

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

PRIORITIES USA and MILDRED GUTIERREZ,

Plaintiffs,

v.

STATE OF MISSOURI

Serve:

Missouri Attorney General's Office
Supreme Court Building
207 West High Street
Jefferson City, Missouri 65102

JOHN R. ASHCROFT, in his official capacity as
Missouri Secretary of State

Serve:

Capitol Building, Room 208
Jefferson City, Missouri 65101

Defendants.

Case No.

Division:

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Priorities USA and Mildred Gutierrez, by and through counsel, Gray, Ritter & Graham, P.C., and Perkins Coie LLP, bring this Complaint for declaratory and preliminary and permanent injunctive relief against Defendants State of Missouri and John Ashcroft, in his official capacity as the Missouri Secretary of State. Plaintiffs allege as follows:

INTRODUCTION

1. The Missouri Constitution guarantees 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.” Mo. Const. Art. I, § 25. The Constitution also clearly defines voter qualifications: “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” *Id.*, Art. VIII, § 2. In other words, by its

plain terms, the Missouri Constitution creates a plain and positive right to vote for *all* Missouri residents who meet the qualifications established by Article VIII, § 2.

2. Despite the Missouri Constitution’s robust guarantees, Republican legislators in Missouri have, for more than a decade, attempted to make it harder for certain classes of voters to exercise their fundamental right to the franchise through successive attempts to enact laws that impose burdensome photo ID requirements. These laws represent impermissible attempts to unconstitutionally restrict the right to vote in this state, by adding unnecessary and irrelevant qualifications for voting that impose particularly significant burdens on precisely those voters who, because of their personal circumstances, will have the most difficulty in overcoming them. This litigation challenges the most recent of these efforts, seeking immediate injunctive relief to enforce the Missouri Constitution’s promise that all residents who are qualified to vote under Article VIII, § 2, may exercise their fundamental right to vote without unjustified burden, and its guarantee that representation in Missouri remains reflective of all of its citizens, not just those who are most likely to support the legislators in power.

3. These efforts to restrict the right to vote began shortly after the adoption of Missouri’s first voter ID law, in 2002, which allowed Missourians to present various forms of non-photo ID to establish their identity (and remained in effect until the 2017 adoption of the current law). Notwithstanding the absence of any reported voter impersonation, the Republican-led General Assembly in 2006 sought to impose additional, strict photo ID requirements on Missouri voters through Senate Bill Nos. 1014 and 730 (collectively “SB 1014”). SB 1014 would have required Missouri voters to present a document issued by the state or federal government that contained (1) the person’s name as listed in the voter registration records, (2) the person’s photograph, and (3) an expiration date showing that the ID was not expired. The Supreme Court

invalidated SB 1014 in *Weinschenk v. Missouri*, 203 S.W.3d 201 (Mo. 2006) (en banc), finding that its photo ID requirement violated the Missouri Constitution’s equal protection clause and impinged on the express, constitutional right to vote. *Id.* at 204. Among other fatal characteristics of the law, the Court highlighted the practical costs that would be incurred by impacted voters, who would have to navigate complicated bureaucracies simply to exercise their constitutional right to vote, and the time it would take for a voter to receive the required documents—burdens that the individuals most likely to lack the required documentation were least likely to be able to surmount. *Id.* at 208-09, 214-15. The Court also found that the State’s asserted interest in preventing voter fraud could not justify this burden because a photo ID requirement “could only prevent a particular type of voter fraud [(voter impersonation)] that the record d[id] not show [wa]s occurring in Missouri.” *Id.* at 218.

4. Undeterred, Republican legislators continued their assault on the franchise, and, after several failed attempts, the General Assembly passed House Bill 1631 in 2016, codified under Mo. Rev. Stat. § 115.427 (“HB 1631”), to require Missouri voters to present: (1) a non-expired Missouri driver’s or non-driver’s license; (2) a document issued by the United States or the State of Missouri that shows the voter’s name, photograph, and expiration date; or (3) an unexpired photo ID (or a photo ID without an expiration date) issued by the Missouri National Guard, U.S. armed forces, or U.S. Department of Veteran Affairs (collectively, “Photo ID”).

5. In a misguided attempt to shield HB 1631 from judicial scrutiny, Republican legislators also sponsored a constitutional amendment (“Amendment 6”) which they contend authorizes HB 1631’s Photo ID requirement. Amendment 6 added a new section (§ 11) to Article VIII of the Missouri Constitution, and states:

A person seeking to vote in person in public elections may be required by general law to identify himself or herself and verify his or her qualifications as a citizen of

the United States of America and a resident of the state of Missouri by providing election officials with a form of identification, which may include valid government-issued photo identification. Exceptions to the identification requirement may also be provided for by general law.

Mo. Const. Art. VIII, § 11.

6. Despite Republican legislators' attempt to sweep HB 1631 within the limited authority conferred by Amendment 6, the plain language of the Amendment does not authorize the General Assembly to demand that voters show Photo ID at the polls as the only means of verifying their qualifications. Instead, by its plain text, Amendment 6 simply permits the General Assembly to enact legislation that would require voters to verify that they have the qualifications that the Missouri Constitution established for voting. And Missourians may establish those qualifications by "providing . . . *a form of identification, which may include valid government-issued photo identification,*" Art. VIII, § 11 (emphasis added). The amendment clearly does not sanction laws that unduly burden the fundamental right to vote as enshrined in Article I, § 25 of the Missouri Constitution.

7. Even assuming that Amendment 6 somehow authorizes the General Assembly to pass a law requiring photo ID to vote (which it does not), the General Assembly's authority is not absolute. Amendment 6 does not eliminate the express, constitutional right to vote set forth in Article I, § 25, nor does it purport to redefine the qualifications required to vote, which are established by Article VIII, § 2, and the Constitution still guarantees Missourians the rights to due process and equal protection of the laws. Yet HB 1631 violates these provisions by requiring voters to present one of several very narrow categories of Photo ID that many Missourians lack, thus imposing severe and unnecessary burdens on the right to vote that extend well beyond whatever limited authority Amendment 6 may have conveyed.

8. The sheer scope of this burden was captured in a 2014 report issued by the Secretary

of State’s office—prepared in response to a proposed voter ID law with similar photo ID requirements—in which it estimated that “[a]pproximately 220,000 registered voters [lacked photo ID and] could be disenfranchised.” Office of the Missouri Secretary of State, *House Bill 1073 Impact Report: The Effect on Missouri Voters*, at 4 (Feb. 2014), <https://www.sos.mo.gov/CMSImages/NewsReleases/2014ImpactReport.pdf>. Voters who lack Photo ID will now have to navigate the same bureaucracies and undertake the same time-consuming and confusing processes of acquiring the proper documentation and applying for a Missouri driver’s or non-driver’s license that the Supreme Court in *Weinschenk* found unduly burdened the constitutional right to vote.

9. For voters who are unable to navigate these new and unnecessary procedural hurdles, the path to casting an effective ballot is fraught with uncertainty and unwarranted threats of criminal penalties. For instance, while a voter who possesses specific forms of secondary, non-photo identification may cast a ballot, that voter must first sign, under penalty of perjury, a statement which avers, among other things, that the voter does not possess any forms of Photo ID (without explaining what it means to “possess” identification), and that she is *required to present government-issued photo identification* to vote—a statement which is confusing, internally inconsistent, and unrelated to the voter’s qualifications, as set forth in Article VIII, § 2 of the Missouri Constitution.

10. Individuals who cannot present any of the specified forms of secondary, non-photo identification (or who are unwilling to sign the sweeping and confusing statement required by HB 1631) must cast a provisional ballot, which is counted only if the individual returns to the polling place with Photo ID, or if election officials determine that the individual’s signature matches the signature on file with the election authority. In other words, voters who cast provisional ballots

must incur the additional burden of retrieving their Photo ID and making another trip to the polling place, or subject their constitutional right to vote to the vagaries of an entirely subjective signature-matching process.

11. Not only are these burdens severe, the only justification advanced by legislators in support of HB 1631's additional restrictions on the right to vote (i.e. preventing voter fraud) is flimsy at best. The same 2014 report from the Secretary of State's office, which estimated that hundreds of thousands of voters lack Photo ID, also found that voter impersonation at the polls—the only type of fraud that HB 1631 could potentially address—is virtually non-existent in Missouri. According to the Secretary of State's report, "[t]here ha[d] not been a single case of voter impersonation fraud reported to the Secretary of State's office" since the pre-existing voter ID law was enacted in 2002. Office of the Missouri Secretary of State, *House Bill 1073 Impact Report: The Effect on Missouri Voters*, at 4 (Feb. 2014), <https://www.sos.mo.gov/CMSImages/NewsReleases/2014ImpactReport.pdf>.

12. HB 1631, therefore, unduly burdens the right to vote by restricting access to the franchise to those who possess Photo ID (as that term is narrowly defined), and by imposing additional, unnecessary obstacles to voting for the sizable segment of Missourians who lack it. These onerous restrictions are neither necessary nor narrowly tailored to advance a compelling state interest in combating voter impersonation, which the Secretary of State's office previously found to be virtually non-existent. As such, HB 1631 impinges upon the fundamental, constitutional right to vote; imposes improper additional qualifications on Missouri voters beyond the exhaustive criteria established by Article VIII, § 2 of the Constitution; and violates the due process and equal protection clauses of the Constitution both facially and as applied to Missourians who lack Photo ID. Plaintiffs, therefore, seek an order from this Court declaring HB 1631

unconstitutional and enjoining its application in all future elections.

PLAINTIFFS

13. Plaintiff Priorities USA (“Priorities”) is a 501(c)(4) nonprofit, voter-centric progressive advocacy and service organization. Priorities’ mission is to build a permanent infrastructure to engage Americans in the progressive movement by running a permanent digital campaign to persuade and mobilize citizens around issues and elections that affect their lives. In furtherance of this purpose, Priorities works to help educate, mobilize, and turn out voters across the country, including in Missouri. In 2018, Priorities expects to make contributions and expenditures in the millions of dollars to educate, mobilize and turn out voters in state and federal elections around the country, including thousands of dollars to educate, mobilize, and turn out voters in Missouri state and federal elections. HB 1631 directly harms Priorities by frustrating its mission of, and efforts in, educating, mobilizing and turning out voters in Missouri by disenfranchising voters who lack the Photo ID mandated by the law. Priorities is aware of HB 1631, and will have to expend and divert additional funds and resources in GOTV, voter education efforts, mobilization, and turn out activities in Missouri, at the expense of its efforts in other states and its other efforts in Missouri, in order to combat the effects of HB 1631 on individuals who fulfill all of the requirements for voters laid out in the Missouri Constitution, but lack Photo ID which the law requires to vote.

14. Plaintiff Mildred Gutierrez is a 70-year-old resident of Lee’s Summit, Missouri, in Jackson County. Ms. Gutierrez has a long history of voting. She has been registered to vote in Missouri for over 40 years, she regularly votes in statewide and local, municipal elections, and she has previously served as an Election Judge in Jackson County. In July 2016, Ms. Gutierrez’s driver’s license expired, and, due to her failing vision at the time, was not eligible for renewal. As

a result, Ms. Gutierrez does not currently possess a nonexpired Missouri driver's license or non-driver's license, nor does she possess any other forms of Photo ID required by HB 1631.

15. During the November 7, 2017 Special Election in Jackson County, Ms. Gutierrez attempted to vote with other forms of identification that had previously been accepted by election officials before HB 1631's passage, including her utility bill and her voter registration card. Ms. Gutierrez, however, was informed by an election official that she did not possess a form of identification that satisfied HB 1631. In order to cast a ballot, Ms. Gutierrez was required to sign a sworn statement, under penalty of perjury, confirming her identity, affirming that she did not possess Photo ID, and attesting that she was required to present a form of Photo ID in order to vote. Ms. Gutierrez was also informed by election officials that she would not be permitted to vote in future elections unless she presented Photo ID.

16. HB 1631's Photo ID requirement, and the confusing, threatening sworn statement required of voters who lack Photo ID, unduly burdens and abridges Ms. Gutierrez's constitutional right to vote. Moreover, in order to obtain a driver's or non-driver's license, Ms. Gutierrez will have to expend additional time and effort to gather the documentation required to apply for such ID; visit a Motor Vehicle and Driver License Office ("License Office"); and, consistent with her prior visits to the License Office, wait in long lines, all to avoid the denial of her constitutional right to vote.

DEFENDANTS

17. Defendant JOHN R. ASHCROFT is the Missouri Secretary of State (the "Secretary") and is named as a Defendant in his official capacity. He is the State's chief election official and is responsible for implementing laws related to voting across the State, including Section 115.427, the statute which codifies HB 1631.

18. Defendant STATE OF MISSOURI is the entity responsible for enforcement of Section 115.427.

JURISDICTION & VENUE

19. This Court maintains original subject-matter jurisdiction over this action under Sections 478.220, 526.030, and 527.010 of the Missouri Revised Statutes and Missouri Rule of Civil Procedure 87.01.

20. Venue is proper pursuant to Section 508.010, Mo. Rev. Stat.

STATEMENT OF FACTS AND LAW

Missouri's Constitutional Guarantee of the Right to Vote

21. The Missouri Constitution guarantees 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.” Mo. Const. Art. I, § 25. It further defines the qualifications that a person must have in order to have the right to vote in Missouri elections, guaranteeing that right—subject to certain limited exceptions not relevant to Plaintiffs’ claims here¹—to: “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” *Id.*, Art. VIII, § 2.

Republican Legislators’ Repeated Attempts to Disenfranchise Missouri Voters

22. Despite the Missouri Constitution’s robust guarantee of the right to vote, Republican legislators have been trying for more than a decade to suppress the franchise through

¹ In defining voter qualifications, Article VIII, § 2 also provides that “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” The provision also authorizes the exclusion from voting of “persons convicted of felony, or crime connected with the exercise of the right of suffrage.” Plaintiff Mildred Gutierrez does not fall within any of these categories, and HB 1631 does not seek to identify any such individuals.

the promotion of voter ID laws imposing onerous, unauthorized, and unnecessary photo ID requirements, which they claimed were required to prevent voter fraud.

SB 675 (2002): Missouri Implements Non-Strict Voter ID

23. Missouri first implemented voter ID in 2002 through S.B. 675, 91st Gen. Assemb., 2d Reg. Sess. (Mo. 2002) (“SB 675” or “2002 voter ID law”). That bill did not require photo ID but instead modified Mo. Rev. Stat. § 115.427 (2002) to require that voters identify themselves when attempting to vote in-person by presenting either: (1) ID issued by the state of Missouri, an agency of the state, or a local election authority of the state; (2) ID issued by the U.S. government or agency thereof; (3) ID issued by an institution of higher education, including a university, college, vocational and technical school, located within Missouri; (4) a copy of a current utility bill, bank statement, government check, paycheck or other government document that contained the name and address of the voter; (5) a driver’s license or state ID card issued by another state; or (6) other ID approved by the secretary of state or approved by federal law. *Id.* If a voter attempted to vote at the polls without an acceptable form of ID, she would be permitted to cast a regular ballot upon completion of an affidavit form which required that two supervising election judges (one from each major political party) attest, based on their personal knowledge, to the voter’s identity. *Id.*

24. In the 12 years following the enactment of SB 675, not a single case of voter impersonation fraud was reported to the Missouri Secretary of State’s Office. *See* Office of the Missouri Secretary of State, HCS HBS 48 & 216 Impact Report: The Effect on Missouri Voters (March 2013), at 4, <https://www.sos.mo.gov/cmsimages/newsreleases/impactreport.pdf>. (“There has not been a single case of voter impersonation fraud reported to the Secretary of State’s Office since the current voter identification requirements went into effect in 2002.”) In fact, Missouri’s

then-Secretary of State Matt Blunt described Missouri's statewide elections in 2002 and 2004 to then-Governor Bob Holden as "two of the cleanest and problem free elections in recent history," and told the St. Louis Post-Dispatch those same elections were "fraud-free." *Weinschenk*, 203 S.W.3d at 210.

SB 1014 (2006): Missouri Implements Strict Photo ID Requirements, Which the Supreme Court Finds Violates the Missouri Constitution in *Weinschenk v. Missouri*

25. Despite the Secretary of State's reassurance that Missouri elections were "fraud-free," in 2006 Missouri's Republican-led General Assembly acted to further restrict the franchise by passing S.B. 1014, 93rd Gen. Assemb., 2d Reg. Sess. (2006) ("SB 1014"), again with the purported justification of preventing (non-existent) voter impersonation fraud. SB 1014 modified the 2002 voter ID law by imposing additional restrictions on the forms of ID that voters could present at the polls in order to cast a regular ballot. For the first time, the new law required voters to present one of several limited forms of government-issued *photo* ID, which also had to include the voter's name as listed in the voter registration records and an expiration date showing that the ID was not expired. Then-Governor Matt Blunt signed SB 1014 into law on June 14, 2006.

26. The Supreme Court invalidated SB 1014 in *Weinschenk*, 203 S.W.3d 201, finding that its photo ID requirement violated the Missouri Constitution. Specifically, the Court found that SB 1014 violated both Missouri's equal protection clause and the constitutional right to vote by imposing severe and unjustified monetary and procedural burdens on Missouri voters. *Id.* at 204, 212-14.

27. The *Weinschenk* Court found it problematic that any individual without one of the forms of ID that SB 1014 deemed acceptable would have to pay for a birth certificate to acquire a purportedly "free" non-driver's license to vote, noting that this would be a significant expense for poor Missourians. *Id.* at 213-14.

28. The *Weinschenk* Court also found significant the additional, non-monetary burdens that SB 1014 would impose on impacted voters, including specifically the requirement that they navigate bureaucracies in order to obtain the underlying records (i.e. a birth certificate) required to apply for photo ID, and even to obtain the ID itself from the Department of Revenue. *Id.* at 214-15.

29. The Court held that these burdens were substantial and required it to exercise strict scrutiny in evaluating the law. *Id.* at 215-216. Ultimately, the Court struck down SB 1014 because, while the State had an interest in preventing voter fraud, the photo ID requirement “could only prevent a particular type of voter fraud [(voter impersonation fraud)] that the record does not show is occurring in Missouri.” *Id.* at 218.

30. The Supreme Court’s decision to invalidate SB 1014’s photo ID requirement did not render Missouri elections any less secure. In *Weinschenk*, the Co-Director of Elections for the Secretary of State’s Office testified that since 2000 she had not received *any* reports of voter impersonation anywhere in the state, and the Secretary of State’s Office issued two official reports in 2013 and 2014 confirming that not a single case of voter impersonation fraud had been reported to it.

SB 3 (2011): Attempt to Impose Photo ID Requirement Is Vetoed Because of Potential Disenfranchisement of Qualified Voters

31. Republican legislators persisted in their purported attempts to root out nonexistent voter impersonation fraud by passing S.B. 3, 96th Gen. Assemb., 1st Reg. Sess. (2011) (“SB 3”) in 2011, which again sought to amend Mo. Rev. Stat. § 115.427 (2011) to require voters to present government-issued photo ID.

32. SB 3 contained many of the same requirements as SB 1014, including requiring the same forms of government-issued photo ID to vote in person. However, it would have also allowed

an individual appearing at a polling place, without proper government-issued photo ID, who was otherwise qualified to vote at that location, to vote by signing an affidavit stating that she could not obtain the required ID due to: (1) a physical or mental disability, (2) a sincerely held religious belief against such forms of ID, (3) being born prior to January 1, 1941, or (4) being unable to pay for a birth certificate or other documents necessary to apply for a photo ID. Governor Jay Nixon vetoed the bill on June 17, 2011, noting that the bill “would disproportionately impact senior citizens and persons with disabilities, among others, who are qualified to vote and have been lawfully voting since becoming eligible to do so, but are less likely to have a driver’s license or government-issued photo ID,” and that “[d]isenfranchising certain classes of persons is not acceptable.” Letter from Jeremiah W. (Jay) Nixon, Governor to the Secretary of State of the State of Missouri (June 17, 2011).

SJR 2 (2011): Attempt to Amend Missouri Constitution to Require Strict Photo ID Blocked by Court Decision Finding Summary of Proposal Insufficient and Unfair to Apprise Voters of Impact of the Measure

33. In 2011, Republican House Representative Stanley Cox and Senator William Stouffer sponsored S.J.R. 2, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011) (“SJR 2”), which attempted to place on the ballot a proposed amendment to Article VIII of Missouri’s Constitution. This amendment would have added several new sections to Article VIII, including the following language, proposed as § 9:

A person seeking to vote in person in public elections may be required by general law to identify himself or herself and verify his or her qualifications as a citizen of the United States of America and a resident of the state of Missouri by providing election officials with a form of identification, which may include *requiring* valid government-issued photo identification. Exceptions to the identification requirement may also be provided for by general law.”

Id. (emphasis added).

34. This proposed section, in sharp contrast to Amendment 6—which was adopted in

November 2016—including the term “requiring” immediately before the phrase “valid government-issued photo ID.”

35. Because SJR 2 was proposed as a constitutional amendment, to be placed on the ballot in the 2012 general election, the legislation included a proposed summary statement,² which described SJR 2 as follows: “Shall the Missouri Constitution be amended to adopt the Voter Protection Act and allow the General Assembly to provide by general law for advance voting prior to election day, voter photo identification requirements, and voter registration requirements based on whether one appears to vote in person or by absentee ballot?”

36. SJR 2 was never presented to voters, however. Before it could be placed on the ballot, eight Missouri voters filed suit in *Aziz v. Mayer*, No. 11AC-CC00439, (Mo. Cir. Ct. Cole County filed Jul. 7, 2012), arguing under Section 116.190³ that the summary statement was “insufficient and unfair,” and Cole County Circuit Court Judge Pat Joyce agreed. The court found that the summary statement violated Missouri law because it: (1) stated that the proposed amendment would adopt a “Voter Protection Act,” when the amendment did not contain the phrase “Voter Protection Act” in any of its sections, and, thus, would confuse voters; and (2) did not confer any new authority upon the General Assembly. *Id.*, slip. op. at 5. As a result, SJR 2 did not appear on the November 2012 ballot. *See id.*

² Under Missouri law, the “general assembly may include the official summary statement and a fiscal note summary in any statewide ballot measure that it refers to voters.” MO REV. STAT. § 116.155 (2017). The summary statement (and fiscal note summary) is meant to be the “official ballot title and . . . [t]he title shall be a true and impartial statement of the purposes of the proposed measure in language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.” *Id.*

³ Mo Rev. Stat. § 116.190(1) provides that any citizen who wishes to challenge the official ballot title for a proposed constitutional amendment submitted by the general assembly may bring an action in the Circuit Court of Cole County “within ten days after the official ballot title is certified by the secretary of state in accordance with the provisions of this chapter.” *Id.* Any such petition must “state the reason or reasons why the summary statement portion of the official ballot title is insufficient or unfair and shall request a different summary statement portion of the official ballot title.” *Id.* at (3).

HB 48 (2013): Attempt to Impose Strict Photo ID Requirement Fails

37. The following year, the Republican legislators introduced yet another voter ID bill, H.B. 48 & 216, 97th Gen. Assemb., 1st Reg. Sess. (2013) (“HB 48”), which, once again, attempted to impose strict photo ID requirements on Missouri voters by limiting acceptable forms of voter ID to: a Missouri driver’s license, non-driver’s license, or other state or federal government-issued photo ID.

38. In a report assessing the potential impact of HB 48 on Missouri voters, the Secretary of State’s Office confirmed that “[t]here ha[d] not been a single case of voter impersonation fraud reported to the Secretary of State’s office since the [2002] voter identification requirements went into effect” *Supra* ¶ 11. The Secretary’s report also compared the proposed law to voter ID laws in other states, concluding that HB 48, if passed, would be one of the strictest voter ID laws in the nation, and provided data demonstrating that provisional ballots were not an acceptable substitute for voters lacking appropriate ID because “[i]n the 2012 Presidential Election, [for example], fewer than 3 in 10 provisional ballots were counted” *Id.*⁴ HB 48 passed the Missouri House of Representatives on February 14, 2013, but the Senate failed to act on the bill.

HB 1073 and HJR 47 (2014): Attempt to Impose Strict Photo ID Requirement Fails Again

39. In 2014, Republican legislators once again introduced two pieces of legislation concerning voter ID: H.B. 1073, 97th Gen. Assemb., 2d Reg. Sess. (Mo. 2014) (“HB 1073”) and H.J.R. 47, 97th Gen. Assemb., 2d Reg. Sess. (Mo. 2014) (“HJR 47”). HB 1073, similar to HB

⁴ Under HB 1631, provisional ballots cast by voters who fail to present Photo ID or secondary ID (or who are unwilling to sign the sweeping and confusing statement required of voters who present secondary ID) are only counted if: (a) the voter returns to the polling place “during the uniform polling hours established by section 114.407 and provides a form of [Photo ID] . . .” or (b) “the election authority verifies the identity of the individual by comparing that individual’s signature to the signature on file with the election authority and determines that the individual was eligible to cast a ballot at the polling place where the ballot was cast”

1631 (and to previous proposed voter ID laws) sought to limit the forms of acceptable voter ID to a Missouri driver's license, non-driver's license, or other state or federal government-issued photo ID. And through HJR 47, the Missouri House of Representatives again sought to place on the ballot the same proposed constitutional amendment authorizing voter ID requirements that the General Assembly previously submitted in 2011 (SJR 2). *See supra* ¶ 33.

40. The Secretary of State's office produced another report, this time analyzing HB 1073's potential impact on Missouri voters, in which it reiterated that, "[t]here ha[d] not been a single case of voter impersonation fraud reported to the Secretary of State's office." *Supra* ¶ 8. The report also concluded that "[a]pproximately 220,000 registered voters could be disenfranchised with the passage of HB 1073." *Id.*

41. HB 1073 and HJR 47 passed the Missouri House of Representatives on February 27, 2014, but failed to move past the Senate.

The Current Legislation: HB 1631 (2016)

42. HB 1631, codified under Section 115.427, was first introduced in the Missouri House of Representatives on January 6, 2016, and imposes new, burdensome, and entirely unnecessary voter ID requirements on Missouri voters. Under HB 1631, individuals seeking to vote in person must present either: (1) a non-expired Missouri driver's or non-driver's license; (2) a document issued by the United States or the State of Missouri that includes the voter's name, photograph, and an expiration date; or (3) photo ID issued by the Missouri National Guard, U.S. armed forces, or U.S. Department of Veteran Affairs that is either unexpired or does not have an expiration date. Mo. Rev. Stat. § 115.427.1.

43. A voter who appears at a polling place without an acceptable form of Photo ID must sign a sworn statement averring, under penalty of perjury, that the voter: (1) is indeed the person

listed in the precinct register, (2) does not possess one of the types of Photo ID required by law, (3) is eligible to receive a Missouri non-driver's license free of charge, and (4) is required to present one of the forms of Photo ID required by law in order to vote. *Id.* § 115.427.2. Upon signing this statement, an individual can cast a regular, non-provisional ballot if he or she presents: (1) ID issued by a state or federal government, or a state or federal agency, (2) ID issued by a university, college, vocational, or technical school within the state of Missouri, or (3) a copy of a utility bill, bank statement, government check, paycheck, or other government document showing their name and address (collectively, "Secondary ID"). *Id.*

44. Voters who do not possess Photo ID or Secondary ID are required to cast a provisional ballot, which will only be counted if: (1) the voter returns to the polling place during polling hours with Photo ID; or (2) the election authority determines that the voter's signature matches the signature on file and "determines that the individual was eligible to cast a ballot at the polling place where the ballot was cast." *Id.*

45. HB 1631 passed both the Missouri House of Representatives and the Senate, and was delivered to the Governor on May 25, 2016. Detailing the burdens imposed on voters, Governor Nixon vetoed HB 1631 on July 7, 2016, citing, in his veto message, "the clear and overwhelming evidence that photo ID requirements are not necessary," along with the fact that "the proliferation of these laws is widely understood to be motivated by an attempt to suppress turnout among a certain class of voters," and that "when controlling for other factors, photo ID requirements have a negative impact on turnout among racial and ethnic minorities." Journal of the House Veto Session 2nd Regular Session, 98th General Assembly at 6 (Sept. 14, 2016), <https://house.mo.gov/billtracking/bills161/jrnpdf/jrn073.pdf>

46. The General Assembly, however, voted to override the Governor's veto on

September 14, 2016. As a result, HB 1631 was set to take effect on June 1, 2017, but, according to the terms of the statute, was contingent upon the approval of a proposed constitutional amendment (“Amendment 6”).

Amendment 6 to the Missouri Constitution

47. Also in May 2016, the General Assembly, through House Joint Resolution 53 (“HJR 53”), submitted a proposed constitutional amendment (Amendment 6) to be placed on the statewide ballot in the November 2016 election.

48. HJR 53 proposed adding the following language to the Missouri Constitution, under Article VIII, § 11:

A person seeking to vote in person in public elections may be required by general law to identify himself or herself and verify his or her qualifications as a citizen of the United States of America and a resident of the state of Missouri by providing election officials with a form of identification, which may include valid government-issued photo identification. Exceptions to the identification requirement may also be provided for by general law.

49. While supporters of HB 1631 have implied publicly that Amendment 6 authorizes HB 1631’s Photo ID requirement, the amendment’s plain terms do not grant the General Assembly authority to demand government-issued photo ID as the sole means of verifying voter qualifications, nor do they authorize the General Assembly to condition the right to vote upon the execution of a sworn statement containing threatening, confusing averments that are unrelated to the voter qualifications established by the Missouri Constitution.

50. The text of Amendment 6 (quoted above) is nearly identical to the proposed constitutional amendments considered by the General Assembly in 2011 (SJR 2) and 2014 (HJR 47), but with one glaring omission: in the 2011 and 2014 proposed amendments, the word “requiring” immediately preceded the phrase “valid government-issued photo identification”; the plain language of Amendment 6, however, conspicuously omits the word “requiring” from the

sentence altogether. Missouri voters, relying on its plain language, approved Amendment 6 in the November 2016 general election, and HB 1631 took effect on June 1, 2017.

51. The General Assembly was surely aware of the omission of the word “requiring,” which was the *only* revision made to the 2011 (SJR 2) and 2014 (HJR 47) versions of the proposed amendment. By deleting that term, the General Assembly (and the plain language of Amendment 6) made it unmistakably clear that the amendment neither mandates nor expressly sanctions a law that *requires* voters to present Photo ID. Instead, the amendment states that a voter may be required to identify herself by providing “*a form of identification, which may include valid government-issued photo identification.*” Mo. Const. Art. VIII, § 11 (emphasis added). In other words, Amendment 6, at most, identifies government-issued photo ID as just one of the possible forms of ID a voter may present to verify her qualifications.

52. Furthermore, any authority conferred upon the General Assembly to regulate the electoral process is still subject to the constraints of the express, constitutional right to vote, the rights to due process and equal protection of the laws, and the constitutional guarantee that all Missourians who meet the voter qualifications set forth in Article VIII, § 2 (i.e. individuals who are: (1) citizens of the United States; (2) over the age of eighteen; (3) residents of this state; (4) residents of the political subdivision in which they offer to vote; and (5) registered within the time prescribed by the law) “are entitled to vote at all elections by the people.”

53. Amendment 6, even if interpreted to authorize a photo ID requirement, does not confer an absolute right to impose onerous restrictions on the forms of acceptable ID that would have the result of unduly burdening the fundamental right to vote.

54. Here, HB 1631’s restrictive Photo ID requirement will potentially disenfranchise a large segment of qualified Missouri voters—previously estimated by the Secretary of State’s office

to be well in excess of 200,000—who lack Photo ID, and now must expend additional time and expense navigating bureaucratic processes just to avoid disenfranchisement. Thus, HB 1631 exceeds the scope of any authority conferred upon the General Assembly by Amendment 6, and unlawfully impinges on the right to vote.

The Burdens Imposed by HB 1631 on the Constitutional Right to Vote Cannot be Alleviated by Free IDs or Vital Records

55. A significant number of Missourians lack the Photo ID required under HB 1631. As noted above, the Missouri Secretary of State in 2014 estimated that, HB 1073, which if enacted would have required voters to provide the same types of Photo ID that HB 1631 now mandates, would disenfranchise approximately 220,000 registered voters, and the State’s population has only increased since the General Assembly considered (and declined to pass) HB 1073. *See supra* ¶ 8.

56. Although HB 1631 includes provisions requiring the State to provide free non-driver’s licenses and other records required to obtain ID, and to facilitate the acquisition of such documents, the statute does not alleviate the additional burdens imposed on voters who must expend significant time and effort, and incur other transaction costs associated with navigating complicated bureaucratic processes in order to exercise their fundamental right to vote.

57. To obtain a Missouri driver’s or non-driver’s license, for instance, a voter may need to provide a “certified birth certificate, certified marriage license, certified divorce decree, certified adoption papers or amended birth certificate, a court order that changed [his or her] name, a social security card that reflects [his or her] name, or naturalization papers that prove citizenship.” Office of the Missouri Secretary of State, ShowIt2Vote Informational Flyer, *available at* <https://www.sos.mo.gov/CMSImages/Elections/ShowIt2Vote/ShowIt2VoteFlyer.pdf>, last accessed June 8, 2018.

58. Assuming the voter already possesses such documentation, she must locate and

travel to the nearest License Office, which may be a great distance away from the voter's residence, and the burden of which is even more pronounced among voters who lack driver's licenses to begin with.

59. For a voter who lacks the documentation needed to obtain a driver's or non-driver's license for voting, the burden is even more onerous. Obtaining such documents will require substantial advance planning and navigation of numerous procedural hurdles. As but one example, obtaining a Missouri birth certificate requires that an applicant: (1) acquire the application for a birth certificate (either on the Department of Health & Senior Services website or at the nearest local health department, many of which only have one location in each county); (2) complete the application (including providing information that may not be readily available for certain voters, such as the hospital in which the voter was born); (3) if returning the application by mail, find a notary public and have the application notarized; (4) return the application by mail, or alternatively, locate and travel to the nearest local health department; and (5) wait a minimum of two to four weeks for the birth certificate to arrive.

60. The process of obtaining the underlying records required to apply for Photo ID is even more complicated for individuals—particularly elderly Missouri residents—who were not born in a hospital or were born out of state. For example, in a hearing on proposed voter ID legislation, House Rep. Clem Smith relayed the story of his mother's attempt to correct her out-of-state birth certificate: "If I showed you my mother's birth certificate, you'd think she made it up." Rep. Smith explained that his mother, who was born in Mississippi, had a birth certificate with multiple errors, including her birthdate, and had to visit Mississippi to obtain a new birth certificate. The process took a week, and the new birth certificate "was *exactly the same* as the old one," except it included the name of the county. Rebecca Rivas, *Voter ID bills are back*, THE ST.

LOUIS AMERICAN, Jan. 28, 2015, http://www.stlamERICAN.com/news/local_news/voter-id-bills-are-back/article_b1c78fba-a759-11e4-b0df-6b9f0c7af911.html. This ordeal—including both the time and expense devoted to correcting a birth certificate—provides just one example of the types of logistical hurdles and severe burdens that HB 1631 may impose on the constitutional right to vote for qualified voters who neither possess Photo ID nor any of the underlying vital records required to obtain such ID.

61. As the Supreme Court recognized in *Weinschenk*, election regulations that demand “substantial planning in advance of an election to preserve the right to vote can tend to eliminate from the franchise a substantial number of voters who did not plan so far ahead . . . [and impose] onerous procedural requirement[s] which effectively handicap[] exercise of the franchise.” 203 S.W.3d at 215 (quotation marks and citations omitted). This is as true about HB 1631 as it was about SB 1014, the law that the *Weinschenk* Court found violated the Missouri Constitution.

Voting with Secondary ID Does Not Alleviate the Burdens Imposed by HB 1631

62. The ability to vote with Secondary ID also does not alleviate the substantial burdens imposed by HB 1631. The statute places undue burdens on voters who attempt to vote with Secondary ID by requiring them to execute, under penalty of perjury, a sworn statement attesting, among other things, that: (1) they do not possess Photo ID, and (2) that they are “required to present a form of personal identification, as described in subsection 1 of [Section 115.427], in order to vote,” effectively threatening and discouraging voters who attempt to cast a ballot without one of the limited forms of Photo ID accepted under HB 1631, and indicating to those voters, as was the case with Plaintiff Mildred Gutierrez, that they will not be permitted to vote again in the future without Photo ID.

63. Requiring voters to attest, under penalty of perjury, to the existence (or lack thereof)

of Photo ID, the scope of which is not clearly defined, will discourage and intimidate Missouri residents who are otherwise qualified to vote. Moreover, a voter who has signed the sworn statement and cast a ballot with Secondary ID in one election, but is unable to obtain Photo ID by the next election in which she wishes to vote, will be discouraged (and potentially disenfranchised) from voting by the sworn statement's internally inconsistent averment that the voter "is required to present [Photo ID] in order to vote." *Id.*

64. The sworn statement required by HB 1631 is unnecessary and unrelated to the exhaustive list of voter qualifications set forth in the Missouri Constitution's Article VIII, § 2. *See id.* (providing generally that individuals who are: (1) citizen of the United States; (2) over the age of eighteen; (3) residents of this state; (4) residents of the political subdivision in which they offer to vote; and (5) registered within the time prescribed by the law, "are entitled to vote at all elections by the people"). Whether a voter with Secondary ID also possesses Photo ID, does not possess Photo ID, or is unsure whether she possess such ID, is entirely unrelated to her constitutional eligibility and right to vote. Similarly, by demanding that voters with Secondary ID attest, under penalty of perjury, that Photo ID is required in order to vote, the sworn statement imposes yet another voter qualification not authorized by the Missouri Constitution.

65. Given that the signed statement already requires that a voter confirm her identity, under penalty of perjury, the inclusion of additional confusing averments and thinly veiled threats against voting with Secondary ID places a substantial, unjustified burden on the constitutional right to vote by forcing voters to provide very limited forms of Photo ID, and discouraging those who do not possess such ID from voting.

Voting by Provisional Ballot Does Not Alleviate the Burdens Imposed by HB 1631

66. Under HB 1631, an individual who fails to present Photo ID or Secondary ID (or

who is unwilling to sign the sweeping and confusing statement required of voters who present Secondary ID) can cast a provisional ballot. Such provisional ballots are only counted if: (a) the voter returns to the polling place “during the uniform polling hours established by section 114.407 and provides a form of [Photo ID] . . .” or (b) “the election authority verifies the identity of the individual by comparing that individual’s signature to the signature on file with the election authority and determines that the individual was eligible to cast a ballot at the polling place where the ballot was cast . . .” Section 115.427.4(b).

67. The Secretary of State has noted that provisional ballots are not an acceptable substitute for voters lacking appropriate ID because they are so rarely counted. For example, “[i]n the 2012 Presidential Election, fewer than 3 in 10 provisional ballots were counted.” *Supra* ¶ 38.

68. The provisional ballot regime put into place by HB 1631 is particularly inadequate because it conditions the right to vote of those lacking Photo ID or Secondary ID (or those unwilling to sign the sworn statement) on the vagaries of an election official’s subjective comparison of the signature on file in the precinct register with the signature on the provisional ballot.

69. Handwriting can change for a variety of reasons, including mechanical factors such as writing instrument, paper quality, writing surface, and the position of the writer when writing; physical factors such as illness, injury, medication, substance abuse, and aging; and emotional factors such as excitement, anger, and fatigue. *See* Katherine Koppenhaver, FORENSIC DOCUMENT EXAMINATION: PRINCIPLES AND PRACTICE 28 (2007); Tomislav Fotak, et al., *Handwritten signature identification using basic concepts of graph theory*, 7 WSEAS Transactions on Signal Processing 145, 145 (2011), <http://www.wseas.us/e-library/transactions/signal/2011/53-595.pdf>. A person’s handwriting also simply changes over time. *See, e.g.*, Michael P. Caligiuri, et al.,

Kinematics of Signature Writing in Healthy Aging, 59 JOURNAL OF FORENSIC SCI. 1020 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4077921/>

70. Further, because HB 1631's signature verification involves human reviewers, it is necessarily fallible. *See, e.g.*, Rory Conn, Gary Fielding, et al., *Signature Authentication by Forensic Document Examiners*, 46 JOURNAL OF FORENSIC SCI. 884-88 (2001). Studies conducted by experts in the field of handwriting analysis have repeatedly found that signature verification by laypersons is inherently unreliable, and that non-experts are significantly more likely to misidentify authentic signatures as forgeries. In one study, for instance, laypersons falsely declared authentic signatures to be inauthentic at least 26 percent of the time, despite having access to six authentic reference signatures for comparison. K. Gummadidala, *Signature authentication by forensic document examiners*, J. FORENSIC SCI., 46(4) 884-88 (2001). It is, therefore, inevitable that election authorities will erroneously reject legitimate ballots due to misperceived signature mismatches, resulting in the disenfranchisement of qualified Missouri voters.

The State Cannot Identify Any Interest Sufficient to Justify the Substantial Burdens Imposed by HB 1631 on the Constitutional Right to Vote

71. HB 1631 places severe burdens on the right to vote which are not justified by a sufficient state interest. Several of the law's legislative proponents have cited the prevention of voter fraud as the purported justification for HB 1631's Photo ID requirement, but there has been *no* evidence of voter impersonation fraud at the polls in the nearly sixteen years since Missouri introduced its first voter ID law in 2002, which was in effect until HB 1631's enactment. *See supra* ¶ 11.

CAUSES OF ACTION

COUNT I

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

72. Plaintiffs hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 71 of this Complaint.

73. Article I, § 25 of the Missouri Constitution guarantees “[t]hat 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,” which firmly establishes a fundamental, constitutional right to vote.

74. By requiring qualified Missouri voters to either: present limited forms of Photo ID, the procurement of which requires significant time, effort, and advance planning; or execute a sworn statement, under penalty of perjury, containing confusing and threatening provisions that discourage qualified voters from attempting to exercise their right to vote without Photo ID; or to cast a provisional ballot, and subject themselves to an opaque and arbitrary process that will inevitably result in the erroneous rejection of legitimate provisional ballots, HB 1631 imposes a “heavy and substantial burden on Missourians’ free exercise of the right of suffrage,” in violation of Article I, § 25 of the Missouri Constitution. *Weinschenk*, 203 S.W.3d at 215.

75. There is no sufficient, let alone compelling, state interest that justifies the burdens imposed by HB 1631 on Missouri voters.

76. Thus, HB 1631 will deprive qualified Missouri voters of their constitutional right to vote, and will cause Plaintiffs irreparable injury if HB 1631 is not enjoined.

COUNT II

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

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

78. Article VIII, § 2 of the Missouri Constitution provides the exclusive list of qualifications to vote in Missouri: (1) citizen of the United States; (2) over the age of eighteen; (3) resident of this state; (4) resident of the political subdivision in which the person offers to vote; and (5) registered within the time prescribed by the law.

79. This provision also provides the exclusive list of disqualifications to vote in Missouri: (1) a person who has a court-appointed guardian of his or her estate by reason of mental incapacity; and (2) a person who is involuntarily confined in a mental institution pursuant to a court adjudication. Mo. Const., Art. VIII, § 2.

80. By its plain terms, this provision grants the General Assembly the authority to make only one determination on qualifications to vote: the General Assembly may, if it chooses to do so, exclude by law from voting “persons convicted of a felony, or crime connected with the exercise of the right of suffrage.” *Id.*

81. Article VIII, § 2 also provides that all persons qualified to vote, and not properly precluded by law from voting, are “entitled to vote at all elections by the people.”

82. By mandating that registered voters present Photo ID to cast a regular ballot, HB 1631 violates the Missouri Constitution by adding a new qualification to vote not specified or permitted by Article VIII, § 2, and excluding by law from voting persons other than those permitted to be excluded under Article VIII, § 2.

83. By imposing additional qualifications to vote, which are not recognized under

Article VIII, § 2, HB 1631 deprives Missouri voters of rights secured to them by the Missouri Constitution and will cause Plaintiffs irreparable injury if it is not enjoined.

COUNT III

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

84. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in Paragraphs 1 through 83 of the Complaint.

85. Article I, § 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.

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

87. HB 1631 imposes severe burdens on the fundamental right to vote of a substantial number of registered voters that are neither justified by, nor necessary to promote, any substantial or compelling state interest that was not already being adequately protected by existing election laws and procedures, or which could not have been advanced using other, less restrictive and less burdensome alternatives.

88. HB 1631 is also overbroad and is not narrowly tailored to prevent voter impersonation, which is the only type of fraud that the law could potentially prevent, and which, by the Secretary of State’s office’s own reports, is virtually non-existent in Missouri. *See also Weinschenk*, 203 S.W.3d at 217 (holding photo ID requirement was not necessary to protect against voter impersonation fraud which the evidence showed “[wa]s not a problem in Missouri.”

(quotation marks omitted)).

89. Furthermore, qualified voters, as defined by the Missouri Constitution, who do not possess any of the forms of Photo ID specified in HB 1631 are similarly situated to registered voters who possess such ID. However, qualified voters who lack Photo ID are treated differently—*i.e.*, denied the right to vote—when voting in person at a polling place.

90. Defendants have not advanced any compelling state interest that justifies the severe burdens imposed on voters who do not possess Photo ID.

91. Thus, HB 1631 has deprived and will continue to deprive Missourians of rights secured to them by the Constitution, and will cause Plaintiffs irreparable injury unless HB 1631 is enjoined.

PRAYER FOR RELIEF

92. Accordingly, Plaintiffs respectfully request that this Court issue its judgment: (i) declaring that HB 1631 violates Article I, §§ 2, 10, and 25, and Article VIII, § 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 acting in concert with them (including all local election authorities) from enforcing or otherwise implementing HB 1631; and (iii) granting Plaintiffs their costs, including reasonable attorneys' fees, and such other relief as this Court deems just and proper.

Dated this 13th day of June 2018.

Respectfully submitted,

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