Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

IN THE SUPREME COURT OF MISSOURI

No. SC101423

MISSOURI ASSOCIATION OF SCHOOL LIBRARIANS, ET AL.,

Respondents,

v.

MELESA JOHNSON, ET AL.,

Appellants.

Appeal from the Circuit Court of Jackson County
The Honorable J. Dale Youngs, No. 2316-CV05732

BRIEF OF RESPONDENTS

Bradley J. Yeretsky, MO # 53845
Austin M. Gassen, MO # 76996
STINSON LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
Telephone: (816) 842-8600
brad.yeretsky@stinson.com
austin.gassen@stinson.com

David P. Thoreson (*Of Counsel*)
STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 335-1500
david.thoreson@stinson.com

Gillian R. Wilcox, MO # 61278
Jason Orr, MO # 56607
ACLU FOUNDATION OF MISSOURI
406 West 34th Street, Suite 420
Kansas City, MO 64111
Telephone: (816) 470-9938
gwilcox@aclu-mo.org
jorr@aclu-mo.org

Kristin M. Mulvey, MO # 76060
Jonathan D. Schmid, MO # 74360
ACLU FOUNDATION OF MISSOURI
906 Olive Street, Suite 1130
St. Louis, MO 63101
Telephone: (314) 652-3114
kmulvey@aclu-mo.org
jschmid@aclu-mo.org

Counsel for Respondents

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iv

INTRODUCTION AND SUMMARY OF ARGUMENT 1

STATEMENT OF FACTS 5

I. Respondents MASL & MLA 5

II. Impact of § 573.550 on Respondents' members 5

III. Appellants' improper Statement of Facts 9

ARGUMENT 14

I. The circuit court correctly concluded that § 573.550 is unconstitutionally overbroad under article I, § 8 because its unconstitutional applications vastly outnumber its constitutional applications. (Responds to Appellants' Point Relied On I) 14

A. Missouri may criminally prohibit its citizens from disseminating published material to other citizens only to the extent the material consists of unprotected speech. 17

1. Material with "sexual" content is unprotected obscenity for minors, and thus criminally proscribable, only to the extent it satisfies the three-part *Miller* test, as adjusted for minors. 21

2. Obscene material for minors was not present in any Missouri schools prior to § 573.550's enactment because Missouri law had long criminalized the dissemination of material that is obscene for minors according to the *Miller* standard. 23

B. Section 573.550's full set of applications proscribes vast amounts of constitutionally protected speech. 24

1. Section 573.550 is a broad criminal prohibition that reaches private expressive conduct. 25

2. Because § 573.550's prohibition does not contain any of the *Miller* requirements, it necessarily criminalizes the

dissemination of vast amounts of non-obscene, constitutionally protected material for minors. 30

3. Section 573.550's "savings clause" does not absolve the statute's overbreadth because it fails to substantively incorporate *Miller*'s required savings clause. 34

C. Appellants' characterizations of § 573.550 as a regulation of "unprotected speech" fail because the statute is a criminal restriction of protected expressive activity, against which regulated citizens enjoy the highest degree of article I, § 8 protection. 38

1. The government-speech doctrine is inapposite to Respondents' facial challenge. 38

(i) The government-speech doctrine is inapposite because § 573.550 is a criminal speech restriction enacted by the State in its sovereign capacity pursuant to its police powers, not an instance of the government expressing its own views 39

(ii) The government-speech doctrine does not apply to Respondents' facial challenge because § 573.550's prohibition is not a regulation of "government speech." 44

2. The "school-sponsored speech" exception does not govern Respondents' facial challenge because § 573.550 is a criminal statute, not an editorial restriction of school-sponsored speech. 45

D. Respondents established that the hundreds of unconstitutional applications of § 573.550 vastly outnumber the statute's nonexistent constitutional applications, such that § 573.550 is facially overbroad. 49

II. The circuit court correctly applied the law and concluded that § 573.550 is unconstitutionally void for vagueness. (Responds to Appellants' Points Relied On II) 55

A. Respondents properly raised a facial vagueness challenge to § 573.550 because the statute has a real and substantial deterrent effect on legitimate, protected expression under article I, § 8. 56

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

B. The circuit court correctly concluded that § 573.550 is facially void for vagueness because the statute's definition of "explicit sexual material" fails to provide adequate notice of the conduct it prohibits. 60

1. Section 573.550's requirement that a prohibited visual depiction be "showing" an instance of enumerated sexual content is unconstitutionally vague. 61

2. Section 573.550's "savings clause" fails to give adequate notice when otherwise "explicit sexual material" is *not* prohibited. 70

3. Section 573.550's "official capacity" limitation is illusory and does nothing to mitigate the statute's vagueness. 75

4. Section 573.550's scienter requirement of knowledge does nothing to mitigate the vagueness inherent in the statute, which stems from regulated parties' lack of knowledge of the law, not of the facts. 77

C. Appellants do not dispute that § 573.550 is unconstitutionally vague because it invites arbitrary enforcement. 81

D. Because the deterrent effect of § 573.550's vagueness on protected speech is both real and substantial, this Court should declare the statute facially void for vagueness. 84

III. The circuit court correctly concluded that § 573.550 is not susceptible of a limiting construction to save it from unconstitutionality; the entire statute must be struck down. (Responds to Appellants' Points Relied On III) 88

CONCLUSION 91

CERTIFICATE OF SERVICE AND COMPLIANCE 93

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

TABLE OF AUTHORITIES

Page(s)

CASES

Am. Booksellers Ass'n v. Virginia,
882 F.2d 125 (4th Cir. 1989) 37

Am. Booksellers v. Webb,
919 F.2d 1493 (11th Cir. 1990) 37

Ashcroft v. Am. Civil Liberties Union,
535 U.S. 564 (2002) 31

Ashcroft v. Free Speech Coalition,
535 U.S. 234 (2002) 33, 34, 69

Backpage.com, LLC v. Cooper,
939 F. Supp. 2d 805 (M.D. Tenn. 2013) 78

Baggett v. Bullitt,
377 U.S. 360 (1964) 60, 84

Bethel Sch. Dist. No. 403 v. Fraser,
478 U.S. 675 (1986) 19, 20, 21

Boyce Motor Lines, Inc. v. United States,
342 U.S. 337 (1952) 77, 78

Broadrick v. Oklahoma,
413 U.S. 601 (1973) 84

Brockett v. Spokane Arcades, Inc.,
472 U.S. 491 (1985) ..... *passim*

Brooks v. State,
128 S.W.3d 844 (Mo. banc 2004) 59

Brown v. Ent. Merchs. Ass'n,
564 U.S. 786 (2011) 18, 60, 89

Cal. Tchrs. Ass'n v. State Bd. of Educ.,
271 F.3d 1141 (9th Cir. 2001) 59, 84, 85

Chaplinsky v. New Hampshire,
315 U.S. 568 (1942) 18

Church of Am. Knights of Ku Klux Klan v. City of Erie,
99 F. Supp. 2d 583 (W.D. Pa. 2000) 79

City of Maryland Heights v. State,
638 S.W.3d 895 (Mo. banc 2022) 59

City of St. Louis v. Kiely,
652 S.W.2d 694 (Mo. App. E.D. 1983) 55, 84, 86

Cmty. Television of Utah, Inc. v. Wilkinson,
611 F. Supp. 1099 (D. Utah 1985) 32

Coates v. City of Cincinnati,
402 U.S. 611 (1971) 59

Cocktail Fortune, Inc. v. Supervisor of Liquor Control,
994 S.W.2d 955 (Mo. banc 1999) 57, 58

Commonwealth v. Am. Booksellers Ass'n,
372 S.E.2d 618 (Va. 1988) 37

Erznoznik v. City of Jacksonville,
422 U.S. 205 (1975) ..... *passim*

Farrell v. Burke,
449 F.3d 470 (2d Cir. 2006) 59

Free Speech Coalition, Inc. v. Paxton,
606 U.S. 461 (2025) ..... *passim*

Frese v. Formella,
53 F.4th 1 (1st Cir. 2022) 81

Frese v. MacDonald,
425 F. Supp. 3d 64 (D.N.H. 2019) 79

Garcetti v. Ceballos,
547 U.S. 410 (2006) 19, 21

Ginsberg v. New York,
390 U.S. 629 (1968) 15, 22

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

GLBT Youth in Iowa Schs. Task Force v. Reynolds,
709 F. Supp. 3d 664 (S.D. Iowa 2023) ("*GLBT Youth I*") 63, 64, 67, 73

GLBT Youth in Iowa Schs. Task Force v. Reynolds,
114 F.4th 660 (8th Cir. 2024) ("*GLBT Youth II*") 41, 44, 45, 63

Grayned v. City of Rockford,
408 U.S. 104 (1972) 83

Green v. Fotoohighiam,
606 S.W.3d 113 (Mo. banc 2020) 10, 11, 12, 13

Griswold v. Connecticut,
381 U.S. 479 (1965) 17, 26

Hazelwood Sch. Dist. v. Kuhlmeier,
484 U.S. 260 (1988) 19, 47, 48

Henry v. Halliburton,
690 S.W.2d 775 (Mo. banc 1985) 18

Hill v. Colorado,
530 U.S. 703 (2000) 85

HM Fla.-ORL, LLC v. Governor of Fla.,
137 F.4th 1207 (11th Cir. 2025) 60, 67

In re McCarty,
716 S.W.3d 245 (Mo. banc 2025) 19, 20

Interactive Digital Software Ass'n v. St. Louis Cnty.,
329 F.3d 954 (8th Cir. 2003) 18

Jacobellis v. Ohio,
378 U.S. 184 (1964) 21, 82

James v. Wilkinson,
No. 89-0139, 1991 WL 626750 (W.D. Ky. May 20, 1991) 82

Kansas City v. O'Connor,
510 S.W.2d 689 (Mo. banc 1974) 70, 71

Karney v. Dep't of Lab. & Indus. Rels.,
599 S.W.3d 157 (Mo. banc 2020) 41

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Kilborn v. Amiridis,
131 F.4th 550 (7th Cir. 2025) 21, 39

Kois v. Wisconsin,
408 U.S. 229 (1972) 33

Kolender v. Lawson,
461 U.S. 352 (1983) 58

Lamont v. Postmaster General,
381 U.S. 301 (1965) 18

Little v. Llano County,
138 F.4th 834 (5th Cir. 2025) (en banc) 41

Local 8027, AFT-N.H., AFL-CIO v. Edelblut,
651 F. Supp. 3d 444 (D.N.H. 2023) 83

Malin v. Mo. Ass'n of Cmty. Task Forces,
669 S.W.3d 315 (Mo. App. W.D. 2023) 11

Martin Leigh, PC v. Williamson,
699 S.W.3d 538 (Mo. App. S.D. 2024) 10, 11

Martin v. City of Struthers,
319 U.S. 141 (1943) 17, 18

Matal v. Tam,
582 U.S. 218 (2017) 43

McNary v. Carlton,
527 S.W.2d 343 (Mo. banc 1975) ..... *passim*

Miller v. California,
413 U.S. 15 (1973) ..... *passim*

Moody v. NetChoice, LLC,
603 U.S. 707 (2024) ..... *passim*

Nat'l Endowment for the Arts v. Finley,
524 U.S. 569 (1998) 19, 21, 39

Nielsen v. Preap,
586 U.S. 392 (2019) 29

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Norma Kristie, Inc. v. Oklahoma City,
572 F. Supp. 88 (W.D. Okla. 1983) 83

Penguin Random House LLC v. Robbins,
774 F. Supp. 3d 1001 (S.D. Iowa 2025) ("*Penguin Random House I*") ..... *passim*

Penguin Random House, LLC v. Robbins,
172 F.4th 581 (8th Cir. 2026) ("*Penguin Random House II*") ..... *passim*

People for the Ethical Treatment of Animals, Inc. v. Gittens,
414 F.3d 23 (D.C. Cir. 2005) 40, 41

Pernell v. Fla. Bd. of Gov'rs of State Univ.,
No. 22-13992, — F.4th —, 2026 WL 1955783 (11th Cir. July 7, 2026) 42, 43

Planned Parenthood of Kan. v. Nixon,
220 S.W.3d 732 (Mo. banc 2007) 17, 59, 88, 91

Pleasant Grove City v. Summum,
555 U.S. 460 (2009) 20, 39, 40

Project Veritas v. Schmidt,
72 F.4th 1043 (9th Cir. 2023) 40, 42

Reno v. Am. Civil Liberties Union,
521 U.S. 844 (1997) 31, 34, 68, 83

Roth v. United States,
354 U.S. 476 (1957) 32, 35, 53

Screws v. United States,
325 U.S. 91 (1945) 77

Sheck v. Baileyville Sch. Comm.,
530 F. Supp. 679 (D. Me. 1982) 87

Shurtleff v. City of Boston,
596 U.S. 243 (2022) 20, 45

Smith v. California,
361 U.S. 147 (1959) 18

Smith v. Goguen,
415 U.S. 566 (1974) 79

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Sovereign News Co. v. Falke,
448 F. Supp. 306 (N.D. Ohio 1977) 86

State ex rel. Houser v. St. Louis Union Tr. Co.,
248 S.W.2d 592 (Mo. Div. 2 1952) 76

State ex rel. Nixon v. Telco Directory Pub.,
863 S.W.2d 596 (Mo. banc 1993) 56

State v. Callen,
45 S.W.3d 888 (Mo. banc 2001) ..... *passim*

State v. Carpenter,
736 S.W.2d 406 (Mo. banc 1987) 88, 89, 91

State v. Collins,
648 S.W.3d 711 (Mo. banc 2022) 14, 24, 27

State v. Conner,
583 S.W.3d. 102 (Mo. App. E.D. 2019) 57

State v. Cooley,
766 S.W.2d 133 (Mo. App. S.D. 1989) 73

State v. Cox,
619 S.W.2d 794 (Mo. App. E.D. 1981) 22, 69

State v. Dale,
775 S.W.2d 126 (Mo. banc 1989) 80

State v. Hart,
404 S.W.3d 232 (Mo. banc 2013) 90, 91

State v. Koetting,
616 S.W.2d 822 (Mo. banc 1981) 80, 81

State v. League of Women Voters of Mo.,
730 S.W.3d 591 (Mo. banc 2026) 57

State v. Mahan,
971 S.W.2d 307 (Mo. banc 1998) 57, 58

State v. Simmer,
772 S.W.2d 372 (Mo. banc 1989) 33, 69, 73

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

State v. Triplett,
722 S.W.2d 633 (Mo. App. S.D. 1986) 73

State v. Van Wye,
37 S.W. 938 (Mo. 1896) 33

State v. Vaughn,
366 S.W.3d 513 (Mo. banc 2012) 17, 18, 59

State v. Vollmar,
389 S.W.2d 20 (Mo. 1965) 17, 26, 86

Thornhill v. Alabama,
310 U.S. 88 (1940) 14

U.S. Lab. Party v. Pomerleau,
557 F.2d 410 (4th Cir. 1977) 83

United States v. Williams,
553 U.S. 285 (2008) 81, 84

Vernon Beigay, Inc. v. Traxler,
790 F.2d 1088 (4th Cir. 1986) 23

Village of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.,
455 U.S. 489 (1982) 17, 58, 77

Waters v. Churchill,
511 U.S. 661 (1994) 19, 21, 39

Young v. Am. Mini Theatres, Inc.,
427 U.S. 50 (1976) ..... *passim*

CONSTITUTIONAL PROVISIONS

MO. CONST. art. I, § 8 ..... *passim*

MO. CONST. art. I, § 10 3

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

STATUTES

§ 573.010, RSMo ..... *passim*
§ 573.020, RSMo 5, 23, 89
§ 573.030, RSMo 5, 23, 69, 89
§ 573.040, RSMo 5, 21, 53, 89
§ 573.550, RSMo ..... *passim*

OTHER AUTHORITIES

Michael J.Z. Mannheimer, *Vagueness as Impossibility*,
98 Tex. L. Rev. 1049 (2020) 77, 81

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal presents the narrow question whether the General Assembly used unlawful means to pursue lawful ends when it enacted § 573.550, RSMo[1] and created the novel criminal offense of "providing explicit sexual material to a student." For the reasons below, this Court should affirm the judgment of the circuit court that § 573.550 is facially unconstitutional and permanently enjoin the statute's enforcement.

According to Appellants, the General Assembly enacted § 573.550 to vindicate the State's responsibility to shield students from non-academic obscenity in elementary and secondary school settings, including school libraries. But the issue is not whether the General Assembly *may* lawfully regulate the content of Missouri public-school libraries in some circumstances. The question is whether the General Assembly adopted a constitutionally permissible *means* of doing so when it enacted § 573.550. For two independent reasons, the circuit court correctly applied the law and answered that question in the negative, and this Court should affirm.

First, Respondents Missouri Association of School Librarians ("MASL") and Missouri Library Association ("MLA") established that § 573.550 is unconstitutionally overbroad in violation of the free-speech clause in article I, § 8 of the Missouri Constitution. Section 573.550 is a statewide, content-based, criminal speech restriction that punishes educators for engaging in the protected expressive activity of disseminating published material to other citizens who happen to be students—a core article I, § 8

[1] Unless otherwise noted, all statutory references are to the Revised Statutes of Missouri (2016), as amended and supplemented.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

freedom. When the General Assembly uses its police powers, and especially the criminal code, to restrict expressive activity, citizens regulated thereby enjoy the highest degree of protection under article I, § 8, and the restriction must be limited to unprotected speech. Appellants claim throughout their briefing here and below that § 573.550 restricts only unprotected obscenity to minors, yet nowhere in the statute does the word "obscene" or "obscenity" appear, and as Respondents make clear, Appellants are simply wrong. With respect to material with so-called "sexual content," this Court and the U.S. Supreme Court have long held that statewide criminal prohibitions on the dissemination of such material to minors must be limited to the three-part definition of constitutionally unprotected obscenity for minors. While Missouri's preexisting criminal statutes are so limited, § 573.550's prohibition is far broader because it fails to incorporate any part of that definition. By necessity, therefore, the unconstitutional applications of § 573.550 vastly outnumber the constitutional applications, and the statute is facially overbroad. Indeed, the record below reflects that *no* titles that are obscene for minors, and *hundreds* of titles that are not (and are thus constitutionally protected for minors), were unconstitutionally removed from Missouri schools because of § 573.550.

On appeal, Appellants offer no persuasive justification for reversing the circuit court's judgment that § 573.550 is overbroad. Because Appellants cannot show that § 573.550 has ever been constitutionally applied, they argue only that the expressive activities regulated by § 573.550 represent unprotected "government speech" or "school-sponsored speech." But neither the government-speech nor school-sponsored speech

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

doctrines apply in Respondents' facial overbreadth challenge to a *criminal* statute like § 573.550 that punishes educators for engaging in expressive conduct.

Second, Respondents established that § 573.550 is facially void for vagueness in violation of article I, § 8 and the due process clause of article I, § 10. Contrary to Appellants' misrepresentations, pre-enforcement, facial vagueness challenges to laws that infringe protected expression are available under both this Court's and the U.S. Supreme Court's precedents. With respect to the merits, § 573.550 criminalizes educators' dissemination to students of any work that contains even one visual depiction "showing" certain categories of so-called "sexual conduct." In the context of literature intended for older minors, however, § 573.550's "showing" requirement and its savings clause have proven impossible to consistently apply. That is because, apart from sex-education materials, young adult literature containing any visual depictions of "sexual conduct" invariably *implies* such conduct without explicitly *showing* it. Section 573.550 thus requires educators to make inescapably aesthetic judgments about when a visual depiction crosses the line from a permissible implication to an impermissible "showing," or when a work is a "work of art." Such subjective judgments are the hallmark of facially vague statutes, and § 573.550 imposes no consistent, objective standards for making them.

Finally, a reasonable narrowing construction saving § 573.550 from unconstitutionality is not available. Nor would Appellants' proposed construction render the statute constitutional. As U.S. Supreme Court precedent dictates, the only way to possibly cure this criminal statute's overbreadth and vagueness is to limit the prohibited material to the three-part constitutional definition of unprotected obscenity for minors,

which this Court cannot do without impermissibly rewriting § 573.550 altogether. Under the circumstances, this Court's precedents are clear: The statute must be invalidated in its entirety.

Accordingly, Respondents respectfully request that this Court affirm the judgment of the circuit court, declare § 573.550 facially overbroad in violation of article I, § 8 and void for vagueness in violation of article I, §§ 8 and 10, and permanently enjoin the statute's enforcement.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

STATEMENT OF FACTS

I. RESPONDENTS MASL & MLA

Respondents MASL and MLA are member associations that represent library professionals affiliated with Missouri schools. D1817 ¶¶ 1-12, 22-32, 35. MASL has more than 963 members currently or formerly working in public and private elementary and secondary school libraries across Missouri. *Id.* ¶ 2. MLA has more than 530 members across Missouri, many of whom are employed as library professionals in public elementary or secondary schools or have regular interactions with students through community partnerships and bookmobile services. *Id.* ¶¶ 24, 32-39, 41-42; D1831 ¶ 47. There is no dispute that members of MASL and MLA are "affiliated" with public and private schools for purposes of § 573.550.

II. IMPACT OF § 573.550 ON RESPONDENTS' MEMBERS

More than forty years before § 573.550 was enacted, Missouri criminalized the provision to minors of material and performances that are obscene from a minor's perspective. *See* §§ 573.020, 573.030, 573.040 (effective Jan. 1, 1979); § 573.010(14) (defining prohibited material or performances as "pornographic for minors" in the foregoing statutes according to this Court's and the Supreme Court's three-part definition of constitutionally unprotected obscenity, adjusted for minors); D1817 ¶¶ 50, 244. For that reason, no works of unprotected obscenity for minors have ever appeared on the shelves of Missouri school libraries, including at the time of § 573.550's enactment. *Id.* ¶¶ 50, 99. To the extent § 573.550 was enacted to vindicate the State's responsibility to shield students

from obscenity in schools, therefore, the statute was a classic solution in search of a problem.

Unsurprisingly, when the General Assembly enacted § 573.550 just before the 2021-2022 school year, it sowed great confusion across Missouri school districts, for several reasons.

First, there was no uniform procedure or guidance for the implementation of § 573.550. *Id.* ¶ 88. School districts, through their administrators, and in some cases individual employees within a district, were required to determine in the first instance which books might fall within the law's prohibition. *Id.* But district officials, teachers, librarians, and others responsible for selecting and maintaining books within schools—including in classroom libraries unrelated to any specific curriculum—did not understand how to properly follow the statute in assessing what materials are prohibited. *Id.* ¶¶ 96-97, 157, 164, 243, 245-46. Educators and school professionals throughout the state understandably feared workplace discipline and criminal punishment for violating § 573.550, were confused by the statute's language and the inconsistent interpretation among districts, and were frustrated by the lack of clear statewide guidance for the statute's implementation. *Id.* ¶¶ 163, 238-46, 259-96, 298-301, 304-08, 310, 313.

The looming threat of criminal prosecution for violating § 573.550 caused a broad review of existing library collections, as well as prospective new material, to identify *anything* that might be considered by one of the 115 prosecuting attorneys in Missouri to

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

be prohibited "explicit sexual material" under the law.[2] D1817 ¶¶ 250-58. Initial reports reflected that at least 300 different titles were removed across Missouri schools as a result. *Id.* ¶ 91. Many of Respondents' members were forced to remove books from their libraries that they deemed developmentally appropriate and educationally suitable for their students simply to avoid the risk of future penalties. *Id.* ¶¶ 111-15, 205-07, 209, 215-16, 217-23, 230-32, 250. Many educators were afraid to speak up about the law, and others left the education profession altogether because of it. *Id.* ¶¶ 279-81.

Second, most districts understandably concluded that § 573.550—whose prohibition is much broader than the definition of constitutionally unprotected obscenity for minors—must prohibit something *more* than what was previously prohibited under Missouri's existing obscenity statutes. D1817 ¶¶ 118-23, 130-41, 143-48, 168-76. But regulated school affiliates interpreted the scope, meaning, and reach of § 573.550's prohibition with alarming differences. *Id.* ¶¶ 50, 163, 238-39, 246. For example, Wentzville School District directed all librarians to review their entire collections for any books that might violate § 573.550. *Id.* ¶¶ 167-70. Despite the fact that Missouri librarians have never purchased materials that are obscene as to minors for their collections, fearful

[2] Missouri has over 2,400 public schools employing approximately 18,000 administrative and supervisory personnel, 70,800 teachers, and 1,600 library professionals. Section 573.550 potentially subjects all of them to conviction for a Class A misdemeanor, punishable by up to one year of incarceration and a $2,000 fine. D1817 ¶ 44-46. One district's message to teachers was: "[We] would rather the district get in trouble for removing an item than a teacher end up in court for violating the law." *Id.* ¶ 146. In addition to public schools, Missouri has approximately 630 private schools. *Id.* ¶ 47.

librarians flagged a staggering 219 titles available to students for review by district administrators. *Id.* ¶¶ 171, 177-78 (books reviewed included *50 Women Artists You Should Know*, *Children's Bible Stories*, *The Giver*, *The Handmaid's Tale: The Graphic Novel*, *Holocaust Resistance*, and *Slaughterhouse-Five: The Graphic Novel*).

In other parts of the state, Nixa Public Schools formally reviewed for potential violations of § 573.550 books such as *The Complete Maus: A Survivor's Tale* by Art Spiegelman, which anthropomorphically depicts Jewish people as mice and Nazis as cats in a graphic memoir of the author and his late father, a Jewish survivor of the Holocaust, due to the inclusion of an image of a naked mouse in a bathtub. *Id.* ¶¶ 121-22, 202-204. Park Hill School District permanently removed, among other titles, *The Big Bath House* by Kyo Maclear, a children's picture-book about the Japanese cultural tradition of family excursions to the neighborhood public bathhouse. *Id.* ¶ 129. An individual librarian at Kansas City Public Schools chose, among others, to remove the *Game of Thrones* series of graphic novels. *Id.* ¶¶ 109, 111. Elsewhere, the Parkway School District removed one of the *New York Times'* 100 Best Books of the 21st Century and *Time*'s #1 Book of the Year—*Fun Home: A Family Tragicomic* by Alison Bechdel. *Id.* ¶¶ 205-07.

Similarly, the Rockwood School District published a list of 25 books removed because of § 573.550. *Id.* ¶ 158-59 (including titles like *Batman: White Night* and the sex-education book, *Let's Talk About It: The Teen's Guide to Sex, Relationships, and Being a Human*). After reviewing Rockwood's list, however, Columbia Public Schools made a conscious decision to retain seven of those same titles, including *The Handmaid's Tale: the Graphic Novel*; McDonald County R1 School District retained two of the titles

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Rockwood removed, including *Slaughterhouse-Five: The Graphic Novel*; and Wentzville School District retained one of those titles. *Id.* ¶ 166. In many districts, the traditional print version of a novel remained on the shelf while a graphic adaptation was removed because of § 573.550, which negatively impacted students who struggle with traditional reading. *Id.* ¶¶ 210-14.

Ultimately, § 573.550 resulted in the widespread removal of books previously deemed appropriate solely to avoid the possibility of criminal prosecution. *E.g.*, D1817 ¶ 256 (detailing how a Wentzville librarian categorically decided not to order books with a "Young Adult" label for her elementary school library); ¶ 261 (librarian concerned that Dr. Seuss books could result in a complaint due to visual depictions of a character's backside). But the statute's effects were felt off campus as well. School professionals were hesitant to give children, including their own, access to books outside school, or place books in free community libraries on their lawns. *Id.* ¶¶ 263-68. Post-secondary and community-library staff who work with elementary and secondary students to provide educational programming, digital media programs and digital library access, including electronic books, audiobooks, and bookmobiles also altered their relationships with Missouri school districts. *Id.* ¶¶ 48-49, 217-35. For example, St. Charles City-County Library elected not to move forward with a partnership with the Wentzville School District to operate a bookmobile due to concerns about criminal liability. *Id.* ¶ 222.

III. APPELLANTS' IMPROPER STATEMENT OF FACTS

The Statement of Facts in Appellants' brief contains factual errors, misrepresentations, legal argument, and other material inappropriate for inclusion under

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

this Court's rules. *See* Rule 84.04(c).[3] Of chief concern, Appellants' brief does not correctly cite to the summary judgment record below. Instead, Appellants' brief reproduces Appellant Intervenor's Statement of Uncontested Material Facts as initially sent to Respondents below, *see* D1729, including many allegations to which Respondents objected or denied in their response. *Compare* Apps. Br. p. 10 ¶ 9 (stating an alleged fact that was denied below), *with* D1772 ¶ 9. Furthermore, instead of citing to that Statement's paragraphs, Appellants often cite to exhibits, *e.g.*, Apps. Br. p. 10 ¶ 9 (citing a deposition), without linking these references to uncontroverted facts in the record. Under Rule 74.04(c) and relevant precedent, Appellants' failure to provide that link is improper. A brief that fails "to identify the uncontroverted material facts as established by the motion for summary judgment and responses thereto … effectively contains no facts." *Martin Leigh, PC v. Williamson*, 699 S.W.3d 538, 543 (Mo. App. S.D. 2024), *reh'g and/or transfer denied* (Oct. 11, 2024), *transfer denied* (Nov. 19, 2024).

"Facts come into a summary judgment record *only* via Rule 74.04(c)'s numbered-paragraphs-and-responses framework." *Green v. Fotoohighiam*, 606 S.W.3d 113, 117 (Mo. banc 2020) (internal quotation marks omitted). Exhibits "generally play only a secondary role, and then only as cited to support Rule 74.04(c) numbered paragraphs or responses, *since parties cannot cite or rely on facts outside the Rule 74.04(c) record*." *Id.* "[A]n appellate court reviewing an entry of summary judgment … need only consult what was properly put before it by way of Rule 74.04(c) paragraphs and responses." *Id.* at 121.

[3] All Rule references are to Missouri Supreme Court Rules unless otherwise noted.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

"[A]rguments ... that are completely disconnected from the numbered paragraph material facts in the summary judgment record, as required by Rule 74.04, are analytically useless in an appellate review that requires this court to properly apply Rule 74.04." *Id.* at 120. "A statement of facts that does not identify: (1) the material facts established by a party's motion for summary judgment and the party opposing the motion for summary judgment's response, or (2) the material facts, if any, pled in the motion for summary judgment properly denied by the opposing party's response, violates Rule 84.04(c)." *Williamson*, 699 S.W.3d at 542-43 (internal quotation marks omitted).

Because Appellants' brief fails to comply with Rules 74.04 and 84.04(c) by including facts that are not part of the full summary judgment record and appear only in their original statement of facts before any response was received, as well as citing directly to exhibits or other supportive materials, "rejection of [Appellants'] points on appeal on this basis alone would be warranted." *Malin v. Mo. Ass'n of Cmty. Task Forces*, 669 S.W.3d 315, 322 n.4 (Mo. App. W.D. 2023). Appellate courts are not required to "sift through the entire record to identify disputed issues, which, in turn, would cause a court to impermissibly act as an advocate for a party." *Green*, 606 S.W.3d at 118. Appeals may be dismissed for this error. *See Williamson*, 699 S.W.3d at 542-43 (noting that the appellant relied on accompanying exhibits and did not direct the court to any responses to their statement of facts, and dismissing the appeal because the "violation of Rule 84.04(c) materially impedes [the court's] review").

For these reasons, the Court should either dismiss the appeal or disregard the Statement of Facts in Appellants' brief, apart from their recitation of § 573.550's text and

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

the procedural history of the case, which are not related to the summary judgment record of facts and responses below. If the appeal is not dismissed for this error, however, the Court should look to the facts cited in Respondents' brief. Here, as required, Respondents have cited to Appellants' *responses* to Respondents' statements of uncontroverted material facts below, including any objections or denials in full or in part, *see* D1817 & D1831, and Respondents have included only facts that were admitted by Appellants, unless otherwise noted and explained.[4]

Finally, because Appellant Class of Prosecutors did not file a motion for summary judgment or respond to the motions for summary judgment below, it is deemed to have admitted all facts contained in Respondents' statements of uncontroverted material facts and may not dispute them on appeal. *See* Rule 74.04(c)(2); *Green*, 606 S.W.3d at 118 (explaining that the facts on which the circuit court based its final order and judgment are "deemed admitted" by a party who "failed to respond to the summary judgment motion in a timely manner"). Thus, while Appellant Intervenor did respond below, the Appellant

[4] In a further violation of the Rules, Appellants' responses and objections to Respondents' Statement of Uncontroverted Material Facts below, *see* D1817, failed to reproduce Respondents' citations to supporting exhibits and accompanying parentheticals, and Appellants' responses and objections to Respondents' Statement of Additional Uncontroverted Material Facts below, *see* D1831, failed to reproduce Respondents' excerpted pages and images. To the extent the Court cannot locate a direct quote or parenthetical in Respondents' citations to D1817, the missing information appears in the same paragraph number in Respondents' Statement of Uncontroverted Material Facts below, *see* D1649. To the extent the Court cannot locate an excerpted page or image in Respondents' citations to D1831, the missing excerpt appears in the same paragraph number in Respondents' Statement of Additional Uncontroverted Material Facts below, *see* D1772.

Class may not now attempt to "create a genuine issue of material fact" by referencing facts "not cited or otherwise referenced in any Rule 74.04(c) paragraph or response." *Id.*

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

ARGUMENT

The Court should affirm the judgment of the circuit court, declare § 573.550 facially overbroad in violation of article I, § 8 and void for vagueness in violation of article I, §§ 8 and 10 of the Missouri Constitution, and permanently enjoin the statute's enforcement.

I. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT § 573.550 IS UNCONSTITUTIONALLY OVERBROAD UNDER ARTICLE I, § 8 BECAUSE ITS UNCONSTITUTIONAL APPLICATIONS VASTLY OUTNUMBER ITS CONSTITUTIONAL APPLICATIONS. (Responds to Appellants' Point Relied On I)

A law is overbroad if it "does not aim specifically at evils within the allowable area of State control, but ... sweeps within its ambit other activities that … constitute an exercise" of protected expression. *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). Such laws are void on their face; they need not be challenged "as applied" to the particular facts of a case. *Id.* at 98. An overbreadth challenge asks "whether a law's unconstitutional applications are substantial compared to its constitutional ones." *Moody v. NetChoice, LLC*, 603 U.S. 707, 718 (2024). "To make that judgment, a court must determine a law's full set of applications, evaluate which are constitutional and which are not, and compare the one to the other." *Id.*; *accord State v. Collins*, 648 S.W.3d 711, 715-16 (Mo. banc 2022), *as modified on denial of reh'g* (Aug. 30, 2022). Ultimately, the Court must decide "whether a substantial number of a law's applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Moody*, 603 U.S. at 723 (internal quotation marks omitted).

Appellants contend the circuit court erred in concluding that § 573.550 is overbroad for at least three reasons. As explained below, each of Appellants' arguments is meritless.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

First, Appellants contend that "§ 573.550 regulates only constitutionally *unprotected* obscenity for minors." Apps. Br. p. 34. As Appellants acknowledge, unprotected obscenity for minors has a strict, three-part definition. *Id.* p. 38 (quoting *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 474 (2025)); *see Miller v. California*, 413 U.S. 15, 24 (1973) (announcing the three-part definition of unprotected obscenity); *Ginsberg v. New York*, 390 U.S. 629, 638 (1968) (permitting states to "adjust" each part of the definition for assessment from a minor's perspective); *McNary v. Carlton*, 527 S.W.2d 343, 345 (Mo. banc 1975) (adopting *Miller*'s three-part standard as a constitutional ceiling for Missouri's criminal obscenity statutes). But Appellants simply declare, without any meaningful analysis, that the "only" material proscribed by § 573.550 qualifies as unprotected "obscenity for minors." Apps. Br. p. 34. In doing so, Appellants ignore that § 573.550 contains none of *Miller*'s three constitutional prerequisites, two of which demand that the trier of fact evaluate the work "as a whole." *Miller*, 413 U.S. at 24. As a result, § 573.550, which criminalizes works with even *one* visual depiction of prohibited "explicit sexual material," often with no holistic evaluation, manages to reach unprotected obscenity for minors—which was already prohibited in Missouri schools long before § 573.550—only by *also* criminalizing vast amounts of constitutionally protected speech for minors to view. Accordingly, § 573.550 is classically overbroad.

Second, Appellants contend that one of the expressive activities § 573.550 affects—the curation of public-school libraries—is wholly unprotected "government speech." Apps. Br. p. 35. Appellants' argument fails for several reasons. First, § 573.550 criminalizes substantially more expressive activity than mere public-school library curation, and in any

event, the Eighth Circuit has held that the curation of public-school libraries is *not* government speech for purposes of the First Amendment. More fundamentally, Appellants misunderstand the premise of the government-speech doctrine. The doctrine may apply in cases where the *state action* challenged on article I, § 8 grounds consists of the government "speaking" in a capacity analogous to a private citizen to express its own views, and the challenger would prefer the government to express a *different* message. But it does not apply in cases where the challenged state action consists of the government acting in its *sovereign* capacity using its police powers, and especially the criminal code, to punish private citizens (public employees or otherwise) for expressive conduct (at work or otherwise).

Finally, Appellants contend the activities regulated by § 573.550 qualify as "school-sponsored speech" subject to diminished article I, § 8 protection. Apps. Br. pp. 35-36. Again, Appellants misunderstand the premise of the controlling decisions. Like the government-speech doctrine, school-sponsored speech decisions may govern article I, § 8 challenges to *state action* that consists of the government acting in a limited, editorial capacity to set standards for public-school education for pedagogical reasons, or through school personnel in the public-school setting. But it does not apply to a *criminal statute* enacted in the State's sovereign capacity to punish both public and private school affiliates for their own expressive activity.

In any overbreadth challenge, the U.S. Supreme Court has cautioned that to get the analysis "right, ... a court must understand what kind of government actions the First

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Amendment prohibits." *Moody*, 603 U.S. at 728.[5] To aid the Court, and because Appellants did not do so, Respondents "set out the relevant constitutional principles" first. *Id.*[6]

A. Missouri may criminally prohibit its citizens from disseminating published material to other citizens only to the extent the material consists of unprotected speech.

The constitutional "right of freedom of speech … includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach." *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965). The right of free speech thus "embraces the right to distribute literature, and necessarily protects the right to receive it." *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943); *State v. Vollmar*, 389 S.W.2d 20, 27 (Mo. 1965) (recognizing "the right of free dissemination of printed matter" under article I, § 8). Irrespective of medium, the right to disseminate and "to receive publications is … a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and

[5] This Court has compared the First Amendment in the U.S. Constitution to Missouri's constitutional counterpart in article I, § 8, and held that "[t]he two constitutional provisions are comparable." *State v. Vaughn*, 366 S.W.3d 513, 517 n.3 (Mo. banc 2012) (citing *Planned Parenthood of Kan. v. Nixon*, 220 S.W.3d 732, 736 (Mo. banc 2007)). Thus, this Court regularly relies on federal First Amendment precedent in its analysis of free-speech claims brought under the Missouri Constitution.

[6] The constitutional background in this section also informs Respondents' vagueness analysis. Likewise, the vagueness of § 573.550 informs Respondents' overbreadth analysis. "In making [an overbreadth] determination, a court should evaluate the ambiguous as well as the unambiguous scope of the enactment. To this extent, the vagueness of a law affects overbreadth analysis." *Village of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 495 n.6 (1982).

consider them." *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring); *see also Martin*, 319 U.S. at 146-47.

While article I, § 8 broadly protects the right of citizens to disseminate and receive published material, "[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the … obscene, the profane, the libelous, and the insulting or 'fighting' words." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942); *accord Vaughn*, 366 S.W.3d at 518. The First Amendment and article I, § 8 do "not recognize *any* state power" to criminally "restrict the dissemination of books which are not obscene." *Smith v. California*, 361 U.S. 147, 152 (1959) (emphasis added).

Notably, the "values protected by" article I, § 8 and "the First Amendment are no less applicable when the government seeks to control the flow of information to minors." *Interactive Digital Software Ass'n v. St. Louis Cnty.*, 329 F.3d 954, 960 (8th Cir. 2003) (internal quotation marks omitted). "No doubt a State possesses legitimate power to protect children from harm, but that does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 794 (2011). Expression that is not "obscene as to youths … cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213-14 (1975).

Finally, the degree of protection afforded to citizens by article I, § 8 depends on the nature of the citizen's speech and the capacity in which the government acted to restrict it. *See Henry v. Halliburton*, 690 S.W.2d 775, 784 (Mo. banc 1985) ("First Amendment

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

theory provides different levels of protection by balancing the competing interests depending upon the character of the speech."); *Moody*, 603 U.S. at 728 (explaining that the starting point of any free-speech analysis is to "understand what kind of *government actions* the First Amendment prohibits" (emphasis added)).

At one end of the spectrum, the highest degree of protection is afforded when the government acts in a *sovereign* capacity, through its police powers, to restrict speech—for example, by enacting a criminal statute punishing citizens for engaging in expressive activity. *See, e.g.*, *Waters v. Churchill*, 511 U.S. 661, 671-72 (1994) (plurality opinion) (explaining that the Court's decisions have "always assumed" that the government acting in a non-sovereign capacity, like employer, "has far broader powers" to limit speech "than does the government as sovereign" (collecting cases)); *Garcetti v. Ceballos*, 547 U.S. 410, 424 (2006) (same); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 589 (1998) (explaining that the First Amendment is far less restrictive of state action "when the Government is acting as patron" of the arts, "rather than as sovereign").

Near the middle of the spectrum are public-employee and student-speech decisions, which afford lesser protection to regulated parties when the government acts in the capacity of an employer to restrict public employees' speech pursuant to official duties, *e.g.*, *In re McCarty*, 716 S.W.3d 245, 256 (Mo. banc 2025); *Garcetti*, 547 U.S. at 424, or *in loco parentis* in the public-school setting to restrict student or school-sponsored speech for disciplinary reasons, *e.g.*, *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986), or pedagogical ones, *e.g.*, *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). In those cases, the government's interest in restricting speech—to ensure efficient and effective

delivery of public services, or to act in the place of parents, effectively in a child-rearing role, in public schools—takes precedence over the regulated citizen's interest in wholly unrestricted speech. *See, e.g.*, *McCarty*, 716 S.W.3d at 256; *Fraser*, 478 U.S. at 681.

At the other end of the spectrum are government-speech decisions, in which the state action consists of the government expressing its *own* views in a capacity analogous to a private citizen. *E.g.*, *Pleasant Grove City v. Summum*, 555 U.S. 460, 465-66 (2009). Such action may not be challenged under article I, § 8 by citizens who would prefer the government to express a different message. *E.g.*, *Shurtleff v. City of Boston*, 596 U.S. 243, 251-52 (2022) (holding that a private citizen cannot use the Free Speech Clause to restrict the government "when it speaks" or when it "chooses what to say").

That state action restricting speech in different capacities results in different degrees of article I, § 8 protection for the regulated citizens makes good sense. After all, when the government acts in a sovereign capacity to restrict speech, especially through its police powers, its power to punish citizens' transgressions—including with a term of imprisonment—is greatest. When the government issues a workplace regulation of public employees' speech pursuant to official duties, by contrast, the most severe punishment it can dole out is a pink slip. When the government acts through educators or administrators in the public-school setting to censor student or school-sponsored speech for pedagogical or disciplinary reasons, the most severe punishment rarely exceeds suspension. And when the government expresses its own view, a private citizen with a different view suffers no meaningful harm at all. It is no wonder courts agree that "the government enjoys greater latitude to craft reasonable" speech restrictions as an employer, educator, or patron "than

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

it has when drafting the criminal code." *Kilborn v. Amiridis*, 131 F.4th 550, 565 (7th Cir. 2025); *accord Waters*, 511 U.S. at 672; *Garcetti*, 547 U.S. at 418-19; *Fraser*, 478 U.S. at 686; *Finley*, 524 U.S. at 589.

1. Material with "sexual" content is unprotected obscenity for minors, and thus criminally proscribable, only to the extent it satisfies the three-part* Miller *test, as adjusted for minors.

Appellants argue the circuit court erred in concluding § 573.550 is overbroad because they opine that the statute proscribes *only* unprotected "obscenity for minors." Apps. Br. p. 34. But Appellants fail to grasp that unprotected obscenity has a specific, constitutional definition that § 573.550 utterly fails to incorporate, thus sweeping vast amounts of constitutionally protected speech into its criminal prohibition.

Until the 1970s, the U.S. Supreme Court struggled to define unprotected obscenity, with Justice Stewart famously concluding in resignation: "I know it when I see it." *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring); *Miller*, 413 U.S. at 20 (acknowledging the "tortured history of the Court's obscenity decisions").

That changed in 1973, when the Court decided *Miller* and announced a revised definition intended to draw a sharper line. The Court held that material is "obscene" ***only if:*** (1) "the average person, applying contemporary community standards, would find that ***the work, taken as a whole, appeals to the prurient interest***" in sex; (2) the average person, applying contemporary community standards, would find that the work "***depicts or describes, in a patently offensive way***, ***sexual conduct*** specifically defined by the applicable state law"; ***and*** (3) "***the work, taken as a whole, lacks serious literary, artistic, political, or scientific value***." *Miller*, 413 U.S. at 24 (emphasis added). *Miller*'s three-part

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

definition controls to this day, although legislatures may modify it to define material that is obscene "from a child's perspective." *Paxton*, 606 U.S. at 474 (citing *Ginsberg*, 390 U.S. at 635). Accordingly, Missouri may only use the criminal law to "prevent minors from accessing works that (a) taken as a whole, and under contemporary community standards, appeal to the prurient interest *of minors*; (b) depict or describe specifically defined sexual conduct in a way that is patently offensive *for minors*; and (c) taken as a whole, lack serious literary, artistic, political, or scientific value *for minors*." *Id.*

The *Miller* Court repeatedly held that its three-part standard must define the scope of prohibited material in ***every state criminal statute*** that proscribes material on the basis of "sexual content." *See* 413 U.S. at 22 (prescribing the three-part "standard to determine what constitutes obscene … material subject to regulation *under the States' police power*" (emphasis added)); *id.* at 24 (holding that every "*state offense* must … be limited to works" that satisfy the three-part standard (emphasis added)); *id.* at 27 (declaring that "*no one will be subject to prosecution* for the … exposure of obscene materials unless these materials" meet the three-part standard (emphasis added)); *id.* at 30 (requiring all "ultimate factfinders in *criminal prosecutions*" to apply the three-part standard (emphasis added)). Missouri courts have done the same. *E.g.*, *State v. Cox*, 619 S.W.2d 794, 795 (Mo. App. E.D. 1981) (holding that when criminalizing material based on "sexual" content, "the state offense must be limited to works which meet the [*Miller*] court's guidelines").

To criminally proscribe material that is unprotected obscenity for minors consistent with article I, § 8, therefore, a statutory prohibition must substantively incorporate all three parts of the *Miller* standard, as adjusted for minors. *Paxton*, 606 U.S. at 474; *see Miller*,

413 U.S. at 20 (describing its three-part standard as that "which must be used to identify obscene material that a State" may criminally "regulate without infringing on the First Amendment"). Following *Miller*, this Court dutifully limited the scope of Missouri's obscenity crimes consistent with article I, § 8:

> [W]e now confine the permissible scope of such regulation to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed. A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.

McNary, 527 S.W.2d at 345. In every state, including Missouri, *Miller*'s three-part standard sets the "limitation beyond which neither legislatures nor juries may go" in the criminal prohibition of material based on "sexual" content, including for minors. *Vernon Beigay, Inc. v. Traxler*, 790 F.2d 1088, 1094 (4th Cir. 1986); *McNary*, 527 S.W.2d at 345.

2. Obscene material for minors was not present in any Missouri schools prior to § 573.550's enactment because Missouri law had long criminalized the dissemination of material that is obscene for minors according to the* Miller *standard.

Decades before § 573.550, the General Assembly comprehensively criminalized the dissemination to minors of material that is obscene from a minor's perspective. *See generally* §§ 573.020, 573.030, 573.040 (effective Jan. 1, 1979).

The feature those statutes share, but which § 573.550 lacks, is the phrase "pornographic for minors." *See* §§ 573.020.1(2)-(3), 573.030.1(3)-(5), 573.040.1(1)-(3). As chapter 573 clarifies, "pornographic for minors" is a term of art defining the scope of

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

each statute's prohibition, and it means "any material or performance" if the following criteria are satisfied:

> (a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and
>
> (b) The material or performance depicts or describes nudity, sexual conduct, the condition of human genitals when in a state of sexual stimulation or arousal, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and
>
> (c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

§ 573.010(14). In other words, almost fifty years before § 573.550, every Missouri statute criminalizing the dissemination of material that is obscene for minors fully incorporated the three-part *Miller* standard of unprotected obscenity, adjusted for minors. Section 573.550 does not—and that is a constitutionally fatal problem.

B. Section 573.550's full set of applications proscribes vast amounts of constitutionally protected speech.

Armed with this background, this Court can begin the overbreadth analysis. "The first step in the proper facial analysis is to assess the [statute's] scope. What activities, by what actors," does § 573.550 "prohibit or otherwise regulate?" *Moody*, 603 U.S. at 724; *see Collins*, 648 S.W.3d at 716 ("The first step in the overbreadth analysis is to construe the challenged statute."). Here, § 573.550's full set of applications not only restricts private citizens' protected expression but also proscribes any number of protected works.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

1. Section 573.550 is a broad criminal prohibition that reaches private expressive conduct.

The "actors" whom § 573.550 "regulate[s]," *Moody*, 603 U.S. at 724, are any "person affiliated with a public or private elementary school in an official capacity." § 573.550.1. That class is broad: It encompasses almost any adult who interacts with students at an elementary or secondary school, and many who do so outside of school. *See* § 573.550.3(2) (including teachers and librarians, but also bus drivers, coaches, and others). Notably, the parties regulated by § 573.550 include both employees and non-employees of both public and *private* elementary and secondary schools. *Id.*; § 573.550.1.

Second, § 573.550 specifies the prohibited activities of the regulated school affiliates. On pain of incarceration, they may not, "knowing of its content and character," provide, assign, supply, distribute, loan, or coerce acceptance of or the approval of the providing of, prohibited "explicit sexual material to a student." *Id.* Nor may they possess, "with the purpose of providing, assigning, supplying, distributing, loaning, or coercing acceptance of or the approval of the providing of," such material to a student. *Id.* "Explicit sexual material," in turn, is defined as:

> ***[A]ny pictorial, three-dimensional, or visual depiction***, including any photography, film, video, picture, or computer-generated image, ***showing*** human masturbation, deviate sexual intercourse as defined in section 566.010, sexual intercourse, direct physical stimulation of genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art, when taken as a whole, that have serious artistic significance, or works of anthropological significance, or materials used in science courses, including but not limited to materials used in biology, anatomy, physiology, and sexual education classes shall not be deemed to be within the foregoing definition.

§ 573.550.3(1) (emphasis added). The "foregoing definition" does not explain what is sufficient for a depiction to be "showing" an enumerated instance of prohibited content. *See id.* What is clear, however, is that any person "affiliated with a public or private elementary or secondary school in an official capacity" may not knowingly disseminate, or possess with the purpose of disseminating, *any* published work that includes even *one* visual "depiction" of qualifying "explicit sexual material" to *any* "student" at *any* time. *See id.*

While Appellants downplay § 573.550 as a regulation of how public-school library collections are curated, this criminal statute plainly reaches much further. If a sexual-education book contains even one prohibited "visual depiction" that qualifies as "explicit sexual material," a counselor may not distribute it to a student seeking resources about safe sex. If an illustrated memoir detailing a professional athlete's discovery of her sexuality contains even one prohibited depiction, a private-school basketball coach cannot loan her personal copy to a student on her team who is worried about coming out. If a graphic adaptation of an award-winning novel contains even one prohibited depiction, a special-education teacher in a religious school cannot provide it to a student who struggles with traditional reading. Far from a regulation of public-school libraries' curation, therefore, § 573.550 is a full-blown criminal restriction of private citizens' right to possess, curate, and disseminate published works to other citizens, and of the latter's right to receive those works. Both are core article I, § 8 freedoms. *Vollmar*, 389 S.W.2d at 27; *Griswold*, 381 U.S. at 482.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

The scope of protected conduct restricted by § 573.550 is made wider still by the absence of time, place, or manner limitations. Under § 573.550, the prohibited conduct is not limited to actions taken in an "official capacity." Nor is it confined to actions that occur on school grounds or during school hours. Indeed, as the circuit court agreed, § 573.550's language "very clearly" applies to regulated school affiliates' dissemination of material when they are "off-duty" or acting "outside [their] official capacity," as well as "off-campus." Tr. 138:21-23. Thus, even school affiliates who disseminate prohibited works to a student outside of school may consummate § 573.550's offense. *See* § 573.550.2.[7]

Appellants insist § 573.550 regulates school affiliates' conduct only when they are "acting in their official capacity," Apps. Br. p. 27, and only in a "school setting," *id.* p. 36. But tellingly, Appellants do not perform *any* statutory analysis to support their reflexive assertions of the law's so-called limitations—and statutory construction is what article I, § 8 demands. *Collins*, 648 S.W.3d at 716. The reason is simple: As a matter of basic grammar, Appellants are wrong.

[7] For many of the persons "affiliated with a public or private elementary or secondary school in an official capacity"—for example, school board members, coaches, law enforcement officers, and school bus drivers, *see* § 573.550.3(2)—it is unclear how any conduct in their "official capacity" could possibly result in the dissemination of prohibited "explicit sexual material to a student" in the first place. A school bus driver acting in her "official capacity" is driving a bus, not distributing literature. Additionally, the statute criminalizes mere "possession" of prohibited material with the purpose of disseminating it to students, *see* § 573.550.1, and a school affiliate cannot merely "possess" prohibited material "in an official capacity." The only way § 573.550 makes sense, therefore, is if the prohibited conduct is *not* limited to the school affiliate's "official" conduct or job duties during school hours or otherwise, which, as explained below, is also the only grammatically correct reading of the statute.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Section 573.550's definition of "person affiliated with a public or private elementary or secondary school in an official capacity" is a term of art defining the *class of persons* to whom the statute *applies*; the phrase "in an official capacity" does not modify the *conduct* of those persons that is *prohibited*. The correctness of Respondents' interpretation of § 573.550—and the untenability of Appellants' reading—is obvious from a superimposition of the definition of "person affiliated with a public or private elementary or secondary school in an official capacity" in § 573.550.3(2) (bracketed and underlined below), over those same words in the statutory prohibition:

> ***A person commits the offense*** of providing explicit sexual material to a student ***if such person is*** [an administrator, teacher, librarian, media center personnel, substitute teacher, teacher's assistant, student teacher, law enforcement officer, school board member, school bus driver, guidance counselor, coach, guest lecturer, guest speaker, or other nonschool employee who is invited to present information to students by a teacher, administrator, or other school employee] ***and***, knowing of its content and character, ***such person provides, assigns, supplies, distributes, loans, or coerces acceptance of or the approval of the providing of explicit sexual material to a student*** or possesses with the purpose of providing, assigning, supplying, distributing, loaning, or coercing acceptance of or the approval of the providing of explicit sexual material to a student.

See §§ 573.550.1 (emphasis added), 573.550.3(2).

Section 573.550.1 thus has two distinct clauses. The first clause defines who "is" regulated by the statute—a "person affiliated with a public or private elementary or secondary school in an official capacity." § 573.550.1; *see* § 573.550.3(2). The second clause specifies what that class of persons may not do. *See* § 573.550.1 ("... and ... such person provides, assigns, supplies ... explicit sexual material to a student."). Together with

the phrase "affiliated with a public or private elementary or secondary school," the phrase "in an official capacity" is a compound *adjective* modifying the noun "person" in the first clause—not a compound *adverb* modifying the second clause or its verbs defining the prohibited conduct. To mean what Appellants baselessly assert the statute means, § 573.550 would need to include the phrase "in an official capacity" somewhere *after* the second instance of "such person," to modify the second clause defining the prohibited conduct. *See* Tr. 128:16-23. But that is not what the statute says, and Appellants cannot make the statute say something it cannot coherently be read to say. *See Nielsen v. Preap*, 586 U.S. 392, 406 (2019) ("[N]o one can deny that the adjectival clauses modify ... the noun ... or that the adverbial clause ... modifies the verb.").[8]

Appellants' claim that § 573.550 restricts only conduct in a "school setting," Apps. Br. p. 36, is even less defensible. The words "school setting" appear nowhere in the statute, and the second clause defining the prohibited conduct contains no time or place limitations whatsoever. Moreover, several regulated "affiliates" are persons unlikely to ever interact with students in a "school setting," including school-board members and bus drivers. The only coherent and grammatically correct reading of § 573.550, therefore, is that as long as prohibited "explicit sexual material" is knowingly provided, assigned, supplied,

[8] Appellants' claim that Respondents' reading would make a "guest speaker" join "a permanent class" of regulated school affiliates, Apps. Br. p. 59, is a red herring. As Respondents explained in the circuit court, a person's "affiliation" with a public or private school in an official capacity, and thus their membership in the regulated class, can obviously expire—for example, after a guest speaker has completed her speech and left the school, after a librarian is no longer employed by the school, and so on. *See* Tr. 138:14–18.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

distributed, and so forth "to a student," ***by*** a person who ***is*** "affiliated with a public or private elementary school in an official capacity," the offense is complete.

Section 573.550 is thus a statewide criminal restriction of the right to disseminate information (1) during and outside school hours, (2) on and off school grounds, (3) to private citizens who happen to be students, and (4) by other private citizens who are employees or non-employees "affiliated with a public or private elementary or secondary school in an official capacity." *See* §§ 573.550.1, 573.550.3(2). Article I, § 8 fully protects the expression § 573.550 criminalizes, except to the extent the disseminated material is unprotected obscenity. *Miller*, 413 U.S. at 24; *McNary*, 527 S.W.2d at 345.

2. Because § 573.550's prohibition does not contain any of the* Miller *requirements, it necessarily criminalizes the dissemination of vast amounts of non-obscene, constitutionally protected material for minors.

In addition to restricting private expressive conduct, § 573.550 also criminalizes the dissemination of countless protected works because it fails to incorporate any of the *Miller* requirements for unprotected obscenity for minors into its definition of "explicit sexual material." *See* § 573.550.3(1).

Appellants claim that § 573.550 "closely follow[s] the standard laid out in *Miller*." Apps. Br. p. 65. But § 573.550 does no such thing, because it contains *none* of the *Miller* requirements. Instead, § 573.550 criminalizes the dissemination of any published work that contains *even one* "visual depiction" of prohibited "explicit sexual material," even if the work (1) taken as a whole, does not appeal to the prurient interest of minors; (2) does not depict sexual conduct as defined by state law in a patently offensive way as to minors;

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

(3) taken as a whole, has serious literary, artistic, political, or scientific value for minors; or (4) some combination of the foregoing, subject to a much narrower savings clause than what *Miller* requires. *See* 413 U.S. at 24. While the absence of even one *Miller* requirement guarantees that § 573.550's prohibition criminalizes many protected works for minors, the absence of all three amplifies that volume by orders of magnitude. That is because each of the three parts of the *Miller* standard are separate *facts* that must be found by the trier of fact to sustain any obscenity conviction. *Miller*, 413 U.S. at 24; *see McNary*, 527 S.W.2d at 346 (holding that "finders of fact at trial, and appellate courts on review, must be limited to the *Miller*" three-part standard and conclude that all three parts are satisfied). Accordingly, the presence of some *Miller* prongs in the prohibition does not cure the absence of others. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 501 (1985).

Unsurprisingly, the U.S. Supreme Court has held that criminal speech restrictions purporting to regulate obscene material, but which do not substantively incorporate all three of *Miller*'s requirements, are facially overbroad. *E.g.*, *Ashcroft v. Am. Civil Liberties Union*, 535 U.S. 564, 578 (2002) (concluding that a statute purporting to restrict material obscene as to minors, but which "did not include any limiting terms resembling" two of *Miller*'s requirements, gave the statute "unprecedented breadth and vagueness"); *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 873-74 (1997) (holding that a statute containing only an incomplete analog of one of *Miller*'s three requirements, but entirely omitting "*Miller*'s additional two prongs," had "unquestionably silence[d] some speakers whose messages would be entitled to constitutional protection," and was overbroad). The Court's readiness to recognize these statutes as overbroad makes sense, because if the statute is a

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

criminal restriction of material with "sexual content" and does not incorporate all three of *Miller*'s requirements into the prohibition, it necessarily proscribes material that is not obscene and therefore protected. *See Cmty. Television of Utah, Inc. v. Wilkinson*, 611 F. Supp. 1099, 1108 (D. Utah 1985) ("In order to be found obscene, the material challenged must meet all three of the prongs of the *Miller* test. Material that does not do so is by definition not obscene and therefore protected.").

For overbreadth purposes, § 573.550's main constitutional defect is that it proscribes dissemination of a work based on the presence of even a single visual depiction qualifying as "explicit sexual material." § 573.550.3(1). But only *Miller*'s second prong theoretically can be satisfied by a single depiction in isolation. The other two prongs demand that the work be "taken as a whole." *Miller*, 413 U.S. at 24. Absent satisfaction of all three prongs, including both taken-as-a-whole requirements, a proscribed work is not obscene for minors and is constitutionally protected. *Id.* at 24-25; *Paxton*, 606 U.S. at 474. Thus, in *Brockett*, the Court concluded that a state criminal obscenity statute containing an improper formulation of *Miller*'s "prurient interest" prong, but incorporating *Miller*'s other two prongs, was nevertheless unconstitutional. 472 U.S. at 501. Because § 573.550's prohibition fails to incorporate *any* of *Miller*'s three prongs, the number of protected works it criminalizes is all but limitless.

The taken-as-a-whole standard long predates *Miller* and is central to the protections afforded by article I, § 8. *See Roth v. United States*, 354 U.S. 476, 489 & n.26 (1957). Almost eighty years before *Miller*, in fact, this Court held that an obscene publication outside the protection of article I, § 8 must be "devoted mainly" to prohibited subject-

matter—an early and rudimentary taken-as-a-whole standard. *State v. Van Wye*, 37 S.W. 938, 938-39 (Mo. 1896); *see State v. Simmer*, 772 S.W.2d 372, 373 (Mo. banc 1989) ("The statute in *Van Wye* … was found constitutionally valid under § 14 of the Missouri Bill of Rights, a provision virtually identical to Article I, § 8 of the present Constitution."). Importantly, the taken-as-a-whole standard is often the dispositive difference between a finding that the work is constitutionally protected and a finding that it is unprotected obscenity. *E.g.*, *Kois v. Wisconsin*, 408 U.S. 229, 230-31 (1972) (declining to assess individual pictures from a newspaper "showing a nude man and nude woman embracing in a sitting position," which the State claimed were obscene, "because in the context in which [the pictures] appeared in the newspaper they were rationally related to an article that itself was clearly entitled to protection").

Unlike *Miller*'s doubly holistic, three-part standard, § 573.550 *requires* isolated excerpts to be adjudged "explicit sexual material" and therefore prohibited (or not), and in most cases, *without* any holistic evaluation. *See* §§ 573.550.1, 573.550.3(1). That is why § 573.550 necessarily proscribes vast amounts of non-obscene, constitutionally protected material and why, as the uncontroverted facts reflect, districts across Missouri removed hundreds of titles that are not obscene for minors. Simply put, § 573.550 defies the "essential First Amendment rule" that the obscenity of a work "does not depend on the presence of a single explicit scene." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 248 (2002); *see Brockett*, 472 U.S. at 501 n.11 (explaining that the Court has forever "rejected a standard of obscenity that allowed material to be judged merely by the effect of an isolated excerpt"). By requiring regulated affiliates to search published works for

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

individual images and evaluate them against § 573.550's definition of "explicit sexual material"—as opposed to judging works holistically against *Miller*'s three-part definition of obscenity for minors—§ 573.550 sweeps vast amounts of protected material into an otherwise constitutional prohibition. *Ashcroft*, 535 U.S. at 248; *Reno*, 521 U.S. at 873-74.

3. Section 573.550's "savings clause" does not absolve the statute's overbreadth because it fails to substantively incorporate Miller*'s required savings clause.*

Appellants counter that § 573.550 does incorporate a taken-as-a-whole standard because its definition of "explicit sexual material" has a "savings clause" for "works of art, when taken as a whole, that have serious artistic significance, or works of anthropological significance, or materials used in science courses, including but not limited to materials used in biology, anatomy, physiology, and sexual education classes." Apps. Br. p. 41 (quoting § 573.550.3(1)). But for multiple reasons, § 573.550's "savings clause" is nothing like *Miller*'s taken-as-a-whole requirements (including its own savings clause) and does not transform § 573.550 into a faithful variation of the *Miller* standard.

First, § 573.550's savings clause does not require that an average person applying contemporary community standards would conclude that the work, taken as a whole, predominantly appeals to minors' *prurient interest*. *Miller*, 413 U.S. at 24. That alone makes the statute overbroad. The "prurient interest" requirement is quite literally the difference between a work that is "sexually explicit" but constitutionally *protected* for minors, and a work that is constitutionally *unprotected obscenity* for minors. As the U.S. Supreme Court has explained, "sex and obscenity are not synonymous. Obscene material is material which deals with sex in a manner appealing to prurient interest. The portrayal

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

of sex … in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech." *Roth*, 354 U.S. at 487. Section 573.550's failure to incorporate *any* requirement that the work, taken as a whole, predominantly appeals to minors' prurient interest means that any given instance of "explicit sexual material" may not be part of a work that is obscene—and may, therefore, be constitutionally protected. *Brockett*, 472 U.S. at 501; *Roth*, 354 U.S. at 487.

While Appellants are fond of slapping the adjective "prurient" onto descriptions of the *image categories* § 573.550 criminalizes, *see* Apps. Br. pp. 2, 4, 5, 48, 53, they cannot and do not demonstrate that the statute requires a factual *finding* that a prohibited work, *taken as a whole*, appeals to minors' prurient interest—because it does not. The record reflects that many titles were removed from Missouri school libraries because of a single image that a library professional thought *could* be considered "explicit sexual material," despite being part of a much longer illustrated work that, taken as a whole, does *not* appeal the prurient interest of minors. *E.g.*, D1831 ¶¶ 1-8.

Second, § 573.550's "taken as a whole" exception applies only if a threshold determination has been made that the "visual depiction" in question is a "work of art." § 573.550.3(1). Appellants attempt to sidestep this with a creative ellipsis. *See* Apps. Br. p. 41 (misleadingly claiming that § 573.550's savings clause excludes "works ... , when taken as a whole, that have serious artistic significance" (quoting § 573.550.3(1)). But *Miller* requires *every* work, not just "works of art," to receive the taken-as-a-whole treatment—both to determine whether the work predominantly appeals to the prurient interest of minors, and to determine whether the work has—in addition to serious *artistic*

value—serious *literary*, *political, or scientific* value for minors. *Paxton*, 606 U.S. at 474. To the extent a regulated affiliate determines that a visual depiction is not a "work of art," or that a "work of art" has only serious political or scientific value, the presence of a single prohibited visual depiction criminalizes its dissemination anyway. Such results are irreconcilable with article I, § 8 and reach vast amounts of constitutionally protected material. *See Brockett*, 472 U.S. at 501; *Miller*, 413 U.S. at 24.

Third, § 573.550's exception for works of "anthropological significance"—whether "serious" or not, apparently—is found nowhere in *Miller* and cannot be squared with *Miller*'s exception. Appellants contend that "[t]his is a *very* broad category" that could "sweep in" many "political" and "scientific" works, because they define anthropology sweepingly as "the study of human beings and their ancestors through time and space and in relation to physical character, environmental and social relations, and culture." Apps. Br. p. 42. But just because some works of serious political or scientific value for minors *could* be spared under this exception does not mean it is substantively *coextensive* with the exception *Miller* requires—it plainly is not. More pointedly, if Appellants ask this Court for such a broad construction of the "anthropological" exception, they are at cross-purposes with their asserted interest in preventing minor students from being exposed to material that is purportedly obscene for them. As Respondents pointed out in the circuit court, and as Appellants have never contested, many works of hardcore adult pornography comfortably fit within Appellants' definitions of the "anthropological" exception's unqualified, capacious terms. D1648 p. 56 n.21-22; D1794 p. 37.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Finally, § 573.550's exception for "materials used in science courses," *see* § 573.550.3(1), in no way "sweeps even more broadly" than *Miller*'s exception for works of "serious scientific value" for minors. Apps. Br. p. 42. Presumably, any "materials used in science courses" (whatever that means, and whichever "science courses" that refers to) are already of "serious scientific value" for minors; otherwise, they would not be used to scientifically educate minors. If, however, the materials are not "used in science courses"—which the vast majority of works with serious scientific value for minors are not—the exception does not apply. For all these reasons, § 573.550's savings clause does not comport with article I, § 8 and criminalizes vast amounts of constitutionally protected material. *Miller*, 413 U.S. at 24; *McNary*, 527 S.W.2d at 345.[9]

Section 573.550's full set of applications thus criminalizes both protected expressive conduct and a virtually unlimited number of protected works. Before

[9] Appellants conclude by refuting several straw-man arguments Respondents have never made. *Compare* Apps. Br. p. 42 ("Just because Missouri legislated protections before does not divest the General Assembly from legislating further protections."), *with* Tr. 143:15-17 (Respondents agreeing in the circuit court "that the General Assembly can double punish the same conduct under the criminal law"). But Appellants' unsupported claim that the General Assembly may criminally punish the dissemination of material in a high-school library that may be obscene for a 13-year-old, but not for a 17-year-old, simply because the library is accessible to some 13-year-olds, Apps. Br. p. 44, is wrong. As the Fourth Circuit has explained, "'if a work is found to have serious literary, artistic, political or scientific value for a legitimate minority of normal, older adolescents, then it cannot be said to lack such value for the entire class of juveniles taken as a whole.'" *Am. Booksellers Ass'n v. Virginia*, 882 F.2d 125, 127 (4th Cir. 1989) (quoting *Commonwealth v. Am. Booksellers Ass'n*, 372 S.E.2d 618, 624 (Va. 1988)); *see also Am. Booksellers v. Webb*, 919 F.2d 1493, 1505 (11th Cir. 1990) (same); *Penguin Random House LLC v. Robbins*, 774 F. Supp. 3d 1001, 1030 (S.D. Iowa 2025) (hereinafter, "*Penguin Random House I*") (warning that "a law that treats a seventeen-year-old high school student ... the same for First Amendment purposes as a" younger student is "less likely, not more, to survive a facial constitutional challenge"), *vacated on other grounds*, 172 F.4th 581 (8th Cir. 2026).

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Respondents complete the overbreadth analysis and "compare the unconstitutional applications" of the statute "to its constitutional ones" to show that the former are "substantial" relative to the latter, *Moody*, 603 U.S. at 718, Respondents address Appellants' meritless arguments that § 573.550 does not infringe protected speech.

C. Appellants' characterizations of § 573.550 as a regulation of "unprotected speech" fail because the statute is a criminal restriction of protected expressive activity, against which regulated citizens enjoy the highest degree of article I, § 8 protection.

Faced with the reality that § 573.550 criminalizes vast amounts of protected speech that is not obscene for minors, Appellants make two last-ditch efforts to argue that the conduct criminalized by § 573.550 is nevertheless outside the protection of article I, § 8. First, Appellants claim that § 573.550 regulates only unprotected "government speech." Additionally, or perhaps in the alternative, Appellants contend § 573.550 regulates "school-sponsored speech," which is entitled to reduced protection. Apps. Br. pp. 47-53. As explained below, Appellants' arguments are as logically inconsistent as they are meritless.

1. The government-speech doctrine is inapposite to Respondents' facial challenge.

The premise of Appellants' government-speech exception is that the activity of curating a public-school library is expressive activity *of the government—i.e.*, the "government's speech"—and because § 573.550 "regulates" that activity, it is immune from article I, § 8 scrutiny. Apps. Br. p. 48. But Appellants fumble the basic premise of the government-speech doctrine. The doctrine is triggered by a type of *state action*—the

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

government "speaking"—that is not susceptible to constitutional challenge under article I, § 8, and that type of state action does not include criminal statutes like § 573.550.

The government-speech doctrine provides that when the relevant state action consists of the government's expression of its *own* views, a citizen who disagrees with those views or would prefer the government to express a different message cannot *challenge* the state action on article I, § 8 grounds. "If [the government] [is] engaging in [its] own expressive conduct, then the Free Speech Clause has no application. The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech." *Summum*, 555 U.S. at 467. Here, the government-speech doctrine is inapposite for at least two reasons.

(i) The government-speech doctrine is inapposite because § 573.550 is a criminal speech restriction enacted by the State in its sovereign capacity pursuant to its police powers, not an instance of the government expressing its own views.

First, the government-speech doctrine does not apply when the challenged state action consists of the government acting in a *sovereign* capacity, including enactments of c*riminal statutes* punishing private citizens for protected expressive activity the government dislikes. When the government exercises its police powers to criminally punish citizens for expressive activity, the regulated parties stand in relation to the State as private citizens to sovereign, and they receive the highest degree of protection under article I, § 8. *Miller*, 413 U.S. at 22; *see Waters*, 511 U.S. at 671; *Finley*, 524 U.S. at 589; *Kilborn*, 131 F.4th at 565. Or, as the Ninth Circuit helpfully explained:

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

> Although the Supreme Court has held that a government entity's expression of its own views does not violate the speech rights of individuals who disagree, this case does not involve a suit against the government for expressing its views. Rather, it involves a statute that impinges on a private individual's speech by restricting the ability to [engage in expressive activity]. The individual engaging in the speech being regulated is the private party … not the government. Therefore, the government speech doctrine is inapposite.

Project Veritas v. Schmidt, 72 F.4th 1043, 1058 (9th Cir. 2023), *reh'g en banc granted, opinion vacated on other grounds*, 95 F.4th 1152 (9th Cir. 2024), *and on reh'g en banc*, 125 F.4th 929 (9th Cir. 2025).

The same is true of § 573.550. Unlike plaintiffs in a government-speech case, Respondents do not raise an article I, § 8 challenge to state action that consists of the General Assembly's expression of its "own" views in a capacity analogous to a private citizen. Instead, Respondents challenge the General Assembly's *sovereign* enactment of a *criminal statute* that punishes citizens, including Respondents' members, for engaging in their own expressive activity. Because the General Assembly chose to punish educators' expressive activity in a sovereign capacity using the criminal code, Respondents' suit is a challenge to the "government's regulation of private speech"—the very heart of state action "[t]he Free Speech Clause restricts." *Summum*, 555 U.S. at 467. But the quantum of "government speech" in the challenged state action is zero. "Therefore, the government-speech doctrine is inapposite." *Project Veritas*, 72 F.4th at 1058.

For the avoidance of doubt, all of Appellants' case law cited in support of the government-speech doctrine, *see* Apps. Br. pp. 47-51, in fact supports that the doctrine is inapposite, for the reasons above. In *People for the Ethical Treatment of Animals, Inc. v.*

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Gittens, 414 F.3d 23 (D.C. Cir. 2005), for example, the D.C. Circuit rejected PETA's First Amendment challenge to the District of Columbia's refusal to include PETA's elephant sculpture in a public-art exhibition composed of submissions the District solicited from the community, because the District's choice to display some designs over others—*i.e.*, the *state action* PETA challenged—was the District's *own* speech. *Id.* at 28. The D.C. Circuit concluded that the "Free Speech Clause does not apply to the government *as communicator*, and it did not restrict the [District] in its decisions about PETA's elephants." *Id.* at 30-31 (emphasis added). Similarly, in *Little v. Llano County*, 138 F.4th 834, 842 (5th Cir. 2025) (en banc), the Fifth Circuit rejected the suit of a group of county library patrons, who alleged that the librarians' discretionary removals of certain titles infringed their First Amendment rights to receive information, because "a [public] library's *collection decisions*—that is, its *choices* about which books to put on or remove from the shelves," and the *state action* the plaintiffs challenged—"are government speech" that cannot be challenged on First Amendment grounds. *Id.* at 842 (emphasis added).[10]

[10] Even if *Little* were relevant here, this Court should not follow it, because it is inconsistent with the Eighth Circuit's holding in *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660 (8th Cir. 2024) (hereinafter "*GLBT Youth II*"), that the curation of a public-school library is *not* government speech. *Id.* at 667-68; *cf. Little*, 138 F.4th at 837 (noting the Fifth Circuit's disagreement with the Eighth Circuit). It would be strange for article I, § 8 of the Constitution of Missouri, a state located within the Eighth Circuit, to be less protective of Missourians' free-speech rights than its federal First Amendment counterpart under controlling Eighth Circuit precedent. *See, e.g.*, *Karney v. Dep't of Lab. & Indus. Rels.*, 599 S.W.3d 157, 162-63 (Mo. banc 2020) (explaining that "provisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions").

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Here, of course, Respondents do not challenge the constitutionality of the State's discretionary expressive choices. Instead, Respondents challenge the constitutionality of the State's enactment of a criminal statute punishing their members for their *own* expressive activity. The state action being challenged is thus the government's sovereign, criminal restriction of private citizens' expression pursuant to its police powers, not the government's *own* speech. *See Pernell v. Fla. Bd. of Gov'rs of State Univ.*, No. 22-13992, — F.4th —, 2026 WL 1955783, at *10 (11th Cir. July 7, 2026) (explaining that the government-speech doctrine applies to "the government itself expressing certain ideas—not banning [public] employees from endorsing others").

Unsurprisingly, Respondents are unable to identify a single decision in which any state or federal supreme or intermediate appellate court has assessed the constitutionality of a criminal speech restriction through a government-speech lens. The reason is simple: The government-speech doctrine does not apply in a citizen's challenge to the State's sovereign enactment of a statute that punishes her expressive activity as a crime. *Project Veritas*, 72 F.4th at 1058; *see Pernell*, 2026 WL 1955783, at *10.

As Respondents explained below, accepting Appellants' bizarre formulation of the government-speech doctrine would have disturbing implications. For one, it would require the Court to perversely conclude that the government can criminalize its *own speech*. Additionally, it would permit a host of other content-based criminal speech restrictions, which are plainly unconstitutional as applied to the public at large, to escape any article I, § 8 scrutiny, simply because they apply to *some* citizens who are public employees and perform expressive activity on the government's behalf.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

For example, if the General Assembly made legislative findings that the legal profession in Missouri suffers from a lack of civility between lawyers on opposing sides, Appellants' version of the government-speech doctrine would permit the legislature to *criminally punish* lawyers' use of certain words the legislature deems too "inflammatory" at oral argument, simply because many of the attorneys regulated thereby are employed by the State and *literally* "speak for the government" when they argue in court. Tr. 177:15-178:12. While Appellants below half-heartedly tried to dismiss this hypothetical as a distraction, *see* Tr. 195:18-21, it describes exactly the kinds of criminal statutes Appellants' deformed version of the government-speech doctrine would inoculate against any article I, § 8 review whatsoever.

Ultimately, Appellants' "mashed-up theory of government speech results in an astonishing assertion: if the government pays your salary, it can dictate every word you say as part of your job," and punish your noncompliance with incarceration. *Pernell*, 2026 WL 1955783, at *12. But neither Appellants' "cherry-picked quotations, nor a true government speech analysis … supports their far-reaching conclusion," and in the end, "the chimeric government speech doctrine" Appellants conjure "cannot stand constitutional scrutiny." *Id.* As the U.S. Supreme Court has warned, the government-speech doctrine "is susceptible to dangerous misuse. If private speech could be passed off as government speech by simply affixing a government seal of approval, the government could silence or muffle the expression of disfavored viewpoints. For this reason," state and lower federal courts "must exercise great caution before extending our government-speech precedents." *Matal v. Tam*, 582 U.S. 218, 235 (2017). Passing private speech off as "government speech" is precisely

what Appellants attempt here. This Court can and should decline Appellants' dangerous invitation to extend the government-speech doctrine to content-based, criminal speech restrictions like § 573.550.

(ii) The government-speech doctrine does not apply to Respondents' facial challenge because § 573.550's prohibition is not a regulation of "government speech."

Second, even if the government-speech doctrine were somehow relevant to Respondents' challenge (it is not), Appellants' reliance is misplaced because § 573.550 is not a regulation of "government speech."

First, § 573.550 regulates far more expressive activities than public-school library curation. As Respondents' analysis shows, § 573.550 is a statewide, criminal prohibition on virtually any kind of dissemination of media qualifying as "explicit sexual material," to *any* student, by *any* person "affiliated with a public *or private* elementary or secondary school in an official capacity," during or outside school hours, and on or off school grounds. *See* § 573.550.1 (emphasis added). Even if Appellants were correct that public-school library curation is "government speech"—and as explained herein, they are not—§ 573.550 cannot be understood as a mere "regulation" of that activity. Tr. 127:11-18. The fact that most of the evidence obtained in discovery in the circuit court is specific to public-school libraries and librarians (who are Respondents' members) is irrelevant to Respondents' *facial* challenge. *See* Tr. 164:15-165:6.

More fatally to Appellants' argument, the Eighth Circuit has held that for purposes of the First Amendment, the curation of public-school libraries is *not* government speech. *GLBT Youth II*, 114 F.4th at 667-68. To reach that conclusion, the court faithfully applied

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

the Supreme Court's analytical framework from *Shurtleff*. *See id.* (citing 596 U.S. at 252). Appellants cannot simultaneously insist this Court follow the Eighth Circuit's decision regarding "school-sponsored speech," *see* Apps. Br. p. 51 (citing *Penguin Random House, LLC v. Robbins*, 172 F.4th 581 (8th Cir. 2026) (hereinafter, "*Penguin Random House II*")), but ignore the Eighth Circuit's equally precedential opinion foreclosing the government-speech exception, especially because the same decision Appellants cite in support of a "school-sponsored speech exception" *reaffirms* that the curation of public-school libraries is not unprotected "government speech." *See Penguin Random House II*, 172 F.4th at 585.

2. The "school-sponsored speech" exception does not govern Respondents' facial challenge because § 573.550 is a criminal statute, not an editorial restriction of school-sponsored speech.

Second, Appellants claim that "recent federal decisions indicate that § 573.550—at most—regulates school-sponsored speech," which receives diminished article I, § 8 protection. Apps. Br. p. 51. Once again, Appellants are wrong.

Appellants' sole supporting authority is the Eighth Circuit's decision in *Penguin Random House II*, 172 F.4th 581. *See* Apps. Br. pp. 51-53. There, the Eighth Circuit held that the plaintiffs—public-school students, book publishers, and authors asserting First Amendment rights to receive and disseminate information—were unlikely to succeed on the merits of a facial overbreadth challenge to an Iowa statute, Senate File 496, which prescribed mandatory guidelines for the contents of Iowa's public-school libraries. 172 F.4th at 585. The court concluded that a public-school library represents "school-sponsored speech"—*not* "government speech"—and a state may constitutionally restrict such speech

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

in an "editorial" capacity consistent with the First Amendment, so long as the restriction has some "valid educational purpose." *Id.* at 588 (internal quotation marks omitted).

Appellants believe *Penguin Random House II* forecloses Respondents' overbreadth challenge to § 573.550 because Senate File 496 is an "analogous restriction" and "[t]he facts ... track closely to § 573.550." Apps. Br. pp. 51-52. But neither is true. Senate File 496 resembles § 573.550 only superficially, insofar as it "requires the removal of books containing 'descriptions or visual depictions of a sex act from … public school libraries and impose[s] penalties' on noncompliant individuals." *Id.* p. 52 (quoting 172 F.4th at 585-86). And the differences between Senate File 496 and § 573.550, not the similarities, are dispositive here.

Unlike § 573.550, Senate File 496 represents a *non-criminal*, *editorial* regulation *limited* to public-school libraries, enacted in Iowa's capacity as a provider of public education and employer of public educators. Specifically, Senate File 496 requires all Iowa public-school districts to establish a library program, which contains "age-appropriate materials, and supports the student achievement goals of the total school curriculum." Iowa Code § 256.11(9)(a)(2) (2026). "Age-appropriate" is defined as "topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group." *Id.* § 256.11(19)(a)(1). The law expressly forbids the inclusion of "any material with descriptions or visual depictions of a sex act," as defined in Iowa Code § 702.17. *Id.* An educator who violates those editorial guidelines is subject to escalating *non-criminal*, *professional* penalties, from a written warning up to termination and loss of teaching

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

licensure. *See Penguin Random House LLC v. Robbins*, 774 F. Supp. 3d 1001, 1013 (S.D. Iowa 2025) (hereinafter, "*Penguin Random House I*"), *vacated on other grounds*, 172 F.4th 581 (8th Cir. 2026).

In preliminarily upholding the law against the plaintiffs' challenge,[11] the Eighth Circuit reasoned "that 'expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school,'" including the contents of a public-school library, "constitute school-sponsored speech, over which a school can exercise *editorial control*, 'so long as [its] actions are reasonably related to legitimate pedagogical concerns.'" *Penguin Random House II*, 172 F.4th at 587 (emphasis added) (quoting *Hazelwood*, 484 U.S. at 271, 273). Because Senate File 496 represented a direct and limited exercise of editorial control over the content of Iowa's public-school libraries in the state's capacity as a public employer and educator, and Iowa showed that the statute's restrictions were "reasonably related to legitimate pedagogical concerns" in the public-school setting, the Eighth Circuit concluded that plaintiffs were unlikely to succeed on the merits of their overbreadth challenge. *Id.* (quoting *Hazelwood*, 484 U.S. at 273).

But the Eighth Circuit did nothing to disturb the district court's conclusion below—supported by this Court's and the U.S. Supreme Court's precedents—that *Miller* and its progeny govern the constitutionality of statewide *criminal* restrictions on the dissemination

[11] In *Penguin Random House II*, the Eighth Circuit was reviewing the district court's order granting the plaintiffs' motion for a preliminary injunction. Accordingly, the court concluded only that plaintiffs were *unlikely* to succeed on the merits of their First Amendment overbreadth claim; it did not resolve the merits of that claim.

of published material to minors because of so-called "sexual content." *See Penguin Random House I*, 774 F. Supp. 3d at 1024; *Penguin Random House II*, 172 F.4th at 585. And unlike Senate File 496, § 573.550 is a *criminal* statute enacted by the State in a sovereign, not "editorial," capacity, pursuant to its police powers. *Cf. Hazelwood*, 484 U.S. at 266 (acknowledging that the First Amendment did not prevent public-school authorities from acting in the school setting to censor school-sponsored speech, "even though the government could not censor similar speech outside the school" using its police powers); *see Miller*, 413 U.S. at 22 (holding that only material satisfying the three-part standard of unprotected obscenity is "subject to regulation under the States' police power").

That makes good sense. After all, the most severe punishment educators face for defying § 573.550's criminal restriction is a term of *imprisonment*, not professional discipline. Unlike Senate File 496, moreover, § 573.550's prohibition is not *limited* to public-school libraries. Instead, it applies equally to expressive dissemination of prohibited "explicit sexual material," even if not obscene for minors, to any student, by not only public-school librarians, but also non-librarian employees and non-employees of Missouri public schools, as well as by librarian and non-librarian employees and non-employees of Missouri *private* schools. *See* § 573.550.1. Finally, § 573.550 does not prescribe any "editorial" standards for Missouri's public-school library collections *ex ante*, like Senate File 496. Instead, it leaves those standards to the discretion of school districts, but criminally *punishes* regulated affiliates, *ex post*, who ultimately disseminate protected, non-obscene material the statute proscribes. *See* § 573.550.1.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Accordingly, § 573.550 cannot be understood as a limited exercise of the General Assembly's "editorial" control over the content of "school-sponsored speech" in Missouri's public-school libraries, and Appellants' "exception" is inapposite. Instead—and as it has been for over fifty years—*Miller* and its progeny govern the constitutionality of § 573.550's statewide, criminal speech restriction. *Miller*, 413 U.S. at 22, 24; *accord Penguin Random House II*, 774 F. Supp. 3d at 1024; *see Penguin Random House I*, 172 F.4th at 588. Here, the Missouri General Assembly chose to wield the blunt cudgel of the criminal code to punish private and public educators alike for protected expression the legislature disapproves. The General Assembly must now accept the constitutional consequences of choosing to act through its "police power." *See Miller*, 413 U.S. at 22.

D. Respondents established that the hundreds of unconstitutional applications of § 573.550 vastly outnumber the statute's nonexistent constitutional applications, such that § 573.550 is facially overbroad.

Having cleared the analysis of Appellants' irrelevant "exceptions," the final overbreadth question "is whether a substantial number" of § 573.550's "applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Moody*, 603 U.S. at 723. As explained below, Respondents showed that § 573.550's unconstitutional applications dwarf its constitutional ones (none of which have been shown, because Missouri schools have never stocked obscene material for minors in their libraries), and its "plainly legitimate sweep" is virtually nonexistent.

In this case, each removal of a book from a Missouri school library to comply with § 573.550 represents an "application" of the statute. *Penguin Random House I*, 774 F. Supp. 3d at 1026 ("[A] school district's removal of a book—whether right or wrong—is

literally an 'application' of the law and therefore should be part of the [overbreadth] balancing."). Adopting that metric, the difference between an unconstitutional application and a constitutional one is whether the removed book is unprotected obscenity for the minors with access to it. *Id.* If so, the book's removal was a constitutional application of § 573.550; if not, the book's removal was an unconstitutional application. *Id.*; *see Miller*, 413 U.S. at 24. Appellants have never contested this analytical framework.

Before § 573.550 was enacted, Missouri comprehensively criminalized the dissemination of obscene material to minors according to a definition—"pornographic for minors"—that incorporates the *Miller* standard. *See* § 573.010(14). When it enacted § 573.550, therefore, the General Assembly necessarily wanted to go *further* than the *Miller* standard; otherwise, the law would have been pointless.

In *Penguin Random House I*, the district court faced a nearly identical situation when reviewing Iowa Senate File 496, which also does not define prohibited material according to the three-part *Miller* standard, as adjusted for minors. 774 F. Supp. 3d at 1029. As the court noted, Iowa law "already prohibited the dissemination of 'obscene material' to minors" when Senate File 496 was enacted, and it "did so according to a definition of 'obscene material' that tracked the [*Miller*] standard" for minors. *Id.* The court reasoned that "[w]hen it enacted Senate File 496, the Iowa Legislature obviously wanted to go beyond the [*Miller*] standard because otherwise the new law would have been pointless." *Id.* The court concluded:

> It follows that if (as the Court believes) the [*Miller*] standard applies to Senate File 496, the unconstitutional applications of Senate File 496 substantially outweigh the constitutional ones.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

> Indeed, there are almost no "constitutional" applications of Senate File 496 because no books containing obscene material … should have been in school libraries before the law was passed, and thus the law should not have resulted in the (constitutional) removal of any such books.

Id.[12]

This Court can and should reach the same conclusion here. The uncontroverted facts show that Missouri school librarians have always understood materials which are obscene for the minors who use their libraries are of course prohibited, and they have never allowed such materials in their collections. D1817 ¶¶ 50, 99, 259; D1772 ¶¶ 5, 31, 32. As Respondents have shown, however, school districts have removed hundreds of works from their shelves to comply with § 573.550. *Id.* ¶¶ 91, 92, 96, 103-05, 111, 122-23, 135, 141, 143, 148, 158, 172, 181, 184, 186, 192, 214-15. The Court can safely assume that none of the removed titles are unprotected obscenity for minors, because when § 573.550 was enacted, the provision of obscenity to minors, including in school libraries, had been a crime for over forty years, *e.g.*, § 573.040, and Missouri's school librarians have never permitted such material in their collections. *See* D1817 ¶¶ 50, 244.

Accordingly, this Court can safely conclude that *every* book removed from Missouri school libraries pursuant to § 573.550 was non-obscene, and thus constitutionally protected, for minors, such that every book removal was an unconstitutional application of

[12] On appeal, the Eighth Circuit in *Penguin Random House II* concluded only that the *Miller* standard does not govern the overbreadth of Iowa Senate File 496, which is *not* a criminal statute. If the *Miller* standard had governed, however, nothing in the Eighth Circuit's decision suggests that the district court's analysis was erroneous. *See* 172 F.4th at 581. Section 573.550, of course, is a criminal statute, and *Miller* unquestionably governs its constitutionality. *See Miller*, 413 U.S. at 22.

the statute. By that measure, the number of unconstitutional applications (hundreds) dwarfs the number of constitutional ones (zero). Because the former is obviously "substantial" compared to the latter, the statute is overbroad. *Moody*, 603 U.S. at 723. As the district court in *Penguin Random House I* explained:

> Under [*Miller*], the results of the [overbreadth] analysis are clear and unequivocal: the book restrictions … are facially unconstitutional. Senate File 496 … comes nowhere close to applying the "obscenity" standard…. The result is the forced removal of books from school libraries that are not pornographic or obscene. Accordingly—and even if one interprets the language of Senate File 496 as narrowly as reasonably possible and focuses only on a representative sample of school districts—the law has been unconstitutionally applied in dozens (if not hundreds) of situations….

774 F. Supp. 3d at 1008.

This Court need not take Respondents' word for it, either; Appellants' brief included three examples of works removed from Missouri schools because of § 573.550—removals Appellants contend were required by the statute. *See* Apps. Br. pp. 24-26 (redacted images from *Fun Home: A Family Tragicomic* by Alison Bechdel (hereinafter, "*Fun Home*"); *Let's Talk About It: The Teen's Guide to Sex, Relationships, and Being a Human* by Erika Moen and Matthew Nolan (hereinafter, "*Let's Talk About It*"); and *Game of Thrones: The Graphic Novel, Vol. I* by George R.R. Martin, adapted by Daniel Abraham and Landry Q. Walker (hereinafter, "*Game of Thrones*")). As in the circuit court, complete copies of each work—which Appellant Intervenor already possessed, as it, too, provided selected excerpts to the circuit court and this Court and offered to permit Respondents to inspect the books during discovery—were provided by Respondents to this Court so it can take judicial notice

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

of the contents and decide the obscenity question for itself. D1831 ¶¶ 17, 20-34;[13] *see Penguin Random House I*, 774 F. Supp. 3d at 1026-27 (explaining that "[i]n prior facial challenges under the First Amendment" applying the *Miller* standard, federal courts, including the Supreme Court, "have essentially taken judicial notice of the contents" of a subset of affected works for overbreadth purposes, often without any factual record, and collecting cases). Respondents are confident the Court will understand that none of these three works are unprotected obscenity for older minors with access to them.[14]

First, none of those works, taken as a whole, appeal to the prurient interest of minors. *Miller*, 413 U.S. at 24. *Fun Home* and *Game of Thrones* are both celebrated illustrated works of literary fiction, and Appellants' redacted images are mere components of single scenes in multifaceted narratives with richly developed characters in which sex is merely an element in some storylines. D1831 ¶¶ 17-28; *see Roth*, 354 U.S. at 487 n.20 (explaining that the "prurient interest" means an unhealthy, "shameful or morbid interest" in sex that "goes substantially beyond customary limits of candor in description or representation of

[13] Appellant Intervenor partially denied paragraphs 21-22, 30, and 34. *See* D1831 ¶¶ 21-22, 30, 34. The portions of those factual statements Appellant Intervenor denied are not material to the Court's taking of judicial notice of the contents of these works, complete copies of which were in Appellants' possession during discovery, and which Respondents submitted to the circuit court and this Court, in full, as exhibits.

[14] Respondents are not suggesting and do not concede that any of the State's three books are unprotected obscenity for *any* minors—only that they may not be *age-appropriate* for younger minors. But because the State's three books have only been made available in some Missouri high-school (and, to a far lesser extent, middle-school) libraries, and Appellants offer no evidence to the contrary, the analysis herein focuses specifically on whether the State's three books are unprotected obscenity for the *older* minors with access to them.

such matters"); *Penguin Random House I*, 774 F. Supp. 3d at 1009 (recognizing that sex often plays "an important role in an award-winning work of fiction like explaining a character's emotional development"). The same is true of *Let's Talk About It*, which is decidedly more "explicit" only because it is a sex-*education* title. D1831 ¶¶ 29-34; *see Brockett*, 472 U.S. at 499 (explaining that "material that, taken as a whole, does no more than arouse a "good, old fashioned, healthy interest in sex" does not appeal to the prurient interest and is "constitutionally protected" (internal quotation marks omitted)). And there is no evidence in the record suggesting these books are available to minors for whom they would not be considered age appropriate. Because none of the State's books, "taken as a whole," therefore satisfy *Miller*'s prurient-interest requirement for minors, none are obscene.

Similarly, all three works have some kind of qualifying "serious … value *for minors*," *Paxton*, 606 U.S. at 474, placing them outside the zone of unprotected obscenity. Taken as a whole, both *Fun Home* and *Game of Thrones* are works of literature with serious literary value for minors, and both have serious artistic value for minors in the form of beautiful, hand-drawn, original artwork. D1831 ¶¶ 17-28. Indeed, *Game of Thrones* contains a lengthy section at the end of the book detailing the painstaking, iterative collaboration between the author and the book's adaptor and illustrator to transform a sprawling epic fantasy novel into a predominantly pictorial medium. *Id.* ¶ 28. *Let's Talk About It*, while perhaps atypical in its frankness, is unquestionably a work with serious scientific value for older minors, because, taken as a whole, the book contains a wealth of sexual-health information specifically oriented toward older minors. *Id.* ¶¶ 29-34.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Because none of Appellants' three supposedly "obscene" works are actually obscene for minors, the removals of these books from libraries accessible to older minors were unconstitutional applications of § 573.550. *Penguin Random House I*, 774 F. Supp. 3d at 1029-30. Even assessing just the State's subset of three works, therefore, the number of unconstitutional applications of the statute equals at least three (times the number of copies that were removed statewide), and the number of constitutional applications equals zero. *See id.* Again, the former is "substantial" compared to the latter, so the statute is overbroad. *Id.* at 1030; *see Moody*, 603 U.S. at 723.

In the end, because the scope of the statutory prohibition in § 573.550 is far wider than *Miller*'s three-part definition of constitutionally unprotected obscenity for minors, the number of unconstitutional applications of § 573.550 will *always* substantially outnumber its constitutional applications—necessarily and mathematically. Accordingly, the circuit court correctly concluded that § 573.550 is unconstitutionally overbroad. *Moody*, 603 U.S. at 723.

II. THE CIRCUIT COURT CORRECTLY APPLIED THE LAW AND CONCLUDED THAT § 573.550 IS UNCONSTITUTIONALLY VOID FOR VAGUENESS. (Responds to Appellants' Points Relied On II)

Respondents also raised a pre-enforcement, facial *vagueness* challenge to § 573.550 under the Due Process Clause of the Missouri Constitution. In facial vagueness challenges to statutes that burden protected speech under article I, § 8, the challenger must show that because of its vagueness, "the statute's deterrent effect on legitimate expression" is "both real and substantial." *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50, 60 (1976); *Erznoznik*, 422 U.S. at 216; *see City of St. Louis v. Kiely*, 652 S.W.2d 694, 702 (Mo. App. E.D. 1983).

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

A statute may be unconstitutionally vague for either of two reasons: "First, a statute is vague if it fails to give notice to potential offenders of the prohibited conduct. … Second, a statute is vague if it lacks explicit standards necessary to avoid arbitrary and discriminatory application by the state." *State v. Callen*, 45 S.W.3d 888, 889-90 (Mo. banc 2001) (internal quotation marks omitted).

As the overbreadth analysis shows, § 573.550 is a criminal statute that "threatens to inhibit the exercise of constitutionally protected rights" to disseminate material protected under article I, § 8. *See State ex rel. Nixon v. Telco Directory Pub.*, 863 S.W.2d 596, 600 (Mo. banc 1993). Accordingly, Respondents' burden in the circuit court was to show that because of § 573.550's vagueness, "the statute's deterrent effect on legitimate expression" is "both real and substantial." *Young*, 427 U.S. at 60. As explained herein, Respondents carried that burden.

A. Respondents properly raised a facial vagueness challenge to § 573.550 because the statute has a real and substantial deterrent effect on legitimate, protected expression under article I, § 8.

On appeal, Appellants assert that "Respondents' vagueness claims are entirely hypothetical—a fact that dooms their facial challenge." Apps. Br. p. 54. But Appellants misunderstand the basic differences between the facial and as-applied vagueness analysis and the unique legal principles governing facial vagueness challenges to criminal statutes, like § 573.550, which burden protected expression.

Appellants first contend that the circuit court erred in concluding § 573.550 is facially void for vagueness because pre-enforcement, facial vagueness challenges are forbidden by Missouri law. *See* Apps. Br. pp. 54-56. According to Appellants, Missouri

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

does not permit plaintiffs to assert vagueness challenges based on "hypothetical applications or situations not at issue." *Id.* pp. 55-56 (quoting *State v. Conner*, 583 S.W.3d. 102, 113-14 (Mo. App. E.D. 2019)). Because Respondents have not identified any criminal prosecutions of regulated school affiliates under § 573.550, Appellants conclude that Respondents' facial vagueness challenge fails. *Id.* p. 55. But Appellants fundamentally misread the relevant law. Just last term, in fact, this Court rejected the same argument offered by Appellants and affirmed the availability of pre-enforcement, facial vagueness challenges. *See State v. League of Women Voters of Mo.*, 730 S.W.3d 591, 613 (Mo. banc 2026) (finding a set of laws facially unconstitutional as restrictions of core political speech).

Furthermore, every decision cited by Appellants attempting to support their argument that Respondents' *pre-enforcement, facial* vagueness challenge must fail, *see* Apps. Br. pp. 54-56, in fact arose from a *post-enforcement, as-applied* challenge to a criminal conviction or regulatory determination.[15] In as-applied challenges, of course, the statute has already been applied, and the only question is whether the statute was vague *as applied to the defendant's specific conduct*. *See Conner*, 583 S.W.3d at 113-14 (refusing

[15] *See, e.g., Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 956 (Mo. banc 1999) (as-applied challenge to a decision of the Administrative Hearing Commission concluding that respondent's liquor license was "subject to discipline" because respondent had permitted "lewd conduct" on its premises); *State v. Mahan*, 971 S.W.2d 307, 309 (Mo. banc 1998) (as-applied challenge to a conviction for the felony offense of creating a grave and unjustifiable risk of infecting another person with HIV); *Conner*, 583 S.W.3d at 106 (as-applied challenge to convictions for the crimes of enticement of a child, attempted statutory rape, attempted statutory sodomy, and sexual misconduct involving a child).

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

to consider hypothetical instances of enforcement "not at issue," because in the context of the defendant's "[a]s applied" vagueness challenge to his convictions, his vagueness "claim must be applied to the facts at hand"); *Mahan*, 971 S.W.2d at 312 (same); *Cocktail Fortune*, 994 S.W.2d at 958-59 (concluding, in an as-applied challenge to an administrative determination, that "[a]lthough it may be possible to hypothesize conduct where it is unclear that the conduct falls under the regulatory prohibition," the question of vagueness was to be decided only by reference to "the facts as determined by the" administrative tribunal). Cases involving as-applied vagueness challenges have no relevance to Respondents' facial vagueness challenge.

Instead, a different set of legal principles govern facial vagueness analysis when statutes burden constitutionally protected activity. Such challenges are permissible so long as the statute "reaches a substantial amount of constitutionally protected conduct." *Kolender v. Lawson*, 461 U.S. 352, 358 n.8 (1983) (internal quotation marks omitted); *Village of Hoffman Ests.*, 455 U.S. at 494-95 (explaining that the "impermissibly vague in all of its applications" standard does not govern a facial vagueness challenge to a legislative enactment that "reaches a substantial amount of constitutionally protected conduct"). This Court has warned that "[c]riminal statutes," like § 573.550, "require particularly careful scrutiny" for vagueness, "and those that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

legitimate application." *Vaughn*, 366 S.W.3d at 518 (internal quotation marks omitted).[16] Simply put, Respondents "need not subject themselves to a multiplicity of suits or litigation or await the imposition of penalties under an unconstitutional enactment in order to assert their constitutional claim." *Planned Parenthood*, 220 S.W.3d at 739.

Facial vagueness challenges are especially available against statutes that reach a "substantial amount of constitutionally protected conduct" under article I, § 8. *See Vaughn*, 366 S.W.3d at 518. Indeed, the "general rule disfavoring facial vagueness challenges does not apply in the First Amendment context." *Farrell v. Burke*, 449 F.3d 470, 496 (2d Cir. 2006) (Sotomayor, J.); *accord Coates v. City of Cincinnati*, 402 U.S. 611, 615 (1971); *see also Cal. Tchrs. Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1149 (9th Cir. 2001) ("In the First Amendment context, facial vagueness challenges are appropriate if the statute clearly implicates free speech rights.").

Facial vagueness challenges to statutes burdening protected speech are essential, in fact, because "[t]he uncertain meanings" of vague statutes can have the same chilling effect on protected expression as overbroad statutes, causing regulated persons "to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked."

[16] The only two cases cited by Appellants arising out of pre-enforcement, facial vagueness challenges are *City of Maryland Heights v. State*, 638 S.W.3d 895 (Mo. banc 2022), and *Brooks v. State*, 128 S.W.3d 844 (Mo. banc 2004). Neither of those cases implicate the unique context of protected speech under article I, § 8, where facial vagueness challenges are proper and common. *See City of Maryland Heights*, 638 S.W.3d at 898 (explaining that the statute being challenged on vagueness grounds "plainly does not regulate ... speech"); *Brooks*, 128 S.W.3d at 846 (noting that the respondent raised facial vagueness challenges to statutes that were alleged to burden the right to keep and bear arms under article I, § 23, not free-speech rights).

Baggett v. Bullitt, 377 U.S. 360, 372 (1964) (internal quotation marks omitted). The only way to neutralize the deterrent effect is to challenge the statute's vagueness on its face and prior to its enforcement. *See Brown*, 564 U.S. at 793; *HM Fla.-ORL, LLC v. Governor of Fla.*, 137 F.4th 1207, 1225-26 (11th Cir. 2025) (explaining that a "desire to avoid chilling protected speech animates several related doctrines that can invalidate speech laws on their face," including "vagueness"). Because Respondents assert that § 573.550 is a criminal statute burdening protected expression, their facial vagueness challenge is proper.

B. The circuit court correctly concluded that § 573.550 is facially void for vagueness because the statute's definition of "explicit sexual material" fails to provide adequate notice of the conduct it prohibits.

"[A] statute is vague if it fails to give notice to potential offenders of the prohibited conduct. In that regard, notice is inadequate when the terms of the statute are so unclear that people of common intelligence must guess at their meaning." *Callen*, 45 S.W.3d at 889-90 (internal quotation marks omitted).

Section 573.550 does not provide adequate notice of the conduct it prohibits because its definition of proscribed "explicit sexual material"—including its "showing" requirement and deficient savings clause—is ambiguous and has resulted in dramatically inconsistent interpretations and applications of the statute across Missouri school districts. Appellants do *nothing* to eliminate those ambiguities. Nor do Appellants dispute the inconsistent interpretations and applications of the law across the state or explain how those are *not* evidence of the statue's facial vagueness. For these reasons, this Court should conclude that § 573.550 is unconstitutionally vague because it fails to give regulated parties adequate notice of the prohibited conduct.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

1. Section 573.550's requirement that a prohibited visual depiction be "showing" an enumerated category of sexual conduct is unconstitutionally vague.

First, § 573.550 does not articulate what is sufficient for an educator to determine that a visual depiction is "showing" an enumerated category of sexual conduct—for example, "sexual intercourse"—such that the work qualifies as prohibited "explicit sexual material." *See* § 573.550.3(1).

Despite Appellants' bizarre fixation on hardcore pornographic magazines like *Hustler*, *Poppin Mamas*, *Beavers*, *Eat Me*, and *Hot Flesh*, *see* Apps. Br. pp. 66-67, no such works, nor any works of hardcore pornography, have ever appeared on the shelves of a Missouri school library, and Appellants produced no evidence to the contrary. *See* D1817 ¶¶ 50, 99, 259; D1772 ¶¶ 5, 31, 32. Instead, Missouri school libraries expressively curate age-appropriate works of *literature* (broadly defined) intended for student audiences that appeal to their (non-prurient) interests. *See* D1817 ¶¶ 50, 53, 64, 72-73, 149-51, 244. Some of those works, specifically in middle- and high-school libraries, may discuss sexual subject matter, and some illustrated works, such as graphic novels and sex-education books, may include visual depictions. *Those* are the works that § 573.550 requires school affiliates to assess for compliance with the statute. The threshold vagueness problem of § 573.550 is that it provides no guidance for determining when such visual depictions are sufficiently "showing" a category of enumerated sexual content to qualify the works in which they appear as "explicit sexual material." *See* § 573.550.3(1).

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

The ordinary meaning of "show" is "to cause or permit to be seen."[17] That definition is frequently, if not invariably, difficult to apply to illustrated works of literature intended for older minors. For example, if a graphic adaptation of an award-winning novel describes an act of rape in the text, and is accompanied by illustrations of a man and a woman in bed—the man on top, only his nude backside visible from behind, pinning the woman underneath with her dress pushed upward at the sides—are those illustrations "visual depiction[s] ... *showing* ... sexual intercourse" or "deviate sexual intercourse"? *See id.* (emphasis added); D1831 ¶¶ 2-8 (images in *The Handmaid's Tale: The Graphic Novel* by Margaret Atwood, adapted and illustrated by Renée Nault (hereinafter, "*The Handmaid's Tale*")). Or must the illustration contain more, like representations of human genitalia and physical penetration, as the definitions of "sexual intercourse" and "deviate sexual intercourse" require in order "to be seen"? *See* § 566.010(7) (defining "sexual intercourse" as "any penetration, however slight, of the female genitalia by the penis"); § 566.010(3) (defining "deviate sexual intercourse" as any "sexual act involving the penetration, however slight, of the penis, female genitalia, or the anus ... done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim").

The foregoing example is not theoretical. It is an actual application of § 573.550 to a constitutionally protected work—*The Handmaid's Tale*—that resulted in its removal from some Missouri schools. *See* D1817 ¶¶ 96, 111, 123, 148, 172, 173 (discussing

[17] "Show," *Merriam-Webster's Online Dictionary*, https://www.merriam-webster.com/dictionary/show (last accessed July 1, 2026).

districts' removals of the book due to illustrations accompanying context that imply either consensual or non-consensual sexual intercourse, but which do not explicitly "show" human genitalia or penetration of any kind). This ambiguity resulted in wildly inconsistent interpretations—and hundreds of unconstitutional removals of books—across Missouri. *See* D1817 ¶¶ 238-39, 243, 251-56, 261; D1831 ¶¶ 56-71.

Such inconsistent applications of § 573.550.3(1)'s definition of "explicit sexual material" to the same work are classic examples of when statutory "notice is inadequate"—namely, "when the terms of the statute are so unclear that people of common intelligence must guess at their meaning." *Callen*, 45 S.W.3d at 890; *see GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 709 F. Supp. 3d 664, 701 (S.D. Iowa 2023) (hereinafter, "*GLBT Youth I*") (concluding that Iowa Senate File 496, requiring books containing any "description" of a "sex act" to be removed from school libraries, was likely facially void for vagueness because school districts were "all over the map on the issue" of what *constituted* a description or depiction of a sex act, "with some districts ... having removed hundreds more books than others"), *rev'd and vacated on other grounds by GLBT Youth II*, 114 F.4th 660.[18]

[18] At the Eighth Circuit on interlocutory appeal in *GLBT Youth II*, and back in the district court on remand (*sub nom. Penguin Random House I*, 774 F. Supp. 3d at 1001), the plaintiffs from *GLBT Youth I* "no longer appear[ed] to be seeking preliminary injunctive relief on the basis that Senate File 496 is void for vagueness under the due process clause." 774 F. Supp. 3d at 1015 n.4. As such, the Eighth Circuit has never addressed any vagueness claim about Iowa Senate File 496. While Appellants cite language in the Eighth Circuit's *Penguin Random House II* decision describing the statute's prohibition as "neither amorphous nor unreasonable," Apps. Br. p. 53 (quoting 172 F.4th at 588), those pronouncements are dicta with respect to the Iowa statute's facial vagueness because the plaintiffs' vagueness challenge never reached the Eighth Circuit on appeal.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

In *GLBT Youth I*, the district court reviewed a similarly vague Iowa statute requiring any book containing a "description" or "visual depiction" of a "sex act," but without reference to *Miller*'s three-part standard adjusted for minors, to be removed from school libraries. 709 F. Supp. 3d at 701. The court's vagueness analysis, which was never disturbed on appeal, is highly relevant to § 573.550. "One of the major areas of uncertainty," the court explained, "is the level of detail a book passage must have before it *constitutes* a description or visual depiction of a sex act; for example, is a passage stating that two characters 'made passionate love' or 'had sexual intercourse' enough to require removal?" *Id.* (emphasis added) (discussing other examples). The court noted how resolution of that ambiguity depends on surrounding context, which educators interpret differently:

> Perhaps the answer depends on whether the book already described what the characters look like, or what clothes they were wearing, or the dimensions of the room they were in. Perhaps not. All the Court can say for now is that it likely violates the due process rights of the Educator Plaintiffs to have to make this judgment call at risk of their employment and licensure.

Id. at 702-03. The same ambiguity afflicting verbs like "describe" and "depict" in the context of illustrated young adult literature—and a far more serious penalty of criminal prosecution and incarceration for getting the answer wrong—plague § 573.550 and its "showing" requirement. *See, e.g.*, D1817 ¶¶ 238-39; D1831 ¶¶ 63-71. These are precisely the sort of subjective, aesthetic judgments *Miller* and its progeny intended to permanently inter, but which § 573.550's vagueness resurrects.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Appellants offer no guidance for this Court to resolve the ambiguity in § 573.550's "showing" requirement. On the contrary, Appellants' own examples of titles it believes were properly removed from school libraries because they contain prohibited "explicit sexual material" only illustrate the vagueness problem. *See* Apps. Br. pp. 24, 26. That is because Appellants' examples contain "visual depiction[s]" at most *implying* a category of sexual conduct listed § 573.550, but not explicitly "showing" it anywhere—despite the words of the statute requiring just that. *See* § 573.550.3(1).

For example, Appellants' excerpt from *Fun Home*, Apps. Br. p. 24; D1564 (unredacted images filed under seal), consists of three panels wherein the protagonist recounts a formative sexual experience in metaphorical terms borrowed from Homer's *Odyssey*. Appellants' redactions of the top panel overlay illustrations of the protagonist's buttocks and one exposed breast of her supine partner—two visual depictions that do not fall anywhere under § 573.550.3(1)'s definition of prohibited material. The bottom panels feature a close-up, from the side, of the protagonist's head between her partner's legs. In the unredacted images, the protagonist's mouth and her partner's genitals are completely obscured by the latter's upright legs; only the top of the protagonist's head, and the very top of her partner's pubic hair, are visible between them. Appellants' redactions cover the partially exposed pubic hair. *See* D1564.

Appellants take the position that these images are prohibited by § 573.550 because they are visual "depiction[s] ... showing" "deviate sexual intercourse" under § 573.550.3(1). *See* Apps. Br. p. 60 (citing § 566.010(3)'s definition of "deviate sexual intercourse," which includes "any act involving the genitals of one person" and the

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

"mouth" or "tongue ... of another person"). But at *most*, Appellants' images from *Fun Home* only—albeit strongly—*imply* such acts. An explicit "showing" of oral sex appears nowhere in the panels, because the panels contain no visual depiction of "genitals" and either a "mouth" or "tongue" together, much less "intercourse" between the two. *Cf.* § 566.010(3). The same is true of Appellants' excerpted images from *Game of Thrones*, to the extent Appellants believe they "show" any "sexual intercourse." *See* Apps. Br. p. 26; D1566 (unredacted images filed under seal); *cf.* § 566.010(7) (defining "sexual intercourse" as "any penetration, however slight, of the female genitalia by the penis").

More to the point, Appellants' examples are representative of how sexual content is "show[n]" in illustrated works of young adult literature generally—that is, purposefully and tastefully *obscured*. Apart from sex-education titles, works of literature clearly intended for older minors, and provided only to them in a school setting by trained library professionals, are unlikely to ever include visual depictions that explicitly "show" an instance of sexual conduct listed in § 573.550, precisely because of the intended audience.

Nevertheless, Appellants apparently conclude that visual depictions *implying* an instance of enumerated sexual conduct in § 573.550, but not "showing" it at all, are sufficient to satisfy § 573.550's "showing" requirement—presumably, if the implication is *strong enough*. *See* Apps. Br. pp. 24, 26 (characterizing images from *Fun Home* and *Game of Thrones* as "prohibited sexual material" under the statute); D1559 (stating incoherently that the unredacted images were "[f]iled under seal to avoid including obscenity in a

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

publicly-filed legal document").[19] In doing so, Appellants admit that the statute's definition of "explicit sexual material" requires school affiliates to make inescapably aesthetic judgments about when a permissible implication becomes a prohibited "showing" for purposes of the statute. *See* § 573.550.3(1). Of course, the Constitution does not require such overrefined lines to be drawn. *See HM Fla.-ORL*, 137 F.4th at 1228 ("Nor is the Constitution a prude."). The fundamentally subjective enterprise of § 573.550's "showing" requirement means that the statute inherently "fails to give [adequate] notice to potential offenders of the prohibited conduct." *Callen*, 45 S.W.3d at 889-90; *accord GLBT Youth I*, 709 F. Supp. 3d at 703.

Rather than address the ambiguity of the statute's "showing" requirement—which Respondents briefed extensively in the circuit court, D1794 pp. 79-88—Appellants focus exclusively on whether the various *categories* of sexual content in § 573.550.3(1)'s definition of "explicit sexual material" are vague,[20] and they rely on case law evaluating

---

[19] Appellants claim that in corporate representative depositions, Respondent MLA's members "acknowledge[d]" that some of these images satisfy the definition of "explicit sexual material." *E.g.*, Apps. Br. p. 24 ¶ 97. As Respondents explained in the circuit court, however, such "admissions" about the meaning of the statute during corporate representative depositions were consistent with Respondents' missions as advocacy organizations for professional librarians opposed to any censorship of constitutionally protected material. Moreover, those "admissions" have no bearing on the constitutionality of the statute, which is a question of law for this Court to decide. *See* Tr. 174:24-175:24.

[20] Even on this largely irrelevant point, Appellants' arguments fall short. For example, Appellants insist the categories of sexual content in § 573.550 "have plain and ordinary meanings and are consistently referenced in Missouri statutes in a manner commonly understood by reasonable people without the need for further definition." Apps. Br. p. 62. As examples, Appellants cite the definitions of "nudity" and "state of nudity" contained in § 573.010(10). But the words "nudity" and "state of nudity" appear nowhere in § 573.550. The closest § 573.550 comes is its prohibition of visual depictions "emphasizing the

works of adult, hardcore pornography as *obscenity* to conclude that they are not. *See* Apps. Br. pp. 66-67. But Respondents' vagueness challenge does not contend that the meaning of phrases like "sexual intercourse" or "human masturbation" are ambiguous—most of those terms are defined by state law, as *Miller* requires. *See* 413 U.S. at 24; *accord* Tr. 190:1-6. Instead, Respondents contend it is impossible to determine when a single "visual depiction" in an illustrated work of young adult literature is sufficiently "showing" such acts to *qualify* as "explicit sexual material." Tr. 190:5-16. By irrelevantly and confusingly focusing on unambiguously defined sex acts, Appellants fail to address the inherent ambiguity of the statute's "showing" requirement when applied to visual depictions that appear in Missouri schools and in literature made available, in an age-appropriate manner, to students. As a result, Appellants fail to rebut that § 573.550's definition of "explicit sexual material" provides inadequate notice of the prohibited conduct to the statute's *regulated parties—i.e.*, persons affiliated with public and private elementary and secondary *schools* in an official capacity. *See Callen*, 45 S.W.3d at 889-90.

Finally, and perhaps most importantly, the ambiguous status of isolated images under § 573.550 might be eliminated if the statute incorporated the *Miller* standard for unprotected obscenity, adjusted for minors, as article I, § 8 requires. *See Reno*, 521 U.S. at

---

depiction of postpubertal [*sic*] human genitals." § 573.550.3(1). Section 573.010(10)'s definitions of "nudity" and "state of nudity" provide no clarification or guidance whatsoever as to when a visual depiction is sufficiently "emphasizing" (as opposed to merely showing, implying, or some other verb) "postpubertal human genitals," or when a visual depiction of human genitals can be determined to be "postpubertal" at all—or indeed, any number of other, obvious questions raised by this novel category of prohibited content.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

873 (stating that *Miller*'s "definition including three limitations is not vague," because "[e]ach of *Miller*'s ... prongs ... critically limits the uncertain sweep of the obscenity definition").[21] If § 573.550 were constitutional, a librarian would consider a work "as a whole," and if the work either does not predominantly appeal to the prurient interest of minors, or has serious literary, artistic, political, or scientific value for minors (or both), the librarian can safely leave the protected work on the shelves or disseminate it to a student. *See Miller*, 413 U.S. at 24; *Paxton*, 606 U.S. at 474; *Ashcroft*, 535 U.S. at 248 (reciting the "essential First Amendment rule" that "[t]he artistic merit of a work does not depend on the presence of a single explicit scene"). As explained above (*see supra* section I.D), *Fun Home* and *Game of Thrones* are both constitutionally protected under the *Miller* standard. For the same reasons, *The Handmaid's Tale* is protected as well. *See* D1831 ¶¶ 1-8.

Because *Miller*'s holistic evaluations are what regulated school affiliates have always done in the course of exercising their professional expertise and judgment prior to

[21] For this reason, Appellants' argument that "this Court has repeatedly 'considered and rejected the argument that obscenity statutes are impermissibly overbroad, ambiguous or vague,'" Apps. Br. p. 63 (quoting *Simmer*, 772 S.W.2d at 374), does nothing to help their case. The statute in *Simmer*, § 573.030, like every other "obscenity statute" under Missouri law prior to § 573.550, "defines obscenity according to the test outlined in *Miller*." *Simmer*, 772 S.W.2d at 373; *see State v. Cox*, 619 S.W.2d 794, 795 (Mo. App. E.D. 1981) (explaining that this Court has long "adopted the guidelines established in *Miller* to enable Missouri to regulate the dissemination of obscene material *if these guidelines are met*" (emphasis added)). Section 573.550's failure to incorporate the *Miller* guidelines, adjusted for minors, or show those guidelines are met, is precisely what makes § 573.550 constitutionally defective. Obscenity decisions do nothing to support Appellants' case for § 573.550's constitutionality because, notwithstanding Appellants' overinsistence to the contrary, § 573.550 *is not an obscenity statute*, precisely *because* it does not incorporate *Miller*'s three-part standard.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

§ 573.550's enactment, including to comply with Missouri's comprehensive regulatory scheme of material that is obscene for minors, there is every reason to believe they would do so in § 573.550's absence. *See, e.g.*, D1817 ¶ 50 (school affiliate testimony that "[o]bscenity is of course not allowed in schools"), ¶¶ 69-72 & 151, ¶ 183 (corporate representative testimony that "all pictorial images in a book must be viewed in the context of an entire book, not in isolation"), ¶ 244 (former librarian testimony that she evaluated books in her library by "read[ing] the professional review, [asking] does it have literary merit, is it geared toward high school students and is it age relevant and does it meet the *Miller* test"). By requiring regulated school affiliates to do something completely different and prohibitively subjective, § 573.550's vague definition of "explicit sexual material" fails to give regulated parties notice of the prohibited conduct. *Callen*, 45 S.W.3d at 889-90.

2. Section 573.550's "savings clause" fails to give adequate notice when otherwise "explicit sexual material" is not *prohibited.*

Section 573.550 is also vague as to when a work is *excluded* from its prohibition, because the statute's exceptions are as facially ambiguous and impossible to consistently apply as the definition itself. Respondents have explained in detail why *Miller*'s complete savings clause for *all works*, taken as a whole, which have serious *literary, artistic, political, or scientific value for minors*, is necessary for any criminal restriction of material with "sexual" content to survive facial constitutional scrutiny under article I, § 8.[22] The

[22] Appellants suggest a statutory exception that merely "parallels" *Miller*'s formulation is permissible. *See* Apps. Br. p. 65 (quoting *Kansas City v. O'Connor*, 510 S.W.2d 689, 696

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

State does not and cannot dispute that § 573.550's exception is not even close to a complete formulation of the *Miller* exception.

As Respondents have further shown, § 573.550's departures from the *Miller* exception magnify the vagueness problems in the statute's definition of prohibited "explicit sexual material." Respondents' statement of facts in the circuit court catalogs numerous examples of regulated affiliates across Missouri reaching divergent interpretations of § 573.550's exception and inconsistently deciding whether the same constitutionally protected work can remain in their libraries as a result. *See* D1817 ¶ 147, 244-45. As one example, the fact that § 573.550 exempts "works of art" with "serious artistic significance," but not works that, taken as a whole, have "serious literary ... value *for minors*," *Paxton*, 606 U.S. at 474, caused the Parkway District to conclude that all graphic novels—many if not all of which qualify as works with serious literary value for minors—are categorically

(Mo. banc 1974)). Even if that were true, Respondents have shown that § 573.550's exception is so different from *Miller*'s that the former cannot be said to "parallel" the latter in any meaningful sense. But Appellants' suggestion also rests on a misreading of the law. In *O'Connor*, the defendant was convicted under a statute prohibiting the knowing exhibition of obscene material *before* the U.S. Supreme Court decided *Miller*. 510 S.W.2d at 690; *see id.* at 698 (Seiler, J., dissenting) (explaining that in 1971, "[a]t the time the movies in the cases at bar were shown the law [of obscenity] was ... not the law announced by the Supreme Court on June 21, 1973, in *Miller v. California*"). This Court nevertheless affirmed the conviction, after *Miller* was decided, because it concluded the trial court had "found that the dominant theme of the movie in question appeals to prurient interest in sex, that it is patently offensive and affronts contemporary community standards relative [*sic*] description and representation of sexual matters, [and] that it is utterly without redeeming social value," and thus necessarily lacked serious literary, artistic, political, or scientific value. *Id.* at 691, 695 (majority opinion). In other words, the trial court's factual findings supported that the film "[was] obscene" under the *Miller* standard. *Id.* at 695. The fact that the pre-*Miller* statute under which the defendant was convicted only "parallel[ed]" the *Miller* standard was irrelevant to the constitutionality of the conviction. *Id.* at 695.

outside § 573.550's saving clause. D1817 ¶ 147. On the other hand, a librarian in Kansas City testified that in her view, "most books that would (or even could) be selected for a school library collection," including graphic novels, "have 'serious artistic significance,'" and should thus be exempt from proscription. *Id.* ¶ 245. Districts also reached divergent interpretations of, among others, § 573.550.3(1)'s ambiguous exception for "materials used in science courses," and they do not understand the "anthropological significance" exception at all. *See, e.g.*, D1817 ¶¶ 145, 147, 158.

Miller's exemption, however, would largely eliminate that confusion, because it is available for any work, not merely "works of art." *Compare Miller*, 413 U.S. at 24, *with* § 573.550.3(1). Moreover, librarians in Missouri schools are familiar with *Miller*'s taken-as-a-whole requirements and know how to holistically evaluate library materials for constitutionally unprotected obscenity because they have been doing so for many years. *See, e.g.*, D1817 ¶¶ 50, 183, 244.

Appellants make no attempt to explain the inconsistent interpretations and applications of § 573.550 and its exception. *E.g.*, D1817 ¶¶ 106, 157, 162-63, 165-66. Instead, they argue only that "the fact that § 573.550's exceptions require the application of statutory text to different factual situations" does not "render the statute unconstitutionally vague." Apps. Br. p. 65. But the vagueness problems of § 573.550's exception do not arise from the fact that it must be applied to different factual situations. The vagueness problems arise from the reality that different districts, and even different employees within the same district, are unable to consistently apply the definition of

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

"explicit sexual material" or its exception to the *same* factual situation—*i.e.*, to the *same book*. *See GLBT Youth I*, 709 F. Supp. 3d at 701.

Ultimately, Appellants all but concede that § 573.550's savings clause is vague in the context of literature found in Missouri school libraries, because they offer only case law concluding that the *Miller* exception is not vague as applied to *adult hardcore pornography*. *See* Apps. Br. p. 47 (citing *Simmer*, 772 S.W.2d at 374; *State v. Triplett*, 722 S.W.2d 633, 638 (Mo. App. S.D. 1986); *State v. Cooley*, 766 S.W.2d 133, 135 (Mo. App. S.D. 1989)). Appellants' reliance on those cases is baffling for at least two reasons. First, whether *Miller*'s exception is vague has nothing to do with whether § 573.550's exception—which does not remotely resemble *Miller*'s—is vague. Second, whether *Miller*'s exception is vague as applied to adult hardcore pornography has nothing to do with whether § 573.550's exception is vague as applied to materials containing sexual content that are found in Missouri schools, which are works of *literature for minors*. Incredibly, Appellants believe that case law concluding that *Miller*'s exception is not vague as applied to actual "photographs of homosexual and heterosexual *gang rapes*, *fellation*, *cunnilingus*, [and] *ejaculation*" in adult pornographic magazines somehow supports that § 573.550's exception "is not unconstitutionally vague" as applied to illustrated works of young adult literature like *The Handmaid's Tale*. *See* Apps. Br. p. 66-67 (emphasis added) (quoting *Triplett*, 722 S.W.2d at 638). To even state such an outrageous proposition is to refute it.

In a now-familiar move, Appellants' own example of a work that was "properly" removed from Missouri school libraries under § 573.550 only supports the unconstitutional

ambiguity of the statute's exception. Specifically, Appellants' brief excerpts and redacts a single page from the illustrated sex-education guidebook *Let's Talk About It*. Apps. Br. p. 25. The excerpted page is from a chapter entitled, "What is…masturbation?" *See* D1831 ¶¶ 29-34. The chapter explains that masturbation is normal and healthy and instructs readers how to do so—if they feel ready—in ways that avoid injury. *Id.* The excerpted page describes different methods of (male) masturbation in the text and contains accompanying illustrations depicting human hands touching male genitalia in a state of arousal. *Id.* Unlike the literary works of *Fun Home*, *The Handmaid's Tale*, and *Game of Thrones*, therefore, *Let's Talk About It* does contain a "visual depiction" explicitly "showing" at least one category of sexual content enumerated in § 573.550—here, "human masturbation"—which qualifies the entire book as prohibited "explicit sexual material." § 573.550.3(1).

Under § 573.550, *Let's Talk About It* evades proscription only if the "anthropological significance" exception is so broad as to negate the statute's prohibition entirely, or if the excerpted visual depiction satisfies the exception for "materials used in science courses, including but not limited to materials used in biology, anatomy, physiology, and sexual education classes." *See* § 573.550.3(1). But school districts and affiliates do not know what that exception means. Does it refer to "materials" that are used in *their* school's "science courses" (like textbooks, which *Let's Talk About It* is not)? Or does it refer to materials that *might* "be seen in a health or science class" *generally* (which requires inescapably subjective judgments about the book)? *See* D1817 ¶¶ 145, 147. Given the inherent ambiguity of the "science courses" exception, it is unsurprising that some districts removed *Let's Talk About It* from their libraries, while others did not. *See id.* ¶ 158.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

The status of *Let's Talk About It* under the *Miller* test, on the other hand, is not ambiguous: The book is not obscene for older minors and is constitutionally protected, including because, taken as a whole, it does not appeal to the prurient interest of older minors and has serious scientific value for them.

In short, Respondents offer ample evidence of the unconstitutional vagueness of § 573.550's definition of "explicit sexual material" and exception, and their departures from the *Miller* standard, in the context of materials actually found in Missouri schools, while Appellants refuse to address the relevant law or the facts of this case. This Court can and should conclude that § 573.550 is unconstitutionally void for vagueness on its face because it fails to give regulated parties—*i.e.*, persons "affiliated with a public or private elementary or secondary school in an official capacity," § 573.550.1, who indisputably qualify as "reasonable" persons for purposes of the vagueness analysis—adequate notice of the prohibited conduct. *Callen*, 45 S.W.3d at 889-90.

3. Section 573.550's "official capacity" limitation is illusory and does nothing to mitigate the statute's vagueness.

Appellants next claim that § 573.550 gives reasonable notice of the prohibited conduct because it "restricts its coverage to actions taken in an 'official capacity.'" Apps. Br. p. 56. Not only is that interpretation of the statute unsupported by the plain text, but even if Appellants' reading were correct, it only compounds the statute's vagueness.

As Respondents have explained (*see supra* section I.B), § 573.550's prohibition is nowhere limited to "actions *taken* in an 'official capacity,'" as Appellants incorrectly assert, Apps. Br. p. 56 (emphasis added), but rather is applicable only to "person[s]

affiliated ... in an official capacity." § 573.550.1 (emphasis added). As this Court has long held, Appellants' failure in their opening brief to offer any statutory construction supporting their contrary "interpretation" means they cannot do so on reply. *State ex rel. Houser v. St. Louis Union Tr. Co.*, 248 S.W.2d 592, 594 (Mo. Div. 2 1952) ("Issues submitted in an appellant's brief on original submission are not to be enlarged by presentations in a reply brief as a respondent is entitled to an opportunity to answer an issue presented by an appellant.")

Moreover, if § 573.550 were limited to "actions taken in an 'official capacity,'" Apps. Br. p. 56, it would only compound the statute's vagueness. As written, § 573.550 applies to persons "affiliated with a public or private elementary or secondary school in an official capacity," § 573.550.1, a defined term of art that enumerates the types of "affiliates" who qualify. *See* § 573.550.3(2). Appellants' interpretation, by contrast, is absurd and nonsensical. *See* Apps. Br. p. 56. For example, the "official capacity" of a school basketball coach—one of the covered "affiliates," *see* § 573.550.3(2)—is to coach students in basketball, not disseminate literature. The myriad vagueness problems created by a limitation to conduct *in* an official capacity are thus easy to imagine, as Respondents observed in the circuit court, with no meaningful response from Appellants:

> If [§ 573.550] is limited to conduct in an official capacity, it's only going to raise a host of other questions[,] like when a basketball coach loans a personal copy of a book to a student right outside the locker room after a game[,] but technically once the game is over, has the coach loaned that book to the student in a personal capacity or an official capacity? Those are the types of questions ... that would still occur if the statute is construed as limited to [actions taken in] an official capacity; it doesn't solve the vagueness problems here.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Tr. 189:16-25. In short, § 573.550 does not prohibit conduct exclusively in an official capacity, and if it did so, the statute would only be vaguer.

4. Section 573.550's scienter requirement of knowledge does nothing to mitigate the vagueness inherent in the statute, which stems from regulated parties' lack of knowledge of the law, not of the facts.

Finally, Appellants contend that § 573.550's "scienter requirement further bolsters its constitutional clarity." Apps. Br. p. 68. Once again, Appellants are wrong.

The presence of a scienter requirement does not eliminate a statute's vagueness in every case, or even in most cases. The U.S. Supreme Court has observed that "a scienter requirement *may* mitigate a law's vagueness ... with respect to the adequacy of notice to the complainant that his conduct is proscribed." *Village of Hoffman Ests.*, 455 U.S. at 499 (emphasis added). That observation is descriptive, not normative.

As jurists and scholars alike have cautioned, in many cases, the "supposed cure" of a scienter requirement "fixes nothing because one can satisfy a scienter requirement by knowing the *nature* of one's conduct and the *facts* that make one's conduct illegal and still not understand that one's conduct falls within the *law's* proscription because of indefinite statutory language." Michael J.Z. Mannheimer, *Vagueness as Impossibility*, 98 TEX. L. REV. 1049, 1053 (2020) (emphasis added); *see Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 345 (1952) (Jackson, J., dissenting) (explaining that knowledge of the relevant facts, which is sufficient to satisfy a statutory scienter requirement, is very different from "knowledge of the law," which is not necessary to satisfy a scienter requirement, and ascertainment of the *meaning* of a statute is a question of "knowledge of the law"); *Screws v. United States*, 325 U.S. 91, 154 (1945) (Roberts, J., dissenting) ("If a

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

statute does not satisfy the due-process requirement of giving decent advance notice of what it is which, if happening, will be visited with punishment . . . then 'willfully' bringing to pass such an undefined and too uncertain event cannot make it sufficiently definite and ascertainable.").

In this case, § 573.550 presents the kind of vagueness that is *not* mitigated by a scienter requirement. As Appellants observe, § 573.550's "knowingly" requirement "means that any prosecution must prove, beyond a reasonable doubt, that any defendant knew of the content and character of the materials he possessed." Apps. Br. p. 68 (internal quotation marks omitted). While requiring knowledge of both the "content and character" of the disseminated material would prevent prosecution if the educator does not know a disseminated work *contains* a visual depiction (that qualifies as "explicit sexual material" under the statute) or the *content* of that visual depiction, it would not prevent her prosecution when she knows that that the work contains the visual depiction and the content of that depiction, but does not know whether the content *qualifies* as prohibited "explicit sexual material"—including whether it sufficiently "show[s]" a prohibited category of sexual conduct, *see* § 573.550.1—because of the statute's inherently subjective language.

That is precisely the distinction between knowledge of the facts, which is sufficient to satisfy a scienter requirement of knowledge, and knowledge of the law, which is not. *See Boyce Motor Lines*, 342 U.S. at 345 (Jackson, J., dissenting); *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 830 (M.D. Tenn. 2013) (concluding that a scienter requirement of knowledge in a statute criminalizing the sale of sex-oriented advertisements did not save the statute from unconstitutional vagueness because it did "not sufficiently

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

compensate for the ambiguity inherent in the statute, which has several undefined terms and broad definitions governing its scope" that made it difficult for sellers to know when an advertisement's content violated the law). Regulated school affiliates may be aware of the visual depictions in works to which § 573.550 applies, and they may be aware of the content of those visual depictions. Often, therefore, they are aware of the "content and character" of the material. But whether the content and character of the material *legally* qualify as prohibited "explicit sexual material" under the statute is—in multiple respects—the definitive question school affiliates and school districts are unable to answer because of the statute's ambiguous language. Section 573.550's scienter requirement of *factual* knowledge does nothing to mitigate that vagueness.

Furthermore, a scienter requirement of mere knowledge is not enough to save § 573.550 from unconstitutional vagueness because § 573.550 is a criminal statute that burdens protected speech. In the unique context of article I, § 8 and the First Amendment, courts have concluded that statutes with scienter requirements even as demanding as *intent* do not overcome unconstitutional vagueness because of the danger that "the requisite intent could be inferred from circumstantial factors," such that regulated parties will still self-censor and protected speech will be chilled. *Church of Am. Knights of Ku Klux Klan v. City of Erie*, 99 F. Supp. 2d 583, 592 (W.D. Pa. 2000); *see also Smith v. Goguen*, 415 U.S. 566, 580 (1974) (rejecting the contention that limiting a statute criminalizing the "contemptuous treatment" of the United States flag to "intentional" conduct would "clarify what conduct constitutes contempt, whether intentional or inadvertent"); *Frese v. MacDonald*, 425 F. Supp. 3d 64, 80 (D.N.H. 2019) (concluding that a criminal statute's "knowing" scienter

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

requirement only required knowledge of the content of one's speech, but did not "adequately delineate" when that speech qualified for the prohibition due to its vague statutory language, and thus did not mitigate the statute's vagueness).

In support of the scienter argument, Appellants cite two cases. *See* Apps. Br. pp. 68-69 (citing *State v. Dale*, 775 S.W.2d 126 (Mo. banc 1989); *State v. Koetting*, 616 S.W.2d 822 (Mo. banc 1981)). Neither supports the State's argument that the mere existence of § 573.550's scienter requirement saves the statute.

In *Dale*, this Court concluded that "[t]he requirement of knowledge [was] the saving grace" of the State's criminal prosecution of three defendants for breaching an otherwise civil duty of care. *See* 775 S.W.2d at 130-31. *Dale* has no relevance to this case, which does not use a scienter requirement to distinguish a criminal offense from a civil tort.

In *Koetting*, a scienter requirement of *purpose* saved from vagueness a criminal statute prohibiting "harassment," which included the act of making "a telephone call or communicat[ing] in writing ... us[ing] coarse language offensive to one of average sensibility." 616 S.W.2d at 824. Such calls could be prosecuted only if they occurred "for the purpose of frightening or disturbing another person." *Id.* This Court held that the statute's requirement "that a defendant must act with the purpose of causing a particular reaction by engaging in the proscribed conduct" transformed it from a vague offense whose commission depends on the unpredictable reaction of a third party into a "specific intent crime" that depends only on the defendant's "purpose." *Id.* at 824-26.

Section 573.550's scienter requirement of mere "knowledge," by contrast, is not nearly as demanding as a specific-intent crime requiring "purpose," and in any event, the

unconstitutional vagueness of § 573.550 does not result from the statute's incorporation of an unpredictable effect upon third parties. Rather, the vagueness of § 573.550 results from regulated school affiliates' inability to determine when a visual depiction in an illustrated work of literature, the content and character of which may be "known" to them, is sufficiently "showing" sexual conduct so as to *legally* qualify as "explicit sexual material" they may not disseminate "to a student." *See* § 573.550.3(1). Unlike the scienter requirement of purpose in *Koetting*, § 573.550's scienter requirement does nothing to mitigate regulated school affiliates' uncertainty whether that content and character "falls within the *law's* proscription because of indefinite statutory language." 98 TEX. L. REV. at 1053 (emphasis added). For all these reasons, § 573.550's scienter requirement does not mitigate the statute's unconstitutional vagueness.

C. Appellants do not dispute that § 573.550 is unconstitutionally vague because it invites arbitrary enforcement.

"Second, a statute is vague if it lacks explicit standards necessary to avoid arbitrary and discriminatory application by the state." *Callen*, 45 S.W.3d at 890. Appellants' brief does not even dispute—and in fact supports—that § 573.550 invites arbitrary enforcement.

A statute invites arbitrary enforcement when its prohibition is "standardless." *United States v. Williams*, 553 U.S. 285, 304 (2008). Put differently, a "statute authorizes an impermissible degree of enforcement discretion—and is therefore void for vagueness—where it fails to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement." *Frese v. Formella*, 53 F.4th 1, 7 (1st Cir. 2022) (internal quotation marks omitted).

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Section 573.550's ambiguous definition of "explicit sexual material" provides no standards for determining when a work's visual depiction sufficiently "show[s]"—as opposed to merely *implies*—an instance of prohibited sexual content. *See* § 573.550.3(1). Such guidelines are necessary in the context of illustrated works of literature intended for minors that are provided on an age-appropriate basis. Rather than offer any guidance for when a visual depiction qualifies, Appellants offer only the sort of "I know it when I see it" assurances that plagued obscenity jurisprudence until *Miller* was decided, and which *Miller*'s standard was designed to permanently inter. *See Jacobellis*, 378 U.S. at 197 (Stewart, J., concurring); Apps. Br. p. 63 (asserting by *ipse dixit* that § 573.550's definition of "explicit sexual material" has "a plain and ordinary meaning *obvious* to a *reasonable* person" (emphasis added)).

The fact that Appellants believe visual depictions from published works that have been removed from Missouri school libraries strongly *implying* a category of prohibited sexual content, but not explicitly "showing" it anywhere, nevertheless "show" such content for purposes of the statute, only cements the conclusion that § 573.550 invites arbitrary enforcement. Following Appellants' own understanding, the statute requires persons charged with enforcement—districts and their employees in the first instance, but also law enforcement officers, prosecutors, judges, and juries—to draw an aesthetic line at which an implication is strong enough to qualify as a "showing." Because there are no standards or guidelines to cabin that task, it is hopelessly subjective. *See, e.g.*, *James v. Wilkinson*, No. 89-0139, 1991 WL 626750, at *5 (W.D. Ky. May 20, 1991) (explaining that when the focus is on what is implied rather than expressed, "the implication is, as with beauty, in the

eye of the beholder"). Section 573.550 also provides no standards for determining when its novel and ambiguous exceptions apply—for example, when a work is a "work of art," *see* § 573.550.3(1)—with predictably divergent results. *Cf. Norma Kristie, Inc. v. Oklahoma City*, 572 F. Supp. 88, 91 (W.D. Okla. 1983) ("The First Amendment is not an art critic."). Notably, such standardless determinations would not be required if the statute incorporated *Miller*'s holistic definition of unprotected obscenity as article I, § 8 requires. *See Reno*, 521 U.S. at 873.

With respect to the ambiguities inherent in § 573.550's definition of "explicit sexual material," the statute is "silent on the matter, leaving it to the subjective ad hoc judgment of an enforcer." *Local 8027, AFT-N.H., AFL-CIO v. Edelblut*, 651 F. Supp. 3d 444, 463 (D.N.H. 2023). If the statute can be enforced because of irreducibly subjective judgments, then it provides no standards for its enforcement at all. *See U.S. Lab. Party v. Pomerleau*, 557 F.2d 410, 412 (4th Cir. 1977) ("Because a violation depends on the subjective opinion of the investigator, the speaker has no protection against arbitrary enforcement of the ordinance."). Accordingly, § 573.550 creates a significant risk of arbitrary enforcement, and it is unconstitutionally vague. *See Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) ("[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.").

Respondents have demonstrated that standardless, subjective judgments required by § 573.550's definition of "explicit sexual material" and its exception resulted in adverse employment consequences for regulated school affiliates in Missouri. *E.g.*, D1817 ¶¶ 282, 284-87, 289-90. School affiliates have also been subjected to harassment and threats,

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

including on social media, from members of their own communities because of their resistance to § 573.550. *See id.* ¶¶ 267-77. Appellants do not address—much less take responsibility for—any evidence of the law's predictably ghoulish consequences. *See id.* ¶¶ 193-95 (detailing how an MLA librarian was visited by law enforcement after a complaint that certain titles were available to students through an app).

More fundamentally, Respondents do not need to point to instances of actual enforcement, because they raise a *pre-enforcement, facial* vagueness challenge. The entire purpose of facial vagueness challenges is to invalidate statutes that substantially deter protected expressive activity through acts of self-censorship that obviate the possibility of enforcement actions in the first place. *See Baggett*, 377 U.S. at 372.

In sum, Respondents have shown that § 573.550's definition of "explicit sexual material" is effectively "standardless," in multiple respects, so as to invite arbitrary and discriminatory enforcement. *Williams*, 553 U.S. at 304. For this additional reason, the Court should affirm that § 573.550 is void for vagueness on its face.

D. Because the deterrent effect of § 573.550's vagueness on protected speech is both real and substantial, this Court should declare the statute facially void for vagueness.

Finally, Respondents have shown that because of § 573.550's vagueness, "the statute's deterrent effect on legitimate expression" is "both real and substantial." *Young*, 427 U.S. at 60; *Erznoznik*, 422 U.S. at 216; *Kiely*, 652 S.W.2d at 702.

"Whether a [vague] statute's chilling effect on legitimate speech is substantial should be judged in relation to what the statute clearly proscribes." *Cal. Tchrs. Ass'n*, 271 F.3d at 1151 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)). "Stated

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

alternatively, uncertainty at a statute's margins will not warrant facial invalidation if it is clear what the statute proscribes 'in the vast majority of its intended applications.'" *Id.* (quoting *Hill v. Colorado*, 530 U.S. 703, 733 (2000)). That standard is met here.

Because images of *any* sexual nature in Missouri schools would appear in literature intended for older minors, the "vast majority" of § 573.550's intended applications are to middle- and high-school library books and other media. Elsewhere, Appellants agree that the majority of § 573.550's intended applications are to school libraries. *See, e.g.*, D1772 ¶¶ 1-115 (mentioning the word "library" or "libraries" 62 times over 115 paragraphs of factual statements Appellants deemed "material" to this case); Apps. Br. p. 51 (claiming, albeit incorrectly, that this case solely concerns the constitutional protection afforded to "[t]he selection of books in a school library"). In other words, the "vast majority" of § 573.550's "intended applications," *Hill*, 530 U.S. at 733, are to works of literature in school libraries that are intended for, and accessible to, older minors.

As Respondents have shown, it is not at all clear what § 573.550 proscribes in the vast majority of its intended applications to those kinds of works—both because of the statute's ambiguous definition of (and exception to) "explicit sexual material," and because of the manner in which young adult literature "visual[ly] depict[s]" sexual content in the first place—through implication, not explicit "showing." *See* § 573.550.3(1).

Respondents have further demonstrated that the statute's vagueness in the context of its "intended applications" has already resulted in a "real and substantial" chilling effect on protected speech. *Young*, 427 U.S. at 60. The statute's indeterminate meaning caused school districts and affiliates to (1) *remove* hundreds of non-obscene, constitutionally

protected works from their shelves; and (2) refrain from *adding* any number of non-obscene, constitutionally protected works to their collections, solely out of fear of future enforcement actions. D1817 ¶¶ 251-57, 259. Of course, "printed media, books, pictures and motion pictures are all forms of pure expression which are entitled to the highest degree of protection" by the First Amendment and article I, § 8. *Sovereign News Co. v. Falke*, 448 F. Supp. 306, 392 (N.D. Ohio 1977); *see also Vollmar*, 389 S.W.2d at 27. The disappearance of hundreds of titles (and the rejection of any number of new ones) of protected literature in Missouri schools because of a vague criminal speech restriction like § 573.550 thus represents an abhorrent—and certainly "real and substantial"—chilling effect on constitutionally protected speech. *Young*, 427 U.S. at 60; *Erznoznik*, 422 U.S. at 216; *Kiely*, 652 S.W.2d at 702. On this basis alone, facial invalidation of § 573.550 is proper.

But Respondents have shown more still, including that regulated school affiliates in Missouri were already self-censoring, and would continue to self-censor, their private expressive conduct, even off school grounds and outside school hours, solely out of fear that their extracurricular activities may be reported by an emotionally dysregulated community member, resulting in harassment and intimidation or even investigation and prosecution by the State. *See* D1817 ¶¶ 262-66. Those fears are not unfounded. The statute has enabled and emboldened documented threats, hate mail, "doxxing," and false accusations against school affiliates who resist § 573.550's censorship by disgruntled members of their own communities. *See, e.g.*, *id.* ¶¶ 263, 280-77, 280-81, 291-93.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

As a result, the statute has put many school affiliates to an intolerable choice between (1) standing up for their right to curate and disseminate constitutionally protected literature to their students who benefit enormously from access to it, but risking baseless and ruinous accusations of pedophilia, grooming, and sexual predation—or indeed, criminal prosecution—on the one hand; or, (2) bowing to State-imposed censorship and robbing students of life-enriching, and potentially life-saving, protected literature on the other. *See id.* The excruciation of that position caused some school affiliates in Missouri to simply quit the education profession altogether before the law was enjoined. *See, e.g., id.* ¶ 281. Such acts of self-censorship, up to and including the loss of educators in Missouri, plainly represents a "real and substantial" chilling effect on protected speech, *Young*, 427 U.S. at 60, and on the "marketplace of ideas" in this State, *see Sheck v. Baileyville Sch. Comm.*, 530 F. Supp. 679, 687 (D. Me. 1982) ("Public schools are major marketplaces of ideas.").

As the foregoing shows, Respondents have established that § 573.550 fails to give adequate notice of the prohibited conduct and invites arbitrary enforcement, and the statute's vagueness has exacted a substantial chilling effect on protected speech. For all these reasons, this Court should affirm the judgment of the circuit court that § 573.550 is facially void for vagueness.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

III. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT § 573.550 IS NOT SUSCEPTIBLE OF A LIMITING CONSTRUCTION TO SAVE IT FROM UNCONSTITUTIONALITY; THE ENTIRE STATUTE MUST BE STRUCK DOWN. (Responds to Appellants' Points Relied On III)

If this Court agrees with Respondents that § 573.550 is facially unconstitutional, Appellants urge this Court to give the statute any reasonable narrowing construction that would render § 573.550 not overbroad or vague (or both). Apps. Br. p. 70. Like the circuit court, however, this Court cannot grant Appellants' request, because no reasonable construction of § 573.550 that would absolve the statute of its unconstitutionality is available here. Instead, the entire statute must be struck down.

First, the judicial presumption in favor of narrowing constructions is rebutted in this case because "there is no indication that" any particular narrowing "construction would be consistent with the intent of the legislature." *State v. Carpenter*, 736 S.W.2d 406, 408 n.1 (Mo. banc 1987); *see also Planned Parenthood*, 220 S.W.3d at 741 ("A narrowing construction ... is only appropriate if it is not inconsistent with legislative intent."). Particularly if the "language of the statute" is "contrary" to the proposed construction, courts must "refrain from any attempt to redraft the statute," which would invade the General Assembly's prerogative. *Carpenter*, 736 S.W.2d at 408 n.1.

Second, the reason the U.S. Supreme Court concluded a narrowing construction was unavailable in *Erznoznik* applies with equal force to § 573.550. The statute "by its plain terms is not easily susceptible of a narrowing construction" because it is a content-based, criminal restriction of material with "sexual content" that is *not* limited to *Miller*'s definition of unprotected obscenity for minors. 422 U.S. at 216. For that reason, "[t]he only

narrowing construction" that would save the statute from unconstitutionality would, at minimum, have "to limit the ordinance to [works] that are obscene as to minors" under *Miller*. *Id.* at 217 n.15. But Appellants have not "suggested such a limitation, perhaps because a *rewriting* of the ordinance would be necessary to reach that result." *Id.* (emphasis added). And because this Court cannot save § 573.550 without rewriting the statute altogether, a narrowing construction is not available. *Carpenter*, 736 S.W.2d at 408 n.1.

Nor have Appellants "provided any evidence that the ... Legislature intended the law to be limited" to the *Miller* standard. *See Brown*, 564 U.S. at 813 (Alito, J., concurring). And for good reason: All evidence is to the contrary. The General Assembly enacted § 573.550 as part of chapter 573. Every other statute in that chapter restricting adults' dissemination to minors of—and minors' access to—sexually explicit material incorporates the term of art "pornographic for minors," *see* § 573.010(14), which adopts the three-part *Miller* obscenity standard, adjusted for minors, to define the scope of the prohibition. *See* § 573.020.1(2); §§ 573.030.1(3)-(5); §§ 573.040.1(1)-(3). From those provisions, it can be inferred that the General Assembly knew exactly how to craft a criminal speech restriction that is limited to constitutionally unprotected obscenity for minors. Instead, the General Assembly chose to create an entirely new prohibition.

The only conclusion to be drawn from the General Assembly's choice is that it *intended* to criminalize regulated school affiliates' possession and dissemination of material with "sexual content," but which is *not* obscene for minors, to public and private elementary and secondary school students. In other words, the General Assembly intended to criminally restrict the dissemination of even constitutionally *protected* material to

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

private citizens. Article I, § 8 does not permit the General Assembly to do so, *see McNary*, 527 S.W.2d at 345, but that was plainly the legislature's objective. Accordingly, a narrowing construction is neither available nor appropriate here, especially because § 573.550 is a criminal statute:

> The severance doctrine never has been used, in this Court or any other, to justify replacing a statute drafted by the legislature with one of the judiciary's own invention. This is what the state suggests, but this the Court will not do.
>
> To misuse the severance doctrine in the way the state suggests would require the Court to overstep its constitutional boundaries in any context. To do so with a criminal statute would be even worse. Severance does not authorize—and cannot justify—an intrusion by this Court into the legislative prerogative to determine what is (and is not) a crime under Missouri law and to authorize which punishments will be (and will not be) applicable to these crimes.

State v. Hart, 404 S.W.3d 232, 244-45 (Mo. banc 2013).

Finally, the only limiting construction Appellants propose would not save the statute from unconstitutionality, either. Appellants ask this Court to strike the words "or private" from § 573.550, such that the statute applies only to persons affiliated with *public* elementary or secondary schools in an official capacity. Apps. Br. pp. 70-71. But doing so would not make the statute constitutional. Nor would limiting the statute to conduct performed in an official capacity, during school hours, and on school grounds. Section 573.550 is constitutionally deficient in the first instance not because it applies to private school affiliates, or because it lacks time, place, or manner limitations on the prohibited conduct. Section 573.550 is constitutionally deficient because it is a content-

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

based, *criminal* speech restriction that is not limited to *unprotected* speech. *Miller*, 413 U.S. at 24; *McNary*, 527 S.W.2d at 345; *accord Erznoznik*, 422 U.S. at 216 n.15.

While in some cases a narrowing construction is the "preferred remedy," *Planned Parenthood*, 220 S.W.3d at 741, this Court cannot adopt one here without contravening the obviously "contrary" intent of the General Assembly as reflected by the "language of the statute," *Carpenter*, 736 S.W.2d at 408 n.1. Under these circumstances, this Court's duty is not to salvage the General Assembly's work product by any means necessary. *Hart*, 404 S.W.3d at 244-45. Instead, its duty is to reject the enactment in full, thereby instructing the General Assembly not to criminally punish Missouri citizens' constitutionally protected expression again. Accordingly, a limiting construction is not available and should not be given. Instead, this Court should facially invalidate § 573.550 in its entirety.

CONCLUSION

For the foregoing reasons, Respondents respectfully ask this Court to affirm the judgment of the circuit court, declare § 573.550 facially overbroad in violation of article I, § 8 and void for vagueness in violation of article I, §§ 8 and 10 of the Missouri Constitution, and permanently enjoin the statute's enforcement.

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

DATED: July 17, 2026

Respectfully submitted,

STINSON LLP

/s/ Bradley Yeretsky
Bradley Yeretsky, MO # 53845
Austin Gassen, MO # 76996
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
Telephone: (816) 842-8600
brad.yeretsky@stinson.com
austin.gassen@stinson.com

David P. Thoreson (*Of Counsel*)
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 335-1500
david.thoreson@stinson.com

ACLU OF MISSOURI FOUNDATION

/s/ Kristin M. Mulvey
Kristin M. Mulvey, MO # 76060
Jonathan D. Schmid, MO # 74360
906 Olive Street, Suite 1130
St. Louis, MO 63101
Telephone: (314) 652-3114
kmulvey@aclu-mo.org
jschmid@aclu-mo.org

Gillian R. Wilcox, MO # 61278
Jason Orr, MO # 56607
406 West 34th Street, Suite 420
Kansas City, MO 64111
Telephone: (816) 470-9938
gwilcox@aclu-mo.org
jorr@aclu-mo.org

Counsel for Respondents

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

Electronically Filed - SUPREME COURT OF MISSOURI - July 17, 2026 - 07:23 PM

CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on July 17, 2026, the foregoing brief was filed electronically and a copy of it was served automatically on counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06; (3) contains 27,609 words, in compliance with Rule 84.06(b), as determined using the word-count feature of Microsoft Word, which includes all material in the brief other than the cover, signature block, and certificate. Finally, the undersigned certifies that this electronically filed brief was scanned and found to be virus-free.

/s/ Kristin M. Mulvey
Attorney for Respondents