

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ORGANIZATION FOR BLACK
STRUGGLE, ST. LOUIS A. PHILIP
RANDOLPH INSTITUTE, GREATER
KANSAS CITY A. PHILIP RANDOLPH
INSTITUTE, NATIONAL COUNCIL OF
JEWISH WOMEN ST. LOUIS SECTION,
and MISSOURI FAITH VOICES,

Plaintiffs,

v.

JOHN R. ASHCROFT,
in his official capacity as the Missouri
Secretary of State, and

GREENE COUNTY CLERK'S OFFICE;
JACKSON COUNTY ELECTION BOARD;
ST. CHARLES COUNTY ELECTION
AUTHORITY; and ST. LOUIS COUNTY
BOARD OF ELECTIONS, and all others
similarly situated,

Defendants.

No. 2:20-cv-4184-BCW

**SUGGESTIONS IN SUPPORT OF PLAINTIFFS'
MOTION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF FACTS	2
A. COVID-19.....	2
C. Requesting and Submitting Absentee and Mail-In Ballots in Missouri	4
D. Ballot Error Rejection Laws and Lack of Notice and Cure	10
ARGUMENT	16
A. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.	24
1. Missouri’s Mail-In Ballot Request and Return Process Places an Undue Burden on the Right to Vote in Violation of the First and Fourteenth Amendment of the U.S. Constitution.....	25
2. Missouri’s Rejection of Remote Ballot Applications and Ballots for Information That is Not Material to Determining Whether a Voter is Eligible Violates the Civil Rights Act.	28
3. Defendants’ Failure to Provide Voters With Sufficient Notice and a Meaningful Opportunity to Cure Remote Ballot Deficiencies Violates Procedural Due Process.	31
B. The Public Interest, Likelihood of Irreparable Harm to Plaintiffs and Missouri Voters, and the Balance of Hardships All Favor a Preliminary Injunction.	38
1. The public interest and the irreparable harm Plaintiffs, their members, and Missouri voters will experience in this year’s elections as a result of Missouri’s mail and absentee voting schemes weigh strongly in favor of preliminary relief.....	38
2. Any burden to Defendants does not outweigh the harm to Plaintiffs and Missouri Voters or to the public interest.....	40
CONCLUSION.....	42

TABLE OF AUTHORITIES

Cases

ACORN v. Scott, 2008 WL 2787931 (W.D. Mo. July 15, 2008)..... 18, 34, 35

Action NC v. Strach, 216 F. Supp. 3d 587 (M.D.N.C. 2016) 34, 36, 38

Anderson v. Celebrezze, 460 U.S. 780 (1983) 19

Borsheim Builders Supply, Inc. v. Harstad-Cook, Case No. 4:14-cv-083, 2014 WL 12543857
(D.N.D. Oct. 3, 2014) 36

Burdick v. Takushi, 504 U.S. 428 (1992)..... 19

Charles H. Wesley Educ. Found., Inc. v. Cox, 324 F. Supp. 2d 1358 (N.D. Ga. 2004) 34

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985) 28

Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259 (D. Colo. 2010)..... 35

Crawford v. Marion Cnty. Elec. Bd., 553 U.S. 181 (2008) 20

Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109 (8th Cir. 1981)..... 18

Democracy N. Carolina v. N. Carolina State Bd. of Elections, No. 1:20CV457, 2020 WL
4484063 (M.D.N.C. Aug. 4, 2020)..... 30, 32

Democratic Nat’l Comm. v. Bostelmann, 2020 U.S. Dist. LEXIS 57918 (W.D. Wis. Apr. 2,
2020) 34

Fish v. Kobach, 840 F.3d 710 (10th Cir. 2016) 35

Frederick v. Lawson, 2020 U.S. Dist. LEXIS 150995 (S.D. Ind. Aug. 20, 2020) 28

H&R Block Tax Servs. LLC v. Nguyen, 2019 U.S. Dist. LEXIS 232816 (W.D. Mo. Nov. 13,
2019) 17

Harper v. Va. Bd. Of Elections, 383 U.S. 663 (1966) 26

Home Instead, Inc. v. Florance, 721 F.3d 494 (8th Cir. 2013)..... 17, 32

League of Women Voters of Fla. v. Browning, 863 F. Supp. 2d 1155 (N.D. Fla. 2012) 34

<i>League of Women Voters of Mo. v. Ashcroft</i> , 336 F. Supp. 3d 998 (W.D. Mo. 2018)	passim
<i>League of Women Voters of N.C. v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014)	33, 35
<i>League of Women Voters of U.S. v. Newby</i> , 838 F.3d 1 (D.C. Cir. 2016)	33
<i>Louisiana v. United States</i> , 380 U.S. 145 (1965).....	31
<i>Martin v. Crittenden</i> , 347 F. Supp. 3d 1302 (N.D. Ga. 2018)	23
<i>Martin v. Kemp</i> , 341 F. Supp. 3d 1326 (N.D. Ga. 2018).....	26, 27
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	26, 28
<i>McDonald v. Bd. Of Election Comm’rs of Chi.</i> , 394 U.S. 802 (1969)	27
<i>Memphis A. Phillip Randolph Inst. v. Hargett</i> , No. 3:20-CV-00374, 2020 WL 5095459 (M.D. Tenn. Aug. 28, 2020)	28
<i>Norman v. Reed</i> , 502 U.S. 279 (1992).....	19
<i>Obama for Am. v. Husted</i> , 697 F.3d 423 (6th Cir. 2012).....	33
<i>Pavek v. Simon</i> , 967 F.3d 905 (8th Cir. 2020).....	19
<i>Raetzel v. Parks/Bellefont Absentee Election Bd.</i> , 762 F. Supp 1354 (D. Ariz. 1990).....	27
<i>Reg Seneca, LLC v. Harden</i> , 938 F. Supp. 2d 852 (S.D. Iowa 2013).....	36
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	27
<i>Richardson v. Hancock</i> , 2020 WL 5367216 (W.D. Tex. Sept. 8, 2020)	27, 28
<i>Saucedo v. Gardner</i> , 335 F. Supp. 3d 202 (N.H.D.C. Aug. 14, 2018).....	26
<i>Self Advocacy Sol. N.D. v. Jaeger</i> , 2020 U.S. Dist. LEXIS 97085 (D.N.D. June 3, 2020) ...	26, 27, 29, 32
<i>United States v. Classic</i> , 313 U.S. 299 (1941).....	28
<i>Washington, et. al. v. Trump, et. al.</i> , No. 1:20-CV-03127-SAB, 2020 WL 5568557 (E.D. Wash. Sept. 17, 2020)	11

<i>Watkins Inc. v. Lewis</i> , 346 F.3d 841 (8th Cir. 2003)	17
<i>Whole Woman’s Health All. v. Hill</i> , 937 F.3d 864 (7th Cir. 2019).....	34
<i>Wilkinson v. Austin</i> , 545 U.S. 209 (2005).....	27
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886)	26

Statutes

52 U.S.C. § 10101.....	18, 22
Mo. Rev. Stat. § 115.219	29
Mo. Rev. Stat. § 115.277	4, 5, 6
Mo. Rev. Stat. § 115.277.1	5, 27
Mo. Rev. Stat. § 115.279	6, 29
Mo. Rev. Stat. § 115.279.2	7, 12
Mo. Rev. Stat. § 115.283	22
Mo. Rev. Stat. § 115.283.6	6
Mo. Rev. Stat. § 115.283.7	6
Mo. Rev. Stat. § 115.284	6
Mo. Rev. Stat. § 115.287	7, 8, 29
Mo. Rev. Stat. § 115.291	6
Mo. Rev. Stat. § 115.293	8, 15
Mo. Rev. Stat. § 115.294	13
Mo. Rev. Stat. § 115.295.2	12
Mo. Rev. Stat. § 115.302	passim
Mo. Rev. Stat. § 115.302.12	7
Mo. Rev. Stat. § 115.302.2	7, 12

Mo. Rev. Stat. § 115.477	15
Mo. Rev. Stat. § 115.916	8
Mo. Rev. Stat. § 115.920.1	8
 Other Authorities	
Caitlin Huey-Burns & Adam Brewster, <i>Why Some Mail-in Ballots are Rejected and How to Make Sure Your Vote Counts</i> , CBS News, (Aug. 4, 2020).....	12, 20
Chad Cotti, et al., <i>The Relationship between In-Person Voting, Consolidated Polling Locations and Absentee Voting on COVID-19: Evidence from the Wisconsin Primary</i> , (May 10, 2020)..	3
Elise Viebeck, et al., <i>Anxieties about mail ballots on display in latest round of primaries, highlighting worries for fall</i> , Wash. Po., (Aug. 4, 2020).....	9
<i>Ensuring a Free, Fair, and Safe Election During the Coronavirus Pandemic, Remote Hearing Before the House Select Subcomm. on the Coronavirus Crisis</i> , 116th Cong. 3 (2020)	12
Institute for Health Metrics and Evaluation, <i>COVID-19 Projections: United States of America</i> ..	2
Jason Hancock, <i>Gov. Parson Orders Missouri Elections Delayed Until June Because of COVID-19</i> , K.C. STAR (Mar. 18, 2020).....	3
John Keilman, <i>After Chicago poll worker dies from COVID-19 and others test positive, city warns voters they might have been exposed to virus at polling places</i> , Chicago Tribune, (Apr. 13, 2020).....	3
K.C. Star Editorial Board, <i>Missouri Gov. Mike Parson: If You Don't Feel Safe, Just Don't Vote. That's Democracy?</i> , K.C. STAR (May 29, 2020).....	4
Missouri Dep't of Health & Senior Servs., <i>Missouri COVID-19 Dashboard: The Spread of COVID-19 in Missouri</i>	2
Missouri Secretary of State, <i>Military and Overseas Voting Access Portal</i>	7

National Conference of State Legislatures, Electronic Transmission of Ballots..... 7

New York Times, Covid in the U.S.: Latest Map and Case Count (Sept. 18, 2020)..... 2

New York Times, Missouri Covid Map and Case Count, (Sept. 18, 2020) 2

Nick Corasaniti & Reid J. Epstein, *At Least 7 in Wisconsin Got Coronavirus During Voting, Officials Say*, New York Times, (May 13, 2020) 3

Request for Missouri Absentee or Mail-In Ballot..... 6

INTRODUCTION

Plaintiffs bring this action to prevent the disenfranchisement of their members and other eligible Missouri voters in the November 3, 2020, election. The COVID-19 pandemic presents a public health threat of a magnitude our nation has not experienced in a century. The highly contagious nature of the coronavirus means that many voters now rely on remote voting opportunities in order to reduce their risk of contracting or transmitting the virus through contact with large numbers of people and common surfaces at polling places on Election Day. Recognizing the seriousness of these health risks, Missouri has amended its election code to allow all Missouri voters to cast their ballots remotely¹ for the remainder of 2020.

However, Missouri has also erected arbitrary and unjustifiable hurdles that voters must navigate in order to successfully cast their ballot remotely, in violation of the United States Constitution and federal law. Absent injunctive relief, thousands of voters are likely to have their remote ballot rejected because it is not received by election officials until after the close of polls on Election Day, through no fault of their own; because the voter made a minor error on the ballot envelope, despite that error having no effect on election officials' ability to verify the voter's eligibility; or because the voter was never even notified they made an error, nor given the opportunity to correct it prior to rejection. Plaintiffs seek preliminary relief by October 9 to prevent unlawful disenfranchisement and to ensure that all eligible Missourians' ballots are counted in the November 3, 2020, election.²

¹ Missouri law distinguishes between excuse-based "absentee" ballots that are received and cast by mail and the new no-excuse "mail-in" ballots. Throughout this brief, "remote voting" and variants will be used to reference both excuse-based absentee voting and no-excuse mail-in voting. Likewise, "ballot cast by mail" will reference any ballot requested or cast by mail, including both absentee mail ballots and mail-in ballots.

² Plaintiffs detail the specific relief requested in their Motion.

STATEMENT OF FACTS

A. COVID-19

COVID-19 has altered nearly every aspect of Americans' lives. The virus—which has infected more than 6.7 million people in the United States and killed at least 197,700³—has caused businesses and schools to close, resulted in mandates that people maintain social distancing, wear masks, and avoid large gatherings, and completely altered the way people engage in regular activities, including voting.

Missouri is one of the states in the nation where COVID-19 cases are increasing and rates are staying high.⁴ As of September 18, 2020, “there have been at least 110,506 [COVID-19] cases and 1,865 [related] deaths in Missouri since the beginning of the pandemic.” New York Times, Missouri Covid Map and Case Count, Sept. 18, 2020 12:12 PM, Ex. S. Just over the last week, “there have been an average of 1,549 cases per day [in Missouri], an increase of 15 percent from the average two weeks earlier.” *Id.* ⁵

With no known cure or effective treatment for the virus, public health officials warn that the pandemic is not likely to relent and project that infection rates and daily deaths will be on the rise leading into and at the time of the November 3, 2020 election. Institute for Health Metrics and Evaluation, COVID-19 Projections: United States of America, <https://covid19.healthdata.org/united-states-of-america?view=total-deaths&tab=trend>. With poll workers and voters who cast ballots in-person in U.S. elections earlier this year having contracted COVID-19, in-person voting poses a serious public health threat. *See, e.g.*, John Keilman, *After Chicago poll worker dies from*

³ New York Times, Covid in the U.S.: Latest Map and Case Count, (Sept. 18, 2020) 12:12 P.M., Ex. R.

⁴ Ex. R.

⁵ *See also* Missouri Dep't of Health & Senior Servs., Missouri COVID-19 Dashboard: The Spread of COVID-19 in Missouri, <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/results.php>.

COVID-19 and others test positive, city warns voters they might have been exposed to virus at polling places, Chicago Tribune, (Apr. 13, 2020), <https://www.chicagotribune.com/coronavirus/ct-chicago-poll-worker-dies-covid-cornavirus-20200413-rz55vqpo6jfbxn7e4i6vkj6n2y-story.html>; Nick Corasaniti & Reid J. Epstein, *At Least 7 in Wisconsin Got Coronavirus During Voting, Officials Say*, New York Times, (May 13, 2020), <https://www.nytimes.com/2020/04/21/us/politics/wisconsin-election-coronavirus-cases.html>; see also Chad Cotti, et al., *The Relationship between In-Person Voting, Consolidated Polling Locations and Absentee Voting on COVID-19: Evidence from the Wisconsin Primary*, (May 10, 2020) (finding “a statistically and economically significant association between in-person voting and the spread of COVID-19 two to three weeks after the election”).

B. Missouri’s June 2, 2020 Municipal Elections

Missouri Governor Mike Parson has put the state of Missouri under a state of emergency, which he has extended until at least December 30, 2020. Gov. Parson, Executive Order 20-12 (June 11, 2020). Recognizing the risks associated with in-person gatherings, on March 18, 2020, Governor Parson issued an emergency order moving the state’s April 7 municipal elections to June 2, 2020, because of the risk of spreading COVID-19 through in-person voting. Jason Hancock, *Gov. Parson Orders Missouri Elections Delayed Until June Because of COVID-19*, K.C. STAR (Mar. 18, 2020), <https://www.kansascity.com/news/politics-government/article241299761.html>.

At the time of the June 2 municipal elections, Missouri was an excuse-required absentee voting state, meaning that only specific categories of voters (i.e., only those able to proffer one of six qualifying excuses) were eligible to vote absentee. Mo. Rev. Stat. § 115.277. This rule limited the number of voters able to cast a ballot at a time and place other than their polling location on Election Day. After April elections in the nearby states of Illinois and Wisconsin resulted in reports

of COVID-19 spreading to people who worked the polls or voted in person, and concerns regarding the safety of voting in person in June were heightened, Governor Parson advised people to simply not vote in the rescheduled municipal election if they felt going to the polls was unsafe. K.C. Star Editorial Board, *Missouri Gov. Mike Parson: If You Don't Feel Safe, Just Don't Vote. That's Democracy?*, K.C. STAR (May 29, 2020), <https://www.kansascity.com/opinion/editorials/article243081151.html>.

Yet there was still a large spike in requests for absentee ballots among those who qualified. For example, in St. Louis County, nearly 73,000 absentee ballot applications were received for the June 2, 2020 municipal election (rescheduled from April 7, 2020 due to the pandemic), compared to 9965 applications for the April 2019 municipal elections; and 7719 applications for the April 2018 municipal elections, *see* Lohman Decl. Ex. F, ¶ 5 and Attachment 1.⁶ However, only 47,163 absentee ballots were received, and only 44,402 of those were counted; 1249 absentee ballots were rejected because they were received after the Election Day Receipt Deadline and 1512 ballots were rejected due to a deficiency in the ballot, including 626 due to a faulty statement, such as incomplete/missing address confirmation, and 856 due to lack of notary seal. *Id.* Requesting and Submitting Absentee and Mail-In Ballots in Missouri.

Through the June 2, 2020 municipal election only voters who swore they were unable to vote at their polling place on Election Day for one of six reasons were permitted to vote absentee. *See* Mo. Rev. Stat. § 115.277. These six excuses included: absence from their election jurisdiction

⁶ It should be acknowledged that St. Louis County sent absentee applications to all voters over 60 for the June, August and November 2020 elections, and in August 2020 the election directors in St. Louis County recommended “that absentee/mail-in ballot applications be sent to every active status registered voter who hasn’t already applied for one. *See* St. Louis County Election Board, Memorandum on November Absentee Applications (Aug. 26, 2020), Ex. T.

on the day of the election; incapacity or confinement due to illness or physical disability;⁷ religious belief or practice; employment with an election authority, so long as a person would not be working at their polling place; incarceration; or participation in Missouri’s address confidentiality program. § 115.277.1. Unless the person casting an absentee ballot was on the permanent absentee list under Mo. Rev. Stat. § 115.284, a covered military or overseas (“UOCAVA”) voter, or a person who stated they could not appear at the polls due to incapacity or confinement due to illness or physical disability, the absentee ballot must be notarized. § 115.291.1; § 115.283.6; § 115.283.7.

On June 4, 2020, Governor Parson signed into law a bill that created, for the remaining 2020 elections only: (1) a seventh acceptable reason to vote absentee for those who have contracted COVID-19 or are at heightened risk of contracting or transmitting COVID-19, § 115.277.1(7);⁸ and (2) a separate form of remote voting (designated as mail-in voting), available to all Missouri voters, § 115.302. All mail-in ballots must be notarized, and the methods by which they can be requested and returned is significantly more limited than what exists for absentee ballots:

Type of Remote Ballot	How voter can submit the ballot application	How voter may return the ballot
Absentee	Email, fax, in-person, by mail ⁹	In-person (including curbside), by mail, by the voter or a close relative ¹⁰

⁷ This also covers people who are caregivers for an individual who is incapacitated or confined.

⁸ State law considers the voters at-risk for contracting or transmitting COVID-19 to be those who: (1) are age 65 or older; (2) live in a long-term, licensed care facility; (3) have chronic lung disease; (3) have moderate to severe asthma; (5) have a serious heart condition; (6) are immunocompromised; (7) have diabetes; (8) have chronic kidney disease; (9) are undergoing dialysis; or (10) have liver disease. Mo. Rev. Stat. § 115.277.6. Individuals who select this reason for casting an absentee ballot are also exempt from the requirement that their ballot be notarized.

⁹ Mo. Rev. Stat. § 115.279.1.

¹⁰ Mo. Rev. Stat. § 115.291.2; *see also* Marantz Decl. Ex. O, ¶¶ 21-26 (noting that because she was casting an absentee ballot and had economic privilege she was able to send her ballot via FEDEX from Illinois on August 3 and have it returned to the Greene County Clerk’s Office before

Mail-In	In-person (ballot is still mailed to voter), by mail ¹¹	By U.S. mail ¹²
----------------	--	----------------------------

Voters submitting an application for a remote ballot (either an excuse-based absentee ballot or a no-excuse mail-in ballot) are asked to provide their name, date of birth or last 4 digits of their Social Security number, registered voting address, address where their ballot should be mailed (if different from their voting address), and reason for requesting a remote ballot; they must also swear that the information provided is correct by signing and dating their application. *See, e.g.*, Request for Missouri Absentee or Mail-In Ballot, <https://www.sos.mo.gov/CMSImages/ElectionGoVoteMissouri/2020FillableBallotApplication-GeneralElection.pdf>.¹³

Remote ballot applications have been rejected when voters have checked more than one reason for requesting a remote ballot or no reason at all, Mo. Rev. Stat. § 115.287. For example, there have been instances where voters have had their request for an absentee ballot rejected because they selected two reasons for requesting the ballot. Ballot Application Rejection Example, Ex. U. This is true even when both of the reason marked are for reasons that qualify a person to cast a no-notary absentee ballot. *Id.* (voter’s absentee ballot having been rejected despite requesting an absentee ballot because of “incapacity or confinement due to illness or physical disability” and

close of polls the following day, avoiding disenfranchisement and stating if she had been casting a mail ballot and, therefore, required to return her ballot by U.S. mail her ballot would not have been received by the Election Day Receipt Deadline).

¹¹ Mo. Rev. Stat. § 115.302.1.

¹² Mo. Rev. Stat. § 115.302.12. While absentee ballots can be returned via overnight delivery with UPS or FedEx, mail ballots may only be returned through the U.S. Postal Service.

¹³ Under the Missouri Code, voters requesting an absentee ballot are required to provide, in writing, “the applicant’s name, address at which he or she is or would be registered, his or her reason for voting an absentee ballot, the address to which the ballot is to be mailed, if mailing is requested,” Mo. Rev. Stat. § 115.279.2. Voters requesting a mail ballot are requested to provide “in writing . . . the applicant’s name, address at which he or she is registered, the address to which the ballot is to be mailed.” § 115.302.2.

having “contracted or [being] at-risk . . . for contracting or transmitting” COVID-19). Further, voters who qualify for an “absentee” ballot may also check the box for “mail-in” ballot simply because they are casting the ballot by mail, without understanding that these are two different types of ballots, which may result in rejection.

After a local election authority receives a voter’s remote ballot application, processes it, and confirms that the applicant is eligible to vote in that election, Mo. Rev. Stat. §§ 115.287.1, 115.302.8), the local election authority must send the ballot to the voter, which the voter must then complete (often times necessitating getting their ballot notarized) and return. Excuse-based absentee and no-excuse mail-in ballots must be *received* by their local election authority by close of polls on Election Day, § 115.293; those UOCAVA voters who return their ballots by mail, however, need only have their ballots *postmarked* by Election Day, § 115.916, and *received* by noon on the Friday following the Election, § 115.920.1, to be counted.¹⁴

Thus, mail-in ballots—the remote ballots open to all Missouri voters this year—are not only limited to being returned by mail, but the ballots must also be received by close of polls on Election Day. This creates unnecessary obstacles to voting a mail-in ballot.

The requirement that mail-in ballots be returned via mail only is inexplicable. One example of the absurd results of this incongruity includes mail-in voters who can have their completed ballots notarized at their local election authority office but cannot then leave the ballot with the

¹⁴ The only other category of voters who may, therefore, be required to return their ballots by mail are provided additional time when they do so to have their ballot received. *See* Missouri Secretary of State, Military and Overseas Voting Access Portal, <https://www.sos.mo.gov/elections/goVoteMissouri/registeroverseas> (noting “[m]ost voters are *required* to return their ballot and accompanying absentee ballot by mail”); *see also* National Conference of State Legislatures, Electronic Transmission of Ballots, <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx> (noting that Missouri allows electronic ballot return for voters serving in a “hostile zone”).

election official in front of them but instead must take the ballot with them and send it back to the election authority through the U.S. Postal Service prior to the close of polls on Election Day. This leads to the absurd possibility that a mail-in voter who does not receive their ballot until close to Election Day can go to their local election office to get it notarized in the days leading up to Election Day, and still be told they must mail it in—despite the virtual certainty that it will fail to arrive by the deadline, and despite the voter standing before the very official who the ballot must return to.

With mail delays having been a significant issue this year, restrictions on how voters may request and return mail-in ballots, combined with the strict “received by” deadline, have proved to present serious, sometimes insurmountable obstacles to many Missouri voters. *See, e.g.*, Newman Decl. Ex. Q, ¶¶ 7-12, 18 (voter did not receive ballot until July 30 despite mailing application on June 30); Morgan Decl. Ex. P, ¶¶ 6, 8-12 (noting that while four members of her family requested mail-in ballots on July 9, 2020, only her and her husband received their ballots in the mail and were able to cast them and have them counted; as of Election Day her two children still had not received their ballots and had to go and vote in person); Marantz Decl. Ex. O, ¶¶ 10-16 (ballot initially requested on July 14, 2020, was sent to voter’s registration address rather than mailing address and the replacement ballot she was sent on July 28, 2020, did not reach her mailing address until August 4); *see also id.* ¶¶ 17-26 (noting that the ballot sent to her mailing address was mailed via FEDEX by her neighbors to her and, because it was an absentee ballot, she was able to FEDEX that ballot back on August 3 and have it received prior to close of polls the following day); Alper Decl. Ex. D, at ¶¶ 23, 25, 26 (voters never received their ballot). Thousands of ballots were rejected in the June and August 2020 elections in Missouri because they were received after close of polls

on Election Day. With the higher turnout seen in federal general elections, the level of disenfranchisement will only be multiplied.

This risk was underscored in a July 31, 2020 letter sent by Thomas J. Marshall, general counsel and executive vice president for the United States Postal Service (“USPS”), to Missouri Secretary of State Joy Ashcroft. Ex. V. In that letter, Defendant Ashcroft was advised that there may not be enough time to complete the mail voting process for voters who submit their requests near the deadline and recommended that Missouri voters place their ballots in the mail by October 27, 2020. *Id.* at 2. Marshall noted the real “risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned properly, and yet not be returned in time to be counted.” *Id.*

The letter also stated the voters should plan to allow “at least one week” for their ballot to travel through the mail. *Id.* This means that mail-in voters must allow at least two weeks to complete the process if they are able to submit their application in person—one week to receive their ballot by mail and one week to return it by mail—and at least three weeks if they submit their application by mail (one week to submit their application; one week to receive their ballot, complete it, and have it notarized; and then and one week to return it).¹⁵

However, recent reports indicate that postal service delays in Missouri have resulted in some “mail taking up to 24 days to arrive back at the county election board.” *See, e.g.,* Elise Viebeck, et al., *Anxieties about mail ballots on display in latest round of primaries, highlighting worries for fall*, Wash. Po., (Aug. 4, 2020), <https://www.washingtonpost.com/politics/michigan->

¹⁵ This means, that because mail-in voters are relegated to only the use of the United States Postal Service for delivery of their ballots, while absentee voters can have their ballots delivered by family members directly to the election office, mail-in voters have at least a week less time to vote than absentee voters. They cannot mail their ballots on Election Day, or for that matter in the week prior to Election Day, with any certainty that their ballot will get there on time.

ballots-tangled-in-mail-delays-in-advance-of-tuesday-primary/2020/08/03/95c2039e-d5a8-11ea-9c3b-dfc394c03988_story.html; *see also* Newman Decl. Ex. Q, ¶¶ 7-12, 18 (voter did not receive ballot until July 30 despite mailing application on June 30); Gaither Decl. Ex. N, ¶¶ 7, 9 (noting that she mailed her ballot on July 22—nearly two weeks before the August 4, 2020, election—and it was not received by election officials until August 3rd, nearly one week longer even than the time the U.S. Postal Service is recommending voters budget for timely return of their ballots). This calls into serious question whether placing a ballot in the mail even by October 27, 2020 will allow enough time for it to arrive by the Election Day Receipt Deadline—and whether mail-in voters will be able to complete the process at all given they must endure this delayed mail transit period two or three times in applying for, receiving, and casting their ballot. A federal judge in the Eastern District of Washington recently found that these concerns are justified, based on statistical evidence showing a “drastic decrease in delivery rates.” *Washington, et. al. v. Trump, et. al.*, No. 1:20-CV-03127-SAB, 2020 WL 5568557, at *5 (E.D. Wash. Sept. 17, 2020); *see also* Newman Decl. Ex. Q, ¶¶ 10-11 (voter told ballot was sitting at post office for several days while in transit, post office was unable to locate ballot and had not “seen any ballots come through [t]here”).

C. Ballot Error Rejection Laws and Lack of Notice and Cure

In addition to the requirements that must be met for no-excuse mail-in ballots to be counted, other state laws make it likely that large numbers of ballots cast by eligible, registered Missouri voters will be unlawfully discarded in the November 3, 2020, election.

First, Missouri law requires that “[e]ach ballot envelope shall bear a statement on which the voter shall state the voter’s name, the voter’s voting address, the voter’s mailing address and the voter’s reason for voting an absentee ballot.” Mo. Rev. Stat. § 115.283.1. If any of this information, which is duplicative of what is provided on the ballot application, §§ 115.279.2, § 115.302.2, is omitted, state law requires that the voter’s ballot be rejected, § 115.295.2. This

hardline rule is applied even when an omission does not call the voter's identity or eligibility into question. For example, when voters apply for their ballot they submit their address of registration, and the fact that they are eligible to vote at that address is confirmed before the ballot is sent to the voter. And yet, if the voter fails to fill out their address on their ballot envelope (which may already have the voter's address printed on it), or check a box confirming their voting address is the same as the mailing address the voter submitted to election officials on their application, and at which it arrived if the voter is now filling out the envelope their ballot will be rejected. Ballot design often contributes to this confusion and immaterial error.¹⁶ See, e.g., Francis Decl. Ex. G, ¶¶ 15-17 (rejection of ballots for minor errors because of voter confusion over address verification and other information); Huddleston Decl. Ex. H, ¶¶ 15-17 (same); Jordan Decl. Ex. I, ¶ 15 (same); Marek Decl. Ex. J, ¶¶ 14, 16 (same); Orden Zarin Decl. Ex. K, ¶¶ 14-15, 18 (same); Stenger Decl. Ex. L, ¶¶ 12, 14 (same); Washington Decl. Ex. M, ¶¶ 14-15, 20 (same).

Failure to indicate that their address has remained unchanged from the one they submitted often times just a week or two earlier has resulted in the disenfranchisement of many voters just this year. See, e.g., Stenger Decl. Ex. L, ¶¶ 11, 13-15 (noting that, while volunteering calling voters whose remote ballots had deficiencies, one elderly woman cried when told that her ballot would be rejected because "she had not marked a small check box indicating her address remained the same," which she did not think she had to do since she had not moved); Orden Zarin Decl. Ex. K, ¶¶ 13, 16-17, 19-20 (noting that while volunteering at the board of elections the lack of a signature and failure to check the address box were the two primary deficiencies leading to the rejection of ballots); Washington Decl. Ex. M, ¶¶ 13, 16-20 (noting that, while volunteering at the local

¹⁶ For example, the ballot envelopes in St. Louis County and St. Louis City indicate that the address field is required but then state that the "[v]oter *may* check [a] box if [their] address [is] the same as [what is on the] front of the envelope." Ballot Affidavit Images, Ex. W, at 1, 5 (emphasis added).

election office calling voters whose ballots had deficiencies, “[t]he majority of the voters I called had not checked the box verifying their address on the envelope”); Huddleston Decl. Ex. H, at ¶¶ 13, 19-22 (noting that, while volunteering at the local election office calling voters whose ballots had deficiencies, “[m]ost of the ballots I handled were rejected because the voters did not check a small box to verify their address”). Even when people who have left the address on their ballot envelope blank, or failed to check a box confirming that the address on the front of the envelope is correct, *are* contacted by elections officials or deputized volunteers and confirm their address remains unchanged, the elections workers cannot check the box for them or consider the ballot as being cured of any defects related to the address omission. Robinson Decl. Ex. B, at ¶ 15; Francis Decl. Ex. G, ¶¶ 5-20 (volunteers deputized to contact voters who had made errors); Huddleston Decl. Ex. H, ¶¶ 5-13 (same); Jordan Decl. Ex. I, ¶¶ 5-18 (same); Marek Decl. Ex. J, ¶¶ 5-19 (same); Newman Decl. Ex. Q, ¶¶ 13-17 (same); Orden Zarin Decl. Ex. K, ¶¶ 5-21 (same); Stenger Decl. Ex. L, ¶¶ 5-15 (same); Washington Decl. Ex. M, ¶¶ 5-20 (same); Francis Decl. Ex. G, at ¶¶ 14, 18; Jordan Decl. Ex. I, ¶¶ 13, 16, 18; Marek Decl. Ex. J, ¶¶ 13, 15, 17-18; Newman Decl. Ex. Q, ¶¶ 14, 16-17 (voters who made ballot envelope statement errors unable to confirm information over the phone, many voters unable to travel to cure in person); *see also* Lohman Decl. Ex. F ¶¶ 28-31, 38 (noting that the address check box was one of the major omissions, failed to clearly explain to the voters that they needed to complete it, and despite advocacy on the point volunteers were told they could not cure the ballots of these deficiencies remotely).

In addition to failure to check an address confirmation box, another possible source of immaterial error is that some jurisdictions use the same ballot envelope for both absentee and mail-in ballots, and require the voter to mark which type of ballot they have cast, leading to voter confusion and error. Many voters who qualify for an “absentee” ballot may check the box for

“mail-in” ballot because they are casting the ballot by mail. Other voters may check both boxes, or check neither box. Even though prohibits the rejection of ballots solely for a voter’s failure to indicate the reason they are voting absentee, Mo. Rev. Stat. § 115.294, local election authorities can reject a ballot if they cannot discern from the envelope whether a voter is voting by excuse-only “absentee” or by no-excuse “mail-in” ballot. *See See Lohman Decl. Ex. F, ¶ 27* (noting that the reasons for voting absentee under the “at-risk” of COVID-19 excuse were not explained and a number of older voters mistakenly marked more than one box).

Second, Missouri law does not provide that a voter must be notified and given the opportunity to cure any deficiencies with their remote ballots. *See Lohman Decl. Ex. F, ¶ 13* (noting that the board of elections could not have provided voters without a volunteer-spurred effort). This results in the disenfranchisement of large numbers of Missouri voters in every election. According to recent congressional testimony from Defendant Ashcroft:

What we see in Missouri is that, in every election, about 2 to 3 percent of ballots received by mail are rejected. Perhaps the voter completed the ballot envelope incorrectly or the voter’s signature didn’t match. Maybe the ballot scanner didn’t properly read the ballot. For every 50 mail-in ballots cast by voters, at least one of them doesn’t count. For every 50 of those voters, at least one is disenfranchised.

Ensuring a Free, Fair, and Safe Election During the Coronavirus Pandemic, Remote Hearing Before the House Select Subcomm. on the Coronavirus Crisis, 116th Cong. 3–4 (2020) (statement of Jay Ashcroft, Missouri Sec’y of State). And, given that remote voting is a process that has been closed to the majority of Missourians and which many individuals will be trying to navigate for the first time this November, this percentage can be expected to significantly increase. *Robinson Decl. Ex. B, at ¶ 17; Alper Decl. Ex. D, at ¶ 13. See, e.g., Caitlin Huey-Burns & Adam Brewster, Why Some Mail-in Ballots are Rejected and How to Make Sure Your Vote Counts, CBS News, Aug. 4, 2020, <https://www.cbsnews.com/news/why-mail-in-ballot-rejected-voting-counts/>* (study

showing first-time remote voters and Black and Hispanic voters are more likely to have their remote ballots rejected).

Even in local jurisdictions which undertake to notify voters of their ballot deficiencies, voters are not provided with the opportunity to cure the ballot telephonically or through other remote means (i.e., email, fax), and instead must travel in person. *See, e.g.*, Robinson Decl. Ex. B, at ¶ 15 (providing rides to the polls for voters who could not cure errors remotely); Alper Decl. Ex. D, at ¶ 17 (some affected voters will be unable to travel to cure errors in person); *See* Lohman Decl. Ex. F, ¶ 19 (noting voters had to appear in person to correct their ballots); *see also id.* ¶ 36 (noting that many voters were elderly and quarantined in senior living facilities, “shut in due to disabilities or health problems, or otherwise unable to drive or appear in person”). When there is little to no window for a ballot to be corrected,¹⁷ and for individuals who lack access to transport, are ill, under lockdown at risk for COVID-19, or concerned about putting themselves or their families at risk by going to the office (presumably this is a reason they submitted a ballot remotely in the first place), this prevents voters from correcting even minor address and ballot type check box errors, which can easily be corrected through remote means. *See, e.g.*, Robinson Decl. Ex. B, at ¶ 15; Alper Decl. Ex. D, at ¶ 17; Orden Zarin Decl. Ex. K, ¶¶ 13, 16-17, 19-20 (noting that, while volunteering calling voters whose remote ballots had deficiencies, many voters stated that they were physically unable to come in person to cure their ballot or get to the polls on Election

¹⁷ Because remote ballots in Missouri must be received by close of polls on Election Day, such ballots must be “complete” and not contain any rejectionable ballot errors at that time. *See* Mo. Rev. Stat. § 115.293(1); § 115.302(14); § 115.295; § 115.477. Thus, even in local election jurisdictions where voters may be notified of deficiencies with their ballot envelopes, it will be impossible to give voters whose mail-in or absentee ballots arrive on Election Day sufficient—if any—time to cure deficiencies with their ballots in order to have them counted. *See* Lohman Decl. Ex. F, ¶ 13, 16 (noting that the board could not have contacted all the voters whose ballot envelopes contained deficiencies without volunteers and that volunteers only came in through August 3, not the following day when ballots were due).

Day because they “were physically disabled, elderly, or described their failing health or fear of contracting COVID-19,”); Washington Decl. Ex. M, ¶¶ 13, 16-20 (“Many voters I spoke with, when presented with their options for having their vote count, told me that no one in their household had a car. Those that had cars, responded that they were unable to drive due to age, sight, mobility impairments, or some other debilitating illnesses. Several people explained they were recuperating from surgery or some other illness, and did not feel confident about driving or using public transportation. And others responded that they simply lived too far south or west to afford or feel safe enough to use a ride-share service or a taxi to get to the closest Board of Elections office, especially during a worldwide pandemic.”); Huddleston Decl. Ex. H, at ¶¶ 13, 19-22 (“Another voter I called because his absentee ballot had been rejected by the St. Louis County Board of Elections was an older man who was quarantined in his apartment in a seniors complex and not allowed to leave the building due to COVID-19 pandemic.”); *id.* ¶ 7 (“Another voter I called whose absentee ballot was being rejected by the St. Louis County Board of Elections told me she had diabetes and other ailments that kept her inside her home as she is in the very high risk category for contracting COVID-19. She stated that she had no transportation to come to the Board of Elections and could not entertain the idea of getting on a public bus or other public transportation due to her health conditions.”); Francis Decl. Ex. G, ¶¶ 14, 18; Jordan Decl. Ex. I, ¶¶ 13, 16, 18; Marek Decl. Ex. J, ¶¶ 13, 15, 17-18; Newman Decl. Ex. Q, ¶¶ 14, 16-17; Stenger Decl. Ex. L, ¶¶ 11, 13-15 (voters who made ballot envelope statement errors unable to confirm information over the phone, many voters unable to travel to cure in person).

D. Plaintiffs

Plaintiffs Organization for Black Struggle, the St. Louis A. Philip Randolph Institute, the Greater Kansas City A. Philip Randolph Institute, National Council of Jewish Women St. Louis Section, and Missouri Faith Voices all have had—and will continue to have to divert resources to

help voters navigate the mail and absentee voting processes. Additionally, their members and the constituencies they serve stand to be disenfranchised by the state's restrictions on mail-in voting, rejection of ballot applications and ballots for immaterial errors, and failure to provide an adequate notice and cure process.

Plaintiff Missouri Faith Voices ("MFV") is a multi-faith, multi-racial, statewide, non-partisan organization that is committed to empowering and transforming the lives of ordinary citizens who have been targeted by unfair policies and practices and oppressed by racial and economic injustice. Gould Decl. Ex. E.

Voting rights is one core issue of MFV's work through its "Faith in Democracy" program, which works to ensure free and fair access to the vote and fair representation. Missouri Faith Voices is a member of the Missouri Voter Protection Coalition and has helped lead efforts related to voter identification laws, redistricting reform and other measures.

MFV's members and constituencies it serves experienced confusion and difficulties casting ballots during the August 2020 elections in Missouri due to the differing rules for requesting and returning absentee and mail-in ballots, mail delays, and rejection of ballots due to deficiencies on their ballot envelope forms. Specifically, declarant Marla Marantz is a co-convener and member of MFV's Southwest Missouri chapter. Marantz Decl. Ex. O. A member of MFV, she contracted COVID-19 and faced extreme difficulties attempting to cast an absentee ballot in the August election.

MFV has had to divert resources from its other core work, including healthcare, criminal justice, and anti-poverty work, as well as advocacy on voting rights ballot measures, such as Amendment 3 on the ballot in Missouri in November, to educate its members and the

constituencies it serves about different and confusing rules for requesting and returning absentee and mail-in ballots and assisting its constituencies with questions regarding their ballots.

Plaintiff National Council of Jewish Women-St. Louis Section (“NCJWSTL”) is a nonpartisan, nonprofit grassroots membership organization inspired by Jewish values to advance social and economic justice for women, children and families. Alper Decl. Ex. D. It is an affiliate of the National Council of Jewish Women (NCJW), and has over 5000 members and supporters in Missouri.

NCJWSTL works to safeguard rights and freedoms, including the right to vote. NCJWSTL is an active member of the Missouri Voter Protection Coalition, tracks voting legislation, and engages in advocacy with lawmakers and election officials on issues related to the right to vote. Its staff and members participate as non-partisan election monitors to respond to voter issues arising with elections.

Following the onset of the COVID-19 pandemic, NCJWSTL signed on to policy recommendations with other voter advocates urging Missouri leaders to take steps to ensure that all voters could cast a remote ballot without undue impediments, including advocating for relaxing deadlines and requirements for requesting and returning remote ballots during the pandemic.

NCJWSTL members and constituencies it serves experienced confusion and difficulties casting ballots during the August 2020 elections in Missouri due to the differing rules for requesting and returning absentee and mail-in ballots, mail delays, and rejection of ballots due to deficiencies on their ballot envelope forms and lack of notice and opportunity to cure. Declarant Karen Francis is a member of NCJWSTL. Francis Decl. Ex. G. Declarant Maureen Jordan is also a member of NCJWSTL. Jordan Decl. Ex. I.

NCJWSTL is very concerned about people being unable to fill out mail and absentee ballots remotely, return them to their local election authority, and have the ballots counted. NCJWSTL members are calling and sending emails to NCJWSTL staff every day with questions about what and how to do it—even those who are deeply involved in the voting and elections process are confused by the multitude of rules surrounding Missouri’s absentee and mail-in voting procedures.

In Missouri, the absentee voting law (pre-June 2020) has placed stringent restrictions on who can cast an absentee ballot, and the mail ballot process is something entirely new in the state. Most of NCJWSTL members, like most Missourians, have traditionally voted in person. This means that many people—including many NCJWSTL members and the communities serve—will be casting a ballot by mail or absentee this year for the first time. NCJWSTL is aware that studies have indicated that people voting mail or absentee ballots for the first time, as well as seniors, are more likely to experience confusion with the new rules and mail delays that could lead to their ballots being rejected.

A high proportion of NCJWSTL’s membership is registered to vote. Prior to the onset of the pandemic, many NCJWSTL members have tended to vote in-person on Election Day in Missouri. This year, a significant number of NCJWSTL membership is planning on applying for an absentee or mail ballot. A number of NCJWSTL members qualify to vote absentee because they fall into one of the at-risk categories for contracting and transmitting COVID-19 that Missouri law allows to cast a no-notary absentee ballot in November’s election; and others are planning to vote by mail. Approximately 50 percent of NCJWSTL members are over the age 60.

Because of concerns around contracting COVID-19 these members want to vote entirely remotely—i.e., they do not wish to vote absentee in person or vote in person at the polls. However,

because of Missouri's failure to allow voters to cure deficiencies on their ballot envelopes remotely, the ability to vote remotely may not be possible for all of NCJWSTL members. Many of NCJWSTL members have expressed concerns about sending their ballots by mail and the potential that mail delays could result in their ballots arriving too late to be counted. NCJWSTL will have to encourage those who have absentee ballots to return them curbside at the board of election offices because many people are wary of the postal service currently. For those with mail-in ballots, they will have to return them by USPS and risk them not being counted. Some of NCJWSTL members have not left their homes since the pandemic began and are afraid for their safety to go to a polling place; and a number do not have or are not equipped to use technology to obtain an application online for an absentee or mail in ballot.

Plaintiff Organization for Black Struggle's ("OBS") mission is to build a movement that fights for political empowerment, economic justice and the cultural dignity of the Black community, especially the Black working class. See Rogers Decl. Ex. A.

Among other issues, OBS works to end voter suppression and disenfranchisement. It fights for a political system that results in a real democracy where Black people and all marginalized people can effectively exercise full political power. OBS is a member of the Missouri Voter Protection Coalition.

Following the onset of the COVID-19 pandemic, OBS joined policy recommendations with other voter advocates urging Missouri leaders to take steps to ensure that all voters could cast a remote ballot without undue impediments, including advocating for relaxing deadlines and requirements for requesting and returning remote ballots during the pandemic. In the wake of challenges to voting amid the COVID-19 pandemic and racial justice battles in the St. Louis, OBS launched its "Respect My Vote" campaign for the August 2020 elections to help its members vote.

OBS's members and the constituencies it serves experienced confusion and difficulties casting ballots during the August 2020 elections in Missouri due to the differing rules for requesting and returning absentee and mail-in ballots, mail delays, and rejection of ballots due to deficiencies on their ballot envelope forms. As a result, OBS was forced to divert personnel, financial and other resources away from its other work to educate its members and the constituencies it serves about the different and confusing rules for requesting and returning absentee and mail-in ballots. OBS has had to divert resources from its other core work, including voter registration and education about candidates and ballot issues, racial justice, criminal justice reform, combatting police brutality, women's rights, youth empowerment, and workers' rights, to assisting its constituencies with their many questions regarding the confusing and burdensome mail-in and absentee ballot requirements in Missouri.

Plaintiff St. Louis Chapter of the A. Philip Randolph Institute ("APRI St. Louis") is a local chapter of the A. Philip Randolph Institute, a national organization for African-American trade unionists and community activists, established in 1965 to forge an alliance between the civil rights and labor movements. Robinson Decl. Ex. B. APRI is a senior constituency group of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO").

APRI St. Louis focuses the bulk of its work on voter education, registration, and outreach efforts at community events, churches, and schools. These voter efforts have traditionally targeted underserved communities, lower propensity voters who may be unfamiliar with voting rules, and areas where a high proportion of eligible voters are not registered at their current residence. It is an active member of the Missouri Voter Protection Coalition.

APRI St. Louis' members and constituencies it serves experienced confusion and difficulties casting ballots during the August 2020 elections in Missouri due to the differing rules

for requesting and returning absentee and mail-in ballots, mail delays, and rejection of ballots due to deficiencies on their ballot envelope forms. Many APRI St. Louis members have tended to vote in-person on Election Day.

This year, a significant number of APTI St. Louis' membership is planning on applying for an absentee or mail ballot. And, a number of APRI St. Louis' members qualify to vote absentee because they fall into one of the at-risk categories for contracting and transmitting COVID-19 that Missouri law allows to cast a no-notary absentee ballot in November's election.

Because of concerns around contracting COVID-19 these members want to vote entirely remotely—i.e., they do not wish to vote absentee in person. However, because of Missouri's failure to allow voters to cure deficiencies on their ballot envelopes remotely, the ability to vote remotely may not be possible for all APRI St. Louis members. For example, in the August 2020 election, one of APRI St. Louis's members had her ballot rejected because she had failed to mark a box on her ballot envelope. To avoid disenfranchisement, this APRI St. Louis member had to go vote in person. The only reason she was aware of the deficiency with her ballot envelope was because members of the League of Women Voters of Missouri and the St. Louis Area Voter Protection Coalition had volunteers go into the election authority to help contact voters whose ballots were set to be rejected.

APRI St. Louis has had to divert resources from its other core work this year, including canvassing the St. Louis area to get people to complete the census, engaging in education efforts encouraging voters to check their polling places and confirm that they received their voter cards, and advocacy on voting rights ballot measures, such as Amendment 3 on the ballot in Missouri in November, in order to educate its members and the constituencies it serves about different and confusing rules for requesting and returning mail-in and absentee ballots, providing rides for

absentee voters to cast ballots in person during the absentee voting period, providing voters whose remote ballots have deficiencies with rides to make sure they are able to correct those deficiencies, and assisting its constituencies with questions regarding their ballots.

The Greater Kansas City Chapter of the A. Philip Randolph Institute (“APRI GKC”) is also a local chapter of the A. Philip Randolph Institute, a senior constituency group of the AFL-CIO. Jones Decl. Ex. C. APRI GKC allots a significant amount of time and organizational resources, such as volunteer time, to voter education efforts in service of its members and the constituencies it serves. APRI GKC engages in voter registration drives and voter education trainings at union meetings, schools, libraries, and local businesses and helps organize voter education and outreach events.

Prior to the COVID-19 pandemic, APRI GKC members typically tended to vote in-person on Election Day. For many African Americans, including APRI GKC members - especially those who are older, as are many of APRI GKC members - voting in person has historically been important symbolically, and important for members to feel confident that their votes will count.

But this year is different. Most of APRI GKC’s members are African American, placing the members at higher risk for contracting and having serious complications from COVID-19, and are also more likely to have other underlying health conditions. APRI GKC’s members and the constituencies it serves experienced confusion and difficulties casting ballots during 2020 elections in Missouri due to the differing rules for requesting and returning absentee and mail-in ballots, mail delays, and rejection of ballots due to deficiencies on their ballot envelope forms. Because many of APRI GKC members are at heightened risk for COVID-19 and worry about voting in person at the polls, many have expressed a desire and assistance to vote remotely to avoid the risk of crowds at the polls on Election Day.

Many in the community, including APRI GKC members, have historically been leery of voting through the mail. This fear is heightened now. Many of APRI GKC members are concerned about mail delays and worry about whether they will receive their ballots in time and whether their completed ballots can be returned in time to be counted.

APRI GKC has had to divert resources from its other core work, including voter registration, get out the vote efforts, advocacy on voting rights ballot measures, such as Amendment 3 on the ballot in Missouri in November, providing rides to the polls and workers' rights in order to educate its members and the constituencies it serves about different and confusing rules for requesting and returning absentee and mail-in ballots and assisting its constituencies with questions regarding their ballots.

As a result of the challenged mail voting provisions and practices, Plaintiffs members have faced confusion and undue barriers to casting their ballots by mail and having their ballots counted, including, upon information and belief, having their ballots rejected due to being received after the deadline and being rejected for deficiencies on the ballot envelope. Moreover, Plaintiffs have had to divert its resources to ensure that voters understand how to successfully cast their ballot by mail, including educating about the need to return ballots early and complete confusing forms on the ballot envelope. They additionally have had to spend significant time educating other community groups about the risk of disenfranchisement due to the challenged mail voting provisions and practices and have devoted time to engaging their membership base about these issues. These activities have diverted resources away from other aspects of their work in furtherance of their core missions. These injuries to the Plaintiffs will be significantly exacerbated by increased voter participation in the November 2020 elections so long as these arbitrary rules and lack of procedural protections ensue.

ARGUMENT

When considering whether to grant a temporary restraining order or preliminary injunction, this Court must consider four factors: (1) the likelihood of the movant’s success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm that the relief would cause to the other litigants; and (4) the public interest. *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003); *see also H&R Block Tax Servs. LLC v. Nguyen*, 2019 U.S. Dist. LEXIS 232816, *9 (W.D. Mo. Nov. 13, 2019). In this analysis, “[w]hile no ‘single factor is determinative,’ the probability of success factor is the most significant.” *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013) (quoting *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981)).

Courts—including this one—routinely order preliminary relief in order to rectify voting rights violations in advance of an election. *See, e.g., League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1007 (W.D. Mo. 2018); *ACORN v. Scott*, 2008 WL 2787931, at *8 (W.D. Mo. July 15, 2008). Here, as in those cases, Plaintiffs are likely to succeed on the merits, and the equities strongly favor preliminary relief.

A. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

Plaintiffs have brought three claims challenging the Missouri’s remote voting scheme. They allege that (1) requiring that mail-in voters may *only* request their ballot by mail or in person and may *only* return their ballot by mail imposes an undue burden on the right to vote in violation of the First and Fourteenth Amendments to the U.S. Constitution; (2) rejecting ballot applications or ballots for immaterial errors, such as failing to correctly identify a voter’s address or the type of ballot they are casting on the ballot application or envelope constitutes a violation of the Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B); and (3) the failure to notify voters of deficiencies with their remote ballots and provide them with a meaningful

opportunity to cure these deficiencies violates the Procedural Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

1. Missouri’s Mail-In Ballot Request and Return Process Places an Undue Burden on the Right to Vote in Violation of the First and Fourteenth Amendment of the U.S. Constitution.

Missouri creates different rules for how voters may request and return remote ballots by creating additional hurdles people must navigate in order to cast a mail-in ballot that do not exist for people casting absentee ballots. The proper analytical framework to assess the constitutionality of these restrictions on the right to vote was established by the U.S. Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 789-90 (1983) and *Burdick v. Takushi*, 504 U.S. 428, 435-36 (1992); see also *Pavek v. Simon*, 967 F.3d 905, 905 (8th Cir. 2020) (noting that the *Anderson-Burdick* balancing test provides the proper legal framework when the right to vote is implicated).

Under the *Anderson-Burdick* balancing test, a court “must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). When the restriction on the right to vote is severe, the regulation must be “narrowly drawn to advance a state interest of compelling importance.” *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). And, when state election laws impose “only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” *Id.* (quoting *Anderson*, 460 U.S. at 788); see also *Crawford v. Marion Cnty. Elec. Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., plurality opinion) (noting that “[h]owever slight” the

burden on the right to vote “may appear . . . it must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation’”). Here, the burden the challenged restrictions place on the right to vote is significant, and cannot be justified by any State interest sufficiently weighty to justify this burden.

First, Missouri limits how applications for mail-in ballots can be submitted. While applications for absentee ballots can be submitted four ways (including by email and fax, which assure instant transmission, as well as by mail or in person), requests for mail-in ballots can only be submitted 2 ways (by mail and in person), both of which require additional time due to the time of the mail or the time the voter must take to travel to the election authority to request it. This means that while Defendants already have in place processes for receiving and processing remote ballot requests that come in through email or fax, these methods—which represent the most immediate and streamlined measures for requesting remote ballots—may be used only by people casting one type of remote ballot (excuse-only absentee) and not the other (no-excuse mail-in). This differential treatment requires substantial additional time for submitting a request for a mail-in ballot and having that ballot received by the voter.

Second, Missouri limits how mail-in ballots can be returned. While absentee ballots can be returned in person or by mail (i.e., USPS, FEDEX, UPS), mail-in ballots can only be returned by U.S. mail. This is true even when voters go to local election offices in Missouri to have their ballot envelope notarized. Rather than being permitted to return their completed ballot while they are in the office, the voters must leave the local elections office, place the ballot in the mail, and hope that the ballot gets back to the local elections office they just left prior to the Election Day Receipt Deadline.

Because, according to the USPS, voters should expect to allow at least one week for a ballot to travel through the mail, the requirements for requesting, casting, and returning a mail-ballot require at minimum two weeks for a mail-in voter to complete the process if they are able to submit their application in person—one week to receive their ballot by mail and one week to return it by mail; this is without accounting for the time they must take to find and go to a notary to get their ballot notarized. At least an additional week is needed if the mail-in voter submits their application by mail. Mail-in voters who do not receive their ballot until close to Election Day must decide between returning their ballot by mail and risking likely disenfranchisement due to late receipt, voting in person at their polling place and risking exposure to the coronavirus, or not voting at all. In contrast, absentee voters who do not receive their ballot until just before Election Day can still drop it off in person or through a family member up to and including on Election Day, and can be sure their ballot will be received by the Election Day Receipt Deadline. Those UOCAVA voters who elect to—or must—submit their ballots by mail are only required to have their ballot postmarked on Election Day. Missouri therefore subjects some—but not all—remote voters to a significant risk of disenfranchisement due to delays in mail delivery.

At a time when our nation is facing a global pandemic and more people are voting remotely, when USPS has issued a warning to Secretary Ashcroft that mail is slower in being processed, and when thousands of remote ballots have already been rejected this year due to late receipt, the restrictions on how Missourians may return mail-in ballots coupled with the strict Election Day Receipt Deadline will deny Missourians their fundamental right to vote in this November's election. There is no justification for cutting the time that mail-in voters have to deliver their ballots as compared to absentee voters, by forcing the former group to cast their ballots only through the postal system.

Neither of these restrictions on how mail-in ballots may be requested or returned advance any state interest that is sufficiently weighty to justify the burden on voters, which is significant and can be disenfranchising. With respect to applications, as noted above, Defendants already have processes in place to accept remote ballot applications by fax and email—in fact, allowing more voters to submit their applications via email in particular is likely to make things easier, not harder, on election officials. Further, with respect to ballot returns, local election authorities are already accepting absentee ballots that are delivered in person, and some mail-in voters are already visiting local election authorities to get their ballots notarized, only to be told that they cannot submit the ballot at the same time. Rather, these voters are told they must leave their local election office, place their ballot in the mail, and take the chance that the ballot will not arrive prior to the Election Day receipt deadline.

Based on the foregoing, Plaintiffs are likely to succeed on their claim that Missouri’s mail-in ballot request and return process places an unconstitutional burden on the right to vote.

2. Missouri’s Rejection of Remote Ballot Applications and Ballots for Information That is Not Material to Determining Whether a Voter is Eligible Violates the Civil Rights Act.

Missouri law requires that remote ballots be rejected if a voter omits their name, voting address, mailing address, or reason for voting remote. Mo Rev. Stat. § 115.295.2; *see also* § 115.283.1. This strict rule has resulted in the ballot applications and ballots of eligible voters being rejected, even when Defendants have enough information available to them to confirm the voter’s eligibility. This violates the Materiality Provision of the Civil Rights Act of 1964 (“Materiality Provision”), 52 U.S.C. § 10101(a)(2)(B).

The Materiality Provision prohibits denying “the right of any individual to vote . . . because of an error or omission on any record or paper relating to any application, registration, or

other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” *Id.* In an analogous case, the Northern District of Georgia previously issued a temporary restraining order holding that the Plaintiffs were likely to succeed on their claim that the Materiality Provision prohibits a remote ballot from being rejected solely because a voter omits or provides an incorrect birth year, in part on the basis that this information had already been verified and that election officials could determine the voter’s eligibility using other information contained on the ballot envelope. *See, e.g., Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308-09 (N.D. Ga. 2018).

As noted above, many Missouri voters have had their remote ballots rejected because they failed to fill out their address on their ballot envelope or failed to check a box confirming that is still their address (some of which confusingly state that the “[v]oter *may* check.” Ex. W, at 1, 5 (emphasis added)); for failure to check a box indicating whether they are casting an absentee or mail-in ballot; or made other minor errors or omissions on the ballot envelope statement. The number of ballots containing such minor errors is likely to increase this November—as remote voting has only recently been opened up to the electorate and many voters who are unfamiliar with the remote voting process will be casting a remote ballot for the first time. Robinson Decl. Ex. B, at ¶ 17 (many members will be voting by mail for first time); Alper Decl. Ex. D, at ¶ 13 (many members will be voting for first time). Caitlin Huey-Burns & Adam Brewster, *Why Some Mail-in Ballots are Rejected and How to Make Sure Your Vote Counts*, CBS News, Aug. 4, 2020, <https://www.cbsnews.com/news/why-mail-in-ballot-rejected-voting-counts/>.

Such errors are immaterial to determining whether a voter is qualified to vote, because they have already affirmed their address multiple times—when they registered to vote and when they applied for a remote ballot—and election officials have already confirmed that the voter was

qualified to vote at their address prior to mailing a remote ballot to the voter, often times *at that very address* . In fact, this address is may printed on the ballot envelope itself. Yet, even though local election officials have just confirmed a voter is registered and eligible to vote at their current address immediately prior to issuing the ballot, they are rejecting ballots because a voter fails to reenter information or check a box affirming information that has already been confirmed—these are immaterial errors.

In addition to failure to confirm a voter’s address, another immaterial error is a voter’s failure to mark which type of ballot they have cast, or marking multiple ballot types or reasons they are voting absentee, either on the initial application or on the ballot envelope itself. Voters who qualify for an “absentee” ballot may check the box for “mail-in” ballot—or check a reason for voting both absentee and mail ballot—simply because they are requesting or casting a ballot by mail, without understanding that these are two different types of ballots. Absentee voters sometimes check that they qualify for an absentee ballot for multiple reasons, including two reasons that qualify them to vote a no-notary absentee ballot (i.e., incapacity or confinement due to illness *and* having contracted COVID-19 or being in an at-risk category). and have their application rejected as a result. This error was common in the August 4 election—and is likely to be common again in the November 3 election. Further, voter confusion about the new mail-in ballot type is exacerbated by the fact that some jurisdictions use the same ballot envelope for both absentee and mail-in ballots and have boxes where voters can indicate that they are either voting a “mail-in” ballot or an absentee ballot for one of seven reasons. Voters who election officials have information indicating are qualified to vote absentee (for instance, because they are over the age of 65), can have their ballots rejected if they mistakenly indicate that they are casting a mail-ballot.

Arguments that these kinds of errors are material, fall flat. If election officials can determine the eligibility of the voter based on the information available to them, they must do so. Nor does it justify rejecting a ballot cast by a voter who has (1) confirmed their eligibility, name, and voting address when registering to vote; (2) reaffirmed, when applying to vote remotely, their eligibility, name, voting address, their mailing address, reason for voting remotely, and the type of ballot they will be; and (3) further affirmed their identity and eligibility by signing the ballot envelope, under penalty of perjury, in many cases in the presence of a notary, simply because they failed to fill out a readily determinable field or correctly check a box confirming this information yet again. Further, returned ballots are entered into Missouri’s statewide voter registration database, meaning that local election officials already need to look up a voters information. Federal law prohibits rejecting an otherwise-valid ballot application or ballot—and thereby disenfranchising an eligible voter—for failure to correctly recite information they have already affirmed and which election officials have confirmed, other than their signature and notary seal, if applicable.

Because Missouri voters have their ballot rejected based on the omission of information that is not necessary to determine the voter’s eligibility to participate in the election, Plaintiffs are likely to succeed in establishing a violation of the Materiality Provision.

3. Defendants’ Failure to Provide Voters With Sufficient Notice and a Meaningful Opportunity to Cure Remote Ballot Deficiencies Violates Procedural Due Process.

The test laid out in by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) provides the appropriate framework to determine whether Missouri is failing to provide its remote voters with adequate notice and cue procedures. Under the *Mathews* test, courts balance three factors: “(1) the private interest that will be affected by the state action; (2) the risk of erroneous

deprivation of that interest through the procedures used, and the value of any additional or substitute procedures; and (3) the state's interest." *Id.*

As courts routinely recognize, the private interest affected in cases like this is the fundamental right to vote. *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018); *Self Advocacy Sol. N.D. v. Jaeger*, 2020 U.S. Dist. LEXIS 97085, *25 (D.N.D. June 3, 2020); *id.* at *23 ("Beyond debate, the right to vote is a constitutionally protected liberty interest."); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (N.H.D.C. Aug. 14, 2018); see *Harper v. Va. Bd. Of Elections*, 383 U.S. 663, 667 (1966) (noting also that the right to vote is a "fundamental political right, . . . preservative of all other rights." (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886))); *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964).

When the right to vote is at stake, it is afforded "substantial weight." See, e.g., *Martin*, 341 F. Supp. 3d at 1338; *Richardson v. Hancock*, 2020 WL 5367216 (W.D. Tex. Sept. 8, 2020); *Jaeger*, 2020 U.S. Dist. LEXIS 97085, at *25. And, while there is no independent constitutional right to vote by remote ballot, *McDonald v. Bd. Of Election Comm'rs of Chi.*, 394 U.S. 802, 807-08 (1969), once a state extends remote voting to its electorate, as Missouri has pursuant to sections 115.277.1(7) and 115.302 of the revised code, due process protections attach. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) ("A liberty interest may arise from the Constitution itself . . . or it may arise from an expectation or interest created by state laws or policies."); see also *Martin*, 341 F. Supp. 3d at 1338 ("Courts around the county have recognized that '[w]hile it is true that absentee voting is a privilege and convenience to voters, this does not grant the state the latitude to deprive citizens of due process with respect to the exercise of this privilege." (quoting *Raetzl v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp 1354, 1358 (D. Ariz. 1990)); *Frederick v. Lawson*, 2020 U.S. Dist. LEXIS 150995, *38 (S.D. Ind. Aug. 20, 2020) ("[O]nce a state creates

an absentee voting regime, the state has enabled a qualified individual to exercise her fundamental right to vote in a way that she was previously unable to do and then must administer that regime in accordance with the Constitution and afford appropriate due process protections, including notice and a hearing, before rejecting an absentee ballot.” (internal quotations omitted)); Memorandum Opinion and Order, *Richardson v. Hancock*, 2020 WL 5367216 (W.D. Tex. Sept. 8, 2020). *But see Memphis A. Phillip Randolph Inst. v. Hargett*, No. 3:20-CV-00374, 2020 WL 5095459, at *11 (M.D. Tenn. Aug. 28, 2020) (finding the right to vote is not a “liberty” interest for purposes of procedural due process) (appeal pending). For, it is well recognized that the Constitution guarantees the right of voters “to cast their ballots *and have them counted. . .*” *United States v. Classic*, 313 U.S. 299, 315 (1941) (emphasis added).

At a minimum, procedural due process requires that the State provide the voter pre-deprivation notice and an opportunity to be heard before being denied their protected liberty interest. *See Mathews*, 424 U.S. at 333 (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (internal citation and quotation omitted)); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) (“The essential requirements of due process . . . are notice and an opportunity to respond.”). Despite creating remote voting processes that have a high likelihood of ballots being rejected for immaterial error or omission, *see supra* Section (A)(2), Missouri fails to provide voters with adequate safeguards to protect them from being erroneously deprived of their right to vote.

At present, there is no mandated notice and cure process for remote ballots in the State of Missouri.¹⁸ Further, as noted above, Missouri law requires the rejection of remote ballots for

¹⁸ Notably, Missouri voters do have a right to challenge rejection of absentee and mail-in ballot application, but no express provision for such challenge to those ballots. *See, e.g.*, Mo. Rev. Stat.

failure to correctly indicate certain information on the statement on their ballot envelope. Local election authorities expect voters to know that failing to mark a box the voter is told they “may” check will result in their ballot being rejected. Some ballot envelopes even fail to designate required fields. Ex. W. Defendants “cannot . . . expect voters to comb through the [Missouri] Code in search of these requirements. *See, e.g., Jaeger*, 2020 U.S. Dist. LEXIS 97085, at *25.

The lack of provision of notice is especially glaring because local election authorities already have information that would enable them to contact the voter, including in many cases telephone numbers and email addresses. *See, e.g., Huddleston Decl. Ex. H*, at ¶¶ 11-12; *Jordan Decl. Ex. I*, ¶¶ 10-12; *Marek Decl. Ex. J*, ¶¶ 10-12; *Orden Zarin Decl. Ex. K*, ¶¶ 11-12; *Stenger Decl. Ex. L*, ¶¶ 8-10; *Washington Decl. Ex. M*, ¶¶ 9-12 (election officials provided volunteers with phone numbers for contacting voters by telephone to notify them of ballot envelope error) Despite the fact that some local election authorities contact voters (or even deputize volunteers to help contact voters) ahead of Election Day to confirm missing or incorrect information, there is no process ensuring that the voter can confirm minor details to address the deficiency over the phone or through other remote means. *Robinson Decl. Ex. B*, at ¶ 15; *Alper Decl. Ex. D*, at ¶ 17; *Francis Decl. Ex. G*, ¶¶ 5-20 (volunteers deputized to contact voters who had made errors); *Huddleston Decl. Ex. H*, ¶¶ 5-13 (same); *Jordan Decl. Ex. I*, ¶¶ 5-18 (same); *Marek Decl. Ex. J*, ¶¶ 5-19 (same); *Newman Decl. Ex. Q*, ¶¶ 13-17 (same); *Orden Zarin Decl. Ex. K*, ¶¶ 5-21 (same); *Stenger Decl. Ex. L*, ¶¶ 5-15(same); *Washington Decl. Ex. M*, ¶¶ 5-20 (same); *Francis Decl. Ex. G*, ¶¶ 14, 18

§§ 115.287, 115.302.8 (“If the election authority is not satisfied that any applicant is entitled to vote by mail-in ballot, the authority shall not deliver a mail-in ballot to the applicant. Within three working days of receiving such an application, the election authority shall notify the applicant and state the reason he or she is not entitled to vote by mail-in ballot. The applicant may file a complaint with the elections division of the secretary of state’s office under section 115.219.”); *see also* § 115.279 (requiring that UOCAVA voters who have their absentee ballot requests rejected be notified why the request was rejected).

(voters who made ballot envelope statement errors unable to confirm information over the phone, many voters unable to travel to cure in person); Huddleston Decl. Ex. H, ¶¶ 13, 19-22 (same); Jordan Decl. Ex. I, ¶¶ 13, 16, 18 (same); Marek Decl. Ex. J, ¶¶ 13, 15, 17-18 (same); Newman Decl. Ex. Q, ¶¶ 14, 16-17 (same); Orden Zarin Decl. Ex. K, ¶¶ 13, 16-17, 19-20 (same); Stenger Decl. Ex. L, ¶¶ 11, 13-15 (same); Washington Decl. Ex. M, ¶¶ 13, 16-20 (same). This is true even when voters merely forgot to indicate the address on their ballot envelope was correct (by checking a box or completing the address field)—information that can easily be confirmed verbally or via email—and even where voters have no way to appear in person to physically fill in this information because they lack access to transportation or are under quarantine due to the pandemic or those for whom appearing in person would put them or their family members at risk. Alper Decl. Ex. D, ¶¶ 17, 19 (some affected voters will be unable to travel to cure errors in person); Francis Decl. Ex. G, ¶¶ 14, 18; Huddleston Decl. Ex. H, ¶¶ 13, 19-22 (voters who made ballot envelope statement errors unable to confirm information over the phone, many voters unable to travel to cure in person); Jordan Decl. Ex. I, ¶¶ 13, 16, 18 (same); Marek Decl. Ex. J, ¶¶ 13, 15, 17-18 (same); Newman Decl. Ex. Q, ¶¶ 14, 16-17 (same); Orden Zarin Decl. Ex. K, ¶¶ 13, 16-17, 19-20 (same); Stenger Decl. Ex. L, ¶¶ 11, 13-15 (same); Washington Decl. Ex. M, ¶¶ 13, 16-20 (same). Indeed, avoiding such risk of exposure is precisely the reason lawmakers saw fit to expand remote voting options in 2020 due to the pandemic. Further, even voters living in an election jurisdiction that is providing notice, for voters whose ballots are received on or near the Election Day Receipt Deadline, they may be provided little or no notice of their ballots deficiency—which must be cured by the same time (close of polls on Election Day) that their ballot is due.

Missouri's failure to provide voters with a uniform statewide allowance or procedure for notice and an opportunity to cure deficiencies on their ballot envelope prior to rejection is

constitutionally inadequate. *See, e.g., Democracy N. Carolina v. N. Carolina State Bd. of Elections*, No. 1:20CV457, 2020 WL 4484063, at *54 (M.D.N.C. Aug. 4, 2020) (finding “the complete lack of statewide curing procedure is constitutionally inadequate”). These voters may never know that their ballot was rejected or why, or that they might have been able to cure a minor deficiency. That some local election authorities, solely at their own discretion, sometimes undertake to provide some notice and some opportunity to cure does not relieve the state of its constitutional obligations. In fact, disparate availability of due process is itself constitutionally problematic. *See id.* at *54 n.32 (“[Voters] should not be subject to disparate due process protections based on the county in which they reside.”); *see also Louisiana v. United States*, 380 U.S. 145, 153 (1965) (“The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar.”).

Nor is the process provided by these local election authorities itself constitutionally adequate, because, even after making contact with the voter, election officials may refuse to accept the voter’s verbal or written affirmation or confirmation of the information in question through telephonic or electronic (email) means, instead requiring the voter to appear in person to perform such trivial actions as needing to confirm their reason for voting a remote ballot or confirming their address, *see, e.g.,* Robinson Decl. Ex. B, ¶ 15; Francis Decl. Ex. G, ¶¶ 14, 18; Huddleston Decl. Ex. H, ¶¶ 13, 19-22; Jordan Decl. Ex. I, ¶¶ 13, 16, 18; Marek Decl. Ex. J, ¶¶ 13, 15, 17-18; Newman Decl. Ex. Q, ¶¶ 14, 16-17; Orden Zarin Decl. Ex. K, ¶¶ 13, 16-17, 19-20; Stenger Decl. Ex. L, ¶¶ 11, 13-15; Washington Decl. Ex. M, ¶¶ 13, 16-20 (voters who made ballot envelope statement errors unable to confirm information over the phone, many voters unable to travel to cure in person)—all of which information can easily be affirmed remotely. That this information

is also immaterial and cannot be grounds for rejection in the first instance, *see supra* Section (A)(2) of the Argument, only serves to further emphasize the need for basic procedural safeguards to protect Missouri voters' constitutional right to vote and to procedural due process.

Finally, Missouri has no state interest that can justify Defendants' failure to provide remote voters in Missouri with adequate notice and a meaningful opportunity to cure. Any asserted administrative burden in providing basic, constitutionally-mandated due process protections pales in comparison to the fundamental liberty interest at stake for Missouri voters. And while Missouri certainly has an interest in ensuring that only eligible voters participate, this interest is not even remotely advanced by failing to notify voters who have already been deemed eligible to cast a remote ballot in the election for which they are submitting their ballot, that they have made a ballot envelope error and providing them with an opportunity to cure that error and ensure their ballot is counted. Indeed, courts have routinely held that these kinds of interests simply cannot justify an inadequate or nonexistent notice and cure process for remote ballots. As the District Court of North Dakota recently explained:

[T]he state's interest does not outweigh the value of the additional notice and cure procedures that protect the fundamental right to vote. To be sure, the state holds important interests in preventing voter fraud and upholding the integrity of elections. But allowing voters to verify the validity of their ballots demonstrably advances—rather than hinders—these goals. As the Secretary notes, the purpose of the [ballot] requirement is to ensure the same person that signed the ballot application is the person casting the ballot. Notice and cure procedures do exactly that by confirming the validity of legitimate voters' ballots, preventing voter fraud and increasing confidence in our electoral system in the process.

Jaeger, 2020 U.S. Dist. LEXIS 97085, at *27-28 (noting also that “any fiscal or administrative burden is miniscule when compared to the palpable threat of disenfranchisement”); *see also Democracy N. Carolina*, 2020 WL 4484063, at *54-55 (finding minimal burden on state in adopting statewide notice and cure process where some counties already have similar processes in place).

Because Defendants fail to provide voters with adequate—or any—notice that their ballot is defective and will be rejected, nor with a meaningful opportunity to cure the defects prior to rejection, Plaintiffs are likely to succeed on the merits of their procedural due process claim.

B. The Public Interest, Likelihood of Irreparable Harm to Plaintiffs and Missouri Voters, and the Balance of Hardships All Favor a Preliminary Injunction.

Here, Plaintiffs have established a likelihood of success on the merits. While this factor is the most significant, *Home Instead*, 721 F.3d at 497, a balancing of the remaining three preliminary injunction factors also strongly weigh in favor of granting Plaintiffs’ requested relief. The public interest—as well as the irreparable harm that Plaintiffs, Plaintiff members, and other Missouri voters would suffer in the absence of an injunction—greatly outweigh any burden Defendants may experience in implementing the requested relief.

1. The public interest and the irreparable harm Plaintiffs, their members, and Missouri voters will experience in this year’s elections as a result of Missouri’s mail and absentee voting schemes weigh strongly in favor of preliminary relief.

Requiring Defendants to meet their constitutional obligations, as well as those set forth in the Materiality Provision of the Civil Rights Act, undoubtedly serves the public interest. *See, e.g., League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1006 (W.D. Mo. 2018) (“[E]nsuring qualified voters exercise their right to vote is always in the public interest.” (internal citation omitted)).

Courts routinely have held that granting a preliminary injunction serves the public interest when it helps permit “as many qualified voters to vote as possible.” *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012); *see also League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (same); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (same); *Democratic Nat’l Comm. v. Bostelmann*, 2020 U.S. Dist. LEXIS 57918, *47 (W.D. Wis. Apr. 2, 2020) (same) (noting also, “[a]s a general matter, ‘[e]nforcing a

constitutional right is in the public interest.” (quoting *Whole Woman’s Health All. v. Hill*, 937 F.3d 864, 875 (7th Cir. 2019)); *Action NC v. Strach*, 216 F. Supp. 3d 587, 648 (M.D.N.C. 2016) (“[F]avoring enfranchisement and ensuring that qualified voters’ exercise their right to vote’ is always in the public interest.” (citation omitted)); *Scott*, 2008 WL 2787931, at *8 (holding that a preliminary injunction “will serve the public interest by . . . extending the opportunity to vote to Missouri citizens in a meaningful way”).

Moreover, ordering a “state to comply with a valid federal statute is most assuredly in the public interest.” *Charles H. Wesley Educ. Found., Inc. v. Cox*, 324 F. Supp. 2d 1358, 1369 (N.D. Ga. 2004). In the instance at hand, “the circumstances . . . suggest the public’s interests in the right to vote, and ensuring that state processes follow federal law, outweigh the public costs for Defendants to comply with a preliminary injunction.” *League of Women Voters of Mo.*, 336 F. Supp. 3d at 1006-07; *see also League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (“Vindicating voting rights and enforcing “a federal statute serve the public interest almost by definition.”).

In the absence of the relief Plaintiffs have requested, Plaintiff members, the communities they represent, and Missouri voters more broadly will be denied their right to vote in the November 2020 election. This defines irreparable harm. *See, e.g., Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (“[T]he right to vote is a constitutionally protected fundamental right. When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”); *Scott*, 2008 WL 2787931, at *7 (this Court holding, in granting a preliminary injunction, that “deprivation of the right to vote is irreparable” as “no monetary award could compensate [the plaintiff’s members] for being unable to vote”); *League of Women Voters of N.C.*, 769 F.3d at 247 (noting that courts “routinely deem restrictions on fundamental voting rights

irreparable injury”). Further, because “[a]ny burden on the right to vote” injures the individuals affected, Plaintiff members and other Missouri residents who manage to navigate the obstacles Defendants have erected and cast a mail-in ballot or cure remote ballot deficiencies still suffer a recognizable harm. *Common Cause of Colo. v. Buescher*, 750 F. Supp. 2d 1259, 1271 (D. Colo. 2010); *see also Wesley Educ. Found.*, 408 F.3d at 1352 (stating that a plaintiff “need not have the franchise wholly denied to suffer injury”).

Moreover, Plaintiff organizations themselves face irreparable harm without a preliminary injunction. Each organization has and will continue to be forced to expend their limited resources educating voters on how to navigate Missouri’s mail and absentee ballot processes, as well as directly assisting voters in navigating these processes. *See* Statement of Facts, *supra* Part D. Filling this need requires Plaintiffs to reduce or eliminate the time and resources devoted to other projects critical to their missions and which are, in many cases also time-bound, such as educating voters on Amendment 3, which will appear on November’s ballot. *Id.* These opportunities cannot be regained after an election has past. *See, e.g., Action NC*, 216 F. Supp. 3d at 643 (“That Organizational Plaintiffs would have to divert resources in the absence of such relief is enough to satisfy their burden of showing a likelihood of suffering irreparable harm.”).

2. Any burden to Defendants does not outweigh the harm to Plaintiffs and Missouri Voters or to the public interest.

Any burden Defendants face must be weighed “against the harm that will result if the Court does not implement the requested relief.” *League of Women Voters of Mo.*, 336 F. Supp. 3d at 1006 (noting also that “[b]ecause a court may examine ‘the harm to all parties involved in the dispute and other interested parties, including the public,’ this Court considers the harm those individuals will experience . . . in the absence of relief preliminary relief” (referencing *Borsheim Builders Supply, Inc. v. Harstad-Cook*, Case No. 4:14-cv-083, 2014 WL 12543857, at *6 (D.N.D. Oct. 3,

2014); *Reg Seneca, LLC v. Harden*, 938 F. Supp. 2d 852, 861 (S.D. Iowa 2013)). Here, Defendants face little burden with respect to time or cost. Plaintiffs' requested relief asks only that:

- Defendants make use of processes already in place by allowing mail-in ballot voters to request a ballot using the same mechanisms absentee voters already utilize;
- Defendants allow mail-in ballots to be returned in-person or by a family member, just as are absentee ballots¹⁹ or, in the alternative, establishing the same postmark and receipt rules for remote ballot voters as UOCAVA voters;
- Prohibiting Missouri from rejecting remote ballots or applications for the omission of information that is not material in determining whether the voter is qualified to cast a ballot in the election under Missouri law; and
- Requiring that voters be given appropriate notice of what deficiencies in their remote ballot could prevent their ballot from being counted and being provided a meaningful opportunity to cure such deficiencies, including by remote means.

As established above, absent such relief, Plaintiffs' members and thousands of other Missouri voters are likely to be disenfranchised in the November 2020 election. This harm is significant. In contrast, Plaintiffs' requested imposes minimal hardship on Defendants, either (1) relying on procedures that are already in place; (2) preventing Defendants from rejecting ballots for several discrete types of common errors; and (3) using voter contact information that is already available to election officials to notify voters whose ballots are deficient, and create basic procedures enabling them to affirm or provide any missing information remotely when a signature or notarization is not required. These remedies, and in particular the first two, are decidedly not resource-intensive, and none will require significant changes in existing procedures.

Courts have routinely ordered meaningful election relief in the months and even weeks leading up to the election or other relevant election deadlines. Indeed, this very court has granted needed election-related preliminary relief just days before relevant election deadlines that relief impacted. *See League of Women Voters of Mo.*, 336 F. Supp. 3d at 1007. Here, "Plaintiffs face

¹⁹ Additionally, as noted *supra*, many voters casting mail-in ballots are already going to the offices of local election authorities to get their ballots notarized.

continuing irreparable harm in the form of divested resources, and the voters they assist face continuing irreparable harm in the form of disenfranchisement,” outweighing the burden on the Defendants. *Id.* at 1006. Further, the form of relief that would require the most time or resources from Defendants is the implementation of a meaningful notice and cure process, which “would occur after the election is over.” *Action NC*, 216 F. Supp. 3d at 648 (noting that when this is the case it “diminish[es] any risk that the injunctive relief would interfere with the administration of the election on Election Day”). Any burden to Defendants, therefore, does not outweigh the harm Plaintiffs, their members, and Missouri voters would face in the absence of the requested relief.

CONCLUSION

Because all relevant factors weigh decisively in favor of granting Plaintiffs request for a temporary restraining order or preliminary injunction should be granted.

Dated: September 19, 2020

Naila Awan*
Kathryn Sadasivan*
DĒMOS
80 Broad Street, Fl 4
New York, NY 10014
Telephone: (212) 485-6065
nawan@demos.org
kasadasivan@demos.org

Chiraag Bains*
DĒMOS
740 6th Street NW, 2nd Floor
Washington, DC 20001
Telephone: (202) 864-2746
cbains@demos.org

Ezra Rosenberg*
Ryan Snow**
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
1500 K Street NW
Suite 900
Washington, DC 20005
(202) 662-8600 (tel.)
(202) 783-0857 (fax)
erosenberg@lawyerscommittee.org
rsnow@lawyerscommittee.org

Respectfully submitted,

/s/ Anthony E. Rothert
Anthony Rothert, #44827
Jessie Steffan, #64861
Kayla Deloach, #72424
ACLU OF MISSOURI FOUNDATION
906 Olive Street, Suite 1130
St. Louis, MO 63101
Telephone: (314) 652-3114
Facsimile: (314) 652-3112
arothert@aclu-mo.org
jsteffan@aclu-mo.org
kdeloach@aclu-mo.org

Denise Lieberman,** #47013
MISSOURI VOTER PROTECTION
COALITION
6047 Waterman Blvd.
St. Louis, MO 63112
Telephone: (314) 780-1833
denise@movpc.org
denise@deniselieberman.com

* Admitted *Pro Hac Vice*

** Motion for Admission *Pro Hac Vice*
forthcoming

CERTIFICATE OF SERVICE

I certify that on September 21, 2020, I filed the foregoing Suggestions in Support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction with the Clerk of the Court using the CM/ECF system, and a copy was made available to all electronic filing participants. A copy will be sent by email to counsel for all defendants for whom counsel has not appeared.

/s/ Anthony E. Rothert _____