

IN THE
Supreme Court of Missouri

No. 88039

**KATHLEEN WEINSCHENK, WILLIAM KOTTMAYER, ROBERT PUND,
AMANDA MULLANEY, RICHARD VON GLAHN, MAUDIE MAE HUGHES and
GIVE MISSOURIANS A RAISE, INC.**

Respondents

v.

STATE OF MISSOURI

Appellant

SECRETARY OF STATE ROBIN CARNAHAN

Respondent

DALE MORRIS AND SENATOR DELBERT SCOTT

Intervenors/Appellants

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan, Circuit Court Judge, Division II**

BRIEF OF *AMICI CURIAE*

National Association for the Advancement of Colored People, Inc.
Missouri Citizens Education Fund
Grass Roots Organizing
The Whole Person
Disabled Citizens Alliance for Independence
Southwest Center for Independent Living
Lawyers' Committee for Civil Rights Under Law
The American Civil Liberties Union Foundation, Inc.
People For the American Way Foundation
Mexican American Legal Defense and Educational Fund

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STATEMENT OF INTEREST OF *AMICI CURIAE*

National Association for the Advancement of Colored People, Inc.

(NAACP), through its Missouri State Conference of Branches, is the nation's oldest civil rights organization process.

Missouri Citizens Education Fund (MCEF) is a non-profit, non-partisan organization that conducts research on critical public policy issues facing the state, and provides training in citizenship skills to increase public participation in the political process. In 2004, MCEF conducted the largest non-partisan voter registration drive in Missouri, registering over 57,000 voters. MCEF is committed to ensuring that current under-represented constituencies of eligible Missouri voters have full and fair access to the ballot.

Grass Roots Organizing (GRO) is a non-profit social justice organization incorporated in 2000, whose membership includes eligible voters throughout the state of Missouri. GRO organizes primarily within communities of low-income persons and persons of color in rural Missouri, who are affected by laws, policies or practices that make it more difficult to exercise their constitutional rights, including the right to vote. GRO takes on difficult social and economic issues facing families, including issues related to voting rights, pursuant to GRO's organizational mission of creating a grassroots voice to win economic and democratic justice and human rights for all Missourians.

The Whole Person, a Center for Independent Living, is a non-profit, non-partisan organization, founded in 1979 to provide civil rights advocacy for and with people with disabilities in Jackson, Cass, Clay, and Platte counties in Missouri. The

majority of The Whole Person's staff and board of directors are people with disabilities. Historically, people with disabilities have been denied the basic civil rights of access to jobs, housing, and public accommodations, as well as the right to cast a private, independent ballot. As part of its advocacy, The Whole Person carries out a coordinated effort to register all people to vote, to educate them on their voting options and to remove barriers to voting.

Disabled Citizens Alliance for Independence (DCAI) is a not-for-profit organization committed to serving the needs of people with disabilities in Crawford, Dent, Iron, Reynolds, and Washington counties in Missouri. Established on October 1, 1980, DCAI was the first totally rural center to be funded by the United States Department of Education. Its mission is that every person, regardless of age or disability, realize total self-determination in all areas of his or her life, both at home and in the community. DCAI advocates the philosophy that every citizen has the right and shall have the opportunity to be an independent, productive person fully integrated into every aspect and activity of our society, including his or her constitutional right to vote. Important aspects of DCAI's advocacy include registering individuals to vote, removing inaccessible voting booth barriers and providing transportation to voting precincts.

Southwest Center for Independent Living (SCIL) is a private, not-for-profit agency which was established in 1985 to provide services, advocacy, and resources for people with any disability in Southwest Missouri including Christian, Dallas, Green, Lawrence, Polk, Stone, Taney, and Webster counties. The majority of SCIL's board of directors and staff are people with disabilities. SCIL works to promote a barrier-free

environment for all people with disabilities through public education and advocacy for social change, including voter education, registering voters, and working to remove barriers to voting.

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a tax-exempt, nonprofit civil rights organization that was founded in 1963 by the leaders of the American bar, at the request of President Kennedy, to help defend the civil rights of racial minorities and the poor. Through the Lawyers' Committee and its affiliates, thousands of attorneys have represented thousands of clients in civil rights cases across the country challenging discrimination in virtually all aspects of American life.

The Lawyers' Committee has decades of experience litigating individual and class action voting rights claims in federal and state courts, and is highly knowledgeable about the legal and policy issues relevant to this case. For example, the Lawyers' Committee is counsel for the plaintiffs in *Common Cause v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005), where the district court has granted two preliminary injunctions enjoining implementation of Georgia voter photo identification laws enacted in 2005 and 2006. The Lawyers' Committee is also counsel for plaintiffs in *Inter Tribal Council of Arizona, Inc. v. Brewer*, No. CV06-1362-PCT-JAT (D. Ariz., filed May 24, 2006), a federal statutory and constitutional challenge to an Arizona law that requires citizens to provide proof of citizenship when they register to vote and identification when they vote in person.

With the cooperation of other voting rights advocates, the Lawyers' Committee has systematically tracked legislation dealing with photo IDs and provided legal analysis on legislation that would impede equal participation by all in the political process, particularly legislation imposing photo ID requirements.

The American Civil Liberties Union Foundation, Inc. (ACLU) is a nationwide, non-profit, nonpartisan organization with nearly 550,000 members dedicated to defending the principles of liberty and equality embodied in the Constitution and this Nation's civil rights laws. As part of that commitment, the ACLU and its 53 affiliates, including the ACLU of Eastern Missouri and the ACLU of Kansas and Western Missouri,¹ have been active in defending the equal rights of racial and other minorities to participate in the electoral process. The ACLU has operated a Voting Rights Project since 1966. Through this project and other ACLU offices nationwide, the ACLU has provided representation to plaintiffs in literally hundreds of voting cases involving electoral processes throughout the country.

The attorneys for the Voting Rights Project of the ACLU have represented voters, candidates, and political parties in courts within the areas covered by all the Circuits of the United States Courts of Appeals. They have litigated hundreds of cases involving voting rights over the past four decades from state and federal trial courts

¹ The ACLU of Eastern Missouri and the ACLU of Kansas and Western Missouri are counsel for *Jackson County v. State of Missouri*, No. 06AC-CC00587 (Mo.Ct.App. 2006).

through the Supreme Court of the United States. The attorneys for the Voting Rights Project of the ACLU have filed lawsuits challenging the constitutionality of voter identification requirements in Georgia, *Common Cause/Georgia v. Cox*, 4:05-cv-201 (N.D. Ga. 2005) and Arizona, *Inter Tribal Council of Arizona, Inc. v. Brewer*, No. CV06-1362-PCT-JAT (D. Ariz. 2006).

People For the American Way Foundation ("PFAWF") is a nonpartisan citizens' organization established to promote and protect civil and constitutional rights, including the fundamental right to vote. Founded in 1980 by a group of religious, civic, and educational leaders devoted to our nation's heritage of tolerance, pluralism, and liberty, PFAWF now has over 900,000 members and other supporters nationwide. PFAWF is actively working with organizations across the country on the nonpartisan Election Protection Program, which is aimed at protecting the fundamental right to vote and have that vote be counted, and has litigated dozens of voting rights cases all over the nation, including, for example, the voter identification lawsuit in Arizona, *Inter Tribal Council of Arizona, Inc. v. Brewer*, No. CV06-1362-PCT-JAT (D. Ariz. 2006). One of PFAWF's primary missions is to promote enfranchisement and participation for all eligible voters and to that end, PFAWF believes that the Missouri photo ID law for voting at issue in this case places an undue burden on Missouri citizens' right to vote, while substantially detracting from the integrity and fairness of the electoral process in Missouri.

The Mexican American Legal Defense and Educational Fund (MALDEF) is the national leading nonprofit Latino litigation, advocacy and educational outreach

institution in the United States. MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. The thirty-five member board of directors is comprised of leaders from the public and private sector, government, and law firms. MALDEF is challenging the constitutionality of photo identification requirements in *Georgia Common Cause v. Billups*, 406 F. Supp.2d. 1326 (N.D. Ga. 2005) and in *Arizona, Gonzalez v. Arizona*, No. CV06-1268 (D. Ariz. 2006)

Because of their experience in litigating voting rights cases and their familiarity with the constitutional implications of photo ID laws, the above-referenced organizations are well-equipped to act as *amicus curiae* in this matter regarding Missouri's photo ID law.²

JURISDICTION

Jurisdiction is conferred on this Court pursuant to Article V, Section 3 of the Missouri Constitution. In this case, the Circuit Court of Cole County, Judge Richard

² Many of the above-referenced organizations are involved, either as plaintiffs or co-counsel, with a later-filed federal court action seeking to invalidate Missouri's photo ID law on the grounds that it violates the United States Constitution and federal laws, including the Voting Rights Act. *NAACP, et. al., v. Carnahan, et. al.*, Case No. 2:06-cv-04200-SOW, filed Sept. 6, 2006. The federal action is presently stayed pending this Court's ruling.

Callahan, issued a Judgment on September 14, 2006 enjoining the Missouri Voter Protection Act on grounds that it violated the Missouri Constitution. Therefore, the Missouri Supreme Court has jurisdiction to review the constitutionality of this law. Additionally, Rule 84.05(f) of the Missouri Supreme Court provides that *Amici Curiae* may submit briefs with consent of the parties, and the parties in this action have consented to *Amici Curiae* filing this brief.

STATEMENT OF FACTS

We respectfully refer this Court to the Statement of Facts as set forth in the brief submitted by Respondents/Plaintiffs in *Weinschenk, et. al. v. State of Missouri, et. al.*, and to the Findings of Fact contained in the Judgment below, which we incorporate by reference herein.

QUESTION PRESENTED

- I. If it would be helpful to the Court to look to United States Supreme Court precedents for guidance as to the standard to be applied in a challenge under the Missouri Constitution to Section 115.427 of the Missouri Revised Statutes as amended (the "Act" or the "MVPA"), would a strict scrutiny analysis apply, and would the Act survive such a challenge under the Equal Protection Clause of the United States Constitution?³

Amici Curiae answer that a strict scrutiny analysis would apply and the Act would not survive such a challenge.

SUMMARY OF ARGUMENT

On September 14, 2006, the Circuit Court of Cole County held that new Section 115.427, Mo. Rev. Stat. (2006), enacted as the Missouri Voter Protection Act, including its photo ID requirement, violates the Missouri Constitution. In this brief, *Amici Curiae* focus specifically on the Circuit Court's conclusion that the Act violates the

³ We do not suggest that federal law controls here – only that the analysis used by the United States Supreme Court may be informative and instructive. We agree with the Respondents/Plaintiffs that the Act is unconstitutional under Missouri's constitution and do not intend to argue the federal constitutional claims in this venue, as those claims are currently before the federal district court.

Due Process and Equal Protection Clauses of Article I, Sections 10 and 2 respectively, of the Missouri Constitution because:

- 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; and
- 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.⁴

The Circuit Court quite properly based its constitutional analysis on Missouri state law. However, to the extent that it might be of assistance to this Court, *Amici Curiae* set forth herein the relevant United States Supreme Court precedents addressing restrictions on the rights of otherwise eligible voters to cast their ballots, when such restrictions are challenged under the Equal Protection Clause of the United States Constitution.

Simply put, the U.S. Supreme Court, in an unbroken line of authority, has held that a statute which unduly burdens or abridges the right to vote is subject to strict scrutiny. Absent a compelling state interest and a statute narrowly drawn with precision to advance that interest, such a statute will be held unconstitutional. Indeed, "if there are

⁴ The Circuit Court also held that the Act violates Article I, Section 25 and Article VIII, Section 2 of the Missouri Constitution.

other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a state may not choose the way of greater interference. If it acts at all, it must choose less drastic means." *Dunn v. Blumstein*, 405 U.S. 330, 342-43 (1972).

Under a strict scrutiny analysis, the photo ID requirements in the MVPA are *not* narrowly tailored to meet the State's asserted interest of preventing voter fraud.⁵ When drafting the MVPA, the Missouri legislature did not rely on any evidence of in-person voting irregularities in Missouri. As the court below found, Missouri, in 2002, adopted an earlier version of Section 115.427 which eliminated entirely complaints of in-person voter fraud.⁶ (Find. of Fact ¶¶ 20, 48, 57; Conc. of Law ¶ 35.) Indeed, Governor

⁵ Under the MVPA, the only acceptable forms of voter identification are: (1) a nonexpired Missouri driver's license; (2) a nonexpired or nonexpiring Missouri nondriver's license; (3) a military-issued photo ID without an expiration date; or (4) a document that: a) contains the name of the individual, which must substantially conform to the most recent signature in the voter registration record; b) includes a photo of the individual; c) includes an expiration date and did not expire prior to the most recent general election; d) was issued by the United States or the State of Missouri (a "Photo ID").

⁶ The 2002 Act required some form of identification to be presented in order to vote in person, but, as the Circuit Court noted, "allowed any one of several forms of identification readily available to virtually all registered voters." (*See* the Circuit Court's September 14, 2006 Judgment at 2, hereinafter referred to as "Judgment.")

Blunt declared the 2002 and 2004 elections "fraud free." (Find. of Fact ¶ 58.) As a result, the Photo ID requirements in the MVPA are unnecessary, and certainly not the "less drastic" means of preventing voter fraud. Moreover, the requirements of the MVPA threaten to disenfranchise as many as 240,000 otherwise eligible Missouri voters who do not have Missouri driver's licenses or one of the other statutorily required forms of Photo ID. As the court below found:

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 least equipped to bear the costs or navigate the many bureaucracies necessary to obtain the required documentation. (Judgment at 9.)

Thus, were this Court to apply the same strict scrutiny analysis to Equal Protection claims under the Missouri Constitution as the United States Supreme Court

This brief also references the Circuit Court's Findings of Fact and Conclusions of Law issued with its Judgment, hereinafter referred to as "Find. of Fact" or "Conc. of Law.")

would apply to similar challenges under the United States Constitution, the MVPA would not survive strict scrutiny and should be held unconstitutional.

ARGUMENT

1. The Missouri Photo ID Act is Subject to Strict Scrutiny

As the U.S. Supreme Court has repeatedly held, the right to vote is the most precious and fundamental of all of our rights:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

Wesberry v. Sanders, 376 U.S. 1, 17-18 (1964); *see also Reynolds v. Sims*, 377 U.S. 533, 555 (1984) ("The right to vote ... is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."); *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) ("In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis...."); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (in a democracy, the right to vote is "of fundamental significance under our constitutional structure," entitled to special and heightened constitutional protection because it is both the wellspring and the protector of all other rights.).

Although the U.S. Constitution allows states to establish the time, place and manner of elections, US Const., Art I, § 4, Cl. 1, such regulations cannot unduly burden or abridge the right to vote. *Tashjian v. Republican Party*, 479 U.S. 208, 217 (1986)

("The power to regulate the time, place, and manner of elections does not justify, without more, the abridgement of fundamental rights, such as the right to vote.").

Accordingly, the Supreme Court has consistently held that state laws which burden the right of otherwise eligible voters to vote:

[M]ust be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are necessary to promote a compelling governmental interest...It is not sufficient for a State to show that [voting] requirements further a very substantial State interest. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with precision...and must be tailored to serve their legitimate objectives...And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose less drastic means.

Dunn v. Blumstein, 405 U.S. 330, 342-43 (1972) (internal citations and quotations omitted); *see also Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) ("right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights," and thus, "any alleged infringement of the rights of citizens to vote must be carefully and meticulously scrutinized."); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 670 (1966) ("We have long been mindful that where fundamental rights and

liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.").

The Supreme Court has been unwavering in its application of "strict scrutiny" to statutory restrictions, such as those present here, which interfere with the ability of otherwise eligible voters to vote, be it the poll tax of \$1.50 in *Harper*, a statute limiting participation in school board elections to parents and property owners in *Kramer v. Union Free School District*, 395 U.S. 621, 626-27 (1969), or the durational residency requirements to voting in *Dunn*, 405 U.S. at 337. *See also Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Tashjian v. Republican Party*, 479 U.S. 208, 213-14 (1986).

A lesser standard may apply when a challenged state election law does not involve an undue burden placed upon the right of otherwise eligible voters to vote. *See Burdick*, 504 U.S. at 433-34. For example, in *Burdick* the Supreme Court confronted a state prohibition on write-in candidates. *Id.* The Court used a reasonableness standard because the statute in question did not burden the fundamental Fourteenth Amendment right to vote: rather, the statute merely limited the choice of candidates on the ballot, something that necessarily occurs whenever a state places limits on which candidates may appear on a ballot. *Id.*⁷ On the other hand, where, as here, a state statute interferes with the right to vote of otherwise qualified voters, that interference, according to

⁷ In fact, the *Burdick* court held that the state laws in Hawaii "provide[d] easy access to the ballot" for voters, that the state did not "unreasonably interfere with the rights of voters," and that "any burden imposed ... is a very limited one." 504 U.S. at 434, 436-37.

unbroken United States Supreme Court precedent, constitutes a severe burden on Fourteenth Amendment rights and is subject to strict scrutiny. Such a statute is unconstitutional unless it is "narrowly drawn to advance a state interest of compelling importance," and no less-intrusive alternative exists. *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1972)); *Dunn*, 405 U.S. at 342-343.

2. The Missouri Photo ID Act Imposes Severe and Undue Burdens on Missouri Citizens' Rights to Vote

As the Circuit Court found after a full evidentiary hearing, the Photo ID requirement in the MVPA "infringes on the fundamental right to vote of as many as 240,000 registered voters in Missouri." (Conc. of Law ¶ 35.) The court, in its Findings of Fact, set forth in painstaking detail the burdens imposed upon a registered voter to secure a non-driver's license, including the obstacles entailed in providing "Proof of Lawful Presence," "Proof of Lawful Identity," and "Proof of Residency." (Find. of Fact ¶¶ 21-45.) The court concluded, based upon the evidence, that "the expense, time, and effort required to obtain the underlying documents to satisfy these three requirements will place a substantial and undue burden...on the fundamental right to vote of as many as 240,000 registered Missouri voters who do not currently possess a valid Photo ID." (Conc. of Law ¶ 36.) Significantly, it also found that this burden would fall disproportionately on "the elderly, the poor, the under-educated, or otherwise disadvantaged...who are least equipped to bear the costs or navigate the many

bureaucracies necessary to obtain the required documentation." (Judgment at 9; *see also* Conc. of Law ¶¶ 46-47.)

3. The Missouri Photo ID Act Would Not Survive Strict Scrutiny Analysis Under United States Supreme Court Precedent

Under the United States Supreme Court's strict scrutiny analysis, a court confronted with a statute that abridges the fundamental right to vote of otherwise eligible voters must determine whether the challenged state statute is "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 434. Thus, while "purity of the ballot box" may be "formidable-sounding," *Dunn*, 405 U.S. at 395, it is not the be all and end all of constitutional inquiry. Indeed, in the present case, the Circuit Court specifically found that:

[The Act] is not necessary to promote any compelling state interest, which was not already being adequately protected by existing criminal laws and election procedures." (Conc. of Law ¶ 35.)

In holding that the Photo ID requirement did not accomplish any compelling state interest, the court held:

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. (Conc. of Law ¶ 37.)⁸

Furthermore, the Photo ID requirement fails to address the type of fraud that every witness agrees is most likely and prevalent, if voter fraud exists at all – absentee ballot fraud. (Find. of Fact ¶¶ 54, 56.) As the Circuit Court held:

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. (Conc. of Law ¶ 38.)

Thus, applying the analytic framework for strict scrutiny analysis established by the United States Supreme Court in *Burdick v. Takushi*, *Anderson v. Celebrezze*, *Reynolds v. Sims*, *Dunn v. Blumstein*, *Kramer v. Union Free School District*,

⁸ See also Find. of Fact ¶¶ 45, 54-58.

and *Harper v. Virginia State Board of Elections*, and based upon the findings of the Circuit Court after a full evidentiary hearing, the MVPA is not justified by a compelling state interest nor is it narrowly tailored to address the alleged state interest under the standards set forth by the United States Supreme Court.

Finally, because a person needing to obtain a non-driver's license to vote is required to pay one or more fees to obtain the requisite underlying documents (*see, e.g.*, Find. of Fact ¶¶ 24, 27, 31, 33, 35), the Act, as the Circuit Court found (Conc. of Law ¶ 27), does indirectly what it clearly cannot constitutionally do directly, namely, require an eligible voter to pay a fee in order to exercise his or her fundamental right to vote. As the United States Supreme Court held in *Harper*:

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, 383 U.S. at 666.

Here, as the Circuit Court concluded (Conc. of Law ¶¶ 27-31), the MVPA effectively places a price on the right to vote and accordingly would fail on a strict scrutiny analysis since "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."

Harper, 383 U.S. at 670. Indeed, the Supreme Court in *Harper* made clear that any qualification to voting based on wealth or fee paying is unconstitutional, regardless of the asserted state interest.⁹

CONCLUSION

For the foregoing reasons, we respectfully suggest that to the extent this Court looks to United States Constitutional law by way of analogy, it apply the strict scrutiny analysis of the United States Supreme Court and affirm the decision below. The MVPA constitutes a severe burden on the most fundamental of constitutional rights, advances no compelling state interest, is unnecessary (since more narrowly tailored state law has already successfully addressed any issue of voter impersonation), and falls disproportionately on the poor, elderly, women, minorities and the disabled.

⁹ Although the United States Supreme Court has always applied strict scrutiny to analyze any restriction that abridges a right to vote, the MVPA would fail even under a "reasonableness" standard given the utter lack of evidence of in-person voter fraud. (*See, e.g.* Find. of Fact ¶ 34. "[T]he stated purpose of the Photo ID Requirement – preventing election fraud – could not rationally have been its true purpose, but was a mere pretext.")

Dated: September 29, 2006

Respectfully Submitted,

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IN THE MISSOURI SUPREME COURT

Kathleen Weinschenk, et al.,)
)
 Respondents,)
)
 v.)
)
 State of Missouri,)
)
 Appellant,) Case No. 88039
)
 Secretary of State Robin Carnahan,)
)
 Respondent,)
)
 Dale Morris and Senator Delbert Scott,)
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 Intervenors/Appellants.)

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type and volume limitations of MO. SUP. CT. R. 84.06(b). It contains no more than 31,000 words of text (specifically, containing 4,728 words). It was prepared using Microsoft Word for Windows 2003. The enclosed floppy disk also complies with MO. SUP. CT. R. 84.06(g) in that it has been scanned and is virus free. The files on the floppy disk contain the brief in Microsoft Word for Windows 2003 format.

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Counsel for *Amici Curiae*

IN THE MISSOURI SUPREME COURT

Kathleen Weinschenk, et al.,)
)
 Respondents,)
)
 v.)
)
 State of Missouri,)
)
 Appellant,) Case No. 88039
)
 Secretary of State Robin Carnahan,)
)
 Respondent,)
)
 Dale Morris and Senator Delbert Scott,)
)
 Intervenors/Appellants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the parties by U.S. Mail, postage prepaid on this ____ day of ____ 2006, to:

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