

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

AMERICAN WOMEN, NANCY HIRSCH,  
JOSEPH ILIFF, and SARAH MANUEL,

Plaintiffs,

v.

STATE OF MISSOURI,  
Serve: Missouri Attorney General  
207 W. High St.  
Jefferson City, Missouri 65101

and

JAY ASHCROFT, in his official capacity as  
Missouri Secretary of State,  
Serve: 600 W. Main St.  
Jefferson City, Missouri 65101

Defendants.

Case No.

Division:

**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs American Women, Nancy Hirsch, Joseph Iliff, and Sarah Manuel bring this Petition for declaratory and injunctive relief against Defendants the State of Missouri (“the State”) and Jay Ashcroft, in his official capacity as the Missouri Secretary of State (the “Secretary”). This Petition is based on the facts and allegations below. Plaintiffs allege as follows:

**INTRODUCTION**

1. This action challenges five state election laws that, together and separately, make it more difficult—and sometimes, outright impossible—for Missouri voters to exercise their fundamental right to vote. As the upcoming general election approaches and the COVID-19 pandemic continues to ravage communities in this state, voters throughout Missouri are desperately trying to retool their voting plans to accommodate the kind of safety precautions that are absolutely vital to preserve community health. An unprecedented number of Missourians are

turning to mail voting, but the five election laws challenged here create obstacles at every turn. The need for urgent intervention by this Court is becoming clearer by the day.

2. COVID-19, the deadly illness caused by the novel coronavirus, continues to make daily life difficult around the world. The virus has infected millions of people and taken many thousands of lives in the United States and here in Missouri. The nation's top health experts do not expect the situation to improve before the end of the year. Because the virus is highly transmissible, social distancing is chief among the guidelines issued by public health officials to mitigate the pandemic.

3. Like the rest of the country, Missouri will hold a general election on November 3, 2020. But unless it is required to make time-critical adjustments to ensure that the democratic process is freely available to all eligible voters, thousands stand to be disenfranchised. Given the public health concerns associated with in-person voting against the backdrop of a global pandemic, the desire to vote by mail has skyrocketed. Nearly half of Missouri voters plan to vote by mail this November, and the state must ensure that those voters can safely and securely cast ballots using a clear, accessible, and fair process.

4. Missouri's mail voting regime is anything but clear, accessible, or fair. Historically, only voters meeting a short list of narrow statutory requirements have been allowed to vote absentee ("Absentee"). However, the State recently passed S.B. 631, which detailed additional mail voting options available to voters in the COVID-affected 2020 election, including a new class of mail ("Mail-In") ballots. The resulting regime imposes an array of confusing, irrational, and burdensome requirements, some of which apply haphazardly to some voters and not others for unclear or arbitrary reasons. In this lawsuit, Plaintiffs challenge several of the arbitrary distinctions that the new Absentee/Mail-In voting regime makes among voters, which will operate to severely

burden the right to vote—particularly in the current pandemic—as well as some pre-existing restrictions that do the same.

5. Specifically, Plaintiffs challenge the following five restrictions, which individually and cumulatively burden the right to vote:

- The “Notarization Requirements,” under which Missouri arbitrarily classifies voters into one of three categories and then imposes differing, confusing, and increasingly burdensome notarization requirements on each;
- The “Election Day Receipt Deadline,” which requires elections officials to reject all ballots received after 7 p.m. on Election Day, regardless of when they were mailed by the voter and even if they arrive later than that cutoff for reasons entirely out of the voter’s control;
- The “Ballot Collection Ban,” which prohibits individuals from helping voters return their voted ballots to elections officials, including where doing so is necessary to avoid disenfranchisement due to the Election Day Receipt Deadline;
- The “Ballot Rejection Rules,” under which elections officials apply inconsistent and indiscriminate evaluation criteria to determine whether a ballot is valid and will be counted or rejected; and
- The “Mail-Return Mandate,” which mandates that ballots voted by certain types of voters but not others are only returnable by U.S. Mail and may not be returned in person (even by the voters themselves).

6. These restrictions (collectively, the “Challenged Provisions”) all but assure that the thousands of Missourians who seek to vote by mail this fall will face a confusing and burdensome regime that will result in widespread, unavoidable, and unconstitutional chaos and disenfranchisement.

7. Plaintiffs are individual Missouri voters and American Women, an organization dedicating resources to robust voter education and get-out-the-vote efforts in Missouri. Without urgent relief, Plaintiffs’ fundamental rights to vote, equal protection, due process, and free speech are at stake. There is no time to waste. According to the Secretary of State’s website, application forms for Mail-In ballots and Absentee ballots for the upcoming general election are available as

of August 18, 2020. Absent immediate declaratory and injunctive relief, these constitutional violations will persist; the Missouri Constitution does not tolerate this result. For these reasons and those set forth below, Plaintiffs ask this Court to declare each of the Challenged Provisions unconstitutional and enjoin Defendants from enforcing them.

### **PARTIES**

8. Plaintiff AMERICAN WOMEN is a nonprofit organization whose mission is to strengthen American democracy by increasing public awareness of the issues impacting women and families. American Women works with voters, leaders, and organizations to amplify women's voices in the policy discussion. American Women increases awareness of the needs, values, attitudes, beliefs and behaviors of women with regard to the critical issues facing our nation. In furtherance of these policy goals in 2020, American Women is engaging in a voter education and assistance campaign by sending Mail-In ballot request forms to Missouri voters, informing them of notarization and other requirements, and educating voters as to the timeline for receiving and mailing ballots. Voter turnout efforts, including assisting voters with the submission of mail ballots, are a means by which American Women would like to communicate its belief in the power and importance of participating in democratic elections. The Challenged Provisions harm American Women by complicating and impeding their ability to ensure that Missouri voters are able to understand and use the mail voting process. American Women must spend more resources helping voters comply with and avoid the pitfalls of the Challenged Provisions. If not for the Challenged Provisions, American Women could dedicate these scarce resources to other mission-critical projects.

9. Plaintiff NANCY HIRSCH is a 68-year-old voter and life-long resident of Missouri. She lives in St. Louis County and, in the past, she has always exercised her right to vote

in person. Due to her concern about the increased risk of voting in person during the COVID-19 pandemic, Hirsch is voting by Absentee ballot in 2020. Hirsch, however, remains concerned that her Absentee ballot will be rejected by an election judge due to the state's indiscriminate Ballot Rejection Rules. Hirsch is also very concerned about the ability of her family members and others in her community to return their ballots. In the August 4 primary, Hirsch was able to return her husband's ballot along with her own. If she were permitted, she would also assist her neighbors and peers with the submission of their Absentee and Mail-In ballots, as means of expressing support for her community and encouraging participation in democratic elections. Unfortunately, the Ballot Collection Ban prohibits Hirsch from engaging in such voter assistance to promote this message.

10. Plaintiff JOSEPH ILIFF is a 47-year-old registered voter in St. Louis County. Though Iliff's wife has diabetes and is therefore eligible to vote by non-notarized Absentee ballot, Iliff only qualifies for a Mail-In ballot. Iliff requested a Mail-In ballot for the August primary election, but he had to vote in person because the ballot never arrived in the mail. Iliff still plans to vote by Mail-In ballot in November, but fears that he will be disenfranchised by the Mail-Return Mandate, the Notarization Requirement, and the Election Day Receipt Deadline. Given the reports of mail delays, USPS crises, and dramatic increases in mail voting, he fears that he will not receive his ballot early enough to locate a notary, safely get the ballot envelope notarized, and mail it back to election authorities by 7 p.m. on election day. Iliff would strongly prefer to return his Mail-In ballot in person to guarantee that authorities receive it in time.

11. Plaintiff SARAH MANUEL is a 28-year-old registered voter in the City of St. Louis. Manuel wishes to vote by mail, but does not meet any statutory excuse that would permit her to vote Absentee. Unless certain challenged provisions are enjoined, Manuel fears that casting

a Mail-In ballot would result in her disenfranchisement. Specifically, she is concerned that her Mail-In ballot would not count if it were to arrive after the Election Day Receipt Deadline due to well-publicized USPS delays, staff shortages, and budget crises. If Manuel were permitted to return her Mail-In ballot in person, she would certainly use that option instead. Additionally, Manuel would strongly prefer to have someone else collect and drop off her Mail-In ballot on her behalf because of the COVID-19 pandemic.

12. Defendant STATE OF MISSOURI is the entity responsible for enforcement of the Challenged Provisions.

13. Defendant JOHN R. (“JAY”) ASHCROFT is the Missouri Secretary of State (the “Secretary”) and is named as a Defendant in his official capacity. He is Missouri’s chief election official and is responsible for preparing certain election papers, for administering statewide elections, and for overseeing execution of Missouri election laws, including the Challenged Provisions. Mo. Const. art. IV, § 14; *see generally* § 115.000 *et seq.* RSMo.

### **JURISDICTION & VENUE**

14. This Court maintains original subject-matter jurisdiction over this action under Sections 478.220, 526.030, and 527.010 of the Missouri Revised Statutes and Missouri Rule of Civil Procedure 87.01.

15. Venue is proper because Defendants maintain offices here and because Cole County holds the seat of the Missouri state government. *See* § 508.010 RSMo.

### **GENERAL ALLEGATIONS**

#### ***The Global COVID-19 Pandemic***

16. The highly transmissible and deadly respiratory disease COVID-19 continues to ravage the globe and especially the United States. As of the date of this filing, the United States

has reported nearly 5 million confirmed cases of the illness. COVID-19 has caused more than 163,000 deaths in the United States and is increasingly believed to threaten serious long-term health repercussions for many of those who survive.

17. The pandemic shows no signs of letting up any time soon. The Director of the Centers for Disease Control and Prevention (the “CDC”) Dr. Robert Redfield, Jr. told Congress on July 30 that the virus remains the “greatest public health crisis our nation and our world have confronted in more than a century.”

18. Dr. Redfield, as well as the White House coronavirus advisor and the Director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, expect the virus to continue to plague Americans through the fall.

19. Indeed, Dr. Redfield has warned that the COVID-19 “wave” facing the nation this fall may “be even more difficult than the one we just went through.”

20. Similarly, the Director of the National Center for Immunization and Respiratory Diseases at the CDC, Dr. Nancy Messonnier, has said she expects the virus to continue spreading in the United States through next year.

21. To prevent the spread of the disease, the CDC recommends that people stay at home as much as possible, and to practice “social distancing” when venturing outside their households.

22. Social distancing requires maintaining a distance of at least six feet between persons and is a proven method to stop the spread of COVID-19.

23. Health experts have repeatedly and consistently reiterated that social distancing is a critical tactic to fight COVID-19.

24. Until there is a vaccine or “herd immunity,” Americans will remain at serious risk of contracting the virus. Health officials at CDC and elsewhere do not expect a vaccine until at

least 2021.

25. Because voting in person poses the risk that voters, poll workers and election officials may not be able to maintain a safe social distance, the CDC officially recommends that jurisdictions encourage mail voting and reduce methods of voting that lead to direct contact with other voters or poll workers.

26. Other federal, state, and local officials have increasingly come to the same conclusion.

### ***COVID-19's Impact on Missouri***

27. As elsewhere, COVID-19 has been spreading through Missouri for several months.

28. As of August 11, 2020, there were nearly 60,000 confirmed cases of COVID-19 in the state, and the deaths of nearly 2,000 Missourians have been officially attributed to the virus.

29. The rate of infection is rapidly increasing, with over 1,100 Missourians infected per day—a 23% increase from the average two weeks ago.

30. Unfortunately, the testing positivity rate is at 14.8% (experts state that positivity rates should be no higher than 5% to indicate control), signaling wide community spread.

31. In certain populations, the virus has proven to be particularly deadly. Elderly Americans are at heightened risk, but so are Americans of all ages, particularly those with relatively common pre-existing conditions, such as high blood pressure.

32. It has also become clear that communities of color, in particular the Black community, are acutely at risk. As of this filing, the State Department of Health and Senior Services reports that 23.0% of Missouri's confirmed infections and 32.2% of reported deaths are among Black residents, even though they make up only 11.8% of the state's population.

33. Consistent with public health advice, Missouri's Governor Michael Parson (the



“Governor”) declared a state of emergency in early March. Exec. Order 20-02 (Mar. 13, 2020).

34. Over the course of the crisis, the State has waived or suspended more than 450 state statutes and regulations to assist with the COVID-19 response.

35. On March 18, the Governor postponed the State’s April General Municipal Election to protect Missourians from “close contacts” and allow for CDC-recommended “social distancing to limit the spread of the Coronavirus.” Exec. Order 20-03 (Mar. 13, 2020). On April 24, Governor Parson extended the state of emergency through mid-June. Exec. Order 20-09 (Apr. 24, 2020). In June, he extended the state of emergency through at least the end of 2020. Exec. Order 20-12 (June 11, 2020).

36. Despite the growing crisis in Missouri, the Governor allowed the State’s stay-at-home order to lapse. Governor Parson announced that Missouri would fully reopen on June 16, 2020, stating “There was a lot of worry and concern, . . . [h]ere we are today, just over 90 days since our first COVID-19 case in Missouri, and I am proud to say we have overcome all of these challenges.”

37. In the weeks that have passed since, however, the virus has continued to surge, with confirmed new case numbers climbing from well under 500 a day in mid-June to over 1,000 per day—a trend that has held alarmingly steady since at least July 21.

38. Despite the continuing surge of the disease in Missouri’s borders, the Governor has refused to reinstate statewide orders to protect the health of all of the state’s citizens. As of the date of filing, Missouri now has no statewide health order and all statewide restrictions have been lifted.

39. Nevertheless, many residents across the state continue to take precautions on an individual scale whenever they are able. This includes continuing to follow CDC guidelines by

staying at home when possible and engaging in social distancing. By taking these measures, Missouri citizens hope to prevent contracting or spreading COVID-19.

### ***COVID-19's Impact on the 2020 Elections***

40. Experts, real examples, and basic math all tell an increasingly clear story for the 2020 elections: mail voting is essential.

41. COVID-19 has caused a critical—and worsening—shortage of poll workers in the United States and in Missouri. Most poll workers in the United States are above the age of 60 and are more vulnerable to the disease. Many would-be poll workers will reasonably stay at home, or themselves may become infected and unavailable on Election Day.

42. As a result, jurisdictions in Missouri are struggling to recruit enough poll workers to operate polling places and handle other necessary tasks.

43. Several states have already experienced major election crises as a result of these and other problems. Florida experienced significant shortages in poll workers and polling locations, with 800 poll workers withdrawing from Palm Beach County alone in its primary election held on March 17, 2020.

44. Likewise, Arizona's most populous county, Maricopa, was forced to close more than 80 polling locations at the last minute in its March 17, 2020 primary, as poll workers in locations serving high-risk communities backed out.

45. In the weeks after Wisconsin's April primary, the Wisconsin Department of Health Services identified 71 poll workers, national guard members (who helped administer elections), and voters who tested positive for COVID-19.

46. The rapid implementation of social distancing measures, the decline in available staff, and the resulting spike in mail voting has placed a significant strain on local election officials'

ability to meet their own deadlines and other requirements.

47. As interest in mail voting increases, delivery issues and delays from USPS threaten to disenfranchise Missouri voters as well, especially given its restrictive deadlines and ballot-return rules.

48. Nevertheless, because mail voting remains a safe and consistently secure alternative to in-person voting, Missouri, like all other U.S. jurisdictions, must rely on it.

### ***Mail Voting in Missouri During the Pandemic***

49. Given the difficulties of voting in person while complying with social distancing guidelines, Missouri voters are turning to mail voting at unprecedented rates.

50. In the June 2 Municipal Election, requests to vote by mail soared. Two weeks before that election, the St. Louis County Election Board had received about 70,000 applications to vote Absentee—more than four times the number requested for a comparable local election in April 2019. Other counties reported similar increases in Absentee ballot requests.

51. Missourians wish to have safe and effective options other than in-person voting this fall. In a recent survey, 44% percent of state voters said they were likely to vote by mail in November, although only 8.9% of Missouri voters cast mail ballots in 2016.

52. Unfortunately, Missouri's mail voting scheme is highly restrictive. Until just recently, registered Missouri voters could traditionally only vote by Absentee ballot for one of six statutory excuses: (1) absence on election day; (2) incapacity or confinement due to illness or physical disability, including a person who is primarily responsible for the physical care of a person who is incapacitated or confined due to illness or disability; (3) religious belief or practice; (4) employment as an election authority; (5) incarceration, provided all qualifications for voting are retained; or (6) participation in the State's address confidentiality program. § 115.277.1 RSMo.

53. Just weeks ago, the General Assembly passed S.B. 631 (2020), which added a new seventh category for voters who “ha[ve] contracted or [are] in an at-risk category for contracting or transmitting severe acute respiratory syndrome coronavirus.” § 115.227.1(7) RSMo. (emphasis added).

54. The new “at-risk category” only includes voters who: (1) are sixty-five years of age or older, (2) are living in a long-term care facility, (3) suffer from chronic lung disease or moderate to severe asthma, (4) have serious heart conditions, (5) are immunocompromised; (6) have diabetes, (7) have chronic kidney disease and are undergoing dialysis; or (8) have liver disease. *Id.* § 115.277.6.

55. The “at risk category” does not cover people living with other pre-existing conditions whom the CDC and other public health authorities have identified as being particularly “at risk” of developing severe or deadly illness from COVID-19. For example, the list does not include cancer patients, persons living with sickle cell disease, or obesity. It also fails to cover pregnancy, pulmonary fibrosis, smoking, and thalassemia, all of which the CDC say put people at higher risk. It also does not capture individuals who living with or in close proximity to people in the enumerated classes.

56. In addition to creating the new seventh category for Absentee voting, S.B. 631 also created a distinctive class—applicable to the 2020 elections only—that the General Assembly called “Mail-In” voting. Any voter may apply for a Mail-In ballot, but—unlike an Absentee ballot—the voter must get it notarized, potentially pay notary fees, and may only return it by U.S. mail.

57. If a voter hopes to vote Absentee or Mail-In they must successfully navigate a multi-step and often confusing process, that differs at certain points depending on the category for

which the voter is eligible or for which she applies—Absentee or Mail-In. And even within the Absentee category, voters face distinct requirements depending on their reason for voting Absentee.

58. First, in order to vote Absentee or Mail-In, a voter must gather various personal data to complete and return an application by 5 p.m. on the second Wednesday immediately prior to the election. *Id.* § 115.279.3. Absentee voters are eligible to return their applications by mail, in person, email, or fax, *id.* § 115.279.1; but Mail-In voters may *only* return their applications by mail or in person, *id.* § 115.302.1.

59. Next, the voter must receive their ballot in the mail (unless they were able to collect their ballot in person), complete the ballot and the required statement on the ballot envelope, and (in most cases) swear an affidavit before a notary public, election official, or other officer authorized to administer oaths. *Id.* § 115.291.

60. An Absentee voter must then must either mail their ballot—by USPS *or* registered carrier—with sufficient time for it to arrive at the election authority by 7 p.m. on election day, *or* return the ballot in person. *Id.* § 115.291.2. A Mail-In voter may *only* return their ballot by USPS *but must meet the same deadline.* *Id.* § 115.302.12.

61. These steps require voters to expend significant time, effort, and sometimes money to complete. A misstep at any point—including by actors other than the voter, such as election officials or the mail carrier—can result in complete disenfranchisement.

62. Making matters worse, because Missouri has made it so difficult for voters to vote Absentee, very few voters have experience navigating this process. In the 2018 general election, for example, only 8.9% of votes cast in Missouri were by mail, compared with 25.8% of all election participants nationally.

63. Thus, in 2020, Missouri will have to contend with exponentially more voters attempting to successfully navigate this process—including the brand-new “Mail-in” voting procedures—in the middle of a pandemic when USPS is also increasingly in crisis.

64. USPS delays are becoming increasingly common, as the result of not only the impacts of COVID-19, but also major overhauls by the new Postmaster General, who for the first time in U.S. history is directing ballot carriers to leave mail undelivered at USPS offices, while also eliminating overtime, cutting and consolidating USPS offices, and restructuring extensively within the agency in a way that will leave many voters out of luck as they attempt to ensure that their ballots are returned to elections officials in time to be counted.

65. Rick Stream, a St. Louis election official and former Republican state representative, told the U.S. Senate Rules and Administration Committee on July 22, “the post office is a very difficult situation for us right now.” Stream’s jurisdiction has “even proposed having one of our employees work in the post office in our local community of St. Ann, to try to speed up the process, to no avail.”

66. Missouri appears to be on a collision track with the same disastrous consequences that jurisdictions all over the country have had when they have held elections during the pandemic: voters, despite having done everything that they should reasonably be required to, have not received timely-requested absentee ballots by the thousands, or have received them too late to return them in time, resulting in widespread disenfranchisement of countless eligible, lawful voters.

### ***The Challenged Provisions***

67. Especially in the context of the ongoing COVID-19 pandemic, the Notarization Requirements, the Mail-Return Mandate, the Election Day Receipt Deadline, the Ballot Rejection

Rules, and the Ballot Collection Ban all but guarantee that well-intentioned Missourians will be unduly burdened and, in some cases, totally disenfranchised, in their quest to cast their ballots.

#### **A. Notarization Requirements**

68. Missouri is one of only a few states that require some voters to notarize their ballots, but the requirement is applied inconsistently among categories of voters, depending on the reason for voting Mail-In or Absentee.

69. Absentee voters who are voting Absentee because of absence, religion, employment as an election official, incarceration, or protected witness status generally must sign their ballot envelope in the presence of a notary or other officer authorized. In contrast, if a voter is voting Absentee because of illness, incapacity, or because they have contracted or are in an “at-risk category” for COVID-19, they need not have their ballot envelope notarized at all. § 115.291.1 RSMo.

70. Absentee voters who are subject to the notarization requirement need not pay a notarization fee; in fact, it is a crime for notaries to charge Absentee voters for their services. *Id.* § 115.283.9-10.

71. *All* Mail-In ballots, regardless of the voter’s reason for voting Mail-In, are subject to the notarization requirement. *Id.* 115.302(11). Unlike Absentee voters, however, Mail-In voters like Plaintiff Iliff are not protected from having to pay fees for notarization. The Secretary, who also oversees notaries in the state, has publicly confirmed that notaries will be allowed to charge Mail-In ballot voters.

72. The cost of notarization in Missouri is \$2.00 or more, plus any other associated fees. S.B. 631 thus provides statutory authorization to place a financial burden on the right to vote, even though the Supreme Court of Missouri recently addressed “the validity of putting a direct or

indirect price or fee on the franchise under the Missouri Constitution,” and concluded that any cost, even a minor one, is impermissibly burdensome. *Weinschenk v. State*, 203 S.W.3d 201, 213 (Mo. 2006).

73. The below chart illustrates the maze of various Notarization Requirements applicable to Missouri voters:

<b>Reason for Voting by Mail</b>	<b>Notarization Required?</b>
Absence	Yes
Disability/illness	No
Religion	Yes
Employment as election authority	Yes
Incarceration	Yes
Witness protection participant	Yes
Contracted COVID-19 or has certain characteristics of “at risk” category	No
Any other reason	Yes

74. Although it remains unclear whether remote notarization will be available to Missouri voters this year, the Secretary claims that voters may have their ballots notarized in-person or digitally. Both are burdensome in their own right.

75. If it takes place in person, notarization generally occurs in close proximity and may involve touching the same piece of paper or writing instruments. Thus, although the purpose of establishing the Mail-In ballot option was “to avoid the risk of contracting or transmitting severe acute respiratory syndrome coronavirus,” § 115.652 RSMo., the Notarization Requirements risk



exactly that for many voters. Many must choose between adhering to public health guidelines to protect themselves and their loved ones and being able to vote in the upcoming elections.

76. In light of the pandemic, digital notarization has been authorized more broadly and the Secretary has confirmed that ballot notarization can be accomplished remotely for the upcoming general election pursuant to legislation passed since the pandemic began. H.B. 1655 (2020).

77. Although H.B. 1655 aims to lessen the burdens of complying with the Notarization Requirements by decreasing the necessity of person-to-person contact for some voters, the law only exacerbates other burdens.

78. The Supreme Court recently highlighted “certain requirements and potential notary fees and costs” associated with H.B. 1655. *See Mo. Conference of the NAACP et al. v. Missouri*, No. SC98536, slip op. at 6 (Mo. banc June 23, 2020) (per curiam). The Court noted that, under HB 1655, a notary must use State-approved software that allows the notary “to create an audio and video recording” of the notarization. *Id.* Further, those recordings must “be maintained for at least ten years.” *Id.* The Court also highlighted lack of clarity surrounding notary fees; though Missouri law prohibits notaries from charging a fee “for notarizing the signature on any absentee ballot,” HB 1655 “authorize[s] a notary and a person requesting a notarial act to agree in advance for payment” that is explicitly separate from the pre-existing statutory maximum fee of five dollars per signature for electronic notarial acts.

79. According to the National Center for Education Statistics, as of 2015 over one quarter of households in Missouri do not have internet access. Therefore, for one in four Missouri households, internet-based notarization provides no remedy to the burdens of the Notarization Requirements.

80. Moreover, asking voters to learn to comply with a brand-new remote notarization procedure to avoid contact with others during a pandemic, all in the days preceding an election, poses more burdens. It “requires appropriate documentation, time, and the ability to navigate bureaucracies. Those things that require substantial planning in advance of an election to preserve the right to vote can tend to ‘eliminate from the franchise a substantial number of voters who did not plan so far ahead.’” *Priorities USA v. State*, 591 S.W.3d 448, 459 (Mo. 2020) (quoting *Harman v. Forssenius*, 380 U.S. 528, 539-40 (1965)).

81. Whether completed in-person or remotely, the Notarization Requirements severely burden the fundamental rights of Plaintiffs and other similarly situated Missouri voters. First, voters like Plaintiff Iliff must weed through an exceedingly confusing set of requirements to determine whether they actually need to notarize their ballot at all. Then, before it is too late to mail it back to the election authority to comply with the Election Day Receipt Deadline, they have to educate themselves on and choose between notarization methods—one which could risk exposure to COVID-19, and the other which requires expensive technology that many cannot afford. In either instance, some voters will have to pay a notarization fee.

82. The reason for all of these complicated mechanics, burdens, and risk calculations is far from clear. Notably, the Notarization Requirement does not apply to all Absentee voters; those that fall into certain broad categories are entirely exempt from it, while all other Absentee and all Mail-In voters must navigate this process in order to exercise their right to vote without having to appear in person at the polls and risk exposure to COVID-19. For many Missouri voters who are vulnerable or live with or interact with loved ones who are particularly vulnerable to the virus, this is no choice at all. Thus, the Notarization Requirements will effectively force them to forego the exercise of their most fundamental right, disenfranchising them entirely.

## **B. Mail-Return Mandate**

83. As noted above, Absentee voters may return their ballots by U.S. mail, any other registered mail service, or in person.

84. In stark contrast, Mail-In voters must return their ballots by “United States mail” only. § 115.302.12 RSMo.

85. The Secretary of State has issued official public guidance affirming that S.B. 631 means what it says: “Unlike absentee ballots, Mail-In ballots **MUST BE** mailed back **through U.S. mail.**” (emphasis in original).

86. Under the Mail-Return Mandate, a well-intentioned and otherwise qualified Mail-In voter who reasonably decides to drop off her ballot at her local polling place on Election Day—perhaps because a family member, an Absentee voter, plans to do the same—would be completely disenfranchised. *See* § 115.302.12 RSMo.

87. And it is not just Mail-In voters that the law is negatively impacting. Secretary Ashcroft has said that the state intends to reverse plans to implement brand new ballot drop boxes, which were purchased prior to SB 631 for Absentee voters to return their ballots directly to election authorities. Those boxes will have to be stored away this year, because any *Mail-In* ballots inadvertently deposited in one would have to be discarded.

88. Rather than suspending or waiving the Mail-Return Mandate—as the Governor, through executive order, has done for over 450 statutes and regulations since the onset of the pandemic—the State has opted to take a course of action that will put more Absentee *and* Mail-In voters at risk. It has *eliminated plans to install secure ballot boxes as a way for voters to safely and securely drop off their ballots in the middle of a pandemic*, one of the most cost effective and contact-free means of returning a ballot.

89. In addition to reducing options for voters to return their ballots, the Mail-Return Mandate increases the chance that the ballot applications and ballots of Missourians will overwhelm USPS in the state, ultimately disenfranchising voters.

90. Even as the pandemic has increased pressure on mail workers, new cost and staff cuts have been implemented at USPS. Every day, more news breaks about new and radical changes that the new Postmaster General is implementing, even going so far as to instruct employees to leave mail behind at distribution centers for delivery on a later day—a first in the nation’s long history with USPS.

91. Government, media, and academic studies have consistently and increasingly concluded that USPS is not equipped to handle the timely delivery of a large influx of ballots during the 2020 election.

92. According to USPS, completed ballots must be mailed by the voter back to the appropriate in-state elections officials more than a full week before Election Day to allow for timely arrival.

93. The Secretary has warned Missouri voters that it may take even longer for a ballot to arrive and has stated, “[i]f you can’t tell, I’m really concerned about people that want to use one of these Mail-In options having the time to get the ballot, fill it out and get it back in time so that their vote counts.”

94. No other state in the United States has adopted this type of restriction, but in the words of Secretary Ashcroft, “[t]hat’s just the way the law is written.”

95. The Mail-Return Mandate, when combined with the Election Receipt Deadline, will force many voters who have requested Mail-In ballots to vote in-person on election day instead.

96. Upon information and belief, Missouri voters are being given inconsistent information about what they must do to vote in person if they previously requested a Mail-In or Absentee ballot. For example, during the primary election, Plaintiff Manuel was told by a St. Louis poll worker that, because she had originally requested a Mail-In ballot, she could only vote in person if she both (1) returned the Mail-In ballot and (2) signed an affidavit averring that she would not vote by mail. Aside from being duplicative, burdensome, haphazardly applied, and entirely non-publicized, the rule entirely disenfranchises voters who lack time to make an unexpected second round-trip to the polling location or to those who lost or discarded their Mail-In ballots.

### **C. Election Day Receipt Deadline**

97. To be counted, under Missouri law, an Absentee or Mail-In ballot must be received by 7 p.m. on Election Day. §§ 115.293.1, 115.302.14, 115.407 RSMo. Ballots that arrive after the Election Day Receipt Deadline—regardless of whether they were mailed by the voter prior to or on Election Day, and regardless of whether the voter is responsible for any delay the ballot encounters on the way to its destination—are not counted.

98. Many voters are unaware of the Election Day Receipt Deadline or how to ensure their ballots arrive by the Deadline. Missouri election authorities do not inform voters as to how many days before Election Day they must mail in their ballots to ensure they are not disenfranchised.

99. Compared to past elections, the number of ballots rejected due to the Election Day Deadline is sure to grow drastically as the global pandemic imperils the safety of in-person voters, and as Missouri expands Absentee voting eligibility and offers Mail-In ballots to all registered voters.

100. The Secretary has leveraged the Election Day Receipt Deadline as a means of instilling in voters a fear of disenfranchisement, advocating instead for in-person voting. In numerous public statements leading up to the August Primary Election, the Secretary has argued that voting in person is the “best way to make sure that your vote counts” because “you don’t have to worry about whether or not the mail took too long.” In one interview, the Secretary warned, “[W]hat if the ballot for some reason by the post office, it gets delayed an extra day getting mailed back and it doesn’t meet the cutoff? Then your vote doesn’t count.”

101. In public statements over the last few weeks, the Secretary has repeatedly told a story about the June Municipal Election, in which one Missouri woman mailed her ballot 6 days before the Election Day Receipt Deadline but was disenfranchised when USPS took 13 days to deliver her ballot.

102. These incidents are not isolated. A trial court in Montana court recently concluded that delivery times can vary up to two weeks, depending on the voter’s location. And neighborhoods throughout Philadelphia have reported going upwards of three weeks without receiving letters and packages.

103. Even voters who timely apply for their Absentee ballots are at serious risk of disenfranchisement. The deadline to submit an application for a Mail-In or Absentee Ballot for the November Election is 5 p.m. on Oct. 21, so many voters are likely to receive their ballot with less than a week before Election Day. According to USPS itself, those voters will face a substantial risk of missing the Election Day Receipt Deadline, even though they otherwise complied with state law.

104. The Election Day Receipt Deadline also severely burdens voters in rural areas, who face longer mail transit times than voters in larger cities and must mail their ballots sooner than

voters in larger cities to ensure that they are received on time.

105. The Election Day Receipt Deadline further requires Missourians to vote without complete information. Within days of an election, a single event could influence voters' decisions. The Election Day Receipt Deadline forces voters between a rock and a hard place: the voter can wait to be completely informed and risk losing their vote entirely or they can mail their ballot well in advance and risk casting their vote without complete information, or even wasting their vote.

#### **D. Ballot Rejection Rules**

106. Even if Missouri Mail-In and Absentee voters manage to overcome these many hurdles, their ballot faces another obstacle: Missouri's Ballot Rejection Rules. Ballots will be rejected—with no opportunity to cure errors—if the statement on the ballot envelope is incomplete or if an election official subjectively determines that the voter's ballot envelope signature does not match the signature on file with election authorities.

107. Missouri law requires officials to reject a ballot "if the statements on any ballot envelope have not been completed," § 115.295.2 RSMo., though there is an exception for a voter's failure "to state on the ballot envelope his reason for voting an absentee ballot." *Id.* § 115.294.

108. Ballot envelope statements are long and require a good deal of information, including the voter's name, voting address, mailing address, and the reason for voting by Absentee ballot. *Id.* § 115.283. The election code's sample ballot envelope statement also includes a line for county of registration, a line for the signature of a person assisting the voter and date of assistance (if applicable), several unlabeled lines marked "signed," and a space for the notary's signature, if required. A signature omission qualifies as an incomplete statement and, thus, results in irrevocable disenfranchisement.

109. Some local election authorities report that they also engage in signature matching:

the process of verifying whether the ballot in fact belongs to the voter by subjectively comparing the signature on the envelope to the voter's signature on file with the election office. Yet Missouri has not publicly offered guidance regarding standards for signature matching.

110. Thus, counties are left to their own devices in determining whether and how to apply this signature verifying procedure, and, ultimately, if the ballot should be counted. Studies conducted by experts in the field of handwriting analysis have repeatedly found that signature verification conducted without adequate standards and training is unreliable, and non-experts are significantly more likely to misidentify authentic signatures as forgeries.

111. Even when conducted by experts, signature matching can lead to erroneous results in the ballot verification context because handwriting can change quickly for a variety of reasons entirely unrelated to fraud, including the signer's age, medical condition, psychological state of mind, pen type, writing surface, or writing position. It is, thus, inevitable that election officials will erroneously reject legitimate ballots due to misperceived signature mismatches, which, without notice and a reasonable opportunity to cure, will result in the disenfranchisement of eligible voters.

112. These requirements burden the right to vote of Absentee and Mail-In voters like Plaintiffs Nancy Hirsch and Joseph Iliff or affiliated voters of American Women. Additionally, the threat of disenfranchisement due to Ballot Rejection Rules has forced some voters to vote in-person, rather than rely on safer mail voting options.

113. In upcoming elections, this signature matching procedure will be applied to hundreds of thousands of mail ballots (and perhaps more), subjecting voters to the risk that their ballots will be rejected erroneously without notice or an opportunity to cure. Absent judicial intervention, their ability to cast an effective vote will ultimately depend on whichever arbitrary standard is employed by their local election officials and county elections board.



## **E. Ballot Collection Ban**

114. While Mail-In voters are forced to return ballots by mail only, Missouri Absentee voters have two options for returning their ballots: by mail or in person. The Notarization Requirements and Election Day Receipt Deadline imbue the first option with cost and risk of disenfranchisement, but the Ballot Collection Ban significantly curtails the second.

115. Missouri law places strict limitations on which individuals can return a voter's Absentee ballot. Only enumerated family members may return a voter's ballot, specifically: the voter, their spouse, their parent, their child, their grandparent, their brother, their sister, their grandchild, their mother-in-law, their father-in-law, their daughter-in-law, or their son-in-law. § 115.291.2 RSMo. A Missouri voter may not rely on any other individual or organization to return their Absentee ballot in person.

116. It is common for political campaigns and advocacy organizations outside of Missouri to help Absentee voters. This interaction fosters conversations about why voting is important and how voting can build political power within a community. The Ballot Collection Ban, by prohibiting the offer or provision of assistance in delivering a ballot, prevents these interactions from occurring.

117. The Ballot Collection Ban prevents organizations like American Women from coordinating ballot collection efforts. If not for the Ballot Collection Ban, American Women would use their voter engagement platforms to encourage grassroots community ballot collection efforts.

118. The Ballot Collection Ban also prohibits active citizens like Plaintiff Nancy Hirsch, who wish to help their peers and neighbors make their voices heard, from assisting fellow Missourians in returning their voted ballots.

119. The Ballot Collection Ban not only hurts organizations and individuals seeking to

persuade voters to action but also curtails voters' ability to return their Absentee ballots. Voters who live alone or away from family, for instance, will be required to deliver their own ballots—a particularly undesirable option given the current public health crisis.

120. The Ballot Collection Ban also disproportionately burdens voters living in poor, minority, and rural communities, as well as voters who are disabled, because they generally have less access to postal services, lack reliable access to public transportation, and are less able to bear the costs of waiting in long lines to vote or exposing themselves to health risks in order to submit an Absentee ballot in person.

121. Voters in rural communities, moreover, face longer travel distances to their clerk's office and less reliable mail service. In many other states, such voters can rely upon assistance provided by third-party organizers to collect and deliver sealed ballots, but the Ballot Collection Ban precludes that option in this state.

122. Ballot collection services help reduce the barriers caused by the other Challenged Provisions by allowing voters to choose to give their Absentee ballot to a trusted representative of a community organization or campaign, who then transports the sealed Absentee ballot return envelope to the county elections office or other county-drop-off site.

### ***The State's Interests***

123. Any legitimate interests the State has in enforcing the Challenged Provisions are outweighed by the burdens placed on voters, particularly in the context of the current pandemic.

124. The State has no interest sufficient to justify the burdens imposed by the Notarization Requirements. Defendants point to fraud prevention to justify these requirements; however, these assertions ring hollow. The lack of Notarization Requirements for many mail voters' ballots indicates that the State can readily prevent fraud without requiring notarization.

Further, mail voter fraud is simply not prevalent. The nonprofit news project News 21 compiled a database that found just 491 cases of mail voter fraud among “literally billions of votes” case nationwide from 2000 to 2012.

125. Missouri already protects against mail voter fraud through a number of other mechanisms under state law: Interference with mail voting is criminalized in numerous other ways: (1) assisting an absentee voter who is not entitled to such assistance is a class one election offense, § 115.291.1 RSMo.; (2) assisting an absentee voter and in any manner coercing or initiating a request or a suggestion that the voter vote for or against or refrain from voting on any question, ticket or candidate is a class one election offense, *id.*; (3) knowingly making, delivering, or mailing a fraudulent absentee ballot application is a class one election offense, *id.* § 115.279.4; and (4) generally, violating any provision of law pertaining to absentee voting is a class one election offense, *id.* §§ 115.631.23, 115.304, which amounts to a felony connected with the exercise of the right of suffrage. *Id.* § 115.631. Similar provisions exist for interference in Mail-In voting. *See id.* § 115.302.

126. The State similarly has no interest, much less a legitimate or compelling one, in enforcing the Mail-Return Mandate. Although the Secretary has said, without further explanation, that the Mail-Return Mandate is “for security,” it is unclear how casting a ballot in person or at a drop box, instead of through the mail, is less secure. Indeed, both of those options are available to all Absentee voters (or, in the case of using a drop box, *were*, before the Mail-Return Mandate caused the Secretary to order all ballot boxes removed from public places and stored through the election).

127. The Mail-Return Mandate likewise cannot be explained based on a desire to negate in-person transmission of coronavirus, as the same statutory provision also authorizes voters (or a

qualifying guardian or relative) to submit their Mail-In ballot *application* in person. Further, the General Assembly did not opt to restrict in-person returns for other types of ballots.

128. The State also has no legitimate interest in the Election Day Receipt Deadline. While Missouri may set a reasonable deadline for receiving ballots to ensure the finality of election results, the Election Day Receipt Deadline is not necessary to ensure that all ballots are received and counted within a reasonable time, as Missouri law permits a verification board to announce the results of an election up to the second Tuesday after that election is held. § 115.507 RSMo. Moreover, upon information and belief, local authorities already count (or reject) certain ballots, including provisional ballots, more than a week after Election Day.

129. The State has no legitimate interest in the Ballot Rejection Rules, which subject voters to inconsistent and vague standards and deprive them of an opportunity to cure any issues that arise amidst an error-ridden process. A voter who inadvertently omits information or a signature from the ballot envelope statement is not engaging in any form of fraud. And untrained officials employing varying standards to reject ballots based on perceived signature mismatches will likely result in arbitrary disenfranchisement. Missouri already employs far less burdensome, and more narrowly tailored, means of preventing fraud.

130. To the extent that the Ballot Collection Ban is intended to serve as an anti-fraud mechanism, it is also unnecessary. The Ballot Collection Ban is entirely duplicative of other, more tailored Missouri laws aimed at preventing mail voter fraud. *See supra*. The fact that the Ban only applies to some voters but not all is further evidence that it is not a necessary component of Missouri's fraud prevention regime. Moreover, Missouri does not have any significant history of voter fraud generally or, in particular, of mail voter fraud.

131. If the Notarization Requirements, Mail-Return Mandate, Election Day Receipt

Deadline, Ballot Rejection Rules and Ballot Collection Ban stand, many Missouri voters face severe burdens and even disenfranchisement. Those burdens are not outweighed by the legitimate interests of the state. The Missouri Constitution empowers the Court to ensure that Missourians are protected this election season. It also requires it. “[I]f a statute conflicts with a constitutional provision or provisions, this Court must hold the statute invalid.” *Priorities USA*, 591 S.W.3d at 452 (quoting *Weinschenk*, 203 S.W.3d at 210).

## **CAUSES OF ACTION**

### **COUNT I**

#### **Interference with Free Exercise of the Right of Suffrage in Violation of Article I, § 25 of the Missouri Constitution**

132. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Petition and the paragraphs in the counts below as though fully set forth herein.

133. Article I, Section 25 of the Missouri Constitution guarantees “[t]hat all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage,” which firmly establishes a fundamental, constitutional right to vote. Missouri courts have accordingly long-recognized that “strict scrutiny” must apply to “direct burdens on the right to vote.” *Weinschenk*, 203 S.W.3d at 216 n. 26. Thus, to be valid under the Missouri Constitution, each of the Challenged Provisions, which directly burden the right to vote, must serve a compelling state interest and must be narrowly tailored to accomplish *only* that interest. *Id.*

134. The Notarization Requirements directly interfere with the ability of Missouri voters like Joseph Iliff to freely exercise their right to vote. Obtaining notarization is an unnecessary extra hurdle for any voter who must comply with the requirement. Additionally, many voters cannot be

reasonably expected to obtain notarization without expending financial resources. Notaries are explicitly permitted to charge Mail-In voters for their services. And, for all voters, the process usually requires travel and other related expenses. These costs and strains are heightened in the context of the pandemic. Remote notarization, an uncertain new procedure in Missouri, likely also cannot be completed without costing voters. Costs aside, the complicated administrative hurdles associated with complying with the Notarization Requirements risk “eliminat[ing] from the franchise a substantial number of voters who did not plan so far ahead.” *Priorities USA*, 591 S.W.3d at 459 (quoting *Harman*, 380 U.S. at 539-40 ).

135. The Mail-Return Mandate, on its face, prevents voters from freely exercising their “right of suffrage. Article I, § 25. Mail-In voters like Joseph Iliff, unlike all other voters, are not free to return their ballot to election authorities. They *must* use an intermediary, the United States mail, which cannot offer to voters any assurance that ballots will be timely delivered and thus counted. This requirement is enough to dissuade some voters, like Sarah Manuel, from casting a Mail-In ballot at all.

136. The Election Day Receipt Deadline likewise poses a direct and severe burden on Missourians’ right to vote. Voters like Joseph Iliff and Sarah Manuel must accurately guess when their ballot must be mailed for it to be counted, assuming they even receive their ballot from the election authority in time to mail it back. For those voters who, through no fault of their own, misjudge how long it will take for their ballot to be returned to elections officials through the mail, or for those whose ballots do not even reach them until close to Election Day, the consequences of the Election Day Receipt Deadline are absolute and severe: total disenfranchisement.

137. Further, Missouri’s Election Day Receipt Deadline severely burdens all voters who vote by mail, even if those voters’ ballots are successfully counted. The Election Day Receipt

Deadline forces Missouri voters to cast their ballots without the benefit of, or opportunity to consider, information about the election or the candidates that arise in the final week leading up to Election Day. It thus deprives voters of the ability to engage in this robust period of civic engagement because it effectively requires them to have already cast their vote for it to be counted.

138. The Ballot Rejection Rules severely burdens voters whose ballots are rejected for inadvertent omissions on their ballot envelopes, and whose signatures vary for reasons entirely unrelated to fraud. For these voters, arbitrary procedures result in immediate disenfranchisement without notice or reasonable opportunity to cure.

139. The Ballot Collection Ban effectively disenfranchises voters who require last minute assistance to return their mail ballots, but do not have an immediate family or household member who is willing or able to provide such assistance. By narrowly defining the subset of individuals who can return a voter's ballot in person, the Ballot Collection Ban unduly burdens and curtails voters' right to vote when the Election Day Receipt Deadline forecloses any guarantee that a mailed ballot would be counted.

140. The Notarization Requirements, the Election Day Receipt Deadline, the Mail-Return Mandate, Ballot Rejection Rules, and the Ballot Collection Ban each individually and in their cumulative impact violate the right of Missouri citizens to freely exercise their right to vote.

## **COUNT II**

### **Undue Burden on the Right to Vote in Violation of the Equal Protection Clause of the Missouri Constitution, Article I, § 2**

141. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Petition and the paragraphs in the counts below as though fully set forth herein.

142. Article I, § 2 of the Missouri Constitution provides:

That all constitutional government is intended to promote the general welfare of the

people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

143. Under the Missouri Equal Protection Clause, whether the State’s justification for treating groups differently is adequate depends on the distinctions drawn by the law. If a statute “implicates a suspect class or impinges upon a fundamental right . . . the classification is subject to strict scrutiny.” *Weinschenck*, 203 S.W.3d at 210-11.

144. Because the Missouri Constitution firmly establishes a fundamental, constitutional right to vote, Missouri courts reviewing Equal Protection challenges “have uniformly applied strict scrutiny to statutes impinging upon the right to vote.” *Id.* at 215. The Missouri Supreme Court has repeatedly instructed courts to meticulously scrutinize laws that impose burdens on the ability of Missourians to vote, emphasizing that “[b]oth the right to vote and right to equal protection under the Missouri constitution are ‘even more extensive than those provided by the federal constitution.’” *Priorities USA*, 591 S.W.3d at 459 n.18 (quoting *Weinschenk*, 203 S.W.3d at 204).

145. Missouri’s Election Day Receipt Deadline imposes a severe burden on the right to vote and results in the disparate treatment of similarly situated voters. Voters like Joseph Iliff must first guess, in the absence of regular mail service, when their ballot must be mailed in order to arrive by 7:00 p.m. on Election Day, assuming they even receive their ballot in time to return it by the deadline. For those voters who, through no fault of their own, misjudge how long it will take for the USPS to deliver their ballots, or who do not receive their ballots sufficiently in advance of Election Day to mail it back to their local clerk, the punishment is swift and severe: total disenfranchisement.



146. Further, the Election Day Receipt Deadline disadvantages rural Absentee and Mail-In voters. Two voters who mail their ballots out on the same day are treated differently, when one lives in an area where USPS has delayed mail service, whereas the other is experiencing normal mail service.

147. The burdens caused by the Notarization Requirements raise constitutional concerns in any context. In the current unprecedented public health crisis, the Notarization Requirements force some voters—but not others—to violate social distancing measures, interact with other people, and touch common objects—all actions that could expose them to COVID-19. The State’s haphazard and uncertain implementation of the Remote Notary law does little to remedy this constitutional violation. Many Missourians lack the required internet and audio-visual connections to comply with the law. Even for those who can use remote notarization, the Notarization Requirements still imposes severe and disparate time and resource burdens, none of which can be justified by any sufficiently weighty state interest.

148. The Mail-Return Mandate creates a facial distinction that arbitrarily imposes a severe and disparate impact on voters like Joseph Iliff who use the state’s Mail-In ballot this year, a mandate that has not been applied to other similarly situated, Absentee voters, in the state. Missouri’s equal protection guarantee, especially in the context of the fundamental right to vote, forbids states from drawing such arbitrary distinctions. The Mail-Return Mandate, without justification, will also undoubtedly leave some Missourians totally disenfranchised, especially in light of the burdensome Election Day Receipt Deadline.

149. The Ballot Rejection Rules authorize the use of inaccurate, arbitrary procedures to disenfranchise eligible voters without notice or reasonable opportunity to cure innocuous defects. The lack of standards for rejecting ballots based on perceived signature defects also disparately

burden voters based on the practices that their local officials happen to employ.

150. The Ballot Collection Ban disenfranchises voters who require last minute assistance to return their mail ballots, resulting in disparate treatment of voters who do not have a nearby immediate family member who is willing or able to provide such assistance. By narrowly defining the subset of individuals who can return a voter's ballot in person, the Ballot Collection Ban unduly burdens and curtails these voters' right to vote when the Election Day Receipt Deadline forecloses any guarantee that a mailed ballot would be counted.

151. Thus, the Notarization Requirements, the Mail-Return Mandate, the Election Day Receipt Deadline, the Ballot Rejection Rules, and the Ballot Collection Ban each deprive Plaintiffs and other Missourians of rights secured to them by the Constitution by unduly burdening the fundamental right to vote as protected under the equal protection clause.

### **COUNT III**

#### **Denial of Procedural Due Process in Violation of the Due Process Clause of the Missouri Constitution, Article I, § 10**

152. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Petition and the paragraphs in the counts below as though fully set forth herein.

153. Article I, § 10 of the Missouri Constitution provides "[t]hat no person shall be deprived of life, liberty or property without due process of law." The right to vote is a liberty interest enshrined in the Missouri Constitution. Mo. Const. art. I, § 25.

154. The Missouri Constitution's Due Process Clause, which is co-extensive with the Due Process Clause of the Federal Constitution, *see Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. 2006), "imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests." *Jamison v. State*, 218 S.W.3d 399, 405 (Mo. 2007) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)).

155. Due process is not provided when the mail voting procedures fail to adequately protect the right to vote.

156. The nature of the interest at stake in this case—the right to vote and to have that vote count—is the most precious liberty interest of all because it preserves all other basic civil and political rights.

157. The Election Day Receipt Deadline creates a significant risk that properly cast, timely ballots will be rejected. Even under normal circumstances, many ballots mailed before Election Day will be rejected because of the Deadline; the coronavirus and USPS budget crisis add a greater degree of volatility, ensuring that even more properly cast ballots will be discarded. The State could easily employ substitute procedural safeguards to ensure that properly cast ballots are actually counted, like a requirement that ballots be postmarked by election day.

158. Because Missouri is not required to announce the results of an election until two weeks after an election is held, § 115.507 RSMo., requiring Missouri to accept ballots that are postmarked on or before Election Day but which arrive before the canvass is complete would not burden the State.

159. Even for voters whose ballots do reach authorities by election day, the Ballot Rejection Rules will result in inconsistent disenfranchisement across counties. Without uniform standards for verifying ballot envelope statements and required notice and opportunity to cure defects, many voters will be denied their right to vote without due process. This is troubling at any time, but these numbers will increase as more Missourians rely on Absentee and Mail-In voting than ever before.

## COUNT IV

### **Infringement on the Right to Free Speech in Violation of the Missouri Constitution, Article I, § 8**

160. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Petition and the paragraphs in the counts below as though fully set forth herein.

161. Article I, § 8 of the Missouri Constitution provides “[t]hat no law shall be passed impairing the freedom of speech, no matter by what means communicated” and “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 . . . .” Mo. Const. art. I, § 8.

162. The Ballot Collection Ban burdens such core political expression. Efforts to encourage citizens to exercise political power not only support the democratic process, but also represent an outward manifestation of political expression. *See League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019) (“[E]ncouraging others to register to vote’ is ‘pure speech,’ and, because that speech is political in nature, it is a ‘core First Amendment activity.’” (*quoting League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1158 (N.D. Fla. 2012))).

163. Voter turnout efforts, including assisting voters with the submission of mail ballots, are a means by which American Women and Nancy Hirsch would like to communicate their belief in the power and importance of participating in democratic elections. In other words, “for political organizations, voter assistance walks hand in hand with their efforts to get individuals and groups, for whom they believe will support their candidates to cast votes.” *DSCC v. Simon*, No. 62-CV-20-585, mem. op. at 54 (2d. Jud. Ct. July 28, 2020) (enjoining Minnesota provisions that restrict the number of absentee voters a person can assist).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

- a) Declaring that the Notarization Requirements, §§ 115.291.1, 115.302.11, 115.283.3 RSMo., are unconstitutional in violation of Article I, §§ 2 and 25;
- b) Declaring that the Mail-Return Mandate, § 115.302.12. RSMo., is unconstitutional in violation of Article I, §§ 2 and 25;
- c) Declaring that the Election Day Receipt Deadline, §§ 115.293.1, 115.302.14, 115.407 RSMo., is unconstitutional in violation of Article I, §§ 2, 10 and, 25;
- d) Declaring that the Ballot Rejection Rules are unconstitutional in violation of Article I, §§ 2, 10, and 25;
- e) Declaring that the Ballot Collection Ban, § 115.291.2 RSMo., is unconstitutional in violation of Article I, §§ 2, 8, and 25;
- f) Enjoining Defendants, their respective agents, officers, employees, and success, and all person acting in concert with each or any of them, from enforcement of these Challenged Provisions;
- g) Enjoining Defendants, their respective agents, officers, employees, and successors and all persons acting in concert with each or any of them from rejecting any otherwise valid ballot because of the manner in which it was returned to the election authority;
- h) Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from rejecting ballots that are

- put in the mail or tendered to a registered mail carrier on or before Election Day and arrive at a local election authority within a minimum of ten days after Election Day; Ballots that do not have a postmark or other marking from USPS or from elections officials to enable the tracking of the ballot (such as intelligent mail barcodes) shall be presumed to have been mailed by Election Day;
- i) Requiring Defendants, their respective agents, officers, employees, and successors, and all person acting in concert with each or any of them, to publicize uniform guidelines for determining the validity of ballot envelope signatures and develop trainings accordingly, and to provide notice and an opportunity to cure any ballot envelope error that would otherwise result in disenfranchisement;
  - j) Requiring Defendants, their respective agents, officers, employees, and successors, and all person acting in concert with each or any of them, to publicize uniform, reasonable guidelines for voters who request a Mail-In or Absentee ballot and subsequently decide to vote in person;
  - k) Enjoining Defendants, their respective agents, officers, employees, and successors, and all person acting in concert with each or any of them, from the enforcement of the Ballot Collection Ban in § 115.291.2 RSMo.;
  - l) Enjoining Defendants, their respective agents, officers, employees, and successors, and all person acting in concert with each or any of them, from the enforcement of all laws that prohibit or criminalize ballot collection;

- m) Awarding Plaintiffs costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to § 527.100 RSMo. and other applicable laws; and
- n) Granting such other and further relief as the Court deems just and proper.

Dated this 20th day of August, 2020.

Respectfully submitted,

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