

**IN THE
SUPREME COURT OF MISSOURI**

SC88018

**COMMITTEE FOR A HEALTHY FUTURE, INC., et al,
Respondent/Cross-Appellant,**

v.

**SECRETARY OF STATE ROBIN CARNAHAN,
Respondent,**

and

**LOUIS SMITHER, et al.,
Appellants/Cross Respondents,**

and

**CHRIS KEMPH, et al.
Cross-Respondents**

**Appeal from the Circuit Court of Cole County,
The Honorable Thomas J. Brown, III**

Respondent's Brief

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Introduction

Respondents/Cross-Appellants, Committee for a Healthy Future, James Blaine, Christy Ferrell, and Mario Castro seek to place the tobacco tax initiative on the ballot. As such, they will be referred to herein as “Proponents”. As plaintiffs below, Proponents received the relief they sought when the trial court ordered Secretary of State Robin Carnahan (“Secretary of State”) to certify the initiative and to take any and all necessary steps to place the initiative on the November 7, 2006 ballot. (L.F. 188.)

Opponents of the initiative petition, intervenors below, Appellants/Cross-Respondents on appeal, filed an appeal challenging the trial court’s decision based on seven issues. They will be referred to herein as “Opponents.” The Secretary of State filed a respondent’s brief on September 25, 2006, contesting the arguments raised in each of the Opponents’ seven issues.

On cross-appeal, Proponents raise three additional issues, challenging the trial court’s determination that the Secretary of State properly declined to count as valid 1880 signatures submitted by circulators who were not properly registered. In this brief, the Secretary of State responds to these three arguments.

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Standard of Review

In reviewing a court-tried civil case, this Court must uphold the decision of the trial court unless there is no substantial evidence to support the decision, the decision is against the weight of the evidence, or the trial court has erroneously

declared or applied the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976).

Argument

- I. The Statutory Language of §§116.080¹ and 116.120 Prohibits the Secretary of State From Counting as Valid Signatures Submitted by Unregistered or Improperly Registered Circulators (responds to cross-appeal Point Relied On VIII)

As discussed in prior briefs, the Secretary of State could not count as valid 1880 signatures submitted by circulators who had not properly registered under §§116.080 and 116.120. (L.F. 78); Proponents' Brief at 11. In the Point Relied On in support of their cross-appeal, Proponents contend that the Secretary of State misapplied these statutory provisions. As the trial court correctly held, however, the circulator registration requirements are set by statute and the Secretary of State was required to apply the statutory remedy for non-compliance therewith. (L.F. 190.)

- B. Statutory scheme is clear and unambiguous.

"The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning." *City of Willow Springs v. Missouri State Librarian*, 596 S.W.2d 441, 445 (Mo. banc 1980). "The particular meaning to be ascribed to specific words and phrases must depend to some extent upon the context in which they are used" *Id.* "Where a statute's language is clear and unambiguous, there is no room for

¹All statutory citations are to RSMo. (2000) unless otherwise specified.

construction.” *Wolff Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988). As set forth below, this statute is not ambiguous.

The circulator registration requirement is established by §116.080.1, which provides that “[e]ach petition circulator shall be at least eighteen years of age and registered with the secretary of state.” In the following section of that same statute a list of seven specific pieces of information is set forth which “each petition circulator shall supply”: (1) petition name; (2) circulator name; (3) residential address; (4) mailing address; (5) whether he or she expects to be paid for soliciting signatures; (6) if so, the identity of the payor; and (7) the circulator’s signature.² §116.080.2.

Finally, the remedy for failure to provide this information is set forth in two statutes. First, §116.080.1 provides that “signatures collected by any circulator who has not registered with the secretary of state pursuant to this chapter on or before 5:00 p.m. on the final day for filing petitions with the secretary of state **shall not be counted**”. (Emphasis added.) Second, §116.120 sets forth that “[s]ignatures on petition pages that have been collected by any person who is **not properly**

²The Secretary provides a form on its website and in an initiative handbook that mirrors the registration requirements set forth in this statute. (L.F. 79.); Ex. 7.

registered with the secretary of state as a circulator **shall not be counted as valid.**” (Emphasis added.)

The logical upshot of these provisions is that if a circulator fails to register as required by §116.080.2, the Secretary of State is obligated by §§ 116.080.1 and 116.120.2, to not count as valid the signatures submitted by those circulators. The mandatory language of the statutes and the explicit provisions that require the circulator be “properly registered” provide the Secretary of State with no discretion in taking this action.

C. Proponents attempt to create ambiguity when none exists.

To avoid the penalty for non-compliance with this circulator registration requirement, Proponents make two convoluted statutory construction arguments. First, they argue that the list of seven mandated disclosed items in §116.080.2 is not encompassed by the registration requirement of §§116.080.1 and 116.120, and therefore the registration requirement is ambiguous. Proponents’ Brief at 78-80. Second, Proponents contend that disclosure elsewhere by circulators as to name and address constitutes substantial compliance with §116.080.2, and such compliance is adequate under this statutory scheme. *Id.* at 80-83. Proponents’ attempts to find ambiguity in these statutory provisions where none exists, and to substitute their preference as to meaning of these provisions for that of the General Assembly must not be countenanced by the Court.

Proponents argue that the information required to be supplied by §116.080.2 is not the registration process required by §116.080.1 and §116.120, because §116.180.2 uses the word “supply” rather than “register.” Proponents’ Brief at 79. Under Proponents’ theory, the legislature twice provided consequences for a circulator’s failure to register without ever specifying what was

needed to register. But what is this list of information the circulators “shall supply” to the secretary of state’s office according to §116.080.2, if not the registration information required by the previous subsection of the statute? There is a single, logical, plain-language reading of §116.080: The legislature mandated circulator registration in §116.080.1, and then in the following subsection, §116.080.2 laid out those requirements.

Proponents’ interpretation would eliminate the need for a circulator to “supply” any specific information. And it would eliminate any time limitation on supplying it. If §116.080.2 is not the registration requirement referred to in §116.080.1, then there is no requirement that the circulator “supply” this information to the Secretary of State’s office by any specific date, because no date is provided in §116.080.2. Accordingly, under Proponents’ interpretation, petition circulators could wait indefinitely – certainly until after the election – to supply this information. This would make the information meaningless, and lead to an absurd result. The legislature is presumed not to intend an absurd result. *State ex rel. McNary v. Hais*, 670 S.W.2d 494, 495 (Mo. 1984).

Even if the statute were ambiguous, Proponents’ argument ignores the maxim that statutory provisions relating to the same subject matter are considered *in pari materia* and are to be construed together. *Baldwin v. Director of Revenue*, 38 S.W.3d 401, 405 (Mo. 2001). This is particularly true, where, as here, the sections at issue in this case were passed by the General Assembly at the same time, by the same amendment. House Bill 676 (effective June 16, 1999). The argument that the registration requirements were ambiguous also ignores the fact that the Secretary of State provides a form for registration, which while not a promulgated rule still makes clear the Secretary’s interpretation of the registration requirements.³ (L.F. 79); Ex. 7.

³The “interpretation and construction of a statute by an agency charged with

D. Substantial compliance does not satisfy the statutory scheme.

Proponents also argue that because some of the circulators whose signatures were disqualified by the Secretary of State were in fact registered for other petitions, their failure to properly register for the tobacco tax initiative should be excused on the basis of “substantial compliance” with the registration requirements in Chapter 116. Proponents’ Brief at 80. The trial court properly rejected this argument. (L.F. 148.)

Missouri law does not simply require “some” form of registration; rather it requires the circulator to provide the name of the petition, the name of the circulator, the circulator’s residential and mailing addresses, whether the circulator will be paid for soliciting signatures, and if so, the identity of the payor. §116.080.2. The mandatory and detailed language in these provisions demonstrates that substantial compliance with the statute was not the intention of the legislature. In fact, the legislature expressly rejected the substantial compliance standard by requiring disqualification of all signatures collected by circulators who had not “properly” registered. §116.120. If the intent was to allow substantial compliance, the General Assembly could have indicated such by simply requiring registration.

When the General Assembly wishes to enact a substantial compliance standard, it knows how to do so. For example, §116.100 sets specific requirements for how petition pages are to be

its administration is entitled to great weight.” *State ex rel. Sprint Missouri, Inc. v. Public Service Com’n of State*, 165 S.W.3d 160 (Mo. 2005).

numbered and organized, and provides that failure to comply with these requirements is fatal for the petition. By contrast, that provision excuses non-compliance if they are “clerical or merely technical errors. . . .” §116.100. There is no such exclusion in §§116.120 or 116.080.1.

Accordingly, the trial court correctly held that §§116.080 and 116.120 require that the Secretary of State not count signatures collected by improperly registered circulators, and that substantial compliance is not acceptable under these statutes. (LF 147-148). This decision should be upheld.

II. Missouri’s Circulator Registration Requirements Are Constitutional Under the Missouri Constitution (responds to cross-appeal Point Relied On IX)

A. The Court may avoid reaching this constitutional issue

The trial court determined that there were a sufficient number of signatures of legal voters from the Fifth Congressional District to meet Article III, Section 50’s signature requirement. (L.F. 159.) Should that determination be upheld, this Court need not reach the constitutional issues regarding the circulator registration requirements of §§116.080 and 116.120. “A court will avoid the decision of a Constitutional issue if the case can be fully determined without reaching it.” *State ex. rel. Union Elec. Co. v. Public Serv. Comm’n*, 687 S.W.2d 162, 165 (Mo. banc 1985).

B. The Missouri Constitution provides the General Assembly with express authority to regulate the initiative process

Proponents contend that if §116.080 and §116.120 are interpreted as set forth above, they violate the Missouri Constitution “because they impair the right of initiative reserved by the people in their constitution.” Proponents’ Brief at 84. The trial court correctly rejected

this argument because the Constitution expressly authorizes legislation, such as these two statutory provisions, to regulate the initiative process. (L.F. 149.)

The Missouri Constitution provides the mechanism for citizens to enact laws and amend the constitution in two main sections: Article III, Section 49 provide broad authority for initiatives:

The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.

But, Article III, Section 53 ensures that initiatives can be regulated so that they proceed in an orderly fashion – and one that resists fraud and deception. That section provides, in part, that, “[i]n submitting the same to the people the secretary of state and all other officers shall be governed by general laws.” Together, these provisions of the Missouri Constitution, with the accompanying “general laws,” permit citizens to proceed by initiative, and instruct the Secretary of State as to when such an effort is sufficient to be placed on a ballot.

It is therefore plainly within the contemplation of Missouri’s Constitution that the General Assembly will enact laws to implement these sections. *State v. Blunt*, 810 S.W.2d 515, 516-17 (Mo. banc 1991) (“[a]lthough the constitution first reserves to the people the initiative power, the constitution by subsequent provisions involves the general assembly in the procedure of submitting initiatives. In submitting initiatives to the people, ‘the secretary of state and all other officers shall be governed by general laws’”). Simply put, §§116.080

and 116.120, are two of the general laws the legislature created to implement the initiative process, a step that provides openness, accountability and integrity to the process.

In determining whether these provisions violate the Missouri Constitution, it is important to recognize the general proposition that a statute is clothed with a strong presumption in favor of constitutionality: A court must presume that a contested statute is constitutional and it may only find a statute to be unconstitutional if it clearly contravenes a specific constitutional provision. *State v. Kinder*, 89 S.W.3d 454, 458-59 (Mo. 2002); *State v. Young*, 695 S.W.2d 882, 883 (Mo. banc 1985). A statute must be interpreted to be consistent with the constitution if at all possible, and any doubts concerning the validity of the statute are to be resolved in favor of its validity. *Id.* at 883-884. Here, the presumption of constitutionality is even further supported when the constitution itself grants specific authority for the legislative implementation of the constitutional right, as the Missouri Constitution does in Article III, § 53.

The case of *United Labor Committee of Missouri v. Kirkpatrick*, 572 S.W.2d 449 (Mo. banc 1978), is instructive on this issue. In *United Labor*, the court held that certain defects in circulator affidavits did not require the Secretary of State to reject the signatures collected by those circulators. Rather, the irregularities in the circulator affidavits simply rebutted the prima facie validity of the petition.⁴ *Id.* at 453. The decision did include a lengthy

⁴*United Labor* is also distinguishable because the only purpose of the notarization requirement, under its holding, was to provide a presumption of validity

discussion of the proposition that legislation implementing a constitutional provision must be “subordinate” to that provision and not designed to “narrow or embarrass it.” *Id.* at 454-56.

to the signatures. The circulator registration requirement has the additional purpose of insuring full public disclosure as to special interest financial involvement in the initiative process. As the Supreme Court ruled in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 202 (1999), this is indeed a “substantial state interest.”

But the Court's holding was based on the simple fact that, unlike the statute at issue here, the statute itself did not specify the effect to be given to this particular defect.⁵

In its ruling, the Supreme Court relied on *Kasten v. Guth*, 395 S.W.2d 433, 435 (Mo. 1965), where it held that "The uppermost question . . . is whether or not the statute itself

⁵This specific statutory language of §116.120 requiring rejection of the signatures collected by improperly registered circulators explains why *United Labor's* general analysis does not apply to the circulator registration issue, but is still applicable with regards to the omission of Congressional district information from the petition, circulator affidavits, and inconsequential variations in name and address, where this specific statutory language mandating rejection of the signatures does not exist. See Secretary of State's First Brief (filed September 25, 2006) at 16-18, 21-24.

makes a specified irregularity fatal. If not, courts will not be astute to make it fatal by judicial construction.” *Id.* at 453. The Court contrasted *Kasten* with *Barks v. Turnbeau*, 573 S.W.2d 677, 681-82 (Mo. App. E.D. 1978), where absentee ballots were invalidated for their lack of compliance with certain statutory requirements because the statute expressly mandated that result.

This case is similar to *Barks* and opposite of *United Labor* and *Kasten*. Taken together, those three cases support the conclusion that the Secretary of State’s action of rejecting these 1880 signatures under Chapter 116 does not offend the Missouri Constitution.

In short, the circulator registration provisions in §§116.080 and 116.120 are general laws passed by the legislature to implement the initiative process. They do not unconstitutionally restrict the people’s rights to engage in the initiative process. Therefore, the trial court’s decision on this issue should be upheld.

III. Missouri’s Circulator Registration Requirements Are Constitutional Under First Amendment (responds to cross-appeal Point Relied On X)

A. Standard of Review

Proponents rely on *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, (1999), and argue that the circulator registration requirements in §§ 116.080 and 116.120 violate the First Amendment because they are not substantially related to an important state interest. Proponents’ Brief at 86. In so doing, Proponents properly acknowledge that the circulator registration requirements are not subject to “strict scrutiny.” This is consistent with *Buckley*, which

requires strict scrutiny, but only when the state regulation “imposes **severe** burdens on speech.” *Buckley*, 525 U.S. at 192 n.12 (emphasis added).

It is also consistent with *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), wherein the Supreme Court ruled that:

[t]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance. But when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions.

Id. at 434. *Accord, Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614, 616 (8th Cir. 2001) (lesser burdens on speech receive a lower level of review).

In Missouri, the circulator registration requirements do not in any way discriminate between classes of circulators, as all circulators must register. Further, the circulator registration requirements are not content-based or viewpoint-based regulations. As such, the issue is whether the State has important regulatory interests that are served by the circulator registration requirements. Missouri has substantial state interests in fraud prevention and public disclosure of special interest involvement in the initiative process, and the circulator registration requirements further these interests. Those interests are so substantial, and the fit between those

interests and the registration requirements so close, that the requirement would even pass muster under “strict scrutiny.”

B. Missouri has important interests furthered by the circulator registration requirements

Proponents’ principal source of authority for their First Amendment claim is *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 192 (1999). And they begin, as they must, where the Court began in *Buckley*: by recognizing the importance of the State’s interest being served by the regulation at issue. In fact, in *Buckley* the Court recognized the need for regulation of the sort found in §§116.080 and 116.120: “there must be substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” 525 U.S. at 187 (internal quotations and citations omitted). Therefore, the *Buckley* Court held, under the First Amendment, states “have considerable leeway **to protect the integrity and reliability of the initiative process**” *Id.* at 191 (emphasis added).

Proponents do not contest – and in fact flatly concede – that Missouri has a substantial interest in “protecting the integrity of the initiative process and preventing impropriety or the appearance thereof in the initiative process as a whole.”⁶

⁶In light of this concession, it is odd that Proponents complain about the Secretary of State and Opponents’ failure to introduce evidence related to this uncontested legal principle. See Proponents’ Brief at 89-90.

Proponents Brief at 88. The Secretary of State absolutely agrees. If there are allegations of fraud in connection with the signature collection process related to one, 100, or 1000 signatures, the State needs to know the name of the circulator involved, contact information for that circulator, and, if that circulator was paid, the identity of such payor for each signature. This information is vital if the State is to effectively investigate such alleged fraud, determine the validity of the claims, and punish those individuals responsible. The State's circulator registration requirement is directly related to this important and substantial state interest.

Of course, preventing or addressing fraud is not the only interest served by the registration requirements. The State and its voters also have an interest in disclosure of the identity of special interests funding the initiative – another interest recognized in *Buckley*. 525 U.S. at 202. During the election process (i.e. post petition-gathering process), individuals who signed the petition as well as all potential voters have a right to know who paid to obtain which signatures. Again, the State's circulator registration requirements – name, contact information, whether paid, and if so, by whom – is substantially related to satisfy that need.

There is really no dispute that Missouri has a considerable, legitimate State interest in preserving the integrity of elections, both by preventing fraud and by disclosing the sources of political influence.

- C. Missouri's circulator registration requirements, unlike the ones regulations at issue in *Buckley*, serve the State's interest without greatly inhibiting First Amendment activity

Where the Secretary and the Proponents part company is with regard to whether the State, because it possesses what even proponents must concede is an imperfect alternative, is required to excuse compliance with the registration requirements. The appropriate analysis against begins with *Buckley*.

In *Buckley*, the United States Supreme Court ruled that restrictions on initiative rights violate the First Amendment only when they "significantly inhibit communication with voters about proposed political change, and are not warranted by the states' interests alleged to justify those restrictions." *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 192 (1999). As a preliminary matter, it is important to note that Proponents failed to put forth any evidence that the speech of any circulator or petition signor has been inhibited by the post-circulation registration requirements at issue in this case. This stands in stark contrast to the situation in *Buckley*, where the plaintiffs presented substantial testimony that certain initiative process requirements actually inhibited the ability of those individuals to gather signatures. *Buckley*, 525 U.S. at 198. On this basis alone, Proponents' First Amendment *Buckley* challenge should be rejected.

More specific analysis and application of *Buckley* leads to the same result. There, the Court struck down a Colorado requirement that circulators wear a badge with their name on it at the time of circulation. 525 U.S. at 200. That badge meant that every person approached by every circulator could "expose the circulator to the risk of 'heat of the moment' harassment." *Id.* at 199-200. But Missouri's circulator registration statute imposes no similar requirement. In fact, it more closely

tracks a different part of the Colorado law – one that the Court spoke of favorably in *Buckley*. Colorado required a circulator’s affidavit, made at the time a petition section was submitted, that required the circulators to submit their name, address, and signature, as an acceptable measure to protect the state’s interest in policing lawbreakers among petition circulators. *Id.* at 196, 199-200. “While the affidavit reveals the name of the petition circulator and is a public record, it is tuned to the speaker’s interest as well as the State’s. Unlike a name badge worn at the time a circulator is soliciting signatures, the affidavit is separated from the moment the circulator speaks.” *Id.*

In Missouri, the requirements for circulator registration in §116.080 is not even as intrusive as the one endorsed in *Buckley*: here, circulators do not have to register until the final day for filing petitions with the Secretary. The Missouri requirement, then, is even less likely than the Colorado requirement to “expose the circulator to the risk of ‘heat of the moment’ harassment.” *Id.* at 199-200. Therefore, the concerns in *Buckley* about restraint on the circulator’s speech at the time of circulation do not apply.

The Court specifically stated that its opinion did not reach the issue of whether it would be constitutional to require circulator’s badges to disclose their paid or volunteer status, if badges could be required. *Id.* at 197. However, *Buckley* overturned a requirement that paid circulators submit a final report that includes their name, address, and total amount paid to each circulator. *Id.* at 204. The Court distinguished between Colorado’s unconstitutional disclosure report, which only targeted paid circulators and required disclosure of the amount paid individually to a each circulator, and constitutional circulator affidavit requirements, which must be completed by both paid and volunteer circulators and do not require disclosure of the amount paid. *Id.* at 204, n. 24. Section 116.080 is similar to the affidavit requirement upheld in *Buckley*, and unlike Colorado’s disclosure report.

Under Missouri statute, both paid and unpaid circulators must register with the Secretary, and no circulator is required to disclose the amount they are paid.⁷

⁷In their Point Relied On X, Proponents contend that the circulator registration requirements are unconstitutional “in that they require the disclosure of the names of paid petition circulators when other statutes meet the state’s interest.” Proponents’ Brief at 86. However, the law is clear under *Buckley* that a state requirement of disclosure of a circulator’s name and address is constitutional. *Buckley*, 525 U.S. at 199, 204, n.24. In their Point Relied On, Proponents did not raise the issue of the disclosure of whether the circulator expects to be paid, and if so, by whom. As such,

Proponents have waived any claim as to these disclosure requirements. Rule 84.04(d)(1); *Hastings v. Coppage*, 411 S.W.2d 232, 235 (Mo. 1967). However, should the Court excuse this waiver and scrutinize these disclosure requirement, as set forth herein, they do not violate the First Amendment.

Proponents argue that there are other “adequate provisions” of state law that “address” this substantial state interest. Proponents’ Brief at 88. They note that another statute, §116.040, requires circulators to sign an affidavit on each petition page containing his or her name and address. *Id.* However, that statutory requirement does not include the requirement in §116.080 disclosing whether the circulator was paid for his work, and if so by whom. The investigation of possible fraud by one or more circulators related to one or more payor entities is furthered by this additional information.

All of this may be somewhat beside the point, for not only do Proponents concede that the State has a substantial interest, they seem to concede that the circulator registration requirement serves that interest. Their real argument, then, seems to be – to use “strict scrutiny” language, though, again, that is not the test – that because in this particular instance the State could find the missing information in other ways and thus serve the State’s interest, the State is constitutionally required to excuse the Proponent’s failures. But they cite nothing for the proposition that a statute can be held not to be “narrowly tailored” (again, using inapplicable “strict scrutiny” terms) merely because in one instance the statutory requirement is possibly unnecessary.

Here, Proponents want the State – and its citizens, looking for information concerning ballot initiatives – to look first at circulator registration for other initiatives, and second to campaign expenditure reports. The reference to campaign finance reports made under Chapter 130, RSMo., is inadequate for at least three reasons:

because the reports contain exceptions that may exclude some payments (see, e.g., §130.011(7) , which excludes from “committees” required to report individuals who spend their own money or do not spend more than \$500); because the reports are filed with another agency, remote from the filing of the petition, and are not limited to initiative, much less to circulator expenditures, making the information considerably more difficult to find and use; and because the filings are made on a schedule that lacks the connection with the submission of the petitions. And looking at registrations for other petitions presents its own set of problems – besides the obvious one that although there may be such registrations here, that is fortuitous.

There is simply no First Amendment basis for requiring the Secretary to excuse Missouri’s carefully tailored circulator registration requirements – requirements that impose a burden on circulators that is, again, even less than the burdens that the U.S. Supreme Court endorsed in *Buckley*.

Conclusion

WHEREFORE, Respondent/Cross-Respondent Secretary of State Robin Carnahan requests this Court uphold the decision of the Circuit Court with respect to the issues raised in Proponents’ brief.

Respectfully submitted,

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Certificate of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 29th day of September, 2006, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were sent via electronic mail, and U.S. mail, postage prepaid, to:

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Assistant Attorney General