech but only cursorily remarked:

> The Registered Voter Requirement categorically prohibits a vast array of individuals—from people under 18 to non-citizen residents of Missouri to visitors from out-of-state to people on probation or parole—from engaging in the core political speech and expressive of encouraging, and assisting with, voter registration. The Missouri Constitution does not permit the State to dictate who can and cannot engage in protected speech and expressive conduct.

The judgment concluded, finding the restriction implicates core political speech.

speech because the age restriction, while restricting speech, is not subject to strict scrutiny. The State claimed the circuit court erred in finding the challenged provisions were subject to strict scrutiny because they regulated conduct and were not subject to strict scrutiny ***because they did not regulate speech at all***.[29] As such, the State's first point relied on does not preserve this issue for appeal. *Atkisson v. Mo. Dep't of Corr.*, 716 S.W.3d 304, 313-14 (Mo. App. 2025) (holding an appellant's failure to raise a point relied on challenging an independent basis for judgment "arrest[ed] any appellate review regarding that independent basis"). On appeal, the State chose to take an all-or-nothing approach, asserting *all* of the provisions regulated conduct, not speech, and, as such, were not subject to strict scrutiny.[30] In so choosing, the State failed to preserve the claim the age requirement implicated speech and, yet, was subject to a lower standard of scrutiny.

"This Court is a neutral arbiter, not an advocate." *City of Harrisonville v. Mo. Dep't of Nat. Res.*, 681 S.W.3d 177, 182 (Mo. banc 2023). As a result, this Court cannot advance arguments for a party that were not made in the circuit court or on appeal.

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[29] The dissenting opinion's claim of error is entirely different and would find the circuit court erred in applying strict scrutiny—not because the age restriction does not regulate speech—but, instead, because restricting speech based on age is not subject to strict scrutiny.

[30] The State's first point relied on stated:

> The circuit court erred in holding that §§ 115.205.1 and 115.279.2 violate the Speech Clause, Art. I, § 8, because the statutes regulate conduct and not speech, in that the challenged statutes merely regulate "solicitation" of voter registration and absentee-ballot applications, and regulations of conduct do not implicate Article I, Section 8 of the Missouri Constitution.

Anderson-Burdick Test

The State further contends, because the challenged provisions implicate the electoral process, strict scrutiny analysis is not appropriate, and this Court must use the *Anderson-Burdick* test to determine whether these laws are constitutional.

The *Anderson-Burdick* test is derived from a pair of Supreme Court cases, *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). This test acknowledges election laws invariably impose some burdens on voters and many of these burdens are necessary to properly run elections. *See Burdick*, 504 U.S. at 433 (holding strict scrutiny does not apply to every law relating to the right to vote because this would tie the hands of the state, which seeks to ensure elections are run equitably and efficiently). Recognizing the necessity of many of these burdens, the *Anderson-Burdick* test approaches laws governing elections with a greater degree of flexibility than traditional strict scrutiny analysis.[31] *Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 137 (3d Cir. 2022).

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[31] As explained in *Mazo*, when applying the *Anderson-Burdick* test, the reviewing court will

> (1) determine the "character and magnitude" of the burden that the challenged law imposes on constitutional rights, and (2) apply the level of scrutiny corresponding to that burden. If the burden is "severe," the court must apply exacting scrutiny and decide if the law is narrowly tailored and advance[s] a compelling state interest. But if the law imposes only reasonable, nondiscriminatory restrictions, the court may use *Anderson-Burdick*'s sliding scale approach under which a State need only show that its legitimate interests ... are sufficient to outweigh the limited burden.

Mazo, 54 F.4th at 137 (alterations in original) (internal quotations and citations omitted).

Before applying this test, however, a court must determine whether the challenged provisions are the type of election provisions to which the *Anderson-Burdick* test is applicable or provisions to which traditional free speech analysis applies. The *Anderson-Burdick* test applies when the challenged provision burdens a relevant constitutional right, such as free speech, and the provision "primarily regulate[s] the mechanics of the electoral process, as opposed to core political speech." *Id*. Because the *Anderson-Burdick* test acknowledges ordinary election laws have *incidental* effects on political expression, a court must determine whether the challenged provision primarily regulates the electoral process or, instead, aims to regulate political expression. *Id*. If the law primarily regulates political expression, traditional free speech analysis governs. *Id*.

In weighing whether the challenged provisions primarily regulate the mechanics of an election, a court considers (1) the location and timing of the regulated speech as well as (2) the nature and character of that speech. *Id*. at 142. When considering the first factor, speech occurring on the ballot or within the voting process will often trigger the *Anderson-Burdick* test, whereas speech relating to, but occurring nowhere near the ballot or an electoral mechanism, is subject to strict scrutiny as core political speech. *Id*. Turning to the second factor, a court considers whether the challenged provision implicates core political speech, burdening interactive communication between individuals. *Id*. at 142-43. If the election-related activity does not have the "potential to spark direct interaction and communication," the *Anderson-Burdick* test applies, but if the speech is likely to spark such communication, traditional strict scrutiny governs. *Id*. at 143.

Here, the challenged provisions clearly burden free speech, restricting one from "soliciting" a person to register to vote or apply for an absentee ballot.[32] Weighing the location and timing of the speech, the speech here—urging a person to register to vote—is far removed from the electoral process both in time and place. This speech does not take place on the ballot, at polling locations, or even within the voting process, as the purpose of this speech is getting people to register to vote, which must take place long before an election.[33] *Cf. Voting for Am., Inc. v. Steen*, 732 F.3d 382, 389-90 (5th Cir. 2013) (holding collecting, reviewing, and delivering completed voter registration forms is not core political speech and any restrictions on these actions are subject to *Anderson-Burdick*, but distinguishing it from speech related to registration, including "urging citizens to register"). Considering the nature and character of that speech, urging a person to apply to register to vote or vote absentee also inherently implicates core political speech, as it sparks direct interactions and communication with an individual.

The *Anderson-Burdick* test does not apply here as the challenged provisions do not govern the mechanics of elections. Rather, these provisions restrict core political speech and are subject to—and fail—strict scrutiny.

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[32] *See Mazo*, 54 F.4th at 141 n.21 (commenting that limitations on the "qualifications for voter registration volunteers," alone, ***without "any of the expressive elements of voter registration, such as one-on-one communication***," is subject to the *Anderson-Burdick* test. But "***voter registration can have both electoral mechanics and pure speech components, and … courts must carefully examine which components are implicated by a particular regulation***.") (emphasis added) (internal quotations omitted).

[33] Pursuant to section 115.135, with limited exceptions, an individual must be registered to vote no later than 5 p.m. on the fourth Wednesday prior to an election to be eligible to vote in that election.

Respondents have made a sufficient showing there is no set of circumstances under which the challenged provisions are valid. These provisions impermissibly restrict speech soliciting voter registration applications and completely silence speech soliciting absentee ballot applications. All four of the challenged provisions regulate core political speech and, as such, are subject to strict scrutiny. The State fails to show the four provisions satisfy strict scrutiny because they are not narrowly tailored toward any of the State's asserted interests. The provisions are facially unconstitutional restrictions of core political speech in violation article I, section 8 of the Missouri Constitution.

Conclusion

The judgment is affirmed.

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Mary R. Russell, Judge

Powell, C.J., Wilson,
and Ransom, JJ., concur;
Gooch, J., dissents in separate opinion
filed; Fischer and Broniec, JJ.,
concur in the opinion
of Gooch, J.

SUPREME COURT OF MISSOURI
en banc

STATE OF MISSOURI; DENNY L. HOSKINS, in his official capacity as Secretary of State; and LOCKE THOMPSON, in his official capacity as Cole County Prosecuting Attorney and on behalf of all Missouri Prosecuting Attorneys,	)	
Appellants,	)	
v.	)	No. SC10099
LEAGUE OF WOMEN VOTERS OF MISSOURI and MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,	)	
Respondents.	)	

DISSENTING OPINION

I respectfully dissent. The principal opinion concludes each challenged provision implicates core political speech, is subject to strict scrutiny, and is facially unconstitutional. I disagree with all three conclusions as to three of the four challenged provisions and would reverse the circuit court's judgment holding the three challenged provisions in section 115.205.1 unconstitutional. As to the fourth challenged provision in

section 115.279.2, I would affirm the circuit court's judgment finding that provision unconstitutional.[1]

Standard of Review

"This Court reviews *de novo* constitutional challenges to a statute." *State ex rel. Hanaway v. Hellmann*, 728 S.W.3d 410, 412 (Mo. banc 2026). This Court presumes statutes are valid, and the party challenging a statute's constitutional validity bears the burden to prove the statute "clearly contravenes a constitutional provision." *Id.* (internal quotation omitted).

As the principal opinion acknowledges, Respondents bring only a facial challenge to each challenged provision. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully[.]" *E.N. v. Kehoe*, 726 S.W.3d 679, 686 (Mo. banc 2026) (alteration in original) (internal quotation omitted). When raising a facial challenge, the party challenging a statute's constitutional validity "must establish there is ***no set of circumstances*** under which the statute would be valid." *Hellmann*, 728 S.W.3d at 412 (emphasis added). "It is not enough to show that, under some conceivable circumstances, the statute might operate unconstitutionally." *Id.* (internal quotation omitted). If the state can show any circumstance under which the statute is constitutional, the facial challenge fails. *Id.*

[1] Unless otherwise noted, all statutory references are to RSMo Supp. 2022, and all rule references are to Missouri Court Rules (2024).

Background Concerning the Challenged Provisions

All of Respondents' challenges are brought under the Missouri Constitution. Respondents allege the four challenged provisions—three in section 115.205.1 and one in section 115.279.2—violate article I, section 8 (free speech and free expression); article I, sections 8 and 9 (freedom of association), and article I, section 10 (due process because unconstitutionally vague). Respondents also allege the challenged provisions are overbroad in connection with their free speech and free expression challenge.

One of the four challenged provisions in section 115.205.1—what the circuit court called the Registered Voter Requirement—has been in effect ***since 2007*** after the legislature in 2006 repealed certain statutes and enacted 22 new sections known as the "Missouri Voter Protection Act." 2006 Mo. Legis. Serv. S.B. 730. Since 2007, section 115.205.1 has provided: "A voter registration solicitor shall be at least [18] years of age and shall be a registered voter in the state of Missouri." Another of the challenged provisions—what the circuit court called the Unpaid Solicitor Registration Requirement—has been in effect in substantially the same form ***since 2007***. Since 2007, section 115.205.1 has specified: "A voter registration solicitor shall register for every election cycle that begins on the day after the general election and ends on the day of the general election two years later." In addition, since 2007, section 115.205.1 has identified a "voter registration solicitor" as one who solicits "more than ten voter registration applications." Further, since 2007, section 115.205.1 has contained the "paid

or otherwise compensated" language Respondents challenge.[2] Finally, since 2007, section 115.205.4 has provided:

> Any voter registration solicitor who knowingly fails to register with the secretary of state is guilty of a class three election offense. Voter registration applications shall be accepted by the election authority if such applications are otherwise valid, even if the voter registration solicitor who procured the applications fails to register with or submits false information to the secretary of state.

While the passage of time does not mean any challenged provision satisfies the Missouri Constitution, it is persuasive and highly compelling background information that two of the challenged provisions had been in effect in identical or substantially similar form without challenge or other incident since 2007, ***about 15 years***, until

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[2] The version of section 115.205.1 in effect from 2007 through August 27, 2022, provided:

> Any person who is paid or otherwise compensated for soliciting more than ten voter registration applications, other than a governmental entity or a person who is paid or compensated by a governmental entity for such solicitation, shall be registered with the secretary of state as a voter registration solicitor. A voter registration solicitor shall register for every election cycle that begins on the day after the general election and ends on the day of the general election two years later. A voter registration solicitor shall be at least eighteen years of age and shall be a registered voter in the state of Missouri.

Effective August 28, 2022, section 115.205.1 provides:

> No person shall be paid or otherwise compensated for soliciting voter registration applications, other than a governmental entity or a person who is paid or compensated by a governmental entity for such solicitation. A voter registration solicitor who solicits more than ten voter registration applications shall register for every election cycle that begins on the day after the general election and ends on the day of the general election two years later. A voter registration solicitor shall be at least eighteen years of age and shall be a registered voter in the state of Missouri.

Respondents sued in 2022, challenging those two provisions along with two others the legislature enacted in 2022 in Missouri House Bill No. 1878.

As the circuit court correctly found, the secretary of state is the state's chief elections official responsible for implementing laws related to voting, including the challenged provisions. As the official charged with enforcing the challenged provisions, the secretary of state's interpretation of those provisions is entitled to weight as the Court conducts its *de novo* review. *See State ex inf. Anderson v. St. Louis Cnty.*, 421 S.W.2d 249, 254 (Mo. banc 1967) ("[W]e refer to the established rule that the interpretation of an ambiguous constitutional or statutory provision by legislative bodies and by administrative, executive, and other public officials will be given serious consideration in determining the meaning thereof."); *Rathjen v. Reorg. Sch. Dist.*, 284 S.W.2d 516, 526 (Mo. banc 1955) ("[W]e have been reminded of the well-established rule of construction that an interpretation of a statute by public officers charged with its execution, while not controlling upon the courts, is entitled to consideration."); *State ex inf. Gentry v. Long-Bell Lumber Co.*, 12 S.W.2d 64, 80 (Mo. banc 1928) ("In further corroboration of the soundness of the above construction is the fact that the secretary of state of Missouri … has, during the past 20 years and more, so construed them. Such conduct on the part of this important executive official of the state, while not conclusive upon the courts, is always entitled to and should receive much weight."); *State ex rel. Kinloch Tel. Co. v. Roach*, 190 S.W. 862, 863 (Mo. banc 1916) ("It has, however, been uniformly interpreted by the executive officers whose duty it has been to enforce it, and their construction has been acted upon without question for a long period of time. While this is in no sense

binding upon the courts, it is entitled to some weight, where, as here, there is some doubt as to the meaning."); *see also Bellotti v. Baird*, 428 U.S. 132, 143 (1976) ("The interpretation placed on the statute by appellants in this Court is of some importance and merits attention, for they are the officials charged with enforcement of the statute."); *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 387 (5th Cir. 2013) (The secretary of state's "interpretation must be accorded some meaningful weight, as [he] is the official charged with enforcing the statute. We defer to [his] interpretation of how the law is to be enforced, so long as it does not conflict with the statutory text." (alterations in original) (internal citation and quotation omitted)).[3]

Before Respondents sued, the secretary of state advised them "solicit" refers to only the distribution and collection of voter registration applications, and the secretary of state testified consistently with this interpretation. Specifically, the circuit court made the following findings of fact:

> At [a] conference [with voter registration groups including Respondents], the Secretary of State's Office indicated that solicitation of voter registration was limited to "handing a voter registration application to an individual and then you are collecting it back and then you are in possession of it, that was soliciting the voter registration application," but that handing a voter registration application to an individual who submits it themselves or directing applicants how to register online would not constitute solicitation.
>
> ….

[3] The principal opinion points to the age of these cases (while also noting the passage of time has no effect on a statute's constitutional validity) but does not dispute these cases remain good law. That the Court has chosen to ignore these cases, or the state official's interpretation of challenged provisions in other cases, as the principal opinion would choose to do here, does not diminish the soundness of the reasoning in these cases.

> The Secretary of State felt that organizations assisting voters in registering to vote using the Secretary of State's online voter registration portal would not be considered in engaging in "solicitation" for the purposes of the law.
>
> ….
>
> At trial, the Secretary of State's position was firm that solicitation of voter registration for purposes of the challenged provisions was limited to those collecting completed registration applications from the prospective voters to return to the election authority.
>
> ….
>
> The Secretary of State indicated that out of state groups like the Voter Participation Center, which mail voter registration applications to prospective voters, would *not* be considered soliciting voter registration under HB1878 (or required to register as solicitors) "because they are sending it directly to the voter and the voter is sending it to the election authority, that would not apply to them."

Despite the record evidence about how the official responsible for enforcing the challenged provisions interprets "solicit" as used in the challenged provisions, neither the circuit court nor apparently the principal opinion accords any weight to that interpretation. But, as discussed in this opinion, the secretary of state's interpretation is not only entitled to weight, it also is consistent with the plain language of sections 115.205.1 and 115.205.4.

The unreasonableness and incorrectness of the principal opinion's *de novo* interpretation of "solicit" is evident in the fact the secretary of state, the official charged with enforcing the challenged election laws and the party adverse to Respondents in this

case, has never interpreted "solicit" in the grossly overbroad way the principal opinion advances.[4]

Analysis

Against Respondents' high burden of establishing the facial invalidity of each of the challenged provisions or, in other words, of establishing ***no circumstances*** exist under which any of the challenged provisions are constitutional, the principal opinion concludes Respondents met their high burden because each challenged provision implicates core political speech and is subject to strict scrutiny, which each provision fails. I disagree.

The principal opinion's analysis hinges on a flawed premise—"solicit" as used in the challenged provisions begins and ends with the dictionary definition of "solicit" and, therefore, necessarily implicates core political speech and fails strict-scrutiny review. Under the principal opinion's analysis, the legislature in the challenged provisions intended to regulate and did regulate ***people who merely seek to encourage others to vote***. ***Under the principal opinion's analysis, any person who encourages other Missourians to vote is subject to regulation under the challenged provisions***.[5] This is

[4] The principal opinion says this is untrue and points to the state's reference to the dictionary definition of "solicit" in the circuit court. The state's position is not inconsistent. In response to Respondents' argument the challenged provisions are void for vagueness, the state pointed to the dictionary definition of "solicit." The secretary of state has never suggested the dictionary definition of "solicit" does not apply. The issue is whether the dictionary definition starts and ends the analysis or whether section 115.205.4 further limits the dictionary definition of "solicit."

[5] As the principal opinion notes, the circuit court had a similarly broad view of the challenged provisions, concluding they would "require any Missouri voter [who] wants to

an absurd result, which is also contrary to the plain language of the challenged provisions.

The principal opinion's construction of section 115.205.1 is contrary to this Court's standard of review requiring this Court to presume statutes are constitutional and to give a narrowed construction upholding constitutional validity whenever possible. In *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 736 (Mo. banc 2007), this Court gave a "narrowed construction to exclude speech or expressive conduct" to the phrase "aid or assist" in section 188.250.1 and rejected Planned Parenthood's argument the plain language of the statute violated the First Amendment of the United States Constitution and the Missouri Constitution's free-speech guarantee. This Court observed:

> [C]ourts may use a narrowing construction when the parties challenging the statute are those who desire to engage in protected speech that the overbroad statute purports to punish. A narrowing construction is the preferred remedy in First Amendment cases. In those instances, a statute is construed so as to be in harmony with the constitution and upheld.

Id. at 741 (internal citation, footnote, and quotation omitted).

This Court determined a narrowing construction was appropriate because "all statutes should be upheld to the fullest extent possible. It is presumed that the General Assembly would not pass laws in violation of the constitution." *Id.* at 742 (internal citation omitted). This Court held: "This narrowing construction is consistent with this Court's understanding that the legislature would seek to regulate conduct even if

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encourage voter registration to pre-register with the [s]tate before engaging in such speech[.]"

regulation of speech and expressive conduct is barred by the First Amendment." *Id*; *see also State v. Vaughn*, 366 S.W.3d 513, 517 (Mo. banc 2012) ("[I]f it is at all feasible to do so, statutes must be interpreted to be consistent with the constitutions. If a statutory provision can be interpreted in two ways, one constitutional and the other not constitutional, the constitutional construction shall be adopted." (alteration in original) (internal citation and quotation omitted)); *Coldwell Banker Residential Real Estate Servs., Inc. v. Mo. Real Estate Comm'n*, 712 S.W.2d 666, 670 (Mo. banc 1986) ("We are obliged to resolve doubts in favor of the constitutionality of legislation and to construe a statute so as to uphold its validity, unless such a construction is foreclosed by the plain language.").

Because "solicit" is not defined in sections 115.205 or 115.279, the principal opinion correctly looks to the dictionary definition of "solicit." But then the principal opinion stops, after concluding the definition necessarily implicates core political speech. As the state points out, this is not a correct interpretation of ***all*** of the plain language of the statutes because section 115.205.4 makes clear more than the dictionary definition of "solicit" is contemplated for the statutes to apply when it provides: "Voter registration applications shall be accepted by the election authority if such applications are otherwise valid, *even if the voter registration solicitor who procured the applications fails to register with or submits false information to the secretary of state*." Sec. 115.205.4 (emphasis added).[6]

[6] The principal opinion suggests the state has changed its position on appeal by adopting the dictionary definition of "solicit" before the circuit court and now suggesting a

By the plain language of sections 115.205.1 and 115.205.4, the provisions regulating voter registration solicitors apply only to those voter registration solicitors who actually procure voter registration applications for submission to the secretary of state. The principal opinion rejects this construction of sections 115.205.1 and 115.205.4, asserting acknowledgement in section 115.205.4 "that a solicitor ***may*** collect applications does not imply one ***must*** collect applications to be considered a solicitor. The dictionary definition of 'solicit' is broad, and does not necessarily include the collection of applications." Slip Op. at 11. This is true—the dictionary definition of "solicit" is broad and is not necessarily limited to collection of voter registration applications. But the language in section 115.205.4 is such a limitation on "solicit" in section 115.205.1, and it is this Court's duty to assume legislation is constitutional and not to give the broadest possible definition to words used in statutes to invalidate legislation.

Reading section 115.205.4 as limiting the broad dictionary definition of "solicit" also is consistent with the interpretation the secretary of state has given to "solicit" since 2007, the same interpretation the secretary of state gave to Respondents before Respondents sued, and the same interpretation the secretary of state maintained at trial.[7]

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narrowed definition of "solicit" applies. As evidenced by the circuit court's findings of fact, the state has acknowledged the dictionary definition of "solicit" and, likewise, has maintained section 115.205.1 applies only to voter registration solicitors—those who distribute and collect voter registration applications. This is not a changed position but, rather, a consistent reading of sections 115.205.1 and 115.205.4 along with the dictionary definition of "solicit."

[7] As the principal opinion notes, John R. "Jay" Ashcroft was the secretary of state at the time of trial. From 2007 until Respondents sued, Missouri had two other secretaries of state before Secretary Ashcroft.

Further, accepting the principal opinion's interpretation renders section 115.205.4 superfluous or a nullity. If section 115.205.1 regulates anyone who merely encourages another to vote, then why would the legislature need to address procurement of voter registration applications in section 115.205.4?

The principal opinion also asserts section 115.205.4 cannot be read to limit "solicit" because "solicit" is used broadly in section 115.279.2 and the same definition of "solicit" must apply in both statutes. The same broad dictionary definition of "solicit" applies in both statutes. Section 115.205.4 is a limit on that broad dictionary definition, and section 115.279.2 should be construed separately to determine if it survives Respondents' facial challenge. The principal opinion relies heavily on *Meyer v. Grant*, 486 U.S. 414 (1988), and *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999), each of which makes clear each challenged requirement must be considered separately to determine constitutional validity.

When "solicit" is properly construed in section 115.205.1 as limited to regulation of those voter registration solicitors who actually procure or collect voter registration applications for submission to the secretary of state under section 115.205.4, none of the three challenged provisions in section 115.205.1 implicates core political speech. Instead, each challenged provision regulates only the non-expressive conduct of the voter registration solicitation process consisting of distributing voter registration applications and collecting completed applications for submission to the secretary of state.[8]

[8] This conclusion is consistent with holdings from a number of other courts concluding distributing and collecting voter registration forms or even ballots is non-expressive

Registered Voter Requirement

That the three challenged provisions in section 115.205.1 regulate only the non-expressive conduct of distributing and collecting voter registration applications is seen most clearly in what the circuit court called the Registered Voter Requirement. This title is misleading because the provision has two requirements, both of which Respondents challenge: "A voter registration solicitor shall be at least [18] years of age and shall be a registered voter in the state of Missouri." Sec. 115.205.1.

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conduct in no way implicating constitutional protections. *See Knox v. Brnovich*, 907 F.3d 1167, 1182 (9th Cir. 2018) (finding a state law regulating early ballot collection did not concern the First Amendment right to speech of ballot collectors); *Steen*, 732 F.3d at 392 ("In sum, we agree with the motions panel majority's conclusion that there is nothing inherently expressive about receiving a person's completed [voter registration] application and being charged with getting that application to the proper place. Because the Non-Resident and County provisions regulate conduct only and do not implicate the First Amendment, rational basis scrutiny is appropriate." (internal citation and quotation omitted)); *VoteAmerica v. Raffensperger*, 609 F. Supp. 3d 1341, 1357-58 (N.D. Ga. 2022) ("Plaintiffs have not shown that the act of sending ballot application packages is expressive conduct subject to First Amendment protections."); *Lichtenstein v. Hargett*, 489 F. Supp. 3d 742, 769 (M.D. Tenn. 2020) (noting "receipt and delivery of completed voter registration forms is not inherently expressive conduct" and finding "not a single case cited by Plaintiffs in which the act of distributing absentee-ballot applications was treated as within the scope of the First Amendment"); *DCCC v. Ziriax*, 487 F. Supp. 3d 1207, 1235 (N.D. Okla. 2020) ("[C]ompleting a ballot request for another voter, and collecting and returning ballots of another voter, do not communicate any particular message. Those actions are thus not expressive, and are not subject to strict scrutiny."); *New Ga. Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1300 (N.D. Ga. 2020) ("[C]ollecting ballots is not expressive conduct."); *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1319 (S.D. Fla. 2008) ("[T]he collection and handling of voter registration applications is not inherently expressive activity."); *League of Women Voters of Kan. v. Schwab*, 549 P.3d 363, 384-85 (Kan. 2024) ("Restrictions on the number of advance ballots one person may deliver does not, in isolation, inhibit speech at all; indeed, ballot deliverers are no more engaged in speech than is the postal service when it delivers packages.").

In *American Constitutional Law Foundation, Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997), the United States Court of Appeals for the Tenth Circuit considered a constitutional challenge to a similar age 18 restriction providing: "No section of a petition for any initiative or referendum measure shall be circulated by any person who is not a registered elector and at least [18] years of age at the time the section is circulated." *Id.* at 1100 (internal quotation omitted). In *Meyer*, the Tenth Circuit recognized "age commonly is used as a proxy for maturity[,]" and noted "Colorado [like Missouri] places age restrictions on voting and candidacy." *Id.* at 1101. "Subject to the Twenty-sixth Amendment, it seems states generally may place an age requirement on the right to vote without having to satisfy exacting scrutiny. Plaintiffs have not demonstrated that persons under [18] have a stronger interest in circulating than they do in voting." *Id.* (internal citation omitted). The *Meyer* court upheld the age 18 restriction:

> The age requirement is a neutral restriction that imposes only a temporary disability—it does not establish an absolute prohibition but merely postpones the opportunity to circulate. Exacting scrutiny is not required. Because maturity is reasonably related to Colorado's interest in preserving the integrity of ballot issue elections, plaintiffs' First Amendment challenge fails.

Id.

The *Meyer* plaintiffs filed a cross-petition for a writ of certiorari in the United States Supreme Court as to the age 18 restriction, which the Supreme Court denied. *Am. Const. Law Found., Inc. v. Buckley*, 522 U.S. 1113 (1998); *see also Buckley*, 525 U.S. at 191 n.10 (1999) (noting denial of writ cross-petition as to the age 18 requirement).

The principal opinion asserts the *Meyer* analysis should not apply as to the requirement in section 115.205.1 that each voter registration solicitor shall be at least age 18 because "[t]his restriction prohibits [those under age 18] from expressing Respondents' voting message." Slip Op. at 19. This is incorrect when "solicit" is construed in section 115.205.1 to regulate only those voter registration solicitors who distribute and collect voter registration applications. Those younger than age 18 remain free to express Respondents' voting message, but they may not both distribute and collect voter registration applications.

Apparently recognizing the persuasiveness of the *Meyer* analysis, the principal opinion dismisses *Meyer* on the basis the state did not present evidence or argument concerning this claim in the circuit court and failed to correctly raise this claim on appeal, resulting in it being unpreserved for this Court's review. Slip Op. at 26-28. This is incorrect on both counts. The principal opinion misunderstands the parties' respective burdens at trial. The state had ***no*** obligation to present any evidence. Respondents, the parties challenging the statutes' constitutional validity, had the extremely high burden of proof to establish "no set of circumstances under which the statute[s] would be valid." *Hellmann*, 728 S.W.3d at 412. The state ***did*** separately argue the age 18 restriction in the circuit court and specifically argued (as it does on appeal) strict scrutiny does not apply. *See, e.g.*, Suggestions in Opposition to Motion for Preliminary Injunction at 10-11 ("Likewise, if the Challenged Provisions' *solicitor* age and registration requirements were a severe burden on speech, then ordinary *voter* age and registration requirements would be constitutionally suspect. Again, this is absurd. *See, e.g.*, *Clingman v. Beaver*,

544 U.S. 581, 593 (2005) (observing that '[m]any electoral regulations, including voter registration generally, require … some action to participate' and that '[t]o deem ordinary and widespread burdens like these severe would subject virtually every electoral regulation to strict scrutiny')."); Defendants' Proposed Findings of Fact, Conclusions of Law, and Final Judgment at 31 (same). The circuit court addressed the age 18 restriction in at least two paragraphs of the judgment.[9] As to preservation on appeal, the state did not need to have a separate point identifying *Meyer* and raised as its first point on appeal that sections 115.205 and 115.279 regulate conduct, not speech, and do not violate the Missouri Constitution.[10] The state specifically addressed the age 18 restriction throughout its briefing. *See, e.g.*, Appellants' Opening Brief at 23 ("The statute provides that a 'voter registration solicitor shall be at least [18] years of age and shall be a registered voter in the state of Missouri.' Age and voter-registration status are reasonable

[9] Despite at least two paragraphs of the judgment addressing the age 18 restriction, the principal opinion asserts the state should have requested an amended judgment, citing Rule 78.07(c). Rule 78.07(c) specifies: "In all cases, allegations of error relating to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment[.]" The circuit court incorrectly failed to analyze the constitutional validity of the age 18 restriction separately from the constitutional validity of the registered voter requirement. The state preserved this legal error for appeal. This error does not relate to the language or form of the judgment or to the failure to make statutorily required findings, so the state had no obligation to file a motion to amend the judgment under Rule 78.07(c).

[10] Indeed, if the principal opinion's discussion of preservation is correct, then the state preserved nothing for review as to any claim because the state did not advance separate points for each challenged provision and instead grouped discussion of each challenged provision under broader points relied on setting out why the circuit court erred. The state's points complied with Rule 84.04 and preserved for review its challenge to the age 18 restriction.

proxies for reliability. … The General Assembly reasonably concluded that teenagers … should not be handling registration forms, which are important state documents."); *id.* at 57 ("Additionally, canvassers can help voters register and apply to vote absentee so long as they are not *collecting* completed applications. This provides [Respondents] with plenty of other options for canvassing, even if [Respondents] want to continue paying underage and out-of-state canvassers to assist with voter registration drives."). The state preserved for appeal its argument the age 18 requirement does not violate the Missouri Constitution. This Court should follow *Meyer* and uphold the challenged provision related to the age 18 requirement.[11]

As to the requirement in section 115.205.1 that each voter registration solicitor "shall be a registered voter in the state of Missouri[,]" the principal opinion notes the Supreme Court in *Buckley* affirmed the Tenth Circuit's decision in *Meyer*, which rejected the voter registration requirement as to *initiative petition circulators* as an unconstitutional restriction on core political speech not surviving strict-scrutiny review. *Buckley*, 525 U.S. at 194-97.

The principal opinion, without citation to any authority, concludes *Buckley* applies here because "restrictions on the solicitation of voter registration applications and the prohibition on the solicitation of absentee ballot applications naturally involve core

[11] To be clear, the state argues on appeal strict scrutiny does not apply because the age 18 restriction regulates conduct, not speech. The state preserved this argument by arguing at the circuit court strict scrutiny does not apply. To the extent the principal opinion suggests this opinion or *Meyer* concludes the age 18 restriction implicates speech but is subject to something other than strict scrutiny, the principal opinion misconstrues this opinion and *Meyer*.

political speech. Solicitation requires one to speak to a person regarding an issue of societal concern—participation in the democratic process—and involves advocacy for political change." Slip Op. at 16. This broad, unsupported statement that voter registration solicitation equals the core political speech of initiative petition circulators at issue in *Meyer* and *Buckley* ignores the fact the analysis in *Buckley* hinged on the registered voter requirement applying to *initiative petition circulators*:

> The requirement that circulators be not merely voter eligible, but registered voters … decreases the pool of potential circulators as certainly as that pool is decreased by the prohibition of payment to circulators. Both provisions limi[t] the number of voices who will convey [the initiative proponents'] message and, consequently, cut down the size of the audience [proponents] can reach.

Buckley, 525 U.S. at 194-95 (alterations in original) (internal citation, footnote, and quotation omitted); *see also Meyer*, 486 U.S. at 421-22 ("Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as core political speech." (internal quotation and footnote omitted)). As this Court noted in *Peters v. Johns*, 489 S.W.3d 262, 270 (Mo. banc 2016) (internal quotation omitted), "[t]he speech burdened by the voter registration requirement in *Buckley* … was the circulation of initiative petitions. In that regard, the Supreme Court found that the circulation of initiative petitions was core political speech for which First Amendment protection was at its zenith."

This case does not involve initiative petition circulators. The core political speech in *Buckley* and *Meyer* is not at issue here. In *Steen*, the United States Court of Appeals for the Fifth Circuit recognized the difference between the speech involved in the

initiative petition circulations in *Buckley* and *Meyer* and the non-expressive conduct involved in distributing and collecting voter registration applications:

> Put otherwise, while voter registration drives involve core protected speech, they are factually distinct from the circulation of petitions addressed by the Supreme Court in *Meyer*[ ] and *Buckley*[ ]. Petitions by themselves are protected speech, and unlike a completed voter registration form, they are the circulator's speech. Assuming a voter registration application is speech, it is the *voter's* speech indicating his desire to be registered. Soliciting, urging and persuading the citizen to vote are the forms of the canvasser's speech, but only the voter decides to "speak" by registering. Logically, what the VDR [Volunteer Deputy Registrar] does with the voter's form *follows* the voter's completion of the application but is not itself "speech." One does not "speak" in this context by handling another person's "speech." As the state's brief observes, the voter could refuse to return a registration application to the VDR and say, "I'll mail it myself."

Steen, 732 F.3d at 390; *see also Ala. State Conf. of the NAACP v. Marshall*, 746 F. Supp. 3d 1203, 1227 (N.D. Ala. 2024) ("Unlike initiative petitions, absentee ballot applications contain no message and do not convey information."); *League of Women Voters of Kan.*, 549 P.3d at 385 (distinguishing *Meyer* and noting "the delivery of completed ballots is not a speech input" (internal quotation omitted)).

With no citation to authority, the principal opinion seems to suggest "solicitation" must somehow necessarily always implicate core political speech, but this is not true when the voter registration solicitor requirements in section 115.205.1 are construed consistently with section 115.205.4 to apply only to individuals who both distribute and procure or collect voter registration applications. Properly construed, section 115.205.1's requirement voter registration solicitors (people who both distribute and collect voter registration applications) must be registered Missouri voters does not limit the number of voices who may advance Respondents' pro-voter registration message. People who wish

to convey Respondents' message remain free to do so; those same individuals are restricted only in the conduct of both distributing and collecting voter registration applications if they decline to or cannot register as a Missouri voter. Respondents assert, with no evidentiary support, some voter registration solicitors may decline to register as an act of political expression protected by the Missouri Constitution's free-speech guarantee. This Court rejected that argument in *Peters*, 489 S.W.3d at 271 ("Johns' failure to register to vote does not qualify as symbolic speech. … The failure to register to vote is actually the absence of conduct.").

Compensation Ban

The next challenged provision in section 115.205.1 provides: "No person shall be paid or otherwise compensated for soliciting voter registration applications, other than a governmental entity or a person who is paid or compensated by a governmental entity for such solicitation." If "solicit" is properly construed under sections 115.205.1 and 115.205.4 as limited to cover only both the distribution and collection of voter registration applications, then the restriction covers conduct only. *See Coldwell Banker*, 712 S.W.2d at 670 (construing a statute prohibiting things of value being given to attract purchasers as regulating conduct, not speech, and noting the statute does not deal with means of communication). Had the legislature intended to prohibit the reimbursement of volunteer expenses or the purchase of T-shirts, stickers, pins, or other items for volunteers in connection with voter registration events, it could have and would have so stated. Instead, the legislature prohibited payment or other compensation to people who solicit voter registration applications, which refers to people who both distribute and then

procure or collect the voter registration application for submission to the secretary of state. The state acknowledges in its briefing Respondents "can even pay unregistered employees to give physical registration forms to voters. The only thing that [Respondents] cannot do is pay unregistered employees to collect completed voter registrations for submission to local election authorities." Appellants' Opening Brief at 16. The principal opinion again relies on *Meyer*, in which the Supreme Court affirmed the Tenth Circuit's holding that a restriction on payment of initiative petition circulators was unconstitutional:

> The refusal to permit appellees to pay petition circulators restricts political expression in two ways: First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

Meyer, 486 U.S. at 422-23 (footnote omitted).

Neither concern applies here. The Compensation Ban does not limit the number of voices who may convey Respondents' pro-voting message; at most, the Compensation Ban may limit the number of individuals who both distribute and collect voter registration applications, but this is conduct, not speech or expression or association. And there is no signature requirement to place a matter on the ballot in the case of voter registration applications, again demonstrating the fundamental difference between this case, *Meyer*, and *Buckley*.

Unpaid Solicitor Registration Requirement

The remaining challenged provision in section 115.205.1 provides: "A voter registration solicitor who solicits more than ten voter registration applications shall register for every election cycle that begins on the day after the general election and ends on the day of the general election two years later." The plain language of this challenged provision supports the interpretation that "solicit" in section 115.205.1 is limited by section 115.205.4 to apply only when a voter registration solicitor both distributes and procures or collects voter registration applications. This challenged provision demonstrates the legislature intended to regulate "professional" voter registration solicitors, *i.e.*, people who distribute and procure more than ten voter registration applications, not every individual who merely encourages another person to vote, as the principal opinion holds.

Absentee Ballot Solicitation Ban

The final challenged provision, in section 115.279.2, provides: "Notwithstanding section 115.284, no individual, group, or party shall solicit a voter into obtaining an absentee ballot application."[12] Section 115.284.1 establishes "an absentee voting process to assist persons with permanent disabilities in the exercise of their voting rights."

The state elections director testified the purpose of the absentee ballot solicitation ban is to prevent a third party from mailing or otherwise providing a blank absentee

[12] Section 115.279.2 also provides: "Absentee ballot applications shall not have the information prefilled prior to it being provided to a voter." Respondents did not challenge the prefilled application restriction in their petition, and the circuit court judgment does not purport to enjoin the prefilled application restriction.

ballot application because this practice has caused widespread confusion among voters and local election authorities when someone has registered to vote absentee and in some cases has voted absentee already and receives a blank absentee ballot application in the mail, causing the person or local election authority to question whether the vote was ineffective or whether there was some other problem with the process.

The legislature may have intended section 115.279.2 to prohibit an "individual, group, or party" from both distributing and collecting absentee ballot applications, and this reading is supported by the reference to section 115.284, which sets out a process for assisting persons with permanent disabilities with the absentee voting process. Alternatively, the legislature may have intended to limit or eliminate the distribution of blank absentee voter applications for the reasons articulated by the state elections director. But, as the principal opinion notes, the plain language of section 115.279.2 provides: "no individual, group, or party shall *solicit a voter into obtaining an absentee ballot application*." (Emphasis added). Section 115.279 contains no limiting language identical or similar to section 115.205.4. Further, in using "solicit," the legislature did not simply restrict or eliminate the provision of blank absentee ballots by third parties. Because of this, the broad dictionary definition of "solicit" applies, making section 115.279.2 facially unconstitutional as restricting Respondents' rights to speak, express, and associate to encourage others to obtain an absentee ballot application.[13]

[13] This does not mean the legislature cannot restrict absentee ballot distribution, but only that the plain language of section 115.279.2 does not survive constitutional challenge. *See Mo. State Conf. of NAACP v. State*, 607 S.W.3d 728, 734-36 (Mo. banc 2020) (concluding the legislature may ban absentee voting altogether); *Lichtenstein v. Hargett*,

Rational-Basis Review of the Challenged Provisions in Section 115.205.1

The three challenged provisions in section 115.205.1 regulate conduct—distributing and collecting voter registration applications—and do not address the speech, expression, or association guarantees in the Missouri Constitution. Each of these challenged provisions is subject to rational-basis review. *See E.N.*, 726 S.W.3d at 689.[14] Under rational-basis review, the challenged provisions are constitutional if they are "rationally related to legitimate government interests." *Id.* (internal quotation omitted).

Under rational-basis review, "[a] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *United C.O.D. v. State*, 150 S.W.3d 311, 313 (Mo. banc 2004) (internal quotation omitted). The state asserts the challenged provisions in section 115.205.1 advance a number of state interests, including the state's interests in preserving election integrity, combating voter registration fraud, and easing the administrative burden on state officials tasked with investigating fraudulent voter registration applications. The

83 F.4th 575, 579 (6th Cir. 2023) (upholding a Tennessee statute making it a crime for anyone other than election officials to distribute the state's official form for applying to vote absentee even though the form is now widely available online after concluding the statute prohibited only conduct—distribution of a government form—not speech); *Priorities USA v. Nessel*, 628 F. Supp. 3d 716, 726-27 (E.D. Mich. 2022) (upholding a Michigan law prohibiting plaintiffs from being "in possession of a signed absent voter ballot application" as restricting only non-expressive conduct and not implicating the First Amendment).

[14] The circuit court never reached the issue of whether the challenged provisions satisfy rational-basis review.

challenged provisions are conceivably rationally related to these legitimate state interests, satisfying rational-basis review.[15]

Vagueness

Respondents assert the three challenged provisions in section 115.205.1 violate the due process guarantee in article I, section 10 of the Missouri Constitution because they are impermissibly vague. "[T]he void for vagueness doctrine ensures that laws give fair and adequate notice of proscribed conduct and protects against arbitrary enforcement." *City of Maryland Heights v. State*, 638 S.W.3d 895, 899 (Mo. banc 2022) (alteration in original) (internal quotation omitted). "The test in enforcing the doctrine is whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Id.* (internal quotation omitted). "[N]either absolute certainty nor impossible standards of specificity are required in determining whether terms are impermissibly vague." *Id.* (alteration in original) (internal quotation omitted).

The circuit court determined the three challenged provisions in section 115.205.1 are impermissibly vague because it is unclear how terms like "solicit" and "compensate" should be defined, inviting arbitrary enforcement by Missouri's prosecutors. The circuit court further noted a more stringent test for vagueness should apply when a law interferes with constitutional rights such as free speech and free expression.

[15] The principal opinion acknowledges the state's asserted interests of "guarding election integrity and preventing voter fraud, preventing disenfranchisement of voters, protecting voting rights, and promoting voter privacy … may be legitimate interests the [s]tate can serve through the passage and implementation of legislation[.]" Slip Op. at 21.

The three challenged provisions in section 115.205.1 are not impermissibly vague in violation of the due process guarantee in article I, section 10 of the Missouri Constitution. The challenged provisions regulate conduct only and do not interfere with any right protected by the Missouri Constitution. The terms used in section 115.205.1 comport with the dictionary definitions of those terms, meaning each term can be understood by a reasonable person. Further, this Court has held "speculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid in the vast majority of its intended applications." *Id.* at 899-900 (internal quotation omitted).

Overbreadth

In connection with their claim the challenged provisions violate the free speech and free expression guarantees in article I, section 8 of the Missouri Constitution, Respondents also assert the challenged provisions are overbroad. This claim lacks merit because the three challenged provisions regulate conduct only and do not impact the ability of Respondents to speak, express, or associate about their pro-voter registration message. On these facts, Respondents have failed to meet their burden to show the challenged provisions are overbroad. *Id.* at 899 n.5 ("Plaintiffs' overbreadth challenge would be meritless because, as explained earlier, [the statute] regulates the use of public funds and does not implicate the officials' constitutionally protected speech."); *State v. Jeffrey*, 400 S.W.3d 303, 310-11 (Mo. banc 2013) (concluding the claim a statute was overbroad in violation of the First Amendment lacks merit when the statute prohibited

conduct and noting "[t]he Supreme Court has recognized that the overbreadth doctrine generally is not applicable when a statute regulates only conduct").

Conclusion

Because Respondents did not establish the three challenged provisions in section 115.205.1 are facially invalid under the Missouri Constitution, I would reverse the circuit court's judgment as to those three provisions. As to the challenged provision in section 115.279.2, I would conclude Respondents established this provision is facially invalid and would affirm the circuit court's judgment as to that provision.

_____

Ginger K. Gooch, Judge