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

APPELLANTS' REPLY BRIEF

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I. This Court Should Construe §105.585(2) as Requiring Labor Agreements Subject to Chapter 105.500 to Reflect the Current Law For Public Employee Participation in Labor Strikes and Picketing.

Respondents avoid applying the general principles that this Court has consistently applied in evaluating the constitutionality of a statute. Namely, "the burden is upon the party claiming the statute is unconstitutional to prove the statute is unconstitutional." *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 828-29 (Mo. 1991) (citing *Schorbus v. Director of Revenue*, 790 S.W.2d 241, 243 (Mo. 1990). Indeed, this Court has very recently emphasized that "every law is entitled to a presumption of constitutional validity in this Court[.]" *City of Aurora, Missouri, et al., v. Spectra Comm's Group, LLC, et al.*, No. SC96276, slip opinion, p. 18 (December 24, 2019). Respondents also ignore that this lawsuit is a *facial challenge* to the validity of §105.585(2).[1] *See Bennett v. St. Louis Co.,*

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[1] Because §105.585(2) only indirectly prohibits conduct related to strikes and picketing through the vehicle of (currently non-existent) labor agreements, the statute's language has no effect until a labor agreement actually contains the mandated information. The trial court's injunction only prevents the Sheriff of Jackson County from following the directive of §105.585(2) when negotiating and drafting its labor agreements. D510, p. 8; A8. However, the Court's legal analysis is not "as-applied" to the facts of this case because it

Missouri, 542 S.W.3d 392, 397 (Mo. App. E.D. 2017) ("The distinction between a facial challenge and an as-applied challenge lies both in the remedy the parties seek and the analysis of the court."). In a facial challenge, "the party challenging the statute must demonstrate that no set of circumstances exists under which the statute may be constitutionally applied." *State v. Johnson*, 524 S.W.3d 505, 511 (Mo. banc. 2017) (quoting *State v. Jeffrey*, 400 S.W.3d 303, 308 (Mo. banc. 2013)).

Respondents ignore their burden in this facial challenge, spending the majority of their brief evaluating the constitutional repercussions of the broadest possible interpretation of the statute, shifting the burden to the Appellants under a heightened scrutiny analysis. This Court should resist Respondent's invitation to relieve them of their burden of proof in this facial challenge by interpreting the statute in a way that generates unnecessary constitutional issues. When these rules of statutory construction are applied, the statute is consistent with intent of the legislature and constitutionally valid.

A. Section 105.585(2), by its ordinary and natural meaning, applies to organized protests in the course of strikes and labor disputes.

"The goal of statutory analysis is to ascertain the intent of the legislature, as expressed in the words of the statute." *United Pharmacal Co. of Missouri, Inc. v. Missouri*

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does not interpret a specific labor agreement between Plaintiffs and the Sheriff of Jackson County containing the mandated provisions.

Bd. of Pharmacy, 208 S.W.3d 907, 909 (Mo. banc. 2006). "When the legislative intent cannot be determined from the plain meaning of the statutory language, rules of statutory construction may be applied to resolve any ambiguity." *Id.* at 910.

Here, the ordinary and natural meaning of the word "picket" refers to organized protests that occur in the context of a strike or labor dispute. A "picket" is defined as "a person posted by a labor organization at an approach to a place of work affected by a strike to ascertain the workmen going and coming and to persuade or otherwise influence them to quit working there." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1710 (2002). Black's Law Dictionary, likewise, confirms that "picketing" most commonly refers to "an employees' demonstration aimed at publicizing a labor dispute and influencing the public to withhold business from the employer." BLACK'S LAW DICTIONARY 1184 (8th ed. 2004). Moreover, the immediate context of the statute confirms that the words "picketing" and "pickets" in the statute refers to its original, narrower meaning of organized labor protests—not the broader, looser meaning that Respondents would attribute to it. [2] The same statutory provision addresses "picketing" in close and

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[2] Section 105.585(2), RSMo says:

> Every labor agreement shall expressly prohibit all strikes and picketing of any kind. 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. 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[.]

direct connection with "strikes," providing strong contextual evidence that "picketing" is used in its ordinary, narrower meaning of organized demonstrations in the course of strikes and labor protests. *See* § 105.585.2, RSMo. "In determining the intent and meaning of statutory language, the words must be considered in context … in order to arrive at the true meaning and scope of the words." *Cosby v. Treasurer of State*, 579 S.W.3d 202, 206 (Mo. 2019). Here, the immediate context of the statute—which specifically addresses strikes and labor disputes—confirms that "picketing" refers to organized demonstrations during strikes and labor disputes.

Respondents' argument hinges entirely on their view of the "plain and ordinary meaning" of the isolated phrase "picketing of any kind" in § 105.585(2). They reject Appellants' position that picketing here refers to picketing in conjunction with a strike, arguing instead that because "picketing" can also mean demonstrations occurring without a strike, it must. Respondent's Brief (Resp. Br.), p. 16. This argument is not convincing, for the reasons discussed above. But even if the statute were ambiguous between the State's narrower, more reasonable interpretation and Respondents' overbroad interpretation, the State's interpretation should still be adopted. "It is a well accepted canon of statutory construction that 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).

Moreover, when determining if the plain meaning of statutory language is ambiguous, "[t]he issue is not whether a particular word in a statute, considered in isolation, is ambiguous, but whether the statute itself is ambiguous." *J.B. Vending Co., Inc. v. Director of Revenue*, 54 S.W.3d 183, 187 (Mo. banc. 2001). "A statute is ambiguous when its plain language does not answer the *current dispute* as to its meaning." *BASF Corp. v. Director of Revenue*, 392 S.W.3d 438, 444 (Mo. banc. 2012) (emphasis added). The *current dispute* in this facial challenge to the constitutionality of § 105.585(2) is whether Respondents have demonstrated that "no set of circumstances exists under which the statute may be constitutionally applied." *Johnson*, 524 S.W.3d at 511. Respondents here cannot demonstrate that there is "no set of circumstances under which the statute may be constitutionally applied," *id.*, because there are evidently many scenarios under which the statute could be applied without any constitutional problems. For example, the statute presents no constitutional problem to union whose employees who do not have any immediate plans to engage in prohibited picketing. Without a doubt, public employers and labor unions subject to Chapter 105 could create many variations of contract language compliant with § 105.585(2)'s directives. Indeed, Respondents' argument is hampered by the fact that the statute only requires the inclusion of certain provisions in collective bargaining agreements, but no specific collective-bargaining agreement has yet been

executed under the statute. For this reason, Respondents' facial challenge is inherently speculative and must fail.

B. The rules of statutory construction do not support Respondents' interpretation.

Respondents cite only two rules of statutory construction to support their position that the statute requires labor agreements to broadly prohibit all types of protest activities by public employees, regardless of the context. First, Respondents rely on the rule that "[t]he legislature is presumed to know the existing law when enacting a new piece of legislation." *Greenbriar Hills Country Club v. Dir. of Revenue*, 47 S.W.3d 346, 352 (Mo. banc 2001). They argue that because "picketing" in case law sometimes refers to "peaceful picketing" about non-labor related issues, "the legislature knew the term 'picketing' does not only mean labor picketing." Resp. Br. at 17. Second, Respond argues that Appellants' interpretation completely reads the phrase "of any kind" out of the statute. *Id.* at 18. These arguments are unpersuasive for the reasons cited in Appellants' opening brief. Appellants make a few additional points in reply to Respondents' position.

*i. The context of the public sector labor chapter supports Appellant's position that the legislative intent of § 105.585(2) is for labor agreements to prohibit **any kind** of picketing which promotes **any kind** of illegal strike.*

Respondents' analysis of the statutory language ignores the primary goal of statutory construction: "If the statute is ambiguous, we attempt to construe it in a manner consistent with the legislative intent, giving meaning to the words used within the broad context of the legislature's purpose in enacting the law." *Sullivan v. Carlisle*, 851 S.W.2d

510, 512 (Mo. banc. 1993).[3] "To discern legislative intent, 'the Court may review the earlier versions of the law, or examine the whole act to discern its evident purpose, or consider the problem that the statute was enacted to remedy.'" *United Pharmacal Co. of Missouri, Inc. v. Missouri Bd. of Pharmacy*, 208 S.W.3d 907 (Mo. banc. 2006).[4]

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[3] As mentioned in Appellant's opening brief, live video from debate on the floor of the House of Representatives 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. During debate the bill sponsor was asked directly about the purpose of this provision, and whether the provisions regarding picketing infringe on a public employees' First Amendment Rights. The bill sponsor explained that the picketing language was not designed to make substantive changes to the rights of public employees—it was designed to mirror current Missouri law relating to strikes and picketing by all public employees, and be included in labor agreements as clarifying language. *See* Video Link above, at 00:49:18 – 00:50:40. To be sure, the interpretation of a statute by a bill's sponsor does not control this Court's interpretation of the statute's language, but the sponsor's statements illustrate the objective reasonableness of the State's interpretation here.

[4]This Court has also said that to interpret legislative intent, "[i]t may be helpful to look to the agency's interpretation of the statute it enforces." *United Pharmacal Co. of Missouri, Inc.*, 208 S.W.3d at 912. Unfortunately, all rulemaking under the Act was enjoined in

Respondents first ignore the immediate statutory context of § 105.585(2)—specifically that the language mandated by §105.585(2) will only exist within *future* labor agreements. *See Bolen v. Orchard Farm R-V Sch. Dist.*, 291 S.W.3d 747, 751 (Mo. App. 2009) (explaining that courts "must construe provisions of the entire legislative act together and, to the extent reasonably possible, harmonize all provisions."). Appellant's argument ignores that "[a] collective bargaining agreement is subject to the same rules of interpretation as other contracts and is to be construed so as to its evident aims." *Brackett, et al. v. East Boot & Shoe Co., et al.*, 388 S.W.2d 842, 847 (Mo. banc. 1965). Respondents cannot reasonably expect that contract provisions required by §105.585(2) would reach circumstances outside the normal scope of a labor agreement.

Respondents also ignore the even broader context of the legislature's purpose in enacting §105.585(2). This purpose is reflected in § 105.530—the only other provision in the entire chapter mentioning strikes. This long-standing provision says, "[n]othing contained in the statute shall be construed as granting a right to public employees covered in sections 105.500 to 105.598 to strike." *Id.* Picketing is mentioned nowhere else in the chapter outside § 105.585(2). Therefore, interpreting the phrase "of any kind" to *only* modify "picketing" does not reflect the intent of the legislature as reflected elsewhere in the chapter—that nothing in the statute should be construed as granting public employees

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March 2019. *See* Findings of Facts and Conclusions of Law and Order Granting Preliminary Injunction, issued March 8, 2019 in *Missouri Nat'l Educ. Ass'n et al. v. Missouri Dep't of Labor, et al.*, No. 18SL-CC03310.

the right to *strike*. *See* § 105.530, RSMo. In this broader context, the phrase "of any kind" modifies "strikes and picketing" occurring together.[5]

This interpretation is supported by other statutory interpretation guidelines. Significantly, "the last antecedent rule is not always mandatory in statutory interpretation." *Spradling v. SSM Health Care St. Louis*, 313 S.W.3d 683, 688 (Mo. banc. 2010). "It is 'merely an aid to construction and will not be adhered to where extension to a more remote antecedent is clearly required by consideration of the entire act.'" *Id*. (quoting *Norberg v. Montgomery*, 173 S.W.2d 387, 390 (Mo. banc. 1943). Considering the entire act requires ignoring the last antecedent rule and reading "of any kind" to modify "strikes and picketing" together.

This reading reflects current law because the very next sentence of the statute defines strike as "any refusal to perform services, walkout, sick-out, sit-in, or any other form of interference with the operations of any ***public body***." §105.585(2) (emphasis added). It is well established that "public employees have no right to strike under Missouri law." *City of Webster Groves v. Institutional and Public Emp. Union*, 524 S.W.2d 162, 166

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[5] As explained in Appellants' opening brief, the statute says "strikes and picketing" not "strikes or picketing." *See Boatmens's Banchares, Inc. v. Dir. of Revenue*, 757 S.W.2d 574, 579 (Mo. banc. 1988) ("The use of the word 'and' … ordinarily, usually, and this context connotes the idea of 'in addition to' or 'plus.' It implies the addition of something else.").

(Mo. App. E.D. 1975). Thus, "strikes" in §105.585(2) means *unlawful* strikes. Picketing is not separately defined, but "[p]icketing by employees or union members is not protected by constitutional safeguards when the result or objective is against state law or policy." *Id*. And "[w]hile peaceful picketing for lawful purposes has long been upheld in this state, still the rule is well established here that where the purpose of concerted action by labor is unlawful such action may be enjoined." *Fred Wolferman Inc. v. Root*, 204 S.W.2d 733, 735 (Mo. banc. 1947). Thus, any kind of picketing which advances any kind of unlawful strike is not protected by constitutional safeguards, and may be enjoined. This restraint on picketing is not limited to the public employees of the targeted public body. *See e.g.*, *Senn v. Tile Layers Protective Unions, Local No.* 5, 301 U.S. 468, 489 (1937) ("But strikes or peaceful picketing for unlawful purposes are beyond any lawful sanction. The object being unlawful, the means and end are alike condemned."); *Katz Drug Co. v. Kavner*, 249 S.W.2d 166 (Mo. 1952) (acknowledging that the state may "restrain even peaceful picketing if its purpose is unlawful"); *Kincaid-Webber Motor Co. v. Quinn*, 241 S.W.2d 866 (Mo. 1951) ("Picketing for both lawful and unlawful purposes is unlawful."). Under § 105.585(2), labor agreements must expressly prohibit any kind of picketing occurring in conjunction with an unlawful strike.

This interpretation does not ignore the phrase "of any kind." To the contrary, it shows how the phrase was added because the legislature understood the limitations on all kinds of picketing in support of a strike of a public body.

Even though the statute does not create new restrictions on public employees' freedom of speech, it is worth mentioning that the State has a compelling interest in requiring its labor agreements to expressly include this well-established limitation on public employee strikes and picketing. In *State ex inf. Danforth v. Kansas City Firefighters Local No. 42, AFL-CIO*, the State sued Kansas City Firefighters Local No. 42 and individual members for damages incurred as a result of a strike under a quasi-contract theory. 585 S.W.2d 94, 95-96 (Mo. W.D. 1979). The Court of Appeals reversed the State's favorable judgment because the State failed to establish all of the necessary elements of it quasi-contract theory. *Id.* at 98. However, if public sector labor agreements expressly include prohibitions aligning with the current law, the State has more legal remedies at its disposal when labor unions and public employees participate in, or promote, illegal strikes. The law is narrowly tailored to achieve this purpose because it only requires labor agreements subject to the statute to contain contract provisions reflecting the laws applicable to public employee labor speech.

ii. Respondents' argument ignores that the plain language of the statute does not require termination for picketing regarding personnel matters.

Respondents claim that the second mandated provision described in §105.585(2)[6] "requires all labor agreements to state that any employee that pickets 'over any personnel matter' will be subject to immediate termination." Resp. Br., p. 21. They assert that this "regulates picketing by employees based on the content of their speech." *Id.* Respondents' argument ignores Appellants' point that the plain language does not require termination for picketing over a personnel matter because the statute says "subject to" not "subjected to." The plain and ordinary language only requires labor agreements to *acknowledge* that employees *could be* terminated when they engage in these activities.

This acknowledgment reflects current legal realities. As explained in the previous section, picketing is not protected "when the result or objective is against state law or policy." *City of Webster Groves*, 524 S.W.2d at 166. It is clear that picketing to support a strike against a public employer "is against state law or policy," but picketing about other issues is not as clear. We also know that "governmental functions may not be impeded or obstructed by strikes or picketing." *Id.* (citing *City of Grandview v. Moo*re, 481 S.W.2d 555, 557-558 (Mo.App.1972)). As the Appellant's expert testified, public sector labor

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[6] The provisions states: "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." §105.585(2).

picketing commonly results in the disruption of government functions through interruption or delay in the delivery of supplies and services that a public employers needs to function and normally obtains from union vendors. D503; D504 pp. 20:5-10, 21:24-22:22, 56:14-59:4, 83:21-84:19. Thus, even peaceful (non-strike) labor picketing runs the risk of interfering with government functions. Like the previous one, this contract provision will also reflect current law because picketing over a "personnel matter" will not always result in termination, but it does always "subject" a public employee to termination.

The testimony in this case illustrates why the legislature might want labor unions to include this sort of acknowledgment in their labor agreements. Respondents engaged in peaceful picketing in November 2018 outside the Jackson County Sheriff's Office to protest their wages. D505, pp. 26:13-23, 28:9-24, 31:25-33:2. Respondent Karney testified that the November 2018 picket was her first, that a union official solicited her to join the picket, that she had never seen a picket, and that she had asked union officials about what picketing means and what it would be for because she was not sure. D506, pp. 31:8-32:7; 34:9-35:23. Respondent Miller testified that Karney told him about the picket, and "other than saying the date and time, we didn't really go over a lot of what it was going to be about or if we were going to—what all was going happen." D505, p. 29:11-14. His understanding of picketing is based on things he's seen on TV and witnessing a picket in the late 1990s. *Id.* at 27: 8-11. Miller testified that he planned to picket in the future, "outside the Sheriff's Office, probably down by the roadway as you're leaving and entering the parking lot." D505, p. 33:22-24. Like Karney and Miller, most public employees are

probably uncertain about what labor picketing is or is used for, and will only participate in labor picketing when solicited by their union. The state has an interest in requiring labor unions to acknowledge that labor picketing puts public employees at risk.

II. Proper Construction of the Statutory Language Withstands Constitutional Scrutiny. (Replying to Respondents' Points II, II, and VI).

Respondents spend the vast majority of their brief analyzing the constitutionality of only the broadest possible interpretation of the statute's language. As already explained in Appellants' opening brief, Appellants' position is that *when the statute is properly construed*, Section 105.585(2) withstands constitutional scrutiny because it does not require labor agreements to prohibit protest activities unrelated to strikes or labor disputes. The provisions merely require certain public sector labor agreements to include provisions prohibiting picketing in conjunction with an unlawful strike, and acknowledging that an employee who pickets about a personnel matter is subject to termination. Properly drafted, these contract provisions survive the *Connor-Pickering* analysis because they reflect constitutionally permissible limitations that already apply to public employee labor speech.

III. Section 105.585(2) Does Not Violate Employees' Equal Protection Rights Because It Mirrors Current Law Relating To Public Employee Strikes and Picketing And Is Narrowly Tailored To Advance A Compelling State Interest. (Replying to Respondents' Point V).

The trial court's Order did not address Respondents' equal protection argument set forth in Point V their brief.[7] However, this argument does not provide a valid alternative

[7] Amicus Curiae also makes this argument. *See* Brief of Amicus Curiae Missouri National Education Association (Amicus Br. at 13). Additionally, Amicus Curiae's attempt to provide this Court with a one-sided legislative summary of HB 1413 in the "Factual Background" portion of its brief is improper and should not be considered by this Court. These facts are not part of the record in this case or the pending matter in St. Louis County District Court. Indeed, as a party to the pending St. Louis County matter, *Missouri Nat'l Educ. Ass'n et al. v. Missouri Dep't of Labor, et al.*, No. 18SL-CC03310, Amicus Curiae has consistently maintained that there is no legislative history for HB 1413, and discovery is irrelevant to the Court's examination of the constitutionality of HB 1413. Therefore, Amicus Curiae's inclusion of a detailed summary of legislative background for HB 1413 contradicts their position in the pending St. Louis County matter. Amicus Curiae's attempt to influence this Court's decision in this matter (and a future matter) with this extra-record information only supports Appellant's position that the constitutionality of § 105.585(2) should be decided in conjunction with the St. Louis County matter, together with all the discovery related to the statute (or lack thereof) that has been established in that case. Amicus Curiae agrees with Appellant's position on this matter. See Amicus Brief, p. 2 ("To avoid piecemeal litigation of HB 1413's constitutionality, this Court may wish to hold the present appeal for decision until the St. Louis County case is fully briefed.").

justification to affirm the trial court's order. "Analysis of an equal protection claim involves a two-step process. The first step is to determine whether the classification burdens a 'suspect class' or impinges upon a 'fundamental right'; in either event, strict judicial scrutiny is required." *Blaske*, 821 S.W.2d 822, at 829. Respondents rely on the fundamental right of freedom of speech, arguing that §105.585(2) restricts protected conduct and "discriminates among pickets" because the statute does not apply to public safety labor unions.

The statute does not impinge upon a fundamental right because, as described above in Section I, it does not enact *new* restrictions on strikes or picketing. The law reflects the current constitutionally valid restrictions on public employee labor speech. Thus, there is no basis for Appellants' argument that the statute "discriminates among pickets." Public employees represented by exempt unions are also subject to the same well-established restrictions on public employee labor speech. The only difference is that exempt unions are not required to expressly recognize these existing restrictions within their labor agreements. The same restrictions on public employee participation in strikes and pickets apply equally to public sector employees regardless of the presence of an acknowledgment and/or warning contained in a labor agreement.

It is also important to note that, prior to the enactment of HB 1413, the public labor law (Chapter 105.500, *et seq.*) excluded police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, college and university teachers, and all teachers of all Missouri schools. *See Independence-Nat. Educ. Ass'n v. Independence School Dist.*, 223 S.W.3d 131, 136, n. 2 (Mo. banc. 2007). Plaintiffs have not attempted to explain why this distinction was valid before 2018, but the current exclusion is not. "With respect to the claim that a statutory classification is violative of equal protection, a challenger must prove

abuse of legislative discretion beyond a reasonable doubt and, short of that, the statute is valid." *Blaske*, 821 S.W.2d at 829 (citing Winston, 636 S.W.2d at 327). Respondents have not met their burden to prove beyond a reasonable doubt the abuse of legislative discretion in excluding public safety labor unions from the procedural requirements of the law.

IV. Section 105.585(2) Does Not Infringe On Public Employees' Collective Bargaining Rights (Replying to Respondents' Point VI).

Respondents claim that §105.585(2) violates employees' right to collective bargaining contained in Article I, section 29 of the Missouri Constitution. Respondents, again, ignore the majority of the points raised by Appellants on this issue.

First, Respondents are incorrect that the right to "bargain collectively through representative of their own choosing" is classified as a "fundamental right" and subject to strict scrutiny. "Fundamental rights are those 'deeply rooted in the nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.'" *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 490 (Mo. banc. 2009) (quoting *State ex rel. Nixon v. Powell*, 167 S.W.3d 702, 705 (Mo. banc. 2005)). The mere fact that the Missouri Constitution "may contain additional protections" not found in the federal constitution does not transform such provisions of the Missouri Constitution into "fundamental" rights. *Id*. The right to bargain collectively protected by Article I, § 29 of the Missouri Constitution is not "deeply rooted in the nation's history and tradition and implicit in the concept of ordered liberty." *Id.* "[E]ven the concept of a private third-party entity with the power to bind employees on the terms of their employment likely would have been foreign to the Founders." *Janus*, 138 S. Ct. at 2471

n.7 (2018). At common law, "collective bargaining was unlawful." *Id.* (quoting *Teamsters v. Terry*, 494 U.S. 558, 565-66 (1990) (plurality opinion)); *see Independence-Nat'l Educ. Ass'n*, 223 S.W.3d at 139. Rather, well into the twentieth century, each "employee had the 'liberty of contract' to 'sell his labor'" upon his or her own terms. *Janus*, 138 S. Ct. at 2471, n. 7 (2018) (quoting *Adair v. United States*, 208 U.S. 161, 174-75 (1908)). Collective bargaining is thus not deeply rooted in the Nation's history, in contrast to fundamental rights such as the right to vote, the right to travel, and the freedom of speech. *In re Marriage of Woodson*, 92 S.W.3d 780, 784 (Mo. banc. 2003).

Second, setting aside the issue of "fundamental rights," all of Respondents' arguments on this point (again) assume Respondents' improperly broad interpretation of §105.585(2). As already explained, the statute does not *require* public employers to terminate employees for picketing over personnel matters. *See* Resp. Br. at 37. The statute does not require employees to "forego" their protected right to engage in expressive conduct. *Id.* at 38. Nor does the statute somehow "prevent good faith negotiations over the conditions of employment." *Id.* at 37.

As already explained in Appellants' opening brief, this 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). Article I, section 29 imposes no obligation on public employers to agree to any specific provision of a labor agreement. Section 105.585(2)'s requirement that certain

labor agreements include provisions reflecting the current limitations on public employee strike and picketing does not violate their right to "bargain collectively through representatives of their own choosing."

Finally, it bears repeating that Article I, § 29 does not protect a right of public employees to engage in strikes and labor picketing. As this Court emphasized in *Independence-National Education Assocation*, "[t]he law … forbids strikes by public employees." 223 S.W.3d at 133. "The public policy of this state … is that public employees do not have the right to strike against their governmental employer." *St. Louis Teachers Ass'n v. Bd. of Ed. of City of St. Louis*, 544 S.W.2d 573, 575 (Mo. 1976). The right to collective bargaining in Article I, § 29, plainly does not protect any right of public employees to engage in strikes and related labor picketing against public employers.

CONCLUSION

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

Respectfully submitted,

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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 6th day of January, 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 4,795 words.

/s/ Alyssa M. Mayer