

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

In re: THE APRIL 7, 2020, MUNICIPAL)	
GENERAL ELECTION,)	
ST. LOUIS COUNTY)	Eastern District: Election Panel
)	
Petitioner,)	

**Petition to Reschedule the April 7, 2020, Municipal General Election pursuant to
Section 115.024 of the Revised Statutes of Missouri and Supreme Court Operating
Rule 24.01**

COMES NOW Petitioner, St. Louis County Board of Election Commissioners (“Election Board”) by and through the undersigned counsel, pursuant to Section 115.024 RSMo and Sup. Ct. Op. R. 24.01, and for its Petition to Reschedule the April 7, 2020, Municipal General Election states as follows:

Introduction

1. Petitioner Election Board is the election authority for St. Louis County, Missouri, constituted under Chapter 115 RSMo, and is responsible for administering elections in St. Louis County, Missouri.

2. Pursuant to Article I, Section 25 of the Missouri Constitution “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.”

3. In furtherance of the constitutional mandate for free and open elections, the Missouri General Assembly adopted Section 115.024 RSMo which recognizes that in exigent circumstances an extreme remedy may be required to protect the integrity of an election.

4. Specifically, Section 115.024.2 RSMo allows the election panel (consisting of three Judges of the Appellate Court) in the event of a “disaster” to “authorize a relocation of the polling places affected by such disaster, or to schedule a new date upon which the election authority may conduct the election.”

5. Accordingly, the election panel of the Eastern District Court of Appeals has jurisdiction to hear this petition pursuant to Section 115.024 RSMo, and venue is proper in this Court as St. Louis County is located within the Eastern District of Missouri.

6. “Disaster” is defined as “any catastrophic or natural disaster, statewide or nationwide emergency, man-made disaster, civil disorder, insurgency, bioterrorism attack, terrorist attack, or enemy attack.” *See* Section 115.024.1 RSMo.

Description of the event prohibiting the election from occurring

7. The Corona Virus, or COVID-19, has been declared a pandemic by the World Health Organization and has resulted in significant disruption to everyday life locally, nationally and internationally. Further, on March 13, 2020, the President, the Governor, and the County Executive declared a state of emergency concerning COVID-19.

8. COVID-19, as both a “statewide” and “nationwide” emergency undoubtedly constitutes a disaster as contemplated by Section 115.024 RSMo.

Reasons the election cannot be held on the day required by law

9. The Election Board conducted the presidential primary election on March 10, 2020. Immediately prior to the election, one polling place informed the Election Board that it could not be used as a polling place due to concerns over COVID-19. In the

lead up to the primary election, 111 election judges withdrew. Another 59 election judges withdrew on election day itself.

10. Since the March 10, 2020 primary election, the statewide and nationwide emergency surrounding COVID-19 has intensified exponentially, resulting in travel restrictions and the cancelling of events that would cause the mass-congregation of people. These efforts are all aimed at preventing and/or slowing the spread of the virus. In fact, as of March 13, 2020, gatherings of more than 250 are prohibited in St. Louis County by emergency Executive Order. Every polling place in St. Louis County has far more than 250 potential voters assigned to it.

11. Three polling places have already indicated that they will not be available for use for the April 7, 2020 municipal general election. Many polling places are school buildings, churches, libraries, and senior living facilities, over which there is increasing uncertainty as to their availability.

12. While much remains unknown about COVID-19, the Centers for Disease Control and Prevention (“CDC”) believe that older individuals are placed at greater risk by the virus.

13. Many of the election judges are retirees and/or older adults, placing them in particular danger from COVID-19. The County Executive has issued an Executive Order that prohibits gatherings in a single space or room of more than ten individuals who are part of the high risk populations. Those over 60 are included within the high risk classification.

14. Section 115.081 RSMo requires two election judges for each of the major political parties at every polling place. The Election Board has over 350 polling locations. In total, more than 3500 election judges are required to run an election in St. Louis County.

15. Based upon the present circumstances, the Election Board considers it to be a virtual certainty that it will not have a sufficient number of election judges to be able to run an election in April in a manner that complies with Chapter 115 RSMo.

16. Other jurisdictions both nationally (e.g. Louisiana and Alabama), and internationally (e.g. the United Kingdom), are taking measures to delay the conduct of elections or encourage absentee or mail-in voting, in an effort to limit the spread of COVID-19.

17. In fact, the CDC is encouraging the use of mail-in voting. See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

Recommendation of the Election Board

18. Even with the current uncertainty surrounding the pandemic, the Election Board can conduct an election on April 28, 2020, provided that this Court authorizes the use of mail-in ballots,¹ consistent with Missouri's Mail Ballot Election Act, Sections 115.650 to 115.660 RSMo, and provided the Court authorizes the following plan:

¹ This Court's Order is necessary to allow the use of mail-in ballots for this election, as traditionally a general municipal election would not fall within the scope of the Missouri's Mail Ballot Election Act.

a. Upon receipt of a voted mail-in ballot, the ballot shall be quarantined for at least 24 hours, which is based upon current guidance that indicates the virus can survive up to ten hours on a paper surface.

b. Following the expiration of the quarantine period, the Election Board shall begin preparing the ballots for tabulation. The preparation shall be completed by teams of Election Board employees or election judges, consisting of one member from each major political party.

c. The Election Board shall accept any validly cast ballot, where the signature on the envelope matches the voter registration signature, and that has a valid postmark for April 28, 2020, or earlier, provided the ballot is actually received prior to the certification of the election results.

d. The Election Board shall notify any voter if their ballot is to be rejected for a lack of a signature or a signature mismatch. Upon notification, any such voter will be allowed to cure any defect provided they do so prior to the certification of the election results.

e. The Election Board shall maintain a telephone help line to assist voters with any problems or questions.

f. Absentee voting has already begun and can continue until 7:00 p.m. on April 28, 2020, at the Election Board's headquarters, and other established Election Board satellite offices.

g. The certification of the election results will occur 14 days following the election date as with a typical election.

h. As certain political subdivisions located in St. Louis County cross over the St. Louis County border, the Election Board requests that this Court order Franklin County and Jefferson County to sequester the election results for the elections involving the overlapping jurisdictions until after April 28, 2020, unless Franklin County and Jefferson County both also seek a delay of the April 7, 2020 municipal general election.

19. Allowing mail-in ballots would minimize the delay in the election, while reducing the risk of the spread of COVID-19 and the potential harm to the general public, including the election workers.

20. Absent the use of mail-in ballots, the Election Board would not be able to hold this election until August 4, 2020, which is a scheduled primary election date.

Plan for Providing Notice

21. In order to provide as much notice as practical of the change in the date and election process, the Election Board will: (1) post information on its website; (2) issue press releases; (3) make public appearances; (4) directly contact stakeholders, such as the candidates for election and the St Louis County Municipal League; and (5) use its social media platforms.

22. Further, each ballot will include detailed instructions for voters, including contact information for the Election Board help desk.

Conclusion

23. The plan proposed by the Election Board is the only manner in which the election can be conducted in the relatively near future, under the extreme circumstances presently facing the Election Board.

24. If the Court does not approve the use of mail-in ballots, in the manner proposed herein, then the Election Board cannot conduct the election until August 4, 2020, which is the date of the next scheduled election (which is a state primary).

25. The Election Board believes that it is in the best interests of the public and the integrity of the election process to allow the use of mail-in ballots and to minimize the delay to the municipal election. Crucially, the Election Board does not believe there are any circumstances under which it could hold any form of election on April 7, 2020.

WHEREFORE, the Election Board respectfully requests that this Court grant its petition to have the April 7, 2020, municipal general election postponed until April 28, 2020, and authorize the use of mail-in ballots in the manner set forth herein. If this Court denies the request to use mail-in ballots, the Election Board respectfully requests the April 7, 2020, municipal general election be postponed until August 4, 2020, to be held with the state primary election scheduled for that same date, but reserving the right for the Election Board to seek a writ of mandamus, pursuant to Supreme Court Operating Rule 24.01, with respect to the use of mail-in ballots.

Respectfully submitted,

CURTIS, HEINZ, GARRETT & O'KEEFE,
P.C.

/s/ Steven W. Garrett

Steven W. Garrett, #27756
Edward J. Sluys, #60471
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)
sgarrett@lawfirmemail.com
esluys@lawfirmemail.com
Attorneys for Petitioner