

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

DEC 05 2011
FILED

DEC 01 2011

BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

KENNETH PEARSON, *et al.*,)
)
Plaintiffs,)
)
vs.)
)
CHRIS KOSTER, *et al.*,)
)
Defendants.)

Cause No. 11AC-CC00624

SUPPLEMENTAL SUGGESTIONS IN SUPPORT OF
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
OR, IN THE ALTERNATIVE, FOR
JUDGMENT ON THE PLEADINGS

The Court having allowed amendment of the Petition, the Attorney General supplements his Motion and Suggestions as follows.

- I. **Plaintiffs have not solved the fatal problem with their “compactness” claim, Count I, by inserting conclusory language reflecting the legal standard.**

The Petition as amended uses the language of the pertinent Missouri Supreme Court precedents: it states as a legal conclusion that the General Assembly “wholly ignored” the compactness requirement. ¶1. But that is not enough; the facts alleged simply do not support that claim. Indeed, the undisputed facts either incorporated into the Petition (the new districts and a map of those districts) or as to which the Court could take judicial notice, if required (the districting plans upheld by the Missouri Supreme Court previously) demonstrate that the new plan *does* conform to the constitutional

requirements. That some lines may have been drawn for purposes other than achieving the legal requirements (which are only compactness, contiguity, population equality, and compliance the federal Voting Rights Act, 42 U.S.C. §§ 1973–1973aa-6) does not render even those lines, much less the plan as a whole, unconstitutional under the pertinent precedents.

II. The Petition does not state a claim regarding plaintiffs’ right to vote.

Plaintiffs add a new Count IV, asserting a violation of plaintiffs’ right to vote. Plaintiffs initially state a legal standard: “each citizen’s vote must have the potential to be of equal force, weight and effect, and may not be diluted as compared to other citizens’ votes.” ¶ 62. But plaintiffs state no facts that would prove a violation under that standard. They implicitly concede that the districts as drawn by the General Assembly are equal in population, so each citizen’s vote has precisely the same power to elect a member of Congress. That is enough.

That any one voter is now less likely to have his or her preferred candidate win an election is not and never has been the “right to vote” test. All possible lines make it harder for someone to win an election. If Plaintiffs were right, all possible lines would be unconstitutional, because some voter supporting some candidate is disadvantaged by each possible line. But there is no basis in Missouri constitutional law for saying that the Missouri

constitution's right to vote means anything more than that every qualified citizen has the ability to vote, *see Weinschenk v. State*, 203 S.W.3d 201 (Mo. banc 2006), and that each vote is counted equally. Plaintiffs simply cannot state a claim as to their right to vote based on a desire for congressional districts that would enhance their ability to elect their preferred candidates, at the expense of the ability of others to do the same.

CONCLUSION

Because the Plaintiffs do not and cannot state claims on which relief may be granted under any of the four counts of their amended petition, the petition should be dismissed with prejudice or judgment entered on the pleadings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via e-mail and mailed postage prepaid on December 1, 2011, to:

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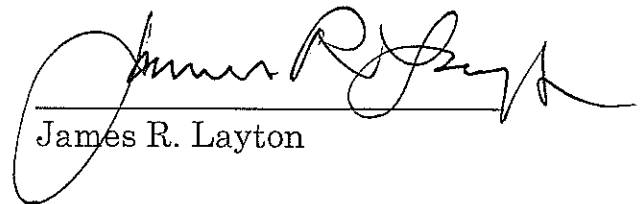
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