SC94285

IN THE SUPREME COURT OF MISSOURI

NATALIE A. VOWELL,

Appellant,

v.

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

Respondent.

Appeal from the 19th Judicial Circuit, Cole County Missouri
The Honorable Jon E. Beetem, Judge

SUBSTITUTE BRIEF OF RESPONDENT

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INTRODUCTION

Missouri law requires that the Secretary of State receive declarations from persons seeking to be candidates and to certify to election authorities those persons "entitled to be voted for." § 115.387. Does this mean that the Secretary of State is required to provide a certified list of candidates to local election authorities that includes a candidate who the voter registration records show is not eligible for the office selected? Or to put the question in its immediate form, must the Secretary include on the August 2014 primary ballot a candidate for the Missouri House of Representatives who concedes that she is ineligible under Art. III, § 4 of the Missouri Constitution? Because that would be the consequence of a ruling in favor of Vowell, an avowed candidate for the 78th House District who admits facts disqualifying her.

Among the qualifications for members of the Missouri House of Representatives is to have been a "qualified voter" for two years before taking office. Mo. Const. Art. III, § 4; § 21.080, RSMo. The Constitution does not define "qualified voter." But, as Vowell cited on page 25 of her Brief in the Western District (but thought to remove from her Substitute Brief in this Court), Missouri courts have defined it as having properly registered to vote. *See State ex rel. Mason v. County Legislature*, 75 S.W.3d 884, 887 (Mo. App. W.D. 2002); *State ex rel. Woodson v. Brassfield*, 67 Mo. 331, 337 (1878). Vowell has admitted repeatedly that she will not have been a registered voter

for two years by the date of the November 2014 general election. *See* LF p. 5, ¶¶ 7, 8; Vowell's Substitute Brief p. 4. However, in her Declaration of Candidacy, she swore that "if nominated and elected to such office, [she would] qualify." § 115.349.3. The result of accepting Vowell's argument would be that voters in the August primary in the 78th House District would have before them a candidate who concedes that she does not meet the qualifications imposed by the Missouri Constitution. This result would compel the Secretary of State to act as if he were blind to official documents that he is statutorily mandated to collect and maintain. That result would largely read out of the law a phrase defining the Secretary's duties.

Vowell's Declaration of Candidacy was not the only pertinent record in the Secretary's possession: Pursuant to § 115.158, since January 1, 2006, the Secretary of State has maintained the Missouri Voter Registration System, which includes voter registration records from throughout the State, including the record of Vowell's recent registration. When the Secretary gives local election authorities notice of the candidates in an election such as the August primary, his duty is not to simply list those who filed declarations of candidacy, but to winnow the list to those who are "entitled to be voted for":

> Not later than the tenth Tuesday before each primary election, the secretary of state shall transmit to each election authority a certified list containing the name

> and address of each person who has filed a declaration of candidacy in the secretary's office and is entitled to be voted for at the primary election, together with a designation of the office for which the person is a candidate and the party the person represents.

§ 115.387.

Vowell's argument detracts substantially from the practical impact of § 115.158. It would mean that the Secretary of State must keep his voter registration and candidate filing assignments in separate silos, depriving him of the opportunity (if not the obligation) to enforce the Missouri Constitution despite statutory assignments that unequivocally place in his hands information that demands action.

There are, of course, other means to remove from the ballot the name of someone who, like Vowell, is constitutionally disqualified. But Vowell's reliance on §§ 115.342, 115.526, and 115.563 overstates the meaning of those sections. That those statutes provide some methods for policing candidacy does not mean that there is not another—especially in light of the duties expressly assigned to the Secretary. Nowhere in those sections does the General Assembly even hint that the Secretary is bound to certify the name of every person who files a declaration of candidacy—which could include not

just those who do not meet the registration requirement, but those who are under age or even lack citizenship.

The Court should find that a candidate who is constitutionally ineligible to sit in the Missouri House of Representatives is likewise not entitled to have her name appear on the ballot merely because she timely submitted a declaration of candidacy, her taxes are apparently in order, and her opponent did not fund a suit challenging her candidacy. It must not be the case that the Secretary of State, when completing his statutory assignment to provide local election authorities the names of those who are "entitled to be voted for," is obligated to ignore the voter registration records that he is required by another statute to compile.

Alternatively, Vowell argues that the voter registration requirement that disqualifies her is unconstitutional. The case law does not support such a claim.

STATEMENT OF FACTS

Natalie Vowell registered as a voter in Missouri on July 17, 2013. LF p. 5, ¶8. Vowell filed her declaration of candidacy with the Secretary of State's office on March 11, 2014, seeking nomination for the office of State Representative, District 78, at the August primary election and to be elected at the November 2014 general election. LF p. 5, ¶ 9. Personnel at the Secretary of State's office received that declaration (Vowell's Substitute Brief at 4, citing LF at 5)–the first step in certifying the list of candidates for the August primary.

On May 6, 2014, following a telephone conversation between Vowell and the Secretary of State's Office, Vowell was informed by letter that she cannot be qualified as a candidate because her voter registration status did not meet the candidate qualifications established in Article III, Section 4 of the Missouri Constitution. LF p. 14. Specifically, the letter informed Vowell that in order to qualify for the August 2014 ballot, she must have been registered to vote for two years before the November 4, 2014, election. *Id*. The

Secretary then omitted Vowell's name from the list sent to local election authorities for the 78th House District.[1]

Vowell filed her Petition for Declaratory Judgment and Injunctive Relief and a separate Motion for Temporary Restraining Order and Preliminary Injunction against the Secretary of State. LF pp. 4 – 21. The circuit court heard the matter, taking it up as an oral motion for judgment on the pleadings. TR 3:7-13. The parties submitted additional written argument to the circuit court. LF pp. 1-2. And the circuit court entered its judgment on May 21, 2014, dismissing Vowell's claims. LF pp. 22-24.[2] Vowell sought relief in this Court (No. SC94223), but this Court transferred the appeal to the Court of Appeals, Western District. That court ruled in Vowell's favor on June 19, 2014. This Court granted transfer on July 7, 2014.

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[1] Based on the Court of Appeals' June 19 decision, the Secretary has supplemented the certified list of candidates sent to the local election authorities to include Vowell's name.

[2] The Secretary later filed an Answer, Defenses, and Affirmative Defenses—and though the circuit court did not rule, Vowell moved to strike Respondent's responsive pleadings. LF p. 2.

ARGUMENT

Standard of Review

The standard of review is the same as that applied by the circuit court in considering a motion for judgment on the pleadings pursuant to Rule 55.27(b). "Judgment on the pleadings is appropriate where the question before the court is strictly one of law." *Eaton v. Mallinckrodt, Inc.,* 224 S.W.3d 596, 599–600 (Mo. banc 2007). The well-pleaded facts of the petition are treated as true for purposes of the motion and the non-moving party is accorded all reasonable inferences drawn therefrom. *Twehous Excavating Co., Inc. v. L.L. Lewis Investments, L.L.C.*, 295 S.W.3d 542, 546 (Mo. App. W.D. 2009). Questions of law are reviewed *de novo*. *Dorris v. Kohl*, 337 S.W.3d 107, 110 (Mo. App. W.D. 2011).

I. Vowell cannot challenge the Secretary's statutory authority in § 115.387 to certify candidates that are "entitled to be voted for" because she admits that she is not qualified as a candidate – Responding to Points I & II.

One thing is clear from the petition and from Vowell's arguments and briefing: she does not qualify as a candidate for the Missouri House of Representatives because she registered to vote less than a year before filing her candidacy. As such, she cannot challenge the Secretary's statutory authority in § 115.387 to certify candidates that are "entitled to be voted for."

A. To be a candidate, Vowell must be a qualified voter for two years, which she is not.

The Missouri Constitution requires that members of the House have been "qualified voters" for two years before taking office:

> Each representative shall be twenty-four years of age, and next before the day of his election shall have been a qualified voter for two years and a resident of the county or district which he is chosen to represent for one year . . . .

Mo. Const. Art. III, § 4; § 21.080, RSMo. The Constitution does not define "qualified voter." But Missouri courts have defined it as having properly registered to vote.

As early as 1878 (three years after the word "qualified" was used in the 1875 constitution, and 67 years before it was included in the current constitution), this Court recognized registering to vote as "the final, qualifying act" that enabled a citizen to vote. *State ex rel. Woodson v. Brassfield*, 67 Mo. at 337. That decision, and subsequent precedents, justified this repeated judicial declarations that "[t]he term 'qualified voter' has been defined in Missouri for many years. 'A qualified voter is one that, in addition to other qualifications, must be registered where such is required as a condition for voting.'" *State ex rel. Mason v. County Legislature*, 75 S.W.3d

884, 887 (Mo. App. W.D. 2002) (quoting *State ex rel. Burke v. Campbell*, 542 S.W.2d 355, 357 (Mo. App. E.D. 1976)); *see also State ex rel. Woodson,* 67 Mo. at 337 ("[N]o matter if a citizen possessed every other qualification, if not registered, he was not a qualified voter.").

Interpretation of the word "qualified" is not merely established in the precedence, but it is eminently logical. As the Missouri Court of Appeals, Eastern District, wrote in *State ex rel. Burke*,

> If we accept intervenor's position that one may be a qualified voter although not registered to vote and carry the argument to its logical conclusion, such would permit a person to present himself as qualified to represent a district in the General Assembly though not qualified to vote in local elections. We do not believe the framers of Article III, Section 4, intended that one not qualified to vote in his own election might serve as State Representative and no such strained construction will be placed on this provision.

542 S.W.2d at 358. Vowell argues that this Court should not rely on *Burke* because there is supposedly only a "glancing similarity" between that case and this one. If the similarity is glancing, it is only because the case of

candidate in *Burke* was far stronger and more sympathetic than Vowell's, given that he had consistently been registered to vote.

Vowell has repeatedly admitted that she will not have been a registered for two years by the date of the November 2014 general election. *See* LF p. 5, ¶¶ 7, 8; Vowell's Substitute Brief p. 4. Therefore, she cannot be a "qualified voter" for two years as required by the Missouri Constitution, Article III, § 4. Ultimately, she cannot be a candidate for the Missouri House of Representatives for the August primary or the November general election—though she certainly can run for future terms if she meets the qualifications as set forth in the Constitution and statutes.

B. There is no standing to challenge a decision on qualifications that Vowell admits she does not satisfy.

Justiciability is a "prudential" rather than a jurisdictional doctrine. "A justiciable controversy exists where [1] the plaintiff has a legally protectable interest at stake, [2] a substantial controversy exists between parties with genuinely adverse interests, and [3] that controversy is ripe for judicial determination." *Schweich v. Nixon*, 408 S.W.3d 769, 773-774 (Mo. banc 2013). (Internal citations omitted throughout.) The first two elements of justiciability are encompassed jointly by the concept of "standing." "Prudential principles of justiciability, to which this Court has long adhered,

require that a party have standing to bring an action." *Id.* Standing is "a component of the general requirement of justiciability" and is the state analogue to the federal "case or controversy" requirement. *Id.*

A party must have standing to bring an action in a Missouri court. Standing, at its most basic level, simply means that the party or parties seeking relief must have some stake in the litigation. *In Their Representative Capacity as Trustees for Indian Springs Owners v. Greeves,* 277 S.W.3d 793, 798 (Mo. App. E.D. 2009). (Internal citations omitted throughout.) Courts have a duty, even *sua sponte*, to determine if a party has standing prior to addressing the substantive issues of the case. *Id.* Standing is "a concept used to ascertain if a party is sufficiently affected by the conduct complained of in the suit, so as to insure that a justiciable controversy is before the court." *Id.*

In the context of a declaratory judgment action, a plaintiff must have a legally protectable interest at stake in the outcome of the litigation. *Lebeau v. Commissioners of Franklin Co., Mo.*, 422 S.W.3d 284, 288 (Mo. banc 2014). "A declaratory judgment provides guidance to the parties, declaring their rights and obligations or otherwise governing their relationship … and generally may be granted when a court is presented with: (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at

stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law." *Gurley v. Missouri Bd. of Private Investigator Examiners*, 361 S.W.3d 406, 411 (Mo. banc 2012).

Contrary to Vowell's argument, her lack of qualification for candidacy reveals the lack of a justiciable controversy or lack of standing. Ultimately, what Vowell wants is to appear on a ballot as if she were someone who could actually become a State Representative, when she concedes she is not. She has no more standing—or put another way, her claim is not more justiciable—than if she filed a declaration for candidacy when she would be too young to take office. Given the undisputed fact that Vowell cannot, as a matter of law, be seated in the 2015 General Assembly, she possesses no claim to candidacy during this election cycle, leaving her with no standing or justiciable controversy.

II. The Secretary of State is authorized by statute – § 115.387 – to certify candidates that file a declaration and are "entitled to be voted for" – Responding to Points I & II.

Vowell further argues that her qualification for office are irrelevant at this stage—that once the staff at the Secretary of State's office has taken her declaration that "if nominated and elected [to the House she] will qualify,"

the Secretary must place her name on the ballot even if official records submitted to the Secretary prove that statement was false. But the Secretary does have sufficient authority to perform the essentially ministerial task of comparing a declaration of candidacy with official voter registration records, and declining to place on the ballot the name of someone who the registration records shows does not qualify for the office sought.

The Missouri Constitution, Article IV, § 14, provides that the Secretary of State shall perform "such duties . . . in relation to elections and corporations, as provided by law." This provision empowers the Secretary as the chief election official in Missouri. Among the Secretary's duties "provided by law" is the obligation, for certain offices including state legislative seats, to accept declarations of candidacy and then to certify names of candidates to the election authorities. In Vowell's view, the Secretary has no role, no authority, no responsibility between those two acts (unless a list is received from the Department of Revenue). But that is not how the statute reads.

Each candidate for state representative must file his or her written, signed, and sworn declaration of candidacy, in-person, with the Secretary of State's Office, by 5:00 p.m. on the last Tuesday in March, containing the information called for in § 115.349.3. §§ 115.347.1, 115.353(1), 115.355.1, and 115.349.1. In that declaration, the candidate swears that "if nominated and elected to such office, I will qualify." § 115.349.3. One declaring her candidacy

for the Missouri House of Representatives, then, is swearing that as of the November election, she will have been a registered voter in her legislative district for two years. As discussed, this is not true for Vowell.

Section 115.387 provides that "[n]ot later than the tenth Tuesday before each primary election" (i.e. May 27, 2014), "the secretary of state shall transmit to each election authority a certified list containing the name and address of each person who has [1] filed a declaration of candidacy in the secretary's office and [2] is entitled to be voted for at the primary election." Here, the Secretary determined that Vowell was not "entitled to be voted for" because the official voter registration records showed that she had not registered in time to be a candidate for this year.

Vowell now argues that the meaning of the second element of § 115.387 is limited only to consideration of the tax-related disqualification factors when alerted by the Department of Revenue – that Missouri's Secretary of State may consider some statutory qualifications, but not others required by Missouri's Constitution and statute, though all such qualifications are equally, explicitly stated. Thus Vowell says that regardless of what the Secretary figures out after the declaration of candidacy is filed—and perhaps even if the Secretary fails to notice a problem on the face of the declaration itself, such as a candidate being under age—the name of the candidate *must* be in the § 115.387 transmittal and, presumably, must be included on each

ballot printed by each election authority, unless the candidate appears on the Department of Revenue's list pursuant to § 115.342.

But if the filing of the declaration of candidacy automatically entitled the filer to be voted upon, there would be no need for the "entitled to be voted for" language. It would be mere surplusage, which the law disfavors. *See, e.g., Jones v. Dir. of Revenue*, 832 S.W.2d 516, 517 (Mo. banc 1992). Alternatively, Vowell argues that if "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[.]" (Vowell's Substitute Brief, p. 18). There is simply no support for this conclusion – neither statute references the other, and there is no indication that one is subservient to the other.

Vowell's argument is based largely on a negative inference: she claims that because there is a statutory mechanism by which opposing candidates can challenge qualifications, the Secretary cannot have a role in determining qualifications—not even to simply check official voter registration records maintained in his office to see if the declared candidate is a resident of the jurisdiction, the required age, and a registered voter. That would unnecessarily and unjustifiably limit the significance of the statutory assignment to the Secretary of State in § 115.158 that the Missouri Voter Registration System be maintained by the Secretary's office and that it

contain the name and registration information of every legally registered voter in Missouri.

Vowell's recitations of § 115.342 (assigning the Department of Revenue to determine non-compliance with tax requirements, and permitting disqualification of candidates on this basis), § 115.526 (permitting opponent challenges to declarations of candidacy or qualifications), and § 115.563 (leaving it to the House of Representatives to determine unadjudicated disputes over the qualifications of its members) are accurate, though her insistence that they are the only means of lawfully vetting candidate qualifications is incorrect. The processes of checking the information stated in the certification of candidates' declarations of candidacy, and opponents' challenges to certification, do not conflict with one another. One does not render the other redundant.

Reliance on *State ex rel. Farris v. Roach* is also misplaced. This Court was not dealing with a grant of statutory authority as explicit as § 115.387. 246 Mo. 56 (1912). This case also does not deal with the internal rules or "customs" of the Secretary of State's Office (*State ex rel. Cameron v. Shannon*, 33 S.W. 1137 (Mo. 1896)), or with regulations relating to a lottery system (*State ex rel. Walton v. Blunt*, 723 S.W.2d 405 (Mo. App. W.D. 1986)), or with the disqualification of a candidate for municipal office (*State ex rel. Thomas v. Neeley*, 128 S.W.3d 920 (Mo. App. S.D. 2004)). Vowell is without any relevant,

supportive case law on this point. The present case simply involves the application of clearly written statutes and constitutional provisions to facts repeatedly admitted by Vowell. And the difference lies in Vowell's comment following her treatment of *Thomas* on page 32 of her substitute brief. In the cases she cites, there was no statutory authorization for the election authorities to evaluate the eligibility requirements of candidates. Here, however, the Secretary of State relies on the plain language of § 115.387.

Vowell's situation is truly without case law comparison, because she has repeatedly admitted a fact that disqualifies her from being a candidate. There is no argument whatsoever that Vowell actually meets the two-year voter registration requirement, distinguishing her from every other decision on this issue. Yet she argues that the Secretary of State was not authorized to determine whether to certify her name for the ballot because his duties, once her declaration of candidacy was received by his office, became purely ministerial. "Ministerial" has been defined as "relating to or being an act done after ascertaining the existence of a specified state of facts in obedience to a legal order without exercise of personal judgment or discretion." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 741 (10th ed. 1993). Even if the Secretary of State's role was purely ministerial, no task is more ministerial than reviewing documents maintained by his office, and looking at a calendar.

The statutes create a series of safeguards, exercisable by different players at different points in the process. There are four parties with vetting opportunities, with some distinct and some overlapping temporal features: the Secretary of State's certification review; primary election opponent; general election opponent; and, the House of Representatives.

The Secretary makes an initial determination, studying the candidate's declaration and comparing the information given there with information in the state's voter registration database, which provides information on the potential candidate's constitutional and statutory qualifications. § 115.38. If the Secretary concludes that a filer is not entitled to be voted for, then the Secretary declines to place the filer on the certified list of candidates. The filer is then entitled to judicial review under § 536.150, RSMo. Absent a review by the Secretary of State's office to identify basic voter registration and residency information, the risk is high that the winner of a primary or general election will belatedly be found disqualified for office, resulting in the complication and expenses of special elections.

The only time limit that applies to the Secretary of State's review is the ten weeks imposed by the deadline for transmitting names for the ballot. Practical considerations argue against requiring the Secretary of State's office to make the determination of eligibility at the instant the declaration is presented for filing, as Vowell seems to do with her "you took it; now it's too

late to do anything about it" argument. The Secretary of State's office receives hundreds of filings in short order, especially on the first day of filing. The Secretary cannot slow the filing process to closely examine each declaration before allowing it to be filed, as Vowell seems to argue. Rather, the statute permits—indeed, contemplates—an orderly, deliberate process, where the Secretary of State's office receives the filings, ensuring that candidates receive credit for filing by the deadline, and then it goes about the task of certifying qualification.

Pages 24 through 28 of Vowell's substitute brief present several examples of conduct and circumstance that may result in a candidate being disqualified from the ballot. In so doing, Vowell cites § 115.342. Section 115.342 lists tax-related reasons that may disqualify a candidate, and instructs the Department of Revenue to examine complaints of noncompliance. In the event the Department of Revenue discovers an uncorrected delinquency, it is to notify the Secretary of State. The reasonable conclusion, and apparently the one Vowell agrees with, is that the Secretary may exclude a candidate from the ballot based upon an official report showing disqualification under § 115.342. The same plain-meaning, reasonable approach leads to a similar interpretation and application of § 115.387. The report of disqualification received from the Department of

Revenue is comparable to the voter registration records maintained by the Secretary, and a similar treatment should apply.

Ultimately, this case does not fully test the scope of the Secretary's authority to act after accepting a filing beyond the facts presented, and thus does not require the Court to conclude, as Vowell suggests, that ruling in the Secretary's favor would give him plenary, problematic authority. It merely asks whether the Secretary of State's office may look at—or, in Vowell's view, is compelled to turn a blind eye to—the voter registration records that are statutorily required to be maintained in his office. § 115.158.

To place a blinder on the Secretary would do more than eliminate the first of the checks of candidacy qualifications. It would render practically meaningless his assignment to determine whether one who filed is also "entitled to be voted for" (§ 115.387)—a conclusion that would violate the longstanding principles that words in statutes must be given meaning, and that they are not mere surplusage. *Jones v. Dir. of Revenue*, 832 S.W.2d 516, 517 (Mo. banc 1992); *Six Flags Theme Parks, Inc. v. Dir. of Revenue*, 179 S.W.3d 266, 272 (Mo. banc 205); *Farish v. Mo. Dept. of Corrections*, 416 S.W.3d 793, 796 (Mo. banc 2013). The Court should reject Vowell's claims and

uphold the Secretary's authority insofar as it is applied based on official records of which the Secretary is the official custodian.[3]

III. Missouri law requiring a candidate to be registered as a voter for two years does not violate the United States Constitution and was not properly preserved for appeal – Responding to Point III.

Vowell's remaining arguments go to whether the durational registration requirement in Article III, Section 4 of the Missouri Constitution violates the United States Constitution. Fatal to her claim, however, is the fact that she failed to preserve her constitutional questions for this Court's review. The claims further fail on the merits.

A. Vowell failed to preserve her constitutional claims.

On page 12 of her substitute brief Vowell admits that her petition did not even cite the provision of Missouri's Constitution that allegedly threatens her First and Fourteenth Amendment rights. It is not possible to state the facts showing the violation for purposes of raising a constitutional claim – let alone preserving that claim under the separate, applicable analysis – without

[3] In the event the Court affirms the judgment entered by the circuit court, the Secretary of State would respectfully request the Court's direction as to the treatment of those votes that will have been cast for Vowell.

first identifying the offending provision. Vowell asks this Court to "infer" that she had. This does not satisfy the framework under *United C.O.D. v. State*, 150 S.W.3d 311 (Mo. banc 2004), which relates only to how a constitutional question may be *raised*.

To preserve a constitutional question for review, four actions must occur. First, the matter must be raised at the first opportunity; second, the sections of the Constitution claimed to be violated must be specified; third, the point must be preserved in the motion for new trial; and fourth it must be adequately covered in the briefs. *City of St. Louis v. Butler Co.*, 219 S.W.2d 372, 376 (Mo. banc 1949). Vowell fails to satisfy these required actions. Consequently, she failed to preserve any constitutional claims.

B. Missouri's voter registration requirement passes constitutional muster.

In addition to her failure to preserve, Vowell's constitutional claims fail on the merits, although it is difficult to ascertain what claims she now raises. "A statute[,] is presumed to be constitutional and will not be invalidated unless it clearly and undoubtedly violates some constitutional provision and palpably affronts fundamental law embodied in the constitution." *State v. Faruqi,* 344 S.W.3d 193, 199 (Mo. banc 2011); *Coyne v. Edwards*, 395 S.W.3d 509, 514 (Mo. banc 2013).

1. Level of scrutiny.

In reviewing candidacy restrictions, the existence of barriers to a candidate's access to the ballot "does not of itself compel close scrutiny." *Bullock v. Carter,* 405 U.S. 134, 143 (1972); *Peeper v. Callaway Co. Ambulance Dist.*, 122 F.3d 619, 622 (8th Cir. 1997). The United States Supreme Court has upheld restrictions on candidacy that are unrelated to First Amendment values and that "protect the integrity and reliability of the electoral process itself." *See Anderson v. Celebrezze,* 460 U.S. 780, 789 (1983); *Peeper*, 122 F.3d at 623. Whether a court believes that the state "was unwise in not choosing means more precisely related to its primary purpose is irrelevant…"; it is sufficient for constitutional purposes that the state's reason at least arguably provides a rational basis for the restriction on candidacy. *Stiles v. Blunt*, 912 F.2d 260, 267 (8th Cir. 1990). The right to run for public office, unlike the right to vote, is not a fundamental right. *Bullock,* 405 U.S. at 142-43; *Stiles*, 912 F.2d at 265. Nor is candidacy a suspect class that triggers strict scrutiny review. *Stiles*, 912 F.2d at 264.

Article III, § 4 of Missouri's Constitution and § 21.080, RSMo, are precisely the types of reasonable, nondiscriminatory restrictions subject to lesser scrutiny. Relevant to this case, they require only that a person seeking to hold elected office register to vote by a certain date. Heightened scrutiny is

not applicable and the state's interest in superintending its elections clearly satisfies the applicable, rational relationship standard.

2. Missouri's durational voter registration passes all constitutional challenges.

Vowell claims that the two-year voter registration requirement, insofar as it bars candidates from the ballot, violates the Equal Protection Clause of the Fourteenth Amendment. That clause commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe,* 457 U.S. 202, 216 (1982); *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 441 (1985).

Durational residency, citizenship, and age requirements as conditions to holding office, both federal and state, have been provided throughout the history of the country. *State ex rel. Gralike v. Walsh*, 483 S.W.2d 70, 76 (Mo. banc 1972). Examples are found in the Constitution of the United States, which makes provisions of this character with respect to the President (Article II, § 1), the Senate of the United States (Article I, § 3), and the House of Representatives (Article I, § 2). *Id*. The State of Missouri has such requirements with respect to the Governor of the State (Article IV, § 3), State Senators (Article III, § 6), State Representatives (Article III, § 4), and Judges of the various courts of the state (Article V, § 25). *Id*.

"Absent a controlling decision by the Supreme Court of the United States holding to the contrary, we hold that the equal protection clause of the Fourteenth Amendment does not eliminate the right of the State of Missouri to establish and enforce the one-year residency in the district requirement as a condition to serve as State Senator[…]." *Id. See also State ex rel. Burke*, 542 S.W.2d at 358 ("We find the reasoning of *Gralike*, that a state may establish and enforce reasonable requirements for officeholders, compelling […].") These restrictions are closely analogous to the two-year voter registration requirement applied to aspiring candidates to state representative, and this Court's ruling in *Gralike* should be controlling.

These types of restrictions have been upheld by federal courts as recently as this past May, in a case with facts closely analogous to ours. In *Lindsay v. Bowen*, a 27-year-old in California sought to have her name placed on her party's California 2012 presidential primary ballot. She was disqualified because she did not meet the federal constitutional age requirement for that office, and, like the present case, there was no true argument about her lack of qualification. She filed suit against California's Secretary of State, claiming that the age requirement violated her free speech, association, and equal protection rights. The Ninth Circuit affirmed the District Court's dismissal of her action, stating that age requirements, like residency requirements and term limits, are neutral candidacy

qualifications which the State certainly has the right to impose. 750 F.3d 1061, 1063 (9th Cir. 2014).

None of the durational registration case law cited by Vowell here or at the Western District is legally controlling, factually similar, or in any other way helpful to her cause. Vowell is not an aspiring notary public in New Hampshire facing a three-year registration requirement[4]; she is not running for county executive in Maryland, facing a five-year registration requirement[5]; she is not running for school board in Texas and facing a three-year registration requirement; she is not running for Auditor in Missouri, subject to a ten-year residency requirement, which was found not to be reasonably related to any state interest; she is not running to be a judge in

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[4] *Opinion of the Justices*, 554 A.2d 466 (N.H. 1989). In the same opinion, the court upheld a three-year voter registration requirement applied to justices of the peace.

[5] *Bd. of Supervisors of Elections of Prince George's County v. Goodsell*, 396 A.2d 1033, 1038 (Md. 1979). The court explicitly limited its decision, stating "We do not here mean to intimate any opinion one way or the other regarding a substantial registration requirement for other offices; we merely wish to make it clear that the application here of a higher standard than the rational basis test is limited to the type of office involved in the instant case."

Florida; and, she is not running for mayor in New Jersey, subject to a voter registration requirement that was found unconstitutional because it arbitrarily differentiated between cities of the first class and other municipalities. Rather, Vowell seeks a seat in Missouri's state legislature, subject to a two-year voter registration requirement, the likes of which has never been struck down, and which is factually and legally analogous to other reasonable restrictions which have been repeatedly upheld despite equal protection challenges.

Vowell's due process argument is somewhat difficult to follow, in that she makes repeated statements sounding of procedural due process, but she only mentions substantive due process explicitly in her brief (though in passing and absent any meaningful attention). Her treatment of substantive due process has consisted simply of saying the words "substantive due process" twice in her substitute brief. There is no analysis of the necessary elements of a substantive due process claim, leaving the Secretary without any argument to which he may respond. While even the phrase "procedural due process" is seemingly absent from Vowell's briefs, her due process arguments appear aimed more at procedure than substance.

Procedural due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Due process is flexible

and calls for such procedural protections as the particular situation demands. *Id*. Accordingly, resolution of the issue whether the procedures provided are constitutionally sufficient requires analysis of the governmental and private interests that are affected. *Id*.

More precisely, identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id*.

Applying these factors to the present case confirms that no process beyond that already afforded by statute should be due. First, candidacy is not a fundamental or property right; it is, instead, at best, an aspiration towards some future status. Here, the status is one to which Vowell is not entitled, due to her admitted lack of voter registration history. Second, the risk of an erroneous disqualification is non-existent. Vowell admits that she did not register to vote until July 17, 2013; less than two years before the November 2014 general election. Finally, as with the residency requirement, the two-year voter registration requirement supports the State's interest in ensuring

that office holders have an established stake in the administration of government and in the community they seek to represent.

Vowell has enjoyed access to all the process due her in this instance. Following the Secretary's qualification review pursuant to § 115.387, Vowell had the opportunity to seek administrative review pursuant to § 536.150, though she chose not to exercise that right. Instead, she pursued the present action to appeal the finding of disqualification. There is no valid argument that Vowell actually satisfied the candidacy requirements. A ruling by this Court that Vowell should have been afforded some additional process would not change the fact that no factual circumstances regarding her failure to timely file remain for hearing.

Due process does not require a pre-disqualification hearing, notice, or opportunity to cure any filing deficiency. In this case, cure is impossible in this election cycle. Vowell was properly disqualified from the ballot because she will not have been registered to vote for two years before the general election, and she has enjoyed access to all process due her in this regard.

Vowell also appears to argue that the two-year voter registration requirement violates her right to freely access the ballot. This argument, too, must fail. There exists no fundamental right to candidacy. *Lewis v. Gibbons*, 80 S.W.3d 461, 467 (Mo. banc 2002) (quoting *Clements v. Fashing*, 457 U.S. 957, 962-64 (1982)). Further, the existence of barriers to a candidate's access

to the ballot "does not of itself compel strict scrutiny." *Bullock*, 405 U.S. at 143. "[A]s a practical matter, there must be substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). The state's "important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Anderson*, 460 U.S. at 788.

The requirement that a candidate for office be a registered voter for two years before the general election does not create an absolute bar to seeking office and a potential candidate has a reasonable opportunity to meet the statutory requirements. *See Labor's Educ. and Political Club-Independent v. Danforth*, 561 S.W.2d 339 (Mo. banc 1977); *Barham v. Moriarty*, 880 S.W.2d 373 (Mo. App. W.D. 1994). Consequently, Vowell's access to the ballot as a candidate was not unconstitutionally limited.

In addition to her other arguments, Vowell states throughout her pleadings that she "refused" to register to vote. No evidence is before the Court regarding any expression of this speech by Vowell that would in any way differentiate her from others who decided not to register to vote. No valid or realistic First Amendment claim has been presented by Vowell, and no fathomable connection can be made between the two-year voter registration requirement and free speech. This argument is unsupported.

Even if the Court entertains Vowell's free speech argument, and even if it applies Vowell's suggested standard from *Anderson*, the result should remain the same. Applying the Court's test from *Anderson*, requiring Vowell to postpone her candidacy until she meets the two-year voter registration requirement is reasonable in character, and not great in magnitude, as it is not an absolute prohibition. Further, the state's reason for this requirement is legitimate, evenly applied, non-discriminatory, and without substitute. Vowell's free speech argument is unsupported. As is her right to travel argument. Vowell paid it no substantive attention in her own brief, and there is no sensible application of this right to this case.

CONCLUSION

For the reasons stated above, this Court should affirm the Judgment entered by the Circuit Court of Cole County, and confirm the ability and responsibility of the Secretary of State to determine, based on voter registration records, whether a person who filed a declaration of candidacy is, in fact, "entitled to be voted for."

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was served electronically via Missouri CaseNet on July 11, 2014, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 7,674 words.

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