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IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	No. SC99823
	)	
	)	
TAMARAE LARUE,	)	
	)	
Appellant.	)	

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF LACLEDE COUNTY, MISSOURI
TWENTY-SIXTH JUDICIAL CIRCUIT
THE HONORABLE LARRY WINFREY, JR., JUDGE

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

Appellant, Tamarae LaRue, was convicted after a bench trial in the Circuit Court of Laclede County, Missouri, of a class C misdemeanor for a violation of the compulsory school attendance law, Section 167.031, RSMo 2016. The Honorable Larry Winfrey, Jr., sentenced appellant to fifteen days in jail, suspended execution of sentence, and placed her on probation. Notice of appeal was filed in this Court, as this appeal challenges the constitutionality of Section 167.031. This Court has original jurisdiction over challenges to the validity of a statute of Missouri. Mo. Const. Art. V, Sec. 3.

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STATEMENT OF FACTS

Tamarae LaRue was charged by information filed March 2, 2022, with a violation of the compulsory school attendance law, Section 167.031, in that, between August 23, 2022, and February 16, 2022, she knowingly failed to cause a child under her control or custody to attend a required academic program on a regular basis (D87). The probable cause statement signed by Annette Danek read in part:

> I am the Attendance Advisor for the Lebanon School District in Lebanon, Laclede County, Missouri. Auston LaRue is a student in Kindergarten at Esther Elementary. Tamarae LaRue is responsible for the care and custody of Auston. Auston LaRue has not been regularly attending school. Since enrolling on 9-9-21 for the 2021-2022 school year, records indicate that Auston LaRue has been absent from school for 15 full days and 3-half days. School personnel has attempted to work with Tamarae LaRue to ensure that Auston LaRue regularly attends school, but these efforts have not been successful.

(D88). Trial counsel filed a motion to dismiss and to quash the information, arguing that the statute was void for vagueness (D89, Tr. 3). The trial court overruled the motion, and the cause proceeded to a bench trial (Tr. 9).

The State called two witnesses – Paige Thornhill, the assistant principal of the elementary school at which Ms. LaRue's son was enrolled, and Annette Danek – the Attendance Advisor for the district (Tr. 11, 49). Ms. LaRue did not testify (Tr. 58). Ms. Thornhill testified that part of her duties is attendance monitoring – the school keeps track of attendance by the day and hour (Tr. 12-13). An absence is excused only with a doctor's note, even if a parent calls a child in sick (Tr. 25, 40-43).

When attendance starts to dip below 90 percent, the school begins to look at the child's performance, and after six absences, a letter is sent to the parent (Tr. 12, 14). The 90 percent requirement is contained in the school handbook, and when parents enroll their child, they must check a box on the online registration saying that they have read the handbook (Tr. 13-14). State's Exhibit 1, the

handbook, was admitted into evidence (Tr. 13-14, D90). Page 18 of the handbook states, "The state mandates that students maintain 90% or higher attendance each year in school and that continued and valuable learning cannot take place without regular attendance." (Tr.14, Ex. 1, D90P20). The handbook goes on to say, "Parents will … [n]otify school with every absence, tardy, or early withdrawal. … Absences caused by personal illness or injury, illness within the family which necessitates that a student be absent, and perhaps other extenuating circumstances, need to be communicated to the student's school." (Ex. 1, D90P20).

According to Ms. Thornhill, a second letter is sent to parents after fifteen absences, after which "they continue to work with the parents" (Tr. 15-16). Three letters were sent to Ms. LaRue, however – one at six days, one at nine days and one from the prosecutor after Auston had missed fourteen days (Tr. 19-20, Exs. 2, 3, 4, 5). The letters indicate the percentage of attendance at that time – Auston's percentages according to the letters were 85.95%, 84.03%, and according to the attendance record, 82.5% (Exs. 3-5). Ms. Thornhill testified that when the probable cause statement was submitted, Auston had missed fourteen days (Tr. 23-24).[1] Charges were filed after the fifteenth absence (D87).

The first day of school in the 2021-2022 school year was August 23, 2021 (Tr. 17). Auston LaRue was enrolled as a five-year-old in kindergarten on September 9, 2021 (Tr. 17).[2] Auston did not attend school on that date and was also ill or had other medical issues two days the following week (Ex. 5). Auston missed two days in late October, one of which was marked "verified", one day in November, and one day in December (Ex. 5). Ms. Thornhill testified that even if

[1] Actually thirteen days – see *ff*.

[2] The provisions of Section 167.031 do not apply to five - to seven-year-olds until they are enrolled. The information filed in this case cites "August 23, 2021" as the start date from which the charges were calculated, but the attendance record, State's Exhibit 5, counts the absences only from his enrollment date of September 9.

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these were for doctor's appointments or illnesses they were not excused "because no doctor note" (Tr. 25, 40).

The rest of Auston's absences before the charges were filed were in January, 2022 (Ex. 5). However, one of those days marked "absent," on January 13, appears instead to be marked in error, as the comment section shows that it was in fact a late arrival (Ex. 5). In all, five of the fourteen absences indicated on Exhibit 5 are marked "verified" (Ex. 5).[3]

Ms. Thornhill did not independently remember many of her conversations with Ms. LaRue, testifying "I don't remember," "I'm sure it's in my notes," and in response to the prosecutor's question, "Does that [explanation] sound familiar," merely answered, "yeah it does" (Tr. 18).

Annette Danek, the attendance advisor for the school district, testified that she had contact with Ms. LaRue about Auston and his siblings (Tr. 49-51). She said that if Ms. LaRue had transportation issues, she would have driven the children to school for her (Tr. 52). Ms. Danek agreed that at one point, Ms. LaRue's entire family had COVID-19, and that sometimes Ms. LaRue sent her children to school in taxis (Tr. 56). Once Ms. LaRue told Ms. Danek that she had to go to Springfield for another child's eyeglasses, and that she would not be able to send the other children to school because she would have no way to pick them up in time (Tr. 53). Ms. Danek said that she discussed the number of absences with Ms. LaRue, but not the percentage of absences (Tr. 53).

The trial court found Ms. LaRue guilty and sentenced her to fifteen days in jail, suspended execution of that sentence, and placed her on probation (Tr. 64, D95).

[3] On page 19 of the Handbook, it says that any absences after *twelve* must be verified by a doctor's note or the school nurse (Ex 1, D90P21). All of Auston's absences due to illness were *before* twelve absences were reached (Ex. 5).

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POINTS RELIED ON

I.

The trial court erred in finding Ms. LaRue guilty and in sentencing her upon her conviction for a violation of the compulsory school attendance law, because such rulings violated Ms. LaRue's right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the State did not prove beyond a reasonable doubt that her conduct in allowing Auston to miss thirteen days of school was a purposeful or knowing violation of the statute, since Ms. LaRue called Auston in sick or with doctor's appointments on three occasions, and State's Exhibit 1, the Lebanon School Handbook, does not inform parents that absences caused by illness are unexcused.

State v. Self, 155 S.W.3d 756 (Mo. banc 2005);

State v. Grim, 854 S.W.2d 403 (Mo. banc), *cert. denied*, 510 U.S. 597 (1993);

Jackson v. Virginia, 443 U.S. 307 (1979);

In re Winship, 397 U.S. 358 (1970);

Fourteenth Amendment to the United States Constitution; and

Article I, Section 10 of the Missouri Constitution.

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II.

The trial court erred in finding Ms. LaRue guilty and in sentencing her upon her conviction for a violation of the compulsory school attendance law, because such rulings violated Ms. LaRue's right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the State did not prove beyond a reasonable doubt that Auston's attendance of between 84 and 90 percent was not sufficiently "regular" to constitute a violation of the statute.

State v. Self, 155 S.W.3d 756 (Mo. banc 2005);

State v. Grim, 854 S.W.2d 403 (Mo. banc), *cert. denied*, 510 U.S. 597 (1993);

Jackson v. Virginia, 443 U.S. 307 (1979);

In re Winship, 397 U.S. 358 (1970);

Fourteenth Amendment to the United States Constitution; and

Article I, Section 10 of the Missouri Constitution.

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III.

The trial court erred in overruling defense counsel's motion to dismiss because Section 167.031 is unconstitutionally vague, in violation of Ms. LaRue's right to due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that Section 167.031 fails to give a person of ordinary intelligence fair notice that her contemplated conduct is forbidden, where it requires parents to cause their child to attend school "on a regular basis" without clearly defining what constitutes "regular" attendance, and allows for arbitrary and discriminatory application.

Roemhild v. State, 308 S.E.2d 154 (Ga. 1983);
State v. Young, 695 S.W.2d 882 (Mo. banc 1995);
State v. Self, 155 S.W.3d 756 (Mo. banc 2005);
State v. Allen, 905 S.W.2d 874 (Mo. banc 1995);
Fourteenth Amendment to the United States Constitution;
Article I, Section 10 of the Missouri Constitution; and
Section 167.031.

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ARGUMENT

I.

The trial court erred in finding Ms. LaRue guilty and in sentencing her upon her conviction for a violation of the compulsory school attendance law, because such rulings violated Ms. LaRue's right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the State did not prove beyond a reasonable doubt that her conduct in allowing Auston to miss thirteen days of school was a purposeful or knowing violation of the statute, since Ms. LaRue called Auston in sick or with a doctor's appointments on three occasions, and State's Exhibit 1, the Lebanon School Handbook, does not inform parents that absences caused by illness are unexcused.

Standard of review

Before the state may deprive a person of her liberty, it must prove each element of the charged offense beyond a reasonable doubt. ***In re Winship***, 397 U.S. 358, 363-364 (1970). The Constitution requires the fact finder to reach "a subjective state of near certitude" that the accused committed the charged offense. ***Jackson v. Virginia***, 443 U.S. 307, 315 (1979). Without such certainty, a conviction cannot stand; however, the appellate courts must view the record in the light most favorable to the verdict. ***State v. Grim***, 854 S.W.2d 403, 405 (Mo. banc), *cert. denied*, 510 U.S. 597 (1993). Thus, the critical inquiry for this Court is whether the evidence *could* reasonably support a finding of guilt beyond a reasonable doubt. ***Jackson***, 443 U.S. at 318.

Trial counsel filed a motion for judgment of acquittal, which was overruled (D94). Even without such a motion, however, the sufficiency of the evidence is always preserved for this Court's review. ***State v. Claycomb***, 470 S.W.3d 358, 359 (Mo. banc 2015).

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Section 167.031 requires a mental state of purposely or knowingly

Section 167.031 provides:

> Any parent, guardian or other person who enrolls a child between the ages of five and seven years in a public school program of academic instruction shall cause such child to attend the academic program on a regular basis, according to this section. Nonattendance by such child shall cause such parent, guardian or other responsible person to be in violation of the provisions of section 167.061, except as provided by this section.

Section 167.061 provides, "Any parent, guardian or other person having charge, control or custody of a child, who violates the provisions of section 167.031 is guilty of a class C misdemeanor."

In order for a parent to be found guilty under Sections 167.031 and 167.061, she must have acted purposely or knowingly. ***State v. Self***, 155 S.W.3d 756, 762 (Mo. banc 2005). This is implicit in the language in the requirement that the parent "cause" their child to regularly attend school. ***Id***. Therefore, the burden was on the State to prove that Ms. LaRue acted knowingly or purposely in causing Auston not to attend school regularly. ***See***, ***id.***

State's evidence of Ms. LaRue's mental state

The following evidence is relevant to the inquiry of whether Ms. LaRue acted knowingly.

- State's Exhibit 1, a page from the Lebanon School Handbook, which is provided to parents with a checkbox they must mark when enrolling their child that indicates they have read the handbook, states: "The state mandates that students maintain 90% or higher attendance each year in school and that continued and valuable learning cannot take place without regular attendance. … Lebanon R-III School District requires regular attendance of all school age children each day school is in session." (Ex. 1, D90P20).

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- The handbook further states: "Parents will … [n]otify school with every absence, tardy, or early withdrawal. … Absences caused by personal illness or injury, illness within the family which necessitates that a student be absent, and perhaps other extenuating circumstances, need to be communicated to the student's school." (Ex. 1, D90P20).
- The assistant principal of Auston's elementary school sent letters to Ms. LaRue when Auston had missed six and nine days of school (Exs. 2, 3). The prosecuting attorney sent a similar letter after Auston had missed thirteen or fourteen days of school (Ex. 4). Those letters stated that Auston's attendance percentages were between 84 and 86 percent (Exs. 2, 3).
- The State also introduced Auston's attendance record for the charged period that ended on February 16 (Ex. 5). Based on the assistant principal's calculations, Auston's attendance percentage was 82.5% (Ex. 5). For three of the absences noted on the record, Ms. LaRue had called the school saying that Auston was sick or had a doctor's appointment (Ex. 5). According to Ms. Thornhill, those absences were marked "verified" but not "excused" because there was no doctor's note (Tr. 20, 40). Two other absences were also marked "verified" but not "excused" (Ex. 5).

The State's evidence is insufficient to show Ms. LaRue purposely or knowingly violated the statute

This evidence shows clearly why the words "attend on a regular basis" in the statute are so problematic. ***See Point III***. Lebanon Public Schools define "regular" as 90% attendance. And yet both their math and their notice to parents of this requirement fail entirely.

First, one of the days that Auston was marked "absent," January 13, appears to have been marked in error, as the comment section shows that it was in fact a late arrival (Ex. 5). So in fact, Auston's attendance percentage for the

charged period was 83.75% rather than 82.5% (67/80 * 100 rather than 66/80 * 100) (Ex. 5).

Second, the very language of the handbook implies that days missed for illness are excused. Nowhere in Exhibit 1 does it state that absences for illness are unexcused – the handbook merely states that absences due to illness "need to be communicated to the student's school." (Ex. 1, D90P20). According to the assistant principal, these absences are marked "verified" but not "excused" unless there is a doctor's note (Tr. 25, 40). Nowhere in Exhibit 1 is this distinction communicated, nor does it appear in any of the letters sent to Ms. LaRue (Exs. 1, 2, 3, 4, D90). Moreover, insofar as the statute only penalizes parents for the *parent's* failure to cause their child to attend school regularly, the statute implies that "verified" absences for illnesses or other family emergencies, which are outside of a parent's control, will not be used to calculate "nonattendance."

Third, if those three days that Ms. Larue called Auston in sick are removed from the calculation, then his attendance percentage was 87.5% (70/80 * 100). If the other two verified absences are removed, the percentage becomes the magic number – 90% (72/80 * 100).

All of this math just goes to show how ridiculous it is to parse a child's attendance so closely that the difference between 84% attendance and 90% attendance sends a parent to jail for fifteen days. ***See Point II***. The statute mandates "regular" attendance. But, the school personnel themselves could not decide what absences counted toward their calculations of "regular" attendance. The school marked a "late" arrival as an "absence" and witnesses testified at trial that Auston had fifteen absences, when he in fact had fourteen (by their records) and thirteen (in fact). Not only was Ms. LaRue not informed by the handbook that the three absences attributable to illness or the other times she called in absences would not be excused, but she was apparently expected by the school district to do her own math. Attendance advisor Danek testified that she discussed numbers of absences with Ms. LaRue, but not percentages (Tr. 53).

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In ***State v. Self***, this Court reversed Brenda Self's conviction under this statute, finding that the State did not prove beyond a reasonable doubt that she purposely or knowingly failed to cause her child to attend school. 155 S.W.3d at 764. As in the instant case, many of Ms. Self's child's absences from school were due to doctor's appointments. ***Id***. at 763. And as this Court noted, the record in that case did not show that Ms. Self knew that the district would not consider doctor's appointments and illnesses to be excused. ***Id***. The handbook in that case, as in this, merely informed the parent that the school should be notified. ***Id***.[4]

> As this Court found in ***Self***,
>
> Read together, these statements suggest that the attendance policy will not apply where the school is satisfied that the lack of attendance is due to prolonged illness or extended absence from school. This is in accord with section 167.031 to the effect that:
>
> > A child who, to the satisfaction of the superintendent of public schools of the district in which he resides, or if there is no superintendent then the chief school officer, is determined to be mentally or *physically incapacitated may be excused from attendance at school* for the full time required, or any part thereof[.]
>
> Sec. 167.031.1(1) (emphasis added). In such cases, there is no violation of the compulsory school attendance law.

Id. The language in the Lebanon Handbook would lead a parent to the same belief. In fact, on page 19 of the Handbook, it states that any absences after *twelve* must be verified by a doctor's note or the school nurse (Ex 1, D90P21). All of Auston's absences due to illness were *before* twelve absences were reached (Ex. 5).

This Court found in ***Self*** that the State failed to prove beyond a reasonable doubt that Ms. Self knew that her daughter's absences could put her in violation of

[4] The attendance issues in ***Self*** were also much more extensive than in this case – Ms. Self's child missed 40 days of school, all but 17 of which were due to illness or a doctor's appointment. ***Id***.

the compulsory attendance laws or that she otherwise caused the excessive absences. ***Id*** at 764. This, despite that Ms. Self was sent "attendance letters" just as Ms. LaRue was. The State's evidence here fails similarly. There was insufficient evidence that Ms. LaRue purposely or knowingly failed to cause her son to attend school regularly in violation of Sections 167.031 and 167.061. This Court should reverse her conviction and discharge her.

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II.

The trial court erred in finding Ms. LaRue guilty and in sentencing her upon her conviction for a violation of the compulsory school attendance law, because such rulings violated Ms. LaRue's right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the State did not prove beyond a reasonable doubt that Auston's attendance of between 84 and 90 percent was not sufficiently "regular" to constitute a violation of the statute.

Standard of review

Before the state may deprive a person of her liberty, it must prove each element of the charged offense beyond a reasonable doubt. ***In re Winship***, 397 U.S. 358, 363-364 (1970). The Constitution requires the fact finder to reach "a subjective state of near certitude" that the accused committed the charged offense. ***Jackson v. Virginia***, 443 U.S. 307, 315 (1979). Without such certainty, a conviction cannot stand; however, the appellate courts must view the record in the light most favorable to the verdict. ***State v. Grim***, 854 S.W.2d 403, 405 (Mo. banc), *cert. denied*, 510 U.S. 597 (1993). Thus, the critical inquiry for this Court is whether the evidence *could* reasonably support a finding of guilt beyond a reasonable doubt. ***Jackson***, 443 U.S. at 318.

Trial counsel filed a motion for judgment of acquittal, which was overruled (D94). Even without such a motion, however, sufficiency of the evidence is always preserved for this Court's review. ***State v. Claycomb***, 470 S.W.3d 358, 359 (Mo. banc 2015).

Section 167.031 requires the State to prove that a child did not attend school on a "regular basis"

Section 167.031 provides that

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> Any parent, guardian or other person who enrolls a child between the ages of five and seven years in a public school program of academic instruction shall cause such child to attend the academic program on a regular basis, according to this section. Nonattendance by such child shall cause such parent, guardian or other responsible person to be in violation of the provisions of section 167.061, except as provided by this section.

Section 167.061 provides that "Any parent, guardian or other person having charge, control or custody of a child, who violates the provisions of section 167.031 is guilty of a class C misdemeanor." Just as the burden was on the State to prove that Ms. LaRue violated the statute purposely or knowingly, ***see Point I***, the burden was also on the State to prove that Ms. LaRue violated the statute at *all.*

State's evidence

Appellant incorporates by reference the arguments from Point I. As discussed *supra*, parents are told in the Lebanon School Handbook that "Lebanon R-III School District requires regular attendance of all school age children each day school is in session." (Ex. 1, D90P20). This language is prefaced by language that the "state mandates that students maintain 90% or higher attendance each year in school" (Ex. 1, D90P20).[5]

Significantly, this language does not mandate a rolling 90% attendance, but 90% attendance for the entire year. If Auston had not missed another day after February 16, by which time he had missed fifteen days (or fourteen, or thirteen), his attendance for the year would be 91.3% (with fifteen absences) and an even higher percentage with only fourteen or thirteen absences.[6]

---

[5] It should be noted that despite the language in the handbook claiming "the state" mandates 90% or higher attendance, Section 167.031 does not mandate 90% attendance, yet this is the number that the State used to prosecute Ms. LaRue under the statute.

[6] Appellant has used 174 school year days for this calculation. Section 171.031.

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Additionally, as more fully discussed in Point I, the absences due to illnesses should not count at all until after twelve absences, per the unclear language in the Lebanon School Handbook. In fact, the handbook implies that absences due to illness do not count at all, and certainly not before twelve absences. (Ex. 1, D90P21).

The meaning of the word "regular"

Finally, why is 85% not regular attendance, while 90% is? If a child missed two days of school in the first twenty days, that is 90% attendance. A third absence, for whatever reason, brings her average to 85% attendance. And if he misses six days in the first *forty* days – instead of only four – his parent receives the first letter advising her that she has been absent too much. And yet in those first forty days of school, most schools have countless holidays for Labor Day, teacher workdays, and the like.

In ***State v. Self***, this Court found that there was insufficient evidence to convict Brenda Self of a violation of the compulsory school attendance law although her daughter had missed forty days of school. 155 S.W.3d 756, 763-764.[7] That case, from the Caruthersville School District, was based on a hard number of absences rather than a percentage, which is further evidence that the meaning of "regular" is not so clear as the State would assert. ***Id***. at 763. The State here failed to prove beyond a reasonable doubt that Ms. LaRue failed to cause her son to attend school "regularly." This Court should reverse Ms. LaRue's conviction and discharge her.

[7] ***Self*** was reversed on the mental element of the statute, rather than the issue raised in this point, but it is instructive on the issue.

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III.

The trial court erred in overruling defense counsel's motion to dismiss because Section 167.031 is unconstitutionally vague, in violation of Ms. LaRue's right to due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that Section 167.031 fails to give a person of ordinary intelligence fair notice that her contemplated conduct is forbidden, where it requires parents to cause their child to attend school "on a regular basis" without clearly defining what constitutes "regular" attendance, and allows for arbitrary and discriminatory application.

Standard of review

This Court reviews issues of law *de novo.* ***State v. Justus***, 205 S.W.3d 872, 878 (Mo. banc 2006). Statutes are presumed to be constitutional. ***Suffian v. Usher***, 19 S.W.3d 130, 134 (Mo. banc 2000) (citations omitted). This Court will resolve all doubt in favor of the act's validity and may make every reasonable intendment to sustain the constitutionality of the statute. ***Westin Crown Plaza Hotel v. King***, 664 S.W.2d 2, 5 (Mo. banc 1984). If a statutory provision can be interpreted in two ways, one constitutional and the other not constitutional, the constitutional construction shall be adopted. ***Murrell v. State***, 215 S.W.3d 96, 102 (Mo. banc 2007).

The statute is vague

A statute that fails to clearly define proscribed conduct violates the Due Process Clause and is void for vagueness. ***State v. Allen***, 905 S.W.2d 874, 876 (Mo. banc 1995). A statute is unconstitutionally vague if it fails to give "a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." ***Id.*** at 877 (*quoting* ***United States v. Harriss***, 347 U.S. 612, 617 (1954)).

Section 167.031 provides:

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> Any parent, guardian or other person who enrolls a child between the ages of five and seven years in a public school program of academic instruction shall cause such child to attend the academic program on a regular basis, according to this section. Nonattendance by such child shall cause such parent, guardian or other responsible person to be in violation of the provisions of section 167.061, except as provided by this section.

Section 167.031 fails to give a person of ordinary intelligence fair notice that her contemplated conduct is forbidden insofar as it fails to clearly define the phrase "a regular basis." And if the definition of "regular" is not clear to parents of school children, how clear will it be to school officials? To prosecutors? A statute is also vague if its standards lack sufficient specificity to prevent arbitrary and discriminatory enforcement. ***Allen***, 905 S.W.2d at 877.

On a challenge that a statute is unconstitutionally vague, it is not necessary to determine if a situation could be imagined in which the language used might be vague or confusing; the language is to be treated by applying it to the facts at hand. ***Prokopf v. Whaley***, 592 S.W.2d 819, 825 (Mo. banc 1980). Here, Section 167.031 is vague as applied to Ms. LaRue.

Appellant incorporates her arguments from Points I and II, which challenge the sufficiency of the evidence to support her conviction, and clearly exhibit that the statute is vague as applied to her situation. The standards applied by the Lebanon School District are arbitrary and do not give a person fair notice that her conduct violates the statute.

As more fully discussed above, Lebanon School District defines "regularly" as 90% attendance. Caruthersville schools apparently do not apply a percentage, but say that students are allowed seven absences in a semester. ***State v. Self***, 155 S.W.3d 756, 763 (Mo. banc 2005). The State of Missouri apparently does not mandate specific percentages (despite the statements in the Lebanon School Handbook). This allows for arbitrary enforcement.

This Court in ***Self*** did not reach the question of whether the compulsory school attendance statute is vague. 155 S.W.3d at 758. However, it opined that

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the issue was not properly presented in ***Self*** because the parties did not present evidence that the statute was interpreted in different ways by different school districts. Appellant asserts that the distinction between the Caruthersville School District in ***Self*** and the Lebanon School District in the instant case illustrates the problem. And in fact, while the arbitrary enforcement is an issue, it is the lack of *notice* that makes the statute unconstitutionally vague as applied to Ms. LaRue.

Appellant asks this Court to simply look at the math problems presented in Point I, and determine whether a person of reasonable intelligence could understand that she was violating this statute.

In ***State v. Young***, 695 S.W.2d 882 (Mo. banc 1995), this Court held Section 578.050, RSMo 1978, which prohibited being present at a cockfight, was void for vagueness. The Court found that the statute, among other problems, exposed a person to criminal liability without having known that a cockfight had transpired or that the facility was a place used for such activities. 695 S.W.2d at 885. Similarly, this statute is not sufficiently clear to give reasonable notice of the prohibited conduct and to apprise enforcers of the proper standards for enforcement. ***Id.*** at 886. "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large." ***Id***., *citing* ***United States v. Reese***, 92 U.S. 214, 221 (1876).

In ***Roemhild v. State***, 308 S.E.2d 154 (Ga. 1983), the Supreme Court of Georgia reversed the defendants' conviction of violating the Georgia compulsory school attendance law, holding the statute unconstitutionally vague. The parents in that case were home schooling their children and charged with failing to enroll their children in a public or private school. ***Id***. at 155. The Supreme Court of Georgia held that the term "private school" was not sufficiently defined so as to give a person of ordinary intelligence fair notice of the behavior that is required or prohibited. ***Id*** at 157. *See also,* ***State v. Popanz***, 332 N.W.2d 750 (Wis. 1983) (compulsory school attendance law impermissibly vague).

The ***Roemhild*** Court made a specific point that part of the reason the statute was vague was because it impermissibly delegated the policy decision of what constituted a "private school." 308 S.E.2d at 158. While Section 167.031 does not specifically delegate the definition of "regular attendance" to Lebanon Public Schools or other local school boards, it is part of the vagueness concerns that each school defines "regularly" in its own way. In ***Grayned v. City of Rockford***, 408 U.S. 104, 108-109 (1972), the United States Supreme Court noted that a vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. And now, with section 167.031, one might add school districts to this list.

Section 167.031 is vague. It is unconstitutionally vague as applied to Ms. LaRue. This Court should, therefore, reverse her conviction and discharge her.

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CONCLUSION

For the reasons presented, appellant Tamarae LaRue respectfully requests that this Court reverse her conviction and discharge her.

Respectfully submitted,

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Certificate of Compliance and Service

I, Ellen H. Flottman, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2010, in Times New Roman size 13-point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 5,658 words, which does not exceed the 31,000 words allowed for an appellant's brief.

On this 21st day of March, 2023, an electronic copy of Appellant's Brief was placed for delivery through the Missouri e-Filing System to Evan Buchheim, Assistant Attorney General, at Evan.Buchheim@ago.mo.gov.

/s/ Ellen H. Flottman

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