

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

STEVEN M. PRYE, individually and by his	)	
guardian, OFFICE OF STATE GUARDIAN,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	No.: 04-4248-CV-C-ODS
MATT BLUNT, in his official capacity as Secretary of	)	
State of the State of Missouri; JEREMIAH W.	)	
(JAY) NIXON, in his official capacity	)	
as Attorney General of the State of Missouri;	)	
LEO G. (GARY) STOFF, JR. and	)	
JAMES P. O'TOOLE, in their capacity as directors	)	
of the Board of Elections for the City of St. Louis;	)	
MICHAEL A. LUEKEN, in his capacity as	)	
secretary and member of the Board of Elections	)	
for the City of St. Louis; DERIO L. GAMBARO,	)	
in his capacity as chairman of the Board of	)	
Elections for the City of St. Louis; ANGELA	)	
DA SILVA and YVONNE B. HUNTER, in their	)	
capacity as members of the Board of Elections for	)	
the City of St. Louis; and BOARD OF ELECTION	)	
COMMISSIONERS FOR THE CITY OF	)	
ST. LOUIS,	)	
Defendants.	)	

**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY**  
**INJUNCTION**

**I. INTRODUCTION**

Plaintiff Steven M. Prye (Prye) is fully cognizant and capable of participating in the November 2, 2004 election as an informed voter, but he has been adjudged in need of a guardian. Prye was adjudged incapacitated because he needs assistance performing self-care, managing money, and taking care of his personal needs. The determination that Prye needed a guardian did not address his capacity to understand the voting process.

The Missouri Constitution and statutes generally extend the right to vote to every resident of the State who is at least 18 years old. But the Missouri Constitution prohibits from voting any individual who has “a guardian of his or her estate or person by reason of mental incapacity[] appointed by a court of competent jurisdiction.” Mo. Const. Art. 8, § 2. By statute, Missouri restricts any person who has been “adjudged incapacitated” for any reason from registering to vote and from voting. V.A.M.S. 115.133.

Prye, who is under guardianship because of mental illness, would like to vote in the November 2, 2004, election; however, his application to register to vote was rejected by Defendant Board of Election Commissioners for the City of St. Louis solely because he is under guardianship. See Rejection Letter. Because Mo. Const. Art. 8, § 2, V.A.M.S. 115.133, and any other provisions of Missouri law that exclude Prye from voting are invalid as violations of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, this Court should grant a preliminary injunction to allow Prye to register to vote and to vote.

## **II. ARGUMENT**

This Court must consider four factors when determining whether to issue a preliminary injunction: (1) the likelihood that the plaintiff will succeed on the merits; (2) the potential for irreparable harm to the plaintiff if the injunction is denied; (3) the potential injury to the plaintiff weighed against possible harm to the defendants; and (4) whether the injunction would be adverse to the public interest. *Pottgen v. Missouri State High School Activities Ass'n*, 40 F.3d 926 (8th Cir. 1994). In evaluating the relevant

factors to decide a motion for preliminary injunction, no single factor in itself is dispositive; instead, each factor must be considered to determine whether balance of equities weighs toward granting an injunction. *United Industries Corp. v. Clorox Co.*, 140 F.3d 1175 (8th Cir. 1998).

**A. Plaintiff is likely to succeed on the merits**

A party seeking a preliminary injunction must demonstrate a substantial likelihood of prevailing on the merits. The best indication that Prye is substantially likely to succeed on the merits is that the only Court to have considered laws significantly similar to Missouri's has found that they violate the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Americans with Disabilities Act, and section 504 of the Rehabilitation Act of 1973. *Doe v. Rowe*, 156 F. Supp. 2d 35 (D. Me. 2001). The case at bar is not distinguishable from that presented to the Court in *Doe v. Rowe*. If there is any difference, then it is that Prye's interest in voting and capacity to vote is more compelling.

Prye is substantially likely to succeed on the merits for other reasons as well.

**1. Missouri's procedures disenfranchise plaintiff of the fundamental right to vote with no due process**

A person may need help with basic tasks of caring for himself and managing finances but still be able to understand what it means to vote in an election. The Supreme Court of the United States has indicated the right to vote is a "fundamental political right ... preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). The interest in retaining the right to vote is of such primacy that it cannot be confiscated without due process. *Raetzl v. Parks/Bellmont Absentee Election Bd.*, 762 F. Supp. 1354, 1357 (D. Ariz. 1990).

When assessing challenges to laws that burden the right to vote, the Supreme Court applies a “flexible” standard. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

A court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights. *Burdick v. Takushi*, 504 U.S. at 434 (internal citation and quotation omitted).

Under the *Burdick v. Takushi* standard, the rigorousness of a court's review of the propriety of an election law depends upon the extent to which the challenged laws burden First and Fourteenth Amendment rights. *Burdick v. Takushi*, 504 U.S. 434. In situations where the burden is severe, the law “must be narrowly drawn to advance a state interest of compelling importance.” *Burdick v. Takushi*, 504 U.S. at 434 (internal citation and quotation omitted).

The burden Missouri has imposed upon Prye's right to vote is complete: Prye was not even allowed to register to vote. See Rejection Letter from Board of Election Commissioners. This rejection comes despite the fact that three mental health professionals—two psychiatrists and one psychologist—who know Prye have attested that Prye does have the capacity to vote. See Affidavits of Drs. Giuffra, Sullivan, and Han. Prye was not given notice or the opportunity to be heard on the issue of voting before his right to register to vote and to vote was taken from him by Missouri law. See Affidavit of Guardian. Indeed, he is denied any forum in which he may establish that he is fully capable of participating in the electoral process regardless of other difficulties he may have for which he requires assistance.

No matter how important Missouri's interest is in preventing persons who are incapable of participating in the electoral process from voting, the blanket ban on those under guardianship regardless of their capacity to vote sweeps far too broadly to pass constitutional muster. There is no justification for denying Prye any opportunity to retain his right to vote simply because he needs assistance with some aspects of his life.

**2. Prye is substantially likely to succeed on his claims under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act**

Defendants' application of Mo. Const. Art. 8, § 2 and V.A.M.S. 115.133 to deny Prye the opportunity to register and vote based on his adjudication of incapacity, despite his ability to understand the nature and effect of an election and casting a ballot, constitutes disability-based discrimination under Title II and Section 504.

**a. The ADA**

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. To establish a violation of Title II, a plaintiff must show that: (1) he is a qualified individual with a disability, (2) he was excluded from participation in or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against by the entity; and (3) the exclusion, denial or other discrimination was by reason of his disability. *Layton v. Elder*, 143 F.3d 469, 472 (8th Cir. 1998).

The Department of Justice's regulations implementing Title II of the ADA further define the types of discrimination it prohibits. The regulations provide that a public

entity may not use criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. 28 U.S.C. § 35.130(b)(3). The regulations also prohibit public entities from imposing or applying eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program or activity unless such criteria can be shown to be necessary for the provision of the service, program or activity being offered.” 28 U.S.C. § 35.130(b)(8).

**i. Plaintiff Prye is an individual with a disability.**

Prye is a person with a disability under the ADA. The ADA defines a disability as a physical or mental impairment that substantially limits a major life activity, a record of such impairment, or being regarded as having such an impairment. 42 U.S.C. § 12102. Prye has a mental impairment, schizoaffective disorder, which substantially limits him in the major life activities of self-care and interacting with others. Because of his impairment, Prye is unable to eat, dress, bathe, maintain personal hygiene, do household chores, and manage money, without assistance. Indeed, Prye’s limitations in caring for himself were the reason that he was adjudicated incapacitated and in need of a guardian. The adjudication of incapacity means that a court concluded that because of his mental illness Prye is “not fully able to manage his person or estate.” See 755 ILCS 5/11a-2.

Prye also has a record of an impairment that substantially limits a major life activity. Only five years ago, Prye was a law school professor. He was first diagnosed with a mental illness in 2001, and his condition deteriorated rapidly. Since 2001, Prye has been substantially limited in caring for himself, and those limitations have continued

to the present day. In the past, Prye's mental condition has caused him to be homeless for months at a time. Currently Prye is unable to obtain and prepare food; eat, dress, bathe, or maintain personal hygiene without prompting and supervision; and manage finances. It was because of these limitations that he was appointed a guardian of his person on December 12, 2003, and a guardian of his estate on March 11, 2004. See Affidavit of Guardian. Accordingly, Prye is a person with a disability protected by the ADA. 42 U.S.C. § 12102(2)(A), (B).

**ii. Prye is "qualified" to participate in registration and voting**

Prye is "qualified" to participate in the activities or programs of voting and registration. Title II defines a "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements for . . . participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). Prye meets the essential eligibility requirements for voting and registering. He is over the age of eighteen, is not confined under a sentence of imprisonment, is not on probation or parole for conviction of a felony, and has not been convicted of a felony or misdemeanor connected to suffrage. See Affidavit of Guardian. Thus, Prye meets all of Missouri's voter eligibility standards in V.A.M.S. 115.133 except for its requirement that voters not be adjudged incapacitated, which is not an essential eligibility requirement.

The requirement that voters not be adjudged incapacitated is not itself essential to voting or registering to vote. While defendants have an interest in ensuring the integrity of elections and preventing voting by individuals who do not have the mental capacity to understand the nature and effect of an election, an adjudication of incapacity -- which

concerns the inability to manage one's personal and/or financial affairs -- does not demonstrate whether a person has the capacity to understand the nature and effect of an election. See *Doe v. Rowe*, 156 F. Supp.2d 35, 52 (D. Me. 2001) (concluding that Maine's laws disenfranchising individuals under guardianship by reason of mental illness "disenfranchised a subset of mentally ill citizens based on a stereotype rather than any actual relevant incapacity" and violated the ADA and the equal protection clause). Because Plaintiff Prye is fully cognizant of the nature and effect of an election and what it means to cast a ballot and is otherwise qualified to register and vote, he is a qualified individual with a disability for purposes of the ADA.

**iii. Defendants have excluded Prye from registration and voting on the basis of his disability**

Pursuant to V.A.M.S. 115.133 and Missouri Constitution Article 8, § 2, which prohibits voting by any individual for whom a court has appointed a "guardian of his or her estate or person by reason of mental incapacity," Defendants have denied Prye the opportunity to register and vote solely because he was adjudged mentally incapacitated. See Rejection Letter. Consequently, Defendants have excluded Prye based on disability in violation of Title II.

Defendants also violate the ADA by using criteria that screen out or tend to screen out an individual based on disability. Defendants' application of V.A.M.S. 115.133 and Mo. Const. Art. 8, § 2 to deny Prye the right to register and vote amounts to the use of criteria that screen out or tend to screen out an individual based on disability from fully enjoying these programs, services and activities and that are not necessary to the provision of the programs, services and activities. 28 C.F.R. § 35.130(b)(8). As explained above, the criterion that voters must not be adjudicated incapacitated is not



**necessary** to Defendants' programs, services and activities of voting and registration.

The inquiry that is required for a determination of incapacity does not include any inquiry into the individual's ability to understand what an election is or what it means to cast a ballot. Instead, the court must determine whether the individual is "unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he or she lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur." V.A.M.S. 475.010, *et seq.* Many individuals may meet this standard but have the capacity to vote because they understand the nature and effect of an election. The court in *Doe v. Rowe* noted, for example, that Maine's guardianship disenfranchisement provisions could take away the right to vote of a person placed under guardianship for an eating disorder. 156 F. Supp.2d at 55. Missouri's guardianship disenfranchisement provisions could also create such a result. Indeed, Steven Prye is more than capable of understanding the nature and effect of an election, and has a sophisticated knowledge of the political process and a keen understanding of the significance and reasons for his vote.

Additionally, Missouri's disenfranchisement provisions do not reach individuals who lack the capacity to understand what an election is but have not been the subject of guardianship proceedings. Given this overinclusiveness and underinclusiveness, it is clear that Defendants' use of the criterion that voters not be adjudged incapacitated is not necessary to their programs, services and activities of voting and registration. Thus, Defendants' actions violate the ADA. Defendants' use of this criterion also has the effect

of subjecting qualified individuals with disabilities, such as Prye, to discrimination based on disability in violation of the ADA. 28 C.F.R. § 35.130(b)(3).

**b. Section 504 of the Rehabilitation Act**

Defendants also violate Prye's rights under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Section 504 provides that otherwise qualified individuals with disabilities may not be excluded from participation in, denied the benefits of, or otherwise discriminated against based on disability by programs and activities receiving federal financial assistance. 29 U.S.C. § 794(a). Section 504 contains the same definition of disability as the ADA, see 29 U.S.C. §§ 794, 705(20)(B), and contains the same standards as Title II of the ADA. Indeed, Congress's intent in enacting Title II of the ADA was to extend the requirements of Section 504 to all state and local government entities. See, e.g., *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002), *cert. denied*, 123 S.Ct. 2639 (2003); *Parker v. Universidad de Puerto Rico*, 225 F.3d 1, 4 n.2 (1st Cir. 2000); *Washington v. Indiana High School Athletic Ass'n*, 181 F.3d 840, 848 (7th Cir. 1999); H.R. Rep. No. 101-485(II), at 84 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 367. As recipients of federal financial assistance, see .e.g., the Help America Vote Act, 42 U.S.C. § 15301, defendants are covered by Section 504. For the same reasons that Defendants violate Prye's rights under the ADA, Defendants also violate his rights under Section 504 of the Rehabilitation Act.

**3. The classifications created by Missouri's procedures violate the equal protection clause by excluding plaintiff from the fundamental right to vote without being narrowly drawn to promote a compelling government interest**

The Equal Protection Clause of the Fourteenth Amendment restrains states from fixing voter qualifications that invidiously discriminate. *Harper v. Virginia State Bd. Of*

*Elections*, 383 U.S. 663, 665 (1996). As with due process claims, claims that state election laws deny equal protection require courts to weigh the character and magnitude of the asserted injury to the rights that the plaintiff seeks to vindicate. *Burdick v. Taksushi*, 504 U.S. at 434. Where the State by law grants the right to vote to some citizens and denies franchise to others, the exclusions must be necessary to promote a compelling state interest. See *Dunn v. Blumstein*, 405 U.S. 330, 337 (1972). Defendants may have a legitimate interest in guaranteeing those who cast a vote understand the nature and effect of the act of voting; nevertheless, this does end the Court's inquiry. Defendants must demonstrate that the exclusions are narrowly tailored to achieve the goal of guaranteeing those who cast a vote understand the nature and effect of the act of voting.

Defendants' broad disenfranchisement of all persons under guardianship is overly inclusive. While there are persons who have been adjudged incapacitated who lack the capacity to vote, it does not follow that all persons who have been adjudged incapacitated lack the capacity to vote. As discussed at section II.A.2.a., *supra.*, the standards for determining incapacity do not include any considerations relevant to the capacity to vote, that is, to understand the election process. Prye's situation demonstrates the inadequacy of trying to prevent persons who lack the capacity to vote from voting by broadly disenfranchising every single person who needs a guardian without inquiry into the individual's capacity to vote. Prye has guardian, but he also has the capacity to vote. See Affidavits of Guardian and Drs. Giuffra, Sullivan, and Han.

Missouri law concerning voting and registration by people adjudged incapacitated is also under inclusive. It does not exclude all persons who may lack the capacity to vote

from registering to vote or voting. A Missouri resident could be comatose or so gravely disabled from Alzheimer's Disease that he or she does not know his or her own name; nevertheless, the resident would be allowed to register to vote and to vote if not under guardianship. What is more, under the Missouri Constitution, a resident who suffered an extreme physical injury to the brain such that he or she did not understand the nature and effect of voting and who had been appointed a guardian because of physical incapacity would be allowed to register to vote and to vote. Still Prye, who is politically aware, interested in the issues, and unquestionably understands the nature and effect of the act of voting is excluded from voting solely because he is under guardianship because of mental incapacity. See Affidavits of Guardian and Drs. Giuffra, Sullivan, and Han. Clearly, Missouri's laws are not narrowly tailored to achieve the goal of guaranteeing those who cast a vote understand the process of voting. See *Doe v. Rowe*, 156 F. Supp.2d at 51-56 (Maine statutes and constitutional provision disenfranchising individuals under guardianship by reason of mental illness was not narrowly tailored to achieve the goal of ensuring integrity of elections because they disenfranchised individuals who have the capacity to vote). Thus, Defendants violate Prye's right to equal protection of the law by denying him the right to register and vote based solely on his adjudication of mental incapacity.

**B. Plaintiff will suffer irreparable harm absent  
a preliminary injunction**

The right to vote is one of the most fundamental rights in our system of government. *Reynolds v. Sims*, 377 U.S. 533, 554 (1964); *Harman v. Forssenius*, 380 U.S. 528, 537 (1965); *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The right to vote is entitled to special constitutional protection because, "The right to vote freely for the

candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. at 555. “[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. at 562; accord *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“[o]ther rights, even the most basic, are illusory if the right to vote is undermined”).

In light of the preferred place the right to vote enjoys in our constitutional scheme, “any illegal impediment to the right to vote, as guaranteed by the U.S. Constitution or statute, would by its nature be an irreparable injury.” *Harris v. Graddick*, 593 F. Supp 128, 135 (M.D.Ala. 1984); see *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1363 (M.D.Ala. 1986) (“denial of the right to vote” constitutes irreparable injury). “Federal courts have jealously guarded the citizens’ rights to vote as central to their ability to participate in and control government.” *Smith v. Babbitt*, 875 F. Supp. 1353, 1369 (D.Minn. 1995).

Prye will suffer irreparable injury if this Court fails to allow his motion for preliminary injunction to allow him to vote. Prye understands the political process and understands the nature and effect of the act of voting. See Affidavits of Guardian and Drs. Giuffra, Sullivan, and Han. He has closely followed the election and made final decisions for whom he would vote for the offices of President, United States Senator, Governor of Missouri, and Attorney General of Missouri. He believes it is important to vote especially in the Presidential race. He attempted to register to vote in Missouri

because he is a resident of Missouri. Prye has voted in every Presidential election for which he was eligible to vote.

Because voting is a fundamental right, denial of the right to vote necessarily causes irreparable harm. If Prye is not permitted to vote, he may never have the opportunity to vote for his choice between President George W. Bush and Senator John F. Kerry again. Likewise he may never get to vote for his choice between Senator Christopher Bond and State Treasurer Nancy Farmer for the United States Senate. He may never again have the opportunity to vote for his choice between Defendant Blunt and State Auditor Clair McCaskill to be Missouri's governor or for his choice between Defendant Nixon and Chris W. Byrd in the election for Missouri Attorney General.

**A. The potential injury to plaintiff outweighs any possible harm to defendants**

The injury threatened to plaintiff outweighs any damage that the allowance of an injunction might cause defendants. The only harm to defendants, and it cannot be characterized as a legally cognizable harm, is that they will be prevented from denying Prye the right and opportunity to cast his vote, a denial they imposed with no determination, judicial or administrative, that Mr. Prye is any less capable of voting than they and other Missouri citizens are.

**B. Issuance of an injunction would be in the public interest**

There would be no adverse consequence to the public interest should this Court allow Prye to vote. To the contrary, it is in the public interest to have citizens vote because it fosters democracy. "In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights, including [voting rights]." *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883-4 (3rd Cir.

1997). Since there is no basis for concluding that allowing Prye to vote in the November 2, 2004 election will negatively impact the election, his “constitutional rights can and should be protected immediately, consistent with the public interest.” *Council of Alternative Political Parties v. Hook*, 121 F.3d at 884.

#### IV. CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that this Court issue a preliminary injunction requiring Defendants to register Prye to vote before the November 2, 2004 election and to vote in the November 2, 2004 election and future elections.

/s/ Ferne P. Wolf  
Ferne P. Wolf, #29326  
Sowers & Wolf, LLC  
1401 S. Brentwood Blvd., Suite 575  
St. Louis, MO 63144  
314 968-2400  
314 968-3330 fax

#### **Certificate of Service**

I hereby certify that on October 8, 2004 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: Matt Blunt, Jeremiah W. (Jay) Nixon, Leo G. (Gary) Stoff, Jr., James P. O’Toole, Michael A. Lueken, Derio L. Gambaro, Angela da Silva, Yvonne B. Hunter, Board of Election Commissioners For The City Of St. Louis.

/s/ Ferne P. Wolf