

SHOW ME THE BALLOT:
THE ONGOING BATTLE FOR THE RIGHT TO VOTE FOR
MISSOURI'S COMMUNITIES OF COLOR

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ABSTRACT

For two centuries, Missouri has been at the crossroads of voting rights debates. Today, the state remains at the forefront of modern-day barriers to the ballot, with repeated backlash towards growing political participation by voters of color. Lieberman draws on Missouri's problematic history to contextualize the discriminatory voting practices disparately impacting voters of color around the country by offering a narrative arc of Missouri's modern voting rights battles through the lens of local advocates involved in those fights.

The Article explores Missouri's voting rights battles to highlight discriminatory voting practices in the United States that limit the freedom to vote, marked by an erosion of protections against discriminatory voting practices and a surge of restrictive voting proposals that target and disparately impact voters of color. It illuminates Missouri's role in elevating a critical narrative behind these nationwide attacks and tracks the role of the Mound City Bar Association ("MCBA") and development of Missouri's Election Protection program locally to respond to voter issues on the ground.

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Lieberman argues that on-the-ground efforts of local legal and advocacy organizations like the Mound City Bar Association are the key to effective legal and organizing strategy to combat discriminatory voting barriers, and that organizations like MCBA play a critical role in Missouri's battles for voting rights by uplifting the lived experiences of the people for whom protection is most needed and whose voices are most often silenced. These voices are needed to uplift the dignity of all and the inherent right to have a voice in one's future.

SHOW ME THE BALLOT

American Democracy is at a crossroads. Center-stage are states like Georgia, Texas, Arizona, and Florida, which faced election challenges in 2020 and passed new restrictive voting laws in 2021 disproportionately impacting voters of color.¹ Missouri sometimes goes unnoticed in this debate, a flyover in the story of voting rights. But Missouri's story—and St. Louis's in particular—is central to this story, a harbinger. In the two hundred years since its admission to the union,² Missouri has grappled with the question of who gets to participate in the democratic process and on what terms. Missouri's history is one of repeated backlash towards growing political participation by voters of color. With the erosion of state and federal protections against discriminatory voting practices and a surge of restrictive voting proposals that target and disparately impact voters of color, our freedom to vote hangs in the balance. Organizations like the Mound City Bar Association (“MCBA”), celebrating its 100th anniversary this year, have played an important supporting role in Missouri's battles for voting rights and must remain essential partners in the fight to ensure free and fair access to the ballot in the years to come.

For two centuries, Missouri has been at the crossroads of voting rights debates—in fact, it was born out of them. Antebellum tensions over slavery played out in the two Missouri Compromises. Criminal disenfranchisement laws, known as “good character laws,” were written into Missouri's first constitution.³ In 1857, the Supreme Court decided *Dred Scott*, a case tried

1. *Voting Laws Roundup: October 2021*, BRENNAN CTR. FOR JUST. (Oct. 4, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021> [<https://perma.cc/T43W-AK3R>].

2. Valerie Schrepf Hahn, *Happy 200th, Missouri! How We Became the 24th State — And How to Party Like It's 1821*, ST. LOUIS POST-DISPATCH (Aug. 12, 2021), https://www.stltoday.com/entertainment/arts-and-theatre/hotlist/happy-200th-missouri-how-we-became-the-24th-state-and-how-to-party-like-its/article_fa785c75-efb5-5501-b4df-08abb3e4742e.html [<https://perma.cc/8KHC-2CTA>].

3. MO. CONST. of 1820, art. III § 14 (“The general assembly shall have the power to exclude from every office of honor, trust, or profit, within this state, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime.”); see Rashi Shrivastava, *TIMELINE: A Look at*

in St. Louis, Missouri, which held that African Americans were not considered citizens—and thus the privileges and immunities clause did not apply to them or grant them civil rights.⁴ *Dred Scott*'s resulting ripple effect across the country continued to exclude African Americans from civil rights, including the right to vote, and was a final spark in kicking off the civil war.

Missouri was central to the fight for women's suffrage as well. In 1867, Virginia Minor established the nation's first women's suffrage association in St. Louis.⁵ After attempting to register and vote in St. Louis in 1872, Minor filed suit, arguing that the newly minted Fourteenth Amendment required the franchise extend to female citizens. The U.S. Supreme Court concluded that while women could be citizens, that citizenship did not guarantee them the right to vote.⁶

Missouri's foray into Reconstruction offered some initial promise for citizens of color. By the end of the Civil War in 1865, Missouri's second constitution, known as the Drake Constitution, supported the emancipation of slaves (but prohibited former Confederate sympathizers from voting).⁷ In 1870, Congress ratified the Fifteenth Amendment, prohibiting infringement of the right to vote on account of race and authorizing voting to all citizens "regardless of race, color or previous condition of servitude."⁸

the Past of Voting Rights in Missouri, VOX MAG. (Oct. 22, 2020), https://www.voxmagazine.com/news/features/voting-rights-timeline/article_9b644542-13d7-11eb-8b51-4f589329cef0.html [<https://perma.cc/A4LP-WSN9>]. Today, Missouri's criminal disenfranchisement laws remain among the more restrictive in the country, barring eligibility to vote even after one convicted of a crime has served their time by extending ineligibility during any period of state supervision on probation or parole. MO. REV. STAT. § 115.133 (West 2021). Nationwide, such laws disparately impact Black voters who are 3.7 times more likely than non-African American voters to be excluded from voting due to a criminal conviction. Christopher Uggen et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, THE SENTENCING PROJECT, Oct. 3, 2020, at 4.

4. See *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

5. Kimberly Harper, *Virginia Minor*, HISTORIC MISSOURIANS, <https://historicmissourians.shsmo.org/virginia-minor> [<https://perma.cc/TY2D-KWWY>].

6. *Minor v. Happersett*, 88 U.S. 162, 163–65, 178 (1875) (holding that the right to vote was not among the constitutionally protected privileges or immunities of the constitution). St. Louis remained a hub for suffragist organizing, including the Golden Lane demonstration in 1916 on Locust street in downtown St. Louis. On July 3, 1919, Missouri became the 11th state to ratify the 19th Amendment. The first woman voted in Missouri in 1920. See Shrivastava, *supra* note 3.

7. MO. CONST. of 1865. See *Missouri's 1865 Constitution*, MO. DIGITAL HERITAGE, https://www.sos.mo.gov/mdh/DividedLoyalties/dl_atour_media/p21 [<https://perma.cc/72SY-HXHF>].

8. U.S. CONST. amend. XV, § 1.

During Reconstruction, Missouri became one of two pioneer states to establish an explicit, affirmative constitutional right to vote.⁹ Its legacy remains: the Missouri Constitution establishes “with unmistakable clarity that the right to vote is fundamental to Missouri citizens.”¹⁰ Missouri courts apply strict scrutiny to a law that “severely burdens the right to vote.”¹¹ But the legal extension of voting came with brutal backlash on the ground, marked by a voter fraud narrative—all too familiar today—raising the specter of stolen elections and painting voters of color as illegitimate and intent on fraud. A century ago, *The Democrat-Argus* in Caruthersville, Missouri, decried “illegal voting” by black voters in Pemiscot County intent on stealing elections, calling on white voters to guard poll sites (not dissimilar to modern day “ballot security” tactics, including aggressive poll watchers and challengers at “inner city” precincts).¹²

It has been a practice of white renegades that would vote n****r children, exconvicts and imported n****rs to have them lined up at the polls at the opening and to vote them before white folks that might know them arrive. . . . the decent element of white folks of both parties are being urged to come en masse . . . do their voting early and remain the balance of the day to frustrate any efforts that may be made to cause votes to be cast by the recently imported n****rs. . . . Let the watchword be, “no illegal voting in

9. MO. CONST. art. I, § 25 (“That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”).

10. *Weinschenk v. State*, 203 S.W.3d 201, 211 (Mo. 2006) (en banc) (citing MO. CONST. art. I, § 25; MO. CONST., art. VIII, § 2)

11. *Id.* at 216; *Priorities USA v. State*, 591 S.W.3d 448, 453 (Mo. 2020) (en banc) (“If a statute severely burdens the right to vote, strict scrutiny applies, which means the law will be upheld only if it is narrowly tailored to serve a compelling state interest.”). “Both the right to vote and right to equal protection under the Missouri constitution are even more extensive than those provided by the federal constitution.” *Id.* at 459 n.18 (quoting *Weinschenk*, 203 S.W.3d at 204) (internal quotations omitted).

12. Lee Fang & Nick Surgev, *Conservative Operatives Float Plan to Place Retired Military, Police Officers as GOP Poll Watchers on Election Day*, THE INTERCEPT (Apr. 11, 2010), <https://theintercept.com/2020/04/11/repUBLICAN-poll-watchers-vote-by-mail-voter-fraud/> [<https://perma.cc/Y8Q2-GX5E>]; Danny Hakim et al., *Trump Renews Fears of Voter Intimidation as G.O.P. Poll Watchers Mobilize*, N.Y. TIMES (Nov. 3, 2020), <https://www.nytimes.com/2020/09/30/us/trump-election-poll-watchers.html> [<https://perma.cc/79BD-4L59>]; see Liz Kennedy et al., *Bullies at the Ballot Box, Protecting the Freedom to Vote Against Wrongful Challenges and Intimidation*, DEMOS (Sept. 2012), <https://www.demos.org/sites/default/files/publications/BulliesAtTheBallotBox-Final.pdf> [<https://perma.cc/NBY8-8WBT>].

Pemiscot county.” By protecting the ballot box, you are defending the flag. The country’s worst enemies are the election thieves.¹³

And a decade later, similar accusations were made in a 1932 *Missouri Herald* article condemning a voting rights rally: “People, this is a negro rally. . . . A rally to attract a horde of black voters from Arkansas and counties adjoining Pemiscot. It’s purely an Election Day scheme to import illegal voters from out of the county and vote them in our election.”¹⁴ Accusations of “bussed in” voters remain a dog whistle¹⁵ with real consequences for voter access.¹⁶ Today, Missouri remains central to the story of modern-day barriers to the ballot in the U.S., in part due to its role in solidifying the voter fraud myth that has been a lynchpin of efforts to justify voting regulations across the country in the twenty-first century.¹⁷

We can trace part of the origins of the modern-day voter fraud narrative to the November 2000 presidential elections in St. Louis. I was one of a handful of attorneys observing elections at the St. Louis City Board of Elections that day and saw the impact of an improper voter purge of some 50,000 voters, disproportionately African American. I witnessed hundreds of voters who had been turned away at their precincts because their names had been removed from active status fill the lobby of the St. Louis City Election Board within a few hours of the polls opening.¹⁸ It took voters

13. *White Folks Should Vote Early*, THE DEMOCRAT-ARGUS (Caruthersville, Mo.), Oct. 6, 1922, at 6 (available at <https://www.newspapers.com/image/335500002>).

14. *Stop that Negro Election Day Rally*, THE MO. HERALD (Hayti, Mo.), Nov. 4, 1932, at 10 (available at <https://www.newspapers.com/image/491585133>).

15. *Trump Voter: I Saw Buses of Illegal Voters*, CNN (Mar. 30, 2017), <https://www.cnn.com/videos/politics/2017/03/30/trump-voter-saw-buses-illegal-voters-camerota-newday.cnn> [<https://perma.cc/VMS4-9JLV>]; Robert Farley, *Fact Check: No Evidence of Busing Voters to New Hampshire*, USA TODAY (Feb. 14, 2017), <https://www.usatoday.com/story/news/politics/2017/02/14/fact-check-no-evidence-busing-voters-new-hampshire/97896228/> [<https://perma.cc/497U-2WJJ>].

16. P.R. Lockhart, *Black Seniors in Georgia Ordered Off of Bus Taking Them to Vote*, VOX (Oct. 17, 2018), <https://www.vox.com/identities/2018/10/17/17990110/georgia-senior-citizens-bus-removal-black-voters-matter-suppression> [<https://perma.cc/WY7F-W4AX>].

17. See LORRAINE C. MINNITE, THE MYTH OF VOTER FRAUD 99–102 (2010) (citing the role of the St. Louis elections in 2000 in development of the voter fraud myth). See Art Levine, *The Republican War on Voting*, THE AMERICAN PROSPECT (Mar. 19, 2008), <http://prospect.org/article/republican-war-voting> [<https://perma.cc/M6SM-YU79>] (“That election night gave birth to the new right-wing voter-fraud movement, while Missouri became a proving ground for the voter-suppression campaigns that later spread to other key states.”).

18. In an account I wrote for ACLU-EM’s newsletter, *Liberties*, “By 11 a.m., the lobby began to

hours to restore their registration status.¹⁹ I interviewed voters and drafted hand-written affidavits that we used in an Election Day lawsuit in which St. Louis Circuit Judge Evelyn Baker ordered the polls kept open until 10pm to ensure time for voters to get their rights restored.²⁰ The order was overturned by the Missouri Court of Appeals around 7:45pm.²¹ As we awaited potential review by the Missouri Supreme Court, voters who believed they had wrongly been turned away at their polls stood in the cold outside the St. Louis Board of Elections office. The line wrapped around the building. Sometime before 11pm, we learned the Missouri Supreme Court would not review the case and sent the many disheartened voters home. That night, in a speech aired on TV, pounding his fists in anger at the effort to extend the poll hours in St. Louis, Missouri, U.S. Senator Christopher “Kit” Bond raised the specter of voter fraud to a national stage with unfounded accusations of widespread illegal attempts to vote in St. Louis.²² That

fill with disgruntled voters who had been turned away from their polling places or who needed to reactivate their voting status. By early afternoon, the numbers swelled to several hundred. The Election Board had just three staff people to assist these voters. Amazingly, most waited patiently in line, some for four hours or more, to try to vote.” Denise Lieberman, *Voting Rights as a Race Issue*, DENISE LIEBERMAN BLOG, <https://deniselieberman.com/articles/votingrights.htm> [<https://perma.cc/LCC2-GQRC>].

19. See ARI BERMAN, *GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA* 214–15 (2015); see also Lorraine C. Minnite, *An Analysis of Voter Fraud in the United States*, DEMOS (Dec. 19, 2007), at 13, <https://www.demos.org/sites/default/files/publications/Analysis.pdf> [<https://perma.cc/8JRV-J6QB>], describing the 2000 elections in St. Louis: “Hundreds of eligible voters were unable to vote because their names had been put on ‘inactive’ lists which were not distributed to St. Louis’s more than 250 polling places. Poll workers were told to call headquarters to verify the eligibility of voters whose names were not on their lists, but the problem was so extensive, the phone lines were jammed for most of the day. When poll workers were unable to get through, they told voters to go down to the Board’s main office to plead their case. Hundreds of people tried to cram into the Board’s office at 300 North Tucker Boulevard. Many were still standing in line at 10 p.m., demanding their right to vote.”

20. *Robert Odom v. Bd. of Election Comm’rs of the City of St. Louis*, No. 004-2379, (Mo. Cir. 2000); see Dirk Johnson, *The 2000 Elections: The Swing States; Judge Delays Closing of Polls in St. Louis Amid Unexpectedly Heavy Turnout*, N.Y. TIMES (Nov. 8, 2000), <https://www.nytimes.com/2000/11/08/us/2000-elections-swing-states-judge-delays-closing-polls-st-louis-amid.html> [<https://perma.cc/QEL9-GQ6L>].

21. The court issued a short opinion justifying its intervention a month later. See *State ex rel. Bush-Cheney 2000, Inc. v. Baker*, 34 S.W.3d 410 (Mo. Ct. App. 2000).

22. Carolyn Tuft, *Bond Wants Federal Investigation of Problems at City Polls; He Accuses Democrats of ‘Criminal Enterprise’ in Keeping Polls Open Late; Democrats Criticize Election Board*, ST. LOUIS POST-DISPATCH, Nov. 10, 2000, at A1, A8. See also, Safir Ahmed, *Slimin’ the City*, RIVERFRONT TIMES, Nov. 15, 2000, <https://www.riverfronttimes.com/stlouis/slimin-the-city/Content?oid=2473333> [<https://perma.cc/2YAV-BLRQ>] (describing Sen. Bond “tunder[ing]”: “Then he began

election sparked a national dialogue on voter fraud that led to calls for voter ID and other regulations on voting.²³ Senator Bond became the leading proponent of a federal voter identification requirement and, along with Senator Mitch McConnell, made a voter ID requirement a deal-breaker to garner support for passage of the Help America Vote Act, opening the door to stricter voter ID measures throughout the country.²⁴ Voter ID laws are among the most pernicious of voting barriers enacted over the last decade in the United States.²⁵ Today, some thirty-five states have laws requesting or requiring voters to show some form of identification at the polls.²⁶ The St. Louis fraud allegations in 2000, like many of the others waged that year, proved baseless.²⁷

Afterwards, several St. Louis organizations, including the St. Louis Black Leadership Roundtable, Urban League of Metropolitan St. Louis, the St. Louis NAACP, Mound City Bar Association, Missouri Interfaith Alliance, and ACLU of Eastern Missouri, formed a coalition, Citizens Concerned with African-American Voter Disenfranchisement, to advocate for needed voting reforms. Among other efforts, the Mound City Bar

banging the podium with his right fist. “That is -- *thump!* -- absolutely -- *thump! thump!* -- an outrage!” he bellowed. The crowd, predictably, went wild.”)

23. See, e.g., Denise Lieberman, *What’s Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights*, ADVANCEMENT PROJECT (2011), https://b3cdn.net/advancement/04b36eb4438666daac_ijm6bt0wf.pdf [<https://perma.cc/32LY-P7UE>]; and Minnite, *An Analysis of Voter Fraud*, *supra* note 19, at 14 (“The politics of voter fraud in St. Louis spilled over into the national debate on election reform that gripped the country after the Florida election debacle of 2000. Bond came to play a key role in the legislative battles over the Help America Vote Act of 2002.”)

24. *Id.* at 15 (“In hindsight, the HAVA ID requirement, limited as it may be, nevertheless paved the way for a partisan movement in the states that uses allegations of voter fraud to impose more and more restrictive identification requirements on voting.”)

25. *Significant Voting Restrictions in America Since 2010*, BRENNAN CTR. FOR JUST. (Nov. 19, 2019), <https://www.brennancenter.org/new-voting-restrictions-america> [<https://perma.cc/VJ88-WZKT>].

26. *Voter Identification Laws in Effect in 2020*, NAT’L CONF. OF STATE LEGS. (Aug. 9, 2021), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> [<https://perma.cc/PL36-QP72>].

27. Minnite, *An Analysis of Voter Fraud*, *supra* note 19, at 6 (After “the 2000 Elections in St. Louis . . . politicians have made great hay, but charges of widespread fraud have not been substantiated.”). “Post-election investigations conducted within weeks of the election by the newly elected Republican secretary of state, Matt Blunt, and the *St. Louis Post-Dispatch* suggested only a marginal amount of voter fraud may have been committed in 2000. Voter and election worker error which later would prove to be the source of the irregularities did not receive the same amount of attention, at least at first.” *Id.* at 13. Justin Levitt, *The Truth About Voter Fraud*, BRENNAN CTR FOR JUST., 2007, at 24–26, https://www.brennancenter.org/sites/default/files/2019-08/Report_Truth-About-Voter-Fraud.pdf [<https://perma.cc/P2TN-QG25>].

Association offered to help the Board of Elections recruit qualified poll workers to no avail.

In March 2001, we filed a lawsuit arguing that St. Louis's election administration practices disparately impacted African American voters in violation of state law.²⁸ Along with lead counsel Don Wolff, I served as counsel for the ACLU of Eastern Missouri, and then-MCBA President Lee Clayton Goodman served as counsel for the Mound City Bar Association. The suit sought relief addressing voter purges, use of the inactive voter list, polling place resources, election judge training, and more. Meanwhile, a federal investigation ensued.²⁹ We worked with the Department of Justice's Civil Rights Division, which brought a federal suit under the National Voter Registration Act to cure the City's list maintenance irregularities. The suit resulted in a 2002 consent decree approved by U.S. District Judge Carol E. Jackson mandating changes to the jurisdiction's purge practices.³⁰

As Professor Lorraine Minnite, a leading national expert on voter fraud who has studied fraud in Missouri, concluded: "Most of the initial charges about criminal conspiracies and the defrauding of Missouri voters were eventually shown to be overblown."³¹ The investigations revealed that St. Louis's illegal list maintenance practices, not voter fraud, led to the chaos on Election Day 2000. For all the hype, the allegations of voter fraud in St. Louis proved baseless.³² No indictments were ultimately issued for fraudulent registrations by voters in the 2000 elections.

28. Moore v. St. Louis City Bd. of Elections, No. 014-00587 (Mo. Cir. 2001) (22nd Judicial Circuit).

29. Jo Mannies, *FBI Subpoenas Records From Election Board; Action Follows Charges of Vote Fraud in Recent Elections; Federal Grand Jury Will Get Documents*, ST. LOUIS POST-DISPATCH, Apr. 17, 2001, at A1.

30. Stipulation of Facts and Consent Order, United States v. Bd. of Elec. Comm'rs for City of St. Louis, No. 4:2002cv01235 (E.D. Mo. Aug. 12, 2002) (available at <https://www.clearinghouse.net/chDocs/public/VR-MO-0025-0001.pdf> [<https://perma.cc/8GRY-TUQY>]). A subsequent MIT/CalTech study found that four million qualified voters nationwide were shut out in 2000 and that registration errors and purges accounted for half of them. *Voting - What Is, What Could Be*, VOTING TECH. PROJECT, July 1, 2001 (available at <https://vote.caltech.edu/reports/1>).

31. Minnite, *An Analysis of Voter Fraud*, *supra* note 19, at 13.

32. *Id.* Indeed, Senator Bond's allegations of ghost voters on vacant lots proved to be administrative error. The *Post-Dispatch* surveyed 1,000 supposedly vacant lots and found that 704 of them had buildings on them and that errors in the city's property records and methods for classifying multi-parcel addresses accounted for the discrepancies. Jo Mannies & Jennifer LaFleur, *City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear to be in Error, Survey Finds; Just 14 Ballots Are Found Suspect*, ST. LOUIS POST-DISPATCH, Nov. 5, 2001, at A1, A10.

However, the fraud allegations surrounding the 2000 election emboldened subsequent efforts to malign voter registration efforts in communities of color.³³ The impact of this narrative on hampering registration efforts in communities of color was exacerbated by state noncompliance with laws like the National Voter Registration Act (“NVRA”), which mandates voter registration access through state agencies intended to bridge the registration gap in communities of color.³⁴ Litigation in 2008 revealed that social service agencies in Missouri were failing to meet their obligations under the NVRA to provide voter registration to customers, resulting in a consent decree.³⁵ Ten years later, I was part of a legal team³⁶ that brought suit on behalf of the League of Women Voters and A. Philip Randolph Institute (“APRI”) challenging the state’s failures to update some voters’ registration address when they moved.³⁷ The practice disproportionately harmed voters of color who are more likely to move within the state and within an election jurisdiction. We won a preliminary injunction requiring the state to offer registration to impacted individuals³⁸ and subsequently negotiated a settlement permanently revising the state’s practices to ensure voters’ registrations are updated.³⁹

33. See, e.g., *ACORN’s Voter Registration Drive Faces National and Local Scrutiny*, ST. LOUIS PUB. RADIO (Oct. 17, 2008), <https://news.stpublicradio.org/government-politics-issues/2008-10-17/acorns-voter-registration-drive-faces-national-and-local-scrutiny> [<https://perma.cc/SCV9-B4LD>].

34. See generally 52 U.S.C. § 20501.

35. *Assoc. of Comm. Orgs. For Reform Now v. Scott*, No. 08-CV-4084-NKL, 2008 WL 2787931, at *8 (W.D. Mo. July 15, 2008); *United States v. Missouri*, 535 F.3d 844 (8th Cir. 2008).

36. Including DEMOS, Advancement Project, ACLU, and Covington & Burling L.L.P. *Suggestions in Supp. of Pls. Mot. for Prelim. Inj.*, 20-1, *League of Women Voters v. Ashcroft*, No. 2:18-cv-04073-BCW (W.D. Mo. 2018).

37. *League of Women Voters v. Ashcroft*, 2:18-CV-04073 (W.D. Mo. 2017).

38. *League of Women Voters v. Ashcroft*, 336 F. Supp. 3d 998, 1002, 1007 (W.D. Mo. 2018).

39. See *League of Women Voters v. Ashcroft*, 2:18-CV-04073 (W.D. Mo. Nov. 21, 2019), Dkt. No. 149 (Nov. 21, 2019) (Stipulation and [Proposed] Order of Dismissal in Light of Settlement Agreement); *League of Women Voters*, 2:18-CV-04073, (W.D. Mo. Dec. 20, 2019) (Order of Dismissal); Jack Suntrup, *Missouri Settled Federal Lawsuit by Agreeing to Make ‘Motor Voter’ Registration Easier*, ST. LOUIS POST-DISPATCH (Nov. 21, 2019), https://www.stltoday.com/news/local/govt-and-politics/missouri-settles-federal-lawsuit-by-agreeing-to-make-motor-voter/article_4a565b17-0a3b-58be-bf7c-21e46ef9acfe.amp.html [<https://perma.cc/4PC6-F2M5>]. The Eight Circuit Court of Appeals recently affirmed attorney fees to counsel. See Kurt Erickson, *Missouri Ordered to Pay More Than \$1 Million in Legal Fees Over Voting Rights Case*, ST. LOUIS POST-DISPATCH (July 28, 2021), https://www.stltoday.com/news/local/crime-and-courts/missouri-ordered-to-pay-more-than-1-million-in-legal-fees-over-voting-rights-case/article_0edf3523-f2a2-53cd-93bc-41dd3074ccbb.html [<https://perma.cc/C6Y8-7WP3>].

But these discrete legal victories underscore ongoing barriers to registration and voting in communities of color that require ongoing community engagement and vigilance. “These are people . . . struggling to get by, struggling to find jobs, struggling to find housing, struggling to have access to healthcare,” said Jamala Rogers, founder of the Organization for Black Struggle (“OBS”), whose offices in St. Louis’s 22nd Ward reflect one of the lowest voter registration and participation rates in the City. “These are communities whose voices and needs have long gone unheard. It is hard for the people we serve to appreciate that their right to vote is meaningful when they daily fight so many barriers to participation.”⁴⁰ OBS holds community meetings and goes door-to-door registering voters and performing get out the vote efforts in the area. But as Rogers explains:

The truth is, for many of the constituencies we work with, voting is the least of their priorities and we work every day to make sure they know that their vote matters. If it were easier, they would be more inclined to do it. And as a result of it being too hard, sometimes they give up and don’t vote. I have seen other states take more proactive steps to make it easier to cast a ballot. There’s no reason it has to be this complicated.⁴¹

But it is—and often intentionally so. A 2020 report from the Poor People’s Campaign reinforced data showing that low-income individuals face greater barriers the ballot—low-income eligible voters are about twenty-two percentage points less likely to vote in national elections than those with higher incomes.⁴² In Missouri, low-income eligible but unregistered voters comprise about eighteen percent of the total electorate.⁴³ Prior census data estimated there to be 155,750 eligible but unregistered voters of color in Missouri.⁴⁴

40. Declaration of Jamala Rogers at ¶ 19, *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790 (W.D. Mo. 2020) (2:20-cv-04184-BCW, Doc. No. 27-1).

41. *Id.*

42. ROBERT PAUL HARTLEY, UNLEASHING THE POWER OF POOR AND LOW-INCOME AMERICANS 9 (2020) (available at <https://www.poorpeoplescampaign.org/wp-content/uploads/2020/08/PPC-Voter-Research-Brief-18.pdf> [<https://perma.cc/7JTW-EKVH>]).

43. *Id.* at 13 fig. 4.

44. Census data estimates that as of 2012, there were an estimated 155,750 unregistered voters

The COVID pandemic exacerbated these barriers, particularly for communities of color hardest hit by the pandemic. As explained by 2021 MCBA President Ken Goins, that's one reason the Mound City Bar Association supported the Urban League's pandemic-driven food drives in north St. Louis County with voting information.⁴⁵ In advance of the 2020 elections, MCBA volunteers went car to car conducting voter registration while people waited in their vehicles for food pantry distributions. It's about meeting people where they are at, Goins explained.

Registration barriers are exacerbated by barriers at the polls, including restrictive voter ID laws that disproportionately impact voters of color. Voter ID laws are among the most pernicious of polling place barriers enacted over the last decade in the United States.⁴⁶ Today, some thirty-five states have laws requiring voters to show identification at the polls.⁴⁷ These laws disparately impact African Americans.⁴⁸ Missouri has been at the forefront of the nation's photo ID debate, which continued to gain traction following the 2000 elections and subsequent passage of the Help America Vote Act.

In 2006, Missouri was one of the first states (along with Indiana and Georgia) to pass a new strict photo ID requirement, requiring voters to present a Missouri or federally issued non-expired photo identification to

of color in Missouri: 22,465 Latino voters, 111,440 Black voters, and 21,845 Asian voters. In addition, there were 1,119,895 unregistered white voters. These numbers translate into voter registration rates of 76% for Latino voters, 77% for Black voters, and 51% for Asian voters. There were 2,923,000 registered white voters in Missouri, and the registration rate for this demographic was 77%. *Voting Age Population by Citizenship and Race*, U.S. CENSUS BUREAU, AM. COMMUNITY SURV., (2008-2012 5-YEAR ESTIMATES); see also *Voting and Registration in the Election of November 2012 - Detailed Tables*, U.S. CENSUS BUREAU; and U.S. CENSUS BUREAU, POPULATION CHARACTERISTICS REP., REPORTED VOTING AND REGISTRATION BY SEX, RACE AND HISPANIC ORIGIN, FOR STATES, Nov. 2012.

45. Phone Interview with Ken Goins, President, Mound City Bar Ass'n (July 27, 2021) (notes on file with author).

46. *New Voting Restrictions in America*, BRENNAN CTR. FOR JUST. (Nov. 19, 2019), <https://www.brennancenter.org/new-voting-restrictions-america> [<https://perma.cc/VJ88-WZKT>].

47. Wendy Underhill, *Voter Identification Requirements; Voter ID Laws*, NAT'L CONF. OF STATE LEGS. (Feb. 24, 2020), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> [<https://perma.cc/PL36-QP72>].

48. *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, BRENNAN CTR. FOR JUST. (Nov. 2006), https://www.brennancenter.org/sites/default/files/2020-09/download_file_39242.pdf [<https://perma.cc/86T7-NBZW>]. African Americans are more than twice as likely to lack adequate ID: 25% of African-American voting-age citizens—more than 5.5 million people—have no current government-issued photo ID. *Id.*

vote.⁴⁹ The Missouri Supreme Court struck down the requirement, finding it constituted “a heavy and substantial burden on Missourians’ free exercise of the right of suffrage” in violation of the Missouri Constitution.⁵⁰ The court affirmed that the Missouri Constitution “establish[es] with unmistakable clarity that the right to vote is fundamental to Missouri citizens”—a right the court found “at the core of Missouri’s constitution and, hence, receive[s] state constitutional protections even more extensive than those provided by the federal constitution,” requiring a higher bar under state law for voter ID and other measures that burden the right to vote in Missouri.⁵¹

Yet, for the next decade, Missouri lawmakers promulgated legislation to mandate non-expired state-issued photo ID to vote, only now with an accompanying proposed state constitutional amendment intended to eradicate the constitutional infirmities identified in *Weinschenck*. During that time, I coordinated efforts of the Missouri Voter Protection Coalition to lobby against such measures.

A pair of measures passed the legislature in 2011—a photo ID requirement and a proposed constitutional amendment intended to make the requirement constitutionally permissible.⁵² Missouri Governor Jay Nixon vetoed the statutory photo ID requirement.⁵³ We filed a lawsuit that invalidated the summary language for the proposed constitutional amendment.⁵⁴ The *St. Louis Post-Dispatch* called the constitutional amendment ballot proposal “one falsehood built upon another,”⁵⁵ but Missouri’s solidification of the voter fraud narrative was enshrined.

49. *Voter ID History*, NAT’L CONF. OF STATE LEGS. (May 31, 2017), <https://www.ncsl.org/research/elections-and-campaigns/voter-id-history.aspx> [<https://perma.cc/YAP2-KA2M>]; see also S.B. 1014, 93d Gen. Assemb., 2d Reg. Sess. (Mo. 2006).

50. *Weinschenck v. State*, 203 S.W.3d 201, 215 (Mo. 2006).

51. *Id.* at 204, 215 (applying strict scrutiny under the Missouri Constitution); cf. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190–91 (2008) (employing a lesser balancing test to uphold Indiana’s voter ID law under the federal constitution).

52. S.B. 3, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011); S.J.R. 2, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011).

53. Letter from Jeremiah W. (Jay) Nixon, Governor of the State of Mo., to the Mo. Secretary of State Vetoing S.B. 3 (June 17, 2011), <https://static.votesmart.org/static/vetotext/39794.pdf> [<https://perma.cc/NX88-FKHK>].

54. *Aziz v. Mayer*, No. 11AC-CC00439, at *5-6 (Mo. Cir. Mar. 27, 2012) (available at <https://www.colecounty.org/ArchiveCenter/ViewFile/Item/308> [<https://perma.cc/HA7B-4MM7>]).

55. Editorial, *It’s Pitch Perfect that Voter ID Measure Tossed as a Fraud*, ST. LOUIS POST-

With each passing year, more photo ID proposals ensued, while their purported justifications were further undermined as more studies confirmed the rarity of voter fraud. Missouri law already required all voters to produce identification at the polls, but voters could use non-photo IDs. There has never been a prosecution for voter impersonation in Missouri—the only irregularity a photo ID requirement could address—and studies show voter fraud to be exceedingly rare.⁵⁶

Nevertheless, ten years after *Weinschenck*,⁵⁷ Missouri lawmakers passed H.B. 1631, along with a proposed constitutional amendment,⁵⁸ which appeared as Amendment 6 on the ballot in 2016. Arguing that a photo ID mandate “purports to solve a problem that does not exist,” Governor Jay Nixon vetoed the statutory requirement, H.B. 1631, but this time, lawmakers overrode his veto.⁵⁹ In November 2016, Missouri voters overwhelmingly passed the constitutional proposal, Amendment 6,⁶⁰ which

DISPATCH (Apr. 2, 2012), http://www.stltoday.com/news/opinion/columns/the-platform/editorial-it-s-pitch-perfect-that-voter-id-measure-tossed/article_44afed8c-d617-5f65-a205-e8e037a610c0.html#ixzz1qwZZOMzB [<https://perma.cc/S78A-UQH4>].

56. See MINNITE, THE MYTH OF VOTER FRAUD, *supra* note 17, at 93 (showing that allegations of widespread voter impersonation fraud at the polls are unsupported by empirical evidence); see also Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <https://www.washingtonpost.com/news/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/> [<https://perma.cc/KQA4-76A5>].

57. Ari Berman, author of *Give us the Ballot*, wrote that as “one of the most racially divided states in the country,” Missouri’s “ten-year voter-ID push has more to do with the intersection of race and political power” than election integrity. Ari Berman, *One of the Most Racially Divided States in the Country Just Passed a New Voter-ID Bill*, THE NATION (May 13, 2016), <https://www.thenation.com/article/one-of-the-most-racially-divided-states-in-the-country-just-passed-a-new-voter-id-bill/> [<https://perma.cc/39YY-BK8R>].

58. H.B. 1631, 98th Gen. Assemb., 2d Reg. Sess. (Mo. 2016); H.J.R. 53, 98th Gen. Assemb., 2d Reg. Sess. (Mo. 2016).

59. Missouri Governor Jay Nixon vetoed H.B. 1631 in July 2016, calling it “an affront to Missourians’ fundamental right to vote.” Letter from Jeremiah W. (Jay) Nixon, Governor of the State of Mo., to the Secretary of State of Mo. (July 7, 2016), <http://www.house.mo.gov/billtracking/bills161/rpt/HB1631v1.pdf> [<https://perma.cc/Q5D5-MSYT>]. In his veto letter, he wrote that the law was “motivated by an attempt to suppress voter turnout among certain classes of voters.” *Id.* He further wrote, “[m]aking voting more difficult for qualified voters and disenfranchising certain classes of people is wrong.” *Id.* In September 2016, lawmakers overrode the veto, allowing the measure to be implemented following passage of Amendment 6. Tim Curtis, *General Assembly Votes to Override Veto on Photo Voter ID*, THE MO. TIMES (Sept. 14, 2016), <https://themissouritimes.com/house-votes-override-veto-photo-voter-id-senate-come/> [<https://perma.cc/C7Q4-GPCE>].

60. See State of Missouri, General Election, Nov. 8, 2016, Official Results, MO. SEC. OF STATE (Dec. 12, 2016), <https://enrarchives.sos.mo.gov/enrnet/default.aspx?eid=750003949> [<https://perma.cc/85S8-S3ZS>] (Amendment 6 passed by a margin of 63–37%).

opened the door to implementation of the legislation.⁶¹ Notably, the amendment does not mandate strict photo ID to vote, but instead permits lawmakers to enact voter identification legislation—which they did with H.B. 1631. On the eve of the law’s implementation, I organized a rally of voter advocates representing numerous organizations, including then-Sen. Jamilah Nasheed and then-St. Louis Treasurer, now-Mayor Tishaura Jones, at St. Louis’s Old Courthouse, the site of the *Dred Scott* trial, denouncing the law’s inequities.⁶² The new voter ID law went into effect on June 1, 2017, establishing a voter ID framework that was later modified by a court injunction.⁶³

Option 1 required voters to present a non-expired (or non-expiring) photo ID issued by the State of Missouri or the federal government to vote.⁶⁴ Option 2 allowed voters presenting an alternate form ID—such as a voter notification card from the election authority; student ID from a Missouri college or university; or a current utility bill, bank statement, or other government document with the voter’s name and current address—to cast a regular ballot upon signing an affidavit confirming that the voter did not possess a photo ID and acknowledging that a photo ID is required to vote.⁶⁵ Voters without either form of ID could cast a provisional ballot, which would be counted only if the voter returned to the polls on election day with a valid photo ID or if the voter’s signature on the provisional ballot affidavit matched the signature on file with the election authority.⁶⁶

61. The Amendment 6 Official Ballot Title read: “Shall the Constitution of Missouri be amended to state that voters may be required by law, which may be subject to exception, to verify one’s identity, citizenship, and residence by presenting identification that may include valid government-issued photo identification?” *2016 Ballot Measures*, MO. SEC. OF STATE, <https://www.sos.mo.gov/petitions/2016BallotMeasures> [https://perma.cc/XL2G-CLNY].

62. *New Voter Photo ID Law is Unclear and Unfunded, Advocates Claim*, ST. LOUIS AM. (June 8, 2017), http://www.stlamerican.com/news/political_eye/new-voter-photo-id-law-is-unclear-and-unfunded-advocates-claim-ashcroft-slow-to-promote/article_9d408962-4bd9-11e7-80f4-3fbd76ec8c6b.html.

63. *Priorities USA v. State*, No. 18AC-CC00226, 2018 WL 6031529, at *2, *7 (Mo. Cir. Oct. 23, 2018), *aff’d en banc*, 591 S.W.3d 448 (Mo. 2020).

64. MO. REV. STAT. § 115.427.1 (2017).

65. § 115.427.2(1). In October 2018, Judge Richard Callahan enjoined use of the affidavit, a ruling that was upheld by the Missouri Supreme Court in January 2020 in *Priorities USA v. State*, 591 S.W.3d 448.

66. See § 115.427.4. Notably, the state must provide a form of state-issued ID without cost to voters who request one for the purposes of voting. See, e.g., § 115.427.6(1) (requiring the State to provide one nondrivers’ license without cost to voters who do not already possess such a document);

The law required advance notice to the public⁶⁷ and sufficient funding,⁶⁸ yet no outreach plan was forthcoming.⁶⁹ These failures formed the basis of a lawsuit we filed on behalf of the NAACP and League of Women Voters.⁷⁰ We argued that insufficient appropriations starved the law's implementation and contributed to the confusing, misleading, and inadequate notice voters received.⁷¹

A second case challenging the 2017 photo ID law was brought by Priorities USA and Mildred Gutierrez, a voter from Lee's Summit, Missouri. They argued that the ID law constituted an "undue burden" for voters who lack or would face significant hurdles in obtaining the required

§ 115.427.6(2) (guaranteeing one copy without cost to the voter of a birth certificate, marriage license, divorce decree, certificate of adoption, court order changing name, Social Security card, or naturalization papers); § 115.427.6(4) (free nondriver's license for purposes of voting).

67. The state must (a) provide sufficient advance notice to voters of the requirements of the law, § 115.427.5; and (b) facilitate the receipt of and payment for the underlying documents necessary for voters to obtain an approved identification, § 115.427.6(2). It also requires the Department of Revenue to issue free nondrivers' licenses and prepare an affidavit to obtain such a free nondrivers' license. § 115.427.6(4).

68. § 115.427.6(3) ("[i]f there is not a sufficient appropriation of state funds, then the personal identification requirements [of the Voter ID Law] shall not be enforced.").

69. When attendees at the January 2017 meeting with Secretary of State Jay Ashcroft asked him what the implementation and voter education plan was, they were told there was not a plan in place. Instead, he said the State was looking to groups like the NAACP and other organizations to provide information to Missourians about the law. Trial Transcript at 68:4-20, *Mo. State Conf. of the NAACP v. State*, No 17AC-CC00309 (Mo. Cir. Aug. 19, 2019); see Letter from Missouri Voter Protection Coalition to Jay Ashcroft, Mo. Sec. of State, and Joel Walters, Director of Mo. Dep't of Revenue (May 13, 2018), <https://advancementproject.org/resources/letter-missouri-voter-protection-coalition/> [<https://perma.cc/FLZ4-WGGD>].

70. *Mo. State Conf. of the NAACP*, No 17AC-CC00309; see Kevin McDermott & Celeste Bott, *St. Louis Will Get Early Preview of New Photo ID Voting Law*, ST. LOUIS POST-DISPATCH, June 1, 2017, at A1, A4. There was no appropriation of funds to the SOS until after July 1, more than two weeks after in-person absentee voting began for that election. *Id.* at A4. Christine Dragonette, who oversees an ID acquisition program at St. Francis Xavier College Church in St. Louis for clients with barriers to obtaining state ID's, was added as an individual taxpayer plaintiff.

71. At the time of the filing, the State had appropriated \$0 for the Secretary of State and just \$100,000 to the Department of Revenue for the implementation of the Voter ID Law. The Second Amended Petition pointed to the state's failure to conduct mandatory implementation activities like the advance notice provisions, as evidence. Second Am. Pet. for Injunctive and Declaratory Relief at ¶¶ 21-29, *Mo. State Conf. of the NAACP v. State*, No. 17AC-CC00309 (Mo. Cir. Nov. 22, 2017). Following a week-long trial in August 2019, Cole County Circuit Judge Jon Beetem dismissed the case for lack of subject matter jurisdiction in April 2020. See Kyreon Lee & The Associated Press, *Coalition of Voter Advocates Headed to Trial to Challenge Missouri's Voter ID*, KRCG (Aug. 17, 2019), <https://krcgtv.com/news/local/coalition-of-voter-advocates-headed-to-trial-to-challenge-missouris-voter-id> [<https://perma.cc/PS2W-WVU5>]; Judgment, *Mo. State Conf. of the NAACP v. State*, No. 17AC-CC00309-01 (Mo. Cir. Apr. 20, 2020).

ID, and that it suppressed voter turnout among “vulnerable populations.”⁷² In an injunction issued a few weeks before Election Day in 2018, Missouri Circuit Court Judge Richard Callahan blocked the affidavit required for non-photo IDs.⁷³ Saying the “affidavit is, on its face, contradictory and misleading,” Judge Callahan concluded that either photo or non-photo ID “shall be sufficient to enable any registered voter to cast a regular ballot,”⁷⁴ finding “no compelling state interest is served by misleading local election authorities and voters into believing a photo ID card is a requirement for voting; in the case of the former it results in qualified voters being turned away at the polls; in the case of the latter, it results in qualified voters not even showing up at the polls. As desirable as a Missouri-issued photo ID might be, unlike an American Express Card, you may leave home without it, at least on election day.”⁷⁵

But notice of the ruling was dismal, and confusion reigned on Election Day 2018. The local Election Protection Command Center I coordinated was inundated with hotline calls from voters asked to present photo ID to vote.⁷⁶ We filed an election day lawsuit against St. Charles County where complaints were particularly numerous and obtained a writ of mandamus prohibiting election officials from demanding photo ID to vote that day.⁷⁷

In January 2020, the Missouri Supreme Court affirmed Judge Callahan’s ruling striking the affidavit portion of the ID law.⁷⁸ Nodding to the heightened scrutiny established by *Weinschenk* for burdens to voting, the court concluded that the measure failed even rational basis scrutiny.⁷⁹

72. Pet. for Declaratory and Injunctive Relief at ¶ 28, *Priorities USA v. State*, No. 18AC-CC00226, 2018 WL 6031529 (Mo. Cir. June 13, 2018).

73. Amend. Order and J. at *7, *Priorities USA v. State*, Am. No. 18AC-CC00226, 2018 WL 6031529 (Mo. Cir. Oct. 23, 2018).

74. *Id.* at 5, 7.

75. *Id.* at 6 (footnote omitted).

76. Peggy Lowe, *Missouri Voters Report Long Lines, Broken Machines and Confusion Over Photo ID Law*, KWUR (Nov. 6, 2018), <https://www.kcur.org/post/missouri-voters-report-long-lines-broken-machines-and-confusion-over-photo-id-law#stream/0> [<https://perma.cc/4SJK-WB6E>]; Sam Levine, Samantha Storey & Jessica Huseman, *Voters In Missouri Wrongfully Hassled For Not Having Photo ID*, HUFFINGTON POST (Nov. 6, 2018), https://www.huffpost.com/entry/missouri-photo-id-poll-workers_n_5be2398ae4b0e8438890fc1e [<https://perma.cc/EZ96-GD3W>].

77. Order on Emergency Writ of Mandamus, *Dukes v. Chrismer*, No. 1811-CC01037 (Mo. Cir. Nov. 6, 2018).

78. *Priorities USA v. State*, 591 S.W.3d 448 (Mo. 2020).

79. *See id.* at 453. (“This Court need not evaluate the extent of the burden imposed by the affidavit requirement because the requirement does not satisfy even rational basis review.”).

The affidavit requirement was overturned.⁸⁰ The Missouri Supreme Court affirmed that *Weinschenck* “made clear that requiring individuals to present photo identification to vote is unconstitutional.”⁸¹ By striking the affidavit requirement for non-photo IDs, Missouri voters can equally cast a ballot upon presentation of a photo or non-photo ID—for now.⁸²

After the 2000 elections showcased scores of local voters who were never able to cast their ballot, it became clear that we needed to be more proactive to address voting barriers in communities of color before Election Day and ensure voters had ready access to help on Election Day itself when problems arose. While advocacy helped usher in new leadership at the Board of Elections and the DOJ consent decree changed list maintenance practices going forward, that couldn’t reclaim the votes that had been lost on Election Day. I began working with national advocates who organized

80. *See id.* at 455. (“Although the State has an interest in combatting voter fraud, requiring individuals voting under option two to sign a contradictory, misleading affidavit is not a reasonable means to accomplish that goal.”).

81. *Id.* at 458. The dissenting justices argued that the trial court should have severed § 115.427.2 (subsection 2, allowing forms of non-photo ID) in its entirety, not just the affidavit language. *Id.* at 461 (Powell, J., dissenting). The majority rejected this, on grounds that eliminating the non-photo ID options would in effect create the very kind of strict photo ID requirement that was rendered unconstitutional in *Weinschenck v. State*, 203 S.W.3d 201 (Mo. 2006). *Priorities USA*, 591 S.W.3d at 458 (majority opinion).

82. Within a week of the *Priorities* ruling, the Missouri Legislature held a hearing on legislation eliminating non-photo IDs and eliminating the advance notice requirements. Hearing on H.B. 1600 Before the H. Subcomm. on Elections and Elected Officials of the H. Comm. on Rules and Leg. Oversight, 100th Gen. Assemb., Reg. Sess. (Mo. 2020); *see also* H.B. 1600, 100th Gen. Assemb., Reg. Sess. (Mo. 2020). *See* Summer Ballentine, *Missouri Lawmakers Try Again with Voter ID After Court Loss*, JOPLIN GLOBE (Jan. 22, 2020), https://www.joplinglobe.com/news/missouri-lawmakers-try-again-with-voter-id-after-court-loss/article_eaad2f7e-3d5e-11ea-a48c-0b8e99425b4f.html [<https://perma.cc/273T-QW7J>]; Alisa Nelson, *Ashcroft: Battle is Not Over on Missouri’s Voter ID Law*, OZARK FIRST (Jan. 17, 2020), <https://www.ozarksfirst.com/local-news/regional-news/ashcroft-battle-is-not-over-on-missouris-voter-id-law/> [<https://perma.cc/XFD7-ZLMN>] (“Missouri Secretary of State Jay Ashcroft wants the Legislature to fight a Supreme Court ruling this week about the state’s voter ID law”). The Missouri House passed similar legislation in 2021. *See* H.B. 334, 101st Gen. Assemb., Reg. Sess. (Mo. 2021). Lawmakers have promised to prioritize this legislation again in 2022. *See* John Haughey, *Missouri Republicans Chart 2022 Effort to Adopt Legal Voter Photo ID Law*, THE CTR. SQUARE (Sept. 15, 2021), https://www.thecentersquare.com/missouri/missouri-republicans-chart-2022-effort-to-adopt-legal-voter-photo-id-law/article_19ef2e72-165c-11ec-834a-b7a6c070021a.html [<https://perma.cc/R4P7-6683>]; Rebecca Rivas, *Missouri Republicans Vow to Push Again for Voter ID Law*, JOPLIN GLOBE (Sept. 19, 2021), https://www.joplinglobe.com/news/local_news/missouri-republicans-vow-to-push-again-for-voter-id-law/article_5eca1010-17c0-11ec-8b5f-0bcb85fc79f2.html.

what ultimately became Election Protection,⁸³ now the largest permanent nonpartisan voter protection coalition in the country, which assists voters before and on Election Day through a nationwide legal hotline staffed by attorneys combined with locally organized monitors assisting voters in person at polling places.

We hosted the first local Election Protection legal effort in the basement of our St. Louis ACLU office in 2002. The efforts expanded in 2004 with masterful ground organizing by Lew Moye and the Coalition of Black Trade Unionists, who helped recruit and train poll monitors for the effort. By 2006, Moye secured the Omega Center in North St. Louis as a local command center. Moye organized hundreds of poll monitor volunteers from the ranks of black trade unionists who monitored polls in their own communities. But we needed a team of local attorneys who could advocate with officials and immediately get matters into court. MCBA's former president (and then-National Bar Association president) Mavis Thompson stepped up to the task. She and I coordinated the Legal Command Center, which included staffing dozens of MCBA affiliated lawyers on the hotline, dispensing them to poll sites to document incidents, and stationing them at election board headquarters on standby for immediate advocacy or to race to the courthouse for emergency filings. Veteran civil rights lawyer Frankie Freeman was among the most dedicated volunteers even as an octogenarian—including during the 2018 elections not long before her death, where she coordinated strategy and directed young lawyers to respond to voter complaints at the polls and advocate with election officials. After each major election, Thompson and I would spend hours parsing through the hand-written intake forms (a digital database today) to prepare Election Protection reports and policy recommendations that we then presented to election officials. Those early meetings were a challenge. Election officials were often leery of our motives, and it was hard to get them to meet with us. Over the years, we fostered relationships of trust with election administrators of both political parties, and local election officials now proactively reach out to us for election protection meetings.

Pamela Meanes was MCBA president in 2006 and helped recruit lawyers and coordinate Election Day litigation. "I remember working the phones," she recalled. "We had to be deliberate on what problems needed

83. See Election Protection, <https://866ourvote.org>.

immediate action at the polls and which were systemic and needed litigation.”⁸⁴ Meanes directed lawyers to poll sites to gather information and draft affidavits for legal advocacy. “Every time I worked polls I felt I had done something. I felt like I contributed. We were active on the ground. We weren’t just taking phone calls.” Meanes recalled taking a hotline call from a voter who was told he couldn’t vote due to a criminal record. Meanes met him at his polling place, took him to the Election Board, and waited in line with him to advocate with an elections supervisor on his behalf. His denial turned out to be an error. Meanes got his registration fixed, and he cast a regular ballot. Two years later, that voter reached out to her on Facebook to thank her for staying with him and helping him vote. “He said, ‘you gave me hope; you stayed with me even though you didn’t know me.’ That made me feel good. A young African American man. He could have been my nephew, so I said, ‘in that way I do know you.’” When we realized the St. Louis City Election Board was requiring applicants with prior criminal convictions to present extra documentation of their release from supervision, Tony Rothert, Legal Director of the Missouri ACLU, and I advocated with the Board to eliminate burdensome processes for registering and restoring voters with prior felony convictions to the rolls.⁸⁵

By 2008, the local Election Protection program grew, and Meanes arranged for Election Protection legal trainings at the St. Louis law offices of Thompson Coburn. Mavis Thompson continued as co-chair of the Legal Command Center, responding to numerous issues in that historic 2008 presidential election, which resulted in the nation’s first African American president. In advance of the 2008 election, my office studied the likely wait times by looking at ballot and machine allocations and ballot items. We found a high likelihood of long wait times, particularly in precincts of color, which saw increased registration that year with Obama on the ballot.⁸⁶ We

84. Interview with Pamela Meanes, Partner, Thompson Coburn LLP (July 20 and July 31, 2021) (notes on file with author).

85. Letter from Denise Lieberman, Advancement Project, and Anthony Rothert, ACLU of Eastern Missouri, to St. Louis Election Bd. (Oct. 13, 2008) (on file with author).

86. *The End of the Line: Preparing for a Surge in Voter Turnout in the November 2008 General Election*, ADVANCEMENT PROJECT, <http://www.advancementproject.org/> (Our analysis concluded that under even moderate voter turnout and vote time estimates, a number of St. Louis County polling places would run out of paper ballots and be unable to process the number of expected voters within the thirteen-hour voting day); see, e.g., Brentin Mock, *Why Does St. Louis Keep Running Out of Ballots on Election Day?*, BLOOMBERG: CITYLAB (Apr. 6, 2016), <https://www.bloomberg.com/news/articles/2016-04-06/>

urged election officials to print more paper ballots to make up the difference. Even with some remedial measures following our report and advocacy, insufficient resources, including limited machines and poll stations, led to hours-long wait times in twenty-seven disproportionately black precincts in north St. Louis County, requiring Election Day advocacy to allow voters to cast paper ballots on clipboards or at empty tables.⁸⁷ Meanwhile, the long lines prompted police presence at more than a half dozen predominantly African American polling sites in north St. Louis County. MCBA attorneys arranged for food for those standing in lengthy lines and waited with voters late into the night until the last voters cast their ballots, guarding against further police intimidation.

The program continued to expand further in 2010 and 2012. Ebony McCain, MCBA President from 2010-2011, had been a regular Election Protection volunteer staffing the phone lines and dispatching others to polling places. As MCBA President, she recruited other lawyers to the effort. “After becoming a lawyer, I was very excited that I could assist voters in understanding and asserting their right to vote through MCBA’s work with Election Protection,” McCain said.⁸⁸ Many more MCBA members became regular volunteers, including Hope Whitehead, Inez Ross, Denyse Jones, Ruby Bonner, Danielle Carr, Jerryl Christmas, and others. “I started volunteering for Election Protection in 2015 or 2016 through the partnership MCBA established with the Missouri Voter Protection Coalition and always looked forward to the work because it allowed me to stay up to date on Missouri election law and also give back to the community,” Carr said.⁸⁹

dozens-of-st-louis-county-precincts-run-out-of-ballots-on-election-day [https://perma.cc/CP9S-M2ZY].

87. See *Seven-Hour Waits Reported in Missouri City*, CNN: POLITICAL TICKER (Nov. 4, 2008); Alan Zagier, *Seven-Hour Wait To Vote? Missouri Voters Don’t Give Up*, HERALD-WHIG (Nov. 4, 2008), https://www.whig.com/archive/article/seven-hour-wait-to-vote-missouri-voters-don-146-t-give-up/article_639b5737-59d2-507d-83e4-da1d8f9bdcc1.html [https://perma.cc/2A74-J3X9]; *Wait Times Reach 4 to 6 Hours in St. Louis Area*, CNN: POLITICAL TICKER (Nov. 4, 2008), <https://political.ticker.blogs.cnn.com/2008/11/04/wait-times-reach-4-to-6-hours-in-st-louis-area/> comment-page-1/; see also OFFICE OF THE MO. SEC. OF STATE, VOTERS FIRST: AN EXAMINATION OF MO.’S 2008 STATE AND FED. ELECTIONS, (Apr. 2009), <http://www.sos.mo.gov/elections/VotersFirst/2008/VotersFirst2008Final.pdf>.

88. Statement from Ebony McCain, MCBA Member, to Denise Lieberman (July 27, 2021) (notes on file with author).

89. Statement from Jolene Danielle Carr, MCBA Member, to Denise Lieberman (Sept. 2, 2021) (notes on file with author).

Other MCBA members began their Election Protection work as law students and continued as lawyers, such as Rene Morency, who organized Election Protection trainings as chair of the Young Lawyer's Division of the Bar Association of Metropolitan St. Louis. Monique Abby—a former legal intern of mine at the ACLU—served as MCBA president from 2017-2018 and described her long-term commitment: “As a Past President of MCBA and a member for almost two decades, I have worked with the organization to register the community to vote, to educate the community about their voting rights and to keep [them] abreast of the changes and updates to the voting requirements.”⁹⁰

The racial backlash to Obama's election set off a firestorm of restrictive voting proposals in states around the country that came to a head following the 2010 midterm elections. Thirty-four states—including Missouri—introduced nearly identical restrictive voter ID proposals in the first two months of 2011,⁹¹ setting off a wave of litigation once they passed. Some of those laws, like those enacted in Texas, Mississippi, and Alabama, were blocked or held by the Voting Rights Act's preclearance provisions requiring covered jurisdictions to submit voting changes for federal review, blocking implementation of practices deemed to be racially retrogressive. But in 2013, the U.S. Supreme Court gutted the Voting Rights Act's prophylactic preclearance provisions by ruling its coverage formula unconstitutional.⁹² The *Shelby* decision “emboldened attacks on the right to vote, not just in the former preclearance States, but around the country, designed to curtail the growing political power of voters of color as they

90. Statement from Monique Abby, MCBA Member, to Denise Lieberman (July 27, 2021) (notes on file with author).

91. See, e.g., Denise Lieberman, *What's Wrong With This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights*, ADVANCEMENT PROJECT (2011), [<https://perma.cc/32LY-P7UE>].

92. *Shelby Cty. v. Holder*, 570 U.S. 529 (2013). Section 5 of the Voting Rights Act of 1965 includes a “preclearance” provision requiring certain states and local election jurisdictions with a history of discrimination in voting to have new voting changes reviewed by the United States Attorney General or a three-judge panel of the United States District Court for the District of Columbia to determine that the measure does not “deny or abridge the right to vote on account of race, color, or membership in a language minority group” before the new voting change may be implemented. In *Shelby*, the Supreme Court struck the coverage formula in Section 4(b) of the Voting Rights Act that was used to determine which jurisdictions are subject to the preclearance requirement of Section 5 of the Voting Rights Act. *Id.*

emerge into the new American majority.”⁹³ The ruling prompted Meanes to think more strategically about the role of black lawyers in the fight for voting rights as she ran for President of the National Bar Association that year. “When *Shelby* was decided, we knew it couldn’t be a one-off,” she said.⁹⁴ “The school to prison pipeline, police brutality, voting rights—it’s all connected. It really became critical in that moment to have a strategy for education and advocacy. So I used voting rights as one of the prongs of my platform. I reached out to experts to expand non-traditional groups we should affiliate with.”⁹⁵ After the police killing of Eric Garner, Meanes asserted that the organization’s protection of voting rights would provide tools for impacted communities to demand policing reform. Meanes became the President of the National Bar Association at the end of July 2014. Less than two weeks later, Michael Brown was killed by police in Ferguson, Missouri, setting off a nationwide reckoning on policing and criminal justice reform. Meanes realized that the role for black lawyers in voting rights right at home was more important than ever. “If we’re just registering people to vote, that’s not enough; we needed direct outreach; you need to teach people the power of their vote and how to engage their vote,” she said. “So I connected with elected officials in Ferguson and we hit the streets. We decided we should collaborate with groups on the ground doing the work, connect the groundwork with the lawsuits. Let’s talk about the full strategy on voting – we will still do voter protection, but that’s not all we will do; we will do a power map of injustice.”⁹⁶ At the national level, she began working closely with Advancement Project, where I then served as a senior voting rights attorney and, later, director of the organization’s Power and Democracy program.

93. *Voting Rights and Election Admin. in America: Hearing Before the H. Comm. on H. Admin.*, 116th Cong. (Oct. 17, 2019) (testimony of Denise Lieberman at 150-52), transcript available at: <https://www.govinfo.gov/content/pkg/CHRG-116hhrg38145/html/CHRG-116hhrg38145.htm> [<https://perma.cc/9BRF-UDZD>]; See *Assessment of Minority Voting Rights Access in the United States*, U.S. COMM’N ON C.R. (2018) (available at https://www.usccr.gov/files/pubs/2018/Minority_Voting_Access_2018.pdf), and Eric Bradner, *Discriminatory Voter Laws Have Surged in Last 5 Years, Federal Commission Finds*, CNN (Sept. 12, 2018), <https://edition.cnn.com/2018/09/12/politics/voting-rights-federal-commission-election/index.html>.

94. Interview with Pamela Meanes, Partner, Thompson Coburn LLP (July 20 and July 31, 2021) (notes on file with author).

95. *Id.*

96. *Id.*

Former MCBA Presidents Jerryl Christmas and Steve Harmon helped make sure that trainings and meetings were held in black-led community spaces, such as at the offices of 100 Black Men, the NAACP, the Urban League, and other locations in north St. Louis City and County. “It made me feel good that someone put my people and people of color ahead of their own advancement,” Meanes said.

MCBA played a pivotal role registering voters in Ferguson during protests following Michael Brown’s killing. MCBA member Sheena Hamilton recalled, “the Mound City Bar Association, through the leadership of past President Kendra Howard and then-President Jared Boyd, played an instrumental role in the community response to Ferguson.”⁹⁷ In 2014, Hamilton and MCBA member Chalana Oliver helped coordinate the MCBA’s participation in the Better Family Life Peace Fest, where the group registered hundreds of voters and handed out Know Your Rights Brochures. Ferguson voters came out in large numbers that year, but they were met with long lines and ballot shortages.⁹⁸ Voters in Ferguson later elected their first black mayor and now have majority representation of African Americans on the City Council. “The work that we have done has been tremendous in ensuring the Black community had fair and equal access to the polls. I’m honored that we have the ability to advocate on behalf of Black voters[.] I don’t know what would have happened in many polling situations to many of our people without our voice and expertise advocating on behalf of our people,” Christmas said.⁹⁹

As MCBA President, Harmon got black radio personalities like DJ Kut to promote the Election Protection hotline on the air. In addition, Harmon set up meetings with elections and public safety officials. “[I]t has been an honor to work alongside the Voter Protection Coalition to ensure voting rights for all,” Harmon said. “I am committed to continue working with Voter Protection.”¹⁰⁰

97. Statement from Sheena R. Hamilton, MCBA Member, to Denise Lieberman, (Aug. 16, 2021) (notes on file with author)

98. Carimah Townes, *Last Minute Problems at the Polls in Ferguson*, THINKPROGRESS (Nov. 4, 2014), <http://thinkprogress.org/lbupdate/3589050/last-minute-problems-at-the-polls-in-ferguson/>.

99. Statement from Jerryl Christmas, MCBA Member, to Denise Lieberman (Aug. 26, 2021) (notes on file with author)

100. Statement from Steve Harmon, MCBA Member, to Denise Lieberman (July 20, 2021) (notes on file with author).

MCBA member Celestine Dotson described MCBA's community work as "offering public forums pertaining to voting and elections laws MCBA has also issued written materials for the public pertaining to voting access and rights."¹⁰¹ Dotson stressed that community-based partnerships are key: "MCBA is a committed partner with the community in ensuring that every citizen who can vote does vote, we maintain a policy of increasing election access and knowledge for the betterment of our community."¹⁰²

When election officials decided to expand police presence at poll sites in Ferguson during the November 2014 midterm elections, in the raw weeks following Michael Brown's death, we advocated that additional police at polls were more likely to lead to voter intimidation than voter access, and they backed off the plan.¹⁰³ St. Louis County Councilwoman Rita Heard Days remembers these efforts well. She served as Democratic Director of Elections for St. Louis County from 2011 to 2015, and previously served in the Missouri Senate and Missouri House of Representatives, where she was on the Elections Committee. She helped facilitate our meeting that ultimately nixed the additional police presence at the polls in Ferguson and realized that the relationship between voter advocates and election officials need not be an adversarial one.

"With the history of the struggles with voting rights for Blacks in America, the MCBA has been a part of protecting the rights of minorities as they exercised their right to vote in the St. Louis region. As attorneys, assessing the legal perspectives of those denials was important as many citizens did not have the resources to fight court battles."¹⁰⁴ But, as Days reminds us, "the battle is not over and we have to be more vigilant than ever in protecting the rights of everyone to vote."¹⁰⁵ Carr agrees: "The tactics used to suppress voter rights seem to get more sophisticated with each voting cycle and but for Election Protection work and the many volunteers

101. Statement from Celestine Dotson, MCBA Member, to Denise Lieberman (Aug. 13, 2021) (notes on file with author).

102. *Id.*

103. Meeting of the St. Louis Cty. Bd. of Elections, Oct. 22, 2014 (notes on file with author); Letter from Denise Lieberman, Senior Att'y, Advancement Project, to St. Louis Cty. Bd. of Elections (Nov. 3, 2014) (on file with author).

104. Statement of Rita Heard Days, MCBA Member, to Denise Lieberman (Aug. 13, 2021) (notes on file with author).

105. *Id.*

that step up to safeguard the public, I hate to even think of what the election landscape would look like.”¹⁰⁶

The COVID-19 pandemic exacerbated barriers to the ballot for Missouri’s communities of color hardest hit by the deadly virus.¹⁰⁷ The pandemic posed an existential threat to voters’ ability to safely cast a ballot, made all the more difficult by Missouri’s restrictive absentee voting law, which strictly limits who is able to cast a ballot by mail.¹⁰⁸ Some sixty civil rights groups joined in advocating for needed policy measures to expand access to remote voting in Missouri, arguing that Missouri should join the thirty-five other jurisdictions that allow any voter to cast a ballot by mail without providing an excuse.¹⁰⁹ When Missouri Governor Mike Parson postponed the April 2020 municipal elections due to the pandemic, we argued that the voter registration deadlines should be extended as well.¹¹⁰

At a minimum, we argued that an existing reason to vote absentee in Missouri—“[i]ncapacity or confinement due to illness”¹¹¹—should cover Missouri voters who expected to confine themselves at home on Election Day to avoid contracting or spreading COVID-19. While several other

106. Statement from Jolene Danielle Carr, *supra* note 89

107. See Reis Thebault, Andrew Ba Tran & Vanessa Williams, *The Coronavirus is Infecting and Killing Black Americans at an Alarming High Rate*, WASH. POST (Apr. 7, 2020), <https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows>.

108. Section 115.277.1 RSMo strictly limits those who may cast absentee ballots in Missouri to voters who identify one of six permissible reasons they cannot go to the polls on election day. MO. ANN. STAT. § 115.277.1 (West 2020).

109. On behalf of the Missouri Voter Protection Coalition, I drafted “Measures to Ensure Voting in Missouri in the Wake of the COVID-19 Crisis” which were signed by approximately sixty Missouri organizations. Press Release, Mo. Voter Prot. Coal., Measures to Ensure Voting in Missouri in the Wake of the COVID-19 Crisis (Apr. 6, 2020), https://www.aclu-mo.org/sites/default/files/field_documents/measures_to_ensure_voting_in_missouri_amid_the_covid-19_crisis.pdf [https://perma.cc/XM4P-BAXY]; see Memorandum from Michael A. Wolff, Former Chief Justice Supreme Court of Missouri, *Absentee Voting in the COVID-19 Pandemic: When Voters Can Apply for and Use for Absentee Ballots Because of “Confinement Due to Illness”*, (Apr. 23, 2020), <https://www.courthousenews.com/wp-content/uploads/2020/05/wolff-memo.pdf> [https://perma.cc/N6WW-L99S].

110. Demand Letter from Missouri Voter Protection Coalition, ACLU of Missouri, DEMOS and Lawyers Committee for Civil Rights Under Law, to Gov. Michael Parson and Sec’y of State Jay Ashcroft (Mar. 20, 2020), https://lawyerscommittee.org/wp-content/uploads/2020/03/MO_VR-Deadline_Ltr_3-20-20.pdf [https://perma.cc/QEN9-6XME].

111. § 115.277.1(2).

excuse-based absentee states took this approach, Missouri did not. We brought suit on behalf of the NAACP and League of Women Voters arguing that Missouri voters who expected to confine themselves amid stay at home orders due to COVID-19 were in fact “confined” due to “illness” and should be able to vote absentee on that basis.¹¹² The suit helped prompt legislation, passed in the final hour of Missouri’s 2020 legislative session, expanding absentee voting without a notary to voters over sixty-five and those in specific risk categories for complications from the virus. The bill also included a provision allowing any voter to cast a ballot by mail but mandated an in-person notary requirement for those ballots.¹¹³ The legislation established different rules for how voters could request and return the excuse-based versus no-excuse remote ballots.¹¹⁴

The notary requirement proved troubling, particularly for those at heightened risk from COVID-19 but who were not exempt from the notary mandate, including those who are obese, have cystic fibrosis, have sickle cell disease, have hypertension or high blood pressure, are smokers, are pregnant,¹¹⁵ or people who live with or care for at risk individuals. This burden fell hardest on Missouri’s communities of color, especially black communities. We argued that in the context of the pandemic, the in-person notary requirement unduly burdened the right to vote.

The Missouri Supreme Court ultimately upheld the notary requirement.¹¹⁶ The court found that while the right to vote may be fundamental in Missouri, there is no fundamental right to vote absentee.

112. Mo. State Conf. of the NAACP v. State, No. 20AC-CC0000169 (Mo. Cir. 2020); Joe Harris, *Missouri Pushes Back on Absentee Voting for All Residents*, COURTHOUSE NEWS SERV. (May 12, 2020), <https://www.courthousenews.com/missouri-pushes-back-on-absentee-voting-for-all-residents/> [<https://perma.cc/74UE-9XYT>].

113. See S.B. 631, 100th Gen. Assemb., Reg. Sess. (Mo. 2020).

114. *Id.*

115. *People with Certain Medical Conditions*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 14, 2021), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html [<https://perma.cc/AZ7A-WTPU>]; *People with Certain Medical Conditions*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> [<https://perma.cc/KBH6-W5B5>].

116. Mo. State Conf. of the NAACP v. State, 607 S.W.3d 728 (Mo. 2020) (en banc). See also Juliette Fairley, *Voting Rights Group Organizes Notary Hubs After Missouri Supreme Court Upholds the Requirement*, DAILY RECORD (Oct. 23, 2020), <https://stlrecord.com/stories/558984872-voting-rights-group-organizes-notary-hubs-after-missouri-supreme-court-upholds-the-requirement> [<https://perma.cc/GUU4-67P5>].

Thus, the court avoided application of the strict scrutiny standard to the absentee provisions. Under the lower balancing test, the court upheld the state's right to regulate absentee voting with a notary requirement. Nevertheless, a concurring opinion helpfully reminded voters that the absentee law hinges on the voter's *expectation* of confinement, suggesting that rising transmission rates could lead some voters to such an expectation. A second case challenging Missouri's mail voting practices, among other voting rules, was also dismissed.¹¹⁷

Problems with Missouri's two-tiered, temporary pandemic remote voting provisions ensued, generating confusion during the August 2020 elections, the first time they were in place. As local election officials attempted to manage a four-fold increase in absentee ballot requests and crafted plans for socially-distanced in-person polling sites amid a massive shortage of poll workers, Missouri voters wrestled with confusion over mail voting eligibility, mail voting rules, strict absentee receipt deadlines, and postal delays that could prevent timely mailed ballots from being counted.¹¹⁸ This confusion fell hardest on those needing to cast no-excuse mail-in ballots, which by law could only be returned via the U.S. Postal Service, while excuse-based absentee ballots could be returned in person. During the August 2020 elections, ballot requests were rejected for minor errors, often errors that went unknown to the voter. In some jurisdictions, certain text on ballot envelopes was in small font size, which led many voters to miss a required check box. In St. Louis County, local advocates lead by Jennifer Lohman of the St. Louis Area Voter Protection Coalition volunteered to call voters whose ballot contained ministerial errors, but many vulnerable voters and those in locked down facilities (including seniors at nursing homes) were not able to cure their ballots in-person at busy election offices. Their ballots were not counted.

With just weeks remaining before the presidential elections, on behalf of black and faith-based organizations, we brought a federal lawsuit arguing that Missouri's lack of notice and cure for remote ballots violated due process and the Civil Rights Act. We also argued that allowing some remote

117. *American Women v. State*, No. 20AC-CC00333 (Mo. Cir. Oct. 22, 2020).

118. Letter from Thomas J. Marshall, Gen. Couns. and Exec. Vice President, U.S. Postal Serv., to Jay Ashcroft, Sec'y of State, State Capitol (July 31, 2020); Press Release, Mo. Voter Prot. Coal., Missouri Voter Advocates Decry Threats to Postal Service Funding and Call on Missouri Leaders to Ensure Absentee and Mail-in Ballots Will Be Counted in November (Aug. 15, 2020) (on file with author).

voters to return absentee ballots in-person while requiring others to return their ballots by mail violated equal protection. The U.S. District Court for the Western District of Missouri issued a preliminary injunction allowing mail-in voters to return ballots in-person, but the injunction was stayed by the Eighth Circuit Court of Appeals.¹¹⁹

As Jamala Rogers of the Organization for Black Struggle explained in her declaration in the case: “Most of our members are African American, placing us at higher risk for contracting and having serious complications from COVID-19. They are also more likely to have other underlying health conditions. They are more likely to be poor. They are more likely to have been laid off, more likely to be evicted, more likely to be housing insecure. They are in incredibly stressful situations.”¹²⁰ On top of that, the pandemic made black voters already leery of voting by mail ever more so. “Prior to this pandemic, our members typically tended to vote in-person on Election Day. Our members are wary of voting by mail, wary of delays in the postal system, wary that their vote will not arrive in time or will not count. But they are also at higher safety risk for going to vote in person.”¹²¹ She added, “[m]any of our members are at heightened risk for COVID-19 and worry about voting in person at the polls, but they also lack many resources to successfully navigate the confusing rules Missouri imposes on remote voting. Because of concerns around contracting COVID-19, our members want to vote entirely remotely. But because Missouri’s failure to allow voters to cure deficiencies on their ballot envelopes remotely, the ability to vote remotely may not be possible for all of our members.”¹²²

Mound City Bar attorneys came out in force to support Election Protection in 2020, co-hosting trainings with the Jackson County Bar Association and joining the now all-virtual Legal Command Center hosted by Stinson LLP. Despite the pandemic, Missouri’s 2020 Election Protection

119. *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 805 (W.D. Mo. 2020), *rev’d*, 978 F.3d 603 (8th Cir. 2020); *see also* Juliette Fairley, *Federal Appeals Court Grants Stay, Preventing Changes to Mail-In Ballot Protocol*, DAILY RECORD (Oct. 26, 2020), <https://stlrecord.com/stories/559352429-federal-appeals-court-grants-stay-preventing-changes-to-mail-in-ballot-protocol> [<https://perma.cc/RT47-XBR2>].

120. Declaration of Jamala Rogers at ¶ 23, *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790 (W.D. Mo. 2020) (2:20-cv-04184-BCW, Doc. No. 27-1).

121. *Id.* at ¶ 24.

122. *Id.* at ¶ 25–26.

program was our largest yet, with nearly 1,400 volunteers statewide.¹²³ We fielded approximately 2,500 incidents from Missouri voters, successfully negotiating resolution in almost all of them. Confusion about the two-tiered remote voting process, along with the lack of options for early voting or same-day registration and other barriers, threatened access to the polls, particularly for voters of color.¹²⁴ Restrictive request and return deadlines, polling place changes, and inaccessible curbside voting were additional barriers.¹²⁵ Afterwards, as the pandemic surged into the winter months, we unsuccessfully urged Governor Parson to extend the pandemic voting provisions.¹²⁶

Despite the majority of states allowing no-excuse absentee voting,¹²⁷ and despite the fact that Missouri's Republican and Democrat local election authorities applauded Missouri's increase in absentee voting in 2020 (reporting results as "timely, accurate and secure,"¹²⁸), Missouri lawmakers

123. Doyle Murphy, *Election Day Questions? An Army of Lawyers Is Ready to Help*, RIVERFRONT TIMES (Oct. 27, 2020), <https://riverfronttimes.us7.list-manage.com/track/click?u=b95e19d391fc06b7ac5b8e3a3&id=638c980afa&e=93aa5361cf> [https://perma.cc/KSY5-AVQT]; Vic Faust, *Missouri Voter Protection Coalition Has Over 1,000 Volunteers Assisting With Voter Questions on Election Day*, FOX 2 NOW (Nov. 2, 2020), <https://fox2now.com/news/missouri-voter-protection-coalition-has-over-1000-volunteers-assisting-with-voter-questions-on-election-day/> [https://perma.cc/S7KB-UAR4].

124. Marissanne Lewis-Thompson & Andrea Y. Henderson, *Missouri Voter Protection Coalition: A Guide for Helping Voters of Color Avoid Hurdles in This Election*, ST. LOUIS PUB. RADIO (Oct. 19, 2020), <https://news.stlpublicradio.org/tags/missouri-voter-protection-coalition> [https://perma.cc/83AM-ZWTU].

125. Kayla Drake, *St. Louis County Offers Curbside Voting at Satellite Sites After Advocates Call for Change*, ST. LOUIS PUB. RADIO (Dec. 1, 2020), <https://news.stlpublicradio.org/government-politics-issues/2020-10-27/satellite-voting-sites-present-barriers-for-curbside-voters-with-disabilities> [https://perma.cc/WU9B-ZLT2]; Erin Richey, *For Some, Voting Before Election Day is a Risky Journey*, KSDK (Oct. 27, 2020), <https://www.ksdk.com/article/news/investigations/absentee-early-voting-sites-far-from-voters-who-dont-have-cars/63-b63d5887-4401-4731-b066-ee6c6e1f6222> [https://perma.cc/V65Q-EHD9]; Faust, *supra* note 123.

126. Jim Salter, *Voter Advocates Urge Parson to Extend Mail-In Option*, ASSOCIATED PRESS (Dec. 18, 2020), https://www.stltoday.com/news/local/govt-and-politics/voter-advocates-urge-parson-to-extend-mail-in-option/article_423f5077-3ad6-5cda-baa5-e8c4c7b22962.html [https://perma.cc/4XA3-UC3X].

127. *States with No-Excuse Absentee Voting*, NAT'L CONF. OF STATE LEGS. (May 1, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx> [https://perma.cc/P874-A8P2].

128. Shane Schoeller & Brianna Lennon, *2020 Shows Need for Change in Missouri Election Laws*, ST. LOUIS POST-DISPATCH (Dec. 30, 2020), https://www.stltoday.com/opinion/columnists/shane-schoeller-and-brianna-lennon-2020-shows-need-for-change-in-missouri-election-laws/article_dc43db6a-db44-56e2-9b64-423ede95b16c.html [https://perma.cc/UTD4-SMF2] ("Most importantly, we saw firsthand that increases in absentee voting did not sacrifice the integrity of the election nor the confidence in its results.").

in 2021 promulgated legislation meant to strictly limit voting by mail, expand opportunities for voter purges, and implement strict, likely unconstitutional photo ID requirements to vote.¹²⁹ It is part of a national legislative assault on voting in the wake of the high turnout 2020 elections.¹³⁰ Missouri's lawmakers have promised to return to these proposals.¹³¹ A recent study places Missouri near the bottom compared to other states when it comes to accessible voting practices.¹³² Without reform, Missouri voter access will remain disproportionately elusive for the state's communities of color.

Our democracy is facing an existential crisis. The 2020 election cycle highlighted assaults on the right to vote, the denigration of voters of color, the surge in white nationalism, the expansion of misinformation on voting, and the elevation of the "Big Lie," which catapulted legislation to make voting harder and undermine election administration. More than 400 restrictive voting bills were introduced in 49 states, with 33 new restrictive voting laws enacted in 19 states in 2021.¹³³ The 2020 election cycle, the violent assault on the U.S. Capitol, and the recent surge in anti-democratic state legislation have made one thing abundantly clear: our democracy is vulnerable, and voters of color are the primary targets. States have rolled back early and mail voting, added new hurdles for voter registration, imposed burdensome and unnecessary voter identification requirements,

129. H.B. 334, 101st Gen. Assemb., Reg. Sess. (Mo. 2021); H.B. 738, 101st Gen. Assemb., Reg. Sess. (Mo. 2021); S.B. 282, 101st Gen. Assemb., Reg. Sess. (Mo. 2021); Johnathan Ahl, *Voting Rights Groups Push Missouri Lawmakers to Stop Legislation They Say is Restrictive*, ST. LOUIS PUB. RADIO (Apr. 28, 2021), <https://news.stpublicradio.org/government-politics-issues/2021-04-28/voting-rights-groups-push-missouri-lawmakers-to-stop-legislation-they-say-is-restrictive> [https://perma.cc/AR28-PLQ2].

130. Pam Fessler, *Missouri's Long Fight Over Voting Rules is Now Part of a Larger National Battle*, NPR (Apr. 9, 2021), <https://www.npr.org/2021/04/09/985437942/missouris-long-fight-over-voting-rules-is-now-part-of-a-larger-national-battle> [https://perma.cc/Y9YA-K3FM].

131. Denise Lieberman, Opinion, *Missouri Saved From the Worst of Voter Suppression Wave – For Now*, LABOR TRIBUNE (St. Louis/Southern Illinois) (June 21, 2021), <https://labortribune.com/opinion-missouri-saved-from-the-worst-of-voter-suppression-wave-for-now/> [https://perma.cc/Z3TH-2V69]; Kurt Erickson, *Missouri Republicans Tee Up Voting Issues Heading into 2022*, ST. LOUIS POST-DISPATCH (Aug. 24, 2021), https://www.stltoday.com/news/local/govt-and-politics/missouri-republicans-tee-up-voting-issues-heading-into-2022/article_ad8d5951-4dd9-5cd3-80ad-450b2719282d.html [https://perma.cc/CCW8-GC3E].

132. Lily Bohlke & Daria Lawson, *MO Voting Laws Hamper Access to Ballot Box*, KRCU (Aug. 16, 2021), <https://www.krcu.org/post/mo-voting-laws-hamper-access-ballot-box#stream/0> [https://perma.cc/S6E2-5GCE].

133. *Voting Laws Roundup*, *supra* note 1.

stripped power from state and local election officials, and taken other steps to silence voters' voices, including legislation making it illegal to assist voters getting or returning ballots or applications, and in some instances, even making it illegal to provide food or drink to those waiting in long lines to vote.¹³⁴ Such restrictions are consistently found to disproportionately burden voters of color.¹³⁵

Pending national legislation like the Freedom to Vote Act¹³⁶ would set minimum national standards for federal elections that make voting options accessible in all fifty states. It would also make many of the worst anti-voter laws being proposed and passed right now illegal and bring to a halt Missouri's fifteen-year effort to mandate photo ID by prohibiting strict photo ID requirements. It would also require nonpartisan redistricting commissions and provide protections to election administrators from partisan overreach. Meanwhile, the John Lewis Voting Rights Advancement Act¹³⁷ would restore the protections of the Voting Rights Act weakened by the Supreme Court's rulings in *Shelby County v. Holder*¹³⁸ and *Brnovich v. Democratic National Committee*¹³⁹ by restoring preclearance provisions with an updated coverage formula and updating the Voting Rights Act to address modern patterns of racial discrimination at the ballot box.

The national discussion about the right to vote freely and without discrimination must be elevated above the partisanship that has come to define our modern voting rights debates. Lawyers and local advocates have a particular role to play, even in the wake of an unsympathetic Supreme Court whose 2021 decision in *Brnovich* set the bar higher to challenge racially discriminatory voter laws. As Justice Kagen stated in her dissenting opinion in *Brnovich*, discriminatory voting laws have only become worse

134. *Id.*

135. Theodore R. Johnson & Max Feldman, *The New Voter Suppression*, BRENNAN CTR. FOR JUST. (Jan. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression> [<https://perma.cc/384Q-K2NQ>]; Danyelle Solomon, Connor Maxwell & Abril Castro, *Systemic Inequality and American Democracy*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/473003/systematic-inequality-american-democracy/> [<https://perma.cc/8KLW-J69M>]; *Democracy Diverted: Polling Place Closures and the Right to Vote*, LEADERSHIP CONF. EDUC. FUND (Sept. 2019), at 10, <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf> [<https://perma.cc/T234-2P7A>].

136. S. 2747, The Freedom to Vote Act, 117th Cong., (2021).

137. H.R. 4/S.4, The John Lewis Voting Rights Advancement Act of 2021, 117th Cong (2021).

138. *Shelby Cty. v. Holder*, 570 U.S. 529, 557 (2013).

139. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2346 (2021).

since *Shelby*.¹⁴⁰ Combatting these efforts is “like playing a game of whack-a-mole. . . . A system is not equally open if members of one race have ‘less opportunity’ than others to cast votes, to participate in politics, or to elect representatives. That equal ‘opportunity’ is absent when a law or practice makes it harder for members of one racial group, than for others, to cast ballots.”¹⁴¹ Minority bar associations like the MCBA are particularly situated to uplift the stories and particularized impacts on communities of color. I previously testified before Congress that “we are faced today with the greatest battle for the solvency of our democracy since the post-Reconstruction era.”¹⁴² Our battle to protect our freedom to vote requires decisive action by Congress, but also by advocates on the ground like Mound City Bar Association. “We cannot underestimate the seriousness of these attacks on voter rights,” said John Bowman, head of the St. Louis County NAACP, who joined a bus of Missouri voter advocates in summer 2021 attending the fifty-eighth anniversary of the historic March on Washington in Washington D.C., and explained that “we have to stop working in silos.”¹⁴³

MCBA lawyers have made a tangible and meaningful difference in access to the ballot in St. Louis and continue a long legacy of civil rights leadership. “I believe lawyers have a unique and special obligation to participate in voting rights activities both in and out of the courtroom,” said long-time MCBA Election Protection volunteer Ruby Bonner. “Here in St. Louis, we truly stand on the shoulders of several lawyers who engaged in the landmark Supreme Court decisions that resulted in the granting of Civil Rights in several arenas. Gaining and sustaining the right to vote is the very

140. *Id.* at 2354 (Kagan, J., dissenting) (“Experience showed that ‘[w]henver one form of voting discrimination was identified and prohibited, others sprang up in its place.’”).

141. *Id.*

142. *Voting Rights and Election Administration in America: Hearing Before the Subcomm. on Elections of the H. Comm. on H. Admin.*, 116th Cong., 150–52 (2019) (statement of Deuel Ross, Senior Counsel, NAACP Legal Defense Fund).

143. Alvin A. Reid, *March on Washington Was a Step in History for Local Group*, ST. LOUIS AM. (Sept. 2, 2021), http://www.stlamerican.com/news/national_news/march-on-washington-was-a-step-in-history-for-local-group/article_250bd554-0c15-11ec-8fa0-c36b7ff6175b.html; Rachel Berhndt ‘Getting in Good Trouble’: Missourians Honor Activists, Demand Equality in D.C., COLUMBIA MISSOURIAN (Aug. 28, 2021), https://www.columbiamissourian.com/news/state_news/getting-in-good-trouble-missourians-honor-activists-demand-equality-in-d-c/article_cde4476e-0838-11ec-bbcc-6329a1808abd.html [<https://perma.cc/93BL-8AW5>].

foundation of our democracy and crucial in maintaining civil rights for all of our citizenry.”¹⁴⁴

Action to secure the freedom to vote lies in the lived experiences of the people for whom protection is most needed and the people whose voices are most often silenced. These voices are needed to uplift the dignity of all and the inherent right to have a voice in one’s future. This is the promise of the freedom to vote—one that working together, we are entrusted to make a reality.

144. Statement from Ruby L. Bonner, MCBA Member, to Denise Lieberman (Sept. 2, 2021) (notes on file with author).