

**IN THE CIRCUIT UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

ORGANIZATION FOR BLACK STRUGGLE, THE ST. LOUIS AND GREATER KANSAS CITY CHAPTERS OF THE A. PHILIP RANDOLPH INSTITUTE, THE NATIONAL COUNCIL OF JEWISH WOMEN ST. LOUIS SECTION AND MISSOURI FAITH VOICES

Plaintiffs,

v.

JOHN R. ASHCROFT,  
in his official capacity as the Missouri Secretary of State, and GREENE COUNTY CLERK'S OFFICE; JACKSON COUNTY ELECTION BOARD; ST. CHARLES COUNTY ELECTION AUTHORITY; and ST. LOUIS COUNTY BOARD OF ELECTIONS, and all others similarly situated.

Defendants.

No. 2:20-cv-4184-BCW

**SUGGESTIONS IN SUPPORT OF MOTION TO CERTIFY DEFENDANT CLASS OF  
116 LOCAL ELECTION AUTHORITIES UNDER FEDERAL RULE OF CIVIL  
PROCEDURE 23 OR IN THE ALTERNATIVE, JOINDER OF 116 LOCAL ELECTION  
AUTHORITIES**

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## INTRODUCTION

Because joinder of all 116 local election authorities would be impracticable, local election authorities' responsibility to provide redress to Plaintiffs derives from a common set of law and facts amongst all 116 defendants, and proposed Defendant class is empowered to provide much of the relief Plaintiffs seek, Plaintiffs request this Court grant the certification of a defendant class of every local election authority responsible for conducting public elections within its jurisdiction in Missouri. Certifying a defendant class will simplify the procedures in this case, facilitate the speedy determination of the litigation on its merits, and Defendant class will adequately, and without any threat to due process, provide the requisite representation for other members of the class.

The proposed defendant class shall be defined as Missouri's 116 local election authorities who are responsible for the "conduct [of] all public elections within [their] jurisdiction" under Mo. Rev. Stat. § 115.023. Missouri law defines the local election authority as "the county clerk . . . except that in a city or county having a board of election commissioners, the board of election commissioners shall be the election authority." Mo. Rev. Stat. § 115.015.<sup>1</sup> All members of the proposed Defendant class have the power to "make all rules and regulations," not inconsistent with

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<sup>1</sup> Missouri law dictates there "be a board of election commissioners: (1) In each county which has or hereafter has over nine hundred thousand inhabitants; (2) In each city not situated in a county; (3) In each city which has over three hundred thousand inhabitants on January 1, 1978, and is situated in more than one county; (4) In each county of the first classification containing any part of a city which has over three hundred thousand inhabitants; provided that the county commission of a county which becomes a county of the first classification after December 31, 1998, may, prior to such date, adopt an order retaining the county clerk as the election authority. The county may subsequently establish a board of election commissioners as provided in subdivision (5) of this section; (5) In each county of the first class which elects to have such a board through procedures provided in section 115.019." Mo. Rev. Stat. § 115.017; *see also* Mo. Rev. Stat. § 115.019; Mo. Rev. Stat. § 115.021; Mo. Rev. Stat. § 115.023.

Missouri statutory law, “necessary for the registration of voters and the conduct of elections.” Mo. Rev. Stat. § 115.043. It is also the local election authorities:

- that receive and process requests for absentee and mail ballots, § 115.279; § 115.302;
- that are responsible for and accepting or rejecting these requests for absentee and mail ballots, § 115.297(2), § 115.302;
- that mail and absentee ballots, § 115.284; § 115.302(12);
- that review absentee and mail ballots, determining which ones are counted and rejected, Mo. Rev. Stat. § 115.299, § 115.302(18); and
- with whom voters would go to cure deficiencies in their mail or absentee ballots, *see* Mo. Rev. Stat. 115.043.

Nowhere in Missouri law does the state require local election authorities to provide notice of ballot errors prior to rejection or an opportunity to cure ballot errors prior to their rejection. Missouri law gives the local election authority the responsibility to reject absentee ballots for errors on the ballot envelope, whether material or immaterial. Mo. Rev. Stat. § 115.295.2 (“If the statements on any ballot envelope have not been completed, the absentee ballot in the envelope shall be rejected” by the local election authority). Errors on the ballot envelope include a voter’s omission of their (a) address; (b) name; (c) mailing address; or (c) for absentee ballots, reason for voting absentee. Mo. Rev. Stat. § 115.283.1. Further, local election authorities are directed to reject any ballots not correctly completed (i.e., containing a deficiency) by close of polls on Election Day, Mo. Rev. Stat. § 115.295, § 115.477 – the same deadline state law requires local election authorities to have received these ballots, Mo. Rev. Stat. § 115.293(1); § 115.302(14).

### **LEGAL STANDARD**

Federal Rule of Civil Procedure 23 (“Rule 23”) governs the certification of a class of defendants, just as it governs certification of a class of plaintiffs. Although rare, Courts have “recognized the utility of these actions to enjoin governmental officials from enforcing locally-

administered state statutes which are defective.” *Akron Center for Reproductive Health*, 110 F.R.D. 576, 580 (N.D. Ohio 1986) (granting class certification of defendant class of Ohio prosecutors) (citations omitted); *Strawser v. Strange*, 307 F.R.D. 604, 611 (S.D. Ala. 2015) (granting class certification of defendant class of all Alabama county probate judges and noting: “many courts [] have certified defendant classes of local or county-level officials in cases that challenge a law executed at a local level” (citations omitted)); *see also Hunter v. Underwood*, 471 U.S. 222, 224 (1985) (noting that district court certified a “defendant class of all members of the 67 Alabama County Boards of Registrars”); *Doe v. Miller*, 405 F.3d 700, 705-06 (8th Cir. 2005) (addressing constitutionality of state statute in case involving a “defendant class, including all of Iowa’s county attorneys”); *Kennard v. Kleindienst*, 2015 WL 4076473, at \*3 n.1 (W.D. Mo. 2015) (granting plaintiff’s motion for attorney’s fees in case involving defendant class which consisted of all Missouri Recorders of Deeds).

Rule 23(a) sets the following prerequisites for establishing a plaintiff or defendant class action: “(1) the class is so numerous that joinder of all members is impractical, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a) (hereinafter these four prerequisites will be referenced as numerosity, commonality, typicality, and adequacy of representation). These conditions are met by the putative defendant class of 116 local election authorities in the state. In addition, a class action must satisfy one of the conditions in Rule 23(b); here, Defendant class falls under the purview of Rule 23(b)(1)(A), 23(b)(1)(B), 23(b)(2), and 23(b)(3). Accordingly, this Court should grant Plaintiffs request for certification of Defendant class.



## DISCUSSION

### **A. Federal Rule of Civil Procedure 23(a)**

Plaintiffs' rights, as well as Plaintiffs' members and Missouri voters' right to vote and to have their votes treated equally under the law, is impaired or totally eclipsed by proposed Defendant class. The defendant class's enforcement of different requirements for submitting absentee and mail ballot applications and ballots, rejection of Missouri voters' absentee and mail ballots for errors that are immaterial to the voters' qualifications to vote in Missouri, and the burdensome requirements Plaintiffs' must meet to correct any deficiencies in their ballots in order for proposed defendant class' to count them form the basis of this action.

The same questions of law and fact apply to all class members for each of Plaintiffs' claims against the proposed defendant class and, as such, a class action involving the proposed defendant class is the most effective and efficient method to resolve the matters presented in this case. Defendants and their counsel will adequately and zealously represent the respective classes, as they have in other voting rights cases involving Missouri's local election authorities. For these reasons, the putative defendant class meets Rule 23(a)'s numerosity, commonality, typicality, and adequacy of representation requirements and certification of the defendant class is appropriate.

#### ***1. Numerosity***

The 116 members of the proposed defendant class easily satisfy the requirement under Rule 23(a)(1) that the classes be "so numerous that joinder of all members is impracticable." To determine whether Rule 23's numerosity requirement has been met, courts examine the number of persons in the proposed class, the nature of the action, the size of the individual claims, and the inconvenience of trying individual claims. *M.B. by Eggemeyer v. Corsi*, 327 F.R.D. 271, 278 (W.D.

Mo. 2018) (citing *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 561 (8th Cir. 1982)). The Eighth Circuit does not have a rigid rule regarding the size of the proposed class necessary to certify numerosity. *Ratray v. Woodbury Cty.*, 253 F.R.D. 444, 452 (N.D. Iowa 2008), *order aff'd*, 614 F.3d 831 (8th Cir.2010). “A relatively small number of plaintiffs does not necessarily defeat class certification” if, for example, geographic dispersion of the potential plaintiffs demonstrates that joinder is impractical. *Id.*; *see also, e.g., Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (certifying class of least 31 geographically scattered class members); *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996) (certifying class of 18 geographically scattered class members). This Court has found that a proposed class of 133 Bondholders that were geographically dispersed satisfied the numerosity requirement of Rule 23 even if 40 of the proposed members of the class were removed. *Cromeans v. Morgan Keegan & Co.*, 303 F.R.D. 543, 551-52 (W.D. Mo. 2014).

The proposed defendant class comprises Missouri’s 116 local election authorities: the entities enforcing and implementing Missouri voting laws as well as the entities empowered to make any rules or regulations related to registration and voting not inconsistent with Missouri statutory laws. The number of class defendants in this case—well over 100—makes the number of parties comprising such a class so large as to make individual lawsuits impracticable. This Court has certified classes of approximately this size. Moreover, Missouri’s’ 116 local election authorities are just that—election authorities comprising every scattered bit of the state of Missouri.

Finally, the time-sensitive nature of this action involving the constitutionally protected fundamental right to vote also makes joinder of all members of the Proposed Class impracticable. *See Paxton*, 688 F.2d at 559-60 (in addition to class size, court may consider “nature of the action” and “any other factor relevant to the practicability of joining all the putative class members”).

Accordingly, this Court should find that proposed defendant class meets the numerosity requirement of Rule 23.

## **2. Commonality**

Common questions of law and fact exist between Plaintiffs and the proposed defendants class, satisfying Rule 23(a)(2). Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). In the Eighth Circuit, “a single common question ‘will do’ for purposes of Rule 23(a)(2).” *Ebert v. General Mills, Inc.*, 823 F.3d 472, 478 (8th Cir. 2016) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)); *see also DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995) (“Commonality is not required on every question raised in a class action.”). Under Rule 23(a)(2), the common contention “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Sandusky Wellness Ctr., LLC v. Medox Sci., Inc.*, 821 F.3d 992, 998 (8th Cir. 2016) (quoting *Wal-Mart*, 564 U.S. at 350). Commonality is satisfied when the legal question “linking the class members is substantially related to the resolution of the litigation.” *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 561 (8th Cir.1982) (internal citation omitted). The determination of whether a given question of law or fact is “common” is based on the nature of the evidence that will suffice to resolve the question as well as the nature of the claims or defenses advanced by the class. *Ebert*, 823 F.3d at 477-78.

Resolution of this litigation turns on the following common questions involving the entire proposed defendant class, namely: (1) whether the class’ enforcement of Missouri voting laws relative to mail-in ballots under Mo. Stat. Ann. § 115.302, places a severe or undue burden on the right to vote; (2) whether defendant class’s rejection of ballots for omissions that are not material in determining a voter’s qualifications violates the Materiality Provision of the Civil Rights Act,

52 U.S.C. § 10101(a)(2)(B); and (3) whether defendant class's failure to provide Plaintiffs' with sufficient pre-rejection notice of ballot deficiencies and a meaningful an opportunity to cure ballot such errors violates the Due Process Clause. This Court should, therefore, find that the proposed defendant class satisfies Rule 23(a)(2)'s commonality requirement.

Proposed defendant class enforce and implement the Missouri laws that control who can request an absentee ballot, how applications for absentee and mail ballots may be submitted, and how such ballots are returned. *See* Mo. Rev. Stat. § 115.293; Mo. Rev. Stat. § 115.302. The enforcement of these Missouri laws is part of the proof required to establish Plaintiffs' claims under the First and Fourteenth Amendment. Likewise, the proposed defendant class each has the authority vested in it to make all rules and regulations, not inconsistent with Missouri statutory law, necessary for the conduct of elections, is responsible for rejecting ballots with faulty statements and those received in a manner or at a time proscribed by law, and is able to provide some voters with pre-rejection notice and an opportunity to cure ballot errors. *See* 115.302 (mail-in voting statute), Mo. Stat. Ann. § 115.043; Mo. Stat. Ann. § 115.293(1); Mo. Stat. Ann. §§ 115.302(12), (14). Plaintiffs' claims related to Missouri local election authorities' rejection of ballots for immaterial errors and failure to provide sufficient notice and a meaningful opportunity to cure alleged ballot errors requiring rejection prior to Election Day could be resolved by the authority vested in each of the 116 local election authorities in the State under Mo. Stat. Ann. § 115.043.

The answers to these common questions affect all defendant class members because defendant class members are responsible for implementing and enforcing Missouri's voting laws with respect to Plaintiffs. Accordingly, this Court should find the proposed defendant class meets the commonality requirement of Rule 23(a).

### **3. Typicality**

This case also meets Rule 23(a)(3)'s requirement that the defendant class' defenses be typical of the class defenses, a requirement that is "fairly easily met so long as other class members have claims similar to the named plaintiff [or defendant]." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995). "Factual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996).

The named representatives of the proposed defendant class are typical of the defendant class as a whole, since they, like the members of their respective proposed defendant class, are charged with implementing and enforcing Missouri's voting laws and making rules and regulations not inconsistent with Missouri law necessary to the conduct of elections within their jurisdiction.

### **4. Adequacy of Representation**

Finally, Rule 23(a) is that the representative defendants must fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). "In determining the adequacy of representation, the Court makes a two-fold inquiry to determine whether: (1) the class representatives have common interests with members of the class; and (2) the class representatives will vigorously prosecute the interests of the class through qualified counsel." *Walls v. Sagamore Ins. Co.* (W.D. Ark. 2011) (citing *Paxton*, 688 F.2d at 562). Adequacy is tied to both commonality and typicality. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). The named representatives of the defendant class, the Greene County Clerk's Office, Jackson County Election Board, St. Charles County Election Authority, and St. Louis County Board of Elections, will fairly and adequately

represent the interests of the class of local election authorities in the state as a whole. Defendant class representatives, the Greene County Clerk's Office, Jackson County Election Board, St. Charles County Election Authority, and St. Louis County Board of Elections represent equally both major political parties and serve both urban and rural election authorities. The interests of ensuring the common application of Missouri voting law is shared by all local election authorities and the proposed defendant class representatives' interests are not antagonistic to those of the rest of the proposed class. All local election authorities implement and enforce voting laws, including those related to requesting, casting, and ultimately counting absentee and mail ballots within their jurisdiction. All Defendants share an interest in the correct interpretation and implementation of Missouri's voting laws.

**B. Rule 23 (b)**

In addition to satisfying the requirements of Rule 23(a), a class must satisfy at least one of the requirements laid out in Rule 23(b). Rule 23(b) sets out that class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Fed. R. Civ. P. 23(b). The matters pertinent to a finding under Rule 23(b)(3) include: “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” *Id.* Class certification is appropriate in this case because all independent subsections of Rule 23(b) are satisfied: both subsections Rule 23(b)(1)(A) and (B), as well as subsections 23(b)(2) and 23(b)(3).

**1. Rule 23(b)(1)(A)**

This case meets the requirements of Rule 23(b)(1)(A), which allows for the certification of a class when not certifying the class would create a risk that “inconsistent or varying adjudications with respect to individual class members [ ] would establish incompatible standards of conduct for the party opposing the class.” Fed. R. Civ. P. 23(b)(1)(A). The goal of this lawsuit is to obtain a declaratory judgment and injunctive relief that would eliminate the precise risk identified in this rule. If the court were to order some Defendants to provide relief to voters in their jurisdiction from the burdensome requirements of Mo. Stat. Ann. § 115.302(12),(14), voters throughout the state of Missouri would have extreme difficulty determining, based on their jurisdiction, how they request and vote remotely in the upcoming November 2020 presidential election. Moreover, if relief is granted against only some election jurisdictions on Plaintiffs immateriality and due process claims, geographical boundaries in a single state would subject the right to vote to differing rules and standards.

**2. Rule 23(b)(1)(B)**

This case also meets the requirements of Rule 23(b)(1)(B), which allows for the certification of a class when “adjudications with respect to individual class members [ ], as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.” Fed. R. Civ. P. 23(b)(1)(B). Common questions of law applicable to each authority responsible for the conduct of elections within its jurisdiction (the proposed defendant class of 116 local election authorities) form the crux of this case and the relief sought – declaratory and injunctive relief in the November 2020 election. A favorable decision on the merits for Plaintiffs requiring one election authority provide specific redress in the November 2020 election could be used to bind the conduct of other local election authorities not party to the litigation. This is precisely what Rule 23(b)(1)(B) was designed to be ameliorate. A class of the 116 local election authorities responsible for conducting elections within their jurisdiction will facilitate a speedy, just, and importantly, consistent resolution of this time sensitive statewide issue.

### **3. Rule 23 (b)(2)**

Proposed defendant class satisfies Rule 23(b)(2), which provides that a class may be certified if “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Fed. R. Civ. P. 23(b)(2). Courts in the Eighth Circuit have found that certification of a defendant class is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) when a defendant class has “acted or refused to act on grounds that apply generally to the class, so that injunctive relief or corresponding declaratory relief is appropriate.” *Planned Parenthood of Wisconsin v. Van Hollen*, No. 13–cv–465–wmc, 2013 WL 3989238 (W.D. Wis. Aug. 2, 2013) (certifying a defendant class of 71 elected district attorneys representing each of



Wisconsin's counties in their official capacities) (citing 1 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 4.46 (9th ed. 2012) (“The decisions allowing certification of a defendant class under Rule 23(b)(2) generally involve actions to enjoin a group of local public officials from enforcing a locally administered state statute of similar administrative policies.”) (case citations omitted)).

Certification of defendant class is most appropriate under Rule 23(b)(2) in this case. Here Plaintiffs are seeking a court order granting Plaintiffs declaratory and injunctive relief from defendant local election authorities with respect to absentee and mail voting in the state. Moreover, almost all the questions of law Plaintiffs request this Court answer and provide declaratory and injunctive relief for, are state-wide in applicability, and the provisions of Missouri law Plaintiffs challenge require the proposed defendant class act in conformity with the law. *See* Mo. Rev. Stat. § 115.293; Mo. Rev. Stat. § 115.302. Mo. Rev. Stat. § 115.043.

These sorts of claims for declaratory and injunctive relief are particularly well addressed through (b)(2) class actions. *See* 7AA Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* § 1775 (3d ed.).

#### **4. Rule 23(b)(3)**

Finally, the proposed defendant class meets the requirements of Rule 23(b)(3). A class action may be maintained if Rule 23(a) is satisfied and if “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3) (hereinafter “predominance requirement”). The matters pertinent to these findings include: “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and

nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” *Id.*

The predominance requirement tests whether the proposed defendant class is sufficiently “cohesive to warrant adjudication by representation,” and “goes to the efficiency of a class action as an alternative to individual suits.” *Ebert v. General Mills Inc.*, 823 F.3d 472, 478-49 (8th Cir. 2016) (quoting *Amchem Products v. Windsor*, 521 U.S. 591, 623 (1997); *Parko v. Shell Oil Co.*, 739 F.3d 1083, 1085 (7th Cir. 2014)). This requirement, is not satisfied if “individual questions ... overwhelm the questions common to the class.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1196 (2013); *see also Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (“An individual question is one where ‘members of a proposed class will need to present evidence that varies from member to member,’ while a common question is one where ‘the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.’” (quoting 2 W. Rubenstein, *Newberg on Class Actions* § 4:50, pp. 196–97 (5th ed. 2012))).

Here, the only issues that differ among individual defendant class members do not change the underlying questions that remains common and predominates throughout the class: (1) whether the class’ enforcement of Missouri voting laws relative to mail-in ballots under Mo. Stat. Ann. § 115.302, places a severe or undue burden on the right to vote; (2) whether defendant class’s rejection of ballots for omissions that are not material in determining a voter’s qualifications violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B); and (3) whether defendant class’ failure to provide Plaintiffs’ with sufficient pre-rejection notice of ballot deficiencies and a meaningful opportunity to cure ballot errors

violates the Due Process Clause. Moreover, Plaintiffs' Civil Rights Act, Equal Protection and Due Process claims are ones that could be brought as "individual suits" against each member of the Defendant class. Although there may be some factual differences between how local election authorities address errors on mail-in and absentee ballot envelopes within their jurisdiction, these same facts form the basis of claims Plaintiffs bring against all Class Defendants.

One court decision that controls all members of the proposed defendant class is the most efficient and fair manner to proceed given the hundreds of thousands (if not more) affected voters in Missouri's 116 local election authorities. Concentrating the litigation in this forum makes sense given the nature of the claim and that the Secretary of State is also serving as a Defendant. Plaintiffs do not anticipate any difficulty in managing this class action case. Counsel and this Court has ample experience managing class action litigation and it would be far more difficult for courts across this state to manage the cases if class status is *not* granted.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for Certification of defendant class or in the alternative, joinder of all 116 local election authorities.

Dated: September 17, 2020

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\* Motion for Admission *Pro Hac Vice*  
pending

\* Motion for Admission *Pro Hac Vice*  
*forthcoming*

## CERTIFICATE OF SERVICE

I certify that on September 21, 2020, I filed the foregoing Suggestions in Support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction with the Clerk of the Court using the CM/ECF system, and a copy was made available to all electronic filing participants. A copy will be sent by email to counsel for all defendants for whom counsel has not appeared.

/s/ Anthony E. Rothert

