FORM NO. 8-A NOTICE OF APPEAL

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

FILED
SEP 22 2006
BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

Judge or Division: Richard G. Callahan, Div. II	Case Number: 06AC-CC00656		
Plaintiff/Petitioner: Kathleen Weinschenck, et al.	Appellate Number:	☐ Filing as an Indigent	
	Court Reporter: Mindy Hunt	☐ Sound Recording Equipment	
	Reporter's Telephone: 573-761-9207	Number of Days of Trial: 2	
Defendant/Respondent: State of Missouri, et al.	Date of Judgment/Sentence: Sept. 14, 2006 (Attach a copy)	Date Post Trial Motion Filed: Sept. 19 & 21, 2006	
	Date Ruled Upon: Sept. 21, 2006	Date Notice Filed: Sept. 22, 2006	(Date File Stamp)

Notice of Appeal to the Supreme Court of Missouri

Notice is given that **Defendants-Intervenors Dale Morris and Senator Delbert Scott** appeal from the judgment entered in this action on September 14, 2006.

Complete if Appeal is to Supreme Court of Missouri

Jurisdiction of the Supreme Court is based on the fact that this appeal involves:

(Check appropriate box)

- ☐ The validity of a treaty or statute of the United States
- ☐ The construction of the revenue laws of Missouri
- X The validity of a statute or provision of the Constitution of Missouri
- ☐ The title to any state office in Missouri
- ☐ The punishment imposed is death

If the basis of jurisdiction is validity of a United States treaty or statute, the validity of a Missouri statute or Constitutional provision or construction of Missouri revenue laws, a concise explanation, together with suggestions, if desired, is required. This may be filed as part of or with this notice of appeal or, in the alternative, may be filed within ten days after the notice of appeal is filed by filing it directly with the Clerk of the Supreme Court. See Rule 81.08(b) and (c) and Rule 30.01(f) and (g).

SEE JURISDICTIONAL STATEMENT ATTACHED

Appellant's Attorney/Bar Number		Respondent's Attorney(s)/Bar Number(s) (If multiple, list all or attach additional sheets)
Mark F. (Thor) Hearne II (37707) James B. Deutsch (27093) Alok Ahuja (43550)		**SEE ATTACHED**
Lathrop & Gage L.C. The Equitable Bldg., Ste 1300 10 S. Broadway St. Louis, MO 63102-1708	Blitz Bardgett & Deutsch LC 308 E. High St., Ste 301 Jefferson City, MO 65101	Address
Telephone 314-613-2500 Fax 314-613-2550	Telephone (573) 634-2500 Fax (573) 573-3358	
Appellant's Name	Intervenor-Defendants Dale Morris and Senator Delbert Scott	Respondent's Name
Address	same as above	Address
Telephone	same as above	Telephone

DUPLICATE OF FILING ON SEP 22 2006 IN OFFICE OF CLERK SUPREME COURT

Brief Description of Case

Constitutional challenge to provisions of the Missouri Voter Protection Act, codified at § 115.427, RSMo as amended by S.B. 1014 (2006). The Circuit Court held that the challenged statute was unconstitutional, and enjoined its enforcement or application.

Date of Appeal Bond: Not applicable	Amount of Bond: Not applicable	☐ Bond Attached
Signature of Attorney or Appellant Thor Hearne II by Chemper S Shirt #44406		Date September 22, 2006

Notice to Appellant's Attorney

Local rules may require supplemental documents to be filed. Please refer to the applicable rule for the district in which the appeal is being filed and forward supplements as required.

Directions to Clerk

Serve a copy of the notice of appeal in a manner as prescribed by Rule 43.01 on the attorneys of record of all parties to the judgment other than those taking the appeal and on all other parties who do not have an attorney. (A copy of the notice of appeal is to be sent to the Attorney General when the appeal involves a felony.) Transmit a copy of the notice of appeal to the clerk of the Supreme Court/Court of Appeals. If a party does not have an attorney, mail the notice to the party at his/her last known address. Clerk shall then fill in the memorandum below. (See Rules 81.08(d) and 30.01 (h) and (i).) Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by ☐ regular mail ☐ registered mail ☒ certified mail ☐ facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

MICHAEL J PAYNE, 5318 DELOR, ST LOUIS, MO 63109

MARK HEARNE II, THE EQUITABLE BLD, SUITE 1300, 10 SOUTH BROADWAY, ST LOUIS, MO 63102

MARK LONG, ASST ATTY GEN OFFICE, PO BOX 899, JEFFERSON CITY, MO 65102

DON DOWNING, 701 MARKET ST, SUITE 800, ST LOUIS, MO 63101

BARBARA WOOD, SECT OF STATE, 600 W MAIN, JEFFERSON CITY, MO 65101

I have also transmitted a copy of the notice of appeal to the clerk of the

☒ Supreme Court ☐ Court of Appeals, __Western___District

☐ Docket fee in the amount of $ 70.00 has been received by this clerk which will be disbursed as required by statute.

☐ A copy of an order granting leave to appeal as indigent.

☐ A copy of an order denying leave to appeal as indigent.

☒ State Agency - no fee

___BRENDA A. UMSTATTD_____
Clerk

____September 22 , 2006_____
Date

By: M.K. Hellerman
Deputy Clerk

JURISDICTIONAL STATEMENT

These consolidated cases involve challenges to the constitutionality of the Missouri Voter Protection Act, Senate Bill 1014, which amends the provisions of § 115.427, RSMo concerning the identification voters must present to vote in Missouri elections.

On September 14, 2006, the Circuit Court of Cole County, Missouri entered its Judgment finding that § 115.427, RSMo, as amended by Senate Bill 1014, violated multiple provisions of the Missouri Constitution, because it allegedly:

- imposes impermissible additional qualifications to vote in violation of Article VIII, § 2 of the Missouri Constitution;
- interferes with the free exercise of the right of suffrage under Article I, § 25 of the Missouri Constitution; and
- requires the payment of money to vote, and unduly burdens to the right to vote, in violation of the due process and equal protection clauses of Article I, §§ 2 and 10 of the Missouri Constitution.

The Circuit Court's Judgment permanently enjoined the State and the Secretary of State "from implementing and enforcing the changes to Section 115.427 enacted in the Missouri Voter Protection Act, including the Photo ID Requirement." Judgment at 12.

Accordingly, this appeal falls within the Supreme Court's exclusive appellate jurisdiction under Article V, § 3 of the Missouri Constitution, because it involves "the validity * * * of a statute * * * of this state * * *."

ATTORNEYS FOR OTHER PARTIES

Don M. Downing
Erica L. Airsman
Gray Ritter & Graham, P.C.
Gateway One on the Mall
701 Market Street, Suite 800
St. Louis, MO 63105-1826
Phone: (314) 241-4140
Facsimile: (314) 241-4140
ddowning@grgpc.com
eairsman@grgpc.com

Attorneys for Plaintiffs Kathleen Weinschenk, William Kottmeyer, Robert Pund, Amanda Mullaney, Richard Von Glahn, and Give Missourians a Raise, Inc.

Mark E. Long
Robert Presson
Office of the Attorney General
P.O. Box 899
Jefferson City, Missouri 65102-0899
Phone: (573) 751-3321
Facsimile: (573) 751-0774
Mark.Long@ago.mo.gov
Robert.Presson@ago.mo.gov

Attorneys for Defendant State of Missouri

Barbara Jane Wood
General Counsel
Missouri Secretary of State
600 W. Main Street
Jefferson City, Missouri 65101-4310
Phone: (573) 751-2418
Facsimile: (573) 526-4903
barbara.wood@sos.mo.gov

Attorney for Defendant Secretary of State Robin Carnahan.

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LATHROP & GAGE LC 0298
LAW OFFICES
314 E HIGH ST
JEFFERSON CITY, MO 65101

9/22/06 DATE

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FOR 06AC-CC00656

Susan Kleithermes MP

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IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

KATHLEEN WEINSCHENK, WILLIAM KOTTMEYER, ROBERT PUND, AMANDA MULLANEY, RICHARD VON GLAHN, MAUDIE MAE HUGHES and GIVE MISSOURIANS A RAISE, INC., Plaintiffs, v. STATE OF MISSOURI and ROBIN CARNAHAN, SECRETARY OF STATE, Defendants.	No. 06AC-CC00656 Division II
JACKSON COUNTY, MISSOURI, et al., Plaintiffs, v. STATE OF MISSOURI, Defendant.	CONSOLIDATED WITH No. 06AC-CC00587 Division II

JUDGMENT

This case involves the consolidation of two lawsuits challenging the constitutionality of Senate Bill 1014. The *Jackson County* suit claims that portions of SB 1014 violate Article X, Section 21 of the Missouri Constitution as it allegedly

imposes new mandates on local governments without an appropriation of state funds to cover increased costs. The *Weinschenk* suit includes a Hancock challenge but also claims that SB 1014 violates the Missouri Constitutional in multiple respects for interfering with the right to vote as guaranteed by the Missouri Constitution. This matter first came before the Court on August 21, 2006, when evidence was taken. Thereafter on August 28, 2006, Intervenors were permitted to intervene. Additional evidence was taken on September 1 and 6, 2006, and arguments were heard on September 6, 2006.

VOTING RIGHTS CLAIMS

Prior to 2002, voters in Missouri, like a majority of other states, were generally not required to present any form of identification as a condition of voting. Rather, they were required only to identify themselves to the election judges, write their addresses and sign certificates furnished to the election judges by the election authorities.

In 2002, the legislature adopted the current version of Section 115.427, RSMo. It required that some form of identification be presented, but allowed any one of several forms of identification readily available to virtually all registered voters. They were:

1. Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state ;

2. Identification issued by the United States government or agency thereof ;

3. Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri ;

4. A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter ;

5. Driver's license or state identification card issued by another state ;

6. Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section or other identification approved by federal law ; or

6. Personal knowledge of the voter by two supervising election judges, one from each major political party...on completion of an affidavit.

Thus, while photo ID's were permissible under the 2002 law, the types of photo ID's acceptable were numerous and photo ID's were not required exclusively. Voters were also free to use many other forms of identification, including such commonly available documents as a utility bill, bank statement, government check, paycheck, student identification card, and any identification card issued by the United States government, the state of Missouri, an agency thereof, or a local election authority. The latter form of identification could include the voter identification card mailed to registered voters. Even without any identification papers, a voter could still vote if the voter was personally known to two or more supervising election judges as long as the judges were from both major political parties.

Significantly, no complaints of voter fraud have been made since the passage of the 2002 law, nor have widespread concerns been raised that the forms of identification required by the 2002 law are unduly burdensome. The obvious reason for the lack of complaints about the ID requirements is that the many forms of identification permitted under the 2002 law meant that

registered voters were not required to take any affirmative steps to obtain acceptable identification because they already had it.

During the 2006 legislative session, the legislature determined to further revise the election laws and passed SB 1014. The new law eliminated many of the forms of identification that had previously been acceptable and established a strict photo ID requirement. Under the new law the only acceptable forms of Photo ID, are:

> (1) Nonexpired Missouri driver's license showing the name and a photograph or digital image of the individual; or
>
> (2) Nonexpired or nonexpiring Missouri nondriver's license showing the name and a photographic or digital image of the individual; or
>
> (3) A document that satisfies all of the following requirements:
>
> > (a) The document contains the name of the individual to whom the document was issued, and the name substantially conforms to the most recent signature in the individual's voter registration record;
> >
> > (b) The document shows a photographic or digital image of the individual;
> >
> > (c) The document includes an expiration date, and the document is not expired, or if expired, expired not before the date of the most recent general election; and
> >
> > (d) The document was issued by the United States or the state of Missouri; or

(4) Any identification containing a photographic or digital image of the individual which is issued by the Missouri National Guard, the United States armed forces, or the United States Department of Veteran Affairs to a member or former member of the Missouri National Guard or the United States armed forces and that does not have an expiration date.

For the vast majority of Missouri citizens, nonexpired Missouri driver licenses or so-called nondriver licenses will have to suffice for purposes of the new voter ID requirement. Whether such a requirement would have presented the same obstacles prior to 2005 is debatable. However, in 2005 the Missouri legislature changed and increased the documentation that a citizen would have to present in order to renew or obtain a new driver or nondriver license. Many Missouri citizens have yet to experience the newly-enacted renewal process as their licenses have not yet expired. Under the revised 2005 driver license law, three different forms of proof must now be presented by all citizens seeking or renewing a driver or nondriver license for the first time under the new law. Those are: Proof of Lawful Presence, Proof of Identity, and Proof of Residence.

For someone born in the United States, Proof of Lawful Presence can only be established by a U.S. passport (cost $97 to $236), or birth certificate certified with an embossed or raised seal by the state or municipality (cost $15 to $30). For U.S. citizens born in another country, the documentation for Proof of Lawful Presence is more expensive and requires a Certificate of

Citizenship, a Certificate of Naturalization, or a Certificate of Birth Abroad. Unlike Georgia where the court found that the state of Georgia had allowed for many alternative and cheaper documents as an alternative to birth certificates in order to establish identification, the only documents which may suffice in Missouri as an alternative to a birth certificate are documents that are more expensive than birth certificates.

The second category of proof required by the Missouri Departement of Revenue is Proof of Identity. To satisfy this category, an individual must present a U.S. passport, a Social Security card, or a Medicare card. For most citizens to establish Proof of Identity, this will mean obtaining a Social Security card. Not to be outdone by its state counterparts, the Social Security Administration is no shrinking violet when it comes to demanding documentation for one of its prized cards.

To obtain a Social Security card, an applicant must submit a completed application to the local Social Security office personally and provide at least two documents from the following satisfying the three categories identified:

a) Proof of U.S. citizenship: U.S. birth certificate, U.S. passport, Certificate of Naturalization or Certificate of Citizenship;

b) Proof of age: birth certificate, U.S. passport;

c) Proof of identity: U.S. driver's license; state-issued nondriver identification card or U.S. passport (document must be current (not expired) and show name, identifying information (date of birth or age) and preferably a recent photograph). If the person does not have one of these specific documents or cannot get a replacement for one of

them within 10 days, other documents accepted for proof of identity are:

i) employee ID card;
ii) school ID card;
iii) health insurance card (not a Medicare card)
iv) U.S. military ID; or
v) adoption decree.

(Documents must be original or copies certified by the issuing agency. Proof of U. S. citizenship and age are not required for those requesting a replacement card.)

For persons whose names have changed (such as persons who have married or divorced and requested a change of name), an applicant must take or mail a completed application to the local Social Security office and must submit original documents (or copies certified by the issuing agency) from the following to show proof of the name change:

a) U.S. citizenship (if not previously established with Social Security) or immigration status;

b) Legal name change: marriage document; divorce decree specifically stating person may change her name; certificate of naturalization, or court order for a name change;

c) Identity: U.S. driver's license; state-issued nondriver identification card or U.S. passport (document must be current (not expired) and show name, identifying information (date of birth or age) and preferably a recent photograph).

(If documents do not give date of birth, age or recent photograph, person will need to produce one document with old name and a second document with the new legal name containing the identifying information (date of birth or age) or a recent photograph.)

Because of our societal custom of women modifying or changing their name in marriage, these documentation requirements will have a greater

disparate effect on women rather than men, regardless of their affluence. However, an even greater disparate effect will occur on poor women because of the financial burden entailed in acquiring certified copies of all the supporting documents. The fact that the state does not charge for the nondriver license itself (if obtained for the purpose of voting) does not avoid the constitutional issue or economic reality that voters will have to "buy" numerous government documents to get the "free" photo ID to qualify for the privilege of voting. While a license to drive may be just that: a license and not a right. The right to vote is also just that: a right and not a license.

Though the State's interest in establishing a person's identity as the person who is registered to vote is a legitimate government goal, that goal and the means employed to accomplish it must be weighed against the rights and interest of citizens' free exercise of their right to vote. The court does not question the motives of the proponents of the photo ID requirements and acknowledges the benefits of an identification system which increases voter confidence in the integrity of the electoral system. Differing perceptions and opinions about the effect of a strict photo ID system on suspect classes do not constitute proof of purposeful discrimination and court rejects plaintiffs' proof and arguments in support of it claims on counts V and VI.

In SB 1014, however, the legislature has chosen a scheme of identification that places little burden on the state. Unlike the photo ID laws in most other states, the Missouri law has few real alternatives to a state

issued ID, and places most of the burden on the citizen voter. Even the "exemption" for people born before 1941 is largely illusory as it requires the completion of an affidavit that the person is unable to obtain a photo ID because of their age: an oath to which many elderly persons would not or could not attest.

The photo ID burden placed on the voter may seem minor or inconsequential to the mainstream of our society for whom automobiles, driver licenses, and even passports are a natural part of everyday life. However, for the elderly, the poor, the under-educated, or otherwise disadvantaged, the burden can be great if not insurmountable, and it is those very people outside the mainstream of society who are the least equipped to bear the costs or navigate the many bureaucracies necessary to obtain the required documentation. For these many reasons, this court concludes that the voting restrictions imposed by SB 1014 impermissibly infringe on core voting right guaranteed by the Missouri Constitution

HANCOCK CLAIMS

The Hancock issues in this case are more subtle and complex. The defendants correctly point out that the photo ID requirement of SB 1014 is an obligation that is imposed on the voter and does not constitute a new or expanded activity that is imposed on local government. In this argument they would be correct if SB 1014 did nothing more. However, in an attempt

to ameliorate some of the difficulties with the new photo ID requirement, SB 1014 also established provisional balloting under subsections 3 and 13 of section 115.427. These two subsections establish new provisional balloting to deal with the photo ID issues and are different from the provisional balloting which already existed under section 115.430 to address voter registration discrepancies in the voter registration lists. The provisional balloting and its implementation provided for in SB 1014 does constitute a new and expanded activity imposed on local government which must be funded if there are increased costs. On that issue the Court does find specific and credible evidence from three jurisdictions as to substantial increased costs associated with provisional balloting. With respect to the remaining 113 jurisdictions, however, the evidence of increased costs, though logical and credible, lacked the specificity required by the Missouri Supreme Court in the *City of Jefferson* and *Brooks* cases.

The remedy for a proven Hancock violation is unique not only to Missouri constitutional law but as best this court can tell, to all state and federal constitutional law across the country. Much like a county by county option for liquor by the drink, a statute that violates the Hancock amendment is only unconstitutional in those counties that want to raise the objection while the statute remains "constitutional" in those counties that do not object. More importantly, the remedy for the counties that do object is simply that they are relieved of performing the unfunded mandated activity

while the rest of the statute remains in effect, i.e., counties would be relieved of providing for provisional balloting while the photo ID requirements remained in effect.

The specific relief being sought by the plaintiffs in the *Jackson County* case and count VII of the *Weinschenk* case for Hancock violations is a class certification of all 116 Missouri counties, a declaration that SB 1014 in its entirety is violative of Article X, Sections 16 – 22 of the Missouri Constitution, and a state-wide order preventing its enforcement. Bound by Missouri Supreme Court precedent as this Court is, the relief sought by plaintiffs is beyond the power of this court to grant as the remedy sought by plaintiffs is not a remedy that our Supreme Court has established for Hancock violations. Accordingly, the relief sought by plaintiffs is denied.

IT IS HEREBY ORDERED, ADJUDGED, DECREED AND DECLARED, for the reasons set forth in this judgment and the accompanying Findings of Fact and Conclusions of Law, that the new Section 115.427, Mo. Rev. Stat. (2006) enacted in the Missouri Voter Protection Act, including its Photo ID Requirement, is UNCONSTITUTIONAL in that:

(a) It constitutes an impermissible additional qualification to vote in violation of Article VIII, Section 2 of the Missouri Constitution;

(b) It violates the prohibition on interference with the "free exercise of the right of suffrage" and the requirement that "all elections shall be free and open" contained in Article I, Section 25 of the Missouri Constitution;

(c) It requires the payment of money to vote, in violation of the Due Process and Equal Protection Clauses in Article I, Sections 10 and 2, respectively of the Missouri Constitution;

(d) It constitutes an undue burden on the fundamental right to vote that is not narrowly tailored to meet a compelling state interest, in violation of the Due Process and Equal Protection Clauses in Article I, Sections 10 and 2, respectively of the Missouri Constitution.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED :

In the *Wienschenk* case, judgment is entered in favor of plaintiffs against defendants on Counts I, II, III, and IV; judgment is entered in favor of defendants against plaintiffs on Counts V, VI, and VII. In the *Jackson County* case, judgment is entered in favor of defendants against plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants State of Missouri and Robin Carnahan, Secretary of State, and those defendants' respective officers, agents, representatives, employees and successors, and all other persons in active concert and participation with Defendants in administering and certifying elections within the state of Missouri, including all local election officials, be and they hereby are RESTRAINED AND ENJOINED from implementing and enforcing the changes to Section 115.427 enacted in the Missouri Voter Protection Act, including the Photo ID Requirement.

IT IS FURTHER ORDERED that Defendant Robin Carnahan, Secretary of State, shall promptly provide actual notice of this judgment and

injunction to each of the 116 local election authorities in the State of Missouri.

All parties are to bear their own costs.

SO ORDERED THIS 14TH DAY OF SEPTEMBER, 2006.

Richard G. Callahan
Circuit Judge, Division II

STATE OF MISSOURI } SS
COUNTY OF COLE

I, BRENDA A. UMSTATTD, Clerk of the Circuit Court of Cole County, Missouri, hereby certify that the above and foregoing is a full true and correct copy of

Judgment

as fully as the same remains of record in my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office this 21 day of Sept 2006

BRENDA A. UMSTATTD, Clerk

Deputy Clerk
Circuit Court of Cole County, Missouri

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

KATHLEEN WEINSCHENK, WILLIAM KOTTMEYER, ROBERT PUND, AMANDA MULLANEY, RICHARD VON GLAHN, MAUDIE MAE HUGHES and GIVE MISSOURIANS A RAISE, INC., Plaintiffs, v. STATE OF MISSOURI and ROBIN CARNAHAN, SECRETARY OF STATE, Defendants.	FILED SEP 14 2006 CLERK, CIRCUIT COURT COLE COUNTY MISSOURI No. 06AC-CC00656 Division 2
JACKSON COUNTY, MISSOURI, et al., Plaintiffs, v. STATE OF MISSOURI, Defendant.	CONSOLIDATED WITH No. 06AC-CC00587 Division 2

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

After due consideration of the testimony, documentary evidence, pleadings, legal memoranda, and oral argument, the Court hereby enters the following findings of fact, conclusion of law.

FINDINGS OF FACT

1. Plaintiff Kathleen Weinschenk is a citizen of the United States, a resident of Columbia, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA. Ms. Weinschenk was born in the state of Arkansas, and the fee to obtain a certified birth certificate from the Arkansas Division of Vital Records is twelve dollars ($12.00). Ms. Weinschenk was born with cerebral palsy. Because of her disability, she is unable to make a consistent signature or mark, therefore her signature will not match the signature on her voter registration record. (Exh 16; Weinschenk hearing testimony).

2. Plaintiff William Kottmeyer is a citizen of the United States, a resident of Chesterfield, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA. Mr. Kottmeyer has not driven in over ten years. Due to his lack of mobility, Mr. Kottmeyer will have difficulty gathering all of the documents necessary to obtain a nondriver's license and standing in long lines at the Department of Revenue office. (Exh. 12).

3. Plaintiff Robert Pund is a citizen of the United States, a resident of Columbia, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA. Due to his physical condition, Mr. Pund will be required to arrange transportation to and from

the Department of Revenue office to employ an attendant to assist him in order to obtain a nondriver's license. (Exh. 14).

4. Plaintiff Amanda Mullaney is a citizen of the United States, a resident of the City of St. Louis, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA. Ms. Mullaney has no need for a Missouri driver's license because she does not have an automobile. Ms. Mullaney was born in Kentucky and her current name does not match the name on her birth certificate because her parents were not married at the time of her birth. Therefore, in order to provide "Proof of Identity" to obtain a Missouri nondriver's license, she will be required to provide "Proof of Name Change" in the form of either a certified court order or certified amended birth certificate (Exh. 13).

5. Plaintiff Richard von Glahn is a citizen of the United States, a resident of Maplewood, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA. Mr. von Glahn unsuccessfully attempted to obtain a nondriver's license in late June 2006 at the Deer Creek Contract Office in Maplewood, Missouri. After waiting in line for approximately 45 minutes, Mr. von Glahn explained to the Department of Revenue employee that he needed a Missouri nondriver's license for the purpose of voting. The employee did not know what he was talking about, and asked a co-worker for assistance. Ultimately, Mr. von Glahn was told that because he was not over sixty-five years of age, he would be required to

pay $11.00 for a Missouri nondriver's license. Even if Mr. von Glahn would have agreed to pay the fee, he would not have been allowed to obtain the nondriver's license without first obtaining a certified copy of his birth certificate from the Ohio Department of Social Services for a fee of twenty dollars ($20.00). (Exh. 15).

6. Plaintiff Maudie Mae Hughes is a citizen of the United States, a resident of Kansas City, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA. She is a taxpayer in the state of Missouri. Ms. Hughes is an African-American who was born in Mississippi. The State of Mississippi has informed Ms. Hughes on multiple occasions that it does not have any record of her birth. (Exh. 11).

7. Plaintiff Katheryn J. Shields is a resident of Jackson County, Missouri and a taxpayer. Executive Shields is the duly elected County Executive of Jackson County. Stipulations of the Parties.

8. Plaintiff Francis G. Slay is a resident of the City of St. Louis, Missouri and a taxpayer. Mayor Slay is the duly elected Mayor of the City of St. Louis. Stipulations of the Parties.

9. Plaintiff Charlie A. Dooley is a resident of St. Louis County, Missouri and a taxpayer. Executive Dooley is the duly elected County Executive of St. Louis County. Stipulations of the Parties.

10. Each individual plaintiff is also a Missouri taxpayer. (Exhs. 11-16).

11. Defendant Robin Carnahan is the Missouri Secretary of State, and is sued in her official capacity only. First Amended Petition ¶ 16. Defendant Carnahan is the chief election official for the State of Missouri and is responsible for administering all statewide elections, including those for state and federal office. Defendant Carnahan assists the 116 local election authorities in interpreting and administering the state election laws, and promulgates rules governing elections and electronic voting systems. Defendant Carnahan is required to publish the Missouri Election Laws for use by county clerks and election boards. Defendant Carnahan convenes the State Board of Canvassers and totals and announces election results. Defendant Carnahan designs and provides to local election authorities the envelopes and forms necessary to carry out provisional voting throughout Missouri. Defendant Carnahan is responsible for producing various election materials including instructions for poll workers, training videos and a manual for election authorities. Defendant Carnahan is also responsible for maintaining a computerized statewide voter registration database, known as the "Missouri Voter Registration System," for use by the local election authorities in Missouri. Defendant Carnahan cooperates with other officials and civic organizations to provide materials to support voter registration, responsibility and education. Defendant Carnahan is the chief state election official responsible for the administration and coordination of state responsibilities pursuant to Help American Vote Act of 2002 and the

coordination of state responsibilities under the National Voter Registration Act of 1993. (Hearing testimony of Betsy Byers.)

12. A high priority of the Secretary of State is to work with local election officials, the media and other groups to increase voter participation. "About the Elections Division," Secretary of State's website, available at http://www.sos.mo.gov/elections/about.asp).

13. Local election authorities in the State of Missouri work in concert with the Missouri Secretary of State in conducting, administering and certifying elections. (Betsy Byers hearing testimony; Wendy Noren hearing testimony; Wendy Noren aff. at ¶ 2.)

14. In its most recent legislative session, the General Assembly passed Senate Bills Nos. 1014 and 730, entitled the "Missouri Voter Protection Act" (the "MVPA"). Governor Blunt signed the MVPA on June 14, 2006.

15. The MVPA modified Missouri election laws in various ways, including imposing a requirement that one of certain listed forms of "nonexpired" or "non-expiring" photographic identification ("Photo ID") be presented by each voter who votes in-person at a polling place before being allowed to receive a regular ballot (the "Photo ID Requirement"). The Photo ID Requirement applies to all elections held after August 28, 2006.

16, The only acceptable forms of Photo ID under the MPVA are:

(1) Nonexpired Missouri driver's license showing the name and a photograph or digital image of

the individual; or

(2) Nonexpired or nonexpiring Missouri nondriver's license showing the name and a photographic or digital image of the individual; or

(3) A document that satisfies all of the following requirements:

(a) The document contains the name of the individual to whom the document was issued, and the name substantially conforms to the most recent signature in the individual's voter registration record;

(b) The document shows a photographic or digital image of the individual;

(c) The document includes an expiration date, and the document is not expired, or if expired, expired not before the date of the most recent general election; and

(d) The document was issued by the United States or the state of Missouri; or

(4) Any identification containing a photographic or digital image of the individual which is issued by the Missouri National Guard, the United States armed forces, or the United States Department of Veteran Affairs to a member or former member of the Missouri National Guard or the United States armed forces and that does not have an expiration date.

17. The MVPA allows certain categories of voters who cannot obtain a Photo ID acceptable under the MVPA to cast a "provisional" ballot in

certain elections. To do so, the voter must execute an affidavit averring that the voter is the person listed in the precinct register and that the voter is "unable" to obtain a current and valid Photo ID because of:

> (1) A physical or mental disability or handicap of the voter, if the voter is otherwise competent to vote under Missouri law; or
>
> (2) A sincerely held religious belief against the forms of personal identification described in subsection 1 of this section; or
>
> (3) The voter being born on or before January 1, 1941.

18. The provisional ballot affidavit form required by the statute also contains the sentence: "I understand that knowingly providing false information is violation of law and subjects me to possible criminal prosecution."

19. Before a provisional ballot may be counted under the MVPA, the election authority must, among other requirements, verify the identity of the individual by comparing that individual's signature to the signature on file with the election authority and also determine that the individual was eligible to cast a ballot at the polling place where the ballot was cast.

20. Identification requirements in prior Missouri law, which were adopted in 2002, required voters to identify themselves but allowed them to do so by presenting one of many forms of identification readily available to virtually all voters, including a utility bill, bank statement, government check, paycheck, voter identification card, any ID issued by the U.S.

Government, the state of Missouri, an agency of the state or a local election authority. Betsy Byers testimony; Section 115.427.1 (Mo. Rev. Stat. (2002)).

21. By contrast, many Missouri citizens - - including each of the individual plaintiffs in this case - - do not possess the type of Photo ID required under the MVPA. According to an analysis by the Missouri Secretary of State dated August 18, 2006, approximately 240,000 registered Missouri voters may not have acceptable Photo ID's. (Exh. 21; Stip 46). According to information prepared by the Missouri Department of Revenue and included in the fiscal note that accompanied the MVPA, there "are approximately 169,215 individuals who do not have a photographic personal identification." (Exh. 20; Stip. 1).

22. For those Missouri citizens who do not possess a Photo ID acceptable under the MVPA and wish to obtain one, three different forms of proof must be obtained and presented: Proof of Lawful Presence, Proof of Identity, and Proof of Residency. (Exh. 22; Stip. 11).

23. For someone born in the United States, only two documents are acceptable to establish Proof of Lawful Presence; a birth certificate (certified with embossed or raised seal by state or local government) or a U.S. Passport. *Id.*

24. To obtain a certified birth certificate, a person born in Missouri must make a request to the Department of Health and Senior Services in Jefferson City, Missouri or a local health department, pay $15, and allow six

to eight weeks for delivery. (Exh. 23; Stip 12). If requested by mail, additional postage costs must be paid for the transmittal of the request and for the self-addressed, stamped envelope required for the return of the certificate. (Stip. 13).

25. The State of Missouri does not maintain birth certificate records prior to January 1, 1910. (Stip. 23).

26. For someone born in another state, that person must contact his or her state of birth to obtain a certified birth certificate. (Stip. 14).

27. The required fees to obtain birth certificates in other states range from $5.00 to $30.00. (Exh. 41; Stip. 15).

28. Several states (including the neighboring states of Illinois and Oklahoma) require a Photo ID to obtain certified birth certificates. (Exh. 24; Stip. 24).

29. Like in Missouri, it takes time to obtain certified birth certificates from other states. For example, it takes eight to ten weeks to obtain a certified birth certificate from the State of Louisiana. (Exh. 25; Stip. 25).

30. Over 1.6 million Missouri residents were born in another state. (Exh. 26; Stip. 26).

31. The only option for a person born in the United States to establish Proof of Lawful Presence other than a certified birth certificate is a U.S. Passport. To obtain a passport, a person must contact the United States

Department of State, fill out an application, request a passport, and pay a fee of $97.00 for delivery within six weeks, or $236.00 for delivery through private agencies within seven to ten days. (Exh. 27; Stip. 16).

32. For someone born in another country and wishing to establish proof of lawful presence, that person must obtain and present one of three documents: Certificate of Citizenship, Certificate of Naturalization or a Certificate of Birth Abroad. (Exh. 22; Stip. 11).

33. These documents likewise cost time and money and take time to receive. For example, a certificate of citizenship costs $255, requires completion of a seven-page application, and takes three weeks simply to receive a notification that the government has received the application. (Exh. 28).

34. For those whose name has changed since birth, additional certified documents must be obtained and presented to establish Proof of Lawful Presence. These include a certified marriage license, a certified divorce decree, a certified court order, certified adoption papers or amended birth certificate. (Exh. 22; Stip. 17).

35. These records also cost money. For example, to obtain a certified copy of a marriage license, the fee ranges from $5.00 to $30.00. (Exh. 41; Stip. 18).

36. In addition to establishing Proof of Lawful Presence, any person who needs a Photo ID must also establish Proof of Identity. To establish

Proof of Identity, a Social Security card or Medicare card with the person's current name can be presented. If the name on the Social Security card or Medicare card does not match that person's current name, additional documents must be presented to supply proof of the name change. (Exh. 22).

37. To obtain a Social Security card, an applicant must submit a completed application to the local Social Security office personally and provide at least two documents from the following satisfying the three categories identified:

a) Proof of U.S. citizenship: U.S. birth certificate, U.S. passport, Certificate of Naturalization or Certificate of Citizenship;

b) Proof of age: birth certificate, U.S. passport;

c) Proof of identity: U.S. driver's license; state-issued nondriver identification card or U.S. passport (document must be current (not expired) and show name, identifying information (date of birth or age) and preferably a recent photograph). If the person does not have one of these specific documents or cannot get a replacement for one of them within 10 days, other documents accepted for proof of identity are:

i) employee ID card;
ii) school ID card;
iii) health insurance card (not a Medicare card)
iv) U.S. military ID; or
v) adoption decree.

(Documents must be <u>original</u> or copies certified by the issuing agency. Proof of U. S. citizenship and age are not required for those requesting a replacement card.)

(Exh. 29; Stip. 20).

38. For persons whose names have changed (such as persons who have married or divorced and requested a change of name), an applicant must take or mail a completed application to the local Social Security office and must submit original documents (or copies certified by the issuing agency) from the following to show proof of the name change:

a) U.S. citizenship (if not previously established with Social Security) or immigration status;

b) Legal name change: marriage document; divorce decree specifically stating person may change her name; certificate of naturalization, or court order for a name change;

c) Identity: U.S. driver's license; state-issued nondriver identification card or U.S. passport (document must be current (not expired) and show name, identifying information (date of birth or age) and preferably a recent photograph).

(If documents do not give date of birth, age or recent photograph, person will need to produce one document with old name and a second document with the new legal name containing the identifying information (date of birth or age) or a recent photograph.)

(Exh. 29; Stip. 21).

39. The final of the three "Proofs" that must be established to obtain a Photo ID is "Proof of Residency." Options to establish Proof of Residency are many. Those options include the most recent utility bill, voter registration card, bank statement, government check, pay check, property tax receipt or an official letter by state or local governmental agency on its letterhead issued within the last 30 days. (Exh. 22).

40. More than 21% of Missouri's African-American households have no car, and therefore have no need for a driver's license. (Exh. 34; Stip. 2).

41. This is over four times the percentage of white Missourians who have no car. (Exh. 34; Stip. 2).

42. Twenty-five percent of Missouri African-Americans live in poverty; only ten percent of whites do. (Exh. 34; Stip. 3).

43. The average per capita income for Missouri African-Americans is $15,099 compared to $23,583 for Missouri whites. (Exh. 34; Stip. 4).

44. Seventeen and nine-tenths percent of Missouri African-Americans over the age of 25 have less than a high school education; only thirteen and one tenth percent of whites do. (Exh. 34; Stip. 5).

45. Given these facts, the financial and other burdens imposed by the Photo ID Requirement disproportionately affect African-Americans. (Exh. 34; Stip. 2-5).

46. Proponents of the Photo ID Requirement have attempted to justify it on the ground that it will prevent election fraud.

47. The only type of election fraud that potentially could be deterred or prevented by the Photo ID Requirement is voter impersonation fraud - - a voter claiming that he is someone other than himself. Testimony of Wendy Noren and Betsy Byers.

48. No evidence was presented that voter impersonation fraud exists to any substantial degree in Missouri. In fact, the evidence that was presented indicates that voter impersonation fraud is not a problem in Missouri.

49. Robert Nichols, Director of Elections for Jackson County, Missouri for the last 20 years, credibly testified that voter impersonation fraud is not a problem in Jackson County, Missouri. Nichols also credibly testified to direct and specific costs that would be associated with the increased number of provisional ballots which he estimated would be cast because of SB 1014. (Nichols hearing testimony).

50. Robert Nichols, a Director of Elections for Jackson County, testified that the Act imposes additional increased duties on election officials that will require the expenditure of funds from county budgets. Nichols has served continuously as the Democrat Director of Elections for the Jackson County Board of Elections since 1986. In his position as Director, he has participated in approximately five elections every year. According to Nichols, Jackson County has approximately 216,000 registered voters, 490 precincts, and 290 polling places. He testified under subpoena.

Nichols is employed by the Board of Elections pursuant to Mo. Rev. Stat. § 115.045 and, with Charlene Davis, his Republican counterpart, carries out the day-to-day management of the Board of Elections with regard to the registration of voters and the conduct of elections within Jackson County.

Nichols identified the Act and was familiar with its content. Based on his review of the Act and his experience as an election official, he testified that the Act would cause additional provisional and absentee ballots to be cast.

Nichols and Davis together prepared a fiscal note that they submitted to the legislature concerning the fiscal impact the Act would have on Jackson County. They estimated that the Act would require Jackson County to incur additional expenses of

$470,308 per year for five elections as a result of the new and additional services and duties required of the Board of Elections by the Act. Specifically, Nichols testified to the following additional expenses contained in the fiscal note that the Act will impose on Jackson County:

i) $16,800 for 10 additional telephone lines;

ii) $2,500 for 10 additional wire drops for computers;

iii) $14,500 for 10 additional computers;

iv) $30,108 for 193 additional cell phones for polling places;

v) $1,250 for election clerk training;

vi) $4,500 for 10 additional election clerks;

vii) $315,000 for additional polling place workers;

viii) $900 for 10 additional clerks to process additional provisional ballots;

ix) $28,750 for verification board clerks;

x) $54,000 for postage; and

xi) $2,000 to process Notification Cards.

Nichols attributed each of these additional costs to the new duties and services required by the Act. The fiscal note Nichols and Davis prepared was prepared using the same methods they use to prepare estimated election costs for every election, as required by Mo. Rev. Stat. § 115.077.

Nichols had reviewed Plaintiffs' Petition and testified that most of the unfunded mandates alleged were included in the fiscal note he prepared with Davis. In addition, Nichols testified that some of the Act's requirements will impose yet more costs

upon Jackson County. Specifically, Nichols testified that §§115.427.3(3) and 115.427.13-14 requirements for new affidavits for voters not possessing a type of identification acceptable under § 115.427.1, the new "clear and conspicuous" notices required by § 115.427.2, and the expense of hiring and training of additional staff to process the anticipated increased number of provisional ballots that will be cast as a result of §§ 115.427 and 115.430. These costs would be more than *de minimus*.

Finally, Nichols testified that § 115.024 would require new costs for relocating or rescheduling an election. (Testimony of Robert Nichols, August 21, 2006.)

Nichols's testimony as to the costs imposed on Jackson County by new and additional services and duties required by the Act was credible and persuasive. No testimony was offered to challenge or refute Nichols's testimony.

51. Judy Taylor, Director of Elections for St. Louis County, Missouri for the last 12 years, credibly testified that voter impersonation fraud is not a problem in St. Louis County, Missouri. Taylor also credibly testified to direct and specific costs that would be associated with the increased number of provisional ballots which she estimated would be cast because of SB 1014. (Taylor hearing testimony).

52. Judy Taylor, Director of Elections for St. Louis County, provided testimony establishing that the Act imposes additional and increased duties and service on St. Louis County that will require the expenditure of additional funds by the County. Taylor has been continuously employed by the St. Louis County Board of Election Commissioners for 30 years, working her way up from clerk to Democrat Director, a position she has held since 1998. From 1992 to 1998, she was an assistant director. In

her long career as an election official, Taylor has conducted more than 100 elections in St. Louis County. She testified under subpoena.

Taylor is familiar with all aspects of the election process. As a director, she is responsible for the day-to-day operations of the Board of Election Commissioners Office, the registration of voters, and the conduct of all public elections in St. Louis County. St. Louis County is the largest county in the state and has over 650,000 registered voters, 1,500 precincts, 448 polling places. Like plaintiffs' other witness, Taylor has extensive experience estimating the anticipated costs of elections in compliance with Mo. Rev. Stat. § 115.077.

Taylor identified many unfunded mandates in the Act that, absent an appropriation from the state, will require St. Louis County to divert general revenue funds reserved for basic services such as school, fire protection, water works, and the like. Taylor anticipated increased costs would be incurred by the county by reason of each of the following:

a. §115.163.3's requirement for the creation of a new "Voter Notification Card";

b. §§ 115.427.3(3) and 115.427.13-14's requirements related to a new affidavit form for voters not possessing acceptable photo identification;

c. § 115.427.2's requirements for clear and conspicuous notifications in all polling places related to the new, more restrictive identification requirements;

d. Additional expenses related to the hiring and training of additional staff to process the anticipated significant increase in provisional ballots;

e. § 115.105.6's imposition of expenses for redrafting and reprinting challenger and poll worker instructions as well as for additional poll worker training to reflect more stringent identification requirements of § 115.427.

f. § 115.430.5(2)'s requirement that local election authorities photocopy each provisional ballot envelope;

g. The cost of redesigned and reprinting notice of election cards to comply with the new identification provisions of the Act;

h. Costs related to hiring and training additional staff to process the anticipated increase in absentee ballot applications and absentee ballots as a result of the Act;

i. Costs for designing and printing new absentee ballot applications, absentee ballot envelopes, and absentee ballot voting instructions to comply with the Act's identification requirements; and

j. The costs required to relocate or reschedule an election when the location or date of an election is modified pursuant to § 115.024.

Based on her experience in preparing election costs estimates, Taylor anticipated that the new and additional duties and services required by the Act that she identified would increase the overall cost of St. Louis County elections by $215,000 for each election. (Testimony of Judy Taylor, August 21, 2006.)

Taylor's testimony as to the costs imposed on St. Louis County by new and additional services and duties required by the Act was credible and persuasive.

53. Carol Signigio, former Assistant Director of Elections for the City of St. Louis, Missouri for 12 years and a consultant to the St. Louis City Election Board for the past 7 years, credibly testified that voter impersonation fraud is not a problem in the City of St. Louis. Signigio also opined as to increased costs she estimated would be caused by an increased number of provisional ballots but her testimony, standing alone, lacked the specificity required for the Court to conclude that such costs were likely or certain to occur under the Brooks and City of Jefferson cases. (Signigio hearing testimony).

54. Wendy Noren, Boone County Clerk, credibly testified that voter impersonation fraud is not a problem in Boone County, Missouri. Ms. Noren, who also served for 15 years on the legislative committee for the Association of Missouri State County Clerks and Election Authorities, and who regularly is in contact with local election authorities throughout the State of Missouri, testified no one ever suggested that a Photo ID Requirement was needed, or that it would be helpful in preventing voter fraud. She further testified that there never has been any general perception in her Association that voter identification fraud was a problem. She testified that the current ID requirements, in conjunction with current voter registration application verification procedures, have been successful in identifying and protecting against potential fraudulent registrations resulting in casting fraudulent ballots at the polling place. Ms. Noren testified that there have been

problems in the State of Missouri with absentee ballot fraud. She also testified that many Missouri voters will not have sufficient time to obtain the required documents necessary to obtain a Photo ID in time for the November general elections. Noren also credibly testified to direct and specific costs that would be associated with the increased number of provisional ballots she estimated would occur because of SB 1014. (Wendy Noren hearing testimony; Wendy Noren Affidavit)

55. Wendy Noren is the County Clerk of Boone County. As County Clerk, she is the chief election official for the county. She was first elected as County Clerk in 1982 and has served continuously in that position during the intervening 24 years. She is responsible for the conduct of all public elections in Boone County. She has worked with the Secretary of State's office and other local election authorities across the state in conducting, administering, and certifying elections. She is the former president of the Missouri Association of County Clerks.

In response to a request by the Missouri General Assembly for a fiscal note on the financial impact of the Act, Noren thoroughly reviewed the Act. She submitted a note indicating that implementation of the Act would cause new and additional expenditures by Boone County in the amounts of $21,000 for postage and printing and $10,275 for employee training. Noren testified that that these anticipated costs are still accurate.

Noren further testified that the Act would now require additional and substantial expenditures for printing provisional ballots for each ballot style in her jurisdiction. As a consequence of the Act, all election authorities in the State are now required to print provisional ballots in every ballot style in their jurisdictions, regardless of whether they

are used or not. Prior to the Act, provisional ballots were only needed in one style for statewide offices. The additional cost for every county would be more than *de minimis*.

Noren testified that the Fiscal Note she prepared is similar to and consistent with the estimated election costs she is required to prepare for each election pursuant to the requirements of Mo. Rev. Stat. § 115.077.

Noren's testimony as to the costs imposed on Boone County by new and additional services and duties required by the Act was credible and persuasive. No evidence was offered to challenge or refute Noren's testimony.

56. Betsy Byers, who for the last seven and one-half years has served under Republican and Democratic administrations as Co-Director of Elections in the Missouri Secretary of State's Office, credibly testified that since 2000 she has not received any reports of voter impersonation fraud from anywhere in the State of Missouri. Ms. Byers further testified that if there had been any widespread or significant issues or concerns about voter impersonation fraud occurring in Missouri, she believes she would have heard about it. During the same time period, Ms. Byers testified that she has received reports of absentee ballot fraud. Ms. Byers further testified that there is no evidence that voter impersonation fraud exists or that the Photo ID Requirement would solve any existing problem in our election system. Byers also credibly testified that every county in the state would experience significant increased costs occasioned by the use of provisional ballots required by SB 1014 but her testimony was a general assessment of the costs and not county specific as required by the Brooks and City of Jefferson cases..

57. In a May 11, 2006, letter to Governor Matt Blunt, Secretary of State Robin Carnahan likewise pointed out that "there is no evidence that such voter fraud actually exists or that [The Photo ID Requirement] would solve any existing problem in our elections system." Secretary of State Carnahan further stated that "Missouri's voter identification requirements are already among the strictest in the nation and have proven an effective safeguard to prevent wrongful voting." She further stated that "[r]ather than solve any real problem, Senate Bill 1014 will jeopardize the integrity of our elections by getting in the way of 170,000 Missourians' right to vote and have their votes counted." (Exh. 33).

58. Governor Matt Blunt, when he was Missouri's Secretary of State, stated in a 2004 letter to then-Governor Holden that Missouri's statewide elections in 2002 and 2004 "were two of the cleanest and problem-free elections in recent history." (Exh. 31, Stip. 30). Governor Blunt, also while he was Secretary of State, in a 2004 letter to the St. Louis Post Dispatch, similarly characterized these elections as "fraud-free." (Exh. 32; Stip. 31).

CONCLUSIONS OF LAW

1. Plaintiffs have legal standing to assert their claims pursuant to Rule 87.02, Mo. R. Civ. P. and Section 527.020, Mo. Rev. Stat. ("Any person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any

question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.") As stated above, each Plaintiff's fundamental "right" to vote will be "affected" and unduly burdened if the MVPA is not declared unconstitutional and enjoined. Plaintiffs also have standing because they will suffer irreparable injury-in-fact if the provisions are not declared unconstitutional and enjoined. *See Home Builders Association of Greater St. Louis, Inc. v. City of Wildwood*, 32 S.W.3d 612, 615 (Mo. Ct. App. 2000)("an injury need not have occurred prior to bringing a declaratory action because one of the main purposes of declaratory relief is to resolve conflicts in legal rights before a loss occurs."). Finally, because each Plaintiff is a taxpayer in the State of Missouri, Plaintiffs have taxpayer standing to challenge the MVPA under the Hancock Amendment.

2. Any injunction issued in this case against Defendants would be binding on local election officials throughout the State of Missouri because, as detailed above, they act in concert with the Missouri Secretary of State in administering and certifying elections in Missouri. Rule 92.02(e) provides that an injunction is binding "upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Rule 92.02, Mo. R. Civ. P. Therefore, local election authorities can be properly bound should this Court enter an

injunction against Defendant Carnahan in this case and order her to provide actual notice of the order to local election authorities.

3. This action is a justicable controversy that is concrete and ripe for judicial resolution, and no adequate remedy at law exists.

4. In Count I, plaintiffs assert that the Photo ID Requirement constitutes an impermissible additional qualification to vote under Article VIII, Section 2. For the reasons expressed below, this Court agrees.

5. Article VIII, Section 2 of the Missouri Constitution provides:

> All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote at all elections by the people, if the election is one for which registration is required if they are registered within the time prescribed by law, or if the election is one for which registration is not required, if they have been residents of the political subdivision in which they offer to vote for thirty days next preceding the election for which they offer to vote: Provided however, no person who has a guardian of his or her estate or person by reason of mental incapacity, appointed by a court of competent jurisdiction and no person who is involuntarily confined in a mental institution pursuant to an adjudication of a court of competent jurisdiction shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting.

6. This provision sets forth the exclusive list of qualifications to vote in Missouri. Those are:

- Citizen of the United States;

- Over the age of eighteen;
- Resident of this state;
- Resident of the political subdivision in which the person offers to vote; and
- Registered within the time prescribed by law.

7. This provision also sets forth the exclusive list of disqualifications to vote in Missouri. Those are:

- Person who has a court-appointed guardian of his or her estate by reason of mental incapacity; and
- Person who is involuntarily confined in a mental institution pursuant to a court adjudication.

8. This provision also gives the legislature authority to make one, and only one, determination on qualifications to vote. The legislature can, if it so chooses, exclude by law from voting "persons convicted of felony, or crime connected with the exercise of the right of suffrage." That is the only constitutionally permissible basis upon which the legislature may deny an otherwise qualified Missouri citizen the right to vote.

9. Article VIII, Section 2 provides that "all" persons qualified to vote, not disqualified to vote, and not properly precluded by law from voting, are "entitled to vote at all elections by the people." (emphasis added). So important is this right to vote that Missouri voters are constitutionally protected from arrest while "going to, attending, and returning from elections," except in cases of treason, felony or breach of the peace. Article VIII, Section 4. Section 25, Missouri's Bill of Rights, Article I, further

reinforces that "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

10. By requiring that registered voters present a Photo ID before being issued a ballot, the MVPA violates Article VIII, Section 2 of the Missouri Constitution in three ways:

(a) It adds a new qualification to vote - - presenting a Photo ID - - not specified or permitted by Article VIII, Section 2;

(b) It adds a new disqualification to vote - - not presenting a Photo ID - - not specified or permitted by Article VIII, Section 2; and

(c) It attempts to exclude by law from voting - - persons not presenting a Photo ID - - persons other than those permitted to be excluded under Article VIII, Section 2.

11. The legislature cannot add qualifications that are not specifically enumerated in the Constitution. Courts from around the country have long recognized that when a constitution "undertakes to enumerate and describe . . . that enumeration and description is exhaustive, and the legislature cannot therefore enlarge the list." *Stewart v. State*, 98 Ga. 202, 205, 25 S.E. 424, 425 (1896); *see also Morris v. Powell*, 25 N.E. 221, 223 (Ind. 1890) ("That when the people by the adoption of the Constitution have fixed and defined in the Constitution itself what qualifications a voter shall possess to entitle him to vote, the legislature can not add an additional qualification, is too plain and well recognized for argument, or to need the citation of authorities. The principle is elementary that when the Constitution defines

the qualification of voters, that qualification can not be added to or changed by legislative enactment."); *Koy v. Schneider*, 110 Tex. 369, 377-78, 218 S.W. 479, 480 (1920) ("All the authorities seem in accord with the statement that 'where the right of suffrage is fixed in the Constitution of a state, as is the case in most states, it can be restricted or changed by an amendment to the Constitution or by an amendment to the federal Constitution, which, of course, is binding upon the states. But it cannot be restricted or changed in any other way. The legislature can pass no law directly or indirectly either restricting or extending the right of suffrage as fixed by the Constitution.") *See also Gerberding v. Munro*, 134 Wash.2d 188, 949 P.2d 1366 (Wash. 1998) ("this general rule has been repeatedly expressed in cases across the United States. . . . [that] where the Constitution establishes specific eligibility requirements for a particular constitutional office, the constitutional criteria are "exclusive.")

12. Missouri law is in accord. *See, e.g., Wickland v. Handoyo*, 181 S.W.3d 143, 152 (Mo. Ct. App. 2005) ("It is an elementary principle of statutory construction, as well as established law in Missouri, that the expression of one thing means the exclusion of another."); *State v. Campbell*, 26 S.W.3d 249, 254 (Mo. Ct. App. 2000) (applying same principle); *Schudy v. Cooper*, 824 S.W.2d 899, 901 (Mo. 1992) (applying same principle).

13. In two analogous cases, the Supreme Court held the power of Congress and the states to be similarly limited. In *Powell v. McCormack*,

395 U.S. 486 (1969) the Supreme Court held that although Congress is expressly authorized by Article 1, Section 4 of the Constitution to judge the qualifications of its members, Congress was not authorized to use its power to refuse to seat a member of the House for reasons other than those expressly set forth in Article 1, Section 2 of the United States Constitution. 395 U.S. at 556.

14. In its subsequent opinion in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798 (1995), the Supreme Court struck down a provision in the Arkansas Constitution imposing term limits on its U.S. Senators and Congressmen on the ground that, "the qualifications for service in Congress set forth in the text of the Constitution are 'fixed' at least in the sense that they may not be supplemented by Congress." 514 U.S. at 779. The Court explained its earlier decision in *Powell* based on the text of the Qualifications Clause:

> [T]he enumeration of a few qualifications would by implication tie up the hands of the Legislature from supplying omissions . . .
>
> It would seem but fair reasoning upon the plainest principles of interpretation, that when the constitution established certain qualifications, as necessary for office, it meant to exclude all others, as prerequisites. From the very nature of such a provision, the affirmation of these qualifications would seem to imply a negative of all others.

514 U.S. at 793 n. 9 (internal citations and quotations omitted).

15. The Missouri Constitution does not permit the legislature to add any qualifications or disqualifications not specifically mentioned. The Photo ID Requirement does just that. Voters without a photo ID, with certain narrow exceptions, are not qualified to vote.[1] Unlike the identification options under the current statute which require no action by the voter to obtain identification, the Photo ID Requirement requires, for those without an unexpired Photo ID, affirmative steps. If the voter does not take those steps, the voter is not qualified to vote under the MVPA.

16. Because the Photo ID Requirement violates Article VIII, Section 2, it is unconstitutional.

17. In Count II, Plaintiffs assert that the Photo ID Requirement interferes with the free exercise of the right of suffrage in violation of Article I, Section 25. For the reasons expressed below, this Court agrees.

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[1] The primary exception is contained in the new Section 115.427.3, which states:

> An individual who appears at a polling place without identification in the form described in subsection 1 of this section and who is otherwise qualified to vote at that polling place may execute an affidavit averring that the voter is the person listed in the precinct register and that the voter does not possess a form of identification specified in this section and is unable to obtain a current and valid form of personal identification because of:
>
> (1) A physical or mental disability or handicap of the voter, if the voter is otherwise competent to vote under Missouri law; or
>
> (2) A sincerely held religious belief against the forms of personal identification described in subsection 1 of this section; or
>
> (3) The voter being born on or before January 1, 1941.
>
> Upon executing such affidavit, the individual may cast a provisional ballot. Such provision ballot shall be counted, provided the election authority verifies the identity of the individual by comparing that individual's signature to the signature on file with the election authority and determines that the individual was eligible to cast a ballot at the polling place where the ballot was cast.

In addition, any election held before November 1, 2008 that permits the casting of provisional ballots (provisional ballots are not permitted in local elections), qualified voters may cast a provisional ballot under specified circumstances. The availability of a provisional ballot for these narrow categories of voters and for other voters before November 1, 2008, does not cure the unconstitutionality of the Photo ID requirement, as explained below.

18. Article I, Section 25 of the Missouri Constitution provides:

> That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

19. The General Assembly, in imposing the Photo ID Requirement, violated the express prohibition in Article I, Section 25 against interference with the free exercise of the right of suffrage.

20. In numerous ways set forth above, the Photo ID Requirement unconstitutionally interferes with the free exercise of the right of suffrage as to those without a photo ID, including:

(a) It requires the payment of money to vote; and

(b) It imposes burdensome and time consuming hurdles that must be overcome before receiving a ballot.

(c) For some, it will make it impossible to vote.

21. These easily fall within the definition of "interfere" as used in Article I, Section 25. As defined in the Merriam-Webster's Collegiate Dictionary, Tenth Edition, "interfere" means "to interpose in a way that hinders or impedes." The Photo ID Requirement unquestionably "hinders or impedes" qualified voters from the free exercise of their constitutional right to vote. It places in front of voters an obstacle that must be overcome before being permitted to vote. For those who are poor, elderly or disabled, the obstacle will serve as a substantial hindrance and impediment to voting.

This type of obstacle is precisely what this constitutional provision was designed to prevent.

22. For these reasons, the Photo ID Requirement violates Article I, Section 25.

23. In Count III, Plaintiffs assert that the requirement of a Photo ID makes Payment of a fee an electoral standard and therefore violates the Due Process and Equal Protection Clause, Article I, Sections 10 and 2, respectively. For the reasons expressed below, this Court agrees.

24. Missouri's Equal Protection Clause is contained in Article I, Section 2, which provides in pertinent part:

> [T]hat all persons are created equal and are entitled to equal rights under the law.

25. To determine the constitutionality of a state statute under Missouri's Equal Protection Clause, the Missouri Supreme Court requires "two-part analysis." *Etling v. Westport Heating & Cooling Systems, Inc.*, 92 S.W.3d 771, 774 (Mo. 2003).

> The first step is to determine whether the classification "operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution." If so, the classification is subject to strict scrutiny and this Court must determine whether it is necessary to accomplish a compelling state interest. If not, review is limited to determining whether the classification is rationally related to a legitimate state interest. Suspect classes are classes such as race, national origin or illegitimacy that "command extraordinary protection from the majoritarian political process" for historical reasons. Fundamental rights include the

> rights to free speech, to vote, to freedom of interstate travel, and other basic liberties.

(emphasis added).

26. The right to vote under the Missouri constitution, unlike under the United States Constitution, is given explicit protection. Article VIII, Section 2; Article I, Section 25. Missouri cases uniformly make clear that the right to vote is a fundamental right. *See, e.g. Etling v. Westport Heating & Cooling Services, Inc.*, 92 S.W.3d at 774; *Mullenix-St. Charles Properties, L.P. v. City of St. Charles*, 983 S.W.2d 550, 559 (Mo. Ct. App. 1998); *Blaske v. Smith & Entozeroth, Inc*, 821 S.W.2d 822, 829 (Mo. 1991); *Nguyen v. Nguyen*, 882 S.W.2d 176, 177-78 (Mo. Ct. App. 1994). Therefore, under Missouri constitutional law, strict scrutiny is required.[2]

27. Under any strict scrutiny analysis, the state cannot impinge upon the fundamental right to vote by directly or indirectly requiring payment of a fee as a precondition to voting. As the United States Supreme Court made clear forty years ago, it is a violation of the Equal Protection Clause of the United States Constitution to require payment of any fee to vote. *Harper v. Virginia Bd of Elections*, 383 U.S. 663 (1966). For those registered Missouri voters who do not already possess a photo ID, that is precisely what the State has done. To obtain a photo ID, one must first provide three forms of documents. The first is typically a birth certificate. To

[2] An identical analysis is used when determining the constitutionality of a statute under the Due Process Clause. *See Casualty Reciprocal Exchange v. Missouri Employers Mutual. Ins. Co.*, 956 S.W.2d 249 (Mo. 1997).

obtain a birth certificate, one must pay the State of Missouri $15. For those who were not born in the State of Missouri, one must pay a fee that varies state to state. This fee is far greater than the $1.50 fee that was held unconstitutional in *Harper*.

28. To the person needing to obtain a nondriver's license to vote, being required to pay a fee (or multiple fees) to obtain an underlying document (or multiple documents) is no different than being required to pay a fee to obtain the nondriver's license itself - - both violate the Equal Protection Clause because they make payment of a fee an electoral qualification. In language directly applicable here, the Supreme Court concluded:

> We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax. Our cases demonstrate that the Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate.

Harper v. Virginia State Board of Elections, 383 U.S. 663, 666 (1966).

29. *Harper* held that legislation that attempts to put a price on the right to vote can never pass the strict scrutiny test because "wealth or fee paying has . . . no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned."[3] *Id.* at 670; *see*

[3] The state's purported justification for imposing the Photo ID requirement and related fees on Missouri's voters (to prevent voter fraud) is pretextual as explained below, and for the reasons discussed above do not survive any level of scrutiny in equal protection analysis. In *Harper*, however, the Court specifically ruled

also Jenness v. Little, 306 F. Supp. 925, 929 (N.D. Ga. 1969) (holding that prohibiting candidates from being listed on the ballot unless they post a certain amount of money is illegal and unconstitutional).

30. The Supreme Court in *Harper* went on to address the same argument made by supporters of the Photo ID Requirement · · that the state is only extracting a fee for a license and that is permissible. In specifically rejecting that argument, the Court stated:

> It is argued that a State may exact fees from citizens for many different kinds of licenses; that if it can demand from all an equal fee for a driver's license, it can demand from all an equal poll tax for voting. But we must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race are traditionally disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant.

383 U.S. at 668. (emphasis added) (citations omitted).

31. For these reasons, the Court finds that the Photo ID Requirement is unconstitutional under Missouri's Equal Protection Clause.

32. In Court IV, Plaintiffs assert that The Photo ID Requirement constitutes an undue burden on the fundamental right to vote that is not

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that any qualification to voting based on wealth or fee paying is unconstitutional, and no justification asserted by the state would be sufficient to allow such a qualification to stand. 383 U.S. at 670; *see also United Mine Workers v. Illinois State Bar Ass'n.*, 389 U.S. 217, 222 (1967) ("We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purposes of dealing with some evil within the state's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil.")

narrowly tailored to meet a compelling state interest in violation of the Due Process and Equal Protection Clause of the Missouri Constitution, Article I, Sections 10 and 2, respectively.

33. Even if the Photo ID Requirement did not require the payment of money to vote, it still would be unconstitutional under Missouri's Due Process and Equal Protection Clauses. As pointed out above, the Missouri Supreme Court requires that strict scrutiny be applied under Missouri's Equal Protection Clause to any law that "impinges upon a fundamental right." *Etling v. Westport Heating and Cooling Systems, Inc.*, 92 S.W.3d at 774.[4]

34. Under strict scrutiny, the Court must determine whether the challenged provision "is necessary to accomplish a compelling state interest." *Id. See also Komosa v. Komosa*, 939 S.W.2d 479, 482 (Mo. Ct. App. 1997)("Any state restriction which significantly interferes with the exercise of a fundamental right is subject to strict scrutiny and cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests."); *State v. Williams*, 729 S.W.2d 197 (Mo. banc 1987)(when a statutory scheme impinges upon a fundamental right explicitly or implicitly protected by the Constitution it receives strict judicial scrutiny to ascertain whether the classification is necessary to a compelling state interest); *Kahn v. Griffin*, 701 N.W.2d 815 (Minn. 2005)(the right to

[4] An identical analysis is used when determining the constitutionality of a statute under the Due Process Clause. *See Casualty Reciprocal Exchange v. Missouri Employers Mutual. Ins. Co.*, 956 S.W.2d 249 (Mo. 1997).

vote is a fundamental right and that potential infringements are analyzed using strict scrutiny).

35. The Photo ID Requirement cannot survive strict scrutiny. It impinges on the fundamental right to vote of as many as 240,000 registered voters in Missouri. It is not necessary to promote any compelling state interest which was not already being adequately protected by existing criminal laws and election procedures, or which could not have been accomplished in other, less restrictive alternatives without interfering with their right to vote in person.

36. As explained above, for a registered voter to secure a nondriver's license, he or she must provide, among other things, "Proof of Lawful Presence," which typically requires the voter to obtain a certified copy of the voter's birth certificate from the state in which the voter was born, "Proof of Lawful Identity," which most commonly is a Social Security card with the applicant's current name, and "Proof of Residency," which can be a voter ID card, utility bill, or government check showing the voter's address. As set forth above, the expense, time and effort required to obtain the underlying documents to satisfy these three requirements will place a substantial and undue burden - - and certainly "impinge" - - on the fundamental right to vote of as many as 240,000 registered Missouri voters who do not currently possess a valid Photo ID, including the individual plaintiffs in this case.

37. Also as explained above, the Photo ID requirement is far from necessary to accomplish any compelling state interest. There is no evidence that existing state law is insufficient to deter and prevent voter impersonation fraud, the only type of fraud the Photo ID Requirement could prevent. In fact, the evidence is to the contrary. Since the 2002 change in Missouri election laws requiring some form of identification, the evidence presented to this Court indicates that there have been no reported instances of voter impersonation fraud. Governor Blunt himself recognized that the two statewide elections held after these changes were implemented were "fraud-free" and "were two of the cleanest and problem-free elections in recent history." Secretary of State Carnahan has made the same point.

38. Even if some types of voting fraud were still a significant concern, the Photo ID law is overbroad and not narrowly tailored to address the most prevalent types of voting fraud in Missouri, absentee ballot and registration fraud. For these reasons, and the reasons explained above, the stated purpose of the Photo ID Requirement - - preventing election fraud - - could not rationally have been its true purpose, but was mere pretext. The Photo ID Requirement certainly was not necessary to accomplish any compelling state interest.

39. As the United States Supreme Court has recognized, "[i]n decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis

with other citizens in the jurisdiction [and that,] as a general matter, before that right to vote can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny." *Dunn v. Blumstein*, 405 U.S. 330 (1972)(state law requiring waiting period prior to voting, purportedly to combat fraud, did not further any compelling state interest and violated the equal protection clause of the Fourteenth Amendment). In *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court stated:

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, and alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

Reynolds v. Sims, 377 U.S. 533, 561-62 (1964); *see also Kramer v. Union Free School District*, 395 U.S. 621 (1969)(statute limiting voting rights to owners or lessees of taxable realty was not necessary to promote a compelling state interest and denied equal protection to persons excluded); *see Morgan v. City of Florissant*, 147 F.3d 772 (8th Cir. 1998)(outlining differences between election laws that provide for the redrawing of political subdivisions, which are analyzed under a rational basis test, and election laws imposing restrictions on voters based on characteristics such as wealth and race, which "affect more significant rights and constitutional concerns, meriting strict-scrutiny review."); *Antonio v. Kirkpatrick*, 453 F.Supp. 1161, 1163 (W.D. Mo.

1978)(If the classification affects a fundamental right or is based on a "suspect" criterion, then it will be strictly scrutinized, and "the state must demonstrate a clear showing that the burden imposed is necessary to protect a compelling and substantial government interest.").

40. Even though a governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly reached. *Antonio v. Kirkpatrick*, 453 F.Supp.1161, 1167 (W.D. Mo. 1978). "When a classification is subjected to strict scrutiny, it is almost always found unconstitutional." *Stiles v. Blunt*, 912 F.2d 260, 263 fn5 (8th Cir. 1990)(citing Gunther, *The Supreme Court, 1971 Term-Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv.L.Rev. 1, 8 (1972)(strict scrutiny review is "strict" in form but usually "fatal" in fact)).

41. Defendant State of Missouri and Intervenors have argued that strict scrutiny is not required based upon U.S. Supreme Court precedent. In *Burdick v. Takushi*, 504 U.S. 428 (1992), the United States Supreme Court applied a somewhat more flexible test in holding that Hawaii's prohibition on write-in voting did not unreasonably infringe upon its citizens' rights under the United States Constitution's First and Fourteenth Amendments. That case is not applicable here.

42. Under the Missouri Constitution, the Missouri Supreme Court uniformly has required strict scrutiny of any law that impinges on fundamental constitutional rights, like the right to vote. *See* cases cited *supra*. There can be no question that the Photo ID requirement impinges on the right to vote, and that strict scrutiny is required under controlling Missouri Supreme Court precedent.

43. In addition, the law challenged in *Burdick* did not impinge or interfere with a qualified voter's fundamental right to cast a ballot. Rather, it limited the potential candidates whose names would appear on the ballot. Under this limited circumstance, *Burdick* did not apply strict scrutiny but instead used a somewhat more flexible standard: "A court considering a state election law challenge must weigh the character and magnitude of the asserted injury to the First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against the precise interests put forward by the State as justification for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.* at 434. The Court explained that the reason it used a lesser standard was because "it [could] hardly be said that the laws at issue here unconstitutionally limit access to the ballot by party or independent candidates *or unreasonably interfere with the right of voters to associate* and have candidates of their choice placed on the ballot." *Id.* at 434 (emphasis added). The MVPA, unlike the law challenged in *Burdick*, unreasonably

interferes with the right to vote of thousands of qualified voters in Missouri. Therefore, *Burdick* is factually distinguishable and would not apply even if it were a decision by the Missouri Supreme Court interpreting the Missouri Constitution, which it is not.

44. Even if this Court were to apply the *Burdick* standard here, the Photo ID requirement in the MVPA would still be unconstitutional. That was the conclusion reached by the Georgia federal court in *Common Cause/Georgia v. Billups*, 406 F.Supp.2d 1326 (N.D. Ga. 2005). The "character and magnitude" of the asserted injury - - an undue burden on a fundamental constitutional right - - is significant and irreparable. The precise interests put forward by the state as justification for the burden imposed by the Photo ID Requirement - - preventing voter fraud - - are pretextual and fictitious as explained below. Thus, under any scrutiny - - strict, flexible or otherwise - - the Photo ID Requirement is unconstitutional.

45. For these reasons, the Photo ID Requirement in the MVPA violates the Equal Protection Clause of the Missouri Constitution.

46. The Photo ID Requirement has a disparate impact on qualified voters who are African-American. More than 21% of Missouri's African-American households have no car, and therefore have no need for a driver's license. This is over four times the percentage of white Missourians who have no car. Twenty-four percent of Missouri African-Americans live in poverty; only nine percent of whites do. The average per capita income for

Missouri African-Americans is $14,021 compared to $20,957 for Missouri whites. Twenty-six percent of Missouri African-Americans over the age of 25 have less than a high school education; only sixteen percent of whites do. Given these facts, the financial and other burdens imposed by the Photo ID Requirement disproportionately affect African-Americans.

47. The Photo ID Requirement also has a disparate impact on qualified voters who are women. As explained above, to obtain a Photo ID, a person must produce a certified birth certificate and certified documents showing any name changes since birth, such as certified marriage license(s), divorce decrees, and court orders reflecting name changes. While these requirements are gender neutral on their face, they will have a disparate and disproportionate impact on women due to the widespread custom of women taking their husband's surname. The Missouri Department of Revenue's website recognizes this unequal burden by including a separate section instructing women what additional certified documents are required for them to prove their identity. For example, to obtain a Photo ID for voting, a woman who has married, divorced and married again will have to produce and pay for at least three certified documents in addition to a similarly situated man who will be required to produce only his birth certificate.

48. The provisional balloting and its implementation established by SB 1014 constitute a new and expanded activity being imposed on local governments which will have a direct and substantial cost. Because the

legislature failed to appropriate funds to reimburse local governments for this new activity, the provisional balloting provisions are subject to a Hancock challenge in all of the 116 individual counties which would likely be successful if brought.

49. The provisional balloting provided by SB 1014 does not solve or ameliorate any of they constitutional issues raised by the Photo ID requirements.

50. Issuance of an injunction is in the public interest. In the absence of an injunction, a substantial number of registered Missouri voters would otherwise suffer unconstitutional interference with, and an undue burden on, their fundamental right to vote. While the purported justification -- preventing election fraud – is a legitimate interest, the State has not shown any substantial likelihood of any voter identification fraud occurring under the current law, which was passed in 2002.

Richard G. Callahan
Circuit Court Judge, Division II

STATE OF MISSOURI } SS
COUNTY OF COLE }

I, BRENDA A. UMSTATTD, Clerk of the Circuit Court of Cole County, Missouri, hereby certify that the above and foregoing is a full true and correct copy of Finding of Fact and Conclusion of Law as fully as the same remains of record in my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office this 21 day of Sept 2006.

BRENDA A. UMSTATTD, Clerk

Deputy Clerk
Circuit Court of Cole County, Missouri