SC97833

IN THE SUPREME COURT OF MISSOURI

THE MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, et al.,

Appellants,

v.

REBECCA KARNEY, et al.,

Respondents.

Appeal from the Circuit Court of Jackson County, Missouri at Independence
The Honorable James Francis Kanatzar, Circuit Judge

BRIEF OF APPELLANTS

ERIC S. SCHMITT
ATTORNEY GENERAL

Alyssa M. Mayer, #64008
Assistant Attorney General
Zachary M. Bluestone, # 69004
Deputy Solicitor General
Missouri Attorney General's Office
615 E. 13th Street, Suite 401
Kansas City, Missouri 64106
(816) 889-5023
(816) 889-5006
alyssa.mayer@ago.mo.gov

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

JURISDICTIONAL STATEMENT 6

STATEMENT OF FACTS 6

POINTS RELIED ON 11

STANDARD OF REVIEW 13

ARGUMENT 14

I. The Trial Court Erred In Construing Section 105.582(2) As A Complete Ban On Picketing By Public Employees Rather Than Limiting Its Application To Picketing In Conjunction With A Strike And Picketing About Disputes Over Employment Conditions Governed By A Labor Agreement Because The Rules Of Statutory Construction Require A Narrow Interpretation Of The Statute. 14

A. The Plain Meaning of Section 105.585(2) Requires Labor Agreements to Expressly Prohibit Public Employee Picketing in Conjunction with a Labor Strike and Acknowledge the Limits of Public Employee Picketing With Regard to Personnel Matters. 16

B. Even if "Picketing of Any Kind" Were Ambiguous, Basic Principles of Statutory Construction Require Reading the Section 105.585(2) To Require Labor Agreements to Prohibit Picketing in Conjunction With Labor Striks and to Acknowledge the Possible Consequences When Public Employees Picket Over Personnel Matters 18

II. The Trial Court Erred In Determining That The Picketing Referenced In Section 104.585(2) is a Matter of Public Concern That Constitutes Protectable Speech Under *Connick v. Myers* And It's Progeny. 22

A. The *Connick-Pickering* Framework Governs Appellees' Free Speech Claim. 24

B. Section 105.585(2) is Consitutional Because Picketing About "Personnel Matters" or Other Conditions of Employment Governed By A Labor Agreement Is Not Speech on A Matter of Public Concern. .....

C. Even if Public Employee Picketing About An Employment Dispute Touched On A Matter of Public Concern, the State's Interest in Avoiding the Disruption Associated with Labor Picketing Outweighs Any Free Speech Interest 27

III. The Trial Court Erred In Determining That Section 105.585(2)'s Picketing Provisions Constitute An Impermissible "Statutory Blanket Requirement That Restrics Speech" Under The U.S. Supreme Court Decision in *Janus*. **31**

IV. The Trial Court Erred In Determining That Section 105.585(2) Alternatively Violates The Employees' Rights To Collective Bargaining Because Public Employees Collective Bargaining Rights Do Not Include The Right to Picket About Disputes Over Employment Conditions Governed By A Labor Agreement. 34

CONCLUSION 39

CERTIFICATE OF SERVICE AND COMPLIANCE 40

TABLE OF AUTHORITIES

Page(s)

Cases

138 S. Ct. 2448 (2018) 31, 32, 33
Abood v. Detroit Bd. of Ed.,
431 U.S. 209 (1977) 31, 32
Alberici Constructors, Inc. v. Dir. of Revenue,
452 S.W.3d 632 (Mo. banc 2015) 18
Am. Fed'n of Teachers v. Ledbetter,
387 S.W.3d 360 (Mo. banc 2012) 36, 37
Bailey v. Dep't of Elementary & Secondary Ed.,
451 F.3d 514 (8th Cir. 2006) 27
Bateman v. Rhinehart,
391 S.W.3d 441 (Mo. banc 2013) 11, 16
Bauer v. Rutter,
256 S.W.2d 294 (St. L. Ct. App. 1953) 20
Bd. of Educ. v. State,
47 S.W.3d 366 (Mo. banc 2001) 13
Bd. of Registration for Healing Arts v. Boston,
72 S.W.3d 260 (Mo. App. W.D. 2002) 15
Blaske v. Smith & Entzeroth, Inc.,
821 S.W.2d 822 (Mo. 1991) 13
Boatmen's Bancshares, Inc. v. Dir. of Revenue,
757 S.W.2d 574 (Mo. banc. 1988) 20
Bolen v. Orchard Farm R–V Sch. Dist.,
291 S.W.3d 747 (Mo. App. 2009) 20
Borough of Duryea, Pa. v. Guarnieri,
564 U.S. 379 (2011) ..... passim
Breeze v. Goldberg,
595 S.W.2d 381 (Mo. App., W.D. 1980) 21
City of San Diego v. Roe,
543 U.S. 77 (2004) 23, 24, 25, 26
Connick v. Myers,
461 U.S. 138 (1983) ..... passim
Crain v. Bd. Of Police Com'rs,
920 F.2d 1402 (8th Cir. 1990) 25, 30
Doe v. Phillips,
194 S.W.3d 833 (Mo. banc 2006) 22

E. *Mo. Coalition of Police, v. City of Chesterfield*,
386 S.W.3d 755 (Mo. banc 2012) 35, 36
Farmers' & Laborers' Co-op Ins. Ass'n v. Dir. of Revenue,
742 S.W.2d 141 (Mo. banc 1987) 15
Hammerschmidt v. Boone Cty.,
877 S.W.2d 98 (Mo. banc 1994) 13
Howard v. City of Kan. City,
332 S.W.3d 772 (Mo. banc. 2011) 11, 16
Hughes v. Sup. Ct. of Cal. in and for Contra Costa Cty.,
339 U.S. 460 (1950) 28
Independence-Nat. Educ. Ass'n v. Independence Sch. Dist.,
223 S.W.3d 131 (Mo. banc 2007) 34, 35, 37, 38
Medvick v. Ollendorff,
772 S.W.2d, 696 (Mo. App. E.D. 1989) 25
Missouri Ass'n of Club Executives, Inc. v. State,
208 S.W.3d 885 (Mo. banc 2006) 11, 21
Nord v. Walsh Co.,
757 F.3d 734 (8th Cir. 2014) 27
Pickering v. Bd. Of Educ. Of Township High School Dist.,
391 U.S. 563 (1968) 12, 22, 23, 27
Quinn [*v. Buchanan*,
298 S.W.2d 413 (Mo. banc 1957) 37
Roberts v. Ban Burwn Pub. Sch.,
773 F.2d 949 (8th Cir. 1985) 25, 28
Schweich v. Nixon,
408 S.W.3d 769 (Mo. banc 2013) 7, 8, 10
Spradlin v. City of Fulton,
982 S.W.2d 255 (Mo. banc 1998) 15
St. Louis Police Leadership Org. v. City of St. Louis,
484 S.W.3d 882 (Mo. App. E.D. 2016) 38
State ex rel. Union Elec. Co. v. PSC,
399 S.W.3d 467 (Mo. App. W.D. 2013) 14
State v. Lancaster,
506 S.W.2d 403 (Mo. 1974) 19
State v. Payne,
250 S.W.3d 815 (Mo. App. W.D. 2008) 18
Webster Groves v. Institutional and Public Employees Union,
524 S.W. 2d 162, (Mo. App. E.D. 1975) 28, 29, 30
West Central Missouri Regional Lodge #50 v. City of Grandview,
460 S.W.3d 425 (Mo. App. W.D. 2015) 36, 37, 38

Westin Crown Plaza Hotel Co. v. King,
664 S.W.2d 2 (Mo. banc 1984) 13, 15
Williams v. Mercy Clinic Springfield Communities,
568 S.W.3d 396 (Mo. banc 2019) 13

Statutes

Article I, Section 29 of the Missouri Constitution 9, 34, 35, 38
Article I, Sections 8-9 of the Missouri Constitution..... 9
MO. CONST. ART. V, § 3 6
Section 105.585(2), RSMo (2018) .....passim
Section 105.595(2), RSMo (2018) 7
§ 105.585, RSMo..... 19

JURISDICTIONAL STATEMENT

This appeal challenges the trial court's finding the Section 105.585(2), RSMo (2018),[1] a provision contained with a newly enacted statute, House Bill 1413 (2018), violates the constitutions of Missouri and the United States. Thus, this appeal falls within the scope of the Supreme Court's exclusive jurisdiction. MO. CONST. ART. V, § 3.

STATEMENT OF FACTS

In 2018, the Missouri General Assembly passed HB 1413, a comprehensive public-sector union reform bill addressing critical issues of public importance. As demonstrated during almost two hours of debate that took place on the House floor on May 17, 2018, HB 1413 enacted several procedural changes designed to benefit both the state and public-sector

[1] Unless otherwise noted, all statutory references are to RSMo (2018).

employees.[2] Among its many provisions, HB 1413 enacted Section 105.595(2), RSMo (2018),[3] which provides:

> Every labor agreement shall expressly prohibit all strikes and picketing of any kind. A strike is any refusal to perform services, walkout, sick-out, or any other form of interference with the operations of any public body. Every labor agreement shall include a provision acknowledging that any public employee who engages in any strike or concerted refusal to work, or who pickets over any personnel matter, shall be subject to immediate termination of employment.

Id. During debate on this issue, the bill's sponsor was asked directly about the purpose of this provision, and whether the provisions regarding picketing infringe on public employees' First Amendment rights. The bill sponsor explained that the picketing language tracked current Missouri law concerning picketing in the context of public-sector employment and that it was not

---

[2] Video of this debate is publically available on the Missouri House of Representatives' website at: https://mohouse.granicus.com/MediaPlayer.php?view_id=1&clip_id=744&starttime=4947&autostart=1&embed=1. This Court may take judicial notice of this publically available information about HB 1413. *See Schweich v. Nixon*, 408 S.W.3d 769, 778 (Mo. banc 2013) ("This Court may take judicial notice of a bill, just as it does of statutes or of the proceedings by which laws are enacted."); *see also id.* at 778 n.11 (collecting cases). Further, this publically available information has been presented to the trial court in the course of a lawsuit currently pending in St. Louis County which challenges the constitutionality of HB 1413 in its entirety. Should this Court disagree with Appellants that it can take judicial notice of this information, Appellants respectfully request that this Court reserve ruling on this case pending resolution of the St. Louis County case, in order to reduce any potential for inconsistent results regarding the constitutionality of a Missouri statute.

designed to make substantive changes in that regard. Instead, the provision requires that this "clarifying language" is included in bargaining agreements for the purpose of raising employee awareness of public-employee picketing laws and increasingly the likelihood that they will conduct themselves accordingly.[4]

Two employees of the Jackson County, Missouri Sherriff's Office, Rebecca Karney and Johnny Miller (hereinafter the "Public Employees"), brought a petition for declaratory and injunctive relief against enforcement of Section 105.585(2), against the Department of Labor and Industrial Relations, Darryl Forte in his official capacity as Jackson County Sheriff, and Todd Smith, in his official capacity as Chair of the State Board of Mediation. D470 - D474.

The Public Employees, both members of Communications Workers of America Union Local 360, (D474, ¶ 3), asserted that this provision violates their constitutional right to freedom of speech, including peaceful picketing. They also claim that employees have the right to peacefully assemble under Article I, Sections 8-9 of the Missouri Constitution and their constitutional right to organize and bargain collectively under Article I, Section 29 of the Missouri Constitution. *Id.* ¶ 15. The trial court granted Plaintiffs' request for

[4] See video referenced in footnote 2, above, at 00:49:18 – 00:50:40.

a temporary restraining order on September 14, 2018, (D478), and the court entered a preliminary injunction on October 23, 2018. D487; D488. On December 14, 2018 a trial was held on the Public Employees' petition. D510, p. 1; A1.

At trial, Appellants presented evidence from Mr. Thomas McCarthy, an expert in the area of collective bargaining, including private-sector practices in that area and the practices associated with labor striking and picketing. D503. Mr. McCarthy has specialized in the area of traditional labor relations and collective bargaining continuously since 1973. D504, pp. 6-9. He has been personally negotiating collective bargaining agreements (CBAs) and counseling parties on practices associated with collective bargaining, striking, and picketing continuously for 40 years. *Id.* pp. 6-9. In that time, he has personally participated in the collective bargaining process hundreds of times (either at the negotiating table or behind-the-scenes counseling of employers and, on occasion, unions). *Id.* pp. 15, 80:16-81:1. His collective bargaining experience includes, among other things, participating in labor relations and negotiations during a significant number of active strikes and pickets. *Id.* pp.75:24-76:7, 81:2-23. Mr. McCarthy explained that Section 105.585(2) serves the State's interest in preventing a more tangibly destructive form of disruption common to and uniquely the result of labor picketing. That disruption is the interruption or delay in the delivery of supplies and services

the public employer needs to function and ordinarily obtains from union vendors (e.g., delivery of packages by UPS, a unionized delivery service). D503; D504 pp. 20:5-20, 21:24-22:22; 56:14-59:4, 83:21-84:19.

Appellants also presented evidence that the Employees both conceded in their depositions they understand that "picketing" means labor picketing. Indeed, they admitted that they want to patrol in front of the Jackson County Sheriff's Office with signs that publicize their dissatisfaction with the terms and conditions of their employment. D505, pp. 26:13-23, 28:9-24, 31:25-33:2; D506, pp. 29:3-16, 31:24-33:16. More specifically, they want to picket about how much they are paid to be dispatchers. *Id*.

The trial court issued its Judgment on March 12, 2019, holding that Section 106.585(2) "clearly and undoubtedly violates the Constitution of the State of Missouri and the United States and palpably affront fundamental law embodied in the constitutions of the State of Missouri and the United States." D501.

POINTS RELIED ON

I. The Trial Court Erred In Construing Section 105.582(2) As A Complete Ban On Picketing By Public Employees Rather Than Limiting Its Application To Picketing In Conjunction With A Strike And Picketing About Disputes Over Employment Conditions Governed By A Labor Agreement Because The Rules Of Statutory Construction Require A Narrow Interpretation Of The Statute.

Howard v. City of Kan. City, 332 S.W.3d 772 (Mo. banc. 2011)
Bateman v. Rhinehart, 391 S.W.3d 441 (Mo. banc 2013)
Missouri Ass'n of Club Executives, Inc. v. State, 208 S.W.3d 885 (Mo. banc 2006)

II. The Trial Court Erred In Determining That The Picketing Referenced In Section 104.585(2) is a Matter of Public Concern That Constitutes Protectable Speech Under *Connick v. Myers* And It's Progeny.

Connick v. Myers, 461 U.S. 138 (1983)
Pickering v. Bd. Of Educ. Of Township High School Dist., 391 U.S. 563 (1968)
Borough of Duryea, Pa. v. Guarnieri, 564 U.S. 379 (2011)

III. The Trial Court Erred In Determining That 105.582(2)'S Picketing Provisions Constitutes An Impermissible "Statutory Blanket Requirement That Restricts Speech" Under The U.S. Supreme Court Decision In *Janus*.

Janus v. AFSCME, Council, 138 S. Ct. 2448 (2018)

IV. The Trial Court Erred In Determining That Section 105.585(2) Alternatively Violates The Employees' Rights To Collective Bargaining Because Public Employees Collective Bargaining Rights Do Not Include The Right to Picket About Disputes Over Employment Conditions Governed By A Labor Agreement.

Independence-Nat. Educ. Ass'n v. Independence Sch. Dist., 223 S.W.3d 131 (Mo. banc 2007*)*

STANDARD OF REVIEW AND PRESERVATION OF ERROR

Appellants raised these issues in their opposition to Public Employees' temporary restraining order (D473), in their supplemental suggestions in opposition to Public Employees' temporary restraining order (D476), and in their opposition to declaratory judgment and permanent injunction. D502.

The challenge to Section 105.582(2) under the constitutions of the Missouri and the United States raises questions of law to which this Court applies de novo review. *Williams v. Mercy Clinic Springfield Communities*, 568 S.W.3d 396, 406 (Mo. banc 2019). Because constitutional claims against a bill's passage are strongly disfavored by the courts, courts are to "interpret[] procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation." *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). "A statute is presumed to be constitutional and will not be invalidated unless it 'clearly and undoubtedly' violates some constitutional provision and 'palpably affronts fundamental law embodied in the constitution.'" *Bd. of Educ. v. State*, 47 S.W.3d 366, 368–69 (Mo. banc 2001) (citations omitted). Further, courts must "resolve all doubt in favor of the act's validity." *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984).

As courts have long noted, if one interpretation of a statute results in the statute being constitutional while another interpretation would cause it to be unconstitutional, the constitutional interpretation is presumed to have been intended. *Blaske v. Smith & Entzeroth, Inc.,* 821 S.W.2d 822, 838-39 (Mo. 1991). Finally, courts are required to construe legislative enactments so as to render them constitutional and avoid the effect of unconstitutionality, if it is reasonably possible to do so. *State ex rel. Union Elec. Co. v. PSC*, 399 S.W.3d 467, 470 (Mo. App. W.D. 2013).

ARGUMENT

I. THE TRIAL COURT ERRED IN CONSTRUING SECTION 105.582(2) AS A COMPLETE BAN ON PICKETING BY PUBLIC EMPLOYEES RATHER THAN LIMITING ITS APPLICATION TO PICKETING IN CONJUNCTION WITH A STRIKE AND PICKETING ABOUT DISPUTES OVER EMPLOYMENT CONDITIONS GOVERNED BY A LABOR AGREEMENT.

The trial court's determination that Section 105.582(2) violates public employees' constitutional right to free speech is based on the trial court's unreasonably broad interpretation of the statute's language. Section 105.585(2) provides:

> Every labor agreement shall expressly prohibit all strikes and picketing of any kind. A strike is any refusal to perform services, walkout, sick-out, or any other form of interference with the

> operations of any public body. Every labor agreement shall include a provision acknowledging that any public employee who engages in any strike or concerted refusal to work, or who pickets over any personnel matter, shall be subject to immediate termination of employment.

Id. Without any analysis of the language in the statute, the trial court concluded that the first sentence of Section 105.582(2) requires CBAs to prohibit "picketing of any kind" by a public employee. D510, p. 2. The trial court then interpreted the second reference to picketing as a "prohibition against picketing" by public employees "over any personnel matter[.]" *Id.* at 3-4.

The trial court's construction of the scope of the first sentence in Section 105.582(2) is inconsistent with the fundamental rules of statutory construction because it fails to read the plain meaning of the statutory text, fails to read the statutory provision by reference to the whole act, and renders a provision of Section 105.585(2) a nullity. *See Bd. of Registration for Healing Arts v. Boston*, 72 S.W.3d 260, 265 (Mo. App. W.D. 2002) (holding that "[c]ourts must give effect to statutory language as written," giving meaning to every word without rendering any provision a nullity (citing *Spradlin v. City of Fulton*, 982 S.W.2d 255, 261 (Mo. banc 1998)). When applied to Section 105.582(2), the rules of statutory construction establish the narrow scope of the statute.

A. The Plain Meaning of Section 105.585(2) Requires Labor Agreements to Expressly Prohibit Public Employee Picketing in Conjunction with a Labor Strike.

The first step in statutory construction is "to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning." *Farmers' & Laborers' Co-op Ins. Ass'n v. Dir. of Revenue*, 742 S.W.2d 141, 145 (Mo. banc 1987). "When the words are clear, there is nothing to construe beyond applying the plain meaning of the law." *Bateman v. Rhinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013).

Section 105.585(2) defines the term "strike" but does not define the term "picketing." When construing the plain meaning of the law, "undefined words are given their plain and ordinary meaning as found in the dictionary to ascertain the intent of lawmakers." *Howard v. City of Kan. City*, 332 S.W.3d 772, 780 (Mo. banc. 2011).

The word "picket" is commonly defined as "[a] person posted at a labor organization at an approach to the place of work affected by a strike to ascertain the workers going and coming and to persuade or otherwise influence them to quit working there." WEBSTER'S SECOND NEW INTERNATIONAL DICTIONARY 1856; *see also* CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/dictionary/english/picket, ("a person stationed by a union or the like outside a factory, store, mine, etc., in order to

dissuade or prevent workers or customers from entering it during a strike"). Thus, the term picketing in Section 105.582(2) applies to *labor* picketing about disputes over the conditions of employment in conjunction with a labor dispute. In other words, Section 105.585(2) is not a wholesale ban that abolishes the rights of public employees to picket about anything and everything.

Further, the plain meaning of the second reference to picketing *is not* a "prohibition against picketing" by public employees "over any personnel matter[.]" D510, p. 3-4; A3-4. Unlike the first sentence, the second reference to picketing does not use the word "prohibit" at all. This sentence merely requires labor agreements to acknowledge "that any public employee who … pickets over any personnel matter, shall be subject to immediate termination." Acknowledge is defined as "to accept the truth or recognize the existence of something." *See* CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/acknowledge. It requires that labor agreements to admit the potential consequences of engaging in the specified conduct. This is exactly what the bill sponsor explained, that provision was added only as "clarifying language" in bargaining agreements because it requires public sector unions to acknowledge the confines of the current public-employee picketing laws.

B. Even if "Picketing of Any Kind" Were Ambiguous, Basic Principles of Statutory Construction Require Reading Section 105.852(2) To Require Labor Agreements to Prohibit Picketing in Conjunction with Labor Strikes and to Acknowledge the Possible Consequences When Public Employees Picket Over Personnel Matters.

The trial court erred in failing to analyze the statutory language under the traditional rule of statutory construction because its interpretation of the term "picketing" reads inconsistency into the statute. The circuit court broadly interpreted statute's first reference to picketing to include all picketing "of any kind," but interpreted the second reference to picketing as a "prohibition against picketing" by public employees "over any personnel matter[.]" (J. at 3-4). If the statute already prohibited "picketing of any kind," then there is no need for the statue to prohibit picketing over personnel matters. Thus, the district court's interpretation of these two provisions renders the second superfluous. *See, e.g.*, *Alberici Constructors, Inc. v. Dir. of Revenue*, 452 S.W.3d 632, 638 (Mo. banc 2015): "This Court presumes "that the legislature did not insert idle verbiage or superfluous language in a statute.""); *State v. Payne*, 250 S.W.3d 815, 819 (Mo. App. W.D. 2008) ("The words in a statute are presumed to have meaning, and any interpretation rendering statutory language superfluous is not favored.").

The trial court's interpretation of the Section 105.585(2) as both unconstitutional *and* illogical automatically requires this Court to review the

statutory language. Under the principles of statutory construction there is a much narrower, logical, *and* constitutional interpretation of the term "picketing" than the one used by the trial court.

i. Section 104.582(2) must be read in light of the act as a whole.

When interpreting any potential ambiguity in the term "picketing of any kind" in Section 105.585(2), the specific governs the general. "Where a statute enumerates particular classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified." *State v. Lancaster*, 506 S.W.2d 403, 405 (Mo. 1974).

Section 105.585(2) is the second subparagraph in a long enumerated list of contractual provisions that must be included within a public sector labor agreement. A labor agreement, in turn, is specifically defined as one "negotiated between a public body and a labor organization" that "may cover wages, benefits, and all other terms and conditions of employment for public employees" who are members of that labor organization. § 105.585, RSMo. So, while the prohibition on "picketing of any kind" might seem all-encompassing if considered strictly in isolation, the defined term "labor agreement" necessarily limits "picketing of any kind" to the subject matter of the labor agreement—that is, the "terms and conditions of employment." § 105.585, RSMo.

The remaining language in Section 105.585(2) leaves no room for doubt about its narrow application. The prohibition in that provision is on "all ***strikes and picketing*** of any kind." § 105.585 (2), RSMo. The word "and" conjoins picketing to strikes. And the word strikes unambiguously denotes activity that only occurs during a labor dispute. R.S. Mo. § 105.585(2) ("A strike shall include any refusal to perform services, walkout, sick-out, sit-in, or any other form of interference with the operations of any public body"). The General Assembly's use of a conjunction to link picketing to strikes is significant—it reveals the intent to exclude picketing that is unrelated to a labor dispute. "The use of the word 'and' . . . ordinarily, usually and in this context connotes the idea of 'in addition to' or 'plus.' It implies the addition of something to something else." *Boatmen's Bancshares, Inc. v. Dir. of Revenue*, 757 S.W.2d 574, 579 (Mo. banc. 1988), J. Houser, dissenting. The phrase "of any kind" is a prepositional phrase modifying "strikes and picketing." The trial court was not free to disregard that Section 105.585(2) expressly links picketing to strikes. Rather, the Court "must construe provisions of the entire legislative act together and, to the extent reasonably possible, harmonize all provisions." *Bolen v. Orchard Farm R–V Sch. Dist.*, 291 S.W.3d 747, 751 (Mo. App. 2009).

ii. The trial court's interpretation of Section 105.582(2) fails to consider other rules of statutory construction.

The trial court's interpretation of Section 105.585(2) as a blanket restriction abolishing all forms of public employee picketing reads "picketing of any kind" in a vacuum. This reading divests the statutorily defined term "labor agreement" of all significance or limiting effect. *Bauer v. Rutter*, 256 S.W.2d 294 (St. L. Ct. App. 1953) ("[S]ignificance must be attached to every word in a statute or else some words will be without effect.").

The trial court's reading of Section 105.585(2) also produces an unreasonable result and an avoidable constitutional problem. In construing a statute, courts must presume that the General Assembly intended a logical and reasonable result, not an absurd one. *Breeze v. Goldberg*, 595 S.W.2d 381 (Mo. App., W.D. 1980). Courts also must presume that the General Assembly would not pass laws in violation of the constitution. *Missouri Ass'n of Club Executives, Inc. v. State*, 208 S.W.3d 885, 888 (Mo. banc 2006). The notion that the General Assembly enacted a blatantly unconstitutional wholesale ban that abolishes every right of public employees to picket about any issue irrespective of its relationship to a labor agreement is not reasonable. The narrower interpretation of Section 105.585(2) as (1) an express prohibition on public employees' labor picketing in conjunction with a labor strike, and (2) a requirement that public sector employers and unions *acknowledge* the confines of the current public-employee picketing laws in their labor agreements.

Thus, this Court should reverse the trial court's unreasonable and anti-textual interpretation, which avoids constitutional problems while still given effect to the language the General Assembly enacted.

II. THE TRIAL COURT ERRED IN DETERMINING THAT THE PICKETING REFERENCED IN SECTION 105.582(2) IS A MATTER OF PUBLIC CONCERN THAT CONSTITUTES PROTECTABLE SPEECH UNDER *CONNICK V. MYERS*, 461 U.S. 138 (1983), AND ITS PROGENY.

The trial court incorrectly analyzed the rest of Appellants' arguments in light of its broad interpretation of Section 105.585(2). D510, p. 4; A4 ("The thrust of the State's response is that the constitutional analysis outlined above does not apply to Plaintiffs because they are public employees."). To the contrary, the Appellants' position is that, *when it is properly construed*, Section 105.585(2) withstands constitutional scrutiny because public employers have always had the right to restrict their employees' speech about routine employment and personnel matters. The underlying rationale is that "a citizen who accepts public employment must accept certain limitations on his or her freedom." *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 386 (2011). "Restraints are justified by the consensual nature of the employment relationship and by the unique nature of the government's interest." *Id.* at 387. Indeed, the state's compelling interests "justify a cautious and restrained approach to the protection of speech by public employees." *Id.* at 389.

A. The *Connick-Pickering* Framework Governs Appellees' Free Speech Claim.

Public employees' free speech claims against the government are analyzed under the framework set forth in *Connick v. Myers*, 461 U.S. 138 (1983), and *Pickering v. Bd. Of Educ. Of Township High School Dist.*, 391 U.S. 563 (1968). *See also Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006) ("[A]nalysis of a section of the federal constitution is "strongly persuasive in construing the like section of our state constitution."). The *Connick-Pickering* framework is a two-step analysis. The threshold question is whether the speech addresses a "matter of public concern." *Connick*, 461 U.S. at 147; *City of San Diego v. Roe*, 543 U.S. 77, 82 (2004) (public concern test is the "threshold inquiry"). If not, the inquiry ends and the Public Employees lose. *Connick*, 461 U.S. at 147. But, "[e]ven if an employee does speak as a citizen on a matter of public concern, the employee's speech is not automatically privileged." *Guarnieri*, 564 U.S. at 386. In that event, courts move to the second step and perform a balancing analysis. "Courts balance the First Amendment interest of the employee against the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id.* (quoting *Pickering*, 391 U.S. at 568) (internal quotation marks omitted).

As explained below, Section 105.585(2) regulates speech—public employees' disputes about the terms and conditions of employment governed

by a labor agreement with their public employer—that is not a matter of public concern. Regardless, the State's interest in ensuring that public labor agreements fulfill their defining purpose of preventing significant disruptions due to labor strife dramatically outweighs any free-speech interest incident to labor picketing.

B. Section 105.585(2) is Constitutional Because Picketing About "Personnel Matters" or Other Conditions of Employment Governed by a Labor Agreement Is Not Speech on a Matter of Public Concern.

To determine whether particular speech is a matter of public concern, courts "examine the content, form, and context" of the speech. *Connick*, 461 U.S. at 146-47. The question is whether the speech can be "fairly considered as relating to any matter of political, social, or other concern to the community," *id.* at 146, such that the speech is "of value and concern to the public at the time of publication," *Roe*, 543 U.S. at 84. Public employee speech about "matters only of personal interest" is not a matter of public concern. *Connick*, 461 U.S. at 147. When speech does not touch on a public concern, "absent the most unusual circumstances . . . government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment." *Id.* at 146, 147. In other words, absent public concern, government action "may not be fair," but it is

"not subject to judicial review even if the reasons for [it] are mistaken or unreasonable." *Id.* at 146.

Courts applying this test have held repeatedly that everyday workplace grievances are matters of personal interest to public employees that do not implicate public concerns. *See, e.g., Connick*, 461 U.S. at 148-49 (transfer to different office); *Guarnieri*, 564 U.S. at 383, 399 (overtime, change of employee's duties, use of police car, smoking in workplace); *Crain v. Bd. Of Police Com'rs*, 920 F.2d 1402, 1405, 1411 (8th Cir. 1990) (sick leave regulations and "size of a salary increase or the number of company holidays"); *Roberts v. Ban Burwn Pub. Sch.*, 773 F.2d 949, 956 (8th Cir. 1985) (handling of complaints about rules governing funds given for and administration of fifth-grade field trips); *Medvick v. Ollendorff*, 772 S.W.2d, 696, 701 (Mo. App. E.D. 1989) (administrative regulation generally prohibiting statements "to a co-worker" of a racial nature that are "unwanted or imprudent"). "To conclude otherwise would ignore the common-sense realization that government offices could not function if every employment decision became a constitutional matter." *Roe*, 543 U.S. at 83 (quoting *Connick*, 461 U.S. 143).

The trial court erred in determining that Section 105.585(2)'s references to public employee labor picketing restrict the sort of workplace grievances that are matters of public concern. Indeed, potential prohibition or acknowledgment contained *within a labor agreement* applies only during the

term of a labor agreement itself. This labor agreement is reached *after* being negotiated pursuant to the collective bargaining process. Thus, it applies only when public employees' labor picketing is of the least value or concern to the public—i.e., during the term of a labor agreement reached after being negotiated pursuant to the collective bargaining process. *See Roe*, 543 U.S. at 84 (speech only protected if "of value and concern to the public *at the time of publication*") (emphasis added). Particularly under these circumstances, "[t]o presume that all matters which transpire within a government office are of public concern would mean that virtually every remark . . . would plant the seed of a constitutional case." *Id.*

The law is clear that "[the] right to participate as a citizen . . . is not a right to transform everyday employment disputes into matters for constitutional litigation . . . ." *Guarnieri*, 564 U.S. 379, 382, 399 (2011) (applying *Connick-Pickering* analysis in rejecting plaintiff's claims over "routine disputes with government employers" under the Petition Clause).

The trial court's conclusion that Section 150.585(2) broadly *prohibits* picketing regarding personnel issues at all times, but this is based on its broad interpretation of the statute. As previously noted, labor agreements must only *acknowledge* that public employees are subject to termination under certain conditions, including picketing over personnel matters. A public employer and labor union cannot "accept the truth" that employees are subject to termination

for conduct that is lawful. The only possible restriction a collective bargaining agreement can *acknowledge* are those that already exist. Under a more narrow construction of Section 1050.585(2), the statute does not *prohibit* public employees from picketing over matters of public concern. The Court's inquiry may stop here if it agrees.

C. Even if Public-Employee Picketing About an Employment Dispute Touched on a Matter of Public Concern, the State's Interest in Avoiding the Disruption Associated with Labor Picketing Outweighs Any Free-Speech Interest.

Even if the statute affirmately restricts Public Employees' picketing over personnel matters, the trial erred in determining that Public Employees' claims satisfy the second step of *Connick-Pickering*. As stated above, this step requires the Court to balance the state's interest in providing public services against any free-speech interest. *Pickering*, 391 U.S. at 568. The more limited the protectable free-speech interest is, the more deference the state receives when restricting the speech. *Connick*, 461 U.S. at 150, 152. To prevail at this step of the *Connick-Pickering* analysis, Defendants need not prove actual disruption of public services. *Id.* at 151-52 ("[T]here is no demonstration here that [the public employee's speech] impeded [her] ability to perform . . . [but] we do not see the necessity for an employer to allow events to unfold to the extent that the disruption is manifest before taking action."); *Nord v. Walsh Co.*, 757 F.3d 734, 743 (8th Cir. 2014) (citing *Connick* and determining no

evidence of actual disruption required); *Bailey v. Dep't of Elementary & Secondary Ed.*, 451 F.3d 514, 521 (8th Cir. 2006) ("[S]uch evidence [of actual disruption] is not required. . . .").

Section 105.585(2) serves the state's compelling interest in preventing the disruption inherent in labor picketing. This is particularly true where, as here, the disputed conditions of employment should no longer be up for discussion because they already have been negotiated and agreed to as part of the collective bargaining process. Indeed, "[t]he concerns underlying the *Pickering* balance suggest that a government as an employer has a legitimate interest in achieving compliance with decisions that, while once open to dispute and discussion, have been made through proper channels." *Roberts*, 773 F.2d at 956.

Courts recognized long ago that, by design, labor pickets creates disruption. "[T]he very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. . . . [T]he very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication." *Hughes v. Sup. Ct. of Cal. in and for Contra Costa Cty.*, 339 U.S. 460, 465 (1950) (citing additional authority). When public employers enter into labor agreements, an obvious and primary benefit of the bargain is to avoid labor pickets (and other labor strife) for the duration of the agreement. Public

employers that negotiate a labor agreement in good faith cannot be required to tolerate the likelihood of the significant disruption occasioned by their employees marching back and forth at the workplace with signs publicly deriding the labor bargain the parties have struck. *See Webster Groves v. Institutional and Public Employees Union*, 524 S.W. 2d 162, (Mo. App. E.D. 1975).

The State presented evidence adduced by the parties during discovery which demonstrates that Section 105.585(2) serves the State's interest in preventing a more tangibly destructive form of disruption common to and uniquely the result of labor picketing. That disruption is the interruption or delay in the delivery of supplies and services the public employer needs to function and ordinarily obtains from union vendors (*e.g.*, delivery of packages by UPS, a unionized delivery service). D503; D504 pp. 20:5-20, 21:24-22:22; 56:14-59:4, 83:21-84:19. This form of disruption happens when other unions and their members refuse to cross picketing employees' picket line. *Id.* This practice of unions honoring other union employees' pickets is so well understood as an inevitable incidence of labor picketing that many labor agreements in both the public and private sectors expressly acknowledge and make provisions for it. *Id.*, pp. 21:24-22:22. In this regard, Public Employees do not hide their true intentions here: they are not before the Court to protect their right to participate in public discourse. Rather, Public Employees admit

they understand that "picketing" means labor picketing, and they want the constitutional right to patrol in front of the Jackson County Sheriff's Office with signs that publicize their dissatisfaction with the terms and conditions of their employment. D505, pp. 26:13-23, 28:9-24, 31:25-33:2; D506, pp. 29:3-16, 31:24-33:16. More specifically, they want to picket about how much they are paid to be dispatchers. *Id.* Picketing about wages governed by a labor agreement is a textbook example of speech that the State has every right to restrict without violating Employees' rights to free speech, even if Employees' specific expressions incidentally touch on matters of public concern. *Crain*, 920 F.2d at 1411.

The minimal free-speech interest public employees have in picketing about grievances over the terms and conditions of their labor agreements stands in stark contrast to the State's significant interests. As discussed at length above, public employees generally have no protectable free-speech interest in workplace grievances, much less those already negotiated as part of a labor agreement.

The interests here are not equally weighted. To the contrary, the State's interests in achieving labor peace, assuring continuity of public services, and receiving the benefits of its labor agreement bargain far outweigh the free-speech interest in labor picketing about disputes over the terms and conditions of public employees' labor agreements.

Therefore, even if this Court disagrees that a provision acknowledging the confines of the current public sector labor laws affirmatively restricts public employees' ability to picket over personnel matters of public concern, such restriction is justified.

III. THE TRIAL COURT ERRED IN DETERMINING THAT 105.582(2)'S PICKETING PROVISIONS CONSTITUTES AN IMPERMISSIBLE "STATUTORY BLANKET REQUIREMENT THAT RESTRICTS SPEECH" UNDER THE U.S. SUPREME COURT DECISION IN *JANUS*.

In *Janus v. AFSCME, Council,* the United States Supreme Court struck down an Illinois law authorizing public-sector unions to charge nonmember public employees "agency fees" for the union's collective bargaining activity, overruling *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977). *See* 138 S. Ct. 2448, 2460 (2018), The Court held that under the challenged Illinois law "public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities." *Id.* at 2459-60. The law violated "the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern. *Id.* at 2460.

In its Judgment, the trial court compared Section 105.585(2) to the Illinois statute in *Janus*, improperly drawing the follow comparison: "If the

constitution protects public employees from statutory blanket requirements of compelled speech, it must also protect them from statutory blanket requirements that restrict speech." D510, p.7; A7. The trial court's conclusion takes one sentence in the lengthy opinion in *Janus* entirely out of context.

The holding in *Janus* does not hinge on the statute's broad, rather than individualized, application. To the contrary, the majority opinion makes it abundantly clear that although freedom of speech protects both the right to speak and the right to not to speak, a law "commanding 'involuntary affirmation' of objected-to beliefs" is demeaning and thus *more offensive* "than a law demanding silence." *Id.* at 2463-64. The *Janus* Court provided a robust analysis for why it was overruling its decision in *Abood*, and only addressed the fact that the law was a "statutory blanket requirement" to explain why the *Pickering* framework is ill-suited to analyze the Illinois' law.

The opinion in *Janus* provided three reasons why any defense of the holding in *Abood* based on the *Pickering* framework does not work to analyze the Illinois statute. First, the "*Pickering* framework was developed for use in cases that involve 'one employees' speech and its impact on public responsibilities." *Id.* at 2471. The Court noted, however, that "we have sometimes looked to *Pickering* in considering general rules that affect broad categories of employees[.]" *Id.* at 2472. "Second, the *Pickering* framework fits much less well where the government *compels* speech or speech subsidies in

support of third parties." *Id.* at 2473 (emphasis added). Third, the classification systems outlined in *Pickering* and *Abood*, cannot be harmonized, "Under *Abood* a public employer is flatly prohibited from permitting nonmembers to be charged for this speech, but under *Pickering*, the employees' free speech interests could be overcome if a court found that the employer's interests outweighed the employees'." *Id.*

The trial court's apparent attempt to cite to *Janus* as an independent basis to invalidate Section 105.585(2)'s is misplaced. Section 105.585(2) does not compel any speech or speech subsidies in support of third parties like the Illinois law in *Janus*. As already noted, it merely requires collective bargaining agreements to contain provisions acknowledging the current. Thus, this court should disregard the trial court's unsupported claim that "the constitution protects public employees from statutory blanket requirements that restrict speech." D510, p. 7; A7.

IV. THE TRIAL COURT ERRED IN DETERMINING THAT SECTION 105.582(2) VIOLATES THE EMPLOYEES' RIGHTS TO COLLECTIVELY BARGAIN BECAUSE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING RIGHTS DO NOT INCLUDE THE RIGHT PICKET ABOUT DISPUTES OVER EMPLOYMENT CONDITIONS GOVERNED BY A LABOR AGREEMENT.

The trial court held that "delayed relief would impede the Plaintiffs' rights to collective bargaining under Missouri's Constitution by causing the Plaintiffs to choose between their right to collective bargaining and their rights

to free speech. This conclusion is unsupported in light of the narrow reach of the statute. However, even if the Section 105.585(2) prohibits public employee picketing rights, the court's conclusion is not supported by the case law.

Article I, section 29 of the Missouri Constitution provides that "employees shall have the right to organize and to bargain collectively through representatives of their own choosing." MO CONST. ART. I, § 29. The trial court held that by Section 105.582(2) impedes this right by requiring employees to choose between their right to collective bargaining and their right to free speech. D510, p. 7.

As noted, Section 105.582(2) does not violate employees' right to free speech because it merely tracks the current law related to public-sector employee picketing in Missouri. Further, such a provision does not infringe upon the Public Employees' rights to bargain collectively bargain. Missouri cases interpreting Article I, section 29 directly foreclose this argument. The Supreme Court of Missouri has emphasized repeatedly that Article I, section 29 must be interpreted according to its plain and ordinary meaning, which authorizes "employees to organize and to bargain collectively through representatives of their choosing." *See Independence-Nat. Educ. Ass'n v. Independence Sch. Dist.,* 223 S.W.3d 131, 137 (Mo. banc 2007). Nothing in the plain language of this provision imposes any express or implied limitations on the outcome of collective bargaining with public-sector unions. In fact, the

Supreme Court of Missouri has repeatedly held that it does not require employers to agree to any provisions or that an employer is free to reject any union proposal. "The meaning of section 29 is clear and there is, accordingly, no authority for this Court to read into the Constitution words that are not there." *Id.*

The Supreme Court has held that while Article I, section 29 gives employees a right to collective bargaining, section 105.500, *et seq*., provides the "procedural framework for collective bargaining for most public employees." E. *Mo. Coalition of Police, v. City of Chesterfield*, 386 S.W.3d 755, 759 (Mo. banc 2012). Significantly, Article I, section 29 imposes no obligation on public employers to agree to any specific provision of a labor agreement. In both *Independence* and subsequent cases, the Court consistently has held that Article I, section 29 imposes no obligation on a public employer to accept any substantive proposal during bargaining:

> There is nothing in the law . . . that requires a public entity to agree to a proposal by its employee unions or organizations. In fact, this Court has repeatedly recognized that the public sector labor law allows employers to reject all employee proposals, as long as the employer has met and conferred with employee representatives.

Independence, 223 S.W.3d at 136 (emphasis added). The *Independence* Court explained that this interpretation is required to avoid nondelegation concerns. *See id.* ("If the public employer is free to reject any proposals of employee

organizations, and thus to use its governing authority to prescribe wages and working conditions, none of the public entity's legislative or governing authority is being delegated."). Further, the Supreme Court has repeatedly reaffirmed this principle in subsequent collective-bargaining jurisprudence. *See, e.g., City of Chesterfield*, 386 S.W.3d 755, 760 (Mo. banc 2012) ("[N]othing requires a public entity to reach an agreement with its employee unions . . . and [thus] the employer remains free to reject any proposal"); *Am. Fed'n of Teachers v. Ledbetter,* 387 S.W.3d 360, 367 (Mo. banc 2012) (reaffirming "the employer's freedom to reject any proposal" made by public-sector unions). The Missouri Constitution grants no entitlement to any substantive provision in a labor agreement.

Moreover, it is settled law in Missouri that public employers may prescribe the certain terms of labor agreements by law, so long as they remain willing to meet and confer in good faith. In that regard, the present matter is indistinguishable from *West Central Missouri Regional Lodge #50 v. City of Grandview*, 460 S.W.3d 425 (Mo. App. W.D. 2015). In *Grandview*, the Court of Appeals reversed a circuit court's injunction of a law prohibiting certain bargaining terms, concluding that it did not violate a public-sector union's right to collective bargaining. *Id.* at 429. Specifically, the City of Grandview had enacted an ordinance that, inter alia, limited the term of a police officers' labor agreement to one year and proscribed compensation for the time union

representatives spent on collective bargaining. *See id.* at 431–32. While the City went well "beyond establishing the procedural framework for negotiations by setting forth its initial positions on a variety of [bargaining] issues," the Court of Appeals found that such substantive prescriptions "do[] not make the framework established constitutionally infirm." *Id.* at 445 n.15. As the Court explained,

> The constitution requires that an employer "meet and confer" with a collective bargaining representative and engage in the bargaining process in good faith. Besides these parameters, the Missouri Constitution does not impose any other affirmative duties upon a public employer. No requirement[] exists in the constitution that the parties must reach an agreement.

Id. at 445 (citing *Ledbetter*, 387 S.W.3d at 367). Like the *Grandview* ordinance, while Section 105..582(2) results in a public employer "'showing its hand' to the [unions] regarding its stance on certain issues," nothing in Section 105.582(2) "takes the issues off of the table during the bargaining process." *See id.* at 444–45. "The mere fact that some issue is initially addressed in [a statute] providing a framework for negotiations does not mean that the [State] would be unwilling to negotiate over a change to that [law]." *Id.* at 444.

Aside from its factual similarity to the present matter, *Grandview* is also significant as one of relatively few judicial pronouncements to interpret the right to collective bargaining in the wake of the Supreme Court's decisions in *Independence*, *Ledbetter*, and *City of Chesterfield*. In considering these three

opinions, the Court of Appeals drew two broader conclusions that bear noting here. First, *Grandview* emphasized that, while the Supreme Court "overruled *Quinn* [*v. Buchanan*, 298 S.W.2d 413 (Mo. banc 1957)] in *Chesterfield*," it did so "only to the extent that *Quinn* held that . . . the Missouri Constitution did not impose any affirmative duty on employers to bargain collectively." *Id.* at 446 n.16. Accordingly, the *Grandview* Court reaffirmed that "Sec. 29, Art. I is not a labor relations act, specifying rights, duties, practices and obligations of employers and labor organizations." *Id.* at 446; *see also id.* at 446–47 ("Article I, section 29 merely serves to protect an employees' right to bargain collectively and does not purport to require any specific procedures within which to conduct collective bargaining activities by either employees or employers."); *see also St. Louis Police Leadership Org. v. City of St. Louis*, 484 S.W.3d 882 (Mo. App. E.D. 2016) (same). Second, *Grandview* emphasized that "the establishment of a collective bargaining framework is for the legislative bodies and not the courts." *Id.* at 445 (quoting Independence, 223 S.W.3d at 136); *see also id.* at 446 ("It is for the City to decide, as a matter of policy, when and how they desire to meet and confer to collectively bargain with their employees. As long as they 'meet and confer' and do so in good faith, the Appellants have met their constitutional duties under article I, section 29 of the Missouri Constitution."). These twin principles—that the right to collective bargaining is limited and that separation-of-powers considerations require courts to give deference to

legislative enactments concerning the framework for bargaining—apply with equal force here.

There is simply no support for the trial court's passing conclusion that Section 105.585(2) also impedes a public employees' rights to collective bargaining. Accordingly, this Court should not affirm the trial court's judgment on this alternative basis.

CONCLUSION

For these reasons, this Court should reverse the judgment of the Circuit Court of Jackson County.

Respectfully submitted,

ERIC S. SCHMITT
Attorney General

By: */s/ Alyssa M. Mayer*
Alyssa M. Mayer , #64008
Assistant Attorney General
Zachary M. Bluestone
Deputy Solicitor General
615 E. 13th Street, Suite 401
Kansas City, Missouri 64106
(816) 889-5023
(816) 889-5006
alyssa.mayer@ ago.mo.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above was filed electronically under Rule 103 through Missouri Case Net, on this 17th day of October, 2019.

/s/ Alyssa M. Mayer

CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that the above brief complies with the limitations in Rule 84.06(b) in that excluding the cover, certificates of service and compliance, and signature blocks, the brief contains 8,421 words.

/s/ Alyssa M. Mayer