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SC94285

IN THE SUPREME COURT OF MISSOURI

NATALIE A. VOWELL,

Plaintiff-Appellant,

v.

JASON KANDER, in his official capacity as Missouri Secretary of State,

Defendant-Respondent.

APPEAL FROM THE NINETEENTH CIRCUIT COURT OF COLE COUNTY
The Honorable Jon Beetem, Judge

APPELLANT'S SUBSTITUTE BRIEF

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INTRODUCTION AND SUMMARY

In 1977, the General Assembly adopted the Comprehensive Election Act which, in part, provided clear, detailed guidelines that would govern legal contests arising from Missouri elections. *See* §§ 115.001 to 115.641, RSMo.[1] The General Assembly assigned the judiciary sole responsibility for hearing and resolving pre-election challenges to candidates' constitutional qualifications for office. The statutes establish who can initiate such challenges, when and where they must be filed, and also provide detailed procedures to guide the progress of these challenges through the courts. The design of these statutes is to bring predictability and order to what might otherwise be a chaotic process, and to ensure that the courts will resolve election disputes in a manner that is both timely and fair to all parties.

In this case, the Secretary of State ("the Secretary") has utterly disregarded this established statutory system. Instead, he claims virtually unbounded authority to investigate and draw legal conclusions about candidates' qualifications and, if he (or one of his non-attorney subordinates) deems a candidate's qualifications wanting, to unilaterally declare the candidate unqualified for office and exclude them from the ballot. In exercising this usurped power the Secretary's office follows no established procedure, offers no hearings, and respects no deadlines.

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[1] All statutory references are to Missouri Revised Statutes (2000), as updated, unless otherwise noted.

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The Appellant, Natalie A. Vowell ("Vowell"), contends that Missouri law does not permit the Secretary to exercise authority that the General Assembly has assigned to the courts. In March, Vowell submitted her declaration of candidacy for election to serve the 78th Representative District in the state legislature. Having lived in this district for three years, Vowell believed when she filed her declaration of candidacy and she believes now that she meets every legitimate qualification required to serve her district in the General Assembly. The Secretary's office accepted and filed Vowell's declaration. The April 24 statutory deadline for challenges to candidates' qualifications passed without any action or objection from Vowell's opponent in the primary election. But nearly two weeks after that deadline had passed, non-attorneys within the Secretary's office sent Vowell a letter noting that at the time of the general election in November 2014 Vowell will only have been registered to vote in Missouri for sixteen months, rather than the twenty-four months required by Article III, Section 4 of the Missouri Constitution. The letter went on to state that if Vowell did not satisfy the Secretary's office of her qualifications, the Secretary would refuse to certify her as a candidate on the August primary election ballot. The letter cited no statute giving the Secretary authority to question Vowell's qualifications or to act as though her declaration of candidacy was invalid, nor did it offer any formal hearing at which she could defend her qualifications.

Vowell responded by filing this lawsuit, seeking a declaration that the Secretary was acting improperly and an order preventing him from leaving her off the certified list of candidates for the August primary election ballot. Her petition specifically asserted that leaving her off the ballot would violate her rights under the First and Fourteenth

Amendments. The Secretary filed neither a responsive pleading nor a motion to dismiss, but argued at the hearing on Vowell's Motion for Temporary Restraining Order that the trial court must rule on the question of Vowell's qualifications before the court could even consider her challenge to the Secretary's authority to raise that very question. Vowell offered to provide briefing to rebut the Secretary's arguments, but the trial court declined and several days later adjudged Vowell unqualified. Because of that conclusion, the judge dismissed her Petition without ever addressing her contention that the question of her qualifications was not even properly before the court or that excluding her from the ballot would violate her rights under the First and Fourteenth Amendments.

On Appeal, this Court must now answer the following questions:

(1) Did the trial court err by issuing a ruling on Vowell's qualifications without addressing her challenges to the Secretary's authority and Missouri's durational voter registration requirement?

(2) Once the Secretary has accepted and filed a citizen's declaration of candidacy for a primary election, does Missouri law allow him unilaterally to render his own judgment as to the candidate's qualifications for office and to exclude the candidate from the ballot?

(3) Does Missouri's durational voter registration requirement violate the First and Fourteenth Amendments by penalizing citizens who express their frustration with the political status quo by refusing to register to vote, restricting citizens' freedom to travel, and/or denying them equal protection of the laws?

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JURISDICTIONAL STATEMENT

This is an appeal of a judgment of the Cole County Circuit Court, entered on May 21, 2014. Pursuant to this Court's authority under Article V, section 10 of the Missouri Constitution, this Court accepted transfer of this case after the Court of Appeals, Western District, issued an opinion in Vowell's favor.

STATEMENT OF FACTS

Natalie A. Vowell ("Vowell") has lived in St. Louis since 2010 and has lived in the area now designated as the 78th Representative District since 2011. (LF at 4-5). Although for the duration of this period she was qualified to register to vote in Missouri, Vowell was intensely frustrated with the political status quo and she symbolically expressed this frustration by choosing not to register to vote.[2] (LF at 5). By the summer of 2013, however, Vowell's friends had persuaded her that the political status quo would only improve if good people got involved as voters and as candidates for office. (LF at 5). She registered to vote in July 2013 and on March 11, 2014, Vowell submitted to the Secretary's office her declaration of candidacy for election to represent the 78th

[2] Vowell has consistently maintained that her refusal to register to vote prior to July 17, 2013, (despite being qualified to do so) was an expressive action intended to convey a message of her frustration with the political status quo. (LF at 10-11, 17-18).

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Representative District in the General Assembly. (LF at 5). Vowell's paperwork was complete and the Secretary's subordinates accepted and filed her declaration of candidacy without objection. (LF at 5). Although Section 115.526 provides candidates in a primary election a window of time within which they may challenge their opponents' qualifications, no one utilized that provision to challenge Vowell's qualifications. (LF at 5-6). The deadline for filing a challenge to the qualifications of a candidate for the August 5, 2014, primary election was April 24, 2014. (LF at 6).

On May 6, 2014, nearly two weeks after that statutory deadline had passed, the Secretary's office sent Vowell a letter stating that it questioned whether she met the durational voter registration requirement established in Article III, section 4 of the Missouri Constitution. (LF at 6-7, 14). The letter indicated that unless Vowell satisfied the Secretary's office that she was qualified, the Secretary would refuse to certify her as a candidate on the August 2014 primary ballot. (LF at 7, 14). The letter cited no statutory basis for the authority it asserted, and it did not offer any formal hearing or avenue for appeal. (LF at 7, 14). The Secretary has not promulgated any regulations that would guide or explain its evaluation of candidates' qualifications for office. (LF at 9). In fact, the Secretary has asserted that his office has complete discretion to decide who will be permitted to appear on a primary ballot. (LF at 9).

With the election rapidly approaching, Vowell opted to file suit on May 13, 2014, rather than wait for the Secretary to announce a formal decision. (LF at 1, 4). Vowell's Petition contested the Secretary's authority to make and act upon a unilateral, non-judicial determination of a candidate's qualifications and asserted that excluding her from

the ballot would violate rights protected under the First and Fourteenth Amendments to the U.S. Constitution. (LF at 7-11). Vowell specifically alleged that her fellow residents of the 78th District would be harmed if they were deprived of the opportunity to vote for Vowell to represent their district in the Missouri House of Representatives. (LF at 11). Vowell also concurrently filed a Motion for Temporary Restraining Order and Preliminary Injunction which asserted that the First and Fourteenth Amendments would not permit Missouri to block Vowell from the ballot as a consequence of her prior expressive decision to protest a political system she believed to be broken by refraining from registering to vote. (LF at 17-18).

The Secretary did not file a responsive pleading, a motion to dismiss, or any written response to Vowell's Motion for Temporary Restraining Order and Preliminary Injunction. (LF at 1). Instead, he argued for the first time at the hearing that (1) the trial court must rule on the question of the candidate's qualifications *before* Vowell could contest the Secretary's authority to raise that question, and (2) that Article III, section 4 of the Missouri Constitution precludes Vowell from running for or serving in the Missouri House of Representatives. (Tr. at 11). The Secretary also accused Vowell of lying in her declaration of candidacy because (in his opinion) she could not qualify to serve in the office she was seeking. (Tr. at 13, 33). Vowell retorted that she does believe herself to qualify to serve in the House of Representatives, that the question of her qualifications was not properly before the court, and that she is qualified to serve in the

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legislature.[3] (Tr. at 20). She also argued that the U.S. Constitution invalidates a durational voter registration prerequisite for service as a state legislator because it would unjustifiably penalize citizens who, like herself prior to July 17, 2013, had made symbolically expressive decisions not to register to vote. (Tr. at 22-24). The Secretary asserted that Vowell was precluded from contesting the validity of the durational voter registration requirement by failing to address it as soon as possible. (Tr. at 17). Vowell responded that she had, indeed, raised the issue in her pleadings and Motion for Temporary Restraining Order, (Tr. 21), but twice specifically requested leave to amend her pleadings if the judge thought it necessary for the sake of preserving her constitutional claims. (Tr. at 29, 35). The trial judge refused briefing, (LF at 35), and on May 21, 2014, issued a Judgment holding that Vowell's symbolically expressive decision not to register to vote until July 17, 2013, rendered her ineligible to run for or be elected to the Missouri House of Representatives. (LF at 22-23).

[3] The Judgment incorrectly stated that Vowell "does not aver that she is a qualified voter[.]" (LF at 22). Vowell is, in fact, a qualified voter and her Declaration of Candidacy and the trial transcript demonstrate she has consistently maintained that she meets all legitimate qualifications to serve her district in the General Assembly.

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POINTS RELIED ON

I. The Trial Court Erred In Ruling That Vowell Lacked Standing And In Addressing Vowell's Qualifications To Serve In The Missouri House Of Representatives, Because That Question Was Not Properly Before The Court, In That No One Had Challenged Vowell's Qualifications Under Section 115.526, RSMo., And Missouri Law Gives The Secretary Of State No Authority To Challenge The Qualifications Of A Candidate To Serve In The Missouri General Assembly.

Section 115.526, RSMo.

Article V, section 18 of the Missouri Constitution

Section 536.150, RSMo.

St. Louis County v. State, 424 S.W.3d 450 (Mo. banc 2014)

II. The Trial Court Erred In Failing To Enjoin The Secretary Of State From Excluding Vowell From The August Primary Ballot, Because The Secretary Of State Had A Ministerial Responsibility To Certify Vowell For The Ballot, In That The Secretary Of State's Office Had Accepted And Filed Vowell's Declaration Of Candidacy And There Had Been No Court Order Pursuant To Section 115.526, RSMo., Deeming Vowell Unqualified To Be A Candidate For The Missouri House of Representatives.

State ex rel. Farris v. Roach, 150 S.W. 1073 (Mo. 1912)

State ex rel. Cameron v. Shannon, 33 S.W. 1137 (Mo. 1896)

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State ex rel. Thomas v. Neeley, 128 S.W.3d 920 (Mo. App. S.D. 2004)

State ex rel. Walton v. Blunt, 723 S.W.2d 405 (Mo. App. W.D. 1986)

III. The Trial Court Erred In Ruling That The Durational Voter Registration Requirement Of Article III, Section 4 Of The Missouri Constitution Precludes Vowell From Being Elected To The Missouri House Of Representatives, Because The First And Fourteenth Amendments To The U.S. Constitution Prohibit The Enforcement Of The Durational Voter Registration Requirement, In That It Would Deny Vowell's Right To Travel, To Enjoy Due Process And Equal Protection Of The Law, And Her Freedom Of Speech.

Anderson v. Celebrezze, 460 U.S. 780 (1983)

Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182 (1999)

Bd. of Supervisors of Elections of Prince George's County v. Goodsell, 396 A.2d 1033 (Md. 1979)

Gangemi v. Rosengard, 207 A.2d 665 (N.J. 1965)

STANDARD OF REVIEW

"A grant of judgment on the pleadings will be affirmed only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petition could not prevail under any legal theory." *Emerson Electric Co. v. Marsh & McLennan Companies*, 362 S.W.3d 7, 12 (Mo. banc 2012). Courts considering such motions review a plaintiff's petition "in an almost academic matter, to determine if the

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facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." *State ex rel. Union Elec. Co. v. Dolan*, 256 S.W.3d 77, 82 (Mo. banc 2008) (citing *Reynolds v. Diamond Foods & Poultry, Inc.*, 79 S.W.3d 907, 909 (Mo. banc 2002). "The petition will withstand the motion if it invokes substantive principles of law entitling plaintiff to relief[.]" *Id*. (citation omitted).

Whether a petitioner has standing to assert a claim is a question of law reviewed de novo. *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 622 (Mo. banc 2011). Where a trial court has failed "to make a declaration settling rights, as when it dismisses petition without a declaration, a reviewing court may make the declaration." *Nicolai v. City of St. Louis*, 762 S.W.2d 423, 426 (Mo. banc 1988).

The interpretation of a statute is a question of law, and appellate review is *de novo*. *Nelson v. Crane*, 187 S.W.3d 868, 869 (Mo. banc 2006). The constitutionality of a statute is a question of law, the review of which is *de novo*. *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 737 (Mo. banc 2007). This Court reviews a trial court's interpretation of the Missouri Constitution *de novo*. *StopAquila.org v. City of Peculiar*, 208 S.W.3d 608, 611 (Mo. banc 2006).

As a general rule, statutes are presumed to be valid. *State v. Richard*, 298 S.W.3d 529, 531 (Mo. banc 2009). But where, as in this case, a law restricts or penalizes speech, the U.S. Supreme Court has made exceedingly clear that *the government* bears the burden of justifying that restriction or penalty. *McCutcheon v. Federal Election Commission*, 134 S.Ct. 1434, 1452 (April 2, 2014); *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 816 (2000). Additionally, this Court has held that the Fourteenth Amendment's Equal

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Protection Clause requires the application of strict scrutiny to a provision that denies "the right to run for public office based on the particular office sought" and that *the government* bears the burden of justifying its restriction. *Labor's Educational and Political Club-Independent v. Danforth*, 561 S.W.2d 339, 348 (Mo. banc 1977).

ARGUMENT

I. The Trial Court Erred In Ruling That Vowell Lacked Standing And In Addressing Vowell's Qualifications To Serve In The Missouri House Of Representatives, Because That Question Was Not Properly Before The Court, In That No One Had Challenged Vowell's Qualifications Under Section 115.526, RSMo., And Missouri Law Gives The Secretary Of State No Authority To Challenge The Qualifications Of A Candidate To Serve In The Missouri General Assembly.

The trial court considered this case as though the Secretary had filed a motion for judgment on the pleadings. [LF at 22]. "A grant of judgment on the pleadings will be affirmed only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petition could not prevail under any legal theory." *Emerson Electric Co.*, 362 S.W.3d at 12. In her petition and at argument below, Vowell contended that the Secretary lacked authority under Missouri law to exclude her from the ballot based on his office's unilateral, unauthorized evaluation of her qualifications, and also that leaving her name off the ballot for the August 5, 2014, primary election would violate several constitutional provisions. The Secretary's letter of May 6, 2014, which Vowell included as an Exhibit with her Petition (LF at 14), identifies Article

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III, section 4 of the Missouri Constitution as the sole basis for the Secretary's decision to exclude Vowell from the ballot. Although Vowell's Petition did not explicitly state that her First and Fourteenth Amendment challenges were directed at Article III, section 4, it is reasonable to infer that Vowell's challenges included (but were not necessarily limited to) the durational voter registration requirement the Secretary had identified as the reason he intended to exclude her from the ballot.

Vowell Has Standing Because Her Petition Presented A Justiciable Claim

The trial court dismissed Vowell's Petition, claiming that Vowell lacked standing to bring her challenges. (LF at 23). "In a declaratory judgment, the criterion for standing is whether the plaintiff has a legally protectable interest at stake." *St. Louis County v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014). "Standing can be based on an interest that is 'attenuated, slight or remote,'" as long as there is "a showing of an actual personal interest or stake in the outcome of the litigation." *Id.* A legally protectable interest exists "if the plaintiff is affected directly and adversely by the challenged action or if the plaintiff's interest is conferred statutorily." *St. Louis Ass'n of Realtors*, 354 S.W.3d at 623. "There is no litmus test for determining whether a legally protectable interest exists; it is determined on a case-by-case basis." *Mo. Alliance for Retired Ams. v. Mo. Dept. of Health & Senior Servs.*, 229 S.W.3d 670, 676 (Mo. banc 2009).

In this case, Vowell is a candidate for political office. She submitted the required paperwork at the appropriate time and the Secretary accepted and filed her declaration of candidacy. Being a candidate for political office is a "legally protectable interest," which is demonstrated by the fact that the General Assembly has created a comprehensive

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statutory framework to govern challenges to a person's candidacy. *See* §§ 115.526 to 115.601. Although no one followed these statutory procedures to challenge her qualifications and no statutorily-authorized entity had ruled Vowell ineligible to be voted for, the Secretary unilaterally and unlawfully rendered his own quasi-judicial decision and threatened to end Vowell's candidacy by excluding her from the ballot. The Secretary's action directly and adversely affected Vowell, and she filed this lawsuit to challenge the Secretary's authority to take that action. Thus, Vowell has a "legally protectable interest at stake" and, therefore, standing to bring her case before the courts. Missouri courts have allowed several similar cases to proceed without expressing any concern as to the standing of candidates challenging election officials' authority to exclude them from the ballot. *See, e.g., State ex rel. Farris v. Roach*, 150 S.W. 1073 (Mo. 1912) (allowing candidate for office to challenge the Secretary of State's refusal to certify his name for the ballot because the Secretary lacked authority to evaluate candidate's qualifications); *State ex rel. Thomas v. Neeley*, 128 S.W.3d 920 (Mo. App. S.D. 2004) (allowing candidate for office to challenge election official's refusal to certify his name for the ballot because election official lacked authority to evaluate candidate's qualifications).

Additionally, Missouri law makes clear that a "legally protectable interest" may be conferred by statute. In the instant case, both Article V, section 18 of the Missouri Constitution and Section 536.150 confer standing on Vowell. Article V, section 18 of the Missouri Constitution grants the judiciary authority to review "(a)ll final decisions, findings, rules and orders of any administrative officer or body existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights,"

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and it explicitly says "such review shall include the determination whether the same are authorized by law(.)" The Secretary of State is "an administrative officer… existing under the constitution," and Vowell explicitly challenged whether the determination he made in regard to her eligibility for office is authorized by law. (LF at 8). Furthermore, the Secretary argued below that his office is subject to the Administrative Procedures Act, (Tr. at 16), and the trial court agreed, holding that if Vowell was entitled to any relief at all from the Secretary's determination she could file an action pursuant to Section 536.150. (LF at 22). But even though the trial court acknowledged that Vowell had a statutory right to challenge the Secretary's determination, it nevertheless erred by failing to either (1) address the challenge Vowell had raised to the Secretary's authority to judge her qualifications, (2) address the constitutional challenge that Vowell had raised as to the validity of the durational voter registration requirement the Secretary relied on to exclude her from the ballot, or (3) allow Vowell to amend her pleading so as to cure any alleged deficiencies in her petition so that the court could then consider the merits of her claim.

Vowell has undeniably demonstrated the "legally protected interest" required to confer standing in this matter. Even if this Court ultimately rules against her as to the merits of her claims regarding the Secretary's authority to judge her qualifications and/or the constitutional validity of the durational voter registration requirement, Vowell is entitled to have this Court rule on the questions she has raised.

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Section 115.526 Is The Exclusive Method Through Which A Legislative Candidate's Article III, Section 4 Qualifications May Be Challenged Before A Primary Election

Missouri law provides a clear, comprehensive, and exclusive statutory framework to guide – and limit – challenges to political candidates' qualifications prior to an election.[4] Section 115.526 governs challenges to the qualifications of a would-be state legislator that take place prior to an election, while Section 115.563.2 governs challenges to the qualifications of one who has already been elected to serve in the General Assembly. Section 115.526 establishes that "(a)ny candidate for nomination to an office at a primary election may challenge the declaration of candidacy or qualifications of any other candidate for nomination to the same office[.]"[5] § 115.526.1. It establishes that the challenge must

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[4] As the Secretary noted at argument below, this Court has ruled that the Comprehensive Election Reform Act of 1977 (in which Section 115.526 originated) did not abolish the traditional quo warranto action against one alleged to have unlawfully usurped public office. *State v. Young*, 362 S.W.3d 386 (Mo. banc 2012). But quo warranto may only be pursued after an election has taken place, and the Missouri Constitution forbids courts to consider quo warranto claims against persons elected to or serving in the state legislature. *State ex inf. Danforth v. Banks*, 454 S.W.2d 498 (Mo. banc 1970).

[5] Notably, Section 115.526 *only* authorizes a candidate for office to bring this sort of a challenge. It does not authorize the Secretary (or any other member of the executive branch) to do so.

be initiated "by filing a verified petition with the appropriate court as is provided for in case of a contest of election for such office in sections 115.527 to 115.601." *Id.* It establishes that the challenger's petition "shall set forth the points on which the challenger wishes to challenge the declaration of candidacy or qualifications of the candidate and the facts he will prove in support of such points, and shall pray leave to produce his proof." *Id.* It establishes that "[i]n the case of a challenge to a candidate for nomination in a primary election, the petition shall be filed not later than thirty days after the final date for filing for such election." § 115.526.2. It accounts for disqualifying factors that might take place after that deadline has passed, stating that "[i]n the case of a disability occurring after said respective deadlines, the petition shall be filed not later than five days after the disability occurs or is discovered." *Id.* It establishes a clear set of procedures courts are required to follow in assessing the challenge and also the procedures that will govern any appeals from the trial court's judgment. § 115.526.3. It also states the consequences if the judiciary determines that a candidate is not qualified to seek or hold the office for which they are a candidate. § 115.526.4.

To sum up, Section 115.526 represents the legislature's carefully considered determination that (1) only opposing candidates for the same office should be empowered to challenge another candidate's constitutional qualifications prior to an election, (2) only courts should be empowered to draw authoritative, legally enforceable conclusions regarding candidates' constitutional qualifications, (3) there should be limits as to when and how courts may entertain challenges to candidates' constitutional qualifications during an election cycle, and (4) parties involved in challenges to candidates' constitutional

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qualifications should enjoy the clearly defined, expedited judicial procedures detailed in sections 115.527 to 115.601.

The legislature adopted Section 115.526 as part of the Comprehensive Election Act of 1977 because prior to its passage there was a significant degree of uncertainty regarding how pre-election challenges to candidates' constitutional qualifications should proceed. *See Clark v. City of Trenton*, 591 S.W.2d 257 (Mo. App. W.D. 1979). The legislature vested the courts with the power to consider and pass judgment on candidates' constitutional qualifications because the interpretation and application of the law is quintessentially a judicial function. The plain language of Section 115.526 provides no role for the Secretary in challenging or evaluating a candidate's constitutional qualifications,[6] but the Secretary now claims complete discretion to decide for himself who will appear on a primary ballot as a candidate for the state legislature. (LF at 9). He makes these decisions without any regulatory framework to govern his evaluations and without any requirement that candidates be notified or afforded a hearing at which candidates may dispute the Secretary's determinations before he issues a certified list of candidates.[7] (LF at 9).

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[6] "[T]he Secretary of State derives his or her authority to act from statutes[.]" *Beavers v. Recreation Ass'n of Lake Shore Estates, Inc.*, 130 S.W.3d 702, 710 (Mo. App. S.D. 2004).

[7] The Secretary's role as an executive officer arguably prohibits him from exercising power properly belonging to the judiciary. Mo. Const. Art. II, § 1.

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Assuming, contrary to the plain language of the statute, that the Secretary is correct and that the Missouri law affords the Secretary a role in evaluating candidates' qualifications for office, the only reasonable conclusion would be that the legislature intended the Secretary to exercise that authority *within* the framework of Section 115.526, rather than having the unbounded authority he claims to conduct his own investigations and draw his own conclusions on his own timeline. Operating under the guidelines of Section 115.526, the Secretary would be bound by the same statutory deadlines and procedural requirements that govern any other pre-election challenge to a candidate's qualifications. He would have to file his challenge in the courts, specifying his claims and the facts he intends to prove to back up those claims, and requesting a formal hearing at which to present his evidence. He would have to initiate his challenges in the same timely manner that Section 115.526 requires of candidates. Vowell does not agree that Missouri law authorizes or that the General Assembly intended any such thing, but if the Secretary is correct that his office has been empowered to intervene in the determination of candidates' qualifications, this would be the only plausible way for the Secretary to exercise that newfound authority.

But even if the legislature intended to empower the Secretary to work within the framework of Section 115.526, his utter failure in this case to comply with *any* provision of Section 115.526 means that he was acting improperly and the trial court erred in condoning the Secretary's actions. In this case the Secretary never filed an action in Circuit Court as required by Section 115.526.1 – in fact, he did not submit to the trial court any

written arguments explaining his basis for believing Vowell unqualified.[8] The Secretary did not respect any deadlines imposed by Section 115.526. The Secretary never provided any formal hearing that would be presided over by a neutral arbiter and would allow testimony from and cross-examination of witnesses. Furthermore, even if it is assumed that the Secretary first suspected Vowell was unqualified on May 6, the date on which the Secretary's representative sent the letter questioning her qualifications, Section 115.526.2 would have required a challenge to be filed in court "not later than five days after" the Secretary discovered a "disability." The Secretary did not even do this. Thus, there could not have been any valid challenge to Vowell's qualifications under Section 115.526, and because Section 115.526 is the *exclusive* mechanism the legislature has provided for contesting the Article III, section 4 qualifications of candidates for the state legislature prior to an election, the absence of a valid challenge rendered the trial court powerless to rule on that question. *See Dally v. Butler*, 972 S.W.2d 603, 607-08 (Mo. App. S.D. 1998).

The facts of the instant case demonstrate the legislature's wisdom in adopting the procedures and limitations included in Section 115.526 because they illustrate exactly what happens when that statute is ignored. The trial court below abandoned the statute's clear, comprehensive procedures and limitations, relieving the Secretary of any responsibility to

[8] Had the Secretary offered written arguments, Vowell would have had a much clearer opportunity to contest the Secretary's improper claims and to present to the trial court full legal arguments in her own support.

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submit a pleading identifying the reasons it believed Vowell to be unqualified. The trial court also denied Vowell the chance to submit briefs presenting decades' worth of precedent supporting her arguments that the Secretary lacks authority to challenge her qualifications and that Missouri's durational voter registration requirement violates the First and Fourteenth Amendments. Additionally, because the trial court disregarded Section 115.526 it concluded that Vowell could only contest the Secretary's action by seeking judicial review under Section 536.150 – but that statute makes clear that Vowell would not be permitted to initiate such a claim until the Secretary formally issued a "decision… determining the (candidate's) legal rights, duties or privileges(.)"[9] In the instant case, the Secretary did not issue any such final "decision" to Vowell until May 23, 2014, almost entire month after the deadline had passed for challenges under Section 115.526 and just one month before the June 24, 2014, statutory deadline after which courts would be prohibited from ordering candidates' names added to the August 5, 2014, ballot. If this Court condones the arguments asserted by the Secretary and adopted in the Judgment

[9] Although in this case the Secretary gave Vowell some advance warning that the Secretary was planning to exclude her from the ballot, it does not appear that the Secretary believes that any law requires him to notify a candidate that their qualifications are under review. Thus, it may be that a candidate would have no idea that their qualifications are being contested until the Secretary issues a certified list that does not include the candidate's name.

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of the trial court below, no law would prevent the Secretary from putting other candidates for office at an even more severe political and legal disadvantage than the one Vowell currently faces.

It should also be noted that allowing the Secretary the authority he claims could also give certain political candidates an end run around Section 115.526. As we have seen in the instant case, even though 115.526 establishes a clear deadline for the initiation of challenges, a clever candidate could forgo the expense and frustration of a Section 115.526 challenge and instead quietly prod the Secretary to conduct his own evaluation of their opponents' qualifications *after* the deadline imposed by Section 115.526 has already passed. This sort of maneuver would dramatically multiply the hardship imposed on the target of inquiry while simultaneously relieving the target's political opponent of the costs and hassles that would attend bringing their own challenge under Section 115.526. Even if the target successfully defends their candidacy by pursuing an action under Section 536.150, they will have suffered incredible distraction and expense in the heat of their campaign while their opponent may dedicate their full time, attention, and resources to campaigning. The legislature surely never intended such a result, but that is the inevitable consequence of the unlimited power the Secretary has claimed.

The legislature enacted Section 115.526 with the expectation that it would be the exclusive mechanism for challenging the qualifications of a candidate to serve in the General Assembly prior to an election. Section 115.526 does not give the Secretary any role in evaluating or challenging candidates' constitutional qualifications to serve in office. In the absence of a valid challenge under Section 115.526, Missouri courts are not

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empowered to rule on a pre-election challenge to a candidate's qualifications for office. Because no one raised a Section 115.526 challenge to Vowell's qualifications, the question of her qualifications was not properly before the trial court and the court erred in attempting to evaluate Vowell's qualifications. The trial court's holding to the contrary should be reversed.[10]

II. The Trial Court Erred In Failing To Enjoin The Secretary Of State From Excluding Vowell From The August Primary Ballot, Because The Secretary Of State Had A Ministerial Responsibility To Certify Vowell For The Ballot, In That The Secretary Of State's Office Had Accepted And Filed Vowell's

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[10] Vowell notes that even if this Court rules that the question of her qualifications was not properly before the trial court, Missouri law provides at least two more opportunities for appropriate parties to contest her qualifications. Section 115.526 allows an opponent in the general election to bring a judicial challenge her qualifications at an appropriate time in advance of that election, and both Article III, section 18 of the Missouri Constitution and Section 115.563.2 authorize the House of Representatives to judge the qualifications of its members after an election. Contrary to opposing counsel's argument at the hearing before the trial court (Tr. at 18, 29-30), however, this Court has concluded that in light of Article III, section 18 of the Missouri Constitution, once a candidate has been elected to the General Assembly quo warranto is not available to contest their qualifications. *State ex inf. Danforth v. Banks*, 454 S.W.2d 498, 500 (Mo. banc 1970).

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Declaration Of Candidacy And There Had Been No Court Order Pursuant To Section 115.526, RSMo., Deeming Vowell Unqualified To Be A Candidate For The Missouri House of Representatives.

The Secretary argued below that Section 115.387 not only gives his office plenary authority to examine and judge candidates' qualifications, it obliges him to do so. (Tr. at 18). An examination of this statute and others related to it will demonstrate that this cannot have been the legislature's intent. "[T]he primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute." *State ex rel. Nothum v. Walsh*, 380 S.W.3d 557, 565 (Mo. banc 2012). "In determining the intent and meaning of statutory language, the words must be considered in context and sections of the statutes in pari materia, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words." *South Metro. Fire Prot. Dist. v. City of Lee's Summit*, 278 S.W.3d 659, 666 (Mo. banc 2009).

Section 115.387 Neither Authorizes Nor Requires The Secretary To Unilaterally Contest And Adjudicate Candidates' Qualifications For Office

Section 115.387 establishes the Secretary's responsibility for certifying certain information about candidates for office, the type of task that for well over a century

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Missouri courts have deemed to be "ministerial."[11] *See State ex rel. Stokes v. Roach*, 190 S.W. 277, 278 (Mo. 1916); *State ex rel. Farris v. Roach*, 150 S.W. 1073, 1076 (Mo. 1912); *State ex rel. Cameron v. Shannon*, 33 S.W. 1137, 1144 (Mo. 1896); *see also State ex rel. Thomas v. Neeley*, 128 S.W.3d 920, 927 (Mo. App. S.D. 2004). Specifically, Section 115.387 establishes a deadline by which the Secretary must distribute to local election authorities a certified list containing certain information about candidates for office, including each candidate's (1) name, (2) address, (3) the office sought, and (4) the party each candidate wishes to represent. Importantly, the information the Secretary is required to certify is precisely the information that Section 115.349 requires candidates to provide under oath in their declarations of candidacy. Because the information is provided under oath, the Secretary's responsibility *is not* to certify the truth of the candidate's declaration, but rather to certify that the candidate has provided the required information and done so within the proper timeframe and in the required format. This is precisely what this Court held in *Farris*, holding that where no one had lodged a timely objection to a candidate's certificate of nomination the Secretary of State had a "purely ministerial" duty to certify the candidate's name to the appropriate election officials. *Farris*, 150 S.W. at 1074. It is also what the Southern District Court of Appeals held in *Thomas*, holding that where a

[11] In fact, this Court has noted that *particularly in the context of elections*, "[t]he vast majority of the duties assumed by the Secretary of State are ministerial." *In re Impeachment of Moriarty*, 902 S.W.2d 273, 277 (Mo. banc 1994).

candidate had "timely fil[ed] his written, signed, sworn declaration of candidacy" there was "no basis under which [the election official] may make a discretionary decision not to certify the name of that candidate." *Thomas*, 128 S.W.3d at 927.

The question then is what the legislature meant by including in Section 115.387 this eleven-word phrase: "and is entitled to be voted for at the primary election"? The phrase seems to presume that, even in light of properly constituted declarations of candidacy, some candidates still might not be "entitled to be voted for." The answer is found in nearby sections of Chapter 115. Missouri law establishes several ways that a candidate can be disqualified from participating in an election. For example, a candidate is disqualified if:

- They are delinquent in the payment of state income taxes, personal property taxes, real property taxes on their place of residence, or if they are the past or present corporate officer of any fee office that owes taxes to the state. § 115.342.
- They have been found guilty of or pled guilty to a felony or misdemeanor under federal law. § 115.348.
- They have been convicted of or found guilty of or pled guilty to a felony under Missouri law. § 115.350.
- Without withdrawing their declaration as one party's candidate for nomination or election to an office, they file as another party's candidate or as an independent candidate for nomination or election to the office for the same term. § 115.351.
- Without withdrawing as a candidate for one office, they file for another office to be filled at the same election. § 115.351.

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- They fail to satisfy a valid constitutional requirement for serving in the office they are seeking. § 115.526.

The Secretary claims that Section 115.387 obligates him to determine the qualifications of every single candidate before he certifies their names to local election authorities.[12] If the Secretary is correct, however, Section 115.387 must also obligate him to investigate and judge *all* of these potentially disqualifying factors. But the Secretary has admitted that his office would not necessarily have access to information regarding several of the statutory disqualifying factors, (Tr. at 15-16, 33), and the Secretary has not developed any regulations or guidelines that would instruct his non-attorney staff as to how they would

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[12] The Secretary argues that the legislature's decision to assign the Secretary's office responsibility for operating the Missouri Voter Registration System is somehow evidence that the legislature intended the Secretary to conduct investigations into candidates' qualifications. Vowell maintains that the legislature assigned the Missouri Voter Registration System to the Secretary's office simply because the system needed to be run by a state-level office and, given the Secretary's role in helping to administer elections, it simply made his office the logical choice to operate that system. Nothing in Section 115.158 even remotely suggests that responsibility for maintaining the Missouri Voter Registration System changes the nature of the Secretary's purely ministerial task of certifying information provided by candidates for office or imbues the Secretary with new, far-reaching authority to investigate candidates' qualifications for office.

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go about gathering information related to these disqualifying factors and evaluating how the information they gathered might affect a candidate's qualifications for office. (LF at 9). The only thing that *is* clear is that the Secretary has asserted complete discretion to decide for himself who will be permitted to appear on a primary ballot. (LF at 9).

Vowell offers a very different interpretation of the phrase "and is entitled to be voted for at the primary election" – one that gives the phrase meaning while still respecting both the ministerial nature of the Secretary's responsibility to certify candidate information to local election authorities and the broader context the legislature has established for evaluating candidates' qualifications.

As the Southern District Court of Appeals suggested in *Thomas*, where a candidate has submitted the written, signed, and sworn declaration of candidacy required by Sections 115.347 and 115.349, the Secretary should presume the truth of the declaration's contents and should certify the information the candidate provided. The exception to this general rule is if the Department of Revenue acting pursuant to Section 115.342,[13] or a court of law following the procedures established in Section 115.526, determines that a candidate

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[13] Section 115.342 states that if the Department of Revenue receives a complaint alleging a candidate's failure to comply with tax laws, it may investigate that complaint. If the Department finds a deficiency and the candidate does not remedy the deficiency within thirty days, the Department of Revenue notifies the Secretary that the candidate is disqualified.

should be disqualified, in which case either the Department of Revenue or the court will notify the Secretary of the candidate's disqualification. In the wake of one of these statutorily-authorized determinations, a candidate would no longer be "entitled to be voted for at the primary election," and Section 115.387 would require the Secretary to exclude that candidate's information from the certified list to be sent to local election authorities.

Unlike the Secretary's wildly expansive interpretation of Section 115.387, this proper interpretation of that statute respects the fact that in Sections 115.526 to 115.601 the General Assembly demonstrated a deep concern with ensuring that *courts* handle election disputes, and that they do so in a timely and fair manner. The legislature has provided forty statutory sections comprising a detailed, thorough framework within which courts are required to evaluate such contests. The Secretary's interpretation of Section 115.387 would render those forty statutory sections redundant because if the Secretary is truly responsible for evaluating the qualifications of *every* candidate there would be no need for candidates to go to court to challenge their opponents' qualifications. And, although the Secretary has protested that respecting the limits of Section 115.526 would require the Secretary to "turn a blind eye" to candidates who (in the Secretary's opinion) ought to be disqualified, the truth of the matter is that under Vowell's interpretation nothing in the law prevents the Secretary from bringing any disqualifying factors of which they are aware to the attention of the candidates' opponents. Once the Secretary has provided such information to the relevant candidates, the candidates may then pursue a Section 115.526 action that would allow the courts to adjudicate any disputed qualifications in the timely, orderly, and fair manner that the legislature has provided.

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Missouri Courts Have Clearly Limited The Discretion

A Secretary Of State May Lawfully Exercise

This is far from the first time that a Missouri court has dealt with a situation in which a The Secretary of State improperly claimed that the legislature had given him significant discretion in the discharge of his duties. In *State ex rel. Walton v. Blunt*, 723 S.W.2d 405 (Mo. App. W.D. 1986), the Court of Appeals addressed the question of whether the Secretary had the authority to employ a lottery system to determine the order in which declarations of candidacy would be filed for those who arrived at his office prior to 8:00am on the first day of a filing season for a primary election. The relevant statutes stated that the Secretary must list candidate's names on the ballot in the order in which their declarations of candidacy were filed. The Secretary argued that where would-be candidates were arriving at his office before it was open, the statutes allowed him discretion to randomly set the order in which their declarations would be filed. The Court of Appeals disagreed, holding that the Secretary "is bound by the statutes enacted by the General Assembly," *id.* at 408, that he had no authority to fashion his own regulations under Chapter 115, id. at 407-08, and that if he wanted authority to institute his own procedures he must "seek and secure legislative change from the General Assembly." *Id.* at 409.

The authority the Secretary has claimed in the instant case is far more audacious than that claimed by the Secretary in *Walton*. The lottery system in *Walton* did not affect whether candidates would be listed on a ballot; it merely impacted where on the ballot they would be listed. Nor did the lottery system in *Walton* allow or encourage the circumvention

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of a thorough, intricately-designed process through which candidate's qualifications would be questioned and judicially determined.

Missouri courts' skepticism of Secretaries' claims of discretion goes much, much farther back in this state's history. The precedent most analogous to the instant case is *State ex rel. Farris v. Roach*, 150 S.W. 1073 (Mo. 1912). In that case the Secretary had timely filed the documents nominating Frank Farris to serve as a presidential elector on the Democratic ticket for the 1912 presidential election. No objections were initially raised to Farris's nomination, but the Democratic Party eventually endeavored to nominate someone else in Farris's place, arguing that Farris was disqualified from serving as a presidential elector. Even though Farris's certificate of nomination was in order, the Secretary of State refused to certify his name for the ballot. Farris sought - and was granted - a writ of mandamus requiring the Secretary to certify his name for the ballot. This Court ruled that once the Secretary filed the documents nominating Farris without objection, "it became [the Secretary's] duty to certify the name of the relator as such nominee to the proper county officials" and that duty was "purely ministerial." *Id.* at 1074. The Secretary had attempted to argue that the court should determine that Farris was ineligible to serve as an elector, but the court held that the question of the candidate's qualifications was not properly before it because no one had complied with the statutory requirements to challenge those qualifications. *Id*. at 1076.

The *Farris* court went on to compare the facts of that case to those in *State ex rel. Cameron v. Shannon*, 33 S.W. 1137 (Mo. 1896). In *Cameron* a city comptroller had refused to certify the bond for a newly-appointed superintendent of waterworks because the

comptroller questioned the new superintendent's qualifications. The *Cameron* court refused to address the superintendent's qualifications because the comptroller lacked any authority "to pass upon or decide the validity of relator's claim to office;" the comptroller had a purely ministerial duty to approve the superintendent's bond and the question of the superintendent's qualifications was not properly before the court. *Id.* at 1077. The *Farris* court found that the same reasoning should apply and warned of the dangers of allowing ministerial officers such as the Secretary to assume judicial functions, concluding that "the question of the eligibility of the relator is not before us for decision... regardless of his qualifications, it is the duty of the Secretary to certify out the nomination of relator." *Id.*

More recently, the Southern District Court of Appeals addressed a very similar case. In *State ex rel. Thomas v. Neeley*, 128 S.W.3d 920 (Mo. App. S.D. 2004), a resident of Branson, Missouri, submitted his declaration of candidacy to serve as Alderman for the City of Branson. His paperwork was complete and included an affidavit affirming that the information therein was true. The City Clerk signed and filed the form, but later questioned whether the candidate was, in fact, eligible to serve as Alderman. Eleven days after the City Clerk filed the candidate's declaration of candidacy, she announced that she would not certify his name for the ballot. Two weeks after the City Clerk's announcement, the candidate sued, arguing that once the City Clerk had accepted the declaration of candidacy the certification of the candidate's name for the ballot was purely ministerial. The trial court agreed, ordering the City Clerk to certify the candidate's name for the ballot, and the Court of Appeals affirmed. The Court of

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Appeals noted that the candidate had provided all the information required for a Declaration of Candidate for Nomination and had done so in a timely manner. Although the City Clerk argued that she had a duty to determine the eligibility of candidates for city offices, the court disagreed. There was no statutory authorization for the local election authorities to evaluate the eligibility requirements of the candidates – they had simply assumed that responsibility to themselves. The Court concluded that the City Clerk had a ministerial duty to certify the name of that candidate.

As Vowell has demonstrated, the proper understanding of the Secretary's responsibility in the instant case was as follows: Once the Secretary accepted and filed Vowell's declaration of candidacy, it should have been presumed to be valid. Under Section 115.526, Vowell's primary opponent had until April 24, 2014, to initiate a timely judicial challenge to Vowell's qualifications – and if the Secretary had concerns about Vowell's qualifications, he could have conveyed those concerns to Vowell's opponent. But in the absence of a successful Section 115.526 challenge Vowell's qualifications, the Secretary had a purely ministerial duty to include Vowell's name on the certified list of names to be included on the August primary election ballot. Missouri law does not give the Secretary authority to render and enforce his own conclusions as to a candidate's qualifications for office, and the trial court's ruling should have reflected this by granting the declaratory and injunctive relief Vowell sought without reaching the question of Vowell's qualifications to serve in the Missouri House of Representatives. Accordingly, this court should reverse the trial court's Judgment and hold that, given the facts of this case, the Secretary lacked

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authority to exclude Vowell from the certified list of candidates distributed to local election authorities.

III. The Trial Court Erred In Ruling That The Durational Voter Registration Requirement Of Article III, Section 4 Of The Missouri Constitution Precludes Vowell From Being Elected To The Missouri House Of Representatives, Because The First And Fourteenth Amendments To The U.S. Constitution Prohibit The Enforcement Of The Durational Voter Registration Requirement, In That It Would Deny Vowell's Right To Travel, To Enjoy Due Process And Equal Protection Of The Law, And Her Freedom Of Speech.

If this Court concludes that Missouri law does allow the Secretary to unilaterally judge a candidate's qualifications for office and exclude her from the ballot even no one has raised a valid challenge under Section 115.526, this Court must address the constitutional arguments Vowell has raised from the day she initiated this action. Namely, the Court must evaluate whether the First and Fourteenth Amendments to the U.S. Constitution allow this state to penalize citizens' movement across state lines and to completely deny citizens the opportunity to serve in the Missouri House of Representatives based solely on the length of time they have been registered to vote in the state.

Vowell Has Preserved Her Constitutional Claims

The Secretary argued below that Vowell waived her right to dispute the constitutionality of her exclusion from the ballot. (Tr. at 17). "To properly raise a constitutional question, one must: (1) raise the constitutional question at the first available opportunity; (2) designate specifically the constitutional provision claimed to have been

violated, such as by explicit reference to the article and section or by quotation of the provision itself; (3) state the facts showing the violation; and (4) preserve the question throughout for appellate review." *United C.O.D. v. State*, 150 S.W.3d 311, 313 (Mo. banc 2004). This Court has further explained that "first available opportunity" means the earliest moment "that good pleading and orderly procedure will admit under the circumstances of the given case." *Callier v. Director of Revenue*, 780 S.W.2d 639, 641 (Mo. banc 1989). "The critical question in determining whether waiver occurs is whether the party affected had a reasonable opportunity to raise the unconstitutional act or statute by timely asserting the claim before a court of law." *State ex rel. York v. Daugherty*, 969 S.W.2d 223, 225 (1998).

Vowell's initial pleading in this case was her Petition, Paragraph 36 of which read as follows:

> "If the Secretary of State issues a list of candidates certified to appear on the August 2014 primary election ballot without including Vowell's name on that list, the Secretary of State would unlawfully deny Vowell her right to run for political office (guaranteed by Article I, section 25 of the Missouri Constitution), her right to due process (guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, section 10 of the Missouri Constitution,) and the Secretary of State would also be unconstitutionally penalizing Vowell for her expressive decision to protest a political system she believed to be broken by refraining from registering to vote (guaranteed

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by the First Amendment to the U.S. Constitution and Article I, section 8 of the Missouri Constitution)." (LF at 10-11).

It is impossible for a party to raise a constitutional issue prior to filing one's initial pleading. By alleging that the Secretary's decision to exclude Vowell from the ballot would violate her constitutional rights, Vowell satisfied the first requirement for preserving her challenge. The second requirement for preserving a constitutional challenge is to designate specifically the constitutional provision claimed to have been violated. Vowell plainly did this, identifying the First and Fourteenth Amendments as constitutional provisions implicated by the Secretary's action.[14] The third requirement is to state the facts showing the violation. Vowell's Petition stated that she chose not to register to vote because of her frustration with the political status quo and her belief that "the system was so dominated by entrenched interests and stacked against ordinary citizens that voting was

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[14] The test requires the party bringing a constitutional challenge to identify the constitutional provision allegedly violated; no additional detail is required in that regard. The freedom of speech Vowell has asserted is protected by the First Amendment; both the Due Process Clause and the Equal Protection Clause are encompassed in the Fourteenth Amendment. The Fourteenth Amendment's guarantee of substantive due process is the mechanism through which the U.S. Constitution's guarantees of the freedom to travel and freedom of speech are applied against the states. Vowell accurately and adequately identified the constitutional provisions at issue.

just a waste of time." [LF at 5]. She then alleged that denying her access to the ballot would be "unconstitutionally penalizing Vowell for her expressive decision to protest a political system she believed to be broken by refraining from registering to vote." This is the heart of the constitutional challenge she has preserved. The final requirement is for the party to continue asserting her constitutional challenge throughout for appellate review. Vowell identified her constitutional challenge as the primary basis for her appeal. [LF at 25]. She has satisfied every point necessary to preserve this constitutional issue.

If there remains any doubt that Vowell preserved her constitutional claims, this Court should also consider the unusual and extreme circumstances of this case. The Secretary's belated, unauthorized attack on her qualifications took Vowell completely by surprise. She reacted by filing this lawsuit as quickly as she could. Less than 72 hours after filing her Petition, at a hearing that was scheduled to deal only with Vowell's Motion for a Temporary Restraining Order, the Secretary immediately argued that she had waived her constitutional arguments. Vowell insisted that she had preserved her constitutional challenges and asked for an opportunity to amend her pleadings if that was unclear. The trial judge did not afford her that opportunity, nor did he accept her offer to brief the issues before he ruled against her without addressing her constitutional arguments. With time to save her candidacy rapidly slipping away, Vowell had no choice but to immediately appeal the trial court's decision rather than seek reconsideration or a new trial. Under these unique circumstances, Vowell did everything that reasonably could have been expected to preserve the constitutional issues now before the Court; to hold otherwise would be manifestly unjust.

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Facts Relevant to Vowell's Constitutional Challenge

Vowell meets the Missouri Constitution's age requirement for service in the state legislature. She has lived in the state for four years and has lived in the legislative district she intends to serve for three years, long enough to satisfy the durational residency requirement for members of the Missouri House of Representatives. She is currently registered to vote, and at the time of the November 4, 2014, election Vowell will have been a registered Missouri voter for sixteen months. She was qualified to register to vote in Missouri as soon as she moved to St. Louis in 2010; the only reason she did not do so sooner was because she was symbolically protesting her frustration with a political system she believed to be broken.

The Secretary contends that Vowell's expressive decision not to register until July 2013 absolutely prohibits her from being elected to serve in the Missouri House of Representatives until July 17, 2015, because the durational voter registration requirement in Article III, section 4 creates an absolute restriction on a citizen's ability to serve in that house of the legislature unless one has been registered to vote in Missouri for a full two years.[15] According to the plain language of that provision, the durational voter registration

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[15] Missouri Courts have long held that to be a "qualified voter" within the meaning of Article III, section 4 one must not only be qualified to register to vote, one must have actually registered to vote. *See State ex rel. Burke v. Campbell*, 542 S.W.2d 355, 357 (Mo. App. E.D. 1976).

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requirement is *only* concerned with the two years immediately preceding the election at which a citizen might be chosen to serve in the legislature.[16] One impact of this requirement is to penalize citizens who have *even briefly* moved to another state, excluding them from serving in the legislature for at least two years after they return to Missouri and re-establish themselves as registered voters in this state. Another impact of the requirement is to penalize citizens who protest the political system by refusing to register to vote, excluding them from serving in the legislature not only for the duration of their protest, but also for another two years even after they end their protest.[17]

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[16] "Each representative… *next before the day of his election* shall have been a qualified voter for two years[]." Mo. Const. Art. III, § 4.

[17] This penalty imposed for moving across state lines, even temporarily, infringes upon citizens' right to travel, which courts have long held is protected by the Fourteenth Amendment. This sort of penalty on citizens' right to travel has been the basis for the invalidation of a number of election-related restrictions imposed by state and local governments, most notably the U.S. Supreme Court's ruling in *Dunn v. Blumstein*, 405 U.S. 330 (1972), which held that the Fourteenth Amendment limited the extent to which governments could impose a durational residency requirement on those wishing to vote. Vowell does not wish to minimize the impact that Missouri's durational voter registration requirement has on a citizen's right to travel, but the requirement penalizes the speech of

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In *State ex rel. Burke v. Campbell*, 542 S.W.2d 355, 357 (Mo. App. E.D. 1976), the Eastern District Court of Appeals considered a case that illustrates the durational voter registration requirement on a citizen's constitutionally-protected right to travel. John Lawler had lived and been registered to vote in Missouri for several years, but moved to and registered to vote in Oklahoma for a span of four months in 1974; he returned to Missouri shortly after the general elections were held that November. Perhaps because there were no national or Missouri statewide elections held in 1975, Lawler did not reestablish his voter registration in Missouri until February 1976, shortly before he declared his candidacy for a seat in the state legislature. After Lawler's opponent in the primary election raised a timely challenge to the candidate's qualifications, the court adjudged Lawler disqualified and removed him from the ballot. This ruling suggests that even if a citizen like Lawler had lived and been qualified to register to vote in one Missouri city for, say, *fifty* years, if that citizen did not register to vote until one year and 364 days before they were to appear on the ballot as a candidate for office, that citizen would be disqualified from serving in the Missouri state legislature.[18]

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any citizen who protests the political system by refusing to register to vote, regardless of whether they temporarily move to another state before returning to Missouri.

[18] This fact pattern is very similar to the one that confronted the New Jersey Supreme Court in *Gangemi v. Rosengard*, 207 A.2d 665 (N.J. 1965), which resulted in the court's striking down a two-year durational voter registration requirement for the Mayor of Jersey City.

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The *Burke* Opinion Does Not Control The Outcome Of This Case

Given the glancing similarity between the facts of *Burke* and the facts of the instant case, the Court might be tempted to simply draw the same conclusion. There are several reasons it would be incorrect for this Court to do so.

The first reason is that in *Burke*, the candidate whose qualifications were in dispute focused his argument primarily on the definition of "qualified voter," and presented only a rudimentary Equal Protection challenge to the validity of the durational voter registration requirement. The *Burke* majority responded to Lawler's Equal Protection challenge by failing to engage in *any* substantive analysis, which prompted Judge McMillan to pen a thoughtful partial dissent.[19] McMillan's opinion properly noted the existence and importance of a right to pursue and hold office, and pointed out that "statutory and constitutional provisions which tend to limit the exercise of this right or exclude any citizen from participation in the election process must be strictly construed in favor of the right of voters to exercise their choice." *Id.* at 359. McMillan alluded to Missouri's deeply troubling history of using voter registration requirements as a way to disenfranchise unpopular groups[20] and pointed out that even if it might be reasonable to require citizens to register

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[19] Judge McMillan agreed with the result in *Burke* because she believed Article III, section 4 to impose a two-year residency requirement that the candidate failed to satisfy.

[20] In fact, the requirement that state representatives must have been "qualified voters" for two years prior to their election was first adopted with the Missouri Constitution of 1865.

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before voting in order to prevent fraud, the justifications for voter registration have no connection to a person's competence as an elected official. *Id.* at 360. Judge McMillan closed the opinion by agreeing that the candidate at issue in *Burke* was not eligible for office, but also suggesting that the candidate's Equal Protection claim warranted more careful consideration than the majority had given it. *Id*. The *Burke* majority opinion in regard to the durational voter registration requirement for Missouri legislators was perfunctory and inadequate; it should not guide this Court's assessment of Vowell's constitutional claims.

The second reason this Court should not follow the majority opinion in *Burke* is that since *Burke* was decided there have been more than three decades' worth of cases offering clearer guidance as to how the U.S. Constitution should be applied to state limitations on citizens' participation in the political process. For example, in 1978, the Eighth Circuit Court of Appeals handed down *Antonio v. Kirkpatrick*, 579 F.2d 1147 (8th Cir. 1978), in which a candidate for State Auditor challenged Missouri's ten-year durational residency requirements for serving in that office, contending that the restriction violated the Equal Protection Clause of the Fourteenth Amendment. The Eighth Circuit engaged in a

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Mo. Const. 1865 Art. IV, § 3. This requirement was *expressly* designed to exclude disfavored people (not only white Southern sympathizers, but also newly-freed slaves and the illiterate) from participating in Missouri politics. See Mo. Const. Art. II, §§ 3-8, 18-19.

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substantive analysis of the candidate's constitutional claim, and even though the panel decided they should apply a rational basis test instead of strict scrutiny, they struck down the ten-year durational residency requirement because it was not reasonably related to any legitimate interest the government had asserted.

The third and final reason this Court should not follow the majority opinion in *Burke* is that the instant case directly raises a First Amendment challenge that was not at issue in the earlier case. The U.S. Supreme Court has repeatedly held that laws restricting speech are not entitled to presumptions of constitutionality, but rather require the government to justify those restrictions. Particularly in the instant case, where a party has raised a challenge that combines Equal Protection and Due Process concerns with other fundamental rights, such as the right to travel and First Amendment freedoms, this Court has no alternative but to apply the highest level of scrutiny to the durational voter registration requirement.

This Court Must Use The U.S. Supreme Court's *Anderson* Framework To Assess Vowell's Constitutional Challenge

The U.S. Supreme Court has announced a standard to guide courts that are considering constitutional challenges to specific restrictions on citizens' involvement in elections:

> (The court) must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the

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> legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

Below, the Secretary suggested that courts should assess Free Speech, Equal Protection, and Due Process claims separately, even in the context of a case dealing with election restrictions. This is incorrect, as the U.S. Supreme Court has for more than thirty years required courts addressing restrictions on citizens' participation in the political process to analyze the *overall* impact of those restrictions on the citizens' constitutional rights, rather than attempting to assess each constitutional issue independently. *See, e.g., Crawford v. Marion County Election Board*, 553 U.S. 181 (2008); *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008); *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997); *Burdick v. Takushi*, 504 U.S. 428 (1992); *Norman v. Reed*, 502 U.S. 279 (1992); *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

In *Anderson*, the U.S. Supreme Court observed that these election-related cases involve an array of overlapping constitutional rights (or "interwoven strands of liberty") protected under the First and Fourteenth Amendments, which do not lend themselves to the separate

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assessment the Secretary proposed.[21] *Id.* at 786-88. Instead, when a plaintiff asserts that government restrictions on participation in the political process violate the First and Fourteenth Amendment, courts consider the claim as a whole and the degree of judicial scrutiny applied depends upon whether the government demonstrates that the restriction on the citizens' rights is justifiable in light of the government interest asserted. *Id*. at 789. And when, as in the instant case, a restriction severely penalizes or inhibits an individual's ability to run for a desired office, courts must apply heightened scrutiny. *Lubin v. Panish*, 415 U.S. 709, 716 (1974) (in ballot access cases, state interest "must be achieved by a means that does not unfairly or unnecessarily burden… an individual candidate's equally important interest in the continued availability of political opportunity.)

In the instant case, Vowell has asserted from the very beginning that excluding her from the ballot would violate not only her rights under the First and Fourteenth Amendments to the U.S. Constitution, but also the rights of those residents of the 78th Representative District who want to vote for her. (LF at 18). Her constitutional challenge is rooted in the fact that Missouri's durational voter registration requirement denies her Fourteenth Amendment rights to travel and to enjoy substantive due process and equal protection of the laws, and it also directly penalizes her freedom of expression, protected under the First

[21] In other words, cases addressing Due Process or Equal Protection challenges that did not deal with restrictions on citizens' participation in the political process have no usefulness in the context of the analysis required by *Anderson*.

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Amendment. *Anderson*, 460 U.S. at 787 n7 (noting that election cases frequently raise issues under the First and Fourteenth Amendments and that the same sort of "fundamental rights" analysis applies whether the specific claims allege violations of due process or equal protection).[22] *Anderson* requires this Court to evaluate how severely Missouri's durational voter registration requirement impacts these rights.

Regarding the violation of Vowell's right to equal protection of the laws, Article III, section 4 creates a legal distinction between (1) residents who will have been registered to vote in Missouri for the two years immediately preceding the next general election and (2) residents who either have never registered to vote in this state or who at some point in the two years immediately preceding the next general election will not have been registered to vote in Missouri. Persons in the former group may qualify for election to the Missouri House of Representatives while persons in the latter group are totally excluded from doing so. When a citizen alleges that a law treats one group of people differently from another, courts must determine if those classifications improperly deny citizens the equal protection of the laws.

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[22] To be sure, Vowell *is not* asserting a fundamental "right to be a candidate." That said, the government may only impose restrictions on a citizen's opportunity to run for office if those restrictions are consistent with the citizen's rights as protected by the First and Fourteenth Amendments.

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But in election cases courts do not consider these equal protection arguments in a vacuum. To the contrary, they question whether the classification impinges upon a fundamental right. In many cases dealing with durational residency requirements courts have found that such restrictions impinge upon a would-be politician's right to travel, which is protected under the Fourteenth Amendment. But classifications created by durational voter registration requirements such as the one at issue in this case compound the restriction on a would-be politician's right to travel by also imposing harsh penalizes upon any citizen who might express their frustration with the political system by refusing to register to vote or by rescinding their voter registration. Once someone engages in this sort of expressive conduct they are completely prohibited from serving in the Missouri House of Representatives not just for the duration of their protest, but for at least two years thereafter. Thus, Missouri's durational voter registration requirement is harsher than a simple durational residency requirement because it also imposes a clear and significant penalty on citizens such as Vowell simply because they choose to exercise a First Amendment right.[23] This Court should conclude that Missouri's durational voter

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[23] The U.S. Supreme Court has held that penalizing this sort of protest violates the First Amendment. *See Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 183-84 (1999) (striking down voter registration requirement for political participation in part because "there are individuals for whom… the choice not to register implicates political thought and expression.").

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registration requirement creates a classification that directly and severely impinges on fundamental rights protected by the U.S. Constitution, and it should subject the durational voter registration requirement to strict scrutiny.

Furthermore, if the Court deems that Missouri Supreme Court rulings should control its analysis of this case, the Missouri Supreme Court's decision in *Labor's Educational and Political Club-Independent v. Danforth*, 561 S.W.2d 339 (Mo. banc 1977), is the applicable precedent. The *Danforth* Court applied the First and Fourteenth Amendments to strike down several restrictions on citizens' right to participate in the political process. In deciding that case the Missouri Supreme Court held that "a law denying the right to run for office based on the particular office sought… requires strict scrutiny" and also that strict scrutiny was required because a "limitation on the right to run for public office has a real and appreciable impact on the right to vote by denying the electorate of a possible candidate for an appreciable period of time[, and] it infringes on the candidate's freedoms of expression and association[.]" *Id.* at 348.

As Vowell has noted, the durational voter registration requirement challenged in this case imposes a penalty on her because of her exercise of First Amendment rights. The government is applying this provision block her from seeking office in the General Assembly, and if this restriction is not struck down the penalty against Vowell will continue

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until at least July 2015, two years after she ended her protest by registering to vote.[24] But Missouri does not impose a durational voter registration requirement for all public offices – in fact, there is no durational voter registration requirement for any of the statewide executive offices, including Secretary of State.[25] So even though the durational voter registration requirement might currently prohibit Vowell from serving in the state legislature, she would be permitted to run for and serve in other public offices. In other words, the durational voter registration requirement "denies the right to run for office based on the office sought," and in *Danforth* the Missouri Supreme Court held that the Fourteenth Amendment requires such a restriction to be subjected to strict scrutiny, under which the restriction will only be preserved if the government demonstrates it is necessary to achieve a "compelling interest." *Id.* Thus, whether this Court employs the *Anderson* standard

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[24] If Vowell decides to renew her protest against the political status quo by withdrawing or canceling her voter registration, the penalty clock would reset and she would be prohibited from serving in the legislature until she once again registered to vote and an additional two years had elapsed.

[25] Several executive officers do have a durational *residency* requirement, although the Eighth Circuit held that the durational residency requirement violated the Fourteenth Amendment, at least as applied to the office of State Auditor. *Antonio v. Kirkpatrick*, 579 F.2d 1147 (8th Cir. 1978). A *residency* requirement is less burdensome than a *voter registration* requirement.

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required by the U.S. Supreme Court or applies the standard of review the Missouri Supreme Court announced in *Danforth*, the result is that the Secretary can only prevail in regard to Vowell's constitutional challenge if he asserts a compelling state interest served by the durational voter registration requirement *and* shows that it is the least restrictive means of accomplishing that interest.

The Durational Voter Registration Requirement Cannot Survive Strict Scrutiny

Once a party challenging the constitutional validity of a restriction on participation in the political process has identified the ways in which the challenged restriction burdens their rights and the severity of that burden, the analytical framework the U.S. Supreme Court established in *Anderson* requires the government to put forward precise interests that it believes would justify the burden that restriction and then the Court "must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson*, 460 U.S. at 789. In the trial court below (as in the Court of Appeals decision in *Burke*) the government was never required to do this, but in similar cases dealing with durational voter registration requirements, government parties have argued they were necessary (1) "to assure the public that the candidate has a sufficient interest in or understanding of public affairs";[26] (2) "to ensure that only persons who are 'thoroughly informed' and have 'a deep

[26] *Gangemi v. Rosengard*, 207 A.2d 665, 669 (N.J. 1965).

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seated awareness of"' the jurisdiction will serve in office;[27] (3) to prevent "the proliferation of frivolous candidacies";[28] (4) to secure "a ballot composed of knowledgeable and qualified candidates for the increasingly complex job of school board member";[29] and (5) ensuring that lawbreakers are not impermissibly interfering with the political process.[30] Assuming that the Secretary will assert one or more of these concepts as justification for the durational residency requirement, Vowell will address each in turn.

The first two of these interests are very similar, the idea being that if a political candidate is going to represent a part of the state in the legislature there may be a legitimate government interest in ensuring that he or she is familiar with the needs and concerns of their constituents. Vowell contends that this is not even a legitimate government interest, much less a substantial or compelling one. The fundamental principle of democracy is that voters must be trusted to choose their own leaders. Absent any evidence that voters cannot evaluate candidates' merits without the government's assistance, there is no reason to assume that the voters who bear the ultimate responsibility for choosing their legislative representative are incapable of doing so. Even if the Court were to assume that the

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[27] *Bd. of Supervisors of Elections of Prince George's County v. Goodsell,* 396 A.2d 1033, 1039 (Md. 1979).

[28] *Id.*

[29] *Henderson v. Ft. Worth Independent School Dist.*, 526 F.2d 286, 292 (5th Cir. 1976).

[30] *Buckley*, 525 U.S. at 197.

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government had a legitimate interest in protecting voters from candidates who might lack a certain level of familiarity with the district they hope to represent, the government has provided no reason to believe that requiring a candidate to have been registered to vote *somewhere* in Missouri (the durational voter registration requirement is tied to the state, not the district to be represented) is in any way likely to ensure the candidate's familiarity with their district. Similarly, there is no reason to believe that a brief season living, working, and voting in a different state (perhaps even just across the border in Kansas or Illinois) would so devastate a would-be candidate's connection to Missouri that their neighbors must not be permitted to elect that person to the legislature. This is especially true now that technology allows for constant communication between people here in Missouri and their friends who have temporarily relocated to another state. If this is indeed an interest the government asserts to justify the durational voter registration requirement, the Court must explain why such an interest is so important that citizens who even temporarily reside in another state or protest the political status quo must for two years be forbidden from running for or serving in the legislature.

The third potential interest, avoiding a "proliferation of foolish candidacies," sounds superficially appealing – after all, few people want to have to search through a number of unserious candidates to find the one person they want to vote for – but there are three immediate problems. First, for every candidate that one person thinks is a lunatic, ten other people may consider that candidate to be the second-coming of Abraham Lincoln. Second, this nation's history has seen any number of relative newcomers or "fringe" political

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candidates blossom into competent, and sometimes beloved, leaders.[31] And then, of course, there is the absolute lack of evidence that "frivolous candidates" are actually interfering with Missourians' ability to choose legislators or that "frivolous candidates" are unlikely to register to vote. This lack of evidence precludes the Court from taking any such contention seriously, much less accepting the idea that imagined dangers of "frivolous candidates" could somehow justify a very real restriction on would-be candidates' constitutional rights.

As for the fourth potential government interest, ensuring that candidates for a particular office have knowledge, skills, and experience that are necessary if the candidate is to adequately perform their duties, there are certainly some offices where specialized knowledge might be valuable. For example, it might be entirely reasonable for the Missouri Constitution to require the Attorney General to be an attorney admitted to the state bar, given the responsibilities of the office.[32] Ensuring the knowledge, skills, and experience

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[31] New York, in particular, has a storied history of electing to Congress politicians that had never spent much time in that state. The Court might take judicial notice of the fact that Hillary Clinton, for example, had lived exclusively in Washington, DC, and Arkansas for decades before the people of New York elected her as their Senator.

[32] To the best of Vowell's knowledge Missouri law has no such requirement for the state's Attorney General, nor does Missouri law appear to impose a durational voter registration requirement for citizens who wish to run for Attorney General.

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necessary for certain officeholders to do their duty might be a legitimate state interest (if not a substantial or compelling one), but the government has offered no evidence to suggest that a particular set of knowledge, skills, or experience is required for a state legislator to adequately perform his or her duties. Even if the record contained such evidence, nothing in the record suggests that a person who has been registered to vote in Missouri for the two years next preceding the date of election to the House of Representatives is more or less likely to have those skills.

Regarding the final potential interest, ensuring that lawbreakers are not unlawfully interfering in Missouri's political process, concerns about voter fraud are commonly invoked as a justification for requiring would-be voters to register before participating in an election. But even if it was to be assumed that requiring candidates for the state legislature to register to vote might somehow prevent them from breaking laws or hiding convictions that would otherwise escape notice,[33] the Secretary would still have to explain why requiring a candidate to have been registered to vote for the two years immediately preceding their election to the Missouri House of Representatives would justify the resultant infringement upon would-be candidates' constitutional rights. When Colorado tried to invoke this interest as justification for its simple (non-durational) voter registration requirement for petition circulators, the U.S. Supreme Court struck down the requirement as unjustified, ruling that any legitimate interest the state might have in policing

[33] The government has presented no evidence to suggest this is true.

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lawbreakers could be more effectively addressed by the far-less-burdensome requirement for petition circulators to submit an affidavit identifying their address. *Buckley*, 525 U.S. at 196. This Court should also recognize that, particularly when there is no evidence that lawbreakers are currently posing a significant threat to the Missouri political process by positioning themselves as candidates for office, it is manifestly unreasonable for the government to rely on this potential interest to justify the impingement on fundamental rights caused by Missouri's durational residency requirement.

Ultimately, if this Court is going to rule against Vowell and uphold Missouri's durational voter registration requirement for serving in the state House of Representatives, it must explain why it makes a difference whether Natalie Vowell has been a registered voter for sixteen months or whether she has been a registered voter for twenty-four months. Whatever interest the government advances to justify this restriction, the Court must explain why after Vowell has lived in her city for four years, eight additional months of her being registered to vote has anything to do with the government's alleged interest. If the Court cannot offer such an explanation, then this restriction cannot satisfy *any* level of judicial scrutiny, much less the strict scrutiny currently required under this Court's precedents and the U.S. Supreme Court's precedents.

Not One Federal Appellate Court Or State Supreme Court Has Upheld A Durational Voter Registration Requirement In A Contested Case

As has been shown, many state and federal appellate court cases from the past several decades that have applied the U.S. Constitution to strike down various state restrictions on citizens' participation in the political process. But most importantly for the purposes of

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this case, there have been a number of contested cases in which a federal appellate court or a state supreme court has evaluated the constitutionality of a durational voter registration requirement such as is provided in Article III, Section 4 of the Missouri Constitution. In *every single one* of the contested cases Vowell has identified, the courts found the durational voter registration requirement to be unconstitutional.

In 1965 the Supreme Court of New Jersey considered *Gangemi v. Rosengard*, 207 A.2d 665 (N.J. 1965), in which a candidate for mayor contested a Jersey City law requiring officials to have been registered to vote in the city for at least two years prior to their election. Mr. Gangemi immigrated to the U.S. as a small child and had lived in the city for fifty years, never realizing that he was not technically an American citizen. He had, in fact, previously been elected as mayor of Jersey City, but resigned when it was revealed that he was not a citizen. He quickly became a naturalized citizen and wished to once again run for mayor, but could not do so because he had not been registered to vote while he was waiting for his citizenship to be finalized. Gangemi challenged the constitutionality of the durational voter registration requirement and the New Jersey Supreme Court struck down the requirement because it was not related to any legitimate government interest.

In 1976 the federal Fifth Circuit Court of Appeals handed down its decision in *Henderson v. Ft. Worth Independent School Dist.*, 526 F.2d 286 (5th Cir. 1976), a case involving a law that required candidates for the school board to have been qualified voters in the district for three years. Two would-be candidates did not meet this durational voter registration requirement and asserted that it violated their Fourteenth Amendment right to equal protection of the laws. The Fifth Circuit agreed, holding that the law created two

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classes of citizens – those not registered to vote or who had been registered to vote for a period of less than three years, and those who have been registered to vote for three years or more – and only permitted citizens in the latter group to run for school board. The court ruled that even if the state had legitimate power "to prescribe reasonable citizenship, age, and residency requirements" on candidates for office, the durational voter registration requirement was not related to the government's purported interest in ensuring "a ballot composed of knowledgeable and qualified candidates for the increasingly complex job of school board member" and, thus, the durational voter registration requirement was unconstitutional.

In 1977 the Florida Supreme Court decided *Treiman v. Malmquist,* 342 So.2d 972 (Fla. 1977), which involved a constitutional challenge to a Florida statute that required candidates for judicial office "to have been registered to vote in Florida in the last preceding general election." The court noted that the challenged restriction "effectively forecloses the candidacy of all of those otherwise qualified persons who, because of age, illness, residence or other reason, failed or were unable to register to vote in a time period somewhere in the past." *Id.* at 976. The court struck down the durational voter registration requirement, holding that it "does not serve any reasonable or legitimate state interest[; i]t does not in any way protect the integrity of the election process or purity of the ballot; it does not serve to keep the ballot within manageable limits; nor does it serve to assure orderly and effective elections[.]" *Id.*

In 1979 the Maryland Supreme Court considered *Bd. of Supervisors of Elections of Prince George's County v. Goodsell,* 396 A.2d 1033 (Md. 1979), a case in which a local

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election authority refused to certify the candidacy of a citizen who wished to run for county executive because the candidate could not satisfy the county charter's requirement that the county executive must a qualified voter in the county for "at least five years immediately preceding his election." A citizen who had lived in the county for six years, but only registered to vote two years before attempting to become a candidate for county executive, asserted that the durational voter registration requirement violated an array of constitutional provisions, including the Fourteenth Amendment's Equal protection and due process clauses. The court ruled that, although the government might have a sufficient interest in imposing a durational *residency* requirement for those wishing to serve as county executive, a durational *voter registration* requirement was more burdensome and, therefore, more difficult to justify. Although the government claimed the durational voter registration requirement was "a measuring stick of an individual's commitment to [the] county" and that it would prevent "the proliferation of frivolous candidacies," the court emphasized that in a democracy it is the voters who should determine whether a candidate is sufficiently serious or committed to the jurisdiction the candidate hopes to serve. *Id*. at 290. The court ruled that the durational voter registration requirement unjustifiably discriminated against county residents who had registered to vote for less than five years and that the restriction violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

The crux of all of these cases has been that courts must take these sorts of restrictions – and, more to the point, the constitutional rights they infringe – seriously, carefully scrutinizing them to ensure consistency with the Constitution. If the government cannot

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demonstrate that a restriction is adequately related to whatever interest it allegedly serves, the restriction must give way to the citizens' constitutional rights. In this case, Vowell has demonstrated that Missouri's durational voter registration requirement for those wishing to serve in the state House of Representatives seriously penalizes her for no other reason than that she engaged in a political protest. She has shown that the restriction penalizes citizens for temporarily relocating in other states. She has shown that the restriction creates separate classes of citizens, but that the distinction the law draws is not related to accomplishing any legitimate government interest, much less a compelling government interest. In light of the tremendous penalties this restriction imposes on citizens' constitutional rights, it is imperative that this Court rule that the durational voter registration requirement violates the First and Fourteenth Amendments.

CONCLUSION

This brief has shown that the Secretary acted improperly in usurping authority not given him under Missouri law. It has shown that the trial court further erred by indulging the Secretary's improper action and by dismissing Vowell's Petition. And it has shown that the source of all this trouble is a provision of the Missouri Constitution that is unconstitutional under the First and Fourteenth Amendments.

This Court should dispose of this matter with a minimal amount fuss, ruling that once the Secretary accepted and filed Vowell's declaration of candidacy, he was left with the purely ministerial responsibility to submit her name for inclusion on the August primary election ballot; the Secretary had no authority to challenge Vowell's qualifications, and the trial court erred in entertaining that question. This Court should confirm that Vowell's

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name was properly included on the August primary election ballot for the 78th Representative District;[34] if she prevails in the primary election, her general election opponent and/or the Missouri House of Representatives will have an opportunity to bring a timely challenge to her qualifications.

If this Court does not pursue that course, it has an obligation to address Vowell's constitutional challenges and to do so applying strict scrutiny in accordance with the U.S. Supreme Court's guidance. It must presume that the penalty applied to Vowell as a result of her protest against the political status quo is unconstitutional. It must require the government to identify what interests are served by the penalty and determine whether those interests are sufficiently important to justify the resulting infringement on Vowell's constitutional rights and the rights of others similarly situated. This brief has shown that this Court should join the ranks of federal appellate courts and state supreme courts that have decided that the constitutional burdens imposed by durational voter registration requirements simply cannot be justified by any government interest that might be asserted in their defense.

Vowell respectfully asks this Court to rule in her favor and to order her name to be immediately added to the August primary election ballot so that the voters of the 78th

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[34] When the Court of Appeals ruled in Vowell's favor, the Secretary duly certified her name to the appropriate election authorities; her name is currently on the ballot

Representative District will be able to decide for themselves who is best suited to serve them in the Missouri House of Representatives.

Respectfully submitted,

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RULE 84.06(c) CERTIFICATION AND CERTIFICATE OF SERVICE

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 2013 and contains no more than 15,525 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure (less than the 31,000 limit in the rules). The font is Times New Roman, double-spacing, 13-point type.

I hereby certify that I electronically filed the foregoing with the Clerk of the Missouri Supreme Court using the Electronic Filing System, and that a copy will be served by the Electronic Filing System upon those parties indicated by the Electronic Filing System.

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