MISSOURI SUPREME COURT

Case No. SC95678

JOSHUA PETERS,

Respondent,

vs.

RACHEL M. JOHNS,

Appellant.

RESPONDENT'S BRIEF

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I. JOHNS' REFUSAL TO REGISTER TO VOTE IS NOT EXPRESSIVE CONDUCT PROTECTED BY THE FIRST AMENDMENT.

Johns formerly refused to register to vote because, she contends, "voting seemed to be a hollow exercise because she felt that the political system was broken." *Brief at 1*. Johns contends that her prior refusal to register to vote was an act of political expression protected by the First Amendment. It was not.

The U.S. Supreme Court recognizes that there are forms of symbolic speech that deserve First Amendment protection. *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.,* 547 U.S. 47, 65 (2006). The U.S. Supreme Court, "reject[s] the view that conduct can be labeled speech whenever the person engaging in the conduct intends thereby to express an idea." *Id*. at 65-66 (internal quotations omitted). Rather, the First Amendment only protects "conduct that is inherently expressive." *Id*. at 66.

In deciding whether conduct is protected under the First Amendment as speech, the U.S. Supreme Court asks whether, "an intent to convey a particular message was present and whether the likelihood was great that the message would be understood by those who viewed it." *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (internal punctuation omitted). It is unlikely that anyone (other than

Johns) viewed Johns' conduct. It is even more unlikely that anyone who viewed Johns' conduct would have understood her failure to register to vote to be a form of political expression.

To view Johns' conduct, an observer would have to obtain access to the voter rolls and search for Johns' name. Only then would this observer see that Johns was not listed as being registered to vote. The observer, being unsuccessful in finding Johns on the voter rolls, would then have to realize that Johns' name was absent not because of some recordkeeping error, and not because Johns did not care to vote, and not because Johns was otherwise apathetic. Rather, this observer would have to understand that Johns was not on the voter rolls because she was intentionally expressing her disdain for participating in a "broken" system. This scenario seems extremely unlikely. It is certainly not one whose "likelihood was great," as is necessary to implicate the First Amendment. *Texas*, 491 U.S. at 404.

Johns may in her reply cite *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), but *Buckley* does not help her. The *Buckley* Court recognized that, "for some individuals ... the choice not to register implicates political thought and expression." *Id.* at 195. The *Buckley* court did not, however, hold that refusing to register to vote *is* expressive conduct. The court certainly did not hold that refusing to register is expressive conduct

protected by the First Amendment. In fact, *Buckley* did not analyze whether refusing to register to vote is expressive conduct protected by the First Amendment.

Buckley concerned a Colorado law that required initiative petition circulators to be registered voters. *Id*. at 186. Because petition circulation is "core political speech," the Court held that conditioning the circulation of petitions on registering to vote could be a barrier to the ability of a person who refused to register to vote to exercise core political speech protected by the First Amendment. *Id*. Here, however, conditioning the ability to run for office on registering to vote is not a barrier to exercising core political speech because, "[a] candidate's access to the ballot or the right to run for office is not a fundamental right." *Coyne v. Edwards*, 395 S.W.3d 509, 517 (Mo. 2013), citing *Clements v. Fashing*, 457 U.S. 957 (1982).

There is no fundamental right to be a candidate. Johns' conduct is not protected by the First Amendment. Because Johns does not satisfy Art. III, Sec. 4 she was properly excluded from the ballot.

II. THE TRIAL COURT DID NOT ERR IN ENTERING JUDGMENT FOR PETERS BECAUSE JOHNS' FAILURE TO REGISTER TO VOTE AT LEAST TWO YEARS BEFORE THE NOVEMBER 2016 ELECTION DISQUALIFIES HER FROM BECOMING A STATE REPRESENTATIVE UNDER ARTICLE III, SECTION 4, OF THE MISSOURI CONSTITUTION; WHICH PROVISION DOES NOT IMPERMISSIBLY BURDEN JOHNS.

Even if Johns' refusal to register was expressive conduct protected by the First Amendment - and it is not - she would still not be entitled to have her name placed on the 2016 ballot. That is because the burden imposed on Johns is *de minimis*, and Missouri's state interest in controlling access to its ballot outweighs the minor burden imposed on Johns.

A. Standard Applicable to Candidate and Voter Ballot Access Cases.

The U.S. Supreme Court holds that, "a court evaluating a constitutional challenge to an election regulation [should] weigh the asserted injury to the right to vote against the precise interests put forward by the state as justifications for the burden imposed on the rule." *Crawford v. Marion County Election Bd.*, 533 U.S. 181, 190 (2008), citing *Anderson v. Celebrezze* 460 U.S. 780, 789 (1983).

> Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance. But when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions.

Burdick v. Takushi, 504 U.S. 428, 434 (1992) (internal quotations and citations omitted).

"[T]he severity of the burden the election law imposes on the plaintiff's rights dictates the level of scrutiny applied by the court." *Arizona Libertarian Party v. Bennett*, 784 F.3d 611, 618 (9th Cir. 2015). "Where … a state election law imposes only a *de minimis* burden on a party's First and Fourteenth Amendment rights, the State need demonstrate only that the statute at issue is rationally related to a legitimate state interest." *Id*. at 620 (internal quotations and citations omitted); *see also State ex rel. Brown v. Ashtabula County Board of Elections*, 31 N.E.3d 596 (Ohio 2014) (if the burden imposed is slight, "the state interest

required to justify it is correspondingly small"); *Schulz v. Williams*, 44 F.3d 48, 57 (2nd Cir. 1994) (when the burden imposed is not severe, "we need to evaluate only whether the requirement is justified by a legitimate interest and is a reasonable way of accomplishing this goal").

B. The Burden on Johns is *de minimis*.

Johns is now registered to vote. She will qualify to run for State Representative in 2018. Art. III, Sec. 4 only briefly and temporarily excludes Johns from the ballot. Burdens such as the temporary exclusion imposed on Johns have been consistently upheld by the courts.

In *Clements v. Fashing*, 457 U.S. at 966, the U.S. Supreme Court upheld a Texas constitutional provision that prohibited a Justice of the Peace from ending his four-year term early to serve in the legislature. According to the Court, "§ 19 simply requires Baca to complete his 4-year term as Justice of the Peace before he may be eligible for the legislature. At most, therefore, Baca must wait two years - one election cycle - before he may run as a candidate for the legislature." *Id*. at 967. "In establishing a maximum waiting period of two years for candidacy by a Justice of the Peace for the legislature, § 19 places a *de minimis* burden on the political aspirations of a *current* officeholder." *Id* (emphasis in original); *see also Pick v. Nelson*, 528 N.W.2d 309, 496 (Neb. 1995) ("Any alleged injury to [plaintiff] occasioned by the delay to his candidacy is a *de minimis* interference

which does not violate [plaintiff's] fundamental rights under the First Amendment and will not invoke strict scrutiny of the offending statute").

Similarly, in *Stiles v. Blunt*, 912 F.2d 260 (8th Cir. 1990), the Eighth Circuit upheld an age restriction on State Representative candidates imposed by the Missouri Constitution because the burden it imposed on those seeking office was temporary. In *Blunt*, a 23-year old candidate challenged Art III, Sec. 4 on the grounds that, "the minimum age requirement violated the equal protection clause because it deprived him of his right to run for public office and violated his fundamental rights of speech, association and travel." *Id.* at 262.

The Eighth Circuit disagreed.

According to the court, the impact on the youthful candidate and on the rights of voters was *de minimis*. "[T]he burden is only temporary. Appellant is not forever precluded from running for state representative. Should he decide to run for state representative after he attains 24 years, voters interested in supporting him can vote for him at that time." *Id.* at 265.

The burden on Johns is identical to the burdens held to be *de minimis* in *Blunt* and *Clements*. Like the 23 year old would-be State Representative in *Blunt*, or the Justice of the Peace who wanted to run for the Texas legislature in *Clements,* the burden on Johns is only temporary. Assuming no changes in her status, she will qualify to run for Missouri State Representative in 2018. As the

Court stated in *Clements*, "a waiting period is hardly a significant barrier to candidacy." 457 U.S. at 967.

Johns contended in the circuit court that Art. III, Sec. 4 burdens hypothetical would-be State Representative candidates by penalizing protesters by excluding them from running for political office and by discouraging people from refusing to register to vote out of political protest. *L.F.* at 39. The Court should only be concerned with the burden on Johns, not on hypothetical candidates. "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973).

Because the burden on Johns is temporary and *de minimis*, the "State need demonstrate only that the statute at issue is rationally related to a legitimate state interest." *Arizona Libertarian Party*, 784 F.3d at 620.

C. Johns Cannot Assert the Rights of Putative Voters Who Are Not Parties to This Action.

Johns seeks to assert constitutional claims for voters who are not parties to this action. She does not have standing to do so.

"In order to avoid unnecessary or imprudent adjudications, we ordinarily prohibit litigants from raising the claims of third parties not before the court." *Blunt*, 912 F.2d at 265, citing *Singleton v. Wulff*, 428 U.S. 106, 113-14 (1976). "The prohibition of third party standing is relaxed when the litigant is the only effective advocate of the third party's rights." *Id.*

Johns has not shown that interested voters are unable to intervene in this action. There is no basis to conclude that Johns is the only effective advocate for non-party voters.

Recognizing that in her role as a candidate, Johns has no standing to raise claims on behalf of voters, Johns now contends that because she is a qualified voter, she can seek redress on behalf of other absent voters.

Johns cites *McLain v. Meier*, 851 F.2d 1045 (8th Cir. 1988), for the proposition that a candidate who is a voter has standing to challenge alleged infringements on other voters' rights. *Brief at 14.* Johns' reliance on *McLain* is misplaced. The Eighth Circuit held that, "McLain has standing as a voter to assert *his* claim that the North Dakota ballot access laws are unduly restrictive." 851 F.2d at 1048 (emphasis added). The *McLain* Court did not, however, hold that McLain had standing to seek redress for absent voters.

Johns also relies on *Dunn v. Blumstein*, 405 U.S. 330 (1973), in support of her standing argument. *Dunn*, however, was a class action. The voter at issue was

the class representative, who, by court rule, becomes the court-appointed representative of the absent class members.

Johns never contended in her answer to Peters' petition that Art. III, Sec. 4 violated *her* right to vote. Rather, she alleged that Art. III, Sec. 4 violates "her freedom of political expression and right to seek political office," and the voters' "freedom of political expression." *L.F.* at 13-14.

Any right Johns may have had to seek redress on her own behalf, having not been raised below, has been waived. *State v. Fassero*, 256 S.W.3d 109, 117 (Mo. 2008) (constitutional claims must be raised at the first opportunity).

Because Johns does not have standing to seek redress for absent voters, and has waived any claim to seek redress for herself as a voter, it is unnecessary to determine the extent of any burden Art. III, Sec. 4 may impose on putative voters who are not parties to this action. Such potential burdens are nevertheless discussed in the next section.

D. The Burden on the Voters is *de minimis*.

Even if Johns had standing to raise claims on behalf of absent voters, or had not waived her right to raise claims on her own behalf as a voter, the Court should find that any burden on voters is *de minimis*.

The "fundamental rights of voting, speech, and association do not confer upon them an absolute right to support a specific candidate regardless of whether

he or she has satisfied reasonable eligibility requirements." *Blunt*, 912 F.2d at 266; *see also Celebrezze*, 460 U.S. at 792, n. 12 ("Although a disaffiliation provision may preclude such voters from supporting a particular ineligible candidate, they remain free to support and promote other candidates who satisfy the State's disaffiliation requirements"); *Citizens for Legislative Choice v. Miller*, 144 F.3d 916, 921 (6th Cir. 1998) ("A voter has no right to vote for a specific candidate or even a particular class of candidates").

Johns' removal from the ballot does not impact the right of the voters in the 76th District to vote. It simply suspends for a brief time their ability to vote for Johns. Any burden is temporary. Should Johns decide to run in 2018, "voters interested in supporting [her] can vote for [her] at that time." *Blunt*, 912 F.2d at 266.

Just like the burden on Johns, the "impact on the right of voters" imposed by Art. III, Sec. 4 is *de minimis*. *Id.* at 265.

E. Missouri's State Interests Justify the *de minimis* Burden on Johns and Absent Voters.

The U.S. Supreme Court has repeatedly held that, "when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important

regulatory interests are generally sufficient to justify the restrictions." *Burdick*, 504 U.S. at 434 (1992) (internal quotations and citations omitted).

The U.S. Supreme Court recognizes that, "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Buckley* 525 U.S. at 186, citing *Storer v. Brown*, 415 U.S. 724, 730 (1974). "[A] State has an interest, if not a *duty*, to protect the integrity of its political processes." *Storer*, 415 U.S. at 733 (emphasis added).

Moreover, "registration requirements for primary election voters and candidates for political office are 'classic' examples of permissible regulation." *Buckley* 525 U.S. at 196, n. 17.

"A state has a compelling interest in protecting the integrity of their political processes from frivolous or fraudulent candidacies, in insuring that their election processes are efficient, in avoiding voter confusion caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections." *Libertarian Party of North Dakota v. Jaeger*, 659 F.3d 687, 697 (8th Cir. 2011). "Consequently, a state has a legitimate interest in regulating the number of candidates on the ballot in order to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of the majority." *Id.*, citing *Bullock v. Carter*, 405 U.S. 134, 145 (1971).

States also have legitimate interests in ensuring a "candidate's seriousness and his willingness to accept the new community as his home and involve himself meaningfully in its affairs." *Broadwater v. State*, 510 A.2d 583, 588 (Md. 1986). "It would be anomalous ... for those who make and enforce the laws by which all of us must live to have so little interest in public affairs as to not be registered." *Id.*

Proof by the state of voter confusion, ballot overcrowding, or the presence of frivolous candidacies is not necessary to authorize such regulation:

> To require States to prove actual voter confusion, ballot overcrowding, or the presence of frivolous candidacies as a predicate to the imposition of reasonable ballot access restrictions would invariably lead to endless court battles over the sufficiency of the 'evidence' marshaled by a State to prove the predicate. Such a requirement would necessitate that a State's political system sustain some level of damage before the legislature could take corrective action. Legislatures, we think, should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.

Munro v. Socialist Workers Party, 479 U.S. 189, 195 (1986).

Missouri has a compelling state interest in ensuring that its State Representative candidates are serious, committed to the electoral process, and exhibit a meaningful interest in public affairs. Encouraging would-be candidates to participate in elections furthers this compelling state interest.

The two-year registration requirement ensures that a would-be State Representative has taken the minimal affirmative steps necessary to participate as a voter in at least one, and specifically the most recent, general state election before running for office. Because Missouri's general elections occur once every two years[1], Art. III, Sec. 4 encourages would-be State Representatives to register to vote and participate in the electoral process before running for that office. The restriction is therefore rationally related to Missouri's interest in ensuring that its candidates are serious, committed, and interested in public affairs.

Encouraging participation in the electoral process is important. This should not be up for debate. In fact, Johns recognizes this to be true. Johns highlights that she was "directly engaged with matters of policy related to her community." *Brief at 4*. During oral argument in the circuit court, Peters referenced a Facebook post by Johns in which she encouraged people to vote to retain the St. Louis City earnings tax.

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[1] Section 115.121, RSMo

Just as Johns highlights her community participation to the Court and encourages people to participate in municipal elections, Missouri wants to encourage people, especially would-be State Representatives, to participate in its electoral process.

Missouri's general elections often involve issues that impact the state as a whole. For example, had Johns voted in the 2014 general election, she would have been able to vote for a State Representative, a Representative to the U.S. Congress, a State Auditor, and four State Constitutional amendments. http://enrarchives.sos.mo.gov/enrnet/default.aspx. The amendments on that ballot allowed registered voters to vote on: changing the rules for the admission of certain evidence in criminal cases; teacher evaluations; early voting; and forcing the Governor to pay the public debt. http://www.sos.mo.gov/elections/2014ballot/. These are important issues that go beyond any one candidate for any one office. All Missourians eligible to vote should be encouraged to participate, especially would-be State Representatives.

Johns argues that voter registration does not equal voter participation. She is correct. But Missouri's Constitution does not have to compel voting by would-be State Representative candidates to comply with the U.S. Constitution. It is sufficient if the condition it imposes merely encourages voting by would-be candidates.

Missouri's interest in would-be candidates participating in voting would not be furthered if the state imposed a shorter voter registration duration. That is because state elections occur every other year. If a would-be State Representative candidate had to be registered to vote for only one year before running for office, the candidate could run without having had an opportunity to vote. Such a shorter restriction duration would not relate well to encouraging would-be candidates to participate.

Candidate voter registration requirements have been found to provide legitimate protection against frivolous candidacies. In *Thournir v. Meyer*, 909 F.2d 408, 409 (10th Cir. 1990), the Tenth Circuit held that a statute requiring, "that a person seeking elective office as an unaffiliated candidate must be registered in Colorado as an unaffiliated voter for at least one year before filing a nominating petition," did not infringe on constitutional rights. The court held that this durational registration requirement furthered the state's interest in prohibiting "frivolous candidacies." *Id*. at 411.

Thournir appears to be the most recent case to have addressed the constitutionality of a candidate voter registration requirement. It also appears to be the only appellate court to have addressed such a requirement since the U.S. Supreme Court decided *Anderson v. Celebrezze*.

Here, as in *Thournir*, Johns fails to satisfy a durational registration requirement. And, as in *Thournir*, Missouri's constitutional requirement is rationally related to protecting the state against frivolous candidacies.

Johns distinguishes *Thournir* by stating that, "the government asserted that the primary purpose of these restrictions was to protect the integrity of the party system." *Brief at 37* (emphasis and internal quotation omitted). Johns is mistaken. There were two purposes identified by Colorado, neither of which was said to be "primary." One purpose was to protect the integrity of the party system, as Johns asserts. *Thournir*, 909 F.2d at 411. The other purpose was "to prohibit frivolous candidacies." *Id.* (internal quotation omitted). The reference to "frivolous candidacies" in *Thournir* arose in the context of the burden on Thournir's right to candidacy, not her party affiliation: "the only issue relates to Ms. Thournir and her individual right to run for office. In that context, we are unpersuaded that the twelve-month registration requirement, standing alone, presents an undue burden on the rights of a putative candidate." *Id.*

Requiring would-be candidates to be registered voters for two years before running for office limits overcrowded ballots. Johns is correct that Peters will be the only candidate if Johns is removed. That Peters would be unopposed if Johns is disqualified misses the point. Ballot access laws only need to be reasonable, non-discriminatory, and equally applicable to all candidates. Ballot access laws

should not be applied differently in different situations, such as when there are three candidates running for office compared to when there are only two.

Missouri's constitutional requirement that State Representative candidates be registered voters for two years before running for that office is sufficiently rationally related to its non-discriminatory governmental interests to justify the temporary and *de minimis* burden it imposes on Johns.

III. THE DURATIONAL REGISTRATION CASES CITED BY JOHNS ARE NOT APPLICABLE.

Johns cites four out-of-state cases that struck down durational registration requirements. She contends that based on these cases, "[t]his Court must do the same." *Brief at 34*. Johns is incorrect.

The cases cited by Johns are easily distinguishable and not persuasive.

Gangemi v. Rosengard, 207 A.2d 665 (N.J. 1965), pre-dates *Anderson v. Celebrezze*. It thus did not apply the test announced by the U.S. Supreme Court in 1983 in *Celebrezze*, which is controlling. Moreover, *Gangemi* involved an election law that applied to some, but not all, municipalities in the state. 207 A.2d at 669-670. Because the law there did not apply to all similarly-situated persons, it violated the equal protection clause. *Id*. Equal protection, however, is not at issue here. *See infra at Section IV*.

Henderson v. Ft. Worth Independent School Dist., 526 F.2d 286 (5th Cir. 1976), which involved a three-year registration requirement, also pre-dates *Celebrezze*. *Henderson* was also decided on equal protection grounds based on improper classifications. Here, as discussed below, Johns did not timely assert, and therefore waived, her equal protection claims. Therefore, whether and to what extent Art. III, Sec. 4 makes class distinctions - it does not - is irrelevant.

Treiman v. Malmquist, 342 So.2d 972 (Fla. 1977), involved a challenge to a Florida statute based entirely on Florida constitutional grounds. This case also pre-dates *Celebrezze*. *Treiman* did not address whether the durational registration requirement encouraged would-be candidate participation in voting or prevented frivolous candidacies. The analysis in *Treiman*, therefore, is not helpful.

Board of Supervisors of Elections of Prince George's County v. Goodsell, 396 A.2d 1033 (Md. 1979), is another case that pre-dates *Celebrezze* that was decided on equal protection grounds. Moreover, *Goodsell* is further distinguishable because it involved a five-year registration requirement, and because the government asserted different interests in support of the requirement there.

IV. JOHNS CANNOT RAISE A VIOLATION OF EQUAL PROTECTION FOR THE FIRST TIME ON APPEAL.

Constitutional claims "must be made at the first opportunity" to be preserved for appellate review. *Fassero*, 256 S.W.3d at 117. "If not raised at the first opportunity in the circuit court, a constitutional claim is waived and cannot be raised." *Id.*

In her answer to Peters' petition, Johns contended that Art. III, Sec. 4 of the Missouri Constitution violates her, "freedom of political expression and her right to seek political office as protected under the First and Fourteenth Amendments of the U.S. Constitution." *L.F. at 13, paragraph 7.* She further contended that Art. III, Sec. 4 violates other voters' "freedom of political expression protected under the First and Fourteenth Amendments of the U.S. Constitution." *L.F. at 14, paragraph 10.*

Johns in her answer does not mention an equal protection violation. In her brief in this Court, Johns acknowledges she did not previously raise an alleged equal protection violation:

> Johns responded to Peters' lawsuit by arguing that the Durational Voter Registration Requirement is unconstitutional as applied in this case, unjustifiably penalizing her for having engaged in political protest within the protections of the First Amendment and also

> denying voters' rights to cast a meaningful vote for anyone other than Respondent Peters.

Brief at 2-3.

Now, for the first time, Johns contends that Art. III, Sec. 4 would "deny her the equal protection of the law." *Brief at 6*. Johns' untimely contention that Art. III, Sec. 4 violates equal protection was waived and cannot be raised in this Court.

Therefore, it is not necessary to analyze whether Art. III, Sec. 4 denies Johns the equal protection of the law.[2]

V. THE ACLU'S ARGUMENT HANGS ON AN OMISSION.

Every person who meets the following requirements is qualified to vote in Missouri elections:

> 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

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[2] The State of Missouri advises that it will be addressing the equal protection arguments in its brief.

> 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.

Art. VIII, Sec. 2, Missouri Constitution (emphasis added).

Further, "no person shall be permitted to vote in any election unless the person is duly registered." *Section 115.139, RSMo.*

Because an unregistered person cannot vote in a Missouri election, an unregistered voter is not qualified under Art. VIII, Sec. 2.

The ACLU filed an *amicus* brief on Johns' behalf contending that the Missouri cases holding that a "qualified voter" must be a "registered voter" should be overturned because Art. VIII, Sec. 2, of the Missouri Constitution does not contain a registration requirement. *ACLU Brief* at 9-10, 13. In its brief, the ACLU cites Art. VIII, Sec. 2 as follows:

> All citizens over the age of eighteen who reside in Missouri are qualified to vote, "[p]rovided ... 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." Mo. Const., art. VIII, § 2.

ACLU Brief at 10, fn. 2.

A comparison of the *actual* constitutional language with the ACLU's paraphrase of the language shows that the ACLU has conveniently omitted that, in addition to the citizenship, residency, and age requirements, *a person must also be registered to be a qualified voter.*

When Art. VIII, Sec. 2 is viewed without edits, it is clear that for Art. III, Sec. 4 to be consistent with Art. VIII, Sec. 2, "qualified voter" must mean, "one who by law, at an election, is entitled to vote." *State ex rel. Woodson v. Brassfield*, 67 Mo. 331, 337 (1878); *see also State ex rel. Burke v. Campbell*, 542 S.W.2d 355, 358 (Mo. App. 1976).

Since, in Missouri, one is not entitled to vote unless registered to vote, Johns was not until recently a qualified voter and is therefore not eligible to be a State Representative at this time.

CONCLUSION

The judgment of the circuit court should be affirmed.

Respectfully submitted,

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CERTIFICATES

The undersigned attorney for respondence Joshua Peters certifies as required by Rule 84.06(c) as follows:

- This brief complies with the limitations contained in Rule 84.06(b).
- The brief contains 5143 based on the word count function in Google Documents, not including those portions of the brief permitted to be excluded under Rule 84.06(b).
- The electronic PDF version of this brief filed with the court has been scanned for viruses and was determined to be virus-free.
- Copies of this brief were served on all counsel of record through the court's electronic filing system on May 13, 2016.

/s/ Matt Vianello