

**In The Missouri Supreme Court
SC98536**

MO State Conference of the NAACP et al.,
Appellants,

v.

State of Missouri et al.,
Respondents,

On Appeal from the Circuit Court Of Cole County
Case No. 20AC-CC00169
Honorable Jon E. Beetem

Brief of *Amicus Curiae* Professor Lorraine Minnite, Ph.D.
In Support Of Appellants

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I. Interest of Amicus Curiae

Professor Lorraine C. Minnite, Ph.D. (“Dr. Minnite” hereafter) is a political scientist and Associate Professor of Public Policy at Rutgers University-Camden. She has studied voter fraud in U.S. elections for nearly twenty years, and published her research in the first and only book measuring the incidence of voter fraud in U.S. elections. Lorraine Minnite, *The Myth of Voter Fraud* (Ithaca: Cornell University Press 2010). Dr. Minnite has served as an expert witness on the question of voter fraud in eight federal voting rights cases, and two voting rights cases before state courts (in Pennsylvania and New Hampshire); testified before Congress and the U.S. Commission on Civil Rights on the subject of voter fraud; and been a party to several amicus filings on the incidence of voter fraud, including in an important U.S. Supreme Court case challenging a state voter identification requirement. *See Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

Dr. Minnite submits this brief, which consists of social science analysis and research, to guide the Court in its analysis of the instant case.

II. Consent of the Parties

Dr. Minnite has received consent from counsel for Appellants Missouri State Conference of the NAACP, League of Women Voters of Missouri, Javier A. Del Villar, Kamisha D. Webb, and Cecil E. Wattree. Respondents have not consented to this brief. Dr. Minnite is seeking an order from this Court granting leave to file this Amicus Curiae brief in a motion filed herewith.

III. Summary of Argument

Voter fraud is the intentional corruption of the voting process by voters. The best available social science research consistently finds that the incidence of voter fraud in contemporary U.S. elections is exceedingly rare, including the incidence of voter impersonation fraud committed through the use of mail-in absentee ballots. This is the case nationally, and in Missouri. In the wake of the recent coronavirus pandemic, Missouri's legislature passed and Governor Parson signed SB 631, which allows any registered voter to cast a "mail-in" ballot during 2020, however, that ballot must be notarized. Missouri is one of only three states that require voters using an absentee or mail-in ballot to notarize the ballot envelope; eight other states require voters to notarize or witness the ballot envelope. There is scant evidence to suggest that this requirement reduces what little fraud there is in the absentee balloting process.

IV. Jurisdictional Statement

Dr. Minnite adopts Appellants' Jurisdictional Statement.

V. Statement of Facts

Dr. Minnite adopts Appellants' Statement of Facts.

VI. Argument

1. Voter Fraud is Defined as the Intentional Corruption of the Voting Process by Voters.

Most statutes criminalizing what we might think of as voter fraud do not specifically define the term. Instead, nefarious election-related practices are prevented by state laws making “double voting” or “falsifying records,” or “voting by unqualified elector,” and the like illegal.¹ For example, in Missouri, “Voting more than once or voting at any election knowing that the person is not entitled to vote or that the person has already voted on the same day at another location inside or outside the state of Missouri” is a Class One election offense. Mo. Rev Stat § 115.631 (2017). Nevertheless, the process of formulating precise

¹ In Georgia, “Any person who votes or attempts to vote at any primary or election, knowing that such person does not possess all the qualifications of an elector at such primary or election, as required by law, or...who knowingly gives false information to poll officers in an attempt to vote in any primary or election...” commits a felony. O.C.G.A. § 21-2-571 (2010). California prohibits specific election related activity like fraudulent registration, voting in an election which one is not entitled to vote in, voting more than once or to try to buy a vote with the promise of a job. Cal. Elec. Code § 18520 (1994). In Minnesota, it is a felony to submit more than one absentee ballot or to assist another in submitting more than one absentee ballot, or alter another’s absentee ballot. Minn. Stat. § 203B.03 (1999). In New Jersey, it is a third degree crime to “fraudulently vote...or in any manner so interfere...with the voters lawfully exercising their rights of voting at the election, as to prevent the election or canvass from being fairly had and lawfully conducted.” N.J. Stat. Ann. § 19:34-11 (2011).

definitions is critical in the social sciences because it is necessary for accurate measurement of empirical phenomena. W. Phillips Shively, *The Craft of Political Research*, 5th ed. (Upper Saddle River, New Jersey: Prentice Hall, 2002), 30-8.

In the U.S., people commit voter fraud when they knowingly provide false information concerning their own voter eligibility credentials (i.e., citizenship status, age, permanent address), or when they knowingly cast more than one ballot (“double voting”), or cast a ballot knowing that they are not eligible to vote. With some exceptions (i.e, laws concerning age, felon disenfranchisement and mental incompetence), voter eligibility requirements are fairly standard across the states: one must be alive when casting a ballot, 18 years of age, a U.S. citizen, and not under state supervision for a conviction of a felony crime. In our geographically-based system of representation, voters are required to vote in the jurisdiction where they live.

People who *knowingly* abrogate eligibility rules commit voter fraud. For example, this may include so-called “felon” voting by people who have been convicted of a felony and not had their voting rights restored as required by state law. Voting in the name of a dead person is fraudulent when the person casting the ballot intentionally impersonates the dead voter. The voter fraud outlined here can be committed in person at the polls or early voting sites, or through the use of absentee or mail-in ballots.

Accordingly, voter fraud is “the *intentional corruption* of the *voting process* by *voters*.” This definition is specific to the subject of Dr. Minnite’s research.²

Innocent administrative errors on the part of election officials and confusion on the part of voters can cause technically invalid ballots to be cast, however, there is an important distinction to be made between *invalid* registration and ballots, and *fraudulent* registration and ballots. Fraudulent registration and ballots are illegal; but not all invalid registration and ballots are fraudulent. Thus, in measuring the incidence of voter fraud, it is important to first determine the validity of registrations and ballots, and then, to identify, if possible,

² The U.S. Department of Justice prosecutes election crimes committed when there is a federal candidate on the ballot, or in cases where there is jurisdiction to enforce federal criminal laws that potentially apply to both federal and non-federal elections when there is no federal candidate on the ballot. The federal government’s definition of “election fraud” centers on the corruption in “the obtaining and marking of ballots, the counting and certification of election results, or the registration of voters,” and is over-broad for the purpose of measuring election crime committed by voters because it includes acts of official malfeasance, such as ballot box stuffing or corruption of the count. Richard C. Pilger, ed., *Federal Prosecution of Election Offenses*, 8th ed., U.S. Department of Justice, Criminal Division, Public Integrity Section, 22-26, (Washington, D.C.: Government Printing Office 2017), <https://www.justice.gov/criminal/file/1029066/download> (last accessed June 4, 2020). Because *voters* do not have access to the counting process, those activities are not included in a definition of voter fraud used to measure fraud committed by voters.

the intent on the part of the registrant or voter to register and vote and whether the ineligible or invalid registrant or voter knew that it was illegal to do so.

The reasoning and logic Dr. Minnite uses to derive a definition of voter fraud for purposes of measurement lead to the following conclusions:

1) it is important to identify who is committing the fraud – the electoral process is complex and multi-staged; not all actors in the process have access to all parts of the process; therefore, not all forms of electoral fraud may be committed by all actors in the process;

2) thus, there is an important distinction to be made between *voter* fraud and broader *election* fraud; voter fraud is the intentional corruption of the electoral process by voters; election fraud encompasses all other forms of intentional corruption of the electoral process;

3) invalid registration and balloting, which may be detected as anomalies or irregularities in electoral mechanics, may not be fraudulent; therefore, there are competing explanations for electoral anomalies and irregularities: invalid registration and balloting may be caused by simple human error, confusion or mistakes.

2. Fraud Committed by Voters Is Exceedingly Rare, Including Impersonation Fraud Using An Absentee Ballot

There are no official routinely-compiled national or statewide statistics reliably reporting the instances of *voter* fraud, or any other kind of election fraud, for that matter. It is difficult and time-consuming, therefore, to empirically assess the degree to which voter fraud or even the risk of voter fraud is allegedly real or a “problem” in contemporary U.S. elections. *Crawford v. Marion County Election Board*, 553 U.S. 181, 196 (2008) (Stevens, J., plurality opinion). In evaluating the current landscape, it is not enough to point to flagrant or folkloric examples of electoral corruption from America’s past. Context and facts more than anecdotes matter. Dr. Minnite spent nearly ten years collecting and analyzing data and evidence using a wide variety of social science methods to evaluate the incidence of voter fraud in contemporary U.S. elections for *The Myth of Voter Fraud*. *Supra*. That evidence points clearly to the conclusion that fraud committed by voters, including absentee ballot fraud, is exceedingly rare.

The two most important sources of evidence of voter fraud are social scientific studies and official government investigations and reports.

Social Scientific Studies

Social scientific research finds very little evidence of voter fraud in contemporary U.S. elections. In 2014, the U.S. Government Accountability Office (“GAO”) published a performance audit of issues related to state voter identification laws. U.S. Gov’t

Accountability Office, GAO-14-634, *Elections: Issues Related to State Voter Identification Laws* (2014). For this report, the GAO was tasked only with identifying the challenges to determining a complete measure of in-person voter fraud, not with estimating the incidence of voter fraud overall. Part of the study involved a review of “academic literature, organizational studies, peer-reviewed journals, books, and other regularly cited research published from January 2004 through April 2014 to identify studies that attempted to estimate in-person voter fraud, using a documented methodology.” *Id.*, 7 More than 300 studies were analyzed to determine whether they contained data on in-person voter fraud and provided an adequate description of the methodology used for collecting the data. Studies based on anecdotal reports of in-person voter fraud were excluded from the analysis. Only five studies, including Dr. Minnite’s 2010 book, *The Myth of Voter Fraud*, met the criteria. The other four studies deemed sufficiently ‘scientific’ are:

- John S. Ahlquist, Kenneth R. Mayer, & Simon Jackman, *Alien Abduction and Voter Impersonation in the 2012 U.S. General Election: Evidence from a Survey List Experiment*, 13 Election Law Journal 460 (2014);
- Ray Christensen & Thomas J. Schultz, *Identifying Election Fraud Using Orphan and Low Propensity Voters*, 42 American Politics Research 311 (2013);
- M.V. Hood III & William Gillespie, *They Just Do Not Vote Like They Used To: A Methodology to Empirically Assess Election Fraud*, 93 Social Science Quarterly 76 (2012);

- Corbin Carson, *Exhaustive Database of Voter Fraud Cases Turns Up Scant Evidence That It Happens*, <https://votingrights.news21.com/article/election-fraud-explainer/> (last accessed June 5, 2020).

While all of the scientific studies had various limitations for estimating a complete count of cases of in-person voter impersonation, two GAO analysts and a GAO statistician reviewed each and determined that, “...the design, implementation, and analyses of the studies were sufficiently sound to support the studies’ results and conclusions based on generally accepted social science principles.” *Supra.*, 3-4.

The five scientifically sound studies identified by the GAO find very little evidence of voter fraud in contemporary U.S. elections. Three use quantitative methods to identify anomalies in registration and voting data as proxies for voter fraud, finding very little fraud.³ Carson’s report *Exhaustive Database of Voter Fraud Cases Turns Up Scant*

³ Hood and Gillespie performed an audit of the 2006 general election in Georgia “to ascertain the extent to which deceased registrants are being used in a fraudulent manner.” Using a data mining technique, they initially identified 66 suspect ballots out of a total of approximately 2.1 million cast. Only four of the suspect ballots were cast in-person. Further research determined conclusively that none of the in-person ballots and almost none of the absentee ballots (57 of the remaining 62 suspect ballots) were fraudulently cast. Hood and Gillespie were not able to obtain enough information from county registrars to make a determination one way or the other about five of the absentee ballots. They found “no evidence that election fraud was committed under the auspices of deceased registrants” in Georgia’s 2006 election. Hood and Gillespie, *They Just Do Not*

Evidence That It Happens (discussed in more detail below) and *The Myth of Voter Fraud* do not rely solely on quantitative methodologies, focusing instead on identifying actual instances of voter fraud in recent elections.

Only a few other empirical social scientific studies of the incidence of voter fraud have been conducted since the 2014 GAO report, specifically, two academic papers that rely on quantitative methodologies and proxy measures to estimate the probability of fraud.⁴

Vote Like They Used To, 76. Ahlquist, Mayer and Jackman use a different technique to search for proxies for voter impersonation in the 2012 national general election, finding “no evidence of systematic voter impersonation” in that election. Ahlquist et al., *Alien Abduction and Voter Impersonation in the 2012 U.S. General Election*, 30. Christensen and Schultz use yet another quantitative methods technique to search for anomalies in election returns that might indicate the presence of fraud. Their findings “...support the conclusion that electoral fraud, if it occurs, is an isolated and rare occurrence in modern U.S. elections.” Christensen and Schultz, *Identifying Election Fraud Using Orphan and Low Propensity Voters*, 313.

⁴ Not included in this discussion is a set of methodology papers addressing various elections forensics techniques, including anomalous digit distributions in election data as a means for detecting election fraud. See, for example, Bernd Beber & Alexandra Scacco, *What the Numbers Say: A Digit-Based Test for Election Fraud*, 20 *Political Analysis* 211; C. Breunig & A. Goerres, *Searching for Electoral Irregularities in an Established Democracy: Applying Benford’s Law Tests to Bundestag Elections in Unified Germany*, 30 *Electoral Studies* 534; Joseph Deckert, Mikhail Myagkov, & Peter C. Ordeshook,

In the first, a 2019 working paper, Sharad Goel and colleagues use statistical techniques to look for proxy evidence of double voting in the 2012 presidential election. They find that “double voting is not currently carried out in such a systematic way that it presents a threat to the integrity of American elections.” They estimate that “at most,” one in 4,000 votes cast in 2012 were double votes, “with measurement error in turnout records possibly explaining a significant portion, if not all, of this.” In other words, 1 in 4,000 votes could have been double votes, or the 2012 election could have had an administrative error rate producing the appearance of duplicates votes of roughly .025 percent. Sharad Goel, Marc Meredith, Michael Morse, David Rothschild, & Houshmand Shirani-Mehr, *One Person, One Vote: Estimating the prevalence of Double Voting in U.S. Presidential Elections*, 114 American Political Science Review 456, 467 (2020).

A second paper by Cottrell, Herron and Westwood, investigates claims made by President Donald J. Trump that his election in 2016 was tainted by massive voter fraud.

Benford’s Law and the Detection of Election Fraud, 19 Political Analysis 245; Walter Mebane, Paper, *Election Forensics: The Second Digit Benford’s Law Test and Recent American Presidential Elections*, <http://www-personal.umich.edu/~wmebane/fraud06.pdf> (last accessed June 5, 2020); R. Michael Alvarez, Thad E. Hall, & Susan D. Hyde, *Election Fraud*, (Washington, D.C.: Brookings Institution, 2008); Juraj Medzihorsky, *Election Fraud: A Latent Class Framework for Digit-Based Tests*, 23 Political Analysis 506; Jacob M. Montgomery, et al., *An Informed Forensics Approach to Detecting Vote Irregularities*, 23 Political Analysis 488. Most of this work addresses the detection of fraud in national elections and at the national level.

The researchers use a variety of statistical modeling techniques and county-level election returns, census data, and other federal and state government data to estimate the likelihood of invalid non-citizen voting in that election. “Our empirical results share a common theme,” they write. “[T]hey are inconsistent with fraud allegations made by Trump. The results are, however, consistent with various state-level investigations conducted in the initial months of 2017, all of which have failed to find any evidence of widespread voter fraud in the 2016 General Election.” David Cottrell, Michael C. Herron, & Sean J. Westwood, *An Exploration of Donald Trump’s Allegations of Massive Voter Fraud in the 2016 General Election*, 51 Electoral Studies 123, 140 (2018).

Recent findings from another GAO report examining the federal enforcement effort against election fraud are consistent with Dr. Minnite’s prior findings regarding the scant record of voter fraud. U.S. Gov’t Accountability Office, GAO-19-485, *Voter Registration: Information on Federal Enforcement Efforts and State and Local List Management* (2019). The GAO analyzed data for the period 2001 through 2017, drawn from two different U.S. Department of Justice case management systems used by the two Department components responsible for prosecuting election fraud, the Criminal Division’s Public Integrity Section, and the U.S. Attorneys’ Office.

The federal government defines election fraud broadly to include the corruption of “the obtaining and marking of ballots, the counting and certification of election results, or the registration of voters.” *See footnote 2*. The data analyzed by the GAO goes beyond the

careful and precise definition of voter fraud as the intentional corruption of the voting process by voters, to include crimes committed by public officials, politicians and their campaigns, and fraud committed through voter intimidation, such as vote-buying conspiracies in which the powerful use money and other inducements to lure the powerless into selling their votes.⁵

The GAO assessed the reliability of the databases and “found the data sufficiently reliable to provide information on the nature and characteristics of DOJ’s efforts to address potential instances of election fraud.” GAO-19-485, 4. Keeping in mind that the GAO’s analysis is overbroad for the purpose of this report, which focuses on fraud committed by voters, their principle findings are consistent with Dr. Minnite’s findings in *The Myth of Voter Fraud*, that overall, voter fraud in U.S. elections is exceedingly rare:

⁵ “Public Integrity Section officials stated the Section did not focus its efforts on particular types of election fraud, but vote buying...was the most frequent type of election fraud related crime the Section prosecuted during the period of our review. Officials said vote buying is the most common type of election fraud related crime that has come to their attention in recent decades and noted that it tends to occur in communities that are more insular and isolated and have higher levels of poverty. For example, officials observed that in rural communities with high levels of poverty, some residents may be more vulnerable to vote-buying efforts due to their difficult circumstances or the power of local officials who seek to buy votes to provide or cut off needed services.” U.S. Gov’t Accountability Office, GAO-19-485, *Voter Registration: Information on Federal Enforcement Efforts and State and Local List Management* (2019), 34-35.

1) Over the period of fiscal years 2001 through 2017, the Public Integrity Section initiated 1,408 criminal investigations or “matters,” filing charges in 695 cases. GAO-19-485, 3. Of the total number of matters initiated, about two percent (33 matters) were categorized by Section attorneys as election fraud-related; of the total number of cases filed as a result of the Section’s investigations, 19 cases involving 37 individual defendants were election fraud-related; *Id.* 29-30.;

2) Over the same study period, U.S. Attorneys’ Offices initiated more than 2.2 million criminal investigations, of which 525 were election fraud-related, two one-hundredths of a percent of their overall criminal matters. The U.S. Attorneys’ Office filed just over one million criminal cases during this time period; of these, 185 cases were election fraud-related, or the same two one-hundredths of a percent of their overall caseload. Fifteen of these cases were jointly filed by the U.S. Attorneys Offices and the Public Integrity Section (and double counted in the Public Integrity Section equivalent category cited above); *Id.* 35-36.;

3) In sum, “[A]ccording to officials from EOUSA [the Executive Office of the U.S. Attorneys], which provides guidance, direction, and oversight to the U.S. Attorneys’ Offices, election fraud was one of the least frequent crimes addressed by U.S. Attorneys’ Offices.” The GAO report continues: “Officials further noted that *election fraud related cases were taken seriously and thoroughly investigated when facts supporting such charges were uncovered*” (emphasis added). *Id.* 36.

State Government Investigations and Reports

Investigations conducted by state agencies responsible for the administration of elections, and state law enforcement and auditing agencies provide other important sources of data for analyzing the incidence of voter fraud in U.S. elections. Dr. Minnite reviews several such reports in *The Myth of Voter Fraud*,⁶ and also in several subsequent expert reports prepared for plaintiffs in litigation challenging various election laws. *See League of Women Voters of New Hampshire v. Gardner*, 226-2017-CV-433 (N.H. Hillsborough County April 8, 2020); *Fish v. Kobach*, 309 F.Supp.3d 1048 (D. Kan. 2018); *One Wisconsin Institute v. Nichols et al*, 15-CV-324-JDP, 2016 U.S. Dist. LEXIS 100178 (W.D. Wis. July 29, 2016); *Lee v. Virginia State Board of Elections*, 843 F.3d 592 (4th Circuit 2016); *Ohio Democratic Party v. Husted*, 834 F.3d 620 (6th Circuit 2016); *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204 (4th Circuit 2016); *Veasey v.*

⁶ For example, as a result of public records requests sent to all Attorneys General and Secretaries of State, Dr. Minnite obtained and analyzed all election fraud complaints referred to the California Secretary of State's Office for the period of 1994 to 2007; voter complaints collected by the Minnesota Secretary of State's Office from 2005 to 2006; investigation logs maintained by the Election Division of the Oregon Secretary of State's Office for all election law complaints for the period of 1991 to 2006; and a report of a broad investigation by the New Hampshire Attorney General's Office into concerns about voter fraud in the 2004 general election. *The Myth of Voter Fraud*, Chpt 4.

Perry, 71 F.3d 627 (S.D. Tex. 2014); and *Frank v. Walker/LULAC (formerly Jones) et al. v. Deininger*, 17 F.Supp.3d 837 (W.D. Wis. 2014).

A number of states in recent years have conducted investigations of alleged voter fraud including those cited in some of Dr. Minnite's expert reports and others. For example, a multi-year investigation by the Iowa Secretary of State resulted in 27 prosecutions out of approximately 1.6 million votes cast. IA Sec. of State, *DCI Voter Fraud Investigations Report*, <http://publications.iowa.gov/16874/1/DCI%20Voter%20Fraud%20Report%205-8-14.pdf> (last accessed June 5, 2020). And a 2013 voter fraud investigation by the Colorado Secretary of State alleged 155 non-citizens had illegally voted, however, upon further investigation by local prosecutors, almost none were charged (four people were charged, but only one man was eventually convicted of a false registration charge). *Gessler Voter Sting Nets 1 Conviction Despite Accusation of Widespread Fraud*, The Sentinel (March 13, 2015), <https://sentinelcolorado.com/news/gessler-voter-sting-nets-1-conviction-despite-accusation-widespread-fraud/> (last accessed June 5, 2020).

Despite variation in the context, scope, type of fraud examined, time period covered, and investigating agency involved, these studies demonstrate a clear and consistent pattern finding very little voter fraud, and that irregularities and anomalies in the data are more likely the result of administrative or voter error or confusion than they are voter fraud.

Other Sources of Data on Election and Voter Fraud

The Heritage Foundation has created an online, publicly accessible database of what it calls, “A Sampling of Recent Election Fraud Cases from Across the United States.” The Heritage Foundation, <https://www.heritage.org/voterfraud> (last accessed June 4, 2020). As recently as last November, the database was labeled “Election Fraud Cases from Across the United States.” Calling it now just a “sampling” of cases is misleading because no information is provided about the universe from which the sample was drawn or how the sample was drawn. There is no explanation of the methodology used to create the database or the criteria for inclusion of cases. The website for the database contains a disclaimer that “this database is not an exhaustive or comprehensive list...[but] is intended to demonstrate...the many ways in which fraud is committed,” although specific numbers of what are called “proven instances of voter fraud,” in addition to criminal convictions, civil penalties, and diversion programs are tallied and reported on the database homepage. And contrary to the claim of “proven instances of voter fraud,” the database lumps relatively few instances of voters committing fraud with all other forms of election corruption, such as cases of ‘altering the vote count,’ ‘ballot petition fraud,’ and ‘buying votes,’ crimes voters in their capacity as voters cannot commit.

Despite these shortcomings, the Heritage Foundation’s election fraud database is a useful because it represents the evidence the organization has relied on for the last decade or more to promote the idea that voter fraud is “real,” by which they mean rampant, easy

to commit, and easy to hide. While the full database itself does not appear to be publicly available as a downloadable file, there is a helpful online interface that allows users to select cases based on type of fraud, one of which is “Fraudulent Use of Absentee Ballot.” The database contains 206 such cases in the U.S. dating back to 1988, or roughly six or seven cases per year over the last thirty years. Notably, in federal elections alone, more than 1.6 billion votes were cast during this period. Thus, by the Heritage Foundation’s own evidence, absentee ballot fraud in the U.S. is exceedingly rare.

Users can also search and select cases by state. Dating back fifteen years, the Missouri file contains 19 cases of various forms of election fraud involving 27 people. Only six of the 27 people appear to be voters, and only one of those people engaged in voter impersonation with an absentee ballot. That individual, Joel Neal, pleaded guilty to two felonies for voting once for himself in a 2008 primary election, and again after requesting and voting an absentee ballot sent in the name of his recently deceased mother. Robert Patrick, *Voter Fraud Nets Home Confinement*, St. Louis Post-Dispatch, C5 (July 18, 2008).

The database also includes the case of a contested Democratic primary election for Missouri’s 78th House District that was overturned in 2016 by the Missouri Circuit Court for the 22nd Judicial Circuit in St. Louis, finding that improper handling of 142 absentee ballots by the St. Louis Board of Election Commissioners violated Missouri law. Notably, the Court also found that,

No credible evidence was presented from which this Court could find that any voter fraudulently cast a vote in this case. The evidence presented shows that the absentee voters in the August 2, 2016 election did everything they were told to do by election officials and staff. Any error or irregularity that this Court finds herein, is solely the responsibility of the City of St. Louis Board Election Commissioners. *Bruce Franks, Jr. v. Penny Hubbard*, 1622-CC09996, 9, (22nd Cir. Ct. September 2, 2016).

Because the number of ballots in question was larger than the winner's margin (90 votes), the Court ordered a new election. *Bruce Franks, Jr. v. Penny Hubbard*, 498 Sw3d 862 (Mo. 2016).

The same scant record of evidence of voter fraud of any kind, both nationally, and in Missouri, is corroborated by the research conducted by the News21 journalism project at the Walter J. Cronkite School of Journalism and Mass Communications at Arizona State University. Carson, *Exhaustive Database of Voter Fraud Cases Turns Up Scant Evidence That It Happens*. The year-long project compiled cases of alleged voter fraud in the United States between 2000 and 2012, replicating the data collection methodology Dr. Minnite used in *The Myth of Voter Fraud*, by sending out more than 2,000 public records requests to state elections and law enforcement authorities in every state, and the U.S. Department of Justice (and FBI). Project Website, *Who Can Vote?*, <https://votingrights.news21.com/> ,

(last accessed June 5, 2020).⁷ The student journalists followed up these document requests with phone calls and emails, and reviewed more than 5,000 court documents, official records and media reports. They found just over 2,000 alleged cases of a variety of forms of election or voter fraud nationwide, including just under 500 cases of alleged absentee ballot fraud over the twelve-year study period. Whereas the Heritage Foundation's database is limited to cases in which there is some kind of official final judgment, the News21 database contains alleged (or "accused") cases of fraud, cases in which the accused was acquitted, and cases that were not resolved at the time the database was constructed in 2012.

Like the Heritage Foundation database, the News21 database may be searched and sorted by type of fraud and by state, but also by "type of accused," providing a further refinement of the Heritage Foundation's organization of its database. The News21 database contains records for 491 cases of *alleged* absentee ballot fraud; however, filtering out cases that do not involve voters reduces that number to 103. Further filtering on cases resulting in conviction, guilty pleas or consent orders reduces the number further to 72, or about six

⁷ Dr. Minnite served as an (unpaid) consultant on the research design and conducted a seminar for the students on the research methodology used in *The Myth of Voter Fraud*. Their work replicates that approach and produces similar results with respect to a documented low incidence of voter fraud in contemporary U.S. elections.

actual cases per year nationally over the twelve-year study period, the same rate estimated from the Heritage Foundation database covering the longer 1988 to 2018 period.

With respect to the record of allegations and cases of all forms of voter fraud in Missouri, the News21 database like the Heritage Foundation database confirms that what little fraud there is has been limited to a handful of duplicate voting and voter registration fraud cases in the state in the past. This Court came to a similar conclusion in 2006, when it found that, “...fraud in registration...” is “...the type of fraud that has been shown to exist” in Missouri. *Weinschenk v. State of Missouri*, 203 S.W.3d 201, 218 (Mo. 2006). The known voter registration fraud cases in Missouri (which appear in both databases) do not involve voters, but rather the misuse or mishandling of voter registration forms mostly by temporary workers hired by organizations engaged in voter registration drives. The News21 database contains no cases of absentee ballot fraud in Missouri.⁸

⁸ For the 2000-2012 period, the Heritage Foundation database has the one case of individual absentee voter fraud noted above (Joel Neal). Both contain the same 14 cases of voter registration fraud resulting from the mishandling of voter registration forms by organizations running voter registration drives in 2001 and 2006; the Heritage Foundation database also includes two additional cases of voter registration fraud by the parents of a candidate for a 2010 Missouri House District (40th) Democratic primary, who falsely registered in the district in order to cast ballots for their son. Both databases contain two cases of double voting in the 2004 federal election, with one additional case from 2010 in the Heritage Foundation database concerning a university student who voted early at school in Illinois in the 2008 federal election, and then at home in Missouri

3. There Is No Evidence that A Notary or Witness Requirement Reduces Absentee Ballot Fraud

There are no large-scale, systematic studies of *absentee ballot* fraud in the U.S., but based on anecdotal evidence and commonsense, there appears to be a general consensus among experts that even if U.S. elections are relatively free of fraud, if fraud is to occur, it likely will take the form of abuse or misuse of absentee ballots. To be clear, the consensus is that absentee balloting is just slightly less secure than in-person voting, which is not the same thing as alleging that absentee voting is “substantially fraudulent,” as President Trump has tweeted, or implying absentee ballot fraud is rampant from a handful of well-known cases of attempted election rigging by politicians and campaigns through the abuse of absentee ballots. President Trump, *May 26, 2020 Twitter Feed*, <https://twitter.com/realDonaldTrump/status/1265255835124539392>.

There are two main reasons why political scientists and other elections experts reason that absentee ballots *may* increase the opportunities for election fraud: 1) an absentee ballot is not a secret ballot; and 2) absentee balloting rules usually permit some

on Election Day.

kind of third-party participation and/or intervention in the application and ballot chain-of-custody, potentially increasing opportunities for corruption of the voting process.

Experts surmise that absentee ballots increase the potential for fraud because voters who cast ballots outside the polling booth are not assured privacy or the protection from intimidation afforded those who vote under the watchful eyes of election day judges and officials at the polling place. *See* National Commission on Federal Election Reform, *To Assure Pride and Confidence In the Electoral Process*, (Brookings Institution Press 2002); John C. Fortier & Norman J. Ornstein, *Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 University of Michigan Journal of Law Reform 483 (2003); John C. Fortier, *Absentee and Early Voting*, (Washington, D.C. AEI Press 2006). For these reasons, some experts believe that absentee ballot voters could be more vulnerable to coercion than those voters who cast ballots at the polling place.

That said, there is little support for the claim that notarization or witness verification of absentee ballots reduces what little fraud there is in the absentee balloting process. According to the National Council of State Legislatures (NCSL), only Missouri, Mississippi and Oklahoma require at least some voters to notarize their return envelope when voting absentee, but all three states have had isolated cases of absentee ballot fraud.

Eight other states (Alabama, Alaska, Louisiana, North Carolina, Rhode Island, South Carolina, Virginia and Wisconsin) require some form of witness signature on the return envelope, either a notary or the attestation of a non-official witness. When we look

more broadly at these states, we find, again, isolated cases of absentee ballot fraud committed by determined political operatives willing to break the law to win.

The most recent case of election fraud involving absentee ballots in a state with a witness requirement occurred in the 9th Congressional District during the 2018 midterm election in Bladen and Robson Counties, North Carolina. In March of 2019, the North Carolina State Board of Elections (NCSBE) ordered a new election after an investigation found substantial fraud in the mail-in absentee balloting process, with voters claiming they never requested ballots cast in their names and other irregularities. *In Re. Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District*, North Carolina State Board of Elections, (March 13, 2019).

North Carolina law stipulates that an absentee ballot can be marked only by the voter, or a qualified assistant following the voter's instructions while in the voter's presence; that the voter or qualified assistant must seal the ballot in the container envelope in the voter's presence; that two witnesses or a notary must see the voter mark her ballot, sign the container return envelope, and "respect the secrecy of the ballot and the privacy of the absentee voter." N.C. Gen. Stat., 163A-1310 (2017). Only a voter or near relative of the voter can return the ballot to the county board of elections or mail the ballot.

Despite these safeguards, the NCSBE found that a paid political consultant of the Republican incumbent candidate, Mark Harris, engaged in a campaign of fraud to rig the election in Harris' favor. The consultant hired workers he paid in cash to collect absentee

request forms (\$150 per 50 absentee ballot request forms), to collect absentee ballots (\$125 per 50 absentee ballots), and to falsify absent ballot witness certifications. *Evidentiary Hearing: Preview of Evidence*, North Carolina State Board of Elections, (Dec. 12, 2018). https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/Executive%20Director's%20Preview%20of%20the%20Evidence.pdf (last accessed June 5, 2020).

If there are cases of absentee ballot fraud in states with notary requirements, there also are states that do not require voters to notarize or witness their absentee ballots that, according to the data collected by the Heritage Foundation and the News21 investigative journalism project, have no cases of absentee ballot fraud. For example, Delaware, Idaho, Maine, Nebraska, Nevada, North Dakota and Tennessee do not require voters to notarize or witness their absentee ballots, and all seven states have zero cases of absentee ballot fraud recorded in either database.

Taking the analysis one step further, a recent study by the Brookings Institution used the Heritage Foundation's database to look at the number of fraudulent votes attempted by mail for the four states voting entirely by mail before 2018 (Colorado, Oregon, Utah, and Washington). The researchers report that over the time period covered by the database, some 43 million votes were cast in those four states; the Heritage Foundation's database records fewer than 30 fraudulent votes attempted by mail in these four states. Elaine

Kamarck & Christine Stenglein, *Low Rates of Fraud in Vote-by-Mail States Show the Benefits Outweigh the Risks*, (Brookings Institution, June 2, 2020).

The 2005 Report of the Commission on Federal Election Reform, commonly known as the Carter-Baker Commission for the two co-chairs of the Commission, former President Jimmy Carter, and former U.S. Secretary of State James A. Baker, III, developed proposals and recommendations for improving the administration of elections in the U.S. following the debacle of the 2000 election in Florida. National Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, (American University 2005). With regard to the verification of absentee ballots, the report states:

To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized version of the signature that the election administrator maintains. While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot. *Id.* 20.

Notably, nowhere does the report recommend notarization of absentee ballots as a means of deterring absentee ballot fraud.

VII. Conclusion

There is no evidence that a notarization requirement prevents voter fraud or that widespread absentee voter fraud is currently occurring. Allowing voting by absentee ballot without notarization would make it possible for qualified voters to exercise their right to vote without risking the integrity of the electoral process.

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VIII. Certificate of Compliance

I hereby certify that the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b), includes the information required by Rule 55.03, and that the brief contains 6,503 words (as determined by Microsoft Office Word Software).

IX. Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing was served through the Missouri electronic filing system on this 8th day of June, 2020, to:

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