IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

No. WD81484

Missouri State Conference of the National Association
for the Advancement of Colored People, et al.,

Plaintiffs-Appellants,

v.

State of Missouri, and John R. Ashcroft,
in his official capacity as Secretary of State,

Defendants-Respondents

On Appeal from the Circuit Court of Cole County
Honorable Jon E. Beetem

Brief of Appellants Missouri State Conference of the National Association for the Advancement of Colored People, *et al*.

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Table of Contents

Table of Authorities

Page(s)

Cases

Statutes and Rules

Constitution

Other Authorities

JURISDICTIONAL STATEMENT

This action involves the question of whether Plaintiffs-Appellants adequately pleaded that the personal identification requirements of section 115.427 (the "Voter ID Law") cannot be enforced in light of the statute's affirmative command barring enforcement absent a "sufficient appropriation."[1] Plaintiffs' Second Amended Petition (the "Petition") alleges with specificity that Defendant State of Missouri (the "State") has not appropriated sufficient funds necessary to pay the required costs associated with implementing the Voter ID Law. It further alleges that Defendant Secretary of State Ashcroft (the "Secretary") has nevertheless begun enforcing the Voter ID Law's personal identification requirement. Because it appears that the Circuit Court's misconstruction of the Voter ID Law was central to its dismissal of Plaintiffs' case, this appeal concerns the construction of a law of this state and is therefore appropriate for review by this Court.

The Circuit Court's Order is appealable at this time even though it was entered without prejudice. Although such a dismissal is generally not considered an appealable final judgment, courts recognize an exception "[w]hen the effect of the order is to dismiss the plaintiff's action and not the pleading merely." *Mayes v. Saint Luke's Hosp. of Kansas City*, 430 S.W.3d 260, 265 (Mo. banc 2014). Thus, "[w]hen the party elects not to plead further and stands on the original pleadings, the dismissal without prejudice is considered a final and appealable judgment." *Id*. Such an order is also appealable as a

[1] All statutory citations are to Missouri Revised Statutes (2000), as updated, unless otherwise noted.

final judgment "[i]f the dismissal was such that a refiling of the petition at that time would be a futile act." *Nicholson v. Nicholson*, 685 S.W.2d 588, 589 (Mo. App. W.D. 1985).

The Order subject to appeal concerns the Second Amended Petition in this action, which was filed after Defendants submitted separate motions for judgment on the pleadings that largely tracked, and incorporated by reference, their prior motions to dismiss the First Amended Petition. *See* D86 p. 1; D89 p. 1. The Circuit Court provided no reason for dismissing the Second Amended Petition in its Order of dismissal, nor did it set forth any reasons explaining why it dismissed the First Amended Petition. D91 p. 1; App 1.

Accordingly, filing a Third Amended Petition would only be a futile expenditure of resources, as Plaintiffs do not know what, if anything, could further amend the Second Amended Petition to the satisfaction of the Circuit Court. Plaintiffs therefore stand on their Second Amended Petition, and the Circuit Court's Order is thus an appealable final judgment in this case. *See Mayes*, 430 S.W.3d at 265; *Nicholson*, 685 S.W.2d at 589.

FACTUAL AND PROCEDURAL HISTORY

On June 1, 2017, the State of Missouri began imposing new limitations on the ways in which registered voters must identify themselves to exercise their right to vote in person during elections. D79 p. 1 ¶ 1, App. 2. The newly enacted law ("section 115.427" or the "Voter ID Law") replaced Missouri's prior voter identification requirements and imposes a stringent photo identification requirement. The Voter ID Law, however, also includes provisions to ameliorate the burdens on Missouri voters. Thus, the photo identification requirements are subject to certain important exceptions, such as permitting individuals who provide alternative forms of identification to vote if they can attest to their lack of qualifying photo identification. The Voter ID Law further requires the State to assist voters in obtaining the documents they would need to obtain a photo identification. And, critically, the Voter ID Law requires that the voters be given "advance notice" of the new provisions of the law. All of these measures cost money to implement.

As alleged with specificity in the Petition, however, the State has failed to provide a sufficient appropriation for the implementation of the Voter ID Law. It has thereby upset the balance struck by the statute, abridging the rights of the citizens of this state.

A. Statement of the Case

1. The Requirements of the Voter ID Law

Under the Voter ID Law, Missourians seeking to vote in a public election are required "to establish their identity and eligibility to vote at the polling place" by

presenting either a non-expired Missouri's driver's or nondriver's license; certain forms of military photographic identifications; or a document that contains the voter's photograph, was issued by the United States or State of Missouri, and meets certain other requirements regarding expiration dates and the registered name of the voter. § 115.427.1; D79 p. 7-8 ¶ 18; App. 8-9.

At the same time, the Voter ID Law also imposes specific and mandatory obligations upon the Secretary of State and other government agencies and entities before the law may go into effect. D79 p. 8 ¶ 19; App. 9. For example, under the "Advance Notice" provision, the Voter ID Law specifies that:

> The secretary of state shall provide advance notice of the personal identification requirements of subsection 1 of this section in a manner calculated to inform the public generally of the requirement for forms of personal identification as provided in this section. Such advance notice *shall include, at a minimum*, the use of advertisements and public service announcements in print, broadcast television, radio, and cable television media, as well as the posting of information on the opening pages of the official state internet websites of the secretary of state and governor.

§ 115.427.5 (emphasis added); D79 p. 8-10 ¶ 20; App. 9-11.

Under this provision, the Secretary of State is explicitly required to adequately inform the public about the new and meaningful changes made to the existing voter identification requirements. D79 p. 2-3 ¶ 4; App. 3-4. This Advance Notice provision requires the Secretary to inform voters of certain measures aimed at ameliorating the financial and logistical burdens of complying with the Voter ID Law. D79 p. 2 ¶ 3; App. 3.

Notably, these ameliorative measures include certain exemptions from the photo identification requirement. These exemptions include the ability of a voter to cast a regular ballot by providing a non-photo identification along with a sworn statement attesting to their lack of the otherwise required photo identification. § 115.427.2(1).

These ameliorative measures also include the requirement that the State and its agencies provide certain documents required to vote under the new restrictions at no cost to the voter. D79 p. 8-10 ¶ 20; App. 9-11; *see, e.g.*, § 115.427.6(1) (requiring the State to provide one nondriver's license without cost to voters who do not already possess such a document); § 115.427.6(2) (guaranteeing one copy without cost to the voter of a birth certificate, marriage license, divorce decree, certificate of adoption, court order changing name, Social Security card, or naturalization papers); § 115.427.6(4) (free nondriver's license for purposes of voting); D79 p. 2 ¶ 3; App. 3.

As explained in the Petition,[2] carrying out these statutorily mandated activities requires, among other things: providing advance notice to voters using specific forms of media; paying for the material, production, and shipping costs of the nondriver's licenses; providing the documents mentioned above without cost to voters, even if it means paying another state or court for such documents; hiring additional State employees to assist with increased requests for nondriver's licenses; hiring an additional attorney at the Secretary of State's office to assist in the implementation of the Voter ID Law; modifications to the

[2] Unless noted otherwise, all of the facts alleged in this brief are those alleged in the Second Amended Petition.

Missouri Electronic Driver License System; and printing new affidavits and additional provisional ballots and to create distinct provisional ballot envelopes. D79 p. 3-4 ¶ 5; App. 4-5. Such measures clearly cost money and thus require a sufficient appropriation of state funds to accomplish. D79 p. 11 ¶ 25; App. 12.

Consistent with the reality that adequate notice and activities aimed at ensuring proper administration must necessarily occur prior to an election in order to have any meaning, the statute is not silent on the importance of this sufficient appropriation to the statute's enforcement. Critically, section 115.427.6(3) ("Subsection 6(3)") makes clear that, "[i]f there is not a sufficient appropriation of state funds, then the personal identification requirements [of the Voter ID Law] shall not be enforced." D79 p. 10 ¶ 21; App. 11. Subsection 6(3) further provides that, "[a]ll costs associated with the implementation of [the Voter ID Law] shall be reimbursed from the general revenue of this state by an appropriation for that purpose." *Id.*

2. The Insufficient Appropriation

As set forth in the Petition, in his Fiscal Year 2018 budget request, dated February 2, 2017, Defendant Secretary of State Ashcroft admitted that more than $5.25 million would be needed by the Secretary alone to implement the Voter ID Law.[3] D79 p. 14-15

[3] This figure includes $4,259,987 million to fund the advance public notice activities mandated by section 115.427.5; $19,600 to cover the increased costs for provisional ballots required under sections 115.427.2(3) and 115.427.4; $1,000,000 in fees to obtain underlying documents needed to obtain a qualifying photo identification for Missourians lacking such documents, in compliance with section 115.427.6(2); $175,000 to pay for additional mailings to newly registered voters before each election; and $58,672 to pay for the hiring of a deputy counsel in the elections division to assist with (continued…)

¶ 35; App. 15-16; D80. A fiscal note (the "Fiscal Note"), dated June 2, 2016, was prepared by the nonpartisan Committee on Legislative Research Oversight Division and accompanied the House Bill enacting the law. D79 p. 15 ¶ 36; App. 16. The Fiscal Note estimated that the Department of Revenue's costs for complying with the requirement of providing nondriver's licenses without cost, pursuant to section 115.427.6(4), would be greater than $500,000.[4] D79 p. 15-16 ¶ 36; App. 16-17; D81. The Fiscal Note's calculation was based on specific expenditure estimates provided to the Committee on Legislative Research Oversight Division by the relevant state agencies, including the Department of Revenue. D79 p. 15-16 ¶ 36; App. 16-17.

Taken together, and considering only the implementation activities expressly specified by the Voter ID Law, these estimates of the funds needed to implement the law's mandatory provisions amount to approximately $3.5 million in Fiscal Year 2018 alone. D79 p. 16-17 ¶ 37; App. 17-18. And the Secretary and the Department of Revenue have estimated that approximately $2.3 million in additional reasonably necessary costs will be required to implement the statute in the same year. D79 p. 17-18 ¶ 38; App. 18-19.

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implementation of the Voter ID Law. D79 p. 14-15 ¶ 35; App. 15-16.

[4] This figure includes the $457,553 vendor cost "for licensing material and mailing cost" needed to supply free nondriver's licenses to the Missouri population that the Department of Revenue estimated would request a free nondriver's license; the hiring of four additional employees "to handle the additional telephone inquiries" at a cost of greater than $100,000 for Fiscal Year 2018; and revisions to the Missouri Electronic Driver License System in order to allow for the provision of free nondriver's licenses at a cost of almost $30,000. D79 p. 15-16 ¶ 36; App. 16-17.

At the present time, however, the State has completely failed to provide a sufficient appropriation of funds from the general revenue to pay for the costs associated with implementing the Voter ID Law. D79 p. 11, 14 ¶¶ 25, 34; App. 12, 15. As of November 22, 2017, the date when the operative petition in this case was filed, only $1.5 million had been appropriated to the Secretary for the implementation of the Voter ID Law in Fiscal Year 2018, and only $100,000 had been appropriated to the Department of Revenue. D79 p. 10-11 ¶ 23; App. 11-12. No funds to implement the law were appropriated to any other State agency, court, or political subdivision, and no supplemental appropriations were made.[5] D79 p. 10-11 ¶ 23; App. 11-12.

3. The Inadequate Implementation of the Statute

As a result of the insufficient appropriation, the State has failed to carry out certain implementation activities expressly mandated by the Voter ID Law. D79 p. 11 ¶ 26; App. 12. For example, under the Advance Notice provision, the Secretary is required to provide advance notice via cable and broadcast television advertisements across the state "in a manner calculated to inform the public generally" of the new photo identification requirements. § 115.427.5. Yet no cable advertisements have been aired, and the broadcast advertisements have been inadequate, as evidenced by the fact that they were

[5] The Court can take judicial notice of the fact that no supplemental appropriation has been made for the purpose of implementing the Voter ID Law since the Petition was filed. *See Kansas City v. City of Raytown*, 421 S.W.2d 504, 513 (Mo. banc 1967) ("[W]e take judicial notice of these public records [bond registration] of the State Auditor.").

predominantly aired in less expensive and less dense rural areas, where fewer voters reside. D79 p. 11-12 ¶ 27; App. 12-13.

Accordingly, because the legislature has failed to provide a sufficient appropriation of funds to pay for the costs associated with implementing the Advance Notice provision, the general public is not being adequately informed of the changes in the voter identification requirements and, critically, of the existence of the alternative ways to satisfy those requirements (including express exemptions to the photo identification requirements of the law). D79 p. 12 ¶ 28; App. 13. The same insufficient appropriation is expressly alleged to have caused an inadequate implementation of sections 115.427.6(2) and (4) (requiring the State to provide certain forms of photo identification and the documents necessary to obtain such forms of photo identification at no cost to voters). D79 p. 12 ¶ 29; App. 13.

Indeed, based on the current appropriation of state funds, the Secretary will be unable to pay for the cost of the underlying documents for Missourians who need them to acquire a nondriver's license for purposes of voting, and the Department of Revenue will be unable to provide nondriver's licenses to every person who needs one. D79 p. 13 ¶¶ 30-31; App. 14. In fact, for example, the Secretary already conceded his office was unable to provide photo identification documents for voters who needed them during the July 2017 St. Louis Special Election. D79 p. 13 ¶ 31; App. 14. The Petition contends that there is no reason to believe this problem will not persist in the future given the inadequacy of the existing appropriation. *Id.*

B. Procedural History

1. First Petition and Temporary Restraining Order

On June 8, 2017, shortly after the effective date of the law, Plaintiffs Missouri State Conference of the National Association for the Advancement of Colored People ("NAACP") and League of Women Voters of Missouri ("LWV") filed a two-count petition for injunctive and declaratory relief in the Circuit Court of Cole County against Defendants State of Missouri, Secretary of State John Ashcroft, and the Board of Election Commissioners for the City of St. Louis. Under Count I, Plaintiffs alleged that, because the State insufficiently appropriated funds from the general revenue to pay the costs associated with implementing the Voter ID Law, the law could not be enforced pursuant to Subsection 6(3).[6] At the time of the filing of the First Petition, the State had appropriated $0 for the Secretary of State and just $100,000 to the Department of Revenue for the implementation of the Voter ID Law.

At the same time, Plaintiffs moved for a temporary restraining order ("TRO"), arguing that, because the State provided insufficient funds to implement the Voter ID Law, and because the State had failed to provide adequate public education to inform the public of the law's new requirements and protections, the law should immediately be

[6] Count II, which was later voluntarily dismissed, alleged that section 115.427 violates Art. X, Sections 16 and 21 of the Missouri Constitution, which prohibit the State from "requiring any new or expanded activities by counties and other political subdivisions without full state financing."

enjoined so its enforcement would not taint the upcoming July 2017 special election. The Circuit Court denied the TRO on June 13, 2017.

2. First Amended Petition and Order of Dismissal

Plaintiffs subsequently filed a First Amended Petition on June 30, 2017, setting forth similar allegations[7] while removing Defendant Board of Election Commissions, adding Defendant Director of the Department of Revenue Joel Walters, and adding Plaintiff Christine Dragonette, a resident of St. Louis, who oversees the photo identification acquisition program at St. Francis Xavier College Church. D64. Plaintiffs alleged, *inter alia*, that the Secretary's budget request for Fiscal Year 2018 and the June 2, 2016 Fiscal Note estimated costs associated with implementing the Voter ID Law that far exceeded the amount of funds actually appropriated. D64 p. 10 ¶¶ 35-42. Because Subsection 6(3) renders unenforceable the personal identification requirements of the Voter ID Law absent a sufficient appropriation, Plaintiffs alleged Defendants were barred from enforcing the law until adequate funds were provided. *See id.*

Defendants moved for dismissal and judgment on the pleadings, arguing that: (1) Plaintiffs' claim under the Voter ID Law failed to state a claim upon which relief could be granted; (2) Plaintiffs' claim is not ripe and cannot be adjudicated before the end of the fiscal year; (3) sovereign immunity precluded Plaintiffs' claims against the State,

[7] Plaintiffs also added a third count for specific performance of duties under section 115.427 that was later voluntarily dismissed. Plaintiffs also voluntarily dismissed their motion for a preliminary injunction.

even though Plaintiffs only sought equitable relief and not damages; and (4) because no Local Election Authorities ("LEA") were named as defendants, the Court could not grant any relief prohibiting enforcement of the Voter ID Law.[8] *See* D69 p. 4-6, 11-12; D68 p. 1-4, 9.

On November 9, 2017, the Circuit Court held a hearing on Defendants' motions. Plaintiffs subsequently filed a motion for leave to file a Second Amended Petition, which Defendants opposed. Without further clarification, on December 6, 2017, the Court summarily granted without prejudice Defendants' motion to dismiss the First Amended Petition and motion for judgment on the pleadings, explaining only that the First Amended Petition "fails to state a claim for which relief can be granted and Defendants are entitled to judgment as a matter of law." D84. The Court simultaneously granted Plaintiffs leave to file their Second Amended Petition, which is now the operative petition on review before this Court.

3. Second Amended Petition and Order of Dismissal

The Petition removed Defendant Walters and introduced a new legal and factual basis for Plaintiffs' claim. Specifically, the Petition set forth an additional approach to measuring the insufficiency of an appropriation under Subsection 6(3) by alleging an established failure of the State to conduct implementation activities expressly mandated

[8] Defendants also moved to dismiss Counts II and III, which Plaintiffs voluntarily dismissed and therefore are not subject to this appeal. Defendant Secretary of State also moved for attorneys' fees, which were not granted, and therefore are not subject to this appeal.

by the statute.[9] The Petition specifically alleges that this measurable failure has been caused by the insufficiency of the appropriation itself. D79 p. 10-12 ¶¶ 21-29; App. 11-13.

Although hardly required at the pleadings stage, the Petition provides concrete examples of inadequate implementation of activities required under the Advance Notice provision, without which the personal identification provisions may not be enforced. These minimum requirements include both cable and broadcast advertising, and the advertisements must be done "in a manner calculated to inform the public generally" of the change in the voter ID requirements. Indeed, no cable television advertisements have been aired anywhere in the state, even though the Advance Notice provision expressly requires advertisements in this costly medium. D79 p. 11-12 ¶ 27; App. 12-13. The Petition also alleges that an insufficient number of broadcast advertisements were purchased in more densely populated (and expensive) markets due to inadequate funding and appropriation. D79 p. 11-12 ¶¶ 27-28; App. 12-13.

Accordingly, the Petition alleges that it is precisely this ongoing failure to carry out statutorily-mandated implementation activities that fully demonstrates the insufficiency of the appropriation under Subsection 6(3). D79 p. 11-12 ¶¶ 25-29; App. 12-13. The Petition further alleges that the Secretary of State's own statements—as well as those of other state agencies responsible for the implementation of the Voter ID

[9] The new facts alleged in the Second Amended Petition were derived from discovery provided after the First Amended Petition was filed.

Law—confirm the insufficiency of the appropriation. D79 p. 14-19 ¶¶ 35-40, App. 15-20.

The Petition expressly ties the inadequacy of the appropriation to specific statutory provisions mandating these implementation activities. Indeed, the Petition maps the costs of particular minimum implementation activities to the statute's provisions mandating those activities, and does so by identifying with specificity the funding levels necessary to carry out the mandated implementation activities based on the Secretary's own admissions, as well as the estimates of the Department of Revenue, and indicating the exact statutory subsections that mandate those activities. D79 p. 16-18 ¶¶ 37-38; App. 17-19. Detailed charts in the Petition set forth these linkages. *Id.*

Defendants renewed their motions for judgment on the pleadings, reasserting the same defenses made in their prior motions. Without a hearing on the motions, on January 2, 2018, the Court summarily dismissed Plaintiffs' claims without prejudice, again explaining only that the Petition "fails to state a claim for which relief can be granted and Defendants are entitled to judgment as a matter of law." D91 p. 1. Because the Court provided no indication of how another amended petition could cure any apparent defect in Plaintiffs' petition, further amendment is futile. Plaintiffs therefore timely filed their notice of appeal in the Circuit Court.

This appeal follows.

POINTS RELIED ON

Point I: The Circuit Court erred in granting judgment on the pleadings and dismissing Plaintiffs' Second Amended Petition because the personal identification requirements of section 115.427 cannot be enforced absent sufficient appropriation of funds and Plaintiffs adequately pleaded a claim alleging insufficient appropriation, in that Plaintiffs alleged: Defendant State has not appropriated sufficient funds necessary to pay for the required costs associated with the minimum requirements for implementing the statute; the insufficient appropriation is demonstrated by the Defendant State's failure to undertake implementation activities expressly mandated in the law and this failure was caused by the insufficient appropriation; the Defendant Secretary of State has begun to enforce the law's personal identification requirements without sufficient appropriations in place; insufficient appropriations have resulted in an inadequate implementation of the law's statutorily-required activities; the Defendant Secretary of State has set forth the minimum appropriation necessary to implement the statute and the amount actually appropriated has fallen far short of that amount; and the Defendant Secretary of State's admissions related to a necessary minimum appropriation are compounded by the fiscal note that accompanied the law during the legislative process.

- Section 115.427
- Article IV, Section 28 of the Missouri Constitution
- Article X, Sections 16 and 21 of the Missouri Constitution (the "Hancock Amendment")

- *In re Verified Application & Petition of Liberty Energy (Midstates) Corp*., 464 S.W.3d 520 (Mo. banc 2015)
- *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816 (Mo. banc 2013)
- *Breeden v. Hueser*, 273 S.W.3d 1 (Mo. App. W.D. 2008)
- *State ex rel. Hunter v. Lippold*, 142 S.W.3d 241 (Mo. App. W.D. 2004)

Point II: The Circuit Court erred in granting judgment on the pleadings and dismissing Plaintiffs' Second Amended Petition, because the claim is ripe, in that the inadequate appropriation has already tainted at least seven elections.

- Section 115.427
- *Schweich v. Nixon*, 408 S.W.3d 769 (Mo. banc 2013)
- *Barrett v. Greitens*, 2017 WL 6453618 (Mo. App. W.D. Dec. 19, 2017).
- *Weinschenk v. State*, 203 S.W.3d 201 (Mo. banc 2006)

Point III: The Circuit Court erred in granting judgment on the pleadings and dismissing Plaintiffs' Second Amended Petition, because the State of Missouri is not entitled to sovereign immunity as a matter of law, in that Plaintiffs are seeking prospective equitable relief only.

- *Wyman v. Mo. Dep't of Mental Health*, 376 S.W.3d 16 (Mo. App. W.D. 2012)
- *Weinschenk v. State*, 203 S.W.3d 201 (Mo. banc 2006)
- *Kubley v. Brooks*, 141 S.W.3d 21 (Mo. banc 2004)
- *State ex rel. Mo. Dep't of Agric. v. McHenry*, 687 S.W.2d 178 (Mo. banc 1985)

Point IV: The Circuit Court erred in granting judgment on the pleadings and dismissing Plaintiffs' Second Amended Petition, because Local Election Authorities are neither necessary nor indispensable parties for purposes of enjoining the identification provisions of the Voter ID Law, in that the relief sought in the Second Amended Petition is directed to the Defendants who are charged with enforcing the law, thus, the lack of Local Election Authority defendants is no bar to enjoining the Voter ID Law.

- Mo. Sup. Ct. R. 52.04(b)
- *Weinschenk v. Missouri*, No. 06ACCC00656 (Mo. Cole Cty. Cir. Ct. Sept. 14, 2006).
- *Weinschenk v. State*, 203 S.W.3d 201 (Mo. banc 2006)
- *Bracey v. Monsanto Co.*, 823 S.W.2d 946 (Mo. banc. 1992)
- *Sterling Inv. Grp. v. Bd. of Managers of Brentwood Forest Condo. Ass'n*, 402 S.W.3d 95 (Mo. App. E.D. 2013)

ARGUMENT

Standard of review and preservation of error[10]

This Court reviews a Circuit Court's granting of a motion for judgment on the pleadings "de novo and without deference to the circuit court's ruling." *State ex rel. Kansas City Symphony v. State*, 311 S.W.3d 272, 274 (Mo. App. W.D. 2010). A court may grant a motion for judgment on the pleadings "only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory." *Emerson Elec. Co. v. Marsh & McLennan Cos.*, 362 S.W.3d 7, 12 (Mo. banc 2012). Accordingly, "[j]udgment on the pleadings is appropriate where the question before the court is strictly one of law," *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599 (Mo. banc 2007), and should only be granted if no "material issue of fact exists," and, "from the face of the pleadings, the moving party is entitled to judgment as a matter of law," *Madison Block Pharm., Inc. v. U.S. Fid. & Guar. Co.*, 620 S.W.2d 343, 345 (Mo. banc 1981).

On review, this Court is to "liberally grant[] to plaintiff all reasonable inferences therefrom." *State ex rel. Union Elec. Co. v. Dolan*, 256 S.W.3d 77, 82 (Mo. banc 2008). "The party moving for judgment on the pleadings admits, for purposes of the motion, the truth of all well pleaded facts in the opposing party's pleadings." *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 134 (Mo. banc 2000). "No attempt is made to weigh

[10] The standard of review and preservation of error in this appeal is identical for each Point Relied On and is therefore not repeated below each point.

any facts alleged as to whether they are credible or persuasive." *Nazeri v. Mo. Valley Coll.*, 860 S.W.2d 303, 306 (Mo. banc 1993).

All claimed errors on appeal have been timely preserved for appellate review. The Petition was dismissed by the Circuit Court on January 2, 2018. No post-trial motions were required to preserve the claimed errors, and the judgment therefore became final on February 1, 2018, pursuant to Rule 81.54(a). Plaintiffs filed their notice of appeal on February 2, 2018, one day thereafter and timely. *See* Rule 81.04(a).[11]

[11] All rule references are to Missouri Supreme Court Rules, as updated, unless otherwise noted.

Point I: **The Circuit Court erred in granting judgment on the pleadings and dismissing Plaintiffs' Second Amended Petition because the personal identification requirements of section 115.427 cannot be enforced absent sufficient appropriation of funds and Plaintiffs adequately pleaded a claim alleging insufficient appropriation, in that Plaintiffs alleged: Defendant State has not appropriated sufficient funds necessary to pay for the required costs associated with the minimum requirements for implementing the statute; the insufficient appropriation is demonstrated by the Defendant State's failure to undertake implementation activities expressly mandated in the law and this failure was caused by the insufficient appropriation; the Defendant Secretary of State has begun to enforce the law's personal identification requirements without sufficient appropriations in place; insufficient appropriations have resulted in an inadequate implementation of the law's statutorily-required activities; the Defendant Secretary of State has set forth the minimum appropriation necessary to implement the statute and the amount actually appropriated has fallen far short of that amount; and the Defendant Secretary of State's admissions related to a necessary minimum appropriation are compounded by the fiscal note that accompanied the law during the legislative process.**

A sufficient appropriation must be made as a precondition for the mandated implementation activities. To ensure the Voter ID Law is implemented as intended, Subsection 6(3) states: "If there is not a sufficient appropriation of state funds, then the personal identification requirements of subsection 1 of this section shall not be enforced." § 115.427.6(3). This statutory provision is consistent with Article IV, Section 28 of the Missouri Constitution which requires that there be a sufficient appropriation before the State can undertake commitments necessary to implement its laws.[12]

[12] Although there is no separate constitutional claim, Plaintiffs reference the Missouri Constitution because this Court must interpret the Voter ID Law consistently with the constitution and avoid any unconstitutional interpretation. *See United States ex rel. Att'y Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 408 (1909) (holding that interpretative canon of constitutional avoidance applies where one interpretation would be unconstitutional or where it would raise "grave and doubtful constitutional (continued…)

The Voter ID Law is not silent about what is necessary to implement the statute. It sets forth specific mandatory minimum implementation activities, including a detailed provision regarding the *advance* notice that must be provided to voters for the law to go into effect. But under Article IV, Section 28 of the Missouri Constitution, such activities can only take place if there has ***already*** been a sufficient appropriation.

Thus, taken together, the Voter ID Law and the Missouri Constitution require that there must be a sufficient appropriation ***before*** the mandatory implementation activities required by the Voter ID Law can proceed. Quite consistently, Subsection 6(3) of the Voter ID Law requires that the identification provisions of the statute "shall not be enforced" unless a "sufficient appropriation" is already in place.

The Petition plainly alleges that the appropriation to implement the Voter ID Law has in fact been insufficient. D79 p. 10-19 ¶¶ 22-40; App. 11-20. Accordingly, under the plain language of the statute, Plaintiffs claim that the identification provisions of the Voter ID Law cannot be enforced.

The shortfall. The Petition provides two reasons why this appropriation is not "sufficient" within the meaning of the statute.

First, the Petition alleges that the insufficiency of the appropriation has been demonstrated by the State's failure to undertake implementation activities expressly

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questions"); *see also Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838–39 (Mo. banc 1991) (holding that courts have a duty to apply canon of constitutional avoidance where applicable).

mandated by the Voter ID Law itself. The Petition further alleges that the failure to implement these mandated activities was *caused by* the insufficiency of the requisite appropriation. D79 p. 11-12 ¶¶ 26-28; App. 12-13.

Second, the Petition alleges in great detail the amounts that the Secretary of State—the primary government official charged with ensuring proper implementation of all provisions of the Voter ID Law—himself has stated would constitute a sufficient appropriation. D79 p. 14-15 ¶ 35; App. 15-16. Such statements constitute party admissions that cannot be ignored; they certainly cannot be brushed aside at the pleadings stage of the case.

The Petition pleads that there has been a shortfall of at least $2 million for expressly mandated minimum implementation costs for Fiscal Year 2018 alone. *See* D79 p. 16-17 ¶ 37; App. 17-18. When one includes the costs that the Secretary has said are reasonably necessary to implement the statute, the shortfall increases to about $3.75 million for Fiscal Year 2018. D79 p. 17-18 ¶ 38; App. 18-19. This shortfall is greater than $4 million when the Department of Revenue's calculations of the amount reasonably necessary to implement the statute are considered. D79 p. 18 ¶ 39; App. 19.

The failure to conduct mandatory implementation activities because of the shortfall. The Petition specifically pleads mandatory implementation activities that have not taken place *because of* this insufficient appropriation. Most conspicuously, the Secretary has failed to comply with the mandatory "Advance Notice" requirement of the statute. Accordingly, the voters of this state are not being provided with adequate

information about the specifics of the Voter ID Law, including information about various measures that might ameliorate the burdens on voters of the personal identification requirement. D79 p. 12 ¶ 28; App. 13. Similarly, the Petition alleges that the insufficiency of the appropriation has resulted in a failure to make available the documents needed for voters to obtain the identification necessary to comply with the law. D79 p. 13 ¶ 30; App. 14.

The Secretary's admission and the Fiscal Note confirm the shortfall. To establish the amount of the shortfall, the Petition relies on statements made by the Secretary of State himself. Per the Petition, Secretary Ashcroft admitted that he would need more than $5.25 million to fulfill his responsibilities to implement the statute. D79 p. 14-15 ¶ 35; App. 15-16.

The Petition alleges that the Secretary's admissions are compounded by the Fiscal Note accompanying the Voter ID Law during the legislative process. The Fiscal Note states that the Department of Revenue required $457,553 for "licensing material and mailing cost" alone for free nondriver's licenses for Fiscal Year 2018, D79 p. 14 ¶ 36(a); App. 14, far more than the $100,000 that was actually appropriated to the Department of Revenue. D79 p. 10-11 ¶ 23; App. 11-12.

The erroneous bases for the ruling on the pleadings. Defendants moved to dismiss and for judgment on the pleadings based on an erroneous construction of the Voter ID Law. They contended that the prohibition on enforcement in Subsection 6(3) is triggered only if the State fails to later reimburse the relevant departments and

government entities for costs ***already*** incurred in implementing the law.

Defendants, however, conflate (1) the requirement of a sufficient appropriation (the trigger for the non-enforcement of the Voter ID Law), with (2) the distinct obligation to reimburse costs after they have been incurred. Critically, Defendants ignore the fact that under the Missouri Constitution, state entities cannot move forward and implement the Voter ID Law if a sufficient appropriation has not been made ***before*** costs are incurred.

In sum, there is simply no basis for dismissing this case at the pleadings stage. Indeed, counsel for the Secretary has admitted that the central question in this case is whether the $1.5 million appropriated by the legislature for the implementation of the Voter ID Law in Fiscal Year 2018 is in fact sufficient. Tr. 4:5-8; 4:17-20. That point, however, is something that can be resolved only after discovery and trial. It is not a point to be resolved on the pleadings.

The consequences of the insufficient appropriation directly abridge the rights of Missouri voters. As time moves forward, the failure to adequately fund the implementation of the Voter ID Law is tainting election after election and burdening voters' access to the franchise. Appellants respectfully request that this Court promptly reverse the Circuit Court's ruling so that the case can move forward and the rights of the voters of Missouri are protected.

A. Under the plain language of the Voter ID Law, the State must make a sufficient *appropriation* of funds to pay for the law's adequate implementation.

Pursuant to the plain language of the second sentence of Subsection 6(3), the personal identification provisions of the Voter ID Law "shall not be enforced" if the State provides an insufficient *appropriation* of funds, not if a reimbursement is insufficient. *Parktown Imps., Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009) ("This Court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue."). Subsection 6(3), in its entirety, states:

> All costs associated with the implementation of this section shall be reimbursed from the general revenue of this state by an appropriation for that purpose. If there is not a sufficient *appropriation* of state funds, then the personal identification requirements of subsection 1 of this section shall not be enforced.

§ 115.427.6(3) (emphasis added). In interpreting the meaning of Subsection 6(3), the Court is to "presume every word, sentence or clause . . . has effect, and the legislature did not insert superfluous language." *In re Verified Application & Petition of Liberty Energy (Midstates) Corp. ("Liberty Energy")*, 464 S.W.3d 520, 525 (Mo. banc 2015).

1. Two Distinct Obligations Created by Subsection 6(3)

The second sentence of Subsection 6(3) lies at the heart of this dispute. It is the provision that sets forth the specific precondition that applies to blocking the enforcement of the personal identification requirements of the statute. It plainly states that the

personal identification requirement "shall not be enforced" if the *appropriation* is insufficient.

Notably, the statute states that the requirement shall not be enforced if there "is" not a sufficient appropriation in place. § 115.427.6(3) ("If there ***is*** not a sufficient appropriation of state funds, then the personal identification requirements [of the Voter ID Law] shall not be enforced." (Emphasis added)). The use of the verb "is" demonstrates that the sufficiency of the appropriation is a present tense inquiry. The statute does not say that enforcement can proceed if, at some future date, a supplemental appropriation *will* be or *may* be provided.

The first sentence of Subsection 6(3), meanwhile, does not reference the non-enforcement of the statute at all. It simply states that all implementation costs associated with the Voter ID Law "shall be reimbursed" by an appropriation for that purpose.

Thus, the first and second sentences have materially different functions. The second sentence focuses on the precondition for the non-enforcement of the identification provisions of the statute. The first sentence focuses on the manner in which incurred costs are to be treated. The first sentence makes clear that a purpose of the appropriation is to pay for the reimbursement of incurred costs. But there is no logical basis or textual support for a leap from that premise to the conclusion that the trigger for non-enforcement is a failure to reimburse.

The statute nowhere says that the statute shall not be enforced "if this reimbursement is not made." Instead, it says in a straightforward manner that "if there is

not a sufficient *appropriation*," the personal identification requirement "shall not be enforced."

2. The Distinct Meanings of the Terms "Appropriation" and "Reimbursement"

The difference in the functions of the two sentences in Subsection 6(3) is underscored by an examination of the meaning of the two different key terms chosen by the legislature: "appropriation" and "reimbursement." Each of these key terms must be given their full effect when interpreting the Voter ID Law. *See Liberty Energy*, 464 S.W.3d at 525 ("Absent a statutory definition, words used in statutes are given their plain and ordinary meaning with help, as needed, from the dictionary."); *Krispy Kreme Doughnut Corp. v. Director of Revenue*, 358 S.W.3d 48, 53 (Mo. banc 2011) ("[The] Court must give meaning to every word or phrase of the legislative enactment."). This is particularly true where the two words have two distinct meanings. *See Christensen v. Am. Food & Vending Servs., Inc.*, 191 S.W.3d 88, 92 (Mo. App. E.D. 2006) (concluding that "the legislature intended for these two words ['section' and 'chapter'] to have different meaning and effect").

The words "appropriation" and "reimbursement" are not interchangeable. An "appropriation" is forward looking, as it provides for funds that can be used in the future. A "reimbursement," by contrast, is a retroactive activity that provides for the payment of costs that have already been incurred. The dictionary confirms this distinction. *Compare* "Appropriation," MERRIAM-WEBSTER, http://www.merriam-webster.com (Oct. 8,

2017) ("something that has been appropriated; *specifically*: money ***set aside*** by formal action for a specific use"), *and* "Appropriation," Business Dictionary, http://www.businessdictionary.com/definition/appropriation.html (Oct. 8, 2017) ("Government: Authorization by an act of parliament to permit government agencies to incur obligations, and to pay for them from the treasury. . . . "), *with* "Reimbursement," MERRIAM-WEBSTER, http://www.merriam-webster.com (Oct. 8, 2017) ("to pay back to someone"; "to make ***restoration*** or payment of an equivalent to" (emphasis added)).

The legislature chose two distinct terms to dictate the requirements imposed in these two different sentences. *See Christensen*, 191 S.W.3d at 92. Any interpretation that conflates these two words improperly rewrites the statute.

B. Plaintiffs' reading of the Voter ID Law is consistent with the Missouri Constitution.

1. Article IV, Section 28 of the Missouri Constitution requires an appropriation <u>before</u> the implementation of a statute.

The reading of the plain language of the statute is consistent with the General Assembly's intent that the Voter ID Law be enforced only if it can be properly implemented. This is because, under the Missouri Constitution, there are immediate consequences for the implementation of a statute if a sufficient appropriation is not already in place.

Article IV, Section 28 of the Missouri Constitution prohibits the spending or promise of future payments absent an appropriation for that purpose. That provision provides:

> No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for that payment of money be incurred unless . . . there is in the appropriation an unencumbered balance sufficient to pay it.

Thus, the Missouri Constitution prevents governmental entities from accessing funds to implement programs in the absence of an appropriation. And that bar would go into effect long before invoices are submitted for reimbursement. While there is not a separate constitutional claim raised in the Petition, this Court must interpret the Voter ID Law consistently with the Missouri Constitution and avoid any unconstitutional interpretation. *See supra* note 12.

2. The Voter ID Law requires implementation activities before elections are conducted under the statute.

This legal restraint is of critical significance when dealing with a statute, such as the Voter ID Law at issue here, that contains mandatory minimum implementation activities. For example, the Advance Notice provision provides:

> The Secretary of State shall provide advance notice of the personal identification requirements of subsection 1 of this section in a manner calculated to inform the public generally of the requirement for forms of personal identification as provided in this section. Such advance notice shall include, at a minimum, the use of **advertisements and public service announcements in print, broadcast television, radio, and cable television media**, as well as the posting of information on the opening pages of the official state internet websites of the secretary of state and governor.

§ 115.427.5 (emphasis added). For such effective notice activities to take place in "advance" of an election, funds must be committed before that election. And, under the

Missouri Constitution, those commitments cannot be incurred absent a sufficient appropriation.

In addition, the Voter ID Law requires the Department of Revenue to provide nondriver's licenses "at no cost" to persons who need them to vote. § 115.427.6(1) & (4); D79 p. 2 ¶ 3; App. 3. This necessarily requires an appropriation for the "hard" costs associated with providing the licenses, such as materials and mailing. *See* D79 p. 16 ¶ 36(a); App. 17. It also entails "soft" costs, such as hiring additional employees to handle the increased demand for such licenses and making modifications to the Missouri Electronic Driver License System. *See* D79 p. 16 ¶ 36(b), (c); App. 17.

Similarly, the State must provide the underlying documents necessary to obtain a nondriver's license, such as a birth certificate or marriage license. § 115.427.6(2); D79 p. 2 ¶ 3; App. 3. If these documents must be procured from another state or through the judicial process, "[t]he secretary of state shall pay any fee or fees charged by another state or its agencies, or any court of competent jurisdiction." § 115.427.6(2); D79 p. 2, 13 ¶¶ 3, 30; App. 3, 14. Another mandatory cost associated with the Voter ID Law relates to supplying additional provisional ballots envelopes: individuals without qualifying identification who choose not to commit, under the penalty of perjury, to a statement stating that they do not have the proper form of identification, are allowed to instead cast a provisional ballot. § 115.427.2(3); *see* D79 p. 14 ¶ 35(b); App. 15 (alleging that additional funds were requested "to cover the increased costs for provisional ballots").

Absent a sufficient appropriation, none of these mandated implementation activities can take place. Voters will not receive advance notice of the change in the longstanding identification requirement, *see* D79 p. 12 ¶ 28; App. 13, and the Secretary will not be able to provide nondriver's licenses or the underlying documentation to people who need one to vote "at no cost," *see* D79 p. 13 ¶ 31, App. 14. Permitting elections to proceed before these critical activities that ensure voters are able to cast a ballot that is counted take place upends the entire point of having these provisions in the first place. Indeed, because of insufficient appropriations, seven elections have already been adversely affected by a failure to carry out necessary implementation activities as of the time this brief was filed. D88 p. 7; D90 p. 4-5; D79 p. 13 ¶ 31; App. 14.

3. Read together, the Missouri Constitution and Subsection 6(3) require a sufficient appropriation *before* the identification provisions of the Voter ID Law can be enforced.

When read together, the Missouri Constitution and the Voter ID Law reflect a consistent policy and are harmonized by the interpretation urged here. As set forth above, the provisions of the Voter ID Law require that implementation activities take place before elections in which the identification provisions of the law are enforced. And Article IV, Section 28 of the Missouri Constitution confirms that a "sufficient appropriation" must occur before those implementation activities can proceed.

Accordingly, it was completely logical that the legislature made the absence of a sufficient "appropriation" the trigger for the non-enforcement of the statute. That provision achieves two purposes. It prevents state agencies from incurring costs

prohibited by the Missouri Constitution, by blocking enforcement of the statute until there is a sufficient appropriation. Conversely, by requiring a "sufficient appropriation" the legislature assured that, consistent with the Missouri Constitution, the mandated implementation activities could take place. Subsection 6(3) thereby safeguards against the implementation of the statute in a defective manner due to insufficient funding.

C. The Hancock Amendment's policy proscriptions on the State imposing unreimbursed obligations on Local Election Authorities explains the distinct statutory obligation to reimburse such activities.

Separate and apart from the requirement of a sufficient appropriation in the second sentence of Subsection 6(3), the first sentence of that Subsection states that "All costs associated with the implementation of this section shall be reimbursed from the general revenue of this state by an appropriation for that purpose."

This statutory obligation makes perfect sense given Missouri's constitutional policy prohibiting the state from imposing financial obligations on local authorities for which reimbursement is not provided. That mandate is set forth in Article X, Sections 16 and 21 of the Missouri Constitution, collectively known as the "Hancock Amendment." Thus under Section 16:

> The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing.

And under Section 21:

> 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.

Accordingly, the legislature could not create newly mandated activities on the part of local agencies (such as Local Election Authorities) without providing for reimbursement of those activities. *See Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 826 (Mo. banc 2013) (stating that the ban on "unfunded mandates" is "aimed at preventing [the State] from circumventing the taxing and spending limitations [of other portions of the Hancock Amendment] by forcing political subdivisions to do the taxing and spending that the State cannot."); *Brooks v. State*, 128 S.W.3d 844, 850 (Mo. banc 2004) (striking down Concealed Carry Act in four counties where evidence showed that the mandated fingerprint and background checks constituted an unfunded mandate).

The first sentence of Subsection 6(3) thus sets forth a reimbursement obligation in order to account for any increased financial obligation that will be imposed on the Local Election Authorities as a result of the Voter ID Law, consistent with the requirements of the Hancock Amendment. That separate provision, however, in no way subtracts from the requirement that there be a sufficient appropriation if the statute is to be enforced, consistent and harmonized with Article IV, Section 28 of the Missouri Constitution. In short, both the policy of the Hancock Amendment and Article IV, Section 28 are clearly reflected in the plain language of the statute. As noted, Plaintiffs have not raised a separate constitutional claim in their Petition, but this Court must interpret the Voter ID

Law consistently with the constitution and avoid any unconstitutional interpretation. *See supra* note 12.[13]

D. The insufficiency of the appropriation is specifically alleged to have caused the failure to conduct mandatory implementation activities.

As alleged in the Petition, it is now apparent that the statute is in fact not being adequately implemented. This inadequate implementation is itself proof of the insufficiency of the appropriation. This must be accepted as true (for purposes of this appeal) because the Petition specifically pleads that the failure to implement the statute in an adequate manner was *caused by* the insufficiency of the appropriation. D79 p. 11 ¶ 26; App. 12 ("The insufficient appropriation has resulted in an inadequate implementation of the statute.").

Nor do the allegations concerning inadequate implementation activities suffer from a lack of specificity. D79 p. 11-13 ¶¶ 26-31; App. 12-14. These are *concrete* factual allegations about *particular* implementation activities not being adequately performed as a result of the insufficient appropriation. Again, this was far more than was required at the pleadings stage. *See Breeden v. Hueser*, 273 S.W.3d 1, 6 (Mo. App. W.D. 2008) ("If the facts pled and the reasonable inferences to be drawn therefrom, viewed most favorably to the plaintiff, show *any ground* for relief, the plaintiff has the right to

[13] Because it had appeared that the State had in fact failed to carry out its obligations under the Hancock Amendment, the First Amended Petition did include a claim on that score. Plaintiffs subsequently dropped that claim and it is not part of the operative pleading under review here, the Second Amended Petition.

proceed." (emphasis added)); *Ritterbusch v. Holt*, 789 S.W.2d 491, 493 (Mo. banc 1990) ("A petition is. . . not to be dismissed for mere lack of definiteness or certainty or because of informality in the statement of an essential fact.").

Most notably, these allegations focus on the Secretary's failure to adequately implement the Advance Notice provision, which requires that advance notice to the public of the change in the voting requirements is made in a manner "calculated to inform the public generally of the requirement for forms of personal identification." § 115.427.5. This advance notice shall include, at a minimum, the use of advertisements and public service announcements in print, broadcast television, radio, and cable television media." *Id.* The Petition adequately alleges that this has not been done, and that it has not been done due to insufficient appropriations. D79 p. 11-12 ¶ 27; App. 12-13 (alleging that "Defendants have failed to provide adequate notice via cable television media . . . the inadequate funding has *resulted in* inadequate purchases of broadcast television advertisements" (emphasis added)).

The Petition describes the Secretary's inadequate implementation of the Advance Notice provision in detail. D79 p. 11-12 ¶ 27; App. 12-13. The Petition states that the Secretary has not aired *any* cable television advertisements, despite the fact that the enumerated forms of media in Section 5 are only minimal requirements. *Id.* ("Defendants have failed to provide advance notice via cable television media as expressly required by the statute."). The Petition also states that the use of broadcast television across the state has been insufficient, and that this insufficiency is most

apparent in the disparate treatment given to heavily-populated urban areas. Rural regions, by contrast, have far fewer people residing in them yet received disproportionately more broadcast advertisements. *Id.* Specifically:

- 118 broadcast advertisements were aired in Kansas City during June 2017. In contrast, 1,039 advertisements were aired in St. Joseph over the same period. Kansas City has greater than 400,000 residents, while St. Joseph has fewer than 100,000 residents."

- Similarly, St. Louis, which has greater than 300,000 residents, only had 138 advertisements air during June 2017, while Branson, which has fewer than 15,000 residents, received 300 advertisements.

- The broadcast advertisement numbers similarly skewed away from the more heavily-populated . . . regions in July and August 2017.

Id.

The Petition then attributes the inadequate implementation of the Advance Notice requirement to insufficient funding, explaining exactly why fewer broadcast advertisements were aired in Kansas City and St. Louis than in Branson and St. Joseph, despite the former two having significantly larger populations. "Broadcast television advertisements are more expensive in densely populated areas, and thus an insufficient amount of advertisements have been purchased in these areas."[14] D79 p. 11-12 ¶ 27;

[14] The impacts of the Voter ID Law extend beyond those voters who lack qualifying photo identification and cannot obtain one. The law impacts voters who have to figure out how to navigate new rules, obtain documents, and advocate for and exercise their rights at each stage in the process. These attendant impacts are precisely why lawmakers saw fit to mandate advance notice to voters. But such education and outreach efforts are for naught if they are not seen or heard—and that cannot happen if they are not adequately funded.

App. 12-13; *id.* ("[T]he inadequate funding has resulted in inadequate purchases of broadcast television advertisements."). The Petition also states that, as a result of the inadequate appropriation, other mandatory activities associated with section 115.417.6(2) and (4)—the provision of free nondriver's licenses and the underlying documents necessary to achieve them—will also be inadequately implemented. D79 p. 12-13 ¶¶ 29-31; App. 13-14.

While there may be a dispute about the adequacy of the implementation of the required activities, or about whether any inadequacy is due to the insufficiency of the appropriation or attributable to some other cause, these are factual matter that cannot be resolved at the pleadings stage. *See Nazeri*, 860 S.W.2d at 306 ("No attempt is made to weigh any facts alleged as to whether they are credible or persuasive.").

E. Defendant Secretary of State's own statements provide further evidence that the appropriations are insufficient.

As specifically pleaded in the Petition, the Secretary of State's own admissions provide further evidence that the Fiscal Year 2018 appropriations associated with implementing the Voter ID Law are entirely insufficient. This conclusion is reinforced by the Fiscal Note prepared by the Committee on Legislative Research Oversight Division, the details of which are also set forth in the Petition.

1. The Secretary of State's admissions demonstrate the insufficiency of the appropriation.

In the budget instructions given to the Secretary of State, the Governor instructs the Secretary to ensure that his requested appropriations "mirror actual planned spending

as closely as possible." *See* D70 p. 32 n.10 (quoting Fiscal Year 2018 Budget Instructions at 5, https://oa.mo.gov/sites/default/files/FY_2018_Budget_Instructions.pdf). In his appropriation request, Secretary Ashcroft stated that he would need more than $5.25 million to fulfill his responsibilities, which include those related to the Advance Notice provision. D79 p. 14-15 ¶ 35; App. 15-16. In particular, the budget request specifies a need for $4,259,987 for advance notice activities alone, including approximately $2 million for advertisements and approximately $2 million for direct mailings. D79 p. 14 ¶ 35(a); App. 15.

As the Petition alleges, however, only $1.5 million was appropriated to the Secretary in Fiscal Year 2018. D79 p. 10-11 ¶ 23; App. 11-12. Another $100,000 was appropriated to the Department of Revenue, and no funds were appropriated to other state agencies, the courts, or other persons or entities for the implementation of the Voter ID Law. *Id.* There have also been no supplemental appropriations in Fiscal Year 2018 for the purpose of implementing the Voter ID Law. *Id.* Thus the total appropriation is insufficient to satisfy just the Secretary of State's admitted minimally sufficient needs by approximately $3.75 million.

2. The statements by the Committee on Legislative Research Oversight Division confirm the insufficiency of the appropriation.

In addition to this explicit admission by the Secretary of State, the nonpartisan Committee on Legislative Research Oversight Division prepared a Fiscal Note. As

required by law,[15] the Fiscal Note accompanied section 115.427 as it went through the legislative process as House Bill 1631. D79 p. 15-16 ¶ 36; App. 16-17. The drafters of the Fiscal Note relied upon officials at the various state agencies, including the Department of Revenue, to provide estimations of the amount of money necessary to adequately implement the proposed legislation. *See* "Purpose," Committee on Legislative Oversight, http://www.legislativeoversight.mo.gov/; D79 p. 15-16 ¶ 36; App. 16-17.

The Fiscal Note states that the Department of Revenue required $457,553 for "licensing material and mailing cost" for free nondriver's licenses for Fiscal Year 2018, D79 p. 16 ¶ 36(a); App. 17, far more than the $100,000 that was actually appropriated to the Department of Revenue, D79 p. 10-11 ¶ 23; App. 11-12. Other costs reported by officials at the Department of Revenue in expectation of the Voter ID Law passing include the hiring of four employees to match the uptick in demand for nondriver's licenses from Missouri voters who need one ($103,536), and the cost of updating the license centers' software to allow for the provision of free nondriver's licenses ($29,970). D79 p. 16 ¶ 36(b)-(c); App. 17. Thus, based on the Fiscal Note, and as set forth in the

[15] Section 23.140.1 states that "[l]egislation, with the exception of appropriation bills, introduced in either house of the general assembly shall, before being acted upon, be submitted to the oversight division of the committee on legislative research for the preparation of a fiscal note." In preparing the fiscal note, the Legislative Research Oversight Division "shall seek information and advice from the affected department, division or agency of state government." *Id.* § 23.140.4.

Petition, D79 p. 16-17 ¶ 36; App. 16-17, the Department of Review budget estimate was $591,059.

* * *

As set forth in the Petition, when one considers the Secretary of State's admissions and the estimates of the Fiscal Note, the anticipated costs of implementing the Voter ID Law come to nearly $6 million in Fiscal Year 2018. D79 p. 18 ¶ 39; App. 19. The actual appropriation of $1.6 million falls far short of this amount by more than $4 million. D79 p. 19 ¶ 40; App. 20. Not surprisingly, the inadequate implementation of the statute, as set forth above, has been the result. D79 p. 12 ¶¶ 28-29; App. 13.

F. Defendants' construction of the statute is without merit.

1. Defendants read into the statute a nonexistent requirement of incurring costs before a determination of an insufficient appropriation.

Defendants argued below that Subsection 6(3) bars enforcement of the identification provisions of the statute only when there has been a failure to reimburse implementation costs already incurred. D89 p. 1-2; D68 p. 2. The statute contains no such provision.

Defendants contend that the sufficiency of an appropriation is not to be tested before costs are actually incurred. D69 p. 4 ("If costs have not been incurred, no appropriation for *reimbursement* of those costs has been necessary, and section 115.427.6(3) cannot bar the enforcement of section 115.427.1 as a matter of law."); D68 p. 2 ("[T]he appropriation does not have to precede incurring costs in implementing

Voter ID."). They base this contention on the *non sequitur* that the Voter ID Law does not require the State to pay for implementation costs in advance. D69 p. 5; D89 p. 1.

The plain language of the Voter ID Law, however, does not require that costs must be incurred before an appropriation is determined to be inadequate. *See* Point I.A, *supra*. Instead, the statute is clear that a sufficient *appropriation* of state funds must be made *before* the statute's personal identification requirements may be enforced.

While a purpose of the appropriation is to reimburse the costs of the implementation activities, whether the appropriation is large enough to reimburse incurred costs does not make the completion of the reimbursement process the decision point for whether the statute is to be enforced. Put otherwise, the ultimate *purpose* for the funds does not measure the *sufficiency* of the appropriation. Reimbursement is merely an additional requirement imposed by the statute, consistent with the Hancock Amendment; it does not replace the need for a sufficient appropriation that must be provided in order for adequate implementation activities to take place. And the Missouri Constitution confirms that such an appropriation must be provided ***before***, not after, funds for implementation are committed, and thus before any implementation activities can take place. Defendants' position would permit clearly improper, and indeed absurd, results. For example, the State cannot choose to spend zero dollars on implementation, have a one dollar appropriation, and then claim that the appropriation is sufficient on the theory that $1 is greater than $0. Yet that is precisely what Defendants' interpretation would permit the State to do. D68 p. 2 ("Plaintiffs fail to allege that even one dollar has been

spent on Voter ID implementation. Without alleging costs, the claim that there has been an insufficient appropriation to reimburse costs must fail."); D69 p. 4 ("If costs have not been incurred, no appropriation for *reimbursement* of those costs has been necessary"). More realistically, the State cannot make an appropriation adequate by spending an inadequate amount of money (more than zero, but still plainly inadequate) in the first instance. Yet that is exactly what Defendants' reading of the statute would permit. *See Anderson ex rel. Anderson v. Ken Kauffman & Sons Excavating, L.L.C.*, 248 S.W.3d 101, 108 (Mo. App. W.D. 2008) ("'Construction of statutes should avoid unreasonable or absurd results'" (quoting *Reichert v. Bd. of Educ. of St. Louis,* 217 S.W.3d 301, 305 (Mo. banc 2007))).

2. The Secretary of State does not have unbridled discretion to implement the Voter ID Law as he sees fit.

The Secretary also argues that it is improper to "second guess [his] method of implementing § 115.427.6(3), RSMo."[16] D86 p. 2. While the Secretary has broad implementation authority, it is not unlimited. The Voter ID Law requires him—as evidenced by the use of the word "shall"—to conduct mandatory activities, such as providing advance notice "in a manner calculated to inform the public generally of the requirement for forms of personal identification," § 115.427.5, and paying any fees necessary to obtain a nondriver's license to another state or any court, § 115.427.6(2).

[16] Presumably, the Secretary was referencing the entirety of the Voter ID Law, as section 115.427.6(3) imposes no duties on the Secretary, unless one counts not enforcing the photo identification requirement when the appropriation is insufficient.

And it makes non-discretionary the non-enforcement of the Voter ID Law if "there is not a sufficient appropriation." 115.427.6(3).

This conclusion is amply supported by Missouri law. *See Vowell v. Kander*, 451 S.W.3d 267, 275 (Mo. App. W.D. 2014) ("[T]he Secretary of State is required to carry out his or her statutory duties to the letter of the law."); *Stiers v. Director of Revenue*, 477 S.W.3d 611, 617 (Mo. banc 2016) ("[T]he word 'shall' unambiguously indicates a command or mandate." (internal quotation marks omitted)); *State ex rel. Hunter v. Lippold*, 142 S.W.3d 241, 245 (Mo. App. W.D. 2004) ("Generally, the legislature's use of the word 'shall' removes any discretion from the official who is directed to perform the specified act.").

And while the Voter ID Law does not proscribe a penalty to the Secretary of State if he is derelict in his duty, as this Court held in *Hunter v. Lippold*, the failure to proscribe such a penalty "does not transform the legislature's clear mandate into a mere suggestion." 142 S.W.3d at 245. Instead, the proper remedy in this instance is in the plain language of the statute: the photo identification requirement "shall not be enforced." § 115.427.6(3).

G. Counsel for the Secretary freely admitted that a factual dispute lies at the heart of this case - making dismissal on the pleadings inappropriate.

In sum, there was no basis to dismiss Plaintiffs' claim at the pleading stage. Indeed, counsel for the Secretary plainly admitted that the dispute that lies at the center of this case is intensely factual. Thus, at the November 9, 2017 hearing on the motion for

judgment on the pleadings, counsel stated: "So the question is, was the $1.5 million that the legislature appropriated to the Secretary of State's office sufficient to comply with the provisions of the statute?" Tr. 4:5-4:8. And, so there was no doubt as to what that meant, counsel immediately followed up by stating: "So it comes down to two prongs for the Secretary of State: A, is there sufficient funds in the 1.5 million to give notice to the voters and to provide free source documents." Tr. 4:17-4:20. But whether $1.5 million is sufficient to provide adequate advance notice and/or provide free source documents (let alone the other mandatory costs detailed above) is something that should be tested in discovery and at trial. There is no question that the issue has been adequately set forth in the pleadings.

Point II **The Circuit Court erred in granting judgment on the pleadings and dismissing Plaintiffs' Second Amended Petition, because the claim is ripe, in that the inadequate appropriation has already tainted at least seven elections.**

Notwithstanding Defendants' arguments to the contrary, this case is ripe for review. *See* D69 p. 5; D68 p. 3-4. A case is ripe if the "dispute is developed sufficiently to allow the court [1] to make an accurate description of the facts, [2] to resolve a conflict that is presently existing, and [3] to grant specific relief of a conclusive character." *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013) (numbers inserted). There is a conflict that is presently existing,[17] as the insufficient appropriations have already tainted seven elections as of the time this brief was filed,[18] and will continue to taint elections through 2018.

Yet Defendants somehow contended below that this matter is not ripe for adjudication due to the possibility of supplemental appropriations before the end of the fiscal year. *See* D69 p. 5 ("Moreover, even if Plaintiffs properly alleged that costs were incurred (which they have not), their claim would not be ripe because the State would have at least until the end of its fiscal year (*i.e.*, June 30, 2018) to appropriate funds and to reimburse those costs."); *see also* D68 p. 3-4.

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[17] Defendants only challenged this element of ripeness in the trial court. *See* D69 p. 5; D68 p. 3-4. However, the other two elements are also satisfied.

[18] June 20, 2017 Special Election, July 11, 2017 Special Election; Aug. 8, 2017 Special & General Election; Nov. 7, 2017 Special Election; Feb. 6, 2018 Special Election; Feb. 13, 2018 Special Election; March 6, 2018 General Election. *See* https://www.sos.mo.gov/elections/calendar/2017cal.

Such an argument ignores the fact that a supplemental appropriation is purely speculative. In addition, a supplemental appropriation in May 2018—no matter how large—does nothing to remedy the special elections that occurred in Fiscal Year 2017, the four elections that have already occurred in Fiscal Year 2018 and the one that is scheduled to be held on April 3, 2018 (Fiscal Year 2018). *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("[O]nce [an] election occurs, there can be no do-over and no redress."); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (the denial of the right to vote is unquestionably "irreparable harm"); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("restriction on the fundamental right to vote . . . constitutes irreparable injury").

In support of their argument, Defendants mischaracterized *Schweich v. Nixon*. *Schweich* involved a case where the State Auditor challenged the Governor's authority to withhold money budgeted to the Auditor's office. 308 S.W.3d at 779. That matter was not ripe because it turned on Article IV, Section 27 of the Missouri Constitution, which gives the Governor the authority to "reduce the expenditures of the state or any of its agencies below their appropriations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based." *Id.* Because that was not something that could be ascertained until the end of the fiscal year, the State Auditor's claim was not ripe until then. *Id*. *Barrett v. Greitens* similarly involved a challenge to the Governor's authority under Article IV, Section 27. __ S.W.3d__, No. WD 80837, 2017 WL 6453618, at *3 (Mo. App. W.D. Dec. 19, 2017). This Court ruled that the trial

court should have dismissed these challenges because, "before the end of the fiscal year, it could not be known" whether the Governor was exceeding his authority. *Id.*

Unlike *Schweich* and *Barrett*, this case does not implicate Article IV, Section 27. Moreover, unlike *Schweich* or *Barrett*, where one could not tell whether the Governor had exceeded his authority until the end of the fiscal year, the photo identification requirement "shall not be enforced" in the absence of a sufficient appropriation. This is a determination that can be made once the appropriation has been made. *See Weinschenk v. State*, 203 S.W.3d 201, 221 (Mo. banc 2006) ("While this Court shares the hope that the legislature will be able to rectify the problems identified here and pass a constitutional law that is less burdensome on the right to vote, the version of section 115.427 now in effect is the only one ripe for judicial consideration.").

Point III: The Circuit Court erred in granting judgment on the pleadings and dismissing Plaintiffs' Second Amended Petition, because the State of Missouri is not entitled to sovereign immunity as a matter of law, in that Plaintiffs are seeking prospective equitable relief only.

In its motions for judgment on the pleadings, the State argued that Plaintiffs' claims against it were barred by sovereign immunity, even though Plaintiffs sought only equitable relief and not damages. *See* D69 p. 11 ("Under Missouri law, sovereign immunity bars all suits against the State unless the State expressly consents to be sued."); D89 p. 1 (adopting by reference its sovereign immunity defense in its first motion for judgment on the pleadings). The State's assertion is simply false, and to the extent the Circuit Court dismissed Plaintiffs' claims against the State based on sovereign immunity, this Court should reverse.

A. Sovereign immunity does not apply to claims seeking equitable relief.

It is black letter law that the doctrine of sovereign immunity bars only claims against the State seeking damages, and not equitable relief. *Compare Wyman v. Mo. Dep't of Mental Health*, 376 S.W.3d 16, 23-24 (Mo. App. W.D. 2012) (denying sovereign immunity in a suit for equitable relief), *with State ex rel. Mo. Dep't of Agric. v. McHenry*, 687 S.W.2d 178 (Mo. banc 1985) (granting sovereign immunity in a suit for damages); *see also Church v. Missouri*, 268 F. Supp. 992, 1010-11 (W.D. Mo. 2017) (concluding that under Missouri law the State was not entitled to sovereign immunity in case seeking prospective injunctive and declaratory relief); *accord* Carole Lewis Iles, *Sovereign Immunity: A Framework for Applying Current Missouri Law*, 51 MO. L. REV. 535, 538 & n.9 (1986). Accordingly, as this Court explained in *Wyman*, a plaintiff may

seek equitable relief against the State for violating a statutory "'duty and obligation,"' even though the State may not be subject to [a] 'civil action for damages'" for the same violation. 376 S.W.3d at 24; *see also Church*, 268 F. Supp. at 1010-11.

Here, as in *Wyman*, Plaintiffs sued the State for violating its affirmative duties and obligations related to the funding and implementation of the Voter ID Law, and seek only prospective equitable relief in the form of a declaratory judgment and an injunction. *See* D79 p. 19; App. 20. *Wyman* therefore applies in full, and any attempt to distinguish it as allegedly "hedging" on the question of sovereign immunity is baseless. *See* D77 p. 5 (claiming that *Wyman* "hedged by stating that 'sovereign immunity does not necessarily bar a claim for injunctive relief'"). To the contrary, in reversing a trial court's dismissal of a claim for equitable relief, the *Wyman* court made clear there was "no reason why sovereign immunity would prevent the State from being subject to injunctive relief" if it "failed to comply with [a] 'duty and obligation.'" 376 S.W.3d at 24.

Nor is this the type of case that requires consent or a statutory waiver of sovereign immunity before Plaintiffs may bring their claims against the State. *See* D69 p. 11 (claiming that "[u]nder Missouri law, sovereign immunity bars all suits against the State unless the State expressly consents to be sued" and that "[a] waiver of sovereign immunity must be expressed in a statute"). Consent and statutory waiver are only required when a party pleads a claim for damages where, without such consent or waiver, its claims are barred by section 537.600. Again, because Plaintiffs only seek equitable relief, neither consent nor waiver are necessary.

B. The Missouri Supreme Court has repeatedly upheld injunctions entered against the state.

The Missouri Supreme Court has explicitly and repeatedly upheld injunctions entered against the State, even in a similar case enjoining the State from enforcing a prior voter ID law. *See Weinschenk*, 203 S.W.3d at 205 (upholding a trial court order enjoining the State from enforcing a voter ID requirement); *see also Brooks v. Missouri*, 128 S.W.3d 844, 847-48 (Mo. banc 2004), *as modified on denial of reh'g* (Mar. 30, 2004) (enjoining the State from enforcing a gun law because it was found to be "an unfunded mandate" in some counties).

The only cases the State cited below in support of its sovereign immunity defense involved claims for damages. *See, e.g.*, *State ex rel. Mo. Dep't of Agric. v. McHenry*, 687 S.W.2d 178, 181 (Mo. banc 1985) ("There is no authority for a suit against the state of Missouri for money damages"); *Kubley v. Brooks*, 141 S.W.3d 21, 28 (Mo. banc 2004) (observing that the state "recognizes that [plaintiff] . . . is suing in contract for money"). The State's reliance on those cases is misplaced and is based on language taken out of context. For example, *Kubley v. Brooks*, 141 S.W.3d 21, did not address whether sovereign immunity applies to equitable causes of action, but instead focused on an analysis of the statute setting forth the legislature's view that sovereign immunity does not apply to tort claims, § 537.600. *See Kubley*, 141 S.W.3d at 29 (noting that section 537.600 "expressly states it applies only to suits in tort" and therefore "does not address or govern the liability of the State under non-tort theories of recovery"). To be sure,

Kubley did discuss consent to suit, but it did so only because the claim at issue was "for money had and received." *Id*. at 31.

And, *State ex rel. Missouri Dep't of Agric. v. McHenry*, like the other cases cited in the State's original motion, held only that sovereign immunity barred damages claims against the State. 687 S.W.2d at 182. There, three counts were brought against the State, two for declaratory relief and one for damages. On appeal, a relator for the State only challenged the damages count, and the court correspondingly only addressed the issue of whether that claim was barred by sovereign immunity. *Id.*

In sum, in its motions for judgment on the pleadings, the State cited no case discussing, much less concluding, that it is entitled to sovereign immunity for claims seeking prospective equitable relief. Instead, Missouri case law provides just the opposite. To the extent the Circuit Court dismissed Plaintiffs' claims against the State on sovereign immunity grounds, this Court should reverse.

Point IV: The Circuit Court erred in granting judgment on the pleadings and dismissing Plaintiffs' Second Amended Petition, because Local Election Authorities are neither necessary nor indispensable parties for purposes of enjoining the identification provisions of the Voter ID Law, in that the relief sought in the Second Amended Petition is directed to the Defendants who are charged with enforcing the law, thus, the lack of Local Election Authority defendants is no bar to enjoining the Voter ID Law.

In his renewed motion for judgment on the pleadings, the Secretary of State incorporated by reference his argument—as originally set forth in his motion to dismiss the First Amended Petition—that because LEAs are not named as defendants in this action, the Circuit Court could not grant the relief sought. *See* D68 p. 9-10 (arguing that LEAs are necessary parties because "[i]t is the LEAs that enforce the requirements of Voter ID when registered voters appear at the polling places"); D86 p. 1. To the extent the Circuit Court agreed in its judgment dismissing the Petition for failure to state a claim, this Court should reverse.

Missouri's necessary party rule provides that:

> A person shall be joined in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Rule 52.04(a).

Here, because the relief sought in the Petition is directed to the Defendants, not to the LEAs, the lack of LEA defendants is no bar to enjoining the Voter ID Law. And in his motion to dismiss and for judgment on the pleadings, the Secretary did not explain

why failure to join the LEAs would prevent an injunction of the Voter ID Law from being enforced (complete relief), nor did the LEAs claim an interest related to this case.

In fact, the trial court in *Weinschenk v. Missouri*—a challenge to a prior voter ID law—granted similar injunctive relief against the State of Missouri and the Secretary of State, expressing no concern that the lack of LEAs as defendants would undermine the effectiveness of its order. No. 06ACCC00656 (Mo. Cole Cty. Cir. Ct. Sept. 14, 2006). The judgment provides that:

> Defendants State of Missouri and Robin Carnahan, Secretary of State, and those defendants' respective officers, agents, representatives, employees and successors, and all other persons in active concert and participation with Defendants in administering and certifying elections within the state of Missouri, including all local election officials, be and they hereby are RESTRAINED AND ENJOINED from implementing and enforcing the changes to Section 115.427 enacted in the Missouri Voter Protection Act, including the Photo ID Requirement.

Id. at 12. Rather than requiring that the LEAs be joined, the *Weinschenk* court simply directed the Secretary of State to inform all LEAs of the judgment. The Missouri Supreme Court affirmed this judgment in *Weinschenk*, 203 S.W.3d at 201. Absent a showing that a similar judgment would not provide complete relief in this case, the LEAs cannot be deemed necessary parties.

Even if this Court were to determine that LEAs are necessary parties, the Secretary still failed to show that dismissal is the proper remedy. Only where a party makes a showing that joinder would not be feasible is it proper for a court to dismiss an action for failure to join a necessary party. *See* Rule 52.04(b). Where, as here, Defendants have made no showing that joining the LEAs is not feasible, the proper remedy "is not by a

motion to dismiss but rather by motion to add the parties deemed to be necessary." *Bracey v. Monsanto Co.*, 823 S.W.2d 946, 947 (Mo. banc. 1992); *see also, e.g.*, *Sterling Inv. Grp. v. Bd. of Managers of Brentwood Forest Condo. Ass'n*, 402 S.W.3d 95, 98 (Mo. App. E.D. 2013) ("The absence of a necessary party is not fatal to jurisdiction; the remedy is joinder.").

Accordingly, to the extent the Circuit Court dismissed the Petition because LEAs were not named as defendants, this Court should reverse.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the Circuit Court's Order dismissing the Petition and granting Defendants' motion for judgment on the pleadings.

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on March 30, 2018, the foregoing brief was filed electronically and served automatically on counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06 and Local Rule 41; (3) contains 13,471 words, as determined using the word-count feature of Microsoft Office Word. Finally, the undersigned certifies that electronically filed brief was scanned and found to be virus free.

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