IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,	)	
Plaintiffs,	)	
v.	)	No. 20AC-CC00169
STATE OF MISSOURI, et al.,	)	
Defendants.	)	

ORDER AND JUDGMENT

This matter comes before the Court on the Motion to Dismiss of Defendants State of Missouri and Secretary of State John Ashcroft ("State Defendants"). For the reasons stated herein, the State Defendants' Motion is granted and Plaintiffs' Petition is dismissed. Judgment is hereby entered in favor of Defendants on all counts.

The Court takes very seriously the health concerns regarding the Covid-19 pandemic that Plaintiffs allege in their Petition, but the relief Plaintiffs seek is not limited to Covid-19 and goes far beyond the health concerns they raise. In Count I, they ask this Court to declare that any voter who fears catching *any* illness—not just Covid-19—is authorized by Missouri law to cast an absentee ballot in any future election in Missouri. In Counts III and IV, they ask this Court to declare that every Missouri voter has a constitutional right to cast an absentee ballot for *any* reason—again, regardless of Covid-19—without any signature verification, in any future election. Plaintiffs are seeking a radical and permanent transformation of Missouri voting practices without the authorization of the Legislature. Missouri's Constitution and statutes do not grant them entitlement to this extraordinary relief, and their claims fail as a matter of law.

LEGAL STANDARDS

1. Dismissal is proper if the court lacks subject-matter jurisdiction or the pleadings fail to state a claim upon which relief can be granted. Mo. Sup. Ct. R. 55.27(a)(1), (6); *Fox v. White*, 215 S.W.3d 257, 259-60 (Mo. App. W.D. 2007).

2. In considering whether to grant a motion to dismiss, this Court "considers the grounds raised in the defendant's motion to dismiss and does not consider matters outside the pleadings." *Gray v. Missouri Dep't of Corr.*, 577 S.W.3d 866, 867 (Mo. Ct. App. 2019).

3. "In determining whether a motion to dismiss should [be] granted," this Court "reviews the petition in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." *Gray*, 577 S.W.3d at 867.

4. Missouri is a fact-pleading state, which means that, in order to survive a motion to dismiss, plaintiff "must allege facts" supporting each element of his claim. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376-77 (Mo. banc 1993); *Fox*, 215 S.W.3d at 260. Legal conclusions—bare recitations of the required elements—are to be disregarded. *Whipple v. Allen*, 324 S.W.3d 447, 449-50 (Mo. App. E.D. 2010).

5. Where a petition "contains only conclusions and neither the ultimate facts nor any allegations from which to infer those facts, [a] motion to dismiss is properly granted." *ITT Commercial Fin. Corp.*, 854 S.W.2d at 379.

CONCLUSIONS OF LAW

I. Plaintiffs' Count I Fails to State a Claim for Relief.

6. In Count I of their Petition, Plaintiffs seek a declaratory judgment and injunction holding that all voters who "reasonably fear that they may contract or spread COVID-19 if they

vote in person" are authorized by statute to cast an absentee ballot under § 115.277.1(2), RSMo. Pet. ¶ 158. The parties agree that Count I raises questions of statutory interpretation that may be decided as a matter of law.

7. Section 115.277.1(2) provides that a voter may cast an absentee ballot if he or she "expects to be prevented from going to the polls to vote on election day due to: … Incapacity or ***confinement due to illness or physical disability***, including a person who is primarily responsible for the physical care of a person who is incapacitated or confined due to illness or disability." § 115.277.1(2), RSMo (emphasis added). Plaintiffs' Count I raises the question whether a voter who does not have an illness or disability, but fears catching an illness at the polls, is suffering "confinement due to illness or physical disability" under § 115.277.1(2).

8. As an initial matter, no limiting principle would restrict Plaintiffs' interpretation of the statute to the current Covid-19 pandemic. Section 115.277.1(2) does not refer to "Covid-19" or "coronavirus." It refers to "illness." *Id.* If Plaintiffs' interpretation were correct, then a voter who feared catching *any* illness at the polls, in any future election, would be entitled by the statute to cast an absentee ballot. No court or election authority has ever adopted this broad interpretation.

9. Plaintiffs' interpretation of § 115.277.1(2) violates many well-established principles of statutory interpretation. First and foremost, it contradicts the plain language of the statute. In Missouri, the "primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue." *Parktown Imports, Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009). Plaintiffs contend that a voter who is not ill or disabled has an "illness" or "disability" under § 115.277.1(2). But in ordinary English, someone who is not ill or disabled does not have an "illness" or "disability."

10. Second, Plaintiffs' interpretation improperly seeks to engraft language onto the statute that it does not contain. "[T]he Court cannot supply what the legislature has omitted from controlling statutes." *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 668 (Mo. banc 2010); *see also Bd. of Educ. of City of St. Louis v. State*, 47 S.W.3d 366, 371 (Mo. banc 2001). "We cannot engraft language onto a statute that was not provided by the legislature." *State ex rel. Koster v. Cowin*, 390 S.W.3d 239, 244 (Mo. App. W.D. 2013). Someone who is not ill is not "confined due to illness"; they are "confined due to ***fear of*** illness." But the statute does not say "fear of illness"—it just says "illness." § 115.277.1(2), RSMo.

11. Third, this Court must interpret the statute as a whole, rather than reading the absentee-voting exception in isolation. *See Cosby v. Treasurer of State*, 579 S.W.3d 202, 207 (Mo. banc 2019). Missouri's voting laws demonstrate more than just a preference for in-person voting; they require voting to take place in person unless the voter meets one of the enumerated exceptions in § 115.277.1. By adopting an interpretation that would permit virtually anyone to cast an absentee ballot, Plaintiffs fail to read § 115.277 "as a whole." *Cosby*, 579 S.W.3d at 207.

12. Fourth, Plaintiffs' interpretation violates the well-established principle that items listed together in a statute should be interpreted with similar meanings, *i.e.*, *noscitur a sociis*. *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 122 (Mo. banc 2014). Here, the exception for illness and incapacity appears in a list of six enumerated exceptions for receiving an absentee ballot, all of which provide objective and verifiable grounds. *See* § 115.277.1(1)-(6). By contrast, Plaintiffs would interpret paragraph (2) to create a ground for absentee voting based on a subjective, unverifiable criterion—*i.e.*, "fear" of a catching an illness.

13. Fifth, § 115.277.1(2) should be interpreted *in pari materia* with the other sections in Chapter 115. "If the meaning of a word is unclear from consideration of the statute alone, a

court will interpret the meaning of the statute *in pari materia* with other statutes dealing with the same or similar subject matter." *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 122 (Mo. 2014). Chapter 115 sets forth a comprehensive scheme for in-person voting in Missouri, and § 115.277.1 provides a narrow set of exceptions to that rule. Plaintiffs' interpretation would turn Chapter 115 on its head by making absentee voting the predominant method of voting in Missouri.

14. Sixth, Plaintiffs' interpretation of paragraph (2) would render the other grounds for absentee voting effectively meaningless. "Courts never presume that our legislature acted uselessly and should not construe a statute to render any provision meaningless." *Caplinger v. Rahman*, 529 S.W.3d 326, 332 (Mo. App. S.D. 2017) (en banc); *see also State ex rel. Lavender Farms, LLC v. Ashcroft*, 558 S.W.3d 88, 92 (Mo. App. W.D. 2018). On Plaintiffs' view, any voter who "fears" contracting an illness could rely on paragraph (2), and the other enumerated paragraphs would have little or no application, rendering them effectively meaningless.

15. Plaintiffs cite no Missouri cases that support their implausible interpretation of § 115.277.1(2). Instead, they rely heavily on (1) the Centers for Disease Control's guidelines for conducting elections during the Covid-19 pandemic, and (2) a handful of decisions from other States permitting time-limited absentee voting during upcoming elections during the Covid-19 pandemic. These sources do not support Plaintiffs' statutory interpretation.

16. The CDC guidelines provide policy recommendations that shed no light on this Court's task of statutory interpretation. Those guidelines recommend only that absentee voting should be encouraged during the Covid-19 pandemic "if allowed in the jurisdiction." Centers for Disease Control, Recommendations for Election Polling Locations (March 27, 2020), at https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html.

Moreover, far from calling for universal absentee voting, the vast majority of the CDC guidelines provide recommendations to make *in-person* voting safe during the pandemic. *Id.*

17. Likewise, the decisions from other States do not support Plaintiffs' interpretation, for at least three reasons. First, none of these decisions addressed Missouri law, or even engaged in any meaningful analysis of their own statutes, and so they have no persuasive value on this question of statutory interpretation. Second, all these decisions provided relief that was time-limited and specifically addressed to the Covid-19 pandemic, but Plaintiffs' proposed interpretation would apply to fear of any "illness" in any future election. Third, all but one of these decisions were entered by executive officials, not the courts, including Governors who invoked their emergency authority to *suspend* state statutes. This Court is not an executive agency, and it does not suspend statutes—it interprets and applies them. These executive decisions undermine Plaintiffs' argument by emphasizing that the relief they seek must be provided by Missouri's Executive or Legislative Branches, not the courts.[1]

II. Plaintiffs' Count II Fails to State a Claim for Relief.

18. In Count II, Plaintiffs raise an equal-protection claim based on alleged geographic variation in the application of § 115.277.1(2). They contend that "treating voters differently depending on where they live is a violation of the Equal Protection Clause of the Missouri Constitution." Pet. at 31; *see also id.* ¶ 163. This claim fails as a matter of law for three reasons.

19. First, "to successfully raise an equal protection challenge, one first must show that he or she is similarly situated to those who he alleges receive different treatment. The similarly situated standard is a rigorous one requiring proof that the two classes were *similarly situated in*

[1] This Court takes judicial notice of the fact that Missouri's Legislature has truly agreed to and finally passed legislation to expand absentee voting during the Covid-19 pandemic.

all relevant aspects." *Coyne v. Edwards*, 395 S.W.3d 509, 519 (Mo. banc 2013) (emphasis added) (citation omitted). Plaintiffs have not alleged any facts showing that voters in various Missouri voting jurisdictions are "similarly situated in all relevant aspects" with respect to the Covid-19 pandemic. For example, Plaintiffs do not assert that the alleged risks or burdens of in-person voting during Covid-19 are the same in rural counties with few or no positive cases, as they are in metropolitan areas with thousands of positive cases.

20. Second, Plaintiffs have failed to plead any actual variation in official action. The Petition pleads only that certain election officials in different jurisdictions have made statements to the media about what their policies on absentee voting may be. *See* Pet. ¶¶ 117-121. For example, as to St. Louis County, Plaintiffs plead that a St. Louis County election director stated fear of Covid-19 "probably" qualifies voters to vote absentee. Pet. ¶ 119. Plaintiffs do not plead that any local election authority has yet adopted an official policy on this question for the August primary or November general elections, and so they do not plead any unequal treatment. *See id.*

21. Third, Missouri law has always delegated principal responsibility to conduct elections to local election authorities, not statewide officials. *See, e.g.,* §§ 115.023, 115.043, RSMo. Provided that their actions are "not inconsistent with statutory requirements," § 115.043, local election authorities have primary responsibility for conducting elections and responding to local concerns. Thus, Chapter 115 explicitly contemplates that there will be some geographic variation in practices in the conduct of elections.

22. No Missouri case has applied heightened scrutiny to an equal protection claim based on geographic variation, and Plaintiffs provide no good reason for this case to be the first. If geographic-variation claims were subject to strict scrutiny as Plaintiffs contend, that would

undermine the validity of Missouri's entire system and require ongoing, intrusive judicial review of the actions of local election authorities.

23. The Missouri Supreme Court has held that "reasonable regulation of the voting process" is subject to rational-basis review.[2] *Weinschenk*, 203 S.W.3d at 216. Missouri's statutes conferring primary authority to conduct elections on local election authorities—*see, e.g.*, §§ 115.023.1, 115.043, 115.299.1, RSMo—are quintessential examples of "reasonable regulation of the voting process." *Id.*

24. Under rational-basis review, a statute must be upheld if there is any "reasonably conceivable state of facts that ... provide a rational basis for the classification[s]." *Kansas City Premier Apartments, Inc. v. Mo. Real Estate Comm'n*, 344 S.W.3d 160, 170 (Mo. banc 2011) (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)). Courts applying this standard do not question the "wisdom, fairness, or logic of legislative choices." *Kansas City Premier Apartments*, 344 S.W.3d at 170 (quoting *Beach*, 508 U.S. at 313). "Instead, all that is required is that this Court find a plausible reason for the classification in question." *Kansas City Premier Apartments*, 344 S.W.3d at 170.

25. Missouri's longstanding practice of conferring primary authority to conduct elections on local election authorities easily satisfies this highly deferential standard of review. There is nothing irrational about permitting local authorities to adopt local practices to address local concerns in the conduct of elections. Plaintiffs do not even argue that the statute fails rational-basis review, and their equal protection claim thus fails to state a claim.

[2] Likewise, federal cases considering equal protection claims based on geographic variation have also applied rational-basis review or a very similar standard. *See, e.g., Bush v. Gore*, 531 U.S. 98, 105, 109 (2000); *Texas Democratic Party v. Williams*, 2007 WL 9710211, at *3 n.4 (W.D. Tex. Aug. 16, 2007).

III. Plaintiffs' Count III Fails to State a Claim for Relief.

26. In Count III, Plaintiffs contend that every Missouri voter has a constitutional right to cast an absentee ballot for any reason in any election. Pet. ¶¶ 165-69. Count III does not refer to Covid-19 at all. *See id.* Instead, Count III alleges that *ordinary* inconveniences of in-person voting—*i.e.*, "crowds and long lines at the polls," and "waiting for poll workers and a voting booth to become available," Pet. ¶ 168—entail that there is a constitutional right to absentee voting for any reason. Pet. ¶¶ 168-69. Count III requests a declaratory judgment and injunction holding that Missouri's "limitations on which voters may vote absentee by mail violate[] Article I, § 25 of the Missouri Constitution." Pet. at 33 (Prayer for Relief). Again, the relief sought is not limited to, and does not even refer to, the Covid-19 pandemic.

27. Missouri law forecloses this claim. First, the plain language of the Missouri Constitution provides that there is no constitutional right to cast an absentee ballot. Plaintiffs rely on Article I, § 25 of the Constitution, but that provision says nothing about absentee voting. *See* MO. CONST. art. I, § 25. By contrast, Article VIII, § 7 of the Constitution specifically addresses "Absentee voting." MO. CONST. art. VIII, § 7. That section provides: "Qualified electors of the state who are absent, whether within or without the state, ***may*** be enabled by general law to vote at all elections by the people." *Id.* (emphasis added).

28. The word "may" denotes discretion, not an obligation. *See Wolf v. Midwest Nephrology Consultants, PC.*, 487 S.W.3d 78, 83 (Mo. App. W.D. 2016) ("It is the general rule that in statutes the word "may" is permissive only, and the word "shall" is mandatory.") (quoting *State ex inf. McKittrick v. Wymore*, 119 S.W.2d 941, 944 (Mo. 1938)). Thus, under the plain language of Article VIII, § 7, the Legislature "may" permit absentee voting, but it is not obligated to provide it. MO. CONST. art. VIII, § 7.

29. Numerous Missouri appellate decisions support this interpretation of the Constitution, holding that absentee voting is a "special privilege," not a constitutional right. *See, e.g.*, *Straughan v. Meyers*, 187 S.W. 1159, 1163 (Mo. 1916); *Barks v. Turnbeau*, 573 S.W.2d 677, 681 (Mo. App. E.D. 1978); *State ex rel. Hand v. Bilyeu*, 346 S.W.2d 221, 225 (Mo. App. 1961); *Elliott v. Hogan*, 315 S.W.2d 840, 848 (Mo. App. 1958).

30. In *Straughan*, the Missouri Supreme Court held that absentee voting is a "special privilege" that "under the general laws, could not be exercised." 187 S.W. at 1163, 1164. Likewise, *Barks* held that "the opportunity to vote by absentee ballot is *clearly a privilege and not a right.*" *Barks*, 573 S.W.2d at 681 (emphasis added). Similarly, the U.S. Supreme Court has held that there is no constitutional right "to receive absentee ballots," and that absentee-voting restrictions are subject to rational-basis review. *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802, 807 (1969).

31. Missouri's cases also emphasize that, because absentee voting carries unique risks of fraud and abuse, strict compliance with the statutory requirements for absentee voting is mandatory. *See Straughan*, 187 S.W. at 1164 (noting that, without "proper safeguards," absentee voting is "capable of being made an instrument of fraud"); *Elliott*, 315 S.W.2d at 848 (holding that the "special privilege" of absentee voting is "strictly limited" by "safeguards to prevent an abuse of the privilege," and compliance with those statutory safeguards is "mandatory"); *see also Weinschenk v. State*, 203 S.W.3d 201, 218 (Mo. banc 2006) (stating that "opportunities for voter fraud … persist in Missouri, such as absentee ballot fraud").

32. These cases directly contradict Plaintiffs' claim of a constitutional right to cast an absentee ballot in any election for any reason, and they demonstrate that Missouri's interest in

preventing absentee ballot fraud provides a rational basis for the Legislature to decide not to grant absentee voting to every voter for any reason in all future elections.

IV. Plaintiffs' Count IV Fails to State a Claim for Relief.

33. In Count IV, Plaintiffs claim that every Missouri voter has a constitutional right to cast an absentee ballot in any election for any reason without having his or her ballot notarized. Pet. 33-34.

34. As with Count III, the relief Plaintiffs seek in Count IV is not limited to Covid-19 and goes far beyond their asserted health concerns. In Count IV, Plaintiffs contend that "[r]efusing to allow voters to cast an absentee ballot by mail without a notary seal is a violation of the Right to Vote under the Missouri Constitution." Pet. at 33. In their prayer for relief, Plaintiffs ask this Court to declare that Missouri's "limitations on which voters may vote absentee by mail without a notary seal violate[] Article I, § 25 of the Missouri Constitution." Pet. at 34. Again, both the claim and the relief requested are not limited to, and far exceed, the current Covid-19 pandemic.

35. Like Count III, Count IV fails as a matter of law. For the reasons stated above in Part III, there is no constitutional right to cast an absentee ballot in Missouri law. *A fortiori*, there is no constitutional right to cast an absentee ballot without signature verification.

36. To the extent that rational-basis review applies to Missouri's signature-verification requirements for absentee ballots, they easily satisfy that highly deferential standard. Requiring notarization for absentee ballots rationally advances the State's interest in preventing fraud and abuse in absentee voting, which many Missouri cases have recognized. *See supra* Part III.

37. As Plaintiffs note, the Legislature has granted an exemption from the notarization requirement to voters for whom notarization might be more difficult—*i.e.*, permanently disabled voters, voters incapacitated by illness or disability, and military and overseas voters. § 115.291.1,

RSMo. Again, the Legislature's decision to exempt those classes of voters from the notarization requirement, while requiring other voters to obtain notarization, is eminently reasonable.

V. Plaintiffs' Class Allegations Are Dismissed.

38. Because the Court dismisses Counts I-IV, the Court need not reach other grounds for dismissal raised by Defendants. For the sake of creating a complete record, however, the Court addresses the State's motion to dismiss Plaintiffs' class allegations, and grants it as well.

39. Plaintiffs' class allegations are legally insufficient for three reasons. First, Plaintiffs have offered no class definition. Second, Plaintiffs have pled only legal conclusions for many of their class allegations. Third, there is no standing to maintain a bilateral class action.

40. First, the "general practice in both state and federal courts is that the party seeking class certification proposes a class definition which is then subject to challenge by the opposing party." *Hope v. Nissan North America, Inc.*, 353 S.W.3d 68, 76 (Mo. App. W.D. 2011) (brackets omitted) (quoting *H.L. v. Matheson*, 450 U.S. 398, 432 n.11 (1981) (Marshall, J., dissenting)). Under Missouri law, a precise definition should be offered in the petition bringing the suit. *Id*. at 74 (holding that "the determination of class certification is based primarily upon the allegations in the petition"); *Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 178 (Mo. App. W.D. 2006) ("A class will not be deemed to exist unless the membership can be determined at the outset of the litigation."). The "Plaintiff is the master of his complaint, and he has the burden and responsibility of proposing a legally acceptable definition." *Id*. at 76. Because Plaintiffs did not plead a class definition for either the plaintiff or defendant classes, their class allegations are insufficient.

41. Second, Plaintiffs have pled only conclusions for many of their class allegations. In order to plead a basis for certification, the plaintiff must establish the four prerequisites set forth in Rule 52.08(a), which are "commonly referred to as numerosity, commonality, typicality, and

adequacy." *Hope*, 353 S.W.3d at 74. "Missouri rules of civil procedure demand more than mere conclusions that the pleader alleges without supporting facts." *Pulitzer Pub. v. Transit Cas. Co.*, 43 S.W.3d 293, 302 (Mo. banc 2001).

42. For multiple elements required by Rule 52.08, Plaintiffs plead only bare legal conclusions. For the typicality prong, Plaintiffs plead only that "Plaintiffs' claims are typical of the claims of the class." Pet. ¶ 134. For the defendant classes, the Petition recite that "Defendants' defenses are typical of the defenses of the classes" and the named defendants "would have the same essential characteristics of the defenses of the Defendant Class at large." Pet. ¶¶ 143, 148.

43. For the adequacy prong, Plaintiffs allege only that "Plaintiffs will fairly and adequately protect the interests of the class." Pet., ¶ 135. For the defendant class, Plaintiffs allege only that "Defendants will fairly and adequately protect the interests of the classes" and the named defendants "will fairly and adequately protect the interests of Missouri prosecutors and local election authorities." Pet., ¶¶ 144, 149. These are mere legal conclusions, not facts. *Zafer Chiropractic & Sports Injuries, P.A. v. Hermann*, 501 S.W.3d 545, 553-54 (Mo. App. E.D. 2016).

44. Third, Plaintiffs cannot maintain this case as a putative bilateral class action. "There is great judicial reluctance to certify a defendant class when the action is brought by a plaintiff class. The primary concern with bilateral actions … is a fear that each plaintiff member has not been injured by each defendant member." *Thillens, Inc. v. Community Currency Exchange Ass'n of Illinois, Inc.*, 97 F.R.D. 668, 675 (N.D. Ill. 1983); *see also Allee v. Medrano*, 416 U.S. 802, 828-29 (1974) (Burger, C.J., dissenting). Additionally, a "plaintiff who has no claim against a particular defendant does not have a claim typical of class members who do, and cannot fairly and adequately represent the interests of those plaintiff class members who do have such claims." 1 MCLAUGHLIN ON CLASS ACTIONS § 4:46 (16th ed.). "Accordingly, in bilateral class actions,

courts generally have held that a defendant class should not be certified unless each member of the plaintiff class has a claim against each member of the defendant class." *Id*. (collecting cases); *Monaco v. Stone*, 187 F.R.D. 50, 65 (E.D.N.Y. 1999).

45. Here, Plaintiffs do not and cannot plead that every member of the plaintiff class has a claim against every member of the defendant classes. A voter only has a plausible claim against the prosecutor and local election authority in his or her jurisdiction, and he or she has no relationship to those outside his or her jurisdiction. Thus, there is no standing for a bilateral class, and Plaintiffs' class allegations are properly dismissed.

VI. The Organizational Plaintiffs Lack Standing.

46. The Court also holds that the organizational plaintiffs, the NAACP and the League of Women Voters, have not alleged facts supporting associational standing, direct standing or organizational standing to challenge the statutes at issue.

47. "A person does not have standing to challenge the constitutionality of a statute simply because '[the statute] may be subject to the charge of invalidity.' Standing is a prerequisite to such a challenge." *State v. Stottlemyre*, 35 S.W.3d 854, 861 (Mo. App. W.D. 2001) (quoting *State v. Pizzella*, 723 S.W.2d 384, 387 (Mo. banc 1987)).

48. Plaintiffs have not alleged facts meeting the requirements of associational standing under Missouri law. "An organization can sue as a representative for its members if (1) its members would otherwise have standing to bring suit in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members." *Missouri Health Care Ass'n v. Attorney Gen. of the State of Mo*., 953 S.W.2d 617, 620 (Mo. banc 1997).

49. Based on the allegations in the Petition, Plaintiffs fail to satisfy the first and third of these requirements. Any individual members of the NAACP or LWV would either be covered by the statutes or not covered by the statutes. If they are covered by the statute, they can receive an absentee ballot and thus they have no injury. For the members who are not entitled to receive an absentee ballot but contend they should be under their reading of the statute, those members lack standing because any injury they face is speculative and unripe at this time. In addition, because Plaintiffs' asserted basis for qualification rests on a subjective state of mind—*i.e.* "fear" of catching an illness—the participation of individual members would be required to provide evidence critical to both standing and the merits of their claims.

50. Direct standing is also absent because the organizational plaintiffs lack a legally protectable interest in the challenged statutes such that they are adversely affected by the statutes. Simply opposing a law (and shifting resources to educate individuals about it) is not enough to establish an injury. Because they cannot cast ballots, they are not directly injured by the statutes.

51. Furthermore, this Court recently held, in a different lawsuit involving many of these same parties, that "Missouri courts have yet to embrace the liberalized federal rule of organizational standing." Order and Judgment, *Missouri State Conference of the NAACP v. State of Missouri*, Case No. 17AC-CC00309-01, at 3 (Cole Cty. Cir. Ct. Apr. 20, 2020). There, like here, plaintiffs argued that a "diversion of their resources" was necessary because of opposition to a voter law. *Id.* This Court noted that standing requires "injury in fact to a member," and holding that neither organizational nor association standing was applicable. *Id.* at 3.

52. Plaintiffs have argued in their response to the State Defendants' motion that they also have direct organizational standing as set forth in *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982), but no Missouri court appears to have adopted this test. Even if that test were

applicable, Plaintiffs have not met the requirements for this theory of standing, because at most their injuries as alleged in the Petition amounts to a "setback to the organization's abstract social interests," which is insufficient under *Havens*. 455 U.S. at 379.

CONCLUSION

For the reasons stated, the State Defendants' Motion to Dismiss is GRANTED. All Counts in the Petition are dismissed with prejudice. Judgment is hereby entered in favor of Defendants.

Dated: 5-18-2020

The Hon. Jon E. Beetem, Circuit Judge

Dated: May 15, 2020

Respectfully submitted,

ERIC S. SCHMITT
Attorney General

/s/ D. John Sauer
D. John Sauer, #58721
Solicitor General
Christopher R. Wray, #66341
Deputy Solicitor General
Jason K. Lewis, #66725
Assistant Deputy Attorney General
Mark Blanton, #71791
Assistant Attorney General
Missouri Attorney General's Office
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102
Tel: (573) 751-3321
John.Sauer@ago.mo.gov
Chris.Wray@ago.mo.gov
Jason.Lewis@ago.mo.gov
Mark.Blanton@ago.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2020, the foregoing was filed on the Missouri CaseNet e-filing system, which will send notice to all counsel of record.

/s/ D. John Sauer
D. John Sauer