

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

AMERICAN WOMEN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 20AC-CC00333
)	
STATE OF MISSOURI, et al.,)	
)	
Defendants.)	

JUDGMENT

In response to the COVID-19 public health crisis, the General Assembly passed Senate Bill 631 “to ensure citizens can safely exercise the right to vote in the 2020 election.” Senate Bill 631 was “deemed necessary for the immediate preservation of the public health, welfare, peace and safety,” and as such, it was “declared to be an emergency act” under the Missouri Constitution. Senate Bill 631 expanded absentee voter excuses and provided for no-excuse mail in voting on a temporary basis. Its provisions expire on December 31, 2020. On June 4, 2020, the Governor signed Senate Bill 631 and it took effect immediately.

Plaintiffs (three Missouri citizens and a Washington, D.C., 501(c)(4) non-profit organization) challenge several different requirements of Missouri voting laws: (1) that some absentee and all mail-in ballot envelopes must be notarized (§ 115.291.1 & § 115.302(11) RSMo); (2) that all mail-in ballots can only be delivered to Local Election Authorities (LEAs) using the United States Postal Service (§ 115.302.12 RSMo); (3) that all absentee and mail-in ballots must be returned to LEAs by 7 p.m. on election day when polls close (“Election Day Receipt Deadline”) (§§ 115.293.1, 115.302.14, 115.407 RSMo); (4) that LEAs reject a ballot “if the statements on any ballot envelope have not been completed” (“Ballot Rejection Rules”) (§

115.295.2 RSMo); (5) that Missouri voters can only entrust their absentee ballot to a relative within two degrees of consanguinity to return their ballot in person (§ 115.291.2 RSMo). They allege that these provisions, individually and jointly, violate the Missouri Constitution’s right to vote under article I, section 25 (Count I), the Equal Protection Clause in article I, section 2 (Count II), procedural due process rights under the Due Process Clause in article I, section 10 (Count III), and the right to free speech under article I, section 8 (Count IV). In addition to declaring these provisions unconstitutional and enjoining their enforcement, Plaintiffs request that this Court also require Defendants to (1) count all ballots received 10 days after election day (no matter how they are received) even if the return envelopes are not signed or postmarked; (2) “publicize uniform guidelines for determining the validity of ballot envelope signatures,” develop trainings for those guidelines, “provide notice and an opportunity to cure any ballot envelop error,” and “publicize uniform, reasonable guidelines for voters who request a Mail-In or Absentee ballot and subsequently decide to vote in person”; (3) enjoin enforcement of “all laws that prohibit or criminalize ballot collection”; and (4) award Plaintiffs costs and reasonable attorney fees under § 527.100 RSMo. .

On August 20, 2020, Plaintiffs filed suit—nearly three months after Senate Bill 631 became law. On September 4, 2020, Defendants moved for judgment on the pleadings, and Plaintiffs responded on September 14, 2020. A trial on the merits commenced on October 5, 2020, and concluded on October 8, 2020. On October 9, 2020, the Supreme Court of Missouri decided *Missouri State Conference of the NAACP, et. al v. State of Missouri, et al.*, No. SC98744, holding that the notary requirements for absentee and mail-in ballots do not violate the right to vote under article I, section 25. The Court held there that “[a]lthough the Missouri

Constitution establishes that the right to vote is fundamental to Missouri citizens, the right to vote absentee does not enjoy such high status.” Op. 12. Instead, article VIII, section 7 “confers on the legislature discretion to decide whether to allow Missouri citizens to vote absentee under circumstances as the legislature provides.” *Id.* The Supreme Court held that the General Assembly exercised this power in Senate Bill 63 and explained that “by its plain language, article VIII, section 7 applies to both absentee and mail-in ballots in that those seeking to cast their vote by a mail-in ballot are also ‘absent’ from the polls. As a result, restrictions placed on mail-in balloting do not violate the fundamental right to vote because mail-in balloting is not a fundamental right under the Missouri Constitution.” *Id.* at 12–13.

After a trial on the merits and consideration of the Supreme Court of Missouri’s decision referenced above, this Court holds that Plaintiffs cannot prevail as a matter of law and have failed to prove their case. As such, this Court enters judgment for Defendants. Plaintiffs’ Count I alleges only that the absentee and mail-in voting provisions violate the fundamental right to vote under article I, section 25. Petition ¶¶132–140. The Missouri Supreme Court’s decision in *NAACP v. State* forecloses this argument because “there is no constitutional right in Missouri to vote by absentee or mail-in ballot.” Op. 13.

Plaintiffs’ Count II, Petition ¶¶141–151, which alleges an Equal Protection Clause violation, fails for the same reason: there is no fundamental right to vote by absentee or mail-in ballot. Plaintiffs are not members of a protected class, *id.* ¶¶8–11, and during closing arguments, counsel for Plaintiffs expressly disavowed any notion that Count II was based on protected class status. Even had Plaintiffs argued that these laws failed rational basis review, and they did not,

these provisions are reasonable regulations of the voting process. *See Weinschenk v. State*, 203 S.W.3d 201, 216 (Mo. banc 2006).

Plaintiffs' Counts III and IV also fail as a matter of law. Plaintiffs do not allege a protected liberty interest nor do they allege any actions by Defendants that could cause an erroneous deprivation. Plaintiffs' free-speech challenge to the "Ballot Collection Ban" fails because the law clearly regulates conduct, not speech, and Plaintiffs have not identified any speech that the law prohibits.

The authority to allow one to vote not in person and not on Election Day is commended to the legislature in our (Missouri) constitution. Accordingly, Judgment is hereby entered against Plaintiffs and in favor of Defendants on all Counts in the Petition. Plaintiffs' requests for declaratory and injunctive relief are denied. The parties are to bear their own costs.

Dated: 10/22/2020

A handwritten signature in black ink, appearing to read "D. Green", written over a horizontal line.

Daniel R. Green, Circuit Judge