

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

JACKSON COUNTY, MISSOURI,	)	
a political subdivision, et al.	)	
	)	
Plaintiffs,	)	
	)	Cause No.: 06AC-CC00587
v.	)	
	)	Division: II
STATE OF MISSOURI,	)	
	)	Judge Richard Callahan
Defendant.	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' APPLICATION  
FOR PRELIMINARY INJUNCTIVE RELIEF**

Missouri's Constitution, Article X, Sections 16 through 21, and also known as the "Hancock Amendment". Section 16 prohibits the State from "requiring any new or expanded activities by counties and other political subdivision without full state financing, or from shifting the tax burdens to counties and other political subdivisions". Section 21 is to the same effect, *Brooks v. State*, 128 S.W.3d 844, 848 (Mo.Banc, 2004).

The Missouri Voter Protection Act (the "Act") includes R.S.Mo. Section 115.427 and 430 to govern the manner in which voters identify themselves at a polling place in order to vote. The Act takes effect on August 28, 2006. It is uncontested that the Act provides no funding for any of the mandates it creates.

Plaintiffs have provided this Court with a number of well-documented and legally sound grounds for issuing a preliminary injunction. By granting injunctive relief, this Court merely delays the effective date of the Act until the Supreme Court of Missouri finally decides the merits of the case. By doing so, the Court preserves the status quo and protects the constitutional rights of the voters of Missouri should the Supreme Court find for the plaintiffs. An injunction also avoids the great expenditure of time and money in

reliance on an unconstitutional law in the meantime, not to mention the morass of problems that will result if elections are carried out and legitimate voters are prevented from voting by an unconstitutional law. The Act's provision for "provisional ballots" is fraught with potential problems, such as voter discouragement or intimidation, security of the ballots and the like.

Secretary of State Robin Carnahan has provided an analysis of the added duties and costs of implementing the Act. These are contained in a letter to Governor Matt Blunt, dated May 31, 2006, a copy of which is attached hereto as Exhibit 1. The Act does not provide for any funding to offset these costs. Paragraph 20 (20a through 20k) of plaintiffs' Petition details and enumerates the unfunded mandates imposed by the Act. The potential cost of these mandates is estimated by the Secretary of State to reach \$6,000,000.00.

Missouri precedent on the effect of the Hancock Amendment is clear.

"Article X, Section 21 of the Missouri Constitution provides that a state mandated program shall not be required "unless a state appropriation is made ... to pay the county or other political subdivision for any increased costs". We believe this means what it says; it requires that the legislature make a specific appropriation which specifies that the purpose of the appropriation is the mandated program." (*Rolla 31 School Dist. v. State*, 837 S.W.2d 1,7 Mo.Banc,1992.)

Article X, section 21, states in pertinent part:

**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.**" (*Ibid*,

*emphasis added*)

The Court should not risk deprivation of the constitutional rights of Missouri citizens when weighed against a legislative enactment which does not yet have the force of law. Reasonableness and a balancing of the interests require that a preliminary injunction issue in this case to retain the status quo.

Plaintiffs will suffer irreparable harm by reason of the deprivation of constitutional rights should defendant be allowed to enforce the Act.<sup>1</sup>

Plaintiffs have no adequate remedy at law. Damages cannot protect plaintiffs from the loss of their constitutional rights suffered by reason of the enforcement by defendant of the Act.

The injunctive relief sought by plaintiffs consists of enjoining the commission of acts by defendant to enforce the Act. Such enforcement will produce injury to plaintiffs in the deprivation of their constitutional rights because defendant must, by operation, enforce the Act as of August 28, 2006.

WHEREFORE, plaintiffs pray for this Court's preliminary injunction preventing defendants from enforcing the Missouri Voter Protection Act (Senate Bills No. 1014 and 730) as unconstitutional, enjoining the effectiveness of said statutes on August 28, 2006; for the issuance of a decree declaring the likelihood of plaintiffs prevailing on the merits in finding said provisions unconstitutional and void; for plaintiffs' attorneys fees and costs

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<sup>1</sup> There is no requirement for showing irreparable harm for purposes of obtaining a preliminary injunction. The gravity of harm to plaintiffs is illustrated by the fact that deprivation of constitutional rights unquestionably results in irreparable harm. Therefore, plaintiffs have so alleged, although this Court need not find irreparable harm to grant the injunctive relief sought.

herein expended, and for such other and further relief favorable to plaintiffs as the Court deems just and proper.

Respectfully Submitted,

BURTON NEWMAN, P.C.

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**CERTIFICATE OF SERVICE**

The above signature hereby certifies that on the 3rd day of August, 2006, a copy of the foregoing was sent, via U.S. mail, postage prepaid, to:

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