

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

MISSOURI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
and THE LEAGUE OF WOMEN VOTERS
OF MISSOURI,

Plaintiffs,

v.

STATE OF MISSOURI; JOHN R.
ASHCROFT, in his official capacity as
Missouri Secretary of State; BOARD OF
ELECTION COMMISSIONERS FOR THE
CITY OF ST. LOUIS,

Defendants.

Case No. _____

Division: _____

**SUGGESTIONS IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs the Missouri State Conference of the National Association for the Advancement of Colored People ("MO NAACP") and the League of Women Voters of Missouri ("MO LWV"), by and through their undersigned Attorneys and pursuant to Rule 92.02 of the Missouri Supreme Court Rules, submit the following Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

INTRODUCTION

On June 1, 2017, House Bill No. 1631 (2016), which imposes stringent limitations on the ways that registered voters must identify themselves in order to exercise their right to vote in-person, became law. On June 12, 2017, just 4 days from now, in-person absentee voting begins for the July 11, 2017 Aldermanic special election in the City of St. Louis. Despite this impending election, Defendants have undertaken no effective efforts to educate the public about the law's

new identification requirements as mandated or to ensure proper implementation of all aspects of the law, including in particular, provisions meant to alleviate the burdens of the photo ID requirement. Moreover, there will be no appropriation of funds for implementation of the law to the Secretary of State until July 1, more than two weeks *after* in-person absentee voting begins. Given that there has not yet been *any* appropriation of funds—nor is there time—for the Secretary of State to undertake such statutorily mandated activities, including educating the public about the law, providing no-fee IDs to voters who need them, and assisting voters in obtaining and paying for underlying documents necessary to procure an ID, in advance of this election, Plaintiffs respectfully request that this Court enter immediately a temporary restraining order and, after a hearing, a preliminary injunction enjoining enforcement of the new requirement in order to prevent disenfranchisement, confusion, and chaos at the polls.

House Bill No. 1631, codified at Section 115.427 of the Missouri Revised Statutes (“Section 115.427” or the “Photo ID Law”), imposes a host of new obligations not only on voters but on the Secretary of State, Department of Revenue, local election authorities, and numerous other state and local government agencies. Section 115.427 further provides that the photo ID requirement “shall not be enforced” if “there is not a sufficient appropriation of state funds” for “[a]ll costs associated with [its] implementation,” including, among other things, advance public notice and education of the new photo ID requirements, training of poll workers and DMV employees, and costs for issuing free IDs and obtaining underlying documents. Mo. Rev. Stat. § 115.427.6(3)-(4). The fiscal note accompanying this bill estimated a cost of implementation of \$11 million for the 2018 fiscal year (“FY 2018”).¹ For his part, the Secretary of State in his budget request earlier this year sought less than half that amount: for FY 2018 approximately \$5

¹ Oversight Division, *Fiscal Note 1*, Committee on Legis. Res. (June 2, 2016) (hereinafter “Fiscal Note”), <http://www.moga.mo.gov/OverSight/Over20161//fispdf/4554-18T.ORG.pdf>, attached hereto as Exhibit 1.

million for implementation in FY 2018, or \$6 million less than the amount estimated in the bill’s fiscal note. Yet the State has appropriated even less than that meager amount: a mere \$1.5 million for the Secretary of State (less than one-third of his budget request)—which has not yet been approved by the Governor, who retains the authority to make line reductions—and only \$100,000 for the Department of Revenue to cover all of these costs.² Because these funds are woefully inadequate, the law cannot by its own terms be enforced.

Section 115.427, moreover, does not provide for state reimbursement of costs incurred by local government entities in providing free copies of vital records as mandated by the law, and without sufficient state appropriations, local elections authorities and local government agencies will have no choice but to bear from their own budgets the increased costs to carry out their new responsibilities under Section 115.427. Such “unfunded mandates” by the legislature on local entities violates Article X, §§ 16 and 21 of the Missouri Constitution. *See Brooks v. State*, 128 S.W.3d 844, 848 (Mo. banc 2004)

Even if the funds appropriated (and approved by the Governor) were sufficient to implement Section 115.427—which they are not—in-person absentee voting for the Aldermanic special election in the City of St. Louis begins in just 4 days—more than two weeks before *any* funds will be appropriated to the Secretary of State, much less used to undertake his mandated activities under the law.³ Indeed, this has prompted the Secretary of State to concede that the state “won’t get free IDs to everyone who wants them before the St. Louis city special election.”⁴

² See John R. Ashcroft, Secretary of State, *Fiscal Year 2018 Budget Request* 40-49, Office of the Secretary of State (Feb. 2, 2017) (hereinafter “FY 2018 SOS Budget Request”), https://oa.mo.gov/sites/default/files/FY_2018_Secretary_of_State_Budget_Gov_Rec.pdf, attached hereto as Exhibit 2; Fiscal Note at 2.

³ H.B. 12, 99th General Assemb. (2017), <http://house.mo.gov/billtracking/bills171/hlrbillspdf/0012H.05T.pdf>.

⁴ Kevin McDermott & Celeste Bott, *As Missouri photo ID voting law goes into effect, opponents equate it to 'Jim Crow'*, St. Louis Post-Dispatch (June 1, 2017), http://www.stltoday.com/news/local/on-eve-of-new-missouri-photo-id-voting-law-opponents/article_6c965577-46eb-53fc-86b6-802bfcf86651.html.

Given the Secretary of State’s admission that he will be unable to comply with the law’s requirements to provide voters with no-fee IDs, the undisputed inability of the state to allocate resources for the law’s implementation until after voting commences, the state’s failure to provide effective public education or put in place all the law’s protections and the lack of time, money, and resources to do so before voting begins, Plaintiffs seek a temporary restraining order barring enforcement of the photo ID requirement while their request for a preliminary injunction is adjudicated. A preliminary injunction is, moreover, clearly warranted: unless enjoined, the hasty and unfunded enforcement of the Photo ID Law will cause chaos and confusion at the polls, irreparably harm Plaintiffs and risks disenfranchising their members and other qualified Missouri voters at the purported “cost” of requiring Defendants to simply maintain the same identification requirements that have been in effect for 15 years.⁵

FACTS

1. On June 12, 2017, in-person absentee voting, which requires that voters identify themselves in accordance with the provisions of Mo. Rev. Stat. § 115.427, commences for the

⁵ The prior version of Section 115.427 provided that:

Before receiving a ballot, each voter shall identify himself themselves by presenting a form of personal identification from the following list:

- (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state;
- (2) Identification issued by the United States government or agency thereof;
- (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri;
- (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter;
- (5) Driver's license or state identification card issued by another state; or
- (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose.

2002 Mo. Legis. Serv. S.B. 675.

Ward 28 Aldermanic vacancy special election in the City of St. Louis, which is scheduled for July 11, 2017. *See* Board of Election Commissioners for the City of St. Louis, *July 11, 2017 Ward 28 Aldermanic Special Election*, City of St. Louis, <https://www.stlouis-mo.gov/government/departments/board-election-commissioners/> (last visited June 6, 2017).

2. Effective June 1, 2017, House Bill No. 1631 (2016), which repealed the text of Mo. Rev. Stat. § 115.427 and replaced it with new text, became law. H.B. 1631, 98th General Assemb. (2016), <http://www.house.mo.gov/billtracking/bills161/hlrbillspdf/4554S.18T.PDF>.

3. The new law (“Section 115.427” or the “Photo ID Law”) will be in effect for the July 11, 2017 Ward 28 Aldermanic vacancy special election in the City of St. Louis, and applies to in-person absentee voting.

4. By its own terms, Section 115.427 provides that “[a]ll 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 the Photo ID Law] shall not be enforced.” Mo Rev. Stat. § 115.427.3.

5. Currently, \$100,000 has been appropriated to the Department of Revenue for implementation of Section 115.427—only \$80,000 of which from General Revenue, H.B. 14, 99th General Assemb. § 14.045 (2017), <http://house.mo.gov/billtracking/bills171/hlrbillspdf/0014S.03T.pdf>; no funds have yet been appropriated to the Secretary of State for implementation of Section 115.427, H.B. 12, *Actions* 99th General Assemb. (May 22, 2017), <http://www.house.mo.gov/BillContent.aspx?bill=HB12&year=2017&code=R&style=new>; and no funds have been appropriated to any other agency of the state, to the courts, or to any political subdivision to implement Section 115.427.

6. A bill seeking to appropriate only \$1.5 million to the Secretary of State for implementation of Section 115.427 is pending the Governor's signature, *see id.*, who has the authority to make line reductions in the requested amounts, *see Mo. Const., Art. IV, § 26.*

7. Any appropriations under this bill will not be available until July 1, 2017. *See H.B. 12, 99th General Assemb. (2017)*, <http://house.mo.gov/billtracking/bills171/hlrbillspdf/0012H.05T.pdf>.

8. The newly effective provisions of Section 115.427 provide that:

Persons seeking to vote in a public election shall establish their identity and eligibility to vote at the polling place by presenting a form of personal identification to election officials. No form of personal identification other than the forms listed in this section shall be accepted to establish a voter's qualifications to vote. Forms of personal identification that satisfy the requirements of this section are any one of the following:

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

Mo. Rev. Stat. § 115.427.1.

9. In addition to limiting the ways in which voters must identify themselves prior to voting in person, Section 115.427 now imposes obligations upon the Secretary of State, the Department of Revenue, and other state and local government agencies and entities.

10. Section 115.427 explicitly requires that:

- i. “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.” *Id.* § 115.247.5.
- ii. “This state and its agencies shall provide one copy of each of the following, free of charge, if needed by an individual seeking to obtain a form of personal identification described in subsection 1 of this section in order to vote:
 - (a) A birth certificate;
 - (b) A marriage license or certificate;
 - (c) A divorce decree;
 - (d) A certificate of decree of adoption;
 - (e) A court order changing the person's name;
 - (f) A social security card reflecting an updated name; and
 - (g) Naturalization papers or other documents from the United States Department of State proving citizenship.”

Id. § 115.247.6(2).

- iii. “The secretary of state shall pay any fee or fees charged by another state or its agencies, or any court of competent jurisdiction in this state or any other state, or

the federal government or its agencies, in order to obtain any of the [documents in iii] from such state or the federal government.” *Id.* § 115.247.6(2)(g).

11. In addition, the implementation of Section 115.427 requires the printing of new affidavits to be used by voters without qualifying photo ID at the polls, the purchase of cameras for use at polling places, and the printing of additional provisional ballots and distinct provisional ballot envelopes for those registered voters who will now not qualify to cast a regular ballot. *See, e.g., id.* § 115.427.2(2)-(4).

12. In order to ensure that poll workers and other election officials can provide accurate information and properly enforce the intricacies of the new photo ID requirement and exceptions, the implementation of Section 115.427 also requires the preparation of detailed rules, guidance, and substantial training of poll workers and other election officials.⁶ *See* Expert Report of Diana Mutz, dated June 6, 2017 (“Mutz Report”), at 15, 17, attached hereto as Exhibit 3; Fiscal Note at 12.

13. To date, the Secretary of State has not promulgated any formal rules relative to implementation of the law. In response to a public records request seeking copies of all such policies and communications related to such policies,⁷ on May 16, 2017, the Secretary of State’s Office stated: “Presently we do not have any policies regarding the implementation of HB 1631 or any communications related to the development of policies.”⁸ It goes on to say: “As I am sure

⁶ Kaitlyn Schwerts, *Jackson, Cass counties prepare for new voter ID law*, Lee’s Summit J. (June 2, 2017), <http://www.lsjournal.com/2017/06/02/146479/jackson-cass-counties-prepare.html> (Jackson and Cass County election officials stating that “they expect further training from the state prior to the upcoming elections in August and November” and noting that the new law will “be a little bit more work for the judges on Election Day”).

⁷ Letter from The Missouri Voter Protection Coalition to Missouri Secretary of State Jay Ashcroft, May 11, 2017 (hereinafter “MO Voter Protection Coalition Letter”), attached hereto as Exhibit 4.

⁸ Letter from Frank Jung, General Counsel to Missouri Secretary of State Jay Ashcroft to Denise Lieberman, May 16, 2017, attached as Exhibit 1 in Appendix B to the Mutz Report.

you are aware, the promulgation of rules is a lengthy process therefore we have not yet promulgated any rules.”

14. In his budget request for FY 2018, the Secretary of State estimated that he would need over \$4,259,987 million for the advance public notice mandated by the Photo ID Law, including approximately \$2 million for advance notice advertisements, \$2 million for direct mailing to registered voters, \$19,600 for “increased costs for provisional ballots”; and \$58,672 for an additional full time employee. FY 2018 SOS Budget Request at 41. He further estimated that the Secretary of State’s Office “would be responsible for an estimated \$1,000,000 in fees” to obtain underlying documents needed to obtain a qualifying photo ID for those Missourians lacking such documents. *Id.* at 46.

15. The auditor’s fiscal note dated June 2, 2016 accompanying House Bill 1631 estimated that the costs for implementing the law in the first year of implementation (FY 2018) “could exceed” \$11 million. This includes an estimated \$1 million for advance notice advertisements; \$2.1 million for a direct mailing to registered voters; over \$1.2 million in loss revenue for issuing free birth certificates; and \$19,600 for printing provisional ballot envelopes. Fiscal Note at 1, 7-8, 12.

16. Direct mailing provides a better opportunity to bring detailed information directly to the population that needs it. The mailings can serve as reminders that an election is coming soon, while also providing extensive information on what is needed to have one’s vote count and how to obtain additional information. *See* Mutz Report at 16.

17. For purposes of the fiscal note, the Kansas City Board of Election Commission estimated the cost of implementation of the law in its jurisdiction at \$160,000, including \$35,000 in training, and \$100,000 in equipment, printing, and supplies. Fiscal Note at 12.

18. There are 116 election authorities in Missouri.
19. In addition to these new responsibilities, Section 115.427 also explicitly requires that:
 - i. “[T]he state and all fee offices shall provide one nondriver's license at no cost to any otherwise qualified voter who does not already possess such identification and who desires the identification in order to vote.” Mo. Rev. Stat. § 115.247.6(1).
 - ii. “Any applicant who requests a nondriver's license for the purpose of voting shall not be required to pay a fee if the applicant executes a statement, under penalty of perjury, averring that the applicant does not have any other form of personal identification that meets the requirements of this section. The state of Missouri shall pay the legally required fees for any such applicant. The director of the department of revenue shall design a statement to be used for this purpose. The total cost associated with nondriver's license photo identification under this subsection shall be borne by the state of Missouri from funds appropriated to the department of revenue for that specific purpose.” *Id.* § 115.247.6(4).
20. In order to properly implement Section 115.427, Department of Revenue employees will need procedures and training on the availability of and procedures for processing and issuing free nondriver’s licenses. *See* Mo. Rev. Stat. § 115.427.2(1); Letter Mutz Report at 15, 17; MO Voter Protection Coalition Letter.
21. The auditor’s fiscal note accompanying House Bill 1631 estimated that the Department of Revenue’s costs in satisfying its responsibility for issuing free nondriver’s licenses to those voters without qualifying photo ID would be over \$600,000, including \$457,553 for the cost of the IDs and the hiring of additional staff, equipment and other expenses. Fiscal Note at 5. The

fiscal note further estimated that issuing free nondriver's licenses would result in a revenue loss of over \$1 million in fees. Fiscal Note at 7.

22. In Missouri, one obtains a copy of a birth certificate from the local health department or the Missouri Department of Health and Senior Services. *See Obtaining Certified Copies of Vital Records*, Mo. Dep't of Heath & Senior Servs., <http://health.mo.gov/data/vitalrecords/applications.php> (last visited June 6, 2017). The normal fee for each record is \$15. *Id.*

23. In Missouri, one obtains a copy of a death certificate from the local health department or the Missouri Department of Health and Senior Services. *Id.* The normal fee for each record is \$13. *Id.*

24. In Missouri, a copy of a marriage license is obtained from the Recorder of Deeds in the county where the license was obtained. *Id.* The normal fee for each record is \$15. *Id.*

25. In Missouri, a copy of a divorce decree is obtained from the Circuit Clerk in the county where the decree was granted. *Id.* The normal fee for each record is \$15. *Id.*

26. In Missouri, a copy of a certificate of decree of adoption, if available at all, is obtained from the Circuit Clerk in the county where the decree of adoption was granted or the Missouri Department of Health and Senior Services. *Id.*

27. In Missouri, a copy of a court order changing a person's name is obtained from the Circuit Clerk in the county where the order was issued. *Id.*

28. Local election authorities will incur costs of implementing Section 115.427, including the cost of preparing and reproducing affidavits and notices, production and printing of additional provisional ballots and distinct provisional ballot envelopes for registered voters who will no longer be permitted to cast a regular ballot, the purchase of cameras for use at polling

places, and training and hiring of poll workers and other employees on the new restrictions. *See, e.g.,* Mo. Rev. Stat. § 115.247.2(2)-(4); Fiscal Note at 12; MO Voter Protection Coalition Letter.

29. As of May 29, 2017, the only publically available government resource for information concerning the new requirements was a page buried in the Secretary of State’s website. Mutz Report at 7.

30. As of June 4, 2017, the Secretary of State’s website still had posted incorrect information concerning voter photo ID requirements. Mutz Report at 5-7.

31. As of June 8, 2017, the homepage of the Governor’s official website still had no information concerning the new photo ID requirements posted. *See* Office of Missouri Governor, <https://governor.mo.gov/> (last visited June 8, 2017), screenshot attached hereto as Exhibit 5; *see* also Mutz Report at 6-7, App. B, Ex. 2 (as of June 4, 2017).

32. As of June 8, 2017, the St. Louis City Board of Election Commissioners still had outdated, incorrect information concerning the voter identification requirements under the Voter ID page of its official website. *Voter Info: Voter ID*, St. Louis City Bd. of Elec. Comm’rs, <https://www.stlouis-mo.gov/government/departments/board-election-commissioners/voter/voter-id.cfm> (last visited June 8, 2017), screenshot of June 7, 2017 attached hereto as Exhibit 6.

33. On June 1, 2017—less than two weeks before in-person absentee voting begins for the St. Louis City special election—the Secretary of State’s office started for the first time airing some public service announcements (“PSAs”) on radio and broadcast television.¹ Press Release, Mo. Secretary of State, Ashcroft Launches Missouri’s New Voter ID Law (June 1, 2017), *available at* <http://www.sos.mo.gov/default.aspx?PageId=9035>.

34. The entirety of the PSA available on the SOS’s website states:

Hi, I’m Jay Ashcroft. Here at the Secretary of State’s office, we take the integrity of our elections seriously. Last November, Missourians agreed and passed

Constitutional Amendment 6. Missouri's new photo ID law is now in effect. Have questions about the new Voter ID or need to register to vote? We're here to help. Visit ShowIt2Vote.com or call 866-868-3245. Remember, if you're registered, you can vote.⁹

35. The PSA does not mention needing to bring certain forms of identification to the polls to vote or the availability of free IDs and/or underlying documentation. The only way for people to obtain this additional information is by calling a difficult to remember phone number or by going to the "ShowIt2Vote" website, which requires remembering that it is not "to" but "2" and .com not .gov or .org that is necessary to reach the correct website. *See* Mutz Report at 10-11. And when voters visit the website, they are still not provided with complete information on the law's requirements. *See* ShowIt2Vote, Mo. Secretary of State, <http://www.sos.mo.gov/CMSImages/Elections/ShowIt2Vote/ShowIt2VoteEvents.pdf> (last visited June 7, 2017). (For example, it does not advise voters that to be acceptable, an ID must be issued by the state of Missouri or the federal government; nor does it advise that the ID must be non-expired. *Id.*)

36. On June 5, 2017, the Secretary of State began a five-day "Voter ID Informational Tour." The two events planned for the City of St. Louis did not take place until today, June 8, 2017. As of June 7, 2017, one of these events still has event details listed as "TBD." The other event will take place at a location outside St. Louis' 28th Aldermanic Ward. *See* ShowIt2Vote, *Mo. Photo Voter ID Tour*, Mo. Secretary of State, <http://www.sos.mo.gov/CMSImages/Elections/ShowIt2Vote/ShowIt2VoteEvents.pdf> (last visited June 7, 2017).

37. As of the this time of filing, the Secretary of State has not sent any direct mailings to registered voters in St. Louis' 28th Aldermanic Ward or elsewhere in the state notifying them of

⁹ Mo. Secretary of State, *Public Service Announcement* (June 1, 2017), available at <http://media.sos.mo.gov/media/elections/ShowIt2Vote/showit2vote.mp4>.

the new requirement or the availability of free IDs and underlying documents under Section 115.427, despite numerous requests by voter advocates, including Plaintiffs in this matter.

38. Sylvia D. Winters, a registered voter who resides in the City of St. Louis' 28th Aldermanic Ward, has received no direct mailings or other information from the St. Louis City Board of Election Commissioners or the Missouri Secretary of State regarding the new voter identification rules that went into effect on June 1, 2017. She also has not hear or seen any public service announcements concerning the changes in the voter identification rules. Affidavit of Sylvia D. Winters, dated June 6, 2017, attached hereto as Exhibit 7.

39. On June 1, 2017, Defendant Secretary of State stated that: "We won't get free IDs to everyone who wants them before the St. Louis city special election."¹⁰

40. Upon information and belief, and despite numerous requests from voter advocates, including the Plaintiffs in this case, there have been no consistent efforts to provide tools to local election authorities for training for poll workers and election judges on the new voter ID requirements. *See Schwerts, Jackson, Cass counties prepare for new voter ID law*, supra note 6 (Jackson and Cass County election officials stating that "they expect further training from the state prior to the upcoming elections in August and November"); *see also* Affidavit of Nimrod T Chapel, dated June 8, 2017, attached hereto as Exhibit 8; Affidavit of Linda McDaniel, dated June 8, 2017, attached hereto as Exhibit 9.

41. Plaintiff the Missouri State Conference of the National Association for the Advancement of Colored People ("MO NAACP") is a membership organization whose members reside throughout Missouri, including in St. Louis' 28th Aldermanic Ward. The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all

¹⁰ McDermott & Bott, *supra* note 4.

persons and to eliminate race-based description. Its objectives include seeking enactment and enforcement of law securing civil rights as well as educating persons as to their rights. Chapel Aff. ¶¶ 3-5.

42. As a result of the failure of the legislature to provide a sufficient appropriation of state funds from the general revenue for the purpose of paying the costs associated with implementation of Section 115.427, MO NAACP has been and will be required to divert their resources to do for its members and the public what Section 115.427 mandates that the state do. Specifically, the Missouri NAACP has been invested time and resources to advocating with the legislature for sufficient budget allocations for implementing the law. The Missouri NAACP has invested significant time and resources to advocating with the Secretary of State because of concerns about insufficient resources for implementation and outreach of Section 115.427. On behalf of the Missouri NAACP, I have participated in advocacy meetings with the Secretary of State and the Department of Revenue since January 2017 regarding the specifics of implementation and outreach of Section 115.427. Out of concerns regarding inadequate state resources, in May 2017, the Missouri NAACP signed a demand letter to the Secretary of State requesting further action to effectively educate voters about Section 115.427. The Missouri NAACP diverted time and resources from its most recent state conference in May 2017 to educating its members about the requirements of Section 115.427, time that could have been spent on our many other significant policy priorities. The Missouri NAACP has invested significant time and resources in educating voters about the requirements of the law. The Missouri NAACP has committed its limited resources and volunteers to these activities at the expense of our other work due to insufficient allocation of resources by the state to undertake those activities. In particular, the Missouri NAACP has been required to divert resources from

other immediate, pressing issues to provide these services to the public on an expedited basis in light of the facts that Section 115.427 took effect on June 1, 2017; will be enforced in special elections beginning in June 2017; and the earliest possibility of any appropriation to the Secretary of State from the general revenue for the purposes of complying with Section 115.427 is July 1, 2017. Chapel Aff. ¶¶ 7-8.

43. Plaintiff the League of Women Voters of Missouri (“MO LWV”) is a membership organization whose members reside throughout Missouri, including in St. Louis’ 28th Aldermanic Ward. The mission of the MO LWV is to ensure every citizen has the opportunity and information to register and exercise their right to vote and to safeguard the rights of all qualified voters—specifically those from traditionally underrepresented or underserved communities, including first-time voters, non-college youth, new citizens, minorities, seniors, low-income, and women. McDaniel Aff. ¶¶ 3-5.

44. As a result of the failure of the legislature to provide a sufficient appropriation of state funds from the general revenue for the purpose of paying the costs associated with implementation of Section 115.427, MO LWV has been and will be required to divert their resources to do for its members and the public what Section 115.427 mandates that the state do. In particular, LWV Missouri has invested significant time and resources to preparing educational materials on Section 115.427, advocating with the Secretary of State, and organizing, conducting, speaking at, and facilitating town halls, local community meetings and public education events regarding the requirements of Section 115.427. In short, LWV Missouri has committed its limited volunteer base to these activities at the expense of our other work, such as voter registration, get-out-the-vote efforts, and candidate education, due to insufficient allocation of resources by the state to undertake those activities. McDaniel Aff. ¶¶ 7-8.

LEGAL STANDARD

Under Rule 92.02(a)(1) of the Missouri Supreme Court Rules, a temporary restraining order is warranted where, as here, the party seeking relief “demonstrates that immediate and irreparable injury, loss, or damage will result in the absence of relief.” A preliminary injunction preserves the status quo between the parties until a final adjudication of the merits and is appropriate “when the failure to grant a preliminary injunction would have the effect of rendering a final judgment for injunctive relief ineffectual.” *Furniture Mfg. Corp. v. Joseph*, 900 S.W.2d 642, 648 (Mo. App. W.D. 1995). In evaluating whether temporary or preliminary relief is appropriate, a court should weigh: (1) the movant’s probability of success on the merits (2) the threat of irreparable harm to the movant absent the injunction; (3) the balance between this harm and the injury that the injunction’s issuance would inflict on other interested parties; and (4) the public interest. *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) (citing *Pottgen v. Mo. State High Sch. Activities Ass’n*, 40 F.3d 926, 928 (8th Cir. 1994); *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981)). Each of these factors weighs heavily in favor of the entry of a temporary restraining order and, after hearing, a preliminary injunction.

ARGUMENT

I. PLAINTIFFS AND THEIR MEMBERS WILL SUFFER IRREPARABLE HARM IF THE PHOTO ID REQUIREMENT IS HASTILY IMPLEMENTED FOR THE JULY SPECIAL ELECTION.

Plaintiffs, their members, and eligible voters in the 28th Aldermanic Ward in the City of St. Louis will be irreparably harmed if the photo ID requirement is enforced for the July 11, 2017 special election without *any* funds, much less the advanced notice and preparation mandated by the statute.

First, enforcing the new photo ID requirement during the special election risks disenfranchising Plaintiffs’ members and other St. Louis voters. The Secretary of State’s public education efforts to date have been minimal and ineffectual and are undermined by conflicting information that remains available on official websites and publications. *See* Mutz Report at 5-10. Despite impending special elections,¹¹ including the aldermanic special election at issue here, there was, until June 1, virtually no public education on the new voter ID requirements. In fact, outdated information was still prominently available on the Secretary of State’s website until at least May 29, 2017, and, as of June 8, 2017, remains on the St. Louis City Board of Election Commissioners’ website. Facts ¶¶ 29, 32. As of June 8, 2017, the homepage of the Governor’s website, moreover, still contained no information concerning the new photo ID requirement as required by the statute. Mo. Rev. Stat. § 115.427.5 (requiring “the posting of information on the opening pages of the official state internet websites of the secretary of state and governor”); Facts ¶ 31.

Even since June 1, the efforts to date are woefully inadequate, comprised primarily of: the Secretary of State’s “ShowIt2Vote” website, which is only helpful for those voters who are already aware enough to seek out information, and still fails fully to inform voters as to the types of ID mandated by the law; uninformative public service announcements, which have had dubious reach and do nothing to give voters the information they need to understand the new photo ID requirements; and a five-day “Voter ID Informational Tour” ill-designed to capture large attendance, particularly by those voters who are not already aware of the requirements.

¹¹ According to the Secretary of State’s website, aside from the special election at issue here, there are another 53 elections scheduled for this summer: one county has an election scheduled on June 20, 2017, and, on August 7, 2017, 52 additional counties will hold elections. *See ShowIt2Vote.com*, Mo. Secretary of State., <http://www.sos.mo.gov/showit2vote> (last visited June 6, 2017).

Mutz Report at 7-12; Facts ¶¶ 34-37; *see Applewhite v. Pennsylvania*, No. 330 M.D. 2012, 2014 WL 184988, at *16 (Pa. Commw. Ct., June 17, 2014) (criticizing educational campaign that put onus on voter to “learn more” in order to obtain requisite information concerning voter ID requirements). The informational tour did not even have events in the City of St. Louis until *today*, and the only event with any location details is being held outside Ward 28. Facts ¶ 36. These public education efforts are, moreover, misleading in suggesting that there are no additional requirements to vote beyond what was required in previous elections and often failing to mention the availability of free photo IDs and underlying documents.¹² Mutz Report at 10-14; *see Applewhite*, 2014 WL 184988, at *16 (finding that defendants created “culture of misinformation” where they downplayed access to photo ID that did not require underlying documentation). Under such circumstances, Ward 28 voters will inevitably be confused if not wholly unaware of the new requirements and fail to bring the necessary identification to the polls or even turnout, believing erroneously that without a qualifying photo ID they are not able to vote. *Id.*; *see Veasey v. Abbott*, 830 F.3d 216, 256 (5th Cir. 2016) (recognizing state’s subpar efforts to educate citizens about new voter ID law constituted a “burden[.]” on voters’ ability to exercise their right to vote); *see also League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016) (recognizing that “[c]onfusion” concerning registration requirements “will create a disincentive for citizens who would otherwise attempt to register to vote”).

Nor is it at all likely that voters will know that they can obtain a qualifying ID or the necessary underlying documents to obtain such an ID for free, (let alone the procedures to do so),

¹² For instance, there is little mention of the fact that a photo ID issued by a state other than Missouri or an unexpired Missouri driver or nondriver license, both of which could be used under the previous law, no longer qualify as acceptable photo ID, or that individuals can no longer cast a regular ballot with a non-photo ID without executing a statement under penalty of perjury swearing that they do not have a qualifying photo ID. *Compare* 2002 Mo. Legis. Serv. S.B. 675 with Mo. Rev. Stat. §§ 115.427.1, 115.427.2.

one of the provisions of the Photo ID Law included to potentially help ameliorate the burdens of a photo ID requirement. *See Weinschenk v. State*, 203 S.W.3d 201, 213-15 (Mo. banc 2006) (in finding prior photo ID law unconstitutional, noting that requiring payment for underlying documents needed to obtain qualifying ID impermissibly “impose[d] financial burdens on eligible citizens’ right to vote”); *cf. South Carolina v. United States*, 898 F. Supp. 2d 30, 50-51 (D.D.C. 2012) (blocking implementation of new voter ID requirements for election less than four weeks away where enforcement might have impermissibly discriminatory effect because voters “will not have much time to obtain new free photo voter registration cards”). Here, with less than four days before voting begins, much less four weeks, the Secretary of State has even admitted that: “We won’t get free IDs to everyone who wants them before the St. Louis city special election.” Facts ¶ 39.

In addition, there has been no indication that any training of poll workers has occurred. The Photo ID Law imposes significant changes to how voters may identify themselves in order to cast a ballot in person. Among other things, the law tightens the list of qualifying photo IDs and puts in place new procedures and ID requirements for allowing a voter who does not have one of the qualifying photo IDs to nevertheless cast a regular, versus provisional, ballot. This new procedure includes a new affidavit that requires voters to swear under penalty of perjury that they do not possess one of the qualifying photo IDs and simultaneously show one of a separate list of qualifying identity documents. Mo. Rev. Stat. § 115.427.2(1). It may also include photographing the voter. *Id.* § 115.427.2(2). The Secretary of State has been relying on these procedures in claiming that anyone can vote who is registered, but has thus far issued only limited guidance to local election authorities on its implementation, despite requests from voter advocates, including Plaintiffs. Facts ¶¶ 13, 40. Without proper training there is no guarantee that

they will be implemented properly or consistently or at all. *Cf. South Carolina*, 898 F. Supp. 2d at 51-52 (declining to pre-clear voter ID law for election occurring in last than four weeks due in part to insufficient time to properly train poll managers and poll workers on new reasonable impediment provision, the availability of which was central to preclearance for future elections). Thus, even those voters who make it to the polls with the adequate identification may nonetheless be incorrectly turned away or forced to cast a provisional, not regular, ballot.

The deprivation of these voters' fundamental right to vote is the epitome of irreparable harm because "once [an] election occurs, there can be no do-over and no redress." *League of Women Voters of N. C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015); *see also Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (the denial of 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"); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999) (loss of constitutionally protected rights "for even minimal periods of time, unquestionably constitutes irreparable injury" (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))); *Amos v. Higgins*, 996 F. Supp. 2d 810, 814 (W.D. Mo. 2014) (concluding that plaintiffs' inability to exercise their fundamental right to marry caused them irreparable harm).

Second, Plaintiffs have been and will be required to divert irreplaceable resources, including volunteer hours, from other priorities to do for their members and the public what Section 115.427 mandates that Defendants do. In particular, Plaintiffs have shifted and, absent a temporary restraining order and preliminary injunction, will continue having to shift resources, including the scarce allotment of time before the election, from other time-sensitive priorities, such as voter registration in advance of the summer special elections, to provide, public

education and advance notice on the requirements of the Photo ID Law—responsibilities that Section 115.426 specifically imposes on the Secretary of State, and which he has not meaningfully carried out. Facts ¶¶ 42, 44. At a similar cost to other priorities, Plaintiffs also have advocated, and will continue having to advocate, for mandated resources that the state has failed to appropriate for the implementation of Section 115.247. *Id.* Courts have consistently found that an organization’s diversion of resources, including its scarce allotment of time before an election constitutes irreparable harm. *See, e.g., Newby*, 838 F.3d at 9 (organization’s increased difficulty in accomplishing its “primary mission of registering voters,” due to obstacles imposed by new registration requirement, constituted an “irreparable harm” because “there can be no do over and no redress” (internal quotation marks and citation omitted)); *Sw. Voter Registration Educ. Project v. Callanen*, No. 2016-CI-18915 at 2 (Bexar Cty., Tex. Oct. 28, 2016)¹³ (granting temporary restraining order enjoining dissemination of erroneous information regarding voter ID requirements where plaintiff would “suffer imminent and irreparable harm, including the diversion of its resources to educate voters about the correct Voter ID requirements”).

II. THE BALANCE OF HARMS FAVORS THE ENTRY OF A TEMPORARY RESTRAINING ORDER.

The balance of harms also weighs in favor of the grant of a temporary restraining order. As discussed above, failing to enter a temporary restraining order risks depriving Plaintiffs’ members and other St. Louis voters of their constitutional rights. *See Weinschenk v. State*, 203 S.W.3d 201 (Mo. banc 2006), *abrogated in part by* Mo Const., art. VIII, § 11. (finding that the Missouri Constitution “establish[s] with unmistakable clarity that the right to vote is fundamental to Missouri citizens”); *State v. Young*, 362 S.W.3d 386, 397 (Mo. banc 2012) (citing *Etling v.*

¹³ An electronic version of this order is available at https://media.ksat.com/document_dev/2016/10/28/Voter%20ID%20lawsuit%20TRO_1477690013030_8246212_ver1.0.pdf.

Westport Heating & Cooling Servs., Inc., 92 S.W.3d 771, 774 (Mo. banc 2003) (“Fundamental rights include the right[. . . to vote”). Plaintiffs will furthermore be forced to reduce registration and other activities relied upon by the community in the lead up to and throughout the voting period in order to provide public education and advocacy concerning the photo ID requirements on an expedited basis given the proximity of the special election. Facts ¶¶ 42, 44.

By contrast, Defendants would suffer minimal or nonexistent harm by the issuance of the temporary restraining order and preliminary injunction. Indeed, Defendants can claim no harm because the requested injunction simply requires Defendant to comply with the terms of the new law itself by refraining from enforcing its new identification requirements until sufficient funds are appropriated and available and the requisite *advance* public education is properly executed. It is difficult, moreover, to see how Defendants will be burdened by Plaintiffs’ requested temporary restraining order and preliminary injunction: Defendants would simply have to continue to administer elections under the long-existing regime. *See* 2002 Mo. Legis. Serv. S.B. 675. Indeed the purpose of a preliminary injunction is to “protect the status quo and to prevent irreparable harm during the pendency of a lawsuit ultimately to preserve the court’s ability to render a meaningful judgment on the merits.” *United States v. South Carolina*, 720 F.3d 518, 524 (4th Cir. 2013) (quotations omitted); *see Furniture Mfg. Corp.*, 900 S.W.2d at 648. At most, the Secretary of State would suffer some minimal inconvenience in providing notice to all election authorities that the prior law will remain in effect. Such minimal administrative inconvenience cannot outweigh the risk of disenfranchisement and chaos at the polls. *See, e.g., Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) (“modest administrative burdens” borne by state in complying with preliminary injunction barring enforcement of voter registration requirement are “no contest” for “the mass denial of a fundamental constitutional right”); *Obama for Am.*, 697

F.3d at 436 (concluding that preliminary injunction was warranted where state's burden in continuing to enforce rules in place in prior elections did not outweigh burden imposed by state on affected voters' ability to cast a ballot); *see also State ex rel. Mack v. Purkett*, 825 S.W.2d 851, 857 (Mo. banc 1992) (mere "administrative inconvenience" is the "weakest justification" for the loss of a right); *Goodwin v. Turner*, 908 F.2d 1395, 1406 (8th Cir. 1990) (citing *Carey v. Population Servs. Int'l*, 431 U.S. 678, 691 (1977)) ("The prospect of additional administrative inconvenience has not been thought to justify invasion of fundamental constitutional rights.").

III. A TEMPORARY RESTRAINING ORDER WILL SERVE THE PUBLIC INTEREST.

For the same reasons, the entry of a temporary restraining order and preliminary injunction would be in the public interest. There is an extraordinary public interest in protecting the right to vote. *See, e.g., Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *Weinschenk*, 203 S.W.3d at 211; *see also Iowa Right to Life Comm., Inc.*, 187 F.3d at 970 ("the public interest favors protecting core . . . freedoms"). The minimal to non-existent public education, training, and preparation to date directed to implementing the new Photo ID Law will, absent an injunction, cause confusion and chaos at the polls—as well as at the Department of Revenue and other agencies involved in implementing the new requirements of the law—and ultimately disenfranchise qualified St. Louis voters. Under such circumstances, the public interest is well-served by a temporarily halting enforcement of the law. *See U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 388 (6th Cir. 2008) ("Because of the risk of actual fraud is miniscule when compared with the concrete risk that [the state's] policies will disenfranchise eligible voters, we must conclude that the public interest weighs in favor of [preliminary injunctive relief.]); *South Carolina*, 898 F. Supp. at 49 (declining to preclear law imposing new voter ID requirements and procedures for election less than for weeks later where there had not yet been any public

education or training “about the intricacies and nuances of the law,” observing that “the potential for chaos is obvious”).

IV. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS.

A. The Photo ID requirement cannot be enforced under its own terms because there is not a sufficient appropriation of state funds to pay “all costs” for its implementation.

By its own terms, the “personal identification requirements [of the new photo ID law] shall not be enforced” if “there is not a sufficient appropriation of state funds.” Mo. Rev. Stat § 115.427.6(3). Because there is not a sufficient appropriation of state funds from the general revenue of this state for the purpose of paying the costs associated with implementation of the new photo ID law, the photo ID law is not enforceable.

The implementation of the new photo ID requirement imposes many new and substantial obligations on not just the Secretary of State, but the Department of Revenue, local elections authorities, and other local government agencies as well. Among other things, Section 115.427 requires, by its own terms, advance notice to voters of the new rules by the Secretary of State, facilitation by the Secretary of State of receipt of and payment for the underlying documents necessary for voters to obtain an approved identification, and issuance of free nondriver’s licenses by the Department of Revenue. *See* Facts ¶¶ 9-12, 19-20. Section 115.427 also necessarily requires the training of poll workers and other election officials on the new identification requirements and exceptions; the training of Department of Revenue employees on the availability of and processing procedures for free non-drivers licenses; the creation and printing of new affidavits to be used by voters without qualifying photo ID at the polls; and printing of additional provisional ballots and distinct type of provisional ballot envelope for those registered voters who will now not qualify to cast a regular ballot. *Id.* “All costs associated

with the implementation of this section [115.427] shall be reimbursed from the general revenue of this state by an appropriation for that purpose.” Mo. Rev. Stat. § 115.427.6(3).

As an initial matter, putting aside the question of whether the amount of the funds appropriated is sufficient to cover “all costs” of implementing the new photo ID requirement, the funds that have been appropriated have not yet been approved by the Governor, and even if approved, will not be available until July 1, 2017—more than two weeks *after* in-person voting begins in the City of St. Louis special Aldermanic election. Facts ¶¶ 1-7. Thus, even if the amount of the funds were enough to cover “all costs”—which they are not—without being available for use—particularly to pay for the requisite *advance* notice and public education and ID acquisition for those voters who need them—such funds can hardly be considered “sufficient” for purposes of covering the costs to implement the law so that it can be properly enforced once voting begins for the July special election on June 12. In fact, the Secretary of State admitted that “We won’t get free IDs to everyone who wants them before the St. Louis city special election.” Facts ¶ 39.

But the problem persists even if the full amount of the appropriated funds become available on July 1, 2017. As of today, only \$1.5 million has been appropriated to cover all the costs associated with the implementation of the new requirements of Section 115.427. Facts ¶¶ 5-6. This is not sufficient for the Secretary of State, Department of Revenue, and other affected agencies and local authorities to carry out their implementation responsibilities.

First, the statute specifically provides 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.

Mo. Rev. Stat. § 115.427.5. According to the Secretary of State’s own budget request, the cost to meet just the *minimum* public education requirements of the law would alone exceed the appropriated funds, at a cost of more than \$2 million. Facts ¶ 14. In addition, as the Secretary of State apparently recognized in seeking funds for such an effort, direct mailings—if crafted properly—are a more effective means of getting the necessary information to the relevant audience. Mutz Report at 16; Facts ¶ 16. The Secretary of State’s budget request sought funds for a direct mailing to all registered voters at a cost of over \$2 million, and direct mailings to newly registered voters prior to each election at a cost of approximately \$174,000. Facts ¶ 14; FY 2018 SOS Budget Request at 41. Taken together, these public education activities cost more than double (indeed almost triple) the amount appropriated.

Second, the statute provides for the issuance of free nondriver’s licenses as well as payment for underlying documents necessary to obtain a nondriver’s license. Mo. Rev. Stat. § 115.427.6. To cover the costs associated with issuing the free nondriver’s license, the state has appropriated just \$100,000 to the Department of Revenue. Facts ¶ 5. This amount is unrealistically optimistic and leaves open the very real possibility that some individuals will not be able to obtain a qualifying photo ID as promised due to a lack of funding. The auditor’s fiscal note accompanying House Bill 1631 estimated that issuing the free IDs would cost \$457,553 for FY 2018.¹⁴ Facts ¶ 21. This does not take into account costs of any training, additional employees or employee time, the substantial resources necessary to acquire hard-to-find

¹⁴ This estimate is not far-fetched. Indeed, Indiana spent over \$10 million to produce free ID cards between 2007 and 2010—approximately \$2 to \$3 million per year. *See* Iowa State Association of County Auditors, “A Report on Photo ID for Voting Purposes (Iowa: ISACA Photo ID Exploratory Committee, 2011), <http://www.lwvwi.org/Portals/0/IssuesAdvocacy/PDF/ISACA%20Voter%20ID%20Report%2020211%20final2%5B1%5D.pdf>, 7, attached hereto as Exhibit 10.

documents or correct errors in those documents, or other resources needed to take on this new responsibility. Nor can this amount possibly cover the inevitable loss of revenue. Under the statute, a voter who may have previously had a valid photo ID document that is no longer valid or in her possession may now qualify for a nondriver's license at no cost. The auditor's fiscal note estimated that the subsequent loss of revenue from such voters could be as much as \$1.2 million. Facts ¶ 21. Such a large revenue loss is not speculative: In Wisconsin, revenues from photo ID card issuance declined from almost \$3.2 million in 2010, the last full year before the state began issuing free IDs for voting, to \$437,000 in 2015, a reduction of more than 86 percent. *See* DIN 5505: ID for Voting Purposes, FY 18 Budget Request, Wis. Dep't of Transp., attached hereto as Exhibit 11.

With respect to the costs of obtaining underlying documents, the Secretary of State's own budget request estimated that "if even only 10% (20,000) of these 200,000 Missourians [who lack the primary identification required by HB 1631] pursue underlying documents from 'another state or its agencies, or any court of competent jurisdiction in this state or any other state, or the federal government or its agencies' in order to obtain the identification required by HB 163,' SOS would be responsible for an estimated \$1,000,000 in fees." Facts ¶ 14.

Third, there are many other costs incurred in implementing the law. For example, there will be additional printing costs for additional provisional ballots and distinct provisional ballot envelopes that elections officials will need to have on hand for individuals who do not have a qualifying photo ID with them at the polls and are not eligible to or do not wish to sign the identity statement, not to mention the additional costs of processing those added provisional ballots. In his requested budget, the Secretary of State estimated this cost at \$19,600 for FY 2018. Facts ¶ 15. There will, moreover, be additional costs for hiring and providing proper

training to poll workers, election judges, Department of Revenue workers, and other individuals tasked with entirely new responsibilities under the law. *See, e.g.*, SOF ¶¶ 10-12, 17, 19-20, 28.

Taken together, these costs far exceed the \$1.5 million appropriated to the Secretary of State and the \$100,000 appropriated to the Department of Revenue. Accordingly, the Photo ID Law “shall not be enforced.”

B. Section 115.427 imposes unfunded expanded responsibilities on local government agencies in violation of Article X, §§ 16 and 21 of the Missouri Constitution.

Section 115.427 is also void because it imposes an unfunded mandate on local election authorities, local health departments, Recorder of Deeds, and Circuit Clerks in violation of Article X, §§ 16 and 21 of the Missouri Constitution. Article X, §§ 16 and 21 of the Missouri Constitution prohibit the state from “requiring any new or expanded activities by counties and other political subdivisions without full state financing[.]” *See Brooks v. State*, 128 S.W.3d 844, 848 (Mo. banc 2004).¹⁵ Yet this is precisely what Section 115.427 requires.

Section 115.427 imposes new responsibilities on local election authorities who will experience increased costs as a result. These responsibilities include: redrafting and reprinting poll worker instructions and substantial training for poll workers and election judges on the new requirements and procedures; implementing the new process for voters without qualifying photo IDs; implementing the new requirements for determining whether a provisional ballot is counted, including comparing signatures and processing voters who return with qualifying voter ID; and potentially photographing individuals who come to the polls without qualifying photo ID.

¹⁵ Article X, Section 16 of the Missouri Constitution prohibits the state from “requiring any new or expanded activities by counties and other political subdivisions without full state financing.” Article X, Section 21 of the Missouri Constitution provides that: “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.”

Compare Mo. Rev. Stat. § 115.427.1-4 *with* 2002 Mo. Legis. Serv. S.B. 675. Performing these new activities will impose additional costs on local elections authorities as they will have to train current staff; hire new staff or increase hours for current staff to alleviate congestion due to the anticipated increased time to process voters at the polls and provisional ballots due to the law’s multi-tiered voting process, which separates voters into several different voting procedures; expend resources on updating instructions and signs; and potentially purchase additional equipment. Facts ¶ 17. Section 115.427, however, does not provide for reimbursement for these costs.

Under Section 115.427, moreover, local health departments, Records of Deeds, and Circuit Clerks must provide a copy free of charge certain underlying records necessary to procure a state-issued photo ID, such as a certified birth certificate, divorce decree or adoption records. Mo. Stat. Rev. § 115.427.6(2). But, while the statute provides that the Secretary of State shall reimburse fees paid to the courts of this state or another state as well as agencies of other states or the federal government, it does not provide for reimbursement of the costs incurred by local health departments Records of Deeds, and Circuit Clerks in providing copies of records as mandated. These unreimbursed “increased costs” experienced by local elections authorities and other local government agencies in performing the “new or increased activit[ies] or service[s]” required to implement the law violate Article X, §§ 16 and 21 of the Missouri Constitution. *See Miller v. Dir. of Revenue*, 719 S.W.2d 787, 788–89 (Mo. banc 1986); *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 826 (Mo. banc 2013).

In addition, the state’s failure to appropriate sufficient funds to properly implement Section 115.427 necessarily shifts costs of implementation to local election authorities who will have no choice but to absorb the responsibilities and associated costs of implementation—even

without hope of reimbursement—each time an election is held. As detailed above, the limited funds appropriated to implement the Photo ID Law are not even sufficient to cover costs associated with the public education campaign, not to mention the issuance of free nondriver’s licenses and paying for underlying documents. But there are numerous other new responsibilities associated with the law, including preparing and reproducing affidavits and notices, production of additional provisional ballots and distinct provisional ballot envelopes for registered voters who will no longer be permitted to cast a regular ballot, the purchase of cameras for use at polling places, and training and potentially hiring of poll workers, elections staff, and Department of Revenue employees. These new responsibilities impose costs that will, under the current appropriations, be fully borne by local election authorities. In other words, the appropriated funds will be insufficient to cover these increased costs incurred by each local election authority in order to carry out the “expanded activities” necessary to effectively implement and enforce the new photo ID requirement. Under these circumstances, enforcement of the Photo ID Law constitutes an unconstitutional unfunded mandate. *See Brooks*, 128 S.W.3d at 848-51.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests the Court to issue a temporary restraining order and, after a hearing, a preliminary injunction prohibiting Defendants and anyone acting in concert with them from enforcing Mo. Rev. Stat. § 115.427.1 for the July 11, 2017 City of St. Louis’ Ward 28 Aldermanic special election.

Respectfully submitted,

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Certificate of Service

I certify that a copy of the foregoing was faxed and mailed to Defendants on June 8, 2017, as

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