IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

PRIORITIES USA, et. al.,	)	
Plaintiffs,	)	
v.	)	Case No. 18AC-CC00226
STATE OF MISSOURI, et. al.,	)	
Defendants.	)	

ORDER AND JUDGMENT

This case involves a lawsuit by Plaintiffs challenging the constitutionality of HB 1631 and requesting a permanent injunction enjoining the enforcement of the provisions therein. By agreement of the parties, the matter was tried and submitted on the merits for final judgment. For reasons hereinafter stated, the Court finds, with one important exception, that the voting scheme adopted by General Assembly in HB 1631 is within its constitutional prerogative under the Missouri Constitution.

HB 1631 was passed by the General Assembly during the Veto Session on September 14, 2016, and governs all elections occurring after June 1, 2017. Under the new law, in-person voters have one of three options available to them if they wish to cast a vote:

1) Option One requires the presentment of a current Missouri driver or nondriver license, current passport, or a military or veterans identification card;
2) Option Two requires the presentment of any one of a number of prescribed non-photo forms of identification that were permissible under the previous law coupled with the requirement that the individual sign an affidavit under pain of perjury that they are the person on the identification and the resident voter; and
3) Option Three requires a sworn statement on the provisional ballot envelope that the individual is the registered voter but otherwise allows the person to vote without presenting any form of identification, with the caveat that the ballot will only be counted if the individual voter returns with an Option One photo identification, or if the election authority determines that the voter's signature on the provisional ballot matches the voter's signature on file.

For the vast majority of Missouri citizens, the photo identification requirement under Option One poses no burden whatsoever. Indeed, the evidence established that approximately

95% of likely voters already possess such photo identification. See Plaintiffs' Exhibits 06, 107, and Defendants' Exhibit 109. The focus of this lawsuit is the approximately 5% registered voters lacking the prescribed photo identification and whether the new requirements are impermissibly interfering with their fundamental right to vote under the Missouri Constitution.

In order to obtain a nondriver license for voting purposes under Option One, the law requires the same documents as would be required for a driver license: a trip to the Driver License Bureau coupled with proof of lawful presence in this country, proof of Identity, and proof of residence. For those born in the United States, the signed license application accompanied by a certified birth certificate and social security card will usually suffice. For those whose name has changed because of marriage, divorce, or some other reason, or those born outside of the United States, additional certified documents will be required. The General Assembly has provided that individuals requesting the necessary government documents from Missouri agencies may obtain them at no expense as long as the person states that the purpose is to secure a nondriver license in order to vote; and for individuals who require documents from other states, the General Assembly has created a position within the Secretary of State Office to assist such individuals in obtaining the necessary documents from other states, also at no expense to the individual.

These efforts. however, have not resulted in any significant increase of Option One identifications being issued to the thousands of voters who lack such identification. Since the law's inception, only 1,390 nondriver licenses for voting have been issued. Of the 177 DOR license offices in Missouri, 83 of those offices have not issued any nondriver licenses for voting; 30 offices have only issued one, 17 offices only two, and 13 offices only three. Plaintiffs' Exhibits 109, 130. The Downtown DOR license office in St. Louis stands out as singular exception as it has issued 863 free nondriver licenses for voting, which accounts for 62% of the total number of free nondriver licenses issued statewide. The credit for the St. Louis office's numbers, however, belongs to a local Social Ministry group that has been proactive in assisting voters obtain the necessary documentation, and not the Department of Revenue or the local election authority. Obtaining documents from other states has its own problems as most other states require some sort of identification before the sought documents will be released; one witness aptly characterized this pitfall as a bureaucratic "catch-22". In terms of the assistance provided by the Secretary of State Office to voters requiring out-of-state documents, they report successfully assisting 29 individuals in obtaining the necessary out-of-state documents.

The Court does not mean to assign blame for the low numbers. While there is some evidence of misinformation emanating from DOR offices and local election authorities, there is no evidence of a concerted effort to undermine the law or to discourage people from obtaining the necessary documents. These low numbers are in large part simply reflective of a population not well equipped to navigate the intricacy of government red tape: a group for whom walking and public transportation rather than automobiles and driver licenses are the de

facto mode of transportation, a group for whom food and the necessities are the preoccupation of every-day life.

The testimony from Professor Mayer, which the Court finds credible, was that a strict government photo identification requirement (as in Option One) would place a burden on individuals not having such documents and have a negative effect on voter turnout among the percent of the population lacking such credentials. Of course, there are always exceptions. Seventy-one-year-old Mildred Gutierrez credibly testified to her experience in securing a nondriver license after being mistakenly told by a poll worker that she would not be allowed to vote in the future without one. Ms. Gutierrez, who has limited mobility because of a number of physical disabilities, was fortunate enough to have a spouse for transportation; she described how she and her husband spent the better part of a day trying to locate a DOR license office and then had to wait in line for over an hour at the license office before being served. Not all elderly or disabled individuals might have access to transportation or be that dedicated to exercising their right to vote as to spend the better part of a day securing the necessary paperwork. Certainly, the motivation to deal with a DOR license office is greater when wanting to license a recently purchased automobile or to renew a driver license in order to drive that automobile. In the face of these practical problems, the General Assembly has provided other options for voting.

Under Option Two, voters may cast a ballot if they are able to provide a form of identification which was acceptable under the prior law and are willing to sign an affidavit attesting to their identity. The approved forms of identification acceptable under Option Two are:

1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state;
2) Identification issued by the United States government or agency thereof;
3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri;
4) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that contains the name and address of the individual;
5) Other identification approved by the secretary of state under rules promulgated pursuant to this section.

Although voters voting under Option Two are required to sign an affidavit that voters voting under Option One are not required to sign, the Court finds the affidavit requirement reasonable because of the different forms of identification being presented by Option Two voters. The state has a legitimate interest in preserving the integrity of the election process and may adopt such protections as are reasonable, serve a compelling state interest, and are closely tailored to effectuate that interest, *Weinschenk v State, 203 S.W.3d 201,203.* Requiring an affidavit from

the voter that they are in fact the person voting is not an unreasonable burden. An affidavit closely tailored to effectuate the state's interest would be substantially as follows:

1) He/she are in fact the person registered to vote;
2) He/she are in fact a citizen; and
3) The address shown is in fact their legal residence.

Unfortunately, the affidavit set forth in subsection 115.427.2(1) and 115.427.3, which Option Two voters are required to sign, is much more expansive. It reads as follows:

> I do solemnly swear (or affirm) that my name is _____; that I reside at _____; that I am the person listed in the precinct register under this name and at this address; and that, under penalty of perjury, I do not possess a form of personal identification approved for voting. As a person who does not possess a form of personal identification approved for voting, I acknowledge that I am eligible to receive free of charge a Missouri nondriver's license at any fee office if desiring it in order to vote. I furthermore acknowledge that I am required to present a form of personal identification, as prescribed by law, in order to vote. I understand that knowingly providing false information is a Violation of law and subjects me to possible criminal prosecution. **(Emphasis Supplied)**

The affidavit is, on its face, contradictory and misleading. As Mildred Gutierrez explained,

> "I had all kinds of forms of identification. I had my birth certificate. I had my voter ID card which was sent to me from the United States Post Office...it's on the voter records that I am a voter and that I am registered. My name was clearly on there with my current address, and I had that as identification, along with my Social Security card and a utility bill. So, I had all forms of identification."

The affidavit plainly requires the voter to swear that they do not possess a form of personal identification approved for voting while simultaneously presenting to the election authority a form of personal identification that is approved. If, as the State argues, the form of personal identification refers to an "Option One Identification", then the latter part of the affidavit which requires the voter to acknowledge that an "Option One Identification" is now a prerequisite for voting is an outright misstatement of law. Nor is the Court persuaded by the State's argument that any confusion or ambiguity can be solved by a call to the Secretary of State's toll-free hotline.[1] All of this occurs in an affidavit in which the first line informs the voter that they are required to "solemnly swear or affirm", and lest they forget, reminds them in the last line that a false swearing subjects them to criminal prosecution. Whether subject to a strict scrutiny test or rational basis test, the requirement that a voter execute the affidavit set forth in

[1] An equally vexing issue is the use of the word "possess" twice in the affidavit, and the interpretation by the Secretary of State, not heretofore shared with affiants or the public, that each "possess" has a different definition.

sections115.127.2(1) and 115.427.3 impermissibly infringes on a citizen's right to vote as guaranteed under the Missouri Constitution.

HB 1631 also required the Secretary of State to inform the general public of the Photo Identification requirements in Option One utilizing advertisements "in print, broadcast television, radio, and cable television media, as well as the posting of information on the opening pages of the official state internet websites of the secretary of state and governor." Thus, with a budget of 1.5 million dollars the secretary of state embarked on a statewide media campaign to announce the availability of state-issued photo ID cards.

While no evidence was presented to the Court concerning the content of the radio and television advertising, the evidence concerning the content of the print advertising showed that in addition to announcing the availability of state-issued ID cards, the advertising strongly implied that a photo identification card was a required for voting. See Plaintiffs' Exhibits 7 thru 12 and 13. As the state concedes, a photo identification card is not a requirement for voting; however, the print message promulgated by the State could clearly lead voters to believe that they would be unable to cast a ballot without presenting a photo identification card. Certainly, several local election authorities were led to so believe, as evidenced by their web sites and training materials. See Plaintiffs' Exhibits 14, 120, 121, 122. Mildred Gutierrez was told by poll workers that she would need a photo ID card the next time she voted. William David King also described how he had been turned away when he tried to vote using his voter registration card and was told by the poll workers that without his Missouri photo ID card, he needed his passport to vote. No compelling state interest is served by misleading local election authorities and voters into believing a photo ID card is a requirement for voting; in the case of the former it results in qualified voters being turned away at the polls; in the case of the latter it results in qualified voters not even showing up at the polls.[2] As desirable as a Missouri-issued photo ID might be, unlike an American Express Card, you may leave home without it, at least on election day.

Under Option Three, an individual who shows up at the polls without any of the prescribed forms of identification under Option One or Option Two will still be allowed to cast a provisional ballot, with the caveat that the ballot will only be counted if (1)the individual returns with an Option One photo identification before the polls close, or (2) the election authority determines that the voter's signature on the provisional ballot matches the voter's signature on file. The Plaintiffs' main complaint is that the signature matching process is largely subjective without any formal standards, guidelines, or procedures, and therefore presents a substantial risk of voter disenfranchisement. The number of provisional ballots cast in the August 2018 primary that required a signature comparison was relatively small, 393, and of theses less that 15% were rejected. Plaintiffs have not pointed to any authority for the

[2] Not all Secretary of State signage was misleading. Defendants' Exhibit 108 is a fair presentation of the voting options under HB 1631, although from the evidence it did not appear that exhibit 108 was ever used in any newspaper advertising.

proposition that there is an absolute right to vote despite the lack of any identification. The Court finds that the provisional balloting allowed under Option Three is inclusive rather than exclusive as it allows for individuals who show up at the polls without any of the prescribed forms of identification one more opportunity to have their vote counted rather than simply turning them away. The Plaintiffs' argument is unpersuasive.

Order and Judgment

For the reasons set forth in this judgment and the record before this Court,

It Is Therefore Ordered, Adjudged, And Decreed: The Defendants' Motion to Dismiss for lack of standing is sustained as to Plaintiff West County Community Action Network and denied as to the remaining Plaintiffs.

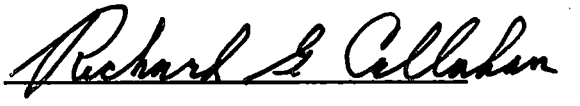
It Is Further Ordered: The Defendants are permanently enjoined from requiring voters otherwise qualified to cast a regular ballot under section 115.427.2 to execute the sworn statement set out in section 115.427.2(1) and 115.427.3.

It is Further Ordered: The Defendants are permanently enjoined from disseminating materials which represent that a photo identification card is required to vote.

It is Further Ordered: The Defendants are permanently enjoined from disseminating materials with the graphic that voters will be asked to show a photo identification card without specifying other forms of identification which voters may also show.

It is Finally Ordered: All remaining claims of Plaintiffs are denied.

So Ordered this 9th Day of October, 2018



Richard G. Callahan
Senior Circuit Judge