

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

KATHLEEN WEINSCHENK,
WILLIAM KOTTMAYER, ROBERT
PUND, AMANDA MULLANEY,
RICHARD VON GLAHN, MAUDIE
MAE HUGHES and GIVE
MISSOURIANS A RAISE, INC.,

Plaintiffs,

v.

STATE OF MISSOURI, and
ROBIN CARNAHAN, SECRETARY
OF STATE,

Defendants.

No. 06AC-CC000656
CONSOLIDATED WITH
No. 06AC-CC00587

Division 2

**FIRST AMENDED PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This action seeks a declaratory judgment that certain provisions in the “Missouri Voter Protection Act” (the “MVPA”), recently passed by the General Assembly and signed by the Governor on June 14, 2006, are unconstitutional under multiple sections of the Missouri Constitution, both on their face and as applied. It also seeks a preliminary and permanent injunction restraining enforcement of those provisions.

2. For the first time in Missouri history, the Missouri General Assembly has attempted to impose a requirement, with certain limited exceptions, that each voter who votes in-person at a polling place must show a personal photo identification (a “Photo ID”) before being provided a ballot (the “Photo ID

Requirement"). This requirement imposes an unnecessary, unauthorized and undue burden on the fundamental right to vote of at least 170,000 registered Missouri voters who do not currently possess a Photo ID.

3. The Photo ID Requirement, which on August 28, 2006 will become Section 115.427.1, Mo. Rev. Stat., unless enjoined, violates several provisions of the Missouri Constitution:

- (a) It constitutes an impermissible additional qualification to vote, in violation of Article VIII, Section 2 (Count I);
- (b) It violates the prohibition on interference with the "free exercise of the right of suffrage" and the requirement that "all elections shall be free and open" contained in Article I, Section 25 (Count II);
- (c) It requires the payment of money to vote, in violation of the Equal Protection Clause in Article I, Section 2 (Count III);
- (d) It constitutes an undue burden on the fundamental right to vote that is not narrowly tailored to meet a compelling state interest, in violation of the Due Process and Equal Rights Protection Clauses in Article I, Sections 10 and 2, respectively (Count IV);
- (e) It was designed to, and does, disparately impact registered voters in suspect classes, including African-Americans, in violation of the Equal Protection Clause in Article I, Section 2 (Count V);
- (f) It improperly discriminates between in-person voters, who are required to show a Photo ID, and absentee voters, who are not required to show a Photo ID, in violation of the Equal Protection Clause in Article I, Section 2 (Count VI); and
- (g) It, and other provisions in the MVPA, violate the Hancock Amendment (Article X, Sections 16 and 21) because they increase costs to local election authorities without any state appropriation to pay for those costs (Count VII).

4. Each of the individual plaintiffs herein is a United States citizen and a Missouri resident duly qualified under current law to vote in local, state and national elections in Missouri. None of the individual plaintiffs possess a valid Photo ID as required by the new Section 115.427, Mo. Rev. Stat., and therefore would not be qualified to vote under the MVPA.

5. Each individual plaintiff also is a Missouri taxpayer.

6. Plaintiffs herein have standing to challenge the constitutionality of the above-referenced provisions of the MVPA under Section 527.020, Mo. Rev. Stat., which provides, “[a]ny person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.” Plaintiffs also have standing because they will suffer irreparable injury-in-fact if the provisions are not enjoined. Plaintiffs also have taxpayer standing to challenge the MVPA under the Hancock Amendment.

7. Plaintiffs herein are entitled to bring this action for declaratory judgment because there is a justiciable controversy that is concrete and ripe for judicial resolution, and no adequate remedy at law exists.

PARTIES

8. Plaintiff Kathleen Weinschenk is a citizen of the United States, a resident of Columbia, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA.

9. Plaintiff William Kottmeyer is a citizen of the United States, a resident

of Chesterfield, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA.

10. Plaintiff Robert Pund is a citizen of the United States, a resident of Columbia, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA.

11. Plaintiff Amanda Mullaney is a citizen of the United States, a resident of the City of St. Louis, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA.

12. Plaintiff Richard von Glahn is a citizen of the United States, a resident of Maplewood, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA.

13. Plaintiff Maudie Mae Hughes is a citizen of the United States, a resident of Kansas City, Missouri, a qualified voter in the state of Missouri, and does not possess a photo ID acceptable under the MVPA.

14. Plaintiff Give Missourians a Raise, Inc. is a Missouri not-for-profit organization in good standing, which may sue or be sued in its own name. Give Missourians a Raise, Inc. was the petitioner for the statewide ballot initiative to raise the minimum wage. If this initiative is certified by the Secretary of State, the ballot for the November 2006 election will contain the minimum wage issue propounded by Give Missourians a Raise, Inc. Because Give Missourians a Raise, Inc. will have an issue on the November 2006 ballot, and the MVPA will adversely affect the rights of hundreds of thousands of qualified Missouri voters to vote in that election, it has standing to challenge the MVPA. In addition, on information and

belief, most of the voters who would be discouraged from voting by the MVPA's Photo ID Requirement, would vote in favor of the ballot initiative. That is an additional basis for standing.

15. Defendant State of Missouri has its capital located in Cole County, Missouri.

16. Defendant Robin Carnahan is the Secretary of State of Missouri. Defendant Carnahan is sued in her official capacity only. In that capacity, she is the chief election official for the State of Missouri and is responsible for administering all statewide elections, including those for state and federal office. Defendant Carnahan also chairs the State Board of Canvassers and totals and announces election results. Mo. Rev. Stat. § 115.511. She designs and provides to local election authorities the envelopes and forms necessary to carry out provisional voting throughout Missouri. Mo. Rev. Stat. § 115.430. She is also responsible for producing various election materials including instructions for poll workers, training videos and a manual for election authorities. Mo. Rev. Stat. §§ 115.103, 115.413. Defendant Carnahan is also responsible for maintaining a centralized voter registration database for use by the local election authorities in Missouri. Defendant Carnahan works in concert with local election authorities in assisting the 116 local election authorities in interpreting and administering the state election laws. Therefore, local election authorities can be properly bound should this Court enter an injunction against Defendant Carnahan in this case. Defendant Carnahan's official residence is in Jefferson City, Missouri.

VENUE AND JURISDICTION

17. Defendants are subject to personal jurisdiction in Missouri because they reside in the State of Missouri. Venue is proper in this Court pursuant to Section 508.010, Mo. Rev. Stat.

18. This Court has general jurisdiction over this action pursuant to Section 478.220, Mo. Rev. Stat.

GENERAL ALLEGATIONS

The Right to Vote Is a Fundamental Right With Which The Legislature May Not Interfere

19. In Missouri, as well as throughout the United States, the right to vote is universally acknowledged to be a fundamental right. The Missouri Constitution, unlike the United States Constitution, grants this fundamental right explicit protection. Article VIII, Section 2 of the Missouri Constitution provides in pertinent part:

All citizens of the United States . . . over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are **entitled to vote at all** elections by the people
(emphasis added).

20. So important is this right that the framers of our Missouri Constitution provided constitutional protection from arrest for voters while “going to, attending and returning from elections,” except in cases of treason, felony or breach of the peace. Art. VIII, Section 4.

21. To further reinforce the inalienable right of Missouri citizens to vote, the framers expressly provided that neither the legislature, nor any other power,

“civil or military, shall at any time **interfere to prevent the free exercise of the right of suffrage.**” Art. I, Section 25 (emphasis added).

**The Legislature In Imposing the Photo ID Requirement Interfered
With the Fundamental Right to Vote**

22. That is precisely what the legislature did when it enacted the MVPA. Under the pretext of fighting election fraud, the legislature has directly “interfere[d]” with the “free exercise” of the fundamental right to vote of those Missouri citizens who possess the constitutionally defined qualifications to vote but who do not possess a Photo ID. The Missouri Department of Revenue has estimated that the number of citizens who do not possess a Photo ID acceptable under the MVPA is 169,215. Mo. Dept. of Rev., Fiscal Note: 4947-01, Bill Number SB 1014. Upon information and belief, that number likely is substantially higher.

23. Whatever the number affected, those without a Photo ID are not permitted to cast a regular ballot in any election after August 28, 2006, the effective date of the Photo ID Requirement. (Section 115.427.15, Mo. Rev. Stat.) For local elections after August 28, 2006 and all elections after November 1, 2008, those without a Photo ID, with certain narrow exceptions, will not be permitted to cast any ballot at all. Under the MVPA:

Before receiving a ballot, voters **shall** establish their identity and eligibility to vote at the polling place by presenting a form of personal identification. “Personal identification” shall mean **only** one of the following:

- (1) Nonexpired Missouri driver’s license showing the name and a photograph or digital image of the individual; or

- (2) Nonexpired or nonexpiring Missouri nondriver's license showing the name and a photographic or digital image of the individual; or
- (3) A document that satisfies all of the following requirements:
 - (a) The document contains the name of the individual to whom the document was issued, and the name substantially conforms to the most recent signature in the individual's voter registration record;
 - (b) The document shows a photographic or digital image of the individual;
 - (c) The document includes an expiration date, and the document is not expired, or if expired, expired not before the date of the most recent general election; and
 - (d) The document was issued by the United States or the state of Missouri; or
- (4) Any identification containing a photographic or digital image of the individual which is issued by the Missouri National Guard, the United States armed forces, or the United States Department of Veteran Affairs to a member or former member of the Missouri National Guard or the United States armed forces and that does not have an expiration date. (emphasis added).

24. The MVPA is far more restrictive than current law, which became effective in 2002. Current law permits the following forms of identification:

- (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 voter;
- (5) Driver's license or state identification card issued by another state; or
- (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law.

Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose.

25. Prior to 2002, before a registered voter received a ballot, the voter was required in most counties only to identify himself to the election judges, write his address and sign his name on a certificate furnished to the election judges by the election authority. Mo. Rev. Stat., Section 115.427 (1993).

26. If the Photo ID Requirement is permitted to go into effect on August 28, 2006, a hypothetical 45-year old male registered voter attempting to vote at his designated polling place and carrying the voter identification card mailed to him by the election authority, along with a current utility bill showing the same address and his driver's license showing the same address that expired the day before the election, would be denied a regular ballot. If the election is a local election, that qualified voter would not be given any ballot at all.

27. The Photo ID Requirement plainly and unconstitutionally interferes with the free exercise of qualified Missouri voters' constitutional right to vote.

**The Photo ID Requirement Unconstitutionally Makes Payment
of a Fee a Precondition To Vote for Those Without a Photo ID**

28. If the Photo ID Requirement is permitted to go into effect, those without a Photo ID will be required to pay money to vote. That in and of itself is a violation of the Equal Protection Clause as the United States Supreme Court made clear under the United States Constitution forty years ago in *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966). The fee held to be unconstitutional in that case was \$1.50. The same analysis and result would apply under the Equal Protection Clause of the Missouri Constitution.

29. The legislature apparently recognized that requiring any payment of money to vote would be unconstitutional. It provided in the MVPA that the state "shall pay the legally required fee" for any applicant who requests a nondriver's license for voting purposes and who executed an affidavit showing that the applicant does not have any other Photo ID acceptable under the MVPA. The fee, absent this provision, would be \$11.

30. What the legislature did not do, - - intentionally, through oversight or otherwise - - is agree to pay the fee required to obtain the underlying documents necessary to obtain a nondriver's license.

31. For example, a person wishing to obtain a nondriver's license must provide "Proof of Lawful Presence," which most commonly is a certified birth certificate or passport. For someone who was born in Missouri, the cost to obtain a

certified birth certificate is \$15. This does not include the fact that if requested by mail, there are additional postage costs incurred for the transmittal of the request and for the self-addressed, stamped envelope required for the return of the certificate. For someone who was born in another state, that person must contact his or her state of birth to obtain a certified birth certificate. The required fee in other states ranges from \$5.00 to \$30.00. To obtain a passport, the fee ranges from \$97.00 through the United States Department of State and its passport agencies and facilities for receipt within six weeks to \$236.00 through private agencies for 7-10 days processing.

32. For those whose name has changed since birth, like the vast majority of married women in this state, additional certified documents showing any name changes since birth, such as marriage licenses, divorce decrees and court orders reflecting name changes, also must be obtained and provided. For women who were born, married and divorced in other states, obtaining these certified documents - - in addition to obtaining a certified birth certificate - - will be a time-consuming and burdensome process. These documents also cost money. To obtain a certified copy of a marriage license, for example, the fee ranges from \$5.00 to \$30.00.

33. To the person needing to obtain a nondriver's license to vote, being required to pay a fee (or multiple fees) to obtain an underlying document (or multiple documents) is no different than being required to pay a fee to obtain the nondriver's license itself - - both violate the Equal Protection Clause because they make payment of a fee an electoral qualification.

**The Photo ID Requirement Imposes an Undue
Burden on The Fundamental Right to Vote**

34. The requirement to pay a fee to vote (for those without Photo ID), along with the other time-consuming tasks that must be performed and trips to government offices that must be made simply to establish “Proof of Lawful Presence,” alone constitute an undue burden on the fundamental right to vote. But those are not the only burdens that would be imposed by the Photo ID Requirement.

35. For example, according to the Missouri Department of Revenue Driver Guide, (Revised May 2006), available at <http://www.dor.mo.gov/mvdl/drivers/dlguid/dlguid.pdf>, in addition to being required to pay a fee (or multiple fees) and being required to take necessary steps to obtain the underlying documents necessary to provide “Proof of Lawful Presence,” a person applying for a nondriver’s license also must provide “Proof of Lawful Identity,” which is a Social Security number. An applicant *may* be required to submit proof of his or her Social Security number. Acceptable proof includes:

- Social Security Card;
- Recent payroll stub containing the SSN;
- Military Identification Card containing the SSN;
- IRS/state tax forms (NOT a form W-2);
- Financial statement, on company form or letterhead, containing the SSN.

If an applicant does not have a Social Security number, he or she must sign an affidavit stating that he or she does not have a Social Security number.

36. However, any person whose name has changed since birth must also provide “Proof of Name Change,” which may include a U.S. Passport (valid or

expired), certified marriage license, certified divorce decree, certified court order, certified adoption papers or amended birth certificate, or, most commonly, a Social Security card with the applicant's current name. Missouri Department of Revenue Driver Guide. To obtain a Social Security card, an applicant must submit a completed application to the local Social Security office personally and provide at least two documents from the following satisfying the three categories identified:

- a) proof of U.S. citizenship: U.S. birth certificate, U.S. passport, Certificate of Naturalization or Certificate of Citizenship;
- b) proof of age: birth certificate, U.S. passport;
- c) proof of identity: U.S. driver's license; state-issued nondriver identification card or U.S. passport (document must be current (not expired) and show name, identifying information (date of birth or age) and preferably a recent photograph). If the person does not have one of these specific documents or cannot get a replacement for one of them within 10 days, other documents accepted for proof of identity are:
 - i) employee ID card;
 - ii) school ID card;
 - iii) health insurance card (not a Medicare card)
 - iv) U.S. military ID; or
 - v) adoption decree.

(Documents must be original or copies certified by the issuing agency. Proof of U. S. citizenship and age are not required for those requesting a replacement card.)

In addition, for persons whose names have changed (such as persons who have married or divorced and requested a change of name), an applicant must take or mail a completed application to the local Social Security office and must submit original documents (or copies certified by the issuing agency) from the following to show proof of the name change:

- a) U.S. citizenship (if not previously established with Social Security) or immigration status;

- b) Legal name change: marriage document; divorce decree specifically stating person may change her name; or court order for a name change;
- c) Identity: U.S. driver's license; state-issued nondriver identification card or U.S. passport (document must be current (not expired) and show name, identifying information (date of birth or age) and preferably a recent photograph).

(If documents do not give date of birth, age or recent photograph, person will need to produce one document with old name and a second document with the new legal name containing the identifying information (date of birth or age) or a recent photograph.)

37. Finally, an applicant for a Missouri nondriver's license must submit "Proof of Residency," which includes the following (a Post Office Box will not be allowed as a resident address):

- Utility bill, most recent (phone, water, gas, electric, trash or sewer, etc.);
- Voter registration card, most recent;
- Bank statement, most recent;
- Government check, most recent;
- Pay check, most recent;
- Property tax receipt, most recent;
- Housing rental contract of current residence;
- Mortgage documents of current residence;
- An official letter or document from another state or local government agency, not previously listed, which is on the agency's letterhead or contains the official seal of the issuing agency issued within the previous 30 days;
- Letter or other documentation issued by the postmaster within the previous 30 days; or
- Other government document that contains the name and address of the applicant issued within the previous 30 days.

Missouri Department of Revenue Driver Guide.

38. These are substantial and undue burdens on the right to vote on all Missouri citizens who do not have a Photo ID. These citizens, who primarily are the poor, the elderly, handicapped and minorities are the least mobile members of the

electorate and will have the greatest difficulty in complying with the requirements of the statute.¹

39. Compliance with the new Photo ID Requirement will present an especially high obstacle for registered voters who are (a) poor, do not own a car, and were born in other states; (b) elderly and no longer drive; (c) visually or physically impaired and are unable to drive; (d) persons born in other states who do not have an acceptable Photo ID; and (e) students without automobiles who have driver's licenses from other states, but who cannot vote in Missouri because they do not have an unexpired Missouri driver's license.

40. The burden is particularly acute and has a disparate impact on qualified voters who are African-American. More than 21% of Missouri's African-American households have no car, and therefore have no need for a driver's license. This is over four times the percentage of white Missourians who do not have a car. Twenty-four percent of Missouri African-Americans live in poverty; only nine percent of whites do. The average per capita income for Missouri African-Americans is \$14,021 compared to \$20,957 for Missouri whites. Twenty-six percent of Missouri African-Americans over the age of 25 have less than a high school education; only sixteen percent of whites do. Given these facts, the financial and

¹ "Asked whether the state would help disabled people cover transportation costs for assembling the necessary documents, Blunt said: 'We're not going to reimburse people who are driving to fulfill a civic obligation. That's an absurd suggestion.'" Governor Matt Blunt, 6/14/06 St. Louis Post Dispatch article. Ironically, the people who are burdened by the Photo ID requirement are not "*driving* to fulfill a civic obligation." By definition, those without a Photo ID who will be burdened by this requirement do not have a valid driver's license and therefore are not permitted to drive. In addition, voting is not a mere "civic obligation," but is a fundamental right with which the legislature cannot constitutionally interfere or unduly burden.

other burdens imposed by the Photo ID Requirement disproportionately affect African-Americans.

41. The Photo ID Requirement also has a disparate impact on qualified voters who are women. As explained above, to obtain a Photo ID, a person must produce a certified birth certificate and certified documents showing any name changes since birth, such as certified marriage license, divorce decrees, and court orders reflecting name changes. These requirements will have a disproportionate and disparate impact on women due to the widespread custom of women taking their husband's surname. The Missouri Department of Revenue's website recognizes this unequal burden by including a separate section instructing women what additional certified documents are required for them to prove their identity. For example, to obtain a Photo ID for voting, a woman who has married, divorced and married again will have to produce and pay for at least three certified documents in addition to a similarly situated man who will be required to produce only his birth certificate. Putting additional burdens on a fundamental right in a discriminatory manner - - without any compelling reason - - is directly inconsistent with the Equal Protection Clause in the Missouri Constitution.

42. The Photo ID Requirement also places a difficult and undue burden on Missouri's elderly, at least 11% of whom do not have a current driver's license. For example, it is impossible for registered voters who were born in Missouri before 1910 to obtain a certified birth certificate because the state does not maintain a record of births before 1910. In order to show the required "Proof of Lawful Presence" to obtain a Missouri Driver's License or nondriver's license, U.S. Citizens

born in 1930 or before who are unable to obtain a government-issued birth certificate may provide a certified "No Record Statement" for his or her state of birth plus two supporting documents. Supporting documents include, but are not limited to, military records, child's birth certificate (hospital records are not acceptable), baptismal record, insurance policy, social security number, school records, and employment records, etc. The supporting documents should list the applicant's name, place of birth, date of birth or age at the time the document was issued. Each document does not need to have all of the preceding information but the department needs sufficient information to establish place and date of birth. In addition, many older and less affluent registered voters cannot obtain a Photo ID because they do not have birth certificates on file for a variety of reasons: (a) because they were born before such records were recorded and maintained, (b) because they were born at home and no official record of their births were filed, or (c) because they were informally adopted and have lived for years under the name of their adoptive parents, rather than the name under which they were born, among the reasons.

43. It will be virtually impossible for some registered voters to obtain the documents necessary to vote. For example, some states require a Photo ID to obtain a certified birth certificate. Missouri residents without Photo ID's who were born in those states will be unable to obtain birth certificates in those states and, therefore, will not be able to obtain a nondriver's license in Missouri. Some registered Missouri voters will not be able to obtain certified birth certificates in sufficient time to vote in Missouri. For example, it takes one to three months to

obtain a certified birth certificate from the state of Michigan. It takes eight to ten weeks to obtain a certified birth certificate from the State of Louisiana (assuming the records still exist after Hurricane Katrina). Over 1.6 million Missouri residents were born in another state. For those without a Photo ID who learn of the Photo ID Requirement within a month or less of the November election, many will not be able to obtain a Photo ID in time to cast a regular ballot in the November election.

The Purported Justification for the Photo ID Requirement
- - Minimizing Election Fraud - - is a Mere Pretext

44. The stated purpose of the Photo ID Requirement is to prevent election fraud.

“‘The right to vote is the cornerstone of our democracy,’ Blunt said at the Capitol bill signing ceremony. ‘That right is undermined whenever fraud occurs. A system that the people do not trust is a system that undermines the people’s trust in their elected government.’”

Governor Matt Blunt, 6/15/06 Associated Press article regarding his decision to sign the MVPA

45. This stated purpose was not the true purpose of the Photo ID Requirement, but was a pretext to conceal the requirement’s actual purpose, which was to suppress voting by African-Americans, other minorities, the poor, the handicapped, the elderly and others by increasing the difficulty of voting. These groups, particularly the African-Americans and the poor, typically vote overwhelmingly for Democrats.

46. If the true purpose of the Photo ID Requirement had been to minimize election fraud, the MVPA, among other things, would have imposed the Photo ID

Requirement on absentee voting and on voter registration, and would not have required “unexpired” Photo ID’s.

47. Ironically, the MVPA changes the requirements for “personal identification” to vote in person, but not to register or to vote absentee ballot. “Personal identification” for voting is now more stringent than “personal identification” to register or to vote absentee ballot. Given that fraud in connection with registration and voting absentee has been substantially more of a problem than voter identification fraud at the polls, the fact that the MVPA was directed only at preventing the latter undermines any argument that minimizing election fraud was the actual purpose of the legislation.

48. Those Missouri citizens who take the time and make the effort to go to the polls to vote are more burdened than those who vote absentee. Absentee voters are not required to present any form of Photo ID to vote. This distinction lacks any rational basis and certainly does not satisfy strict scrutiny as it must.

49. The pretextual nature of the purported justification for the Photo ID Requirement is also shown by the following facts:

- (a) Fraudulent voting is already prohibited by existing Missouri law without unduly burdening the right of a citizen to vote.
 - (i) Fraudulent voting is prohibited as a crime under Section 115.631 Mo. Rev. Stat., punishable by a fine of up to ten thousand dollars (\$10,000.00) or imprisonment for up to five (5) years, or both.
 - (ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Missouri for some other reason. Federal law, 42 U.S.C. § 15483, now mandates that this be done.

- (iii) Existing Missouri law also requires election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to initial the voter's identification certificate before the voter is allowed to proceed to the voting booth to vote. Mo. Rev. Stat. §§ 115.431, 115.433, 115.435.
 - (iv) Registered voters are required by existing Missouri law to present at least one of several forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. Mo. Rev. Stat. § 115.427 (2002).
- (b) There is no evidence that the existing Missouri law has not been effective in deterring or preventing fraudulent in-person voting by impersonators – the only kind of fraudulent voting that might be prevented by the Photo ID Requirement.
- (c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots and on voter registration.
- (d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election because:
- (i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.
 - (ii) Voters are required by existing Missouri law to provide one of the several means of identification to election officials.
 - (iii) Election officials are required, before issuing the ballot to the voter, to check off the name of every voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were

refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot and allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the local election authority or the Secretary of State.

50. Additional evidence of the pretextual nature of the purported justification for the Photo ID Requirement is the requirement that the Photo ID be “nonexpired.” If the purpose of the Photo ID Requirement is simply to identify the voter, it makes no difference whether the Photo ID is expired or unexpired. An expired Photo ID still would identify the voter. This is additional evidence that the purpose of the Photo ID Requirement was in reality to suppress voting by those who are most likely to have expired Photo ID’s - - the elderly, the poor, minorities, and the disabled.

The Photo ID Requirement Is Overbroad and Is Not Narrowly Tailored

51. Even if the Photo ID Requirement had been truly intended to prevent fraudulent voting by imposters, it is still unconstitutional because it places an undue burden on a fundamental right and is not narrowly tailored to meet a compelling governmental interest. For example, the Photo ID Requirement is:

- (i) Overbroad because it applies to and burdens the right to vote of at least 170,000 (or more) registered voters who do not have a Photo ID to supposedly prevent a hypothetical miniscule number of people from fraudulently casting ballots by misrepresenting their identities to poll workers.

- (ii) Not narrowly tailored to prevent the primary source of what fraudulent voting does exist – namely fraudulent voting by absentee ballots.
- (iii) Not narrowly tailored because less restrictive means could be used - - and have been used in the current law - - to accomplish the same objective.

There Is No Need - - Compelling or Otherwise - - For a Photo ID Requirement

52. The Photo ID Requirement is truly a solution in search of a problem. It is statistically more likely for a Missourian to be struck by a bolt of lightening than to have his or her vote cancelled by someone posing as another voter to cast a ballot. There have been few, if any, documented instances of election fraud in recent Missouri history that the Photo ID Requirement could have prevented. There have been no such incidents since the 2002 changes requiring some form of personal identification have been in effect.

53. Given these facts, it is hardly surprising that Missouri voters overwhelmingly see no need - - compelling or otherwise - - for a Photo ID requirement. In a June 2006 poll of Missouri voters on statewide issues, 54% of respondents stated that they opposed the Photo ID requirement, while only 18% favored such a requirement. “June 2006 poll of Missouri voters, statewide issues,” St. Louis Post-Dispatch 6/24/06.

54. To attempt to create a need where none exists, proponents of the Photo ID Requirement have trumpeted a report by Missouri Secretary of State Matt Blunt describing the 2000 St. Louis election. Obviously, the subject of that report - - activities concerning voting in St. Louis in the 2000 election - - was before the 2002 changes went into effect, and therefore does not - - and cannot - - raise any

legitimate concerns about voter identification fraud under the 2002 law which, as explained above, for the first time required some form of voter identification to be presented for in-person voting.

55. That report likewise does not document any widespread voter identification fraud even before the 2002 changes became effective. The report identified 114 alleged votes by convicted felons (not solved by Photo ID); 79 voters allegedly registered with vacant-lot addresses (not solved by Photo ID); 45 people who allegedly voted twice (not solved by Photo ID); and 14 votes allegedly by deceased persons (potentially solved by photo ID, but also solved by HAVA's new database provisions.) Even if these allegations proved true – and most were debunked upon further investigation as explained below – at most 0.01% of the ballots cast in the City of St. Louis - - and less than 0.0006% in the State of Missouri - - were tainted by the kind of election fraud that might have been prevented by Photo ID Requirements.² But even to address these miniscule percentages, Photo ID is an unnecessary response, as the problems will already be remedied simply by implementing existing federal law.

56. The United States Department of Justice under Attorney General John Ashcroft conducted an investigation on voter fraud in Missouri in the 2000 election. It did not find any problems with people voting who were not entitled to vote, but did document many situations in which qualified voters were not permitted to vote.

² By contrast, the odds of being struck by lightning in a person's lifetime is .02%. ("Medical Aspects of Lightning; National Weather Service) That is 33 times greater than the odds of a Missourian in the 2000 election having his or her vote cancelled by someone posing as another voter. The odds of being struck by lightning are infinitely greater than the odds of a Missourian in elections since 2002 having his or her vote cancelled by someone posing as another voter; not a single documented instance - - in over 5 million votes cast in statewide elections since 2000 - - has been reported.

The Department of Justice found in 2002 that the St. Louis Board of Elections prior to the 2000 election improperly removed voters from the registration rolls by placing voters on inactive status without notice and then failing to maintain procedures on Election Day adequate to ensure that those voters could reactivate their registration status and vote without undue delay:

The United States' Complaint alleges that the placement of eligible voters on inactive status by the Board of Election Commissioners for the City of St. Louis, when combined with the election-day procedures that inactive voters were required to follow in order to restore their active voter status and vote during the November 2000 and March 2001 elections, constituted a removal of those voters from the voter registration rolls in violation of Section 8 of the NVRA.

Stipulation of Facts and Consent Order, August 14, 2002, in the case of *The United States of America v. Board of Election Commissioners for the City of St. Louis, et al.*, Civil Action No. 4:02CV001235. Although the Department investigated the allegations raised in a report by Secretary of State Blunt, it did not make any findings on those allegations or require any corrective action related to those allegations. No one was convicted of any voting fraud. No one was even charged with voting fraud.

57. In an investigation of 2000 election activities in the City of St. Louis performed by Secretary of State Rebecca McDonnell Cook, The Secretary of State found, like the Department of Justice, that "there were many people who registered to vote prior to the October 11, 2000 statutory deadline whose names did not appear in the proper precinct registers on election day." Report . . . (p. 9). It also found that "[m]any qualified, registered voters were turned away from the polls because their names could not be found in the precinct rosters and their qualifications could

not be verified by election judges.” (p. 2 of first attachment to report). Also like the Department of Justice, the report by Secretary of State Cook documented no evidence of voter impersonation fraud.

58. Secretary of State Blunt himself recognized in 2004 that “Missouri’s problems in November 2000 were a result of problems in St. Louis City relating to mishandling the City’s inactive voter list, improper voting through the abuse of court orders to vote, an attempt to keep the City polls open in violation of state law.”³ March 23, 2004 letter from Secretary of State Blunt to Governor Bob Holden, p. 2.

59. Importantly, Secretary of State Matt Blunt in the same letter specifically rejected the notion that any significant type of voter fraud - - voter impersonation or otherwise - - has occurred since the 2002 election law changes: “Furthermore, subsequent statewide elections (the November 2002 general election and the February 2004 presidential primary) were two of the cleanest and problem-free elections in recent history.” *Id.* In another letter to the St. Louis Post Dispatch in March, 2004, he characterized these elections as “fraud-free.”

60. Secretary of State Robin Carnahan expressly pointed out in a May 11, 2006 letter to Governor Blunt that there is no legitimate need for the Photo ID Requirement:

In short, the problem with Missouri’s 2000 General Election was not widespread voter impersonation or fraud, but that many Missourians were denied their right to vote.

³ Prosecutorial authorities, who investigated the matter, including the United States Department of Justice under Attorney General John Ashcroft, found no evidence of any violations of law with respect to the alleged “attempt to keep the City polls open.”

In addition, following the November 2002 General Election, overseen by your administration, you commended the local election authorities for conducting an election that was "free of fraud." No new circumstances arose under the 2004 November election, also under your supervision, or since, which would necessitate making it harder for thousands of Missourians to vote.

As you know, Missouri's voter identification requirements are already among the strictest in the nation and have proven an effective safeguard to prevent wrongful voting.

Rather than solve any real problems, Senate Bill 1014 will jeopardize the integrity of our elections by getting in the way of 170,000 Missourians' right to vote and have their votes counted.

61. For all these reasons, there can be no legitimate claim that there is a need - - compelling or otherwise - - for such a drastic Photo ID Requirement that will place a heavy and undue burden on the fundamental right to vote of approximately 170,000 Missouri citizens.

**The Availability of Provisional Ballots Does Not Cure
Unconstitutionality of the Photo ID Requirement**

62. Under the MVPA certain limited categories of individuals without a Photo ID may cast a **provisional** ballot in certain elections if they sign an affidavit swearing that they are "unable"⁴ to obtain a current and valid Photo Id because of:

- (1) A physical or mental disability or handicap of the voter, if the voter is otherwise competent to vote under Missouri law; or
- (2) A sincerely held religious belief against the forms of personal identification described in subsection 1 of this section; or
- (3) The voter being born on or before January 1, 1941.

⁴ The word "unable" is not defined, and will undoubtedly lead many in each category to be hesitant or unwilling to make the required statement under oath to obtain a provisional ballot.

63. Also, for certain elections held before November 1, 2008, voters without Photo ID's may cast a **provisional** ballot if they sign an affidavit affirming identity and present one of the forms of identification permitted under the current law.

64. Provisional ballots may be counted under the MVPA only if all of a series of requirements have been met (none of which are required to count regular ballots):

- (a) The election authority must verify the identity of the individual by comparing that individual's signature on file with the election authority (the "signature match requirement");
- (b) The election authority must determine that the individual was eligible to cast a ballot at the polling place where the ballot was cast;
- (c) The election authority must determine that the voter did not otherwise vote in the same election by regular ballot, absentee ballot or otherwise;
- (d) The election authority must determine that the information on the provisional ballot envelope is found to be "correct, complete and accurate;"
- (e) If the election authority determines that the provisional voter is registered and eligible to vote in the election, it must provide documentation verifying the voter's eligibility, which must be noted on the copy of the provisional ballot envelope; and
- (f) No provisional ballot may be counted until all provisional ballots are determined either eligible or ineligible in accordance with these requirements.

65. The availability of a provisional ballot for these limited categories of voters in these limited circumstances does not cure the unconstitutionality of the

Photo ID Requirement - - even as to those Missouri voters who fall within these limited categories.

66. As made clear in Article VIII, Section 2 of the Missouri Constitution, “All” Missouri citizens who possess the constitutionally defined qualifications are constitutionally “entitled to vote at **all** elections by the people,” not just some elections. (emphasis added).

67. Provisional ballots are not utilized in all Missouri elections. Mo. Rev. Stat. § 115.430 (provisional ballots are used at “primary and general elections where candidates for federal or statewide offices are nominated or elected and any election where statewide issue or issues are submitted to the voters”). They are not used in local elections. For this reason alone, the availability of a provisional ballot for a few categories of voters does not cure the unconstitutionality of the Photo ID Requirement even as to these voters. It obviously does not cure the unconstitutionality of the Photo ID Requirement for the vast majority of qualified voters without a Photo ID who do not fall within these limited categories.

68. With respect to those elections that do permit provisional ballots to be cast, the MVPA imposes many new requirements as set forth above, including a requirement that those ballots be subjected to a highly subjective “signature match” requirement. Under the MVPA, unless the election authority can verify that the signature on the provisional ballot affidavit matches the signature on file with the election authority, the provisional ballot will not be counted.

69. Election authorities are not handwriting experts. Many signatures on file were provided decades ago. It obviously will be difficult, if not impossible, for

the election authorities to determine in any objective manner whether the signatures actually match. Some signatures on file are decades old. Signatures change, particularly for those who are disabled. The legislature has not set forth any standards by which the signature match determination may be judged. As set forth by the United States Supreme Court in interpreting the Equal Protection Clause of the United States Constitution:

The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. *See, e.g., Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966).

...

The recount mechanisms implemented in response to the decisions of the Florida Supreme Court do not satisfy the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right.

...

The problem inheres in the absence of specific standards to ensure its equal application.

Bush v. Gore, 531 U.S. 98, 104-06 (2000) (emphasis added).

70. To make matters worse, this subjective signature verification process under the MVPA will not occur until the day after the election when the results from all non-provisional ballots are known. Thus, the signature match requirement not only provides an undue risk of disparate treatment, it opens the door to a substantial risk of true election fraud and corruption.

71. Even without such a rigid requirement, over 50% of the provisional ballots cast in the last general election were not counted. With this requirement, an

even smaller percentage of provisional ballots will be counted. As recognized by Secretary of State Carnahan in her May 11, 2006 letter to Governor Blunt:

Supporters of Senate Bill 1014 say the bill will allow seniors and voters with disabilities to cast provisional ballots. As you are aware, provisional ballots require voters to put their ballots in special envelopes and to give up some of their right to a private vote to signing the back of those envelopes. In addition, provisional ballots are not placed in the regular ballot box where every other vote goes and will only be counted if the local election authority determines the voter's signature matches the one they have on file, which in some cases can be decades old. You are also undoubtedly aware that in the 2004 General Election, when you were Secretary of State, over 8,000 provisional ballots were cast, but only 3,000 were actually counted.

For all these reasons, the availability of provisional ballots in certain elections for narrow categories of voters does not begin to cure the constitutionality of the Photo ID Requirement.

The MVPA Unconstitutionally Increases Costs on Local Election Authorities Without a State Appropriation to Pay for Those Costs

72. Article X, Section 18(e)(5) of the Missouri Constitution provides that “[a]ny taxpayer or statewide elected official may bring an action under the provisions of section 23 of this article to enforce compliance with the provisions of this section. The Missouri Supreme Court shall have original jurisdiction to hear any challenge brought by any statewide”

73. The Hancock Amendment, in part, prohibits the state from requiring “new or expanded activities by counties . . . without full state financing . . .” and provides that “[a] new activity or service or an increase in the level of any activity or service . . . shall not be required . . . of counties or other political subdivisions,

unless a state appropriation is made and disbursed to pay the county . . . for any increased costs.” Article X, Sections 16 & 21, Missouri Constitution.

74. The Hancock Amendment also prohibits counties from levying “any tax, license or fees . . . without approval of the required majority of the qualified voters of that state . . .” Article X, Section 22, Missouri Constitution.

75. Defendant Carnahan estimates that the MVPA will impose unfunded mandates on Missouri counties that will reach an aggregate total of \$6 million.

76. As outlined in Count VII below, the MVPA will cause unfunded mandates to be imposed on all Missouri counties resulting in financial expenditures in violation of the Hancock Amendment.

COUNT I

Improper Additional Qualification to Vote in Violation Of Article VIII, Section 2 of the Missouri Constitution

77. Plaintiffs hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 76 of the Petition.

78. Article VIII, Section 2 of the Missouri Constitution provides:

All citizens of the United States, including occupants of soldiers’ and sailors’ homes, over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote at all elections by the people, if the election is one for which registration is required if they are registered within the time prescribed by law, or if the election is one for which registration is not required, if they have been residents of the political subdivision in which they offer to vote for thirty days next preceding the election for which they offer to vote: Provided however, no person who has a guardian of his or her estate or person by reason of mental incapacity, appointed by a court of competent jurisdiction and no person who is involuntarily confined in a mental institution pursuant to an adjudication of a court of competent jurisdiction shall be entitled to

vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting.

79. This provision sets forth the exclusive list of qualifications to vote in Missouri. Those are:

- Citizen of the United States;
- Over the age of eighteen;
- Resident of this state;
- Resident of the political subdivision in which the person offer to vote; and
- Registered within the time prescribed by law.

80. This provision also sets forth the exclusive list of disqualifications to vote in Missouri. Those are:

- Person who has a court-appointed guardian or his or her estate by reason of mental incapacity; and
- Person who is involuntarily confined in a mental institution pursuant to a court adjudication.

81. This provision also gives the legislature authority to make one, and only one, determination on qualifications to vote. The legislature can, if it so chooses, exclude by law from voting “persons convicted of a felony, or crime connected with the exercise of the right of suffrage.”

82. Article VIII, Section 2 provides that “**all**” persons qualified to vote, not disqualified to vote, and not properly precluded by law from voting, are “**entitled** to vote at **all** elections by the people.” (emphasis added).

83. By requiring that registered voters present a Photo ID before being issued a ballot, the MVPA violates Article VIII, Section 2 of the Missouri Constitution in three ways:

- (a) It adds a new qualification to vote - - presenting a Photo ID - - not specified or permitted by Article VIII, Section 2;
- (b) It adds a new disqualification to vote - - not presenting a Photo ID - - not specified or permitted by Article VIII, Section 2; and
- (c) It attempts to exclude by law from voting - - persons not presenting a Photo ID - - persons other than those permitted to be excluded under Article VIII, Section 2.

84. By being subject to the imposition of an unconstitutional qualification to vote, a qualification they do not possess, plaintiffs and all other qualified Missouri voters without an acceptable Photo ID will be irreparably injured if the Photo ID Requirement is not enjoined.

COUNT II

Interference with Free Exercise of the Right of Suffrage Violation in Article I, Section 25 of the Missouri Constitution

85. Plaintiffs hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 84 of the Petition.

86. Article I, Section 25 of the Missouri Constitution provides:

That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

87. The General Assembly, in imposing the Photo ID Requirement, violated the express prohibition in Article I, Section 25 against interference with the free exercise of the right of suffrage.

88. In numerous ways set forth above, the Photo ID Requirement unconstitutionally interferes with the free exercise of the right of suffrage as to those without a photo ID, including:

- (a) It requires the payment of money to vote; and
- (b) It imposes burdensome and time consuming hurdles that must be overcome before receiving a ballot.

89. By being subject to unconstitutional interference with the free exercise of their fundamental right to vote, plaintiffs and other qualified Missouri voters without an acceptable Photo ID will be irreparably injured if the Photo ID Requirement is not enjoined.

COUNT III

Improper Requirement of Payment of Money to Vote in Violation of the Equal Protection Clause (Article I, Section 2) of the Missouri Constitution

90. Plaintiffs hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 89 of the Petition.

91. Article I, Section 2 of the Missouri Constitution provides in pertinent part that “all persons are created equal and are entitled to equal rights and opportunity under the law.”

92. Conditioning the right to vote in person on the payment of money violates the Equal Protection Clause because the fee must be paid only by some

voters (those who vote in person, but do not have a Photo ID) and not by others (absentee voters and those who already have Photo ID).

93. The state has not, and cannot, assert any compelling state interest that would support this type of invidious discrimination.

94. Even if the State equally imposed a requirement that all voters pay the same fee, the requirement of a payment of a fee to vote still would violate the Equal Protection Clause as it discriminates on the basis of affluence for no rational purpose, and certainly no compelling purpose.

95. As the United States Supreme Court held forty years ago, interpreting the similarly worded Equal Protection Clause under the United States Constitution:

We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax. Our cases demonstrate that the Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate.

Harper v. Virginia State Board of Elections, 383 U.S. 663, 666 (1966).

96. The Supreme Court in *Harper* went on to address the same argument made by supporters of the Photo ID Requirement -- that the state is only extracting a fee for a license and that is permissible. In specifically rejecting that argument, the Court stated:

It is argued that a State may exact fees from citizens for many different kinds of licenses; that if it can demand from all an equal fee for a driver's license, it can demand from all an equal poll tax for voting. But we must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of

wealth or property, like those of race are traditionally disfavored. **To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant.**

383 U.S. at 668. (emphasis added)(citations omitted).

97. By being subject to the requirement that they pay a fee to vote, plaintiffs and other qualified Missouri voters without a Photo ID will be irreparably injured if the Photo ID Requirement is not enjoined.

COUNT IV

Undue Burden on the Right to Vote in Violation of Due Process and the Equal Protection Clause of the Missouri Constitution, Article I, Sections 10 and 2, Respectfully

98. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1 through 97 of the Petition.

99. Article I, Section 2 of the Missouri Constitution provides:

That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

100. Article I, Section 10 of the Missouri Constitution provides “[t]hat no person shall be deprived of life, liberty or property without due process of law.”

101. The Photo ID Requirement imposes an undue burden on the fundamental right to vote of at least 170,000 registered voters in Missouri that is neither justified by, nor necessary to promote, any substantial and compelling state interest which was not already being adequately protected by existing criminal laws

and election procedures, or which could not have been accomplished in other, less restrictive alternatives without interfering with their right to vote in person.

102. The Photo ID Requirement is also overbroad and is not narrowly tailored to prevent the few documented instances of fraudulent voting that do exist (i.e., fraudulent registration and fraudulent voting of absentee ballots), while making it significantly harder for at least 170,000 Missouri citizens who vote in person to cast ballots in order to prevent a miniscule possibility that a few individuals might attempt to vote illegally by misrepresenting their identity to poll workers.

103. Plaintiffs are registered voters who do not possess acceptable Photo ID who are similarly situated to registered voters who possess the required “personal identification.” However, Plaintiffs are treated differently solely because of their inability to produce a Photo ID at the polling place.

104. For the reasons expressed above, the availability of a provisional ballot does not cure the unconstitutionality of the Photo ID Requirement.

105. By being subject to an undue burden on their right to vote and unequal treatment in violation of the Due Process and Equal Protection Clause of the Missouri Constitution, plaintiffs and other qualified Missouri voters who do not possess an acceptable Photo ID will be irreparably injured unless the Photo ID Requirement is enjoined.

COUNT V

Disparate Impact Upon Qualified Voters in Suspect Classes in Violation of the Equal Protection Clause in Article I, Section 2 of the Missouri Constitution

106. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1 through 105 of the Petition.

107. Article I, Section 2 of the Missouri Constitution provides:

That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

108. Photo ID Requirement would have a disparate impact on the right to vote of registered voters who are African-American, as compared to voters who are white, because, according to recent data published by the U.S. Census Bureau, more than 21% of Missouri's African-American households have no car, and therefore have no need for a driver's license. This is over four times the percentage of white Missourians who do not have a car. Twenty-four percent of Missouri African-Americans live in poverty; only nine percent of whites do. The average per capita income for Missouri African-Americans is \$14,021 compared to \$20,957 for Missouri whites. Twenty-six percent of Missouri African-Americans over the age of 25 have less than a high school education; only sixteen percent of whites do.

109. In addition, for the reasons set forth above, the Photo ID Requirement would have a disparate impact on women.

110. In imposing the Photo ID Requirement, the General Assembly was informed and knew that the Photo ID Requirement would have a disparate impact on African-Americans and women but chose to impose the requirement anyway with discriminatory purpose, thereby depriving qualified African-Americans and women voters equal protection of the law in violation of Article I, Section 2.

111. By being subject to purposeful discrimination in violation of the Equal Protection Clause of the Missouri Constitution, plaintiff Maudie Mae Hughes and other qualified Missouri African-American and women voters without an acceptable Photo ID will be irreparably harmed if the Photo ID Requirement is not enjoined.

COUNT VI

Discrimination Between Absentee Voters and In-Person Voters In Violation of the Equal Protection Clause in Article I, Section 2 of the Missouri Constitution

112. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1 through 111 of the Petition.

113. Registered voters in Missouri are eligible to vote absentee if such voters expect to be prevented from going to the polls to vote on Election Day due to:

- (1) absence on election day from the jurisdiction of the election authority in which such voter is registered to vote;
- (2) incapacity or confinement due to illness or physical disability, including a person who is primarily responsible for the physical care of a person who is incapacitated or confined due to illness or disability;
- (3) religious belief or practice;
- (4) employment as an election authority, as a member of an election authority, or by an election authority at a location other than such voter's polling place;

- (5) incarceration, provided all qualifications for voting are retained.

Section 115.277.1, Mo. Rev. Stat.

114. Individuals who are eligible to vote absentee are not required to provide a Photo ID prior to voting.

115. Individuals casting absentee ballots are similarly situated to in-person voters but are not subjected to the undue burdens imposed by the Photo ID Requirement or the uncertainty in casting provisional ballots as are those who vote in person and are unable to provide a Photo ID.

116. In imposing the Photo ID Requirement, the General Assembly was informed and knew that the Photo ID Requirement would have a disparate impact on voters without Photo ID's who are not eligible to vote absentee, but chose to impose the requirement anyway with discriminatory purpose.

117. For these reasons, the Photo ID Requirement deprives those who are not eligible to vote absentee and who do not possess a Photo ID of their right to equal protection under Article I, Section 2 of the Missouri Constitution.

118. By being subject to unconstitutional and purposeful discriminatory treatment in violation of the Equal Protection Clause of the Missouri Constitution, plaintiffs and other qualified Missouri voters will be irreparably harmed if the Photo ID Requirement is not enjoined.

COUNT VII

Violation of the Hancock Amendment, Article X, Section 21 of the Missouri Constitution

119. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1 through 118 of the Petition.

120. Article X, Section 21 of the Missouri Constitution (commonly known as the Hancock Amendment) provides:

The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

121. Plaintiffs are taxpayers with standing to claim a violation of the Hancock Amendment.

122. The Hancock Amendment, in part, prohibits the state from requiring “new or expanded activities by counties . . . without full state financing . . .” and provides that “[a] new activity or service or an increase in the level of any activity or service . . . shall not be required . . . of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county . . . for any increased costs.” Article X, Sections 16 & 21, Missouri Constitution.

123. The Hancock Amendment also prohibits counties from levying “any tax, license or fees . . . without approval of the required majority of the qualified voters of that state . . .” Article X, Section 22, Missouri Constitution.

124. Defendant Carnahan estimates that the MVPA will impose unfunded mandates on Missouri counties that will reach an aggregated total of \$6 million.

125. The MVPA will cause unfunded mandates to be imposed on all Missouri counties resulting in financial expenditures in violation of the Hancock Amendment, including, but not limited to, the following expenses:

- a. Section 115.163.3, Mo. Rev. Stat., requiring the creation of a "Voter Notification Card" (replacing the Voter Identification Card) containing the new identification requirements of Section 115.427, Mo. Rev. Stat., imposes on all local election authorities unfunded mandates as follows:
 - i. design, layout and printing expenses for the Voter Notification Card;
 - ii. postage expense for issuing a Voter Notification Card after the MVPA's implementation date of August 28, 2006; and
 - iii. loss of revenue previously expended for unused voter identification cards replaced by the Voter Notification Card.
- b. Sections 115.427.3(3) and 115.427.13-14, Mo. Rev. Stat., require the production of new affidavit forms for voters not possessing identification consistent with the MVPA's new Section 115.427.1, which results in unfunded mandates to local election authorities as follows:
 - i. design, layout and printing expenses for new affidavit forms;
 - ii. poll worker training expenses;
 - iii. printing expenses for poll worker training materials;
 - iv. training staff to process affidavits;
 - v. printing expenses for training/instruction materials for staff; and
 - vi. additional staff to process completed affidavits.
- c. Section 115.427.2, Mo. Rev. Stat., requires local election authorities to produce and post "clear and conspicuous" notifications in all polling places notifying voters without identification required by the new Section 115.427.1 of their

voting options, which results in unfunded mandates to local election authorities as follows:

- i. design, layout and printing expenses for thousands of such signs;
 - ii. printing expenses for rewriting poll worker instructions;
 - iii. poll worker training expenses; and
 - iv. additional poll worker staff to accommodate increased responsibilities.
- d. Sections 115.427 and 115.430, Mo. Rev. Stat., impose on local election authorities an unfunded mandate resulting in expenses to hire and train additional staff to process significant increases in provisional ballots as a consequence of the identification requirements of the Act;
- e. Section 115.105.6, Mo. Rev. Stat., imposes on local election authorities unfunded expenses for the redrafting and reprinting of challenger instructions, poll worker instructions and training, to reflect the changes to the new voter identification provisions of Section 115.427, Mo. Rev. Stat.;
- f. Section 115.430.5(2), Mo. Rev. Stat., requires local election authorities to photocopy each provisional ballot envelope, imposing on local election authorities the following unfunded mandates:
 - i. employing bi-partisan teams to photocopy the provisional ballot envelopes;
 - ii. employing staff to process the additional ballot envelopes;
 - iii. training expenses for staff processing provisional ballots; and
 - iv. photocopying expenses for copying the provisional ballot envelopes.
- g. The MVPA imposes on local election authorities, who distribute notice of election cards pursuant to Sections 115.127 and 115.129, Mo. Rev. Stat., unfunded mandates requiring expenses to redesign and reprint the notice of election cards to comply with the new identification provisions of the MVPA;
- h. The MVPA imposes on local election authorities an unfunded mandate by way of creating significantly increased numbers of

absentee ballot applications and absentee ballots which will require expenses as follows:

- i. additional staff to process increased absentee ballot applications and voted absentee ballots; and
 - ii. training and training materials for additional staff processing the absentee applications and voted absentee ballots.
- i. The MVPA imposes on local election authorities an unfunded mandate requiring design and printing costs for absentee ballot applications, absentee ballot envelopes and absentee ballot voting instructions that include the new identification requirements of the MVPA for those casting absentee ballots in person; and
- j. Section 115.024, Mo. Rev. Stat., imposes on local election authorities an unfunded mandate requiring expenses for relocating or rescheduling the election including duplicate payment for replacement ballots as necessary, additional poll workers, any cost for new or rescheduled poll locations, and any other repeated time or expense required.

126. As set forth above, the MVPA violates Article X, Section 21 of the Missouri Constitution because it increases the costs to local election authorities without any State appropriations to pay for increased costs.

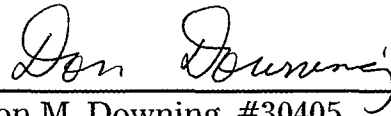
127. By being subjected to increased costs to local election authorities without any state appropriations to pay for those costs, plaintiffs and other Missouri taxpayers will be irreparably harmed if the MVPA provisions which increase costs are not enjoined.

Prayer for Relief

128. As to Counts I - VI, plaintiffs respectfully request that this Court issue its judgment: (i) declaring that the Photo ID Requirement of the MVPA violates Article I, Sections 2, 10, and 25; and Article VIII, Section 2 of the Missouri Constitution and is therefore invalid, unconstitutional, ineffective, and without the force of law; (ii) preliminarily and permanently enjoining Defendants, their agents, servants and officers and others from acting in concert with them (including all local election authorities) from enforcing or otherwise implementing the Photo ID Requirement of the MVPA; and (iii) granting Plaintiffs their costs, including reasonable attorneys' fees, and such other relief as this Court deems just and proper.

129. As to Count VII, plaintiffs respectfully request that this Court issue its judgment: (i) declaring that the MVPA violates Article X, Sections 16-22 of the Missouri Constitution and is therefore invalid, unconstitutional, ineffective and without the force of law; (ii) preliminarily and permanently enjoining Defendants, their agents, servants and officers and others from acting in concert with them (including all local election authorities) from enforcing or otherwise implementing the MVPA; and (iii) granting Plaintiffs their costs, including reasonable attorneys' fees, and such other relief as this Court deems just and proper.

GRAY, RITTER & GRAHAM, P.C.



Don M. Downing, #30405

Erica L. Airsman, #57445

701 Market Street, Suite 800

St. Louis, Missouri 63101

(314) 241-5620

Fax: (314) 241-4140

Email: ddowning@grgpc.com

Email: eairzman@grgpc.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the defendants via Federal Express on this 16th day of August 2006, to:

Mr. Mark Long
Mr. Ryan Harding
Mr. Brett Berri
Office of the Missouri Attorney General
P.O. Box 899
Jefferson City, MO 65102

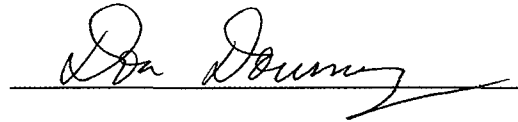
Ms. Barbara Wood
Secretary of State
State Capitol, Room 208
600 W. Main Street
Jefferson City, MO 65101

Jackson County, et al. v. State of Missouri, Cause No. 06AC-CC00587 counsel:

Mr. Burton Newman
Burton Newman, P.C.
231 S. Bemiston, Ste. 910
St. Louis, MO 63105

Mr. Richard C. Miller
Monsees, Miller, Mayer, Presley & Amick, P.C.
4717 Grand Avenue, Suite 820
Kansas City, MO 64112-2258

Mr. Robert Presson
Office of the Missouri Attorney General
P.O. Box 899
Jefferson City, MO 65102

A handwritten signature in dark ink, appearing to read "Don Downing", is written over a horizontal line.