

**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

The presence of multiple parties with and without hyphenated designations and the prospect of at least six briefs filed on four different dates (including two respondent's briefs filed by the Secretary of State) may make this appeal look more complex than it really is. In fact, this is simply another argument between those seeking to place an initiative on the ballot and those who want to keep it off. The case arose when the Secretary of State rejected the petitions – hence the proponents of the petition became plaintiffs in the trial court, with the Secretary of State as the defendant. As the case proceeded, opponents of the initiative intervened. At trial the Secretary of State opposed some arguments made by the proponents. But she also opposed some arguments made by the opponents. On appeal, the Plaintiffs are Respondents/Cross-Appellants, and will be referred to herein as “Proponents” to reflect their ultimate aim. Defendant Secretary of State Robin Carnahan is a Respondent to both the appeal and the cross-appeal, and will be referred to as the “Secretary of State”. The intervenors – Appellants/Cross-Respondents on appeal – will be referred to as “Opponents”, since their aim remains to keep the initiative off the ballot.

Statement of Facts

On August 8, 2006, the Secretary of State issued a Certificate of Insufficiency certifying that the Proponents' tobacco tax initiative petition, did not contain a sufficient number of valid signatures. (L.F. 29.) Specifically, the Secretary of State concluded that Proponents had provided 274 signatures short of what was required for the Fifth Congressional District. (L.F. 94.) This determination was based upon the certifications of valid signatures submitted by local election authorities in the Fifth Congressional District to the Secretary of State, the failure of certain circulators to properly register for this initiative petition as required by Chapter 116, and the corresponding statutory requirement that the Secretary of State not count such signatures as valid. (L.F. 77-78, 90, 156-57.)

After hearing legal arguments, the trial court concluded that the Secretary of State acted properly when she declined to count the 1880 signatures submitted by circulators who had not properly registered under Chapter 116. (L.F. 166-67.) After hearing evidence at trial, however, the trial court determined that local election authorities had failed to count over 1000 valid signatures. (L.F. 180-81.) Based on these determinations, the trial court found that there were enough signatures of legal voters to meet the constitutional requirements of Article III, §50 of the Missouri Constitution, ordered the Secretary of State to certify the tobacco tax initiative petition as sufficient, and ordered her to take all additional necessary steps to place the initiative on the November 7, 2006 ballot. (L.F. 188.)

Opponents contend that certain signatures initially counted by the Secretary of State as valid, as well as additional signatures determined to be valid by the trial court, are in fact invalid for a number of reasons. (L.F. 94-112.)

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

Opponents attempt to reduce the number of valid signatures based on various objections to the Secretary of State's application of the statutes and regulations governing initiatives. However, the "interpretation and construction of a statute by an agency charged with 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). In addition, the Secretary of State's regulations are consistent with her statutory authority under §§116.130.5, RSMo (Cumm. Supp. 2005) and §115.335.7.¹ "A regulation is valid unless unreasonable and plainly inconsistent with the statute under which the regulation was promulgated." *Linton v. Missouri Veterinary Med. Bd.*, 988 S.W.2d 513, 517 (Mo. banc 1999). Accordingly, and as set forth below, the trial court properly determined that these objections failed as a matter of law, or were

¹All statutory citations are to RSMo. (2000) unless otherwise specified. Under both statutes, the Secretary of State is "authorized to adopt rules to ensure uniform, complete and accurate checking of petition signatures" §§ 115.335.7, 116.130.5, RSMo (Cumm. Supp. 2005).

insufficient to rebut the prima facie case established for the validity of the signatures.

I. The Secretary Lawfully Accepted the Signatures of Registered Voters Who Listed a Different Address on the Petition When the Address was Within their County of Registration and the Signature was Verified by Local Election Authorities (responds to Point Relied On I)

Local election officials lawfully counted the signatures of those individuals who signed the initiative petition and listed different addresses on the petition than those listed on their voter registration. Contrary to the Opponents' contention, §116.130.1 RSMo (Cumm. Supp. 2005), 15 CSR 30-15.010, and 15 CSR 30-15.020 do not require that the address listed on a initiative petition be the same address as that listed on voter registration records. Rather, if the local election official is able to match the signature with the one on file, the signature must be counted.

Section 116.060 describes who may sign an initiative petition. It provides that: a registered voter of the state of Missouri may sign initiative and referendum petitions. However, each page of an initiative or referendum petition shall contain signatures of voters from only one county . . . Signatures of voters from counties other than the one designated by the circulator in the upper right-hand corner on a given page shall not be counted as valid.

Therefore, a registered voter, who signs on the sheet for his county, may sign a

petition, even if his address within that county has changed.

Correspondingly, what matters under §116.130.1, RSMo (Cumm. Supp. 2005) is the county of residence and registration of the signor. It provides that:

Each election authority shall check the signatures against voter registration records in the election authority's jurisdiction, but the election authority shall count as valid only the signatures of persons registered as voters in the county named in the circulator's affidavit.

Thus, the statute allows for the counting of signatures by registered voters who have moved as long as they have moved to a different location within the same county.

The Secretary of State's regulations give full effect to the statute, and explicitly require such signatures be counted under certain circumstances. They provide that when an address on a petition is different than that on file with the local election authority, but is within the same county, it must be accepted if the local election authority matches that signature with the signature on file. Specifically, under 15 CSR 30-15.010(3)(E) local election authorities are required to:

compare and determine that the individual's signatures on the petition and on the voter registration record are sufficiently alike to identify the petition signer as the same person who is registered to vote within the jurisdiction. If otherwise valid, the signature of an individual whose address is acceptable under this subsection (3)(E) shall be counted in the totals of the local election authority who has jurisdiction over the address listed on the petition.

15 CSR 30-15.010(3)(E)

A second regulation, 15 CSR 30-15.020 (1)(B), is absolutely consistent with this procedure. It provides:

Where possible, if the voter's address on an "R" designated signature is acceptable pursuant to 15 CSR 30-15.010(3)(E), where the address listed on the petition is different from the address on the voting rolls but within the county named at the top of the page, and the local election authority determined that the individual's signatures on the petition, and on the voter's registration record are sufficiently alike to identify the petition signer as the same person who is registered to vote within the jurisdiction, the local election authority shall add to the "R" designation DA (i.e., RDA)

15 CSR 30-15.020 (1)(B).

Therefore, the regulations that guide the checking of petition signatures specifically authorize local election authorities to count the signatures of individuals who list a different address than that on their voter registration, as long as it is an address within the county, and the local election official matches the signature with the one on file. That is consistent with the Secretary of State's statutory authority under §116.130.5, RSMo (Cumm. Supp. 2005) and §115.335.7.

"A regulation is valid unless unreasonable and plainly inconsistent with the statute under which the regulation was promulgated." *Linton*, 988 S.W.2d at 517. The regulations that allow local election authorities to accept signatures and

addresses when they vary in some minor way from the exact name on the voting record (i.e. using a common nickname, omitting the junior or senior following the name, omitting an apartment number, etc) ensure the completeness and accuracy of the local election authorities' count and are not inconsistent with the statute or unreasonable. Otherwise, under Opponents' argument, if an individual did not sign their name and address in precisely the same way they signed their voter registration card, their act of petitioning for constitutional change would not be counted, even though other information allowed the election authority to verify the signature. Opponents' reliance on *Yes to Stop Callaway Comm. v. Kirkpatrick*, 685 S.W.2d. 209 (Mo. App. W.D. 1984), is misplaced. In that case, the court applied a statutory scheme that has been dramatically changed. The Western District found that the signatures of individuals who listed different addresses on the petition than on their registration were properly not counted under a statute that disqualified such persons from voting. *Yes to Stop Callaway Comm.*, 685 S.W.2d at 211. The court based its decision on a provision of §115.165, RSMo (Sup. 1983), which prevented an individual from voting, if they had not transferred their registration within an election authority's jurisdiction by the fourth Wednesday prior to the election.² *Id.* The court reasoned that individuals who had

²Former Section 115.165.4 provided: Any registered voter who changes his place of residence within a county at or before 5:00 p.m. on the fourth Wednesday prior to an election and does not transfer his registration at or before 5:00 p.m. on

not transferred their registration when they signed the petition were in the same position as an unregistered person, and therefore disqualified from signing a petition under §116.060. *Id.*

This reasoning is no longer valid, however. Some individuals who have not updated their address with the election authority prior to the day of the election are now still legally entitled to vote, and therefore not disqualified from voting under §115.165, RSMo (Cumm. Supp. 2005) or correspondingly, from signing an initiative petition under §116.060. Section 115.165.2 RSMo states:

A registered voter who has changed his or her residence within an election authority's jurisdiction and has not been removed from the list of registered voters pursuant to this chapter shall be permitted to file a change of address with the election authority or before an election judge at a polling place and vote at a central polling place or at the polling place that serves his or her new address upon written or oral affirmation by the voter of the new address.

After this statutory change in 1994, individuals who sign a different address on a petition than the address listed on their voter registration are legally entitled to vote, as long as their new address is within the election authority's jurisdiction. Therefore, those individuals

the fourth Wednesday prior to the election shall not be entitled to vote in the election.

are able to vote on the ballot measure at the election, and their signatures are properly counted on initiative petitions. Accordingly, the trial court correctly determined that it was “proper to count the signatures of “Registered at Different Address” or RDA voter, when the different address is still within the same jurisdiction and the local election official is able to match the signature with the one on file.” (L.F. 169.) See *United Labor Comm. v. Kirpatrick*, 572 S.W.2d 449, 455 (Mo. banc 1978) (“validity of the signatures is the heart of the ultimate determination” as to the sufficiency of an initiative petition).

II. A Signature on a Petition is Properly Counted Notwithstanding the Omission of the Voter's Congressional District from the Signature Line (responds to Point Relied On II)

The trial court correctly held that signatures without a designated congressional district can be counted as valid. (L.F. 159.) Opponents argue that the statutes and regulations provide authority for local election authorities and the Secretary of State to change an incorrect congressional district, but do not allow them to count a verified signature if no congressional district is specified. That is simply nonsensical. Moreover, because there is no statutory authority making this specific irregularity fatal, the Secretary of State properly counted such signatures.

The long-standing law in Missouri is when there is an irregularity, “[t]he uppermost question . . . is whether or not the statute itself makes a specified irregularity fatal.” *United Labor Commission*, 572 S.W.2d at 453 (citation omitted). In contrast to §116.100, where non-compliance with certain statutory requirements is fatal for the petition, §116.130.3, RSMo (Cumm. Supp. 2005) specifically allows a signature to be counted despite the omission of the congressional district. This statute provides that:

If the election authority or the secretary of state determines that the congressional district number written after the signature of any voter is not the congressional district of which the voter is a resident, the election authority or the secretary of state shall correct the

congressional district number on the petition page. *Failure to give the voter's correct congressional district number shall not by itself be grounds for not counting the voter's signature.*

§116.130.3, RSMo (Cumm. Supp. 2005) (emphasis added).³

Furthermore, the regulations state: "In order for a name to be qualified to appear on the petition, there must be a valid voter name, address, and signature.

NOTE: Failure of any other information is not a reason to fail to certify a name as being qualified." 15 CSR 30-15.010(5). "If a person is registered, but the correct congressional district is not indicated on the petition, the incorrect number should be crossed out and the correct number entered in the right margin." 15 CSR 30-

³In drafting this statute, the General Assembly recognized reality – while it can fairly expect voters to know their own addresses and the county in which they live, many do not know the number of their congressional district. Since the General Assembly did not demand such knowledge, the circuit court appropriately declined to do so.

15.020(1)(G). Once again, these regulations are valid, “unless unreasonable and plainly inconsistent with the statute under which the regulation was promulgated.” *Linton*, 988 S.W.2d at 517 (Mo. banc 1999).

Opponents contend that §116.040 requires all of the signature fields found on petition to be filled out by the signer, and that therefore, if a signer fills out every field, except the congressional district, his signature is invalid. Opponents’ Brief at 46. However, no portion of §116.040 makes it mandatory that the signer fill in the congressional district blank, and there certainly is not a statutory provision making such omission fatal to the signature. The language in §116.040 advising a signer of certain criminal penalties does not provide a criminal penalty for failing to fill in the congressional district. The introductory language to the petition in §116.040 does not mention congressional district, and the circulator’s affidavit does not require the circulator to swear that the individual stated his congressional district. Although the form of the petition in §116.040 has a congressional district blank, nothing in §116.040 or in §116.130.3, RSMo (Cumm. Supp. 2005) makes a signature invalid if that blank is left empty.

The clear language of §116.130.3, RSMo (Cumm. Supp. 2005), 15 CSR 30-15.010(5), and 15 CSR 30-15.020(1)(G) indicates that a voter’s failure to fill in the congressional district number does not prevent local election authorities or the Secretary of State from counting his signature. Accordingly, the Circuit Court correctly decided that signatures without a designated congressional district must be counted as valid. *See United*

Labor Commission, 572 S.W.2d at 455 (“validity of the signatures is the heart of the ultimate determination” as to the sufficiency of an initiative petition).

III. Local Election Authorities May Verify Information Against the Missouri Voter Registration System because it is the Official Voter Registration List for the Conduct of All Elections in Missouri (responds to Point Relied On III)

The trial court correctly held that the state voter registration database may be used to verify voter address information. (L.F. 164.) Opponents' contentions that local election authorities must review signatures using only local voter registration records instead of the statewide voter database are contradicted by common sense and a simple review of Missouri law.

The Missouri Voter Registration System is authorized by §115.158, RSMo. (Cumm Supp. 2005). It provides that this database shall:

(2) Serve as the single system for storing and managing the official list of registered voters throughout Missouri; . . . (4) Allow any election official in Missouri, including local election authorities, immediate electronic access to the information contained in the system; (5) Allow all voter registration information obtained by any local election official in Missouri to be electronically entered into the system . . . ; (6) Serve as the official voter registration list for the conduct of all elections in Missouri.”

§115.158.1 (2)(4)(5)(6) RSMo (Cumm Supp 2005). Under §115.157.1, RSMo

(Cumm. Supp. 2005) local election authorities “may place all information on any registration cards in computerized form in accordance with section 115.158.”

Section 116.020 provides that “[t]he election procedures contained in Chapter 115, RSMo, shall apply to elections on statewide ballot measures, except to the extent that the provisions of chapter 116 directly conflict, in which case chapter 116 shall prevail” Chapter 115 provides for the creation of a computerized statewide voter registration list, and use of this system to verify voter address information in no way directly conflicts with any provision of Chapter 116.

Opponents’ argument that local election authorities must check addresses against the original physical voter registration cards, and cannot check them against information that they themselves may place in computerized form to serve as the official voter registration list, defies logic. Opponents rely on §116.130.1, RSMo (Cumm. Supp. 2005) for this argument. But that section says nothing about cards, just “records”: [e]ach election authority shall check the signatures *against voter registration records in the election authority’s jurisdiction*, but the election authority shall count as valid only the signatures of persons registered as voters in the county named in the circulator’s affidavit.” §116.130.1, RSMo (Cumm Supp 2005) (emphasis added). It does not specify which voter registration records the election authority may use. It does not state that those records must be in the form of original documents. It certainly does not require that local election authorities check *addresses* against the physical documents, rather than against the official voter

registration list.

Opponents argue that the legislature could have amended §116.130.1, RSMo (Cumm. Supp. 2005) to provide for use of the Missouri Voter Registration System, had the legislature so intended. But, where the provisions of §116.130.1, RSMo (Cumm. Supp. 2005) do not prevent local election officials from using the Missouri Voter Registration System to verify addresses, there would be no need for the legislature to amend §116.130.1, RSMo (Cumm. Supp. 2005). Accordingly, Opponents misguided attempt to prevent local election authorities from using the statewide voter database to verify signatures must be rejected.

IV. Verified Signatures are Properly Counted Notwithstanding Minor or Inconsequential Variations from the Voter Registration (responds to Point Relied On IV)

Opponents claim that certain signatures should not be counted because they lacked complete names, addresses, and dates. Opponents' Brief at 58. It is unclear, however, from the record exactly what the alleged irregularities are, and it is therefore impossible for the Court to engage in a signature by signature examination in connection with this argument. Recognizing this, Opponents ask this Court to adopt the blanket conclusion that any irregularity related to names, addresses and dates is fatal to that signature. *Id.* Opponents argue that, any allowance for such

irregularities by regulation exceeds the scope of the Secretary of State's authority is therefore void. *Id.* Missouri law mandates a contrary conclusion.

The Secretary of State's regulations allow signatures to be counted when there are minor variations from the voting rolls. See, e.g. 15 CSR 30-15.010 (accepting nicknames like Bill for William, Becky for Rebecca; accepting addresses if they are exactly as they appear on the voting rolls, except for the presence or absence of an apartment number). These regulations do not expand acceptable signatures to "any variation that is vaguely recognizable" as Opponents contend, Opponents' Brief at 39, but instead insure the completeness of local election authorities' verification, while keeping in mind that "[t]he validity of the signatures is the heart of the ultimate determination" of the sufficiency of an initiative petition for the ballot. *United Labor Commission*, 572 S.W.2d at 455.

To the extent Opponents contend again that §116.040 requires every single blank on a signature line be filled out precisely as listed on the original voter registration in order for a signature to be validly counted, the trial court correctly rejected this position as contrary to Missouri law. (L.F. 159-160.) As discussed above, the Secretary of State's regulations are valid, "unless unreasonable and plainly inconsistent with the statute under which the regulation was promulgated." *Linton*, 988 S.W.2d at 517.

Furthermore, these regulations were promulgated in response to and are completely consistent with the holding in *Payne v. Kirkpatrick*, 685 S.W.2d 891 (Mo.

App. 1984). In that case, the Western District upheld the trial court's determination that signatures with "inconsequential variations" such as the absence of a middle initial or the use of a nickname in lieu of a formal given name should have been included in the Secretary of State's count of signatures. *Id.* at 901. As the trial court noted here, "[g]eneral allegations of date, name, or address discrepancies do not suffice to disprove the validity of petition signatures, where the local election authority has specifically reviewed the signatures and matched them with registered voters." (L.F. 163.) The determination by the trial court on this issue should be upheld.⁴

⁴Opponents' heavy reliance on a Pennsylvania case, *In re Nader*, 865 A.2d 8 (Pa. Comm 2004), for support on this argument is of little value in this litigation. Given the importance of detailed state-specific constitutional, statutory, and regulatory provisions to this Court's analysis, the Pennsylvania court's analysis of

Pennsylvania law related to a nomination petition (as opposed to an initiative petition) in this two hundred and fifty-six page opinion offers little guidance to this Court.

V. Signatures Verified by Local Election Authorities are Not Disqualified by Irregularities with the Notarization of the Petition Pages or Circulator Affidavits because such irregularities are not fatal (responds to Point Relied On V)

The trial court correctly held that problems with the notarization and circulator's affidavits on certain petition pages do not affect the validity of signatures verified by the local election authorities. (L.F. 162). This determination was based on *United Labor Commission*, 572 S.W.2d at 449 and *Ketchum v. Blunt*, 847 S.W.2d 824 (Mo.App. W.D. 1993), which stand for the proposition that such irregularities “do not effect on the validity of signatures that have already been verified by the local election authorities” (L.F. 16 2). This determination was proper and should not be disturbed.

Section 116.080.4 provides:

Each petition circulator shall subscribe and swear to the proper affidavit on each petition page such circulator submits before a notary commissioned in Missouri. When notarizing a circulator's signature, a notary public shall sign his or her official signature and affix his or official seal to the affidavit only if the circulator personally appears before the notary and subscribes and swears to the affidavit in his or her presence.

However, under *United Labor Commission* and *Ketchum*, failure to strictly comply with this statutory requirement does not disqualify signatures that the local election

authority has verified.

In *United Labor Commission*, this Court held that the failure to properly notarize certain petition pages did not require the Secretary of State to reject the signatures collected by those circulators. *United Labor Commission*, 572 S.W.2d. at 453. Rather, these irregularities simply rebutted the prima facie validity of the signatures. *Id.* This holding was based, in part, on the fact that the statute requiring notarization did not make non-compliance fatal. *Id.* at 453-54.

In *Ketchum*, a party again sought to disqualify signatures from a petition because of irregularities in the circulators' affidavits. The Western District upheld the trial court's determination that "[i]rregularities in circulators' affidavits rebut the presumed validity of signatures proved by way of the circulators' affidavits, but do not disqualify signatures verified by way of a check of the voter registration rolls." *Ketchum*, 847 S.W.2d at 832 (citing *United Labor Commission*, 572 S.W.2d at 453-54).

In this case, where local election authorities verified the signatures by way of a check of voter registration rolls, any irregularities in the notarization and circulator affidavits of certain petition pages do not invalidate those signatures. Therefore, under the holdings in *Ketchum* and *United Labor Commission*, the circuit court correctly held that these alleged irregularities do not reduce the valid signature count. (L.F. 162.)

VI. The Petition Does Not Unconstitutionally Appropriate by Initiative Because

It Only Appropriates Revenue Raised Thereby (responds to Point Relied On VI)

Opponents claim that the tobacco tax initiative petition will require “the creation of a new bureaucracy to administer the portion of the funds which are directed to Medicaid-related programs.” Opponents’ Brief at 68. And because there are no funds from the initiative to be used for these administrative costs for the Department of Social Services, Opponents argue that the General Assembly will be required to appropriate money for these functions. *Id.* Opponents failed to put forth any evidence of these increased costs below, however. In addition, because the initiative raises revenues and only dictates how those revenues are to be spent, it does not violate the constitution. Opponents’ argument must be rejected.⁵

⁵Opponents rely almost exclusively on *State ex rel. Card v. Kauffman*, 517

S.W.2d 78, 80 (Mo. 1974) for this argument. Opponents' Brief at 71. This reliance is misplaced. In *Card*, the proposed amendment directed that the compensation of University City firefighters be no less than the compensation of St. Louis City firefighters. 517 S.W.2d at 80. This amendment would have resulted in an increase in salaries of \$55,000, and did not have any provisions for creating new revenues to pay these added salaries. *Id.* at 79-80. *Card* did not discuss the administrative costs to the city manager, city council, or fire department of administering the additional fireman's compensation. *Id.*

Art III, §51 of the Missouri Constitution provides that “[t]he initiative shall not be used for the appropriation of money *other than of new revenues created and provided for thereby*, or for any other purpose prohibited by this Constitution.” (Emphasis added.) Reported cases concerning Article III, §51 violations have been sparse, and most involve challenges to local ordinances. In those cases, the ordinances were held to violate Article III, §51 because they would have established increased salaries or compensation for certain officials, but did not provide new revenues with which to pay for the increase. *State ex rel. Card v. Kaufman*, 517 S.W.2d 78, 80-81 (Mo. 1974); *State ex rel. Sessions v. Bartle*, 359 S.W.2d at 716 (Mo.banc 1962); and *Kansas City v. McGee*, 269 S.W.2d 662, at 902-3 (Mo. 1954).

In contrast, the tobacco tax initiative petition in no way purports to appropriate any revenues other than the new tobacco tax. That new tax would be placed in the new healthy future trust fund and appropriated for the items specified. The measure further provides that if the new tax would have the effect of causing a reduction in collections for the existing fair share fund, the health initiatives fund, or the state school monies fund pursuant to Chapter 149, RSMo, then the new tax is to be deposited into those funds to make up for any such reduction, subject to a monthly cap. The measure contains not one word or phrase that appropriates – explicitly or implicitly – any moneys from existing funds. Whether the new tobacco tax ever causes a reduction in monies collected and deposited into the three existing funds, or whether the cap is not high enough to make those funds whole in the case of a reduction, obviously remains to be seen. But even if such events come to pass, that is not an

Article III, §51 issue. Accordingly, the trial court’s rejection of this argument should be affirmed.

VII. The Tobacco Tax Initiative Petition Does Not Contain Multiple Subjects in Violation of the Missouri Constitution Because the Initiative Only Provides the Imposition of a New Tax and Establishes how the Funds shall be Used

(responds to Point Relied On VII)

Opponents argue that the initiative petition contains the following multiple subjects in violation of Article III, §50 of the Missouri Constitution: (1) imposition of a tax on tobacco products; (2) expansion of the state medicaid system; and (3) modification of functions of the State Auditor. Opponents’ Brief at 76-8. However, the trial court correctly rejected this argument, finding a single “central purpose” to the initiative, and that all provisions in the initiative were “properly connected” therewith. (L.F. 170.) This conclusion is consistent with Missouri law.

Article III, §50 mandates that an initiative petition “shall not contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith” “A proposal will be liberally and nonrestrictively construed so that provisions connected with or incident to effectuating the central purpose of the proposal will not be treated as separate subjects.” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 830-31 (Mo. banc 1990). “An amendment to any article may

have the effect of changing several articles or sections of the constitution, *if all are germane to a single controlling purpose.*” *Id.*

In *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 13 (Mo. 1981) the initiative petition proposal arguably included six subjects, including: 1) a taxation lid on state government; 2) a spending lid on state government; 3) a directive that state government continue financial support of local government; 4) a tax lid on local government; 5) limits on local governments obtaining revenues based on assessments and property; and 6) a grant of original jurisdiction to the Supreme Court to hear taxpayer suits to enforce the provisions of the amendment. Even so, the Court found it did not violate the single subject provision of the Missouri Constitution, as “[a]ll of these items are properly connected to the single controlling purpose of the amendment: to limit taxes and governmental expenditures within the state of Missouri.” *Id.* at 14.

In this case, the single controlling purpose of this initiative petition is to improve the health of Missourians. The petition seeks to accomplish this purpose by increasing the tax on tobacco products, and funding health care services including tobacco cessation programs. (Supp. L.F. 2-5.) All of the provisions in the petition are properly connected to this central purpose.

It is well established that a measure containing a tax increase as a means of funding its purpose contains only one subject. *See Akin v. Director of Revenue*, 934 S.W.2d 295, 301-302 (Mo. banc 1996) (holding that provisions in SB 380 which

increased taxes and specifically allocated that tax revenue to education matters did not violate the single subject provision of Article III, §23, because the tax increases were the means to accomplish the educational purpose); see also *Payne*, 685 S.W.2d at 905 (proposal that sets forth details of racing commission and defines the appropriation of funds derived from pari-mutuel horse racing does not violate Article III, §50). In this case, the increase in taxes on tobacco products is a means of funding measures designed to improve the health of Missourians, including tobacco cessation programs and health care services.

Concerning the modifications of the State Auditor's functions, it is sufficient to note that this provision is simply designed as a means to ensure that the revenues raised through the initiative are spent pursuant to its terms, namely to accomplish the central purpose of improving the health of Missourians. See *Missourians to Protect the Initiative Process*, 799 S.W.2d at 830-31 ("amendment to any article may have the effect of changing several articles or sections of the constitution, if all are germane to a single controlling purpose.") As such, this provision is "properly connected" to the central purpose of the initiative.

Accordingly, the initiative petition does not contain multiple subjects, and does not violate the Missouri Constitution.

Conclusion

WHEREFORE, Respondent/Cross-Respondent Secretary of State Robin Carnahan request this Court uphold the decision of the Circuit Court with respect to the issues raised in Opponents' 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 25th day of October, 2006, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were e-mailed and mailed, postage prepaid, to:

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The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

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