

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(ST. LOUIS CITY)

Chantay C. Moore)
Tim Garrett)
Jeffrey Hampton)
John Spencer Hope)
Leonard Massey)
Mahina Nightsage)
John Roberts)
Inya D. Tucker)
John H. Wade, Sr.)
Roxie Wade)

On behalf of themselves and)
All others similarly situated)
Plaintiffs)

v.)

Board of Election Commissioners)
Of the City of St. Louis, Missouri,)
Kevin Coan, Director)
Dorothy Cameron, Director)
Floyd A. Kimbrough, Chairman)
Edward E. Ottinger, Secretary)
Joseph V. Neill, Member)
Joan M. Crawford, Member)
In their official capacity)

Larry Williams, Treasurer)
Of the City of St. Louis)
In his official capacity)
Defendants)

RECEIVED

JUN 11 2001

NATIONAL CENTER
ON POVERTY LAW

No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through counsel, bring this complaint on behalf of themselves and all others similarly situated, to obtain declaratory and injunctive relief and costs of suit from the Defendants. Plaintiffs allege as follows:

Nature of Action

1. This is a class action seeking declaratory and injunctive relief with respect to violation of Plaintiffs' civil rights guaranteed by the Missouri and U.S. Constitutions. The claims stem from the past and anticipated disenfranchisement of St. Louis voters, and disproportionately African-American voters, through the practices and procedures employed by Defendant St. Louis Election Board ("Board"). These practices include, but are not limited to: the use of flawed inactive voter lists; inadequately staffed polling places; inadequate and malfunctioning voting equipment and machines; inadequate training of election judges; lack of sample balloting machines; and lack of available assistance to voters who need help completing a ballot; improper identification requirements and lack of adequate resources or facilities. These practices have caused and will cause irreparable harm to Plaintiffs by impeding and restricting their right to vote, and causing unreasonable delays to their exercise of these rights, and wholly frustrates the purpose of Missouri election laws to "simplify, clarify and harmonize the laws governing elections." The right to vote is a fundamental one secured by the Missouri and United States' Constitutions. This action is brought pursuant to Art. VIII, § 2 of the Missouri Constitution and Missouri election law, codified at Chapter 115 RSMo. et seq..

2. Plaintiffs seek a declaration that the practices and procedures described herein and employed by defendants in conducting elections, violate the Missouri constitutional provisions guaranteeing the right to vote, as well as certain provisions of Missouri election law, that the practices are unconstitutional as applied to voters in St. Louis and that such practices have a specific disparate impact against the sub-class of African-American voters in St. Louis. Plaintiffs further seek a preliminary and permanent

injunction and temporary restraining order barring Defendants from using the inactive voter list until one can be compiled in compliance with state law; ordering the Board to provide sufficient staffing and election judges at polling places; ordering the Board to provide sufficient identification requirements, provide sufficient and properly functioning voting machines and equipment; ordering the Board to provide sample balloting machines; ordering the Board to provide voters who need it with assistance in completing ballots, and other such relief as will promote the right to franchise and the simplification, clarification and harmonization of election laws in St. Louis. An injunction is necessary to prevent defendants from continuing to violate the constitutional and statutory rights of St. Louis voters, resulting in their ongoing disenfranchisement.

Parties

3. Plaintiffs are citizens of the City of St. Louis, who are registered voters in St. Louis, and some of whom are on the current inactive voter list. Plaintiffs' sub-class are African American registered voters in the City of St. Louis, some of whom are on the inactive voter list.

4. Defendants St. Louis Election Board of Election Commissioners are duly appointed under state law and charged with carrying out the duties and responsibilities entrusted to the Board. The Board is charged, pursuant to § 115.017 RSMo (1994) with the duty to supervise, manage and administer elections in the City of St. Louis, including establishing and carrying out the policies and practices thereof. The individual commissioners of the Election Board are sued in their official capacities.

5. Defendant Larry Williams is the Treasurer of the City of St. Louis and is charged with the responsibility of overseeing the City Treasury, from which flows the

funds allocated to the Board for purposes of carrying out its election oversight duties. Mr. Williams is sued in his official capacity.

Plaintiff Class Action Allegations

6. Plaintiffs bring this action on their own behalf and on behalf of a class and a sub-class of all persons similarly situated pursuant to Missouri Supreme Court Rule 52.08. The plaintiff class consists of all registered voters in St. Louis, including those who are on the inactive voting list, and who are subject to the systemic voting irregularities described in this complaint. The plaintiff sub-class consists of all African-American voters who reside in St. Louis.

7. The plaintiff class and sub-class satisfy all of the prerequisites stated in Rule 52.08(a):

(a) The class of registered voters in St. Louis – approximately 250,000 citizens – is so numerous that joinder of all members is impracticable. Similarly, the sub-class of African American voters, and the approximately 50,000 voters on the inactive list are too numerous for joinder to be practicable.

(b) There are questions of law and fact common to the class and the sub-class. The common questions include whether the Board's practices and policies, included, but not limited to, the use of the inactive voter list as it is now comprised, staffing at polling locations, functioning of voting machinery, training of election judges, identification requirements and availability of sample balloting and assistance to voters, result in systemic disenfranchisement or underinfranchisement of St. Louis voters, and in particular of African American St. Louis voters, in violation of the Missouri and United States Constitutions.

(c) The claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs are registered to vote in the City of St. Louis. Thus, like all class members, plaintiffs are subject to the systemic election practices and procedures that serve to impede voting in St. Louis, Plaintiffs' claims are also typical of the claims of members of the sub-class, as the Plaintiff sub-class are African American voters in the City of St. Louis who are disproportionately impacted by the voting irregularities alleged herein.

(d) The named plaintiffs will fairly and adequately represent the interests of the class and the subclass. They have no interests antagonistic to the class or the sub-class. They seek declaratory and injunctive relief on behalf of the entire class and such relief will benefit all members of the class. Finally, they are represented by counsel who are competent and experienced in civil rights and class action litigation.

8. The class and the sub-class satisfy Rule 51.08(a)(1)-(4) because defendants have engaged in a course of conduct common to all members of the class and the sub-class, and **final** declaratory and injunctive relief in favor of the class and the sub-class is therefore appropriate.

Facts

9. Plaintiffs are registered voters in the City of St. Louis, have generally voted in past elections, including the November 2000 general elections held in St. Louis, and intend to vote in future elections in St. Louis, including the upcoming March 6, 2001 municipal elections. (*Plaintiffs' Affidavits*, attached hereto as Exhibits A-J). Each desires to vote and participate in the electoral process fully and without undue impediments, and on an equal basis with other voters, to exercise the right to vote, to not be turned away

from the polls unnecessarily, to not suffer unreasonable delays, not to be forced to endure inadequate or malfunctioning voting equipment, to have assistance in carrying out the process of voting, and to ensure that equal treatment and fundamental fairness are afforded to all St. Louis voters.

10. During the November 2000 general election, there were a variety of voting irregularities in the Board's practices and procedures that resulted in the disenfranchisement or underinfranchisement of many St. Louis voters, causing litigation to extend voting hours in the City of St. Louis. (*Robert Odom et al. v. Board of Election Comm'rs of the City of St. Louis, Missouri*, No. 004-2379, St. Louis Circuit Court, petition attached hereto as Exhibit K.)

11. A disproportionate number of the voting delays, malfunctioning voting equipment, difficulties with assisting voters on the inactive voter list and other irregularities that occurred during the November 2000 general elections occurred in jurisdictions with substantial African-American populations. As a consequence, plaintiffs' sub-class and other African-American voters were significantly less likely to have their vote counted and to encounter unreasonable delays than non-minority voters. Unless action is taken to remedy some of the voting irregularities, plaintiffs' sub-class and other African-American voters anticipate facing similar difficulties in disproportionate numbers during the upcoming March 6, 2001 municipal elections.

12. Following the November 2000 general election, the Missouri Secretary of State's office, in response to allegations of problems with the Board's practices and procedures, conducted a study of the November 2000 elections in the City of St. Louis. The study identified a number of voting irregularities and offered specific

recommendations for improving the Board's practices and procedures. (*Analysis and General Recommendations Report Regarding the November 2000 General Election in the City of St. Louis*, hereinafter "the Report," attached hereto as Exhibit L.)

13. Subsequent to the release of the Report, which encouraged community groups to advocate for reforms to St. Louis Election procedures, a number of St. Louis Civil Rights organizations formed a coalition, Citizens Concerned with African-American Voter Disenfranchisement, for the purpose of advocating for such reform. Among other things, this coalition advocated the Board not use the inactive voter list, or at a minimum provide copies of the inactive list at polling places to facilitate efficient voting. They also advocated for additional staffing at polling places as well as improved communication devices, including cell or line phones, at polling places. The coalition further advocated for the creation of a "blue-ribbon panel" that includes experts in elections to review the Board's overall policies and procedures and work with the board to recommend and implement systemic change to those policies and procedures. Representatives of this coalition met several times with members of the Board to discuss these recommendations. (*Letter of Feb. 8, 2001 from Citizens Concerned*, attached hereto as Exhibit M)

14. When these recommendations were ignored, the coalition presented a demand letter, limited to the issue of the inactive voter list, to the Board on February 27, 2001 requesting that the Board not use its inactive voter list during the March 2001 municipal elections, or alternatively, that it make copies of the list available at polling places to facilitate efficient voting. (*Letter to Board Director from Citizens Concerned, February 27, 2001*, attached hereto as Exhibit N.)

15. The Board rejected both of those requests. (*Letter to Richard Gaines from the Board, February 28, 2001*, attached hereto as Exhibit 0).

16. Various elected officials, including St. Louis Mayor Clarence Harmon and U.S. Congressman William “Lacy” Clay, requested federal officials to monitor the upcoming March 6, 2001 elections, (attached hereto as Exhibits P and Q), citing concerns about voting practices and procedures that result in disenfranchisement in St. Louis. Federal and state monitors have been sent to observe the March 6, 2001 to ensure against fraud, but no monitors have thus far been directed specifically to ensure against disenfranchisement.

17. The next municipal elections are scheduled for Tuesday, March 6, 2001. The next general statewide election is scheduled for 2002. Unless enjoined by the Court, these elections and others in the future will be conducted in the non-uniform, unequal systems and procedures set forth in this petition.

18. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of the Board’s policies and procedures for voting in St. Louis.

Count 1: Inactive Voting List and Precinct Rosters

19. Plaintiffs incorporate paragraphs 1 - 18 as if fully set forth herein.

20. Missouri law, MO. Rev. Stat. §115.193 (1994) requires the Election Board to follow specific procedures in order to designate voters as “inactive” for purposes of compiling an inactive voter list: (a) If the election authority receives from the U.S. Postal Service notification that the voter no longer resides at the address last known to the election authority and no forwarding address is available, or (b) if the voter fails to respond to a notice from the election authority requesting confirmation that the voter has

not changed his or her residence, or has changed residence but remains in the same election authority's jurisdiction within 30 days after the election authority sends the notice.

21. Among other things, the above notice to the voter must contain the following statements:

"(1) Any voter who has not changed his or her residence, or has changed residence but remained in the same election authority's jurisdiction, shall return the card not later than the fourth Wednesday prior to the next election. If the card is not returned by this date, oral or written affirmation of the voter's address may be required at the polling place before the voter will be permitted to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election that occurs after the date of the notice. Any voter who does not vote in an election during that period, will have his or her name removed from the list of eligible voters;

"(2) For additional information on registering to vote, contact the election authority located in the county of your current residence. If you reside in the city of St. Louis, contact the St. Louis city election board." MO. Rev. Stat. 115.193.3

22. According to the Secretary of State, the Election Board's canvass to voters did not contain the above statutorily prescribed language required by RSMo. § 115.193.3. (*Secretary of State's letter to Board, December 11, 2000, attached hereto as exhibit R.*)

23. Because the canvass failed to include the language required by the law, the General Counsel to the Secretary of State concluded that it would not be possible to ever purge voters who have not responded to the forwardable mailing and have not voted in two subsequent general elections, noting that because voters can not be purged from the inactive list, "as the years go by, the number of inactive voters will continue building with no way to remove them from the voter rolls." (Exhibit R). Currently, there are approximately 50,000 people on the inactive voter rolls, approximately 20 percent of the City's 250,000 registered voters. The Secretary of State's office suggested that the Board

send non-forwardable notices as the canvass and then follow it up with forwardable notices, so that there is greater chance for accuracy. Id.

24. Missouri law allows the Board to exclude inactive voters in determining the number of ballots to print. RSMo. §115.193(6)(1). Because the Board's method of notice makes it impossible for the Board to purge any voter from the inactive list, this provision allows the Board to discount the approximately 20 percent of registered voters on the inactive list from its ballot count, thereby increasing the possibility of inadequate numbers of ballots at polling places. Because a disproportionate number of those on the inactive list are in predominantly African-American precincts, such problem is more acute to this sub-class.

25. The Board has stated that it will not designate voters as inactive simply because they failed to respond to the canvass notice the board sent out. The General Counsel to the Secretary of State agreed to that stated course of conduct on grounds that designating those particular voters as inactive would not be legal, stating: "Because your notice does not contain the language required by the statute, the law does not allow you to designate these voters as inactive." (Exhibit R).

26. However, in practice, some of those voters did get placed on the inactive voter list. Among the voters included in the Board's inactive voter list are active voters who had not changed addresses and inactive voter who had not changed addresses. Because they had not changed addresses, the Board's notice to those voters would not have been returned by the postal service, and those people must have been placed on the inactive voter list for some reason other than postal return. The Report found that of the 969 voters who completed affidavits to vote to reactivate their voting status on November

7, 157 of them were actually active registered voters who had not moved, and 182 who were on the inactive list but had not moved, (*Report at 8*, Exhibit L). These number represent only those who drafted affidavits. It is believed that others were improperly on the inactive list as well. (*Plaintiffs affidavits*, Exhibits A-J and *affidavits of voters in Odom et al.*, Exhibit K). The Report concluded that

“This information reveals that there were many people who registered to vote prior to the October 11, 2000 statutory deadline whose names did not appear in the proper precinct registers on election day.” (*Report at 9*, Exhibit L).

27. In addition, the Report cited a number of other problems with the inactive voter list, including finding approximately 5,000 duplicate names on the list and voters whose names appeared both on the active and inactive lists. (*Report at 2*, Exhibit L)

28. According to the Report, Board was in the process of implementing a new voter registration system, and so the Secretary of State submitted proposals concerning the canvass almost a month before releasing her full Report to “avoid the possibility of delay” in carrying out a new canvass. (*Report at 3*, Exhibit L). No such implementation to date has occurred.

29. There has not been a new canvass of St. Louis registered voters conducted in compliance with RSMO. § 115.193 since the November 2000 elections.

30. Because a new canvass has not been conducted in compliance with state law, the current inactive voter list in use by the Board fails to comply with RSMo. § 115.193. Plaintiffs and other registered voters named on the inactive voter list used during the November 2000 election will likely continue to be considered inactive during the March 2001 municipal elections if the same inactive voter list is used.

31. Until a new canvass of St. Louis voters is conducted in accordance with state law, St. Louis voters have a likelihood of continuing harm from the continued use of the flawed inactive voter list.

32. Under state law, any voter on the inactive voter list – whether properly or improperly – must, in order to vote, be determined eligible. Judges are supposed to call the Board headquarters to confirm a voter’s status on the inactive voter list, and then allow the voter to reactivate his status by affirmation or affidavit of his residence. The voter then should be allowed to vote at the polling place. RSMo. § 115.193. However, in practice in St. Louis, voters on the inactive voter list have in many instances been processed by judges not trained in inactive voter procedures, at polling places housing defective equipment with inadequate or unavailable phones to contact the Board headquarters to verify voters’ status on the inactive list. Many such voters were sent to multiple polling places and were made to travel downtown to the Board headquarters, where they were confronted with lengthy lines. Many people in those lines during the November elections, including many who arrived before the polls closed, were unable to get serviced by the Board and were not allowed to vote. (*Plaintiffs’ affidavits*, Exhibits A-J). As a result, voters on the inactive list who were entitled under Missouri law to reactivate at their polling place and vote were instead turned away at the polls in large numbers. (*Plaintiffs’ affidavits*, Exhibits A-J, *affidavits from November elections*, Exhibit K). These problems were more acute in jurisdictions with large African-American populations.

33. The improper inclusion of voters on the inactive list creates inaccuracies to the precinct rosters of registered voters, resulting in long lines and delays while election judges attempt to verify voters' eligibility.

34. In addition to the problems with the inactive voter lists, there are other problems that frustrate the accuracy of the precinct rosters. For example, the St. Louis voter rosters were not updated prior to the November 2000 elections, while other urban election boards in the state were able to provide updated voter rosters to polling places. (*Report at 12, Exhibit L*).

35. The Report found: "Numerous active registrants were inexplicably missing from the proper precinct rosters" during the November 2000 elections. (*Report at 20, Exhibit L*)

36. These problems lead to voter disenfranchisement and undue delays in voting:

"A special and time-consuming situation is presented to election judge, the individual voter and central office staff each time a voter's name can not be located in the precinct roster. Increasing numbers of special voter problems lead to delays for other voters, long lines in the polling places, increased demand on the communications systems in place between the central office and the polling places, public perception problems regarding the preparedness of the Board and the integrity of the voting process, and many other problems." (*Report at 3, Exhibit L*)

37. These problems were more acute in jurisdictions with large African American populations.

38. The Report stated that greater efforts must be made to improve the accuracy of voter registration records, stating that "the election authority must focus year round on keeping voter registration rolls up to date," including by making its canvass comply with Missouri law by including the appropriate language so that inactive voters

who do not vote in two federal elections can be purged from the inactive voter list.
(*Report at 20, Exhibit L*).

39. The Report recommends “Special effort should be made to print and deliver to the precincts on election day supplemental roster pages of those individuals entered into the system after the rosters have been printed.” (*Report at 21, Exhibit L*).

40. The Report concludes that accurate precinct rosters are “critical to the success of enfranchising voters on election day.” (*Report at 3, Exhibit L*).

41. The constitutional rights of numerous St. Louis voters will be denied, and irreparable harm will result, if the Court can not issue injunctive relief in the form of ordering the inactive voter list not to be used until such time as the Board can conduct a new canvass in accordance with state law. In the alternative, if the current inactive voter list continues to be used, voters will be irreparably harmed unless and until the Board provides adequate notice to voters on the inactive list of their right to get on the “active” list and vote, provides adequate training for election judges on how to do this, provides adequate number of judges to handle the additional duties imposed by the inactive voter list, and provides copies of the inactive voting list and updated precinct rosters to polling places to allow election judges to conduct these duties effectively and efficiently.

WHEREFORE, Plaintiffs pray this court:

- (1) Enter a declaratory judgment that the Board’s use of the current inactive voter list and its implementation of policies related to voters on that list, along with widespread inaccuracies in precinct rosters violates the provisions of Missouri election law and impedes voting in violation of Art. VIII, §2 of the Missouri Constitution

- (2) Enter a permanent injunction barring the use of the inactive voter list until such time as a new canvass can be conducted in accordance with RSMo. § 115.193, enter an order returning those voters to the active list rosters, and enter an order requiring updated precinct rosters be delivered to polling places.
- (3) Enter preliminary injunction and temporary restraining order barring the inactive voter list from being used during the upcoming March 6, 2001 municipal elections, enter an order returning those voters to the active list rosters and enter an order requiring updated rosters be delivered to polling places during the March 6, 2001 elections.
- (4) In the event defendants fail to or are unable to conduct future elections in a manner that complies with the Missouri Constitution and Missouri law, enter an order providing for elections under the Court's supervision that comport with all state constitutional and statutory requirements.
- (5) Grant Plaintiffs their costs associated with this complaint and
- (6) For such further relief as this court deems just and proper

Count 2: Inadequate training of election judges

42. Plaintiffs incorporate paragraphs 1- 41 as if fully stated herein.

43. Missouri law, RSMo. §§ 115.085 and 115.103 relate to the qualifications and training of election judges. Specifically, § 115.103 provides that the Board may establish training courses for election judges.

44. § 115.003 RSMo. provides that the purpose of Missouri’s election laws, codified at chapter 115 et seq., is “to simplify, clarify and harmonize the laws governing elections. It shall be construed and applied so as to accomplish its purpose.”

45. As result of lack of training, the election laws as applied by election judges lack simplicity, are not clear and lack harmony.

46. Election judges in St. Louis did not receive any training prior to the November 2000 elections. (*Report at 11*, Exhibit L).

47. During the November 2000 elections, many St. Louis election judges lacked adequate information on procedures for activating voters on the inactive voter list to allow them to vote as provided in RSMo. § 115.193.

48. During the November 2000 elections, many St. Louis election judges lacked adequate information or resources to provide assistance to voters who needed help casting their ballots, and further lacked adequate information to help voters ensure that their ballots were acceptable, by helping them check for hanging chads, etc. before depositing their ballot.

49. The Secretary of State’s Report concluded, “It is apparent . . . that there were many mistakes made by election judges throughout the day in the City.” (*Report at II*, Exhibit L). In addition to reviewing the roles and training of election judges, the Secretary of State recommended, “Each election judge should be evaluated regularly” to address these concerns. (*Report at 22*, Exhibit L).

50. The Report noted the important role that election judges play in the electoral process:

“Ultimately, it is the election judges who apply Missouri’s election laws to voters. Competent and dedicated election judges are a major factor in having

an election process that is applied fairly and has the full confidence of citizens.” (*Report at 23, Exhibit L*).

51. The Secretary of State recommended that the Board conduct training for election judges prior to every election, stating:

“Judges need to be familiar with election laws and processes to follow. Our analysis shows that some situations were handled inconsistently by election judges throughout the city.” (*Report at 23, Exhibit L*).

52. The report further recommended that election judges file reports to the Election Board following elections to better address voting problems. (*Report at 23, Exhibit L*).

53. As a result of these deficiencies many problems were handled improperly, inconsistently or not at all during the November 2000 general elections. In particular because many judges lacked adequate information on reactivating registered voters on the inactive voter list, many voters during the November 2000 elections were not afforded their full rights to reactivate their voting status and vote pursuant to Missouri law. Others were improperly told to go to the Election Board. Others were simply turned away at the polls by election judges who didn’t know how else to handle the situation. In addition, judges did not have the information or facilities capable of assisting voters who needed assistance in casting their ballots. (*Affidavits of Plaintiffs, Exhibits A-J*).

54. Because of these deficiencies, Plaintiffs and other similarly situated voters were irreparably harmed during the November 2000 elections by being forced to drive to the Election Board and wait in excessively long lines, endure onerous delays, and in many cases, not being allowed to vote at all. Until the Board employs procedures to effectively train election judges prior to every election, Plaintiffs and other registered voters in St. Louis stand to be irreparably harmed by inconsistent and inappropriate

actions by election judges. The law allows the Board to implement regular training for election judges. The lack of training has resulted in numerous situations where the purpose of Chapter 15 – to simplify, clarify and harmonize election laws – was wholly frustrated. The law requires the provisions of Chapter 115 “to be construed and applied so as to accomplish this purpose.” Until the Board provides training to election judges about election laws and how to enforce them, the purpose RSMo. § 115.103 will continue to be frustrated and Plaintiffs’ right to vote will be impeded during the March 2001 and future elections.

WHEREFORE, Plaintiffs prays that this Court, pursuant to RSMo § 115.003, to promote the simplification, clarification and harmonization of election laws:

- (1) Enter a declaratory judgment that the lack of adequate training of election judges violated the provisions and spirit of Missouri election law and contributed to the deficiencies that impede the free exercise of the vote in violation of Art. VIII, §2 of the Missouri Constitution;
- (2) Enter a permanent injunction ordering the Board to provide adequate training to election judges on election laws, on how to assist voters who need help casting a vote, and how to assist voters make sure their ballots are properly deposited prior to each election in the City of St. Louis, and for adequate follow up with election judges;
- (3) Enter a preliminary injunction and temporary restraining order ordering the Board to provide training and information on election laws to election judges hired to work during the March 6, 2001 municipal elections;
- (4) In the event defendants fail to or are unable to conduct future elections in a manner that complies with the Missouri Constitution and Missouri law, enter an order

providing for elections under the Court's supervision that comport with all state constitutional and statutory requirements;

- (5) Grant Plaintiffs' costs associated with this complaint; and
- (6) Grant such further relief as this court deems just and proper.

Count 3: Inadequate voting machinery and materials

55. Plaintiffs incorporate paragraphs 1-54 as if fully stated herein.

56. Missouri law, MO. Rev. Stat. §115.411, requires the Board to provide sufficient number of voting booths to allow all voters to vote. Specifically, this provision provides:

“For each polling place in its jurisdiction, the election authority shall provide a sufficient number of voting booths, equipped and supplied so voters can vote conveniently and in secret.”

57. Missouri law, MO. Rev. Stat. § 115.415, requires the Board provide voting machines and all other supplies and material necessary for appropriate voting.

58. Missouri law, MO. Rev. Stat. § 115.419, requires the Board “to deliver to each polling place a sufficient number of sample ballots, ballot cards or ballot labels . . . the samples shall be printed in the form of a diagram, showing the form of the ballot or the front of the marking device or voting machine as it will appear on election day.”

59. Because of the failure of the Board to provide the necessary equipment and supplies, Plaintiffs and numerous other voters during the November 2000 elections were unable to vote, had difficulty casting a vote, or suffered unreasonable delays in exercising the right to vote.

60. Because of the lack of sample ballots during the November 2000 elections, voters who needed help understanding the balloting machines were not able to get that assistance.

61. The Secretary of State's Report noted that such failures caused long lines and "bottlenecks" at polling places. Specifically, it determined:

"With regard to equipment, there were several reports of punch card voting devices that did not work or voting booths without lights. Equipment needs to be maintained and preventative measures taken, such as including extra bulbs and supplies delivered to each polling place." (*Report at 22, Exhibit L*)

62. The Report recommended that "fully functioning voting machines will also help facilitate a smooth election process." (*Report at 19, Exhibit L*)

63. These problems caused Plaintiffs and those similarly situated irreparable harm. Because these problems have not been remedied since the November 2000 elections, Plaintiffs will continue to suffer irreparable harm, including unreasonable delays and difficulty casting ballots, unless adequate voting machinery is provided.

64. The constitutional rights of St. Louis voters will be denied and irreparable harm will result if the court cannot order the Board to provide the necessary voting machines, supplies and materials, including sample ballots, necessary for voting.

WHEREFORE: Plaintiffs' request this Court:

- (1) Enter a declaratory judgment that the voting equipment and supplies, including the availability of sample ballots were insufficient in quantity and quality in violation of MO. Rev. Stat. §115.4 15 and § 115.4 19 and that this impeded the right to vote in violation of Art. VIII, §2 of the Missouri Constitution.

- (2) Enter a permanent injunction ordering that the Board comply with the mandates of RSMo. § 115.4 15 and § 115.4 19 to have sufficient quantity of voting machines, and to ensure that those machines are in working order during elections and to provide sample ballots to polling places;
- (3) Enter a preliminary injunction and temporary restraining order ordering the Board to provide sufficient quantity and quality of voting equipment and sample ballots at polling places during the upcoming March 6, 2001 municipal elections;
- (4) In the event defendants fail to or are unable to conduct future elections in a manner that complies with the Missouri Constitution and Missouri law, enter an order providing for elections under the Court's supervision that comport with all state constitutional and statutory requirements;
- (5) Grant Plaintiffs' costs associated with this complaint; and
- (6) Grant such further relief as this court deems just and proper.

Count 4: Inadequate Staffing; at Polling Places

65. Plaintiffs incorporate 1 - 64 as if fully set forth herein.

66. One source of difficulty during the November 2000 elections was the lack of sufficient staffing at polling places. Because of inaccuracies in precinct rosters and because so many voters are on the inactive voter rolls, election judges had to spend a great deal of time attempting to assist those voters to reactivate their voting rights and vote. This effort was compounded by the lack of adequate training on how to do this, and communication problems with Board headquarters, making it difficult and time consuming for election judges to assist those voters. Because of these difficulties and the

lack of available staff at the polling places to address those concerns, voters faced excessively long lines at the polls and found that there was not staff available to assist them if they needed help activating their inactive status, casting their ballot or any other reason. (*Affidavits of plaintiffs*, Exhibits A-J; Exhibit L)

67. St. Louis City has a high ratio of voters per election judge compared to St. Louis County, Kansas City and Jackson County, Missouri. (*Report at 12*, Exhibit L)

68. During discussions following the November 2000 elections, various citizen groups, including the Mound City Bar Association, NAACP, Urban League, Black Leadership Roundtable and the Clergy Coalition offered assistance to the Board in advertising and recruiting for election judges among their memberships for the March 2001 primaries. Despite that the Report suggested that this was a good way to recruit more election judges (*Report at 16*, Exhibit L), this offer was not responded to.

69. In addition to the citizen groups, the Secretary of State suggested ways to economically advertise election judge openings, including using company and organizational letters, inserts into bills or pay envelopes, local cable access stations, city mailings, radio and TV interview programs, all types of newspapers, public service ads and other media coverage. (*Report at 17*, Exhibit L). These have not been undertaken prior to the March 2001 municipal elections. The Report further suggested that adding additional election judges will help reduce bottlenecks and long lines at the polling places. (*Report at 19*, Exhibit L)

70. The Report further suggested reassessing which election day jobs require party affiliation. (*Report at 23*, Exhibit L). Missouri law requires an equal number of election judges from the two major political parties, however, where one party dominates,

as in St. Louis, this balance is difficult to achieve (*Report at 23*, Exhibit L). Reassessing and changing this law could “make it easier for business to help urban jurisdictions recruit election judges and would likely encourage more citizens to work at polls.” Id.

WHEREFORE, Plaintiffs pray this court:

- (1) Enter declaratory relief that the lack of adequate election judges and staff at polling places contributed to long delays and inadequate service to voters needing assistance casting a ballot or reactivating their voting status, fundamentally impeding the right to vote in violation of Art. VIII, §2 of the Missouri Constitution;
- (2) Enter a permanent injunction ordering the Board to take measures to hire additional election judges and staff at polling places;
- (3) Enter a preliminary injunction and temporary restraining order requiring the Board to adequately staff polling places during the March 6, 2001 municipal elections;
- (4) In the event defendants fail to or are unable to conduct future elections in a manner that complies with the Missouri Constitution and Missouri law, enter an order providing for elections under the Court’s supervision that comport with all state constitutional and statutory requirements;
- (5) Grant Plaintiffs’ costs associated with this complaint; and
- (6) Grant such further relief as this court deems just and proper.

Count 5 : Voter Identification

71. Plaintiffs incorporate paragraphs 1 - 70 as if fully set forth herein.

72. Missouri law, RSMo. § 115.427 addresses the nature of identification voters must provide at the polls, and sets forth that registered voters need not provide additional identification at the polls, specifically, § 115.427(4) provides:

In counties using binders as the precinct register, two election judges, one from each major political party, shall compare the signature on the identification certificate with the signature on the precinct register.

73. Similarly, no identification is required to vote for registered voters pursuant to RSMo § 115.275-1 15.283 including registered voters choosing to vote by absentee under §115.283.2

74. The Board has distributed to election judges and polling places notices stating that election judges must request identification of all voters in the City of St. Louis. (*Notices*, attached hereto as Exhibit S).

75. Because the law does not require election judges to ask all voters for identification, registered voters are denied or impeded in exercising the right to vote or are required to endure undue delay in voting by being requested to produce identification or for lack of specific forms of identification.

WHEREFORE, Plaintiffs pray this court:

- (1) Enter a declaratory judgment that the practice of requesting identification from all registered voters violates the requirements of RSMo. § 115.427 and impedes and prevents the free exercise of the right to vote under Art. VIII, §2 of the Missouri Constitution;
- (2) Enter a permanent injunction enjoining the Board from placing in polling locations signs and literature suggesting that voters are required to show identification to election judges and enjoining the Board from directing

election judges to require registered voters to show identification prior to voting;

(3) Enter a preliminary injunction and temporary restraining order to enjoin the Board from placing signs and notices during the March 6, 2001 municipal elections that misstate that additional identification is required for registered voters;

(4) In the event defendants fail to or are unable to conduct future elections in a manner that complies with the Missouri Constitution and Missouri law, enter an order providing for elections under the Court's supervision that comport with all state constitutional and statutory requirements;

(5) Grant Plaintiffs' costs associated with this complaint; and

(6) Grant such further relief as this court deems just and proper.

Count 6: Inadequate resources

76. Plaintiffs incorporate paragraphs 1-52 as if fully set forth herein.

77. During the November 2000 elections, many St. Louis polling places, and disproportionately those located in jurisdictions with large African American populations, lacked adequate resources, including access to phones and phone lines to address voters on the inactive voter list, adequate staffing, adequate voting booths, and other materials required pursuant to Ch. 115 RSMo. et seq.

78. Because of this deficiency, election judges were required to borrow phones from members of the public, and were forced to ask members of the public to make their mandated phone calls for them, or were unable to make the required phone calls at all to confirm voters' status on the inactive list. Further, it delayed the voter

registration verification process, causing extremely long lines and delays at the polls. The lack of adequate equipment and staff to handle the crowd likewise caused immense delays in processing voters. (Exhibit L)

79. During the November 2000 elections, numerous people attempted to call the Board's headquarters to ask questions, to complain about voting irregularities, including the deficiencies described above, to check their status on the inactive list and to try to reactivate their voting status. The Board headquarters lacked adequate phone lines and staff to handle the large number of calls coming from these citizens and the election judges at polling places who were trying to assist registered voters on the inactive list exercise their right to vote. The Report states that "means for communicating from the polling places to the central office on November 7, 2000 were seriously deficient."

(Report at 5, Exhibit L). According to the Report:

"There were serious communication problems that significantly contributed to long lines, improper decisions and actions by election judges and public confusion. A number of election judges reported that they had little or no access to telephones or were unable to get through to staff at the central office because of busy phone lines. After several attempts without success, sometimes election judges abandoned the effort to reach the central office."
(Report at 17, Exhibit L).

80. Moreover, the Board's office space does not allow for fail safe voting on election day, which results in the disenfranchisement of voters who need this service
Missouri law, RSMo. § 115.165.2 provides:

"A registered voter who has changed his or her residence within an election authority's jurisdiction and has not been removed from the list of registered voters pursuant to this chapter shall be permitted to file a change of address with the election authority or before an election judge at a polling place and vote at a central polling place or at the polling place that serves his or her new address upon written or oral affirmation by the voter of the new address."

81. The Report states: “The current office space at the Board’s central office location is inadequate on election day to comply with the requirements of fail-safe voting” pursuant to RSMo. § 115.165.2. (*Report at 18, Exhibit L*). The Report found:

“We believe that the choice of voting at the central office or at the voter’s new polling place belongs to the voter as a matter of law. This choice was not made available to voters on November 7, 2000 in the City. . . . This was at the least inconvenient and at the worst may have resulted in the disenfranchisement of voters who simply could not afford to go to three separate locations and wait in three long lines on election day.” (*Report at 19, Exhibit L*).

82. The Report also found that the facilities are also inadequate to accommodate new registrants and absentee voters. Id.

83. The Board has stated that it is not adequately funded to address many of those concerns. The Board has stated that it has attempted to implement new procedures, but could not get funding to do so. In particular, Republican director Kevin Coan has stated that they Board attempted to provide laptop computers at polling places to combat poor staffing, long lines and the inactive voter list problems, but “we’ve asked for it and they said no,” Coan is reported to have said. (*Black Leaders may sue over inactive voter list in city, in The St. Louis American, March 1-7,2001, attached hereto as Exhibit T*).

84. The Board further stated that it was not funded sufficiently to provide copies of the inactive voter list to polling places to combat the inactive voter list problems:

“Our problem is getting money from the City,’ Coan said. ‘Our . . . request for funding has fallen on deaf ears. We’re always asking for money and giving documentation for it. The City of St. Louis spends less than any other urban district in the state.’” (*Exhibit T*).

85. The Secretary of State’s Report states that “City staff also stated that it is particularly difficult to recruit good election judges in the city because its election judges

are paid less than election judges in the other urban areas of the state and the Board's election day budget would not have covered additional judges." (*Report at 11*, Exhibit L).

86. Greater resources were expended per voter in the other major similarly situated metropolitan area as compared to St. Louis. The Report found that the costs expended on the November 2000 elections amounted to \$1.10 per voter in the City of St. Louis, compared with \$1.69 per voter in Jackson County and \$1.53 per voter in Kansas City. In addition, St. Louis spent less on personnel and other services expended in putting on the elections. (*Report at 14*, Exhibit L).

87. The Board has stated that lack of adequate funding has also caused its headquarters to be inadequate to address voter complaints on election day or provide fail-safe voting:

"As far as the lack of inadequate (sic) office space, Floyd Kimbrough, the election board chairman said, "This space we have now is not our choice. The city put us here. We have said from day one that it is inadequate. This is far less space the commission had before we came here." (*St. Louis American*, Exhibit T)

88. The Board has further stated that they can not afford new computer software that would allow for greater accuracy of voting records. Id.

89. The Report recommends that the City "conduct a thorough financial analysis to determine whether appropriate resources are being devoted to elections in St. Louis City, in comparison to similar jurisdictions in Missouri and other states."

90. St. Louis City Code, §2.08.130 provides that:

All ballots, blanks and other supplies to be used at any primary election held under the provisions of this chapter, and all expenses necessarily incurred in the preparation for or in conducting such primary, shall be paid out of the treasury of the city. (1948 C. Ch. 20 § 19; 1960 C. § 76.130.)

91. To the extent that inadequate resources provided by the Board are the result of inadequate funding for such resources from the City Treasury, Defendant City Treasurer contributed, by means of insufficient budgeting to the Board, to the lack of resources that resulted in voting irregularities.

92. Plaintiffs have been irreparably harmed and will continue to be irreparably harmed unless this court orders the election board to provide adequate resources at polling places and orders the City Treasurer to budget accordingly to allow the Board to fulfill that obligation.

WHEREFORE, plaintiffs pray this court:

- (1) Enter a declaratory judgment that the lack the lack of adequate space and communication devices impedes voting rights in violation of Missouri election law and Art. VIII, §2 of the Missouri Constitution;
- (2) Enter a declaratory judgment that the lack of adequate resources dedicated to administering the elections contributed to the deficiencies that impede the free exercise of the vote in violation of Art. VIII, §2 of the Missouri Constitution;
- (3) Enter a permanent injunction ordering the Board to provide adequate facilities and communication devices to advance the orderly implementation of voting processes and procedures;
- (4) Enter a permanent injunction ordering the Board and City to conduct an analysis of the financial resources dedicated to elections in the City to determine whether there are adequate resources to ensure sufficient qualified staff are available to keep voter registration records current, prepare for elections and carry out the elections process. Such analysis should also

- include considerations for office and storage space for the election board staff and the maintenance of replacement voting and tabulation equipment;
- (5) Pursuant to such analysis, enter a permanent injunction ordering Defendant Treasurer to budget adequately to allow the Board to fulfill its duties as set forth in RSMo. Chapter 115 et seq..
 - (6) Enter a preliminary injunction ordering the Board to provide adequate resources, including phones, phone lines and fail-safe voting during the during the March 6,200 1 municipal elections;
 - (7) In the event defendants fail to or are unable to conduct future elections in a manner that complies with the Missouri Constitution and Missouri law, enter an order providing for elections under the Court's supervision that comport with all state constitutional and statutory requirements
 - (8) Grant Plaintiffs' costs associated with this complaint; and
 - (9) Grant such further relief as this court deems just and proper.

Respectfully Submitted,

AMERICAN CIVIL LIBERTIES UNION
OF EASTERN MISSOURI

By:

DONALD WOLFF MBE# 18008
8019 Forsyth
St. Louis, MO 63 105
(314) 725-8019
fax: (314) 725-8443
Cooperating attorney for the
ACLU of Eastern Missouri, on behalf of
The Urban League of Metropolitan St. Louis
St. Louis Chapter NAACP
St. Louis Clergy Coalition

Missouri Interfaith Alliance
St. Louis Black Leadership Roundtable
Citizens Concerned with African-American
Voter Disenfranchisement

DENISE D. LIEBERMAN MBE #470 13
Legal Director
American Civil Liberties Union
Of Eastern Missouri
4557 Laclede Ave.
St. Louis, MO 63 108
(314) 361-2111
fax: (314) 361-3135

LEE GOODMAN MBE #42224
Mound City Bar Association
1115 Pine Street, Suite 300
St. Louis, MO 63 101
(314) 241-4002
fax: (314) 241-0042

LAUGHLIN McDONALD
American Civil Liberties Union Foundation
Voting Rights Project
2725 Harris Tower
233 Peachtree Street
Atlanta, GA 30303
(404) 523-2721
fax: (404) 653-0331

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby states that a true and correct copy of the foregoing was sent via fax to Leo Garvin and Paul Maloney, at fax number: (3 14) 727-9071; and to Ira Young and Joe Neil at fax number: (3 14) 622-3587 on the 4th day of March, 2001, and hand-delivered on the 5th day of March, 2001 to same.