

IN THE SUPREME COURT OF MISSOURI

COMMITTEE FOR A HEALTHY FUTURE,)
INC., et al.,)
)
 Respondents/Cross-Appellants,)
)
 v.) Case No. SC88018
)
 ROBIN CARNAHAN, et al.,)
)
 Respondent/Cross-Respondents.)
)
 MISSOURIANS AGAINST TAX ABUSE, et al.)
)
 Appellants/Cross-Respondents,)
)
 and)
)
 CHRIS KEMPF, et al.)
)
 Cross-Respondents.)

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY

The Honorable Thomas J. Brown III

Brief of Respondents/Cross-Appellants (Plaintiffs Below)

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ATTORNEYS FOR RESPONDENTS/CROSS-APPELLANTS

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STATEMENT OF FACTS

The facts relevant to the issues on appeal depend upon the proper standard of review. *Evans v. Groves Iron Works*, 982 S.W.2d 760, 762 (Mo. App. 1998). When the issues on appeal include the sufficiency of the evidence to support the judgment, the relevant facts are those that tend to support the award. *Id.* The statement of facts in Appellants' brief fails to comply with this standard in that it omits significant facts that support the judgment of the trial court. For instance, they fail to state that, before counting *any* petition signature as valid, local election authorities verify that the signature matches the signature on file for that person. Tr. 11:17-12:4; J. Ex. P 13:6-21, 14:18-22,

20:13-19, J. Ex. Q 32:11-33:7, 64:2-72:15, J. Ex. S 62:21-64:2.¹ As another example, they fail to state that local election authorities verify the correct congressional district of each and every petition signer, regardless of whether the signer completes the congressional district column. L.F. 90-91; J. Ex. P 17:1-19; J. Ex. Q 23:8-20.

These omissions render the statement of facts inadequate. The Committee will therefore provide a statement of facts that complies with the proper standard of review.

¹ Throughout this Brief, Appellants are referred to as Tax Abuse Intervenors. Their brief is cited as TAI Brief. The legal file is cited as “L.F.”, the supplemental legal file is cited as “S.L.F.”, and the transcript is cited as “Tr.” The exhibits were separately deposited with the Court. *Index of Exhibits Deposited with the Court* (Sept. 19, 2006). Exhibits to the September 1, 2006, Stipulation are cited as “First Stip. Ex.” Joint exhibits are cited as “J. Ex.” Plaintiffs’ exhibits are cited as “P. Ex.” Defendant Intervenors’ exhibits are cited as “D. Int. Ex.” Joint Exhibits P, Q, R, and S are deposition transcripts. The page and line numbers of the testimony being cited are provided when those exhibits are cited. For example testimony from J. Ex. P beginning at page 1, line 15 through page 2 line 10 would be cited as: “J. Ex. P 1:15-2:10.” The deposition transcripts were printed from an electronic file, and the page number at the bottom of the page does not match the transcript page number. The page numbers used in the cites are the numbers that precede line 1 of each transcript page.

A. Parties

The Committee for a Healthy Future, Inc. is the proponent of the Initiative Petition that is the subject of this lawsuit. L.F. 75. The Initiative Petition proposes a constitutional amendment to increase the tax on tobacco products, and to use that revenue to fund a tobacco control program and to improve health care access and treatment. S.L.F. 1-5. After the Secretary of State issued a certificate of insufficiency for the Initiative Petition, the Committee, James Blaine, Christy Ferrell, and Mario Castro requested that the Cole County Circuit Court reverse that decision pursuant to § 116.200, RSMo.² The Committee, Ferrell, Blaine, and Castro were the plaintiffs in that action and are collectively referred to as “Committee” in this Brief. They are Respondents and Cross-Appellants in this appeal.

The Secretary of State was the original Defendant in that action, but she did not appeal. She is a Respondent and Cross-Respondent in this appeal.

Missourians Against Tax Abuse is a campaign committee that was formed to oppose the Initiative Petition. L.F. 76. Louis Smither, Hal Swaney, and Missourians Against Tax Abuse were allowed to intervene in the Cole County proceeding as Defendants. L.F. 76. They are collectively referred to as the “Tax Abuse Intervenors” in this Brief. They are Appellants and Cross-Respondents in this appeal.

² All statutory cites are to RSMo 2000, unless otherwise indicated.

Chris Kempf and Newell T. Baker, Jr. were also allowed to intervene in the Cole County proceeding as Defendants. L.F. 76. They did not appeal the trial court judgment. Accordingly, they are only before this Court as Cross-Respondents.

B. Circulation Process

When citizens decide to propose a change in the law by initiative petition, they submit the form of their petition to the Secretary of State for approval and preparation of an official ballot title. § 116.334, RSMo. After approval, the petition is circulated for signatures of registered voters. Missouri statutes direct each petition circulator to register with the Secretary of State by the 5 p.m. deadline for filing initiative petitions. § 116.080, RSMo.

Section 116.040, RSMo, provides a model form for the pages of the petition. Petition pages are sufficient if the proponents “substantially” follow the model form. § 116.040, RSMo. The form for the Committee’s Initiative Petition pages is reproduced in the Appendix at pages A-16-20.

The form begins with a notice to would-be petition signers. It specifically tells them that it is a crime to knowingly sign with a name other than their own, more than once for the same measure for the same election, or “to sign a petition when such person knows he or she is not a registered voter.” § 116.040. By signing the initiative petition, each petition signer subscribes to the following statement:

We, the undersigned, registered voters of the state of Missouri
and County (or city of St. Louis), respectfully order
that the following proposed law (or amendment to the

constitution) shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the day of,, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and County (or city of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

§ 116.040, RSMo.

C. Verification Process

After receiving an initiative petition, the Secretary of State verifies that the petition contains a sufficient number of valid signatures with assistance from the local election authorities (sometimes referred to as “LEAs”). § 116.120, RSMo. The Secretary of State has promulgated rules to provide for “uniform determination of whether signatures are those of legal voters as required in Article III, Section 50 of the Missouri Constitution.” 15 CSR 30-15.010. Pursuant to those rules, the local election authorities confirm that the petition signers are legal voters by checking the name, address, and signature for each petition signer.

Names are acceptable if they exactly match or only have minor variations from the voting rolls. 15 CSR 30-15.010(2). Those minor variations are: (1) dropping or adding a first or middle initial, (2) using a common nickname, (3) dropping or adding a suffix such as Jr. or Sr., and (4) using a first and middle initial. *Id.* Also, a name is not acceptable if

the voter was not registered to vote within the county listed on the petition page on the day the petition was signed. *Id.*

Addresses are acceptable if they exactly match or only have minor variations from the addresses listed on the voting rolls. 15 CSR 30-15.010(3). Those minor variations are (1) dropping or adding a letter or number identifying an apartment, or (2) dropping or adding the directional location of a street (e.g., “E” for East). *Id.* An address is also acceptable if the municipal or postal authorities have changed the address designation for the individual. 15 CSR 30-15.010(3)(C). If the address was the voter’s registered address on the day the petition was signed, the address is also acceptable. 15 CSR 30-15.010(3)(D). Finally, an address that is “different from the address on the voting rolls” still acceptable if it is in the same jurisdiction and the local election authority matches the individual with the correct registered voter by performing a signature match. 15 CSR 30-15.010(3)(E).

As the third element of a valid signature, a voter’s signature is acceptable “if it generally appears to be in a form similar to that found on the voter rolls.” 15 CSR 30-15.010(4). Signatures are rejected if the person lists an address outside the county or if they have been crossed out. 15 CSR 30-15.010(1).

As they conduct this review, local election authorities must annotate each signature to reflect their findings for that signature. § 116.130.4; 15 CSR 30-15.020. Valid signatures are annotated with an “R” or an “RDA.” An R annotation (as in “Registered”) means the name, address, and signature are acceptable pursuant to 15 CSR 30-15.010. An RDA annotation (as in “Registered at a Different Address”) means the

signer's name is acceptable pursuant to 15 CSR 30-15.010, that the signer listed an address that is in the jurisdiction of the election authority but different from the address on the voting rolls, and that the local election authority confirmed that signer was the same person as the registered voter by matching the signature to the signature on file with the local election authority. Not counted signatures are annotated with NR (as in "Not Registered"), WA (as in "Wrong Address"), or WS (as in "Wrong Signature"). Duplicate valid signatures must be excluded from the valid signature count. 15 CSR 30-15.020(2).

Local election authorities check the congressional district of each petition signer. L.F. 90-91; J. Ex. P 17:118; J. Ex. Q 23:8-20. If the congressional designation on the petition page is incorrect, they must write in the correct congressional district. 15 CSR 30-15.020(1)(G). Failure to provide the correct congressional district does not invalidate a signature. § 116.130.3, RSMo; 15 CSR 30-15.010(5).

After they complete their review, the local election authorities certify the number of valid signatures on the Initiative Petition to the Secretary of State by congressional district. L.F. 90-91. Local election authorities may prepare their certifications from the annotations on the petition page. 15 CSR 30-15.020(5). In the alternative, they may certify their results using the Centralized Voter Registration System authorized by § 115.158, RSMo. *Id.* That function of the computer program is referred to as the "petition processing module." J. Ex. Q 8:3-12; J. Ex. S 22:11-20.

For local election authorities that use the petition processing module, there are exception and rejection codes that correlate to the annotations established by regulation. J. Ex. Q 18:2-31:16. For any particular petition signer, they may search the statewide

voter registration database to determine whether that person is in fact a registered voter within their jurisdiction. J. Ex. Q 15:11-17:17. If the person is not registered at the address listed on the petition page, they search to determine whether the person has moved with their jurisdiction. J. Ex. Q 32:15-33:7. The petition processing module brings up a list of the persons within their jurisdiction that have the same name as that petition signer, along with a signature specimen for each such registered voter. J. Ex. Q 16:10-17:17. The reviewer then compares the signature of the petition signer to the signature specimens displayed, and determines whether the voter can be identified by signature comparison. Tr. 11:17-12:4; J. Ex. P 13:6-21, 14:18-22, 20:13-19; J. Ex. Q 32:11-33:7, 64:2-72:15; J. Ex. S 62:21-64:2. If the local election authority matches the petition signer with a voter within its jurisdiction, the signature is counted as an RDA signature. *Id.*

At the end of the process, a computer printout is generated showing the local election authorities' action with respect to each specific signature line on the petition pages. L.F. 113; J. Ex. D, E. If the signer was counted as a R or RDA signature, the computer printout identifies each specific signer by name and registered address. J. Ex. D, E.

D. The Tobacco Tax Initiative Petition

On February 15, 2006, the Secretary of State approved the form and official ballot title of the Initiative Petition for circulation, and the Committee then began circulating the Initiative Petition for signatures. L.F. 89. Under the Missouri Constitution, the Committee was required to obtain signatures from “eight percent of the legal voters in

each of two-thirds of the congressional districts in the state.” Mo. Const. art. III, §§ 50, 53. Missouri has nine congressional districts. §§ 128.348-.366, RSMo. Accordingly, the Committee needed to obtain the required number of signatures from six congressional districts.

On May 7, 2006, the Committee filed its Initiative Petition with the Secretary of State containing the signatures of legal voters from the First, Second, Third, Fifth, Seventh, and Ninth Congressional Districts. L.F.89-90. She sent copies of the Initiative Petition pages to the various local election authorities to verify whether the persons who signed the Initiative Petition were registered voters and whether their signatures matched the signatures on file with the local election authority. L.F. 90. The Secretary of State requested that the verification be of each signature rather than by random sampling. L.F. 90. The local election authorities certified the number of valid signatures on the Initiative Petition by congressional district. L.F. 90.

Based on the totals certified by the local election authorities, the Secretary of State determined that the Initiative Petition exceeded the required number of signatures in the First, Second, Third, Seventh, and Ninth Congressional Districts. L.F. 78, 90. But, in the Fifth Congressional District, she found that the Committee was 274 signatures short of the required 23,527 signatures. L.F. 78-79, 94.

The Fifth Congressional District consists of part of Cass County and part of Jackson County. L.F. 91. The Kansas City Board of Election Commissioners has jurisdiction over that part of Jackson County which is included in Kansas City. L.F. 92. The Jackson County Board of Election Commissioners has jurisdiction over that part of

Jackson County that is not included within Kansas City. L.F. 92. The Secretary of State made two copies of the Jackson County petition pages and sent one copy to the Jackson County Board and one copy to the Kansas City Board. L.F. 92. Each Board was responsible for verifying signatures of petition signers who they believed resided within their respective portions of Jackson County. L.F. 92. If either Board identified a signature which it believed was within the jurisdiction of the other Board, it did not check that signature. J. Ex. P 16:12-19; J. Ex. Q 21:2-10.

The Jackson County and Kansas City Boards prepared their certified totals using the petition review module of the Missouri Voter Registration System. J. Ex. D, E. The Cass County Clerk prepared her certified totals from the petition pages with the actual annotations. J. Ex. H.

The local election authorities in the Fifth Congressional District certified their valid signatures for that congressional district to the Secretary of State as follows:

	R Signatures	RDA signatures	Total Valid Signatures
Jackson County Board	6,159	216	6,375
Kansas City Board	15,178	2,959	18,137
Cass County Clerk	575	46	621
Totals	21,912	3,221	25,133
Constitutionally Required Signatures			23,527

Number of Valid Signatures			1,606
In Excess of Constitutional Requirement			

L. F. 91, 93-94.

Thus, based on the certifications by the local election authorities, the Initiative Petition had 1,606 more signatures from legal voters in the Fifth Congressional District than required by the constitution. L.F. 78. Before issuing her final determination, however, the Secretary of State deducted 1,880 signatures from that total. L.F. 78. The Secretary of State’s “sole reason” for deducting those signatures was her determination that the persons who circulated the petition pages which those persons signed had not properly registered with her office for the Initiative Petition. L.F. 78. After deducting those 1,880 signatures, the Secretary of State determined that the Initiative Petition was insufficient, because it was 274 signatures short in the Fifth Congressional District.

L.F. 78, 94; First Stip. Ex. 2.

E. The Kansas City Board’s Partial Re-examination of Petition Pages

After the Secretary of State issued her determination of insufficiency, the Kansas City Board partially re-examined its initial verification. They were concerned because the tobacco tax Initiative Petition was the last petition that they reviewed, and they had hurried to complete the project by the deadline. J. Ex. Q 89: 2-14; J. Ex. R 33:18-34:15. They had hired twelve temporary employees to assist six regular employees in verifying petition signatures. J. Ex. Q 5:21-6:8, 9:11-14. Normally, regular employees would

review the work of the temporary employees before the final results were certified. J. Ex. Q 89:2-14; J. Ex. R 33:18-34:15. However, that was not done because of the time constraints. *Id.*

The Board re-examined approximately 1000 of the 2,907 Jackson County pages. Tr. 12:23-24. Board employee Tiffany Cline conducted that re-examination pursuant to the same procedures that she used in examining signatures in the first instance. Tr. 13:6-16, 16:15-24. Ms. Cline testified that she had found approximately 314 additional valid signatures in that review. Tr. 16:25-27:2. At trial, she produced documents identifying 263 additional valid signatures. P. Ex. 213. Thus, in a limited review of approximately one-third of the petition pages, the Kansas City Board discovered at least 263 additional valid signatures from the Kansas City portion of Jackson County.

F. Additional Valid Signatures

1. Signatures Missed by Local Election Authorities (1,004 Additional Valid Signatures)

The Committee re-examined all of the petition pages and presented evidence of 1,313 valid signatures from the Fifth Congressional District which had not been counted by the local election authorities. L.F. 117. Each of those signatures was supported with a trial exhibit showing the voter's registered address from the statewide voter registration database, copies of the petition page(s) with annotations of the local election authorities showing the signatures had not been counted as valid, copies of the computer printout(s) showing the action taken with respect to each signature and confirming that the signatures had not been included in the certified total as valid signatures, and an image of

the voter's registration record containing the signature on file with the local election authority. P. Ex. 212. A sample supporting exhibit - P. Ex. 212-1000 - is included in the Appendix to this Brief at A21-27. All of those signatures were on petition pages circulated by a person who the Secretary of State had determined was properly registered. P. Ex. 212; First Stip. Ex. 3.

For 1,058 of those 1,313 signatures, Bill Storer - who the Committee presented and the trial accepted as a handwriting expert confirmed - that the handwriting on the petition matched the signature on file with the local election authority. L. F. 118; P. Ex. 301, 302. The Tax Abuse Intervenors' handwriting expert indicated that he could not confirm the validity of 41 signatures that Storer verified. L. F. 139-40, 142. The Tax Abuse Intervenors raised particular objections to 13 signatures. L. F. 118-25, 140. For example, they contended that signatures of 10 individuals whose signatures were confirmed as genuine should not be counted, because their last names were hyphenated on the petition but not on the voter registration record, or vice versa. L.F. 120, 124.

For the remaining 1,004 signatures, no party disputed the genuineness of those signatures. Tax Abuse Intervenors agreed that 18 of those signatures were valid signatures of legal voters from the Fifth Congressional District. L.F. 118. They asserted legal objections to counting the remaining signatures: (1) that signatures without a Congressional District designation should not be counted, (2) that signatures with name and address variations permitted by the Secretary of State's regulations should not be counted, because her regulations were invalid, (3) that signatures could not be counted if their addresses matched the statewide voter registration database, unless those signatures

also matched the voter registration forms produced by the local election authorities, and (4) that RDA signatures could not be counted, because the Secretary of State's regulations were invalid. L.F. 118-25. If the congressional district argument was rejected, they agreed that another 310 signatures were valid. L.F. 119. If the congressional district argument was rejected and the regulation permitting minor name and address variations was valid, they agreed that an additional 316 signatures were valid. L.F. 119. For the last 360 signatures, their validity was challenged based on one or more of the following objections: counting RDA signatures, use of the statewide voter registration database to verify addresses, missing congressional district designations, and/or the acceptance of names and addresses with minor variations. L.F. 124.

The Tax Abuse Intervenors offered no other objection to the signatures, and stipulated that the signatures were valid, if their legal objections were not well-taken. L.F. 94-99.

2. Signatures on Petition Pages Circulated by Persons Who The Secretary of State Determined Were Not Properly Registered (1,880 Additional Valid Signatures)

In addition to those signatures, there were the 1,880 signatures that the local election authorities verified as valid, but were not counted by the Secretary of State for the sole reason that she determined the petition circulators were not properly registered. L.F. 78. These circulators were not considered registered because they either 1) had not included the name of the tobacco tax petition on a registration they filed with the Secretary of State or 2) did not register at all. L.F. 78-79. Therefore, as relates to those

signatures, the evidence shows two distinct groups of circulators: 1) petition circulators who provided all of the information required by § 116.080.2 for a different initiative petition (this group accounts for 1,488 of the 1,880 disqualified signatures) and 2) petition circulators who did not provide the § 116.080.2 information on a separate registration form, but who did supply their names and addresses on the petition pages pursuant to § 116.040 (this group accounts for 312 of the 1,880 disqualified signatures). *Id.* The circulator registration forms for the individuals that all of the § 116.080.2 information for a different petition are reproduced at pages A70-A101 of the Appendix. The Secretary of State has not promulgated any rule or regulation specifying the form or procedure for circulators to register. L.F. 79. The Secretary of State does provide a form on its website and in an initiative handbook. *Id.*

G. Tax Abuse Intervenors' Efforts to Disqualify Signatures

The Tax Abuse Intervenors attempted to disqualify certain signatures that had been counted as valid by the local election authorities. First, they alleged that 474 R and RDA signatures should not be counted because the petition pages contained irregularities in circulator affidavits and notary attestations. L.F. 99-106, 125-29. They also identified a number of other signature lines for which they claimed various defects. D. Int. Ex. A. Those signature lines were not necessarily valid signatures that had been counted by local election authorities. *Id.* Some of them were signatures that had been determined to be NR, WS, or WA signatures and were not counted by the local election authorities. *Id.* Of the valid R and RDA signatures, they did not determine whether those signatures were on petition pages that had been circulated by a person who the Secretary of State had

determined was properly registered. *Id.* All of the signatures for which they alleged defects were on Jackson County petition pages. *Id.*

They alleged the following defects: 322 signature lines with date discrepancies; 324 “forged” signatures (but their handwriting expert only testified to 4 signatures that were written or probably written by the same person); 143 signatures where they believe the petition signer printed their name in both name blanks or signed their name in both name blanks; 644 signatures lines where they believe the petition signer’s printed name is illegible; 428 signatures lines where they believe the petition signer’s address is illegible; and 751 signature lines where they believe a person other than the petition signer completed information on the petition other than the signature. L.F. 129-34.

The Committee disputed whether such defects were actually present, noting that the local election authorities specifically verified the valid signatures and that Tax Abuse Intervenors had produced no specific evidence to suggest that any person counted as a valid signature did not actually sign the petition or was not in fact a registered voter. *Id.*

H. Trial Court Judgment

The Judge bifurcated the case. On September 1, the Judge heard argument on a number of purely legal issues based on a stipulation of facts. L.F. 75-82. On September 8, the parties filed a second stipulation of facts. L.F. 89-116. That same day, the Court received evidence and heard arguments on the fact-specific issues in the case. Tr. 1-141.

1. Legal issues

The Committee argued that the Secretary of State had erred by not counting the 1,880 signatures of legal voters who signed petition pages circulated by a person who the

Secretary of State determined had not registered as a petition circulator. In the alternative, the Committee argued that it was unconstitutional not to count the signatures of legal voters based on the circulators' failure to register. The trial court held that the statutes require circulators to separately register for each petition, that they do not significantly inhibit communication with voters about proposed political change, and that they are warranted by the interests by the state to justify those restrictions. L.F. 85. While the trial court did not cite any specific interest of the state that justified those restrictions, the general interests asserted below were detection of fraud, efficiency, and public awareness of the source of money involved in the initiative process. The trial court therefore held the statutes constitutional under the Missouri and United States constitutions. L.F. 85.

Next, the trial court took up Tax Abuse Intervenors' legal claims. They first argued the signatures of RDA petition signers should not be counted as valid. The court rejected that argument because the statutes and regulations specifically allow such signatures to be counted. L.F. 150. The court distinguished the case of *Yes to Stop Callaway Committee v. Kirkpatrick*, 685 S.W.2d 209, 211 (Mo. App. 1984), because the statutes have changed since that case was decided. Now, "individuals who sign with a different address on a petition than the address listed on their voter registration are legally entitled to vote on that issue, as long as their new address is within the election authority's jurisdiction." L.F. 150.

Tax Abuse Intervenors argued that the Initiative Petition violated the single subject requirement, but the trial court held that it "clearly complies" with that mandate

because “[t]he central purpose of the petition is to impose a new tax on tobacco products, and provide for the collection and disbursement of those funds.” L.F. 151.

Finally, the Tax Abuse Intervenors argued that the Initiative Petition violated the prohibition on appropriation by initiative. The trial court noted that the constitution expressly permits an initiative petition to appropriate “new revenues created and provided for thereby.” L.F. 151 (quoting Mo. Const. art. III, § 51). The court held that the Initiative Petition did not violate that provision, because “[t]he petition imposes a new tax on tobacco products, distributes only those proceeds, and does not divert money from existing funds.” L.F. 151.

2. Factual issues

After hearing evidence, the court credited the Committee’s evidence and determined that at least 1,004 additional signatures should have been counted as valid signatures of legal voters from the Fifth Congressional District:

Plaintiffs produced evidence that 1,058 valid signatures of legal voters from the Fifth Congressional District were not counted by the local election authorities. Those 1,058 signatures were supported by voter registration records showing that those individuals were in fact registered to vote and entitled to be counted pursuant to 15 CSR 30-15.010. Plaintiffs also introduced copies of the annotated petition pages and certification records of the local election authorities showing that those signatures had not in fact been

counted as valid. Finally, Plaintiffs presented testimony from handwriting expert Bill Storer, who confirmed that the signatures of those 1,058 petition signers matched the signatures on file with the local election authority. Defendant Intervenor presented testimony from handwriting expert Don Lock, who testified that he could not confirm the validity of 41 of those signatures. Accordingly, there is no dispute that the signatures of 1,017 of the petition signers matched the signatures on file with the local election authorities.

Of those 1,017 signatures, the parties had minor disagreements over thirteen of the signatures. Those thirteen signatures do not affect the outcome of this case, and do not need to be considered by this Court.

With the addition of the other 1,004 valid signatures, this Court finds and concludes that the tobacco tax initiative petition has more than the 23,527 signatures of legal voters required by article III, section 50 of the Missouri Constitution for the Fifth Congressional District.

L.F. 139-40.

In fact, the Committee had 730 more signatures of legal voters than required by the Constitution.

The trial court separately considered and rejected the Tax Abuse Intervenor's legal objections to counting those signatures. First, the court held that signatures without a congressional district designation must still be counted as valid, because statutes and regulations expressly provide that a correct congressional district designation is not required for a valid signature. L.F. 140. Second, the court held that the Secretary of State's regulations permitting minor name and address variations from the voter registration record was reasonable and consistent with the statute. L.F. 140-41.

Next, the Tax Abuse Intervenor claimed that, in a few instances, the petitioner's address matched the address in the statewide voter registration database, but was inconsistent with the voter registration card produced by the local election authorities. The trial court rejected this argument, concluding that the statewide voter database is Missouri's official list of registered voters. L.F. 141-42.

Finally, the Tax Abuse Intervenor complained that there were differences between the addresses on the petition and in the statewide voter registration database for 108 petition signers. L.F. 122-23. However, the trial court found that – because those signatures had been matched to signatures on file with the local election authority – they were properly counted as RDA signatures, even if the address did not match the address in the statewide voter database. L.F. 142.

Regarding the signatures which were counted as valid by the local election authorities and subsequently challenged, the trial court rejected all of those challenges. The court held that the alleged irregularities in notarization and circulator affidavits do not affect the validity of signatures that have been verified by the local election

authorities, citing *United Labor Comm. of Mo. v. Kirkpatrick*, 572 S.W.2d 449, 453 (Mo. banc 1978) and *Ketcham v. Blunt*, 847 S.W.2d 824, 832 (Mo. App. 1993). L.F. 143.

As to the alleged date, name, and address discrepancies, the court held that the Tax Abuse Intervenors' general allegations were not sufficient to disprove the validity of signatures verified by the local election authorities:

The local election authorities verified the signature of every petition signer as valid only after performing a signature match against the signature in their files. In the case of signatures verified by the Kansas City and Jackson County Boards of Election Commissioners, the local election authorities specifically identified the name and address of the registered voter who it believed had signed the petition. If Defendant Intervenors believed that any signature was not the signature of a legal voter, they had the burden to prove that a specific person was not a registered voter on the date when they signed the petition, or that the person who the local election authority determined had signed the petition was not in fact the signer. General 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. 143-44.

Since the Tax Abuse Intervenor's handwriting expert identified only four signatures that might have been signed by the same penman, the court found that they were "de minimis" and not sufficient to affect the outcome of the case. L.F. 144.

On the signature lines allegedly completed by a person other than the petition signer, the court found that Missouri statutes do not require petition signers to complete any column on the petition page other than the signature. L.F. 144-45.

At trial, Tax Abuse Intervenor renewed their claim that RDA signatures should not have been counted as valid. Based on its previous ruling that RDA signatures should be counted as valid, the trial court held that it need not re-consider that issue. L.F. 145. The court re-adopted its ruling on the legal issues as a Final Judgment. L.F. 145, 147-51.

Finally, the court decided all other disputed issues in favor of Plaintiffs and against the Defendant and Defendants Intervenor. L.F. 145. This appeal followed.

POINTS RELIED ON

I. The Trial Court Properly Determined that Signatures Of RDA Petition Signers Must Be Counted As Valid Pursuant To 15 CSR 30-15.010 And 15.020, Because Those Regulations Are Valid In That The Petition Signers Were Registered Voters When They Signed The Initiative Petition.

(Responds to Appellants' Point Relied On I)

42 U.S.C. § 1973gg-6

§ 115.165, RSMo

§ 115.193, RSMo

15 CSR 30-15.010 and 15.020

Payne v. Kirkpatrick, 685 S.W.2d 891 (Mo. App. 1984)

II. The Trial Court Properly Determined That Signatures Of Petition Signers Without A Congressional District Designation Must Be Counted As Valid Pursuant To § 116.130.3, RSMo, And 15 CSR 30-15.010-15.020, Because The Presence Or Absence Of A Correct Congressional District Designation Does Not Affect The Validity Of Signatures In That The General Assembly And Secretary Of State Have Both Expressly Determined That A Correct Congressional District Is Not A Required Element Of A Valid Signature.

(Responds to Appellants' Point Relied On II.)

§ 116.130.3, RSMo,

15 CSR 30-15.010 and 15.020

United Labor Comm. of Mo. v. Kirkpatrick, 572 S.W.2d 449 (Mo. banc 1978)

III. The Trial Court Properly Found Signatures To Be Valid When The Signature Matched The Record On File With The Local Election Authorities And The Address Matched The One Local Authorities Had Entered Into The Statewide Voter Registration System. (Responds to Appellants' Point Relied on III.)

42 U.S.C. § 15483

§ 115.158, RSMo

§ 116.130.1, RSMo

IV. The Trial Court Properly Determined That The Tax Abuse Intervenors Did Not Disprove The Validity of Signatures On The Initiative Petition Because Tax Abuse Intervenors Did Not Produce Evidence That The Petition Signers Were Not Legal Voters In That Their Evidence At Most Only Showed Discrepancies In The Completion Of The Signature Lines And Did Not Establish That The Signatures Were Not Genuine Or That The Persons Who Signed The Initiative Petition Were Not Registered Voters. (Responds to Appellants' Point Relied On IV.)

United Labor Comm. of Mo. v. Kirkpatrick, 572 S.W.2d 449 (Mo. banc 1978)

Kaesser v. Becker, 243 S.W. 346, 350 (Mo. banc 1922)

V. The Trial Court Properly Determined That Signatures On Petition Pages With Alleged Irregularities In Notarization And/Or Circulator Affidavits Must Be Counted As Valid Pursuant To § 116.130.1, RSMo, And 15 CSR 30-15.010 And 15.020, Because Irregularities In Notarization And/Or Circulator Affidavits Do Not Affect The Validity Of Signatures That Have Been Verified By Local Election Authorities Or Otherwise. (Responds to Appellants' Point Relied On V.)

United Labor Comm. of Mo. v. Kirkpatrick, 572 S.W.2d 449 (Mo. banc 1978)

Ketcham v. Blunt, 847 S.W.2d 824 (Mo. App. 1992)

VI. The Trial Court Did Not Err When It Found That The Initiative Petition Complied With Article III, §51 Of The Missouri Constitution Because the Petition Generates New Revenue and Properly Appropriates that New Revenue. (Responds to Appellants' Point Relied On VI.)

Mo. Const. art. III, § 51

VII. Trial Court Properly Determined That The Proposed Amendment Contains Only One Subject and Matters Properly Connected Therewith Because Every Provision Of The Proposed Amendment Relates To The Imposition, Collection, And Disbursement Of An Increased Tobacco Tax. (Responds to Appellants' Point Relied on VII.)

Mo. Const. art. III, § 50

Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. banc 1990)

Buchanan v. Kirkpatrick, 615 S.W.2d 6 (Mo. banc 1981)

VIII. The Trial Court Erred As A Matter Of Law In Holding That Petition Circulators Who Registered With The Secretary of State, But Did Not Provide Every Piece Of Information Required By §116.080.2 RSMo, Were Not Properly Registered Because The Circulators Complied or Substantially Complied with § 116.080 In That The Circulators Reasonably Complied With The Registration Requirement of § 116.080.1 By Providing Their Contact Information To The Secretary of State And Strict Compliance With An Ambiguous Statute Should Not Be Required. (Committee's First Point Relied On As Cross-Appellant.)

Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999)

United Labor Comm. of Mo. v. Kirkpatrick, 572 S.W.2d 449 (Mo. banc 1978)

IX. The Trial Court Erred As A Matter Of Law In Holding That §§ 116.080 and 116.120 RSMo, Are Constitutional Because Those Statutes Conflict With Article III, §§ 49, 50, and 53 of the Missouri Constitution In That They Condition The Validity Of Legal Voters' Signatures On Whether Petition Circulators Properly Register. (Committee's Second Point Relied On as Cross-Appellant.)

Mo. Const. art. III, §§ 49, 50, 53

Rekart v. Kirkpatrick, 639 S.W.2d 606 (Mo. banc 1982)

X. The Trial Court Erred In Holding §§ 116.080 and 116.120, RSMo Are Constitutional Under The First Amendment to the United States Constitution Because Those Statutes Restrict Core Political Speech and Are Not Substantially Related To An Important State Interest In That They Require The Disclosure Of The Names Of Paid Petition Circulators When Other Statutes Meet The State's Interest. (Committee's Third Point Relied On As Cross-Appellant.)

U.S. Const. amend. I

Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999)

ARGUMENT

The citizens of Missouri have expressly reserved the right to enact laws and amend their constitution by initiative petition. Mo. Const. art. I, §§ 1, 3, art. III, §§ 49-53. That process is a direct expression of the people’s inherent right of self-governance: “Nothing in our constitution so closely models participatory democracy in its pure form.” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990). Through it, citizens may effect changes in state government even though they “have no access to or influence with elected representatives.” *Id.*

The constitutional requirements for placing a measure before the voters of Missouri by way of initiative petition are simple and straightforward. The proponents of the measure must circulate petition pages – with a copy of the measure attached – for signature by legal voters. Mo. Const. art. III, § 50. For a constitutional amendment, they must obtain signatures equal to 8% of the legal voters who voted in the last gubernatorial election from six of Missouri’s nine congressional districts. *Id.* If they are successful, their proposed measure will be voted on by the people of Missouri.

Both the United States and Missouri constitutions protect the exercise of this fundamental liberty. “[T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘*core political speech.*’ ” *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988) (emphasis added). The importance of First Amendment protection is “at is

zenith” for such speech. *Id.* at 425. Likewise, Missouri courts liberally construe the constitution and statutes to make effective the people’s reservation of the right of initiative. *Missourians to Protect the Initiative Process*, 799 S.W.2d at 827; *United Labor Comm. of Mo. v. Kirkpatrick*, 572 S.W.2d 449, 454 (Mo. banc 1978). Statutory restrictions that interfere with or impede that right are in conflict with the Missouri constitution and must be invalidated. *Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. banc 1982).

In a § 116.200 proceeding, the trial court determines the sufficiency of the initiative petition as a matter of original evidence. *Ketcham v. Blunt*, 847 S.W.2d 824, 830-31 (Mo. App. 1992). Since at least 1922, this Court has held that signatures on initiative petition pages supported by circulator affidavits are prima facie valid. *Kaesser v. Becker*, 243 S.W. 346, 350 (Mo. banc 1922). The *Kaesser* Court explained that the law presumes “right conduct rather than otherwise” and also presumes that people do “not deliberately commit criminal acts.” *Id.* The practical effect of that presumption is to initially establish the validity of the signatures, until disproved by other evidence:

Applying such presumption concretely, when the circulator of a referendum petition makes the statutory affidavit thereto, the law accepts as true the statements made therein until the contrary is shown. This means that the genuineness of the signatures and the correctness of the addresses given and that the signers

are legal voters are sufficiently shown by such affidavit to require the secretary of state to accept and file the petition, and that when any of the facts stated in such affidavit are questioned in court proceedings, those questioning the truth of such statements must produce testimony to overcome such prima facie case. When such proof is offered, it is the duty of the trier of facts to determine the fact from all the proof, and such fact must be determined like any other issue of fact in a civil case from a preponderance of the evidence.

Id.

In *United Labor Committee of Missouri*, the Supreme Court re-affirmed this principle, holding that irregularities in circulator affidavits and notary attestations only rebut the initial presumption of validity but do not disqualify signatures that have been verified as valid by local election authorities or otherwise. 572 S.W.2d at 453, 455-56. The Court of Appeals has similarly applied the presumption of validity in signature review cases. *Ketcham*, 847 S.W.2d at 824 (following *United Labor* and holding that signatures are presumed valid); *Payne v. Kirkpatrick*, 685 S.W.2d 891, 901 (Mo. App. 1984) (applying the presumption of validity to signatures with inconsequential name variations).

Initially, the Secretary of State determined that the Initiative Petition was 274 signatures short in the Fifth Congressional District. As plaintiff, the

Committee bore the initial burden of proving that the initiative petition had a sufficient valid number of signatures. *Kinzenbaw v. Director of Revenue*, 62 S.W.3d 49, 54 (Mo. banc 2001); *Moses v. Carnahan*, 186 S.W.3d 889, 906 (Mo. App. 2006). The Committee met this burden by introducing evidence of an additional 1,058 valid signatures that were not counted by the local election authorities or the Secretary of State. Each of those 1,058 signatures was supported by a trial exhibit showing that the petition signer was a registered voter when they signed the Initiative Petition and that their signature was not counted by any local election authority. *See, e.g.*, P. Ex. 212-1000 at A21-26. None of those signatures were on petition pages that were circulated by a person who the Secretary of State had determined was not registered. Moreover, a handwriting expert compared the signature on the petition to a signature on file with the local election authority, and confirmed that all 1,058 of those signatures were genuine. Finally, the signatures were supported by the presumption of validity.

The trial court credited substantially all of Plaintiffs' evidence. It specifically found that the Initiative Petition contained 1,004 valid signatures not counted by the Secretary of State. L.F. 139-40. Thus, the Initiative Petition had 730 more signatures than required.

The burden of going forward then shifted to the Tax Abuse Intervenors to disprove the validity of signatures which had been rehabilitated or to disprove the validity of other signatures that had been counted by the local election authorities and Secretary of State. It was not sufficient for Tax Abuse Intervenors to make

assertions or allegations that the signatures might be invalid. They were required to introduce specific evidence sufficient to overcome the Committee’s evidence, the findings of the local election authorities, *and* the presumption of validity.

The Tax Abuse Intervenors do not contest the genuineness of 1,004 signatures credited by the trial court or the signatures verified by the local election authorities (except for four signatures). Rather, their arguments fall into three categories:

1. Legal Interpretation of “Registered Voters” – In their First Point Relied On, they alleged that RDA petition signers are not in fact “registered voters” in Missouri and therefore are not “legal voters” entitled to sign an initiative petition.
2. Completion of Signatures Lines and Petition Page Form - In their Second, Third, Fourth, and Fifth Points Relied On, they argue that alleged irregularities or defects in the completion of signature lines or circulator affidavits automatically invalidate those signatures.
3. The Substance of the Amendment – In their Sixth and Seventh Points Relied On, Tax Abuse Intervenors challenge the substance of the Proposed Amendment.

These arguments contravene fundamental constitutional guidance from this Court. Rather than construe the constitution, statues, and regulations liberally to support the right of initiative, Tax Abuse Intervenors would have this Court invalidate signatures by striking down regulations, ignoring clear legislative

direction, and overruling prior Supreme Court precedent. Each of their arguments fails as a matter of law, as described below. But, they also fail at a more general level, because all of their arguments depend on the assumption that constitutional and statutory provisions should be narrowly construed to restrict the right of initiative. That assumption is a 180 degree misstatement of Missouri law.

The instant Initiative Petition was signed by the required number of legal voters and is constitutionally sufficient in all other respects. The proposed measure must be placed before the citizens of Missouri at the November general election for their consideration. The constitution of Missouri requires no more and no less of this Court.

I. The Trial Court Properly Determined that Signatures Of RDA Petition Signers Must Be Counted As Valid Pursuant To 15 CSR 30-15.010 And 15.020, Because Those Regulations Are Valid In That The Petition Signers Were Registered Voters When They Signed The Initiative Petition. (Responds to Appellants' Point Relied On I)

After matching their signatures to the signatures on file, the local election authorities counted the signatures of 3,221 RDA petition signers from the Fifth Congressional District as valid. Pursuant to state and federal law, those individuals were registered voters and were not required to re-register or transfer their registration after moving. 15 CSR 30-15.010 and 15 CSR 30-15.020 are

valid regulations that ensure that their signatures are counted. This Court should reject the Tax Abuse Intervenors' attempts to frustrate the exercise of their constitutional right to petition government.

Standard of Review

This Court will affirm the judgment of the trial court unless there is no substantial evidence to support the judgment, unless it is against the weight of the evidence, or unless it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). In this point, the Tax Abuse Intervenors challenge the validity of the Secretary of State's signature-counting regulations codified at 15 CSR 30-15.010 and 15.020. Under the Missouri constitution and statutes, the Secretary of State administers the initiative petition process. *See, e.g.*, Mo. Const. art. III, § 53; § 116.130.5. As such, her interpretations of the initiative petition statutes are entitled to "great weight." *Linton v. Mo. Veterinary Med. Bd.*, 988 S.W.2d 513, 517 (Mo. banc 1999); *Foremost-McKesson, Inc. v. Davis*, 488 S.W.2d 193, 197 (Mo. banc 1972).

Moreover, the challenged regulations were promulgated pursuant to a specific delegation of authority from the General Assembly. § 116.130.5, RSMo 2000 ("The secretary of state is authorized to adopt rules to ensure uniform, complete, and accurate checking of petition signatures either by actual count or

random sampling.”).³ Executive rules that are expressly and specifically authorized by the legislature are presumed valid and cannot be overturned except for “weighty reasons.” *Foremost-McKesson*, 488 S.W.2d at 197 (quoting *King v. Priest* 206 S.W.2d 547, 552 (Mo. banc 1947)). *Accord United States v. Mead Corp.*, 533 U.S. 218, 229-30 (2001) (noting that a federal agency’s interpretation of a statute is generally binding in the courts if the interpretation is the result of a formal rulemaking process that was expressly authorized by Congress).

A. The RDA Petition Signers Were Registered Voters and Their Signatures Must Be Counted As Valid.

For this Initiative Petition, the local election authorities counted as valid the signatures of 3,221 individuals from the Fifth Congressional District who were registered to vote, but listed addresses on the petition that were different from their addresses on the voter registration rolls. L.F. 79. Before counting those

³ Tax Abuse Intervenors cite § 115.335.7, RSMo, as a general election statute governing signature-checking. TAI Brief 10, 37. It is not. That statute applies when new political parties and independent candidates circulate petitions to obtain a place on the ballot. *See* §§ 115.313, 115.321, RSMo. Along with § 116.130.5, § 115.335.7 is cited as authority for the Secretary’s signature-checking rules because the same procedures are followed to check both kinds of petitions. Other than that overlap, the signature-checking statutes in chapter 115, RSMo, have no application to this proceeding.

signatures, the local election authorities confirmed that the individual who signed the petition was in fact registered to vote by comparing the signature on the petition page to the signature on file with the local election authority. Tr. 11:17-12:4; J. Ex. P 13:6-21, 14:18-22, 20:13-19, J. Ex. Q 32:11-33:7, 64:2-72:15, J. Ex. S 62:21-64:2. In doing so, the local election authorities were following the regulations of the Secretary of State. 15 CSR 30-15.010(3)(E), 15.020(1)(B).

Those regulations specifically state that an address listed on the petition page can be “different from the address on the voting rolls” and still be counted as valid if:

the local election authority who maintains the registration record of such person shall compare and determine 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. If otherwise valid, the signature of an individual whose address is acceptable under this subsection (3)(E) shall be counted and the totals of the local election authorities who has jurisdiction over the address listed on the petition.

15 CSR 30-15.010(3)(E). The Secretary of State has further directed local election authorities to annotate such signatures with the notation “RDA” as in “Registered at Different Address.” 15 CSR 30-15.020(1)(B).

1. The Secretary of State’s Regulations are Valid and Necessary to Comply with Federal and State Law.

These regulations implement § 116.130.1, which requires local election authorities to “count as valid only the signatures of persons registered as voters in the county named in the circulator’s affidavit.” *See also Scott v. Kirkpatrick*, 513 S.W.2d 442, 444 (Mo. banc 1974) (interpreting the constitutional term “legal voters” to mean that petition signers must be registered voters). The Secretary of State’s regulations simply restate current law. Persons who have moved but have not left the jurisdiction of their local election authority are legal voters, because moving within the jurisdiction of the same election authority does not affect a person’s status as a registered voter. Such citizens do not become “un-registered.” They are still registered voters and are still entitled to vote. § 115.165, RSMo Supp. 2005. When they do so, they must update their address and the local election authority will verify that the voter is the same person by comparing the voter’s signature to the signature on file. *Id.* Likewise, local election authorities “shall not” remove a registered voter’s name “from the list of registered voters on the ground that the voter has changed residence,” unless and until very specific notice requirements are met. § 115.193.1, RSMo.

Before 1993, the law was different. When a voter moved, that voter had to transfer his or her registration to the new address before he or she would be allowed to vote. § 115.165, RSMo 1986. *See also* § 115.193, RSMo 1986 (requiring a local election authority to remove a person's name from the registration records if it determined that person had moved). Thus, in 1984, the Court of Appeals held that persons who had not transferred their registrations after moving were not registered voters and could not be counted as valid petition signers. *Yes to Stop Callaway Comm. v. Kirkpatrick*, 685 S.W.2d 209, 211 (Mo. App. 1984). As it existed at that time, § 115.165 required registered voters who moved to transfer their registrations by the fourth Wednesday before the election. *Id.* at 211. Because a transfer of registration was required after any move, the Court held that a person who had not transferred that person's registration was "in the same posture as an unregistered person." *Id.* If they signed an initiative petition, their signatures could not be counted. *Id.* at 211-12. A few months later, the Court of Appeals followed that decision in *Payne v. Kirkpatrick*, 685 S.W.2d 891, 903 (Mo. App. 1984).

The *Yes to Stop Callaway* and *Payne* decisions are no longer good law, because the underlying statutes have been superceded by new federal and state laws. In the National Voter Registration Act of 1993, Congress prohibited states from requiring voters who move within the jurisdiction of the same election authority to re-register or transfer their registration as a condition of staying registered. 42 U.S.C. §§ 1973gg-6(d), (e), (f). Congress determined that such

stringent voter registration requirements failed to account for the mobility of citizens in modern society. S. Rep. No. 103-6, at 3 (1993) (relevant excerpts reproduced in the Appendix at A41-44). They effectively elevated the administrative convenience of the local election authority in being apprised of a person's current address over the individual's right to vote. *Id.* at 2, 3. Citizens who moved within an election jurisdiction were losing their fundamental right to vote to accommodate a slight administrative burden on election authorities. Thus, the NVRA required procedures and standards "to assure that voter's names are maintained on the rolls so long as they remain eligible to vote in their current jurisdiction and to assure that voters *are not required to re-register* except upon a change of voting address to one outside their current registration jurisdiction." *Id.* at 2 (emphasis added).

Now, a person who moves within the jurisdiction of the same election authority may update their address at any time, including election day, and still vote. 42 U.S.C. § 1973gg-6(e). When voters move within an election jurisdiction, their names "may not be removed from the list of eligible voters by reason of such a change of address." 42 U.S.C. § 1973gg-6(f). To remove a voter's name from the registration record based on a change of address, the voter must confirm in writing that he or she has moved *outside* the election authority's jurisdiction. 42 U.S.C. § 1973gg-6(d)(1)(A). In the alternative, the local election authority may send voters notice – by forwardable mail – requesting their current addresses and notifying them that they may be required to affirm their address if they do not

respond by the registration deadline, and that their names may be removed from the voter registration list if they do not vote by the second general election after the notice is sent (in other words, in the next two to four years depending on when the notice is sent). 42 U.S.C. § 1973gg-6(d)(2). Thus, the NVRA established the general principle that a move within an election jurisdiction does not affect a person's status as a registered voter.

Missouri's General Assembly subsequently revised the state voter registration laws to conform to the federal law. The current laws apply the NVRA standards for both state and federal elections. §§ 115.165, 115.193. Voters who move within the jurisdiction of an election authority remain registered voters and are entitled to vote at all elections. § 115.165. Their names "shall not be removed from the list of registered voters," unless they move outside the election authority's jurisdiction or the NVRA notice procedures are followed. § 115.193.

The Tax Abuse Intervenors argue that the burden is still on voters to update their addresses and that they are unregistered voters until they do so: "the requirement that a voter affirmatively inform the local election authority that he is changing his address *is a requirement to allow such a voter to be a registered voter.*" TAI Brief 33 (emphasis added). This characterization directly contradicts with federal and state law. A person who moves remains registered, regardless of whether they notify the local election authority of the move. 42 U.S.C. § 1973gg-6(f); § 115.193. Indeed, if the voter registration statutes were interpreted to place the burden on a person who moves to re-register as Tax Abuse Intervenors

suggest, Missouri law would conflict with federal law and could subject the Secretary of State to an enforcement action. See 42 U.S.C. § 1973gg-9.

Consistent with the NVRA-mandated changes to voter registration laws, the Secretary of State revised the regulations to ensure that the signatures of people who move within an election jurisdiction are counted as valid. Proposed Amendment, 21 Mo. Reg. 1846 (Aug. 15, 1996). The signature match procedure mirrors the voting procedure for such a person. To sign an initiative petition or vote, a person who has moved within the jurisdiction of the same local election authority only needs to provide their new address and a signature by which the local election authorities can confirm that they are in fact the person who is registered to vote. *Compare* § 115.165.1, *with* 15 CSR 30-15.010(3)(E). Thus, 15 CSR 30-15.010 and 15.020 are reasonable interpretations of the term “registered voters” in § 116.130.1.

**2. Tax Abuse Intervenors’ Alternative RDA
Argument Was Not Supported By The Evidence,
Nor Is It Supported By Missouri Law.**

In the alternative, Tax Abuse Intervenors contend that RDA petition signers with multiple possible name matches should be rejected. TAI Brief 39. Of the 3,221 RDA petition signers in the Fifth Congressional District, Tax Abuse Intervenors identified 458 individuals for which multiple potential RDA matches existed. D. Int. Ex. B. They apparently believe the difficulty in determining which of those potential matches signed the petition is prohibitive, and ask this

Court to deny constitutional rights to citizens who are unlucky enough to have a common name. Nothing in federal or state law permits such an arbitrary distinction. Moreover, their fears are misplaced. Before counting any RDA signature, the local election authorities must match the signature to the signature in its files. 15 CSR 30-15.010(3)(E). Jackson County and Kansas City Board representatives testified that they do in fact perform that comparison for every R and RDA signature. Tr. 11:17-12:4; J. Ex. P 13:6-21, 14:18-22, 20:13-19; J. Ex. Q 32:11-33:7, 64:2-72:15; J. Ex. S 62:21-64:2. It should be noted that those 488 signatures were less than 15% of the total RDA signatures in the Fifth Congressional District. So, contrary to the innuendo of Tax Abuse Intervenors, RDA signatures are not inherently unreliable. Even in a jurisdiction as large as Jackson County, only one possible match exists for the great majority of signers.

Tax Abuse Intervenors did not meet their burden of disproving the signatures' presumptive validity. The local election authorities, the Secretary of State, and the trial court have all correctly concluded that signatures of RDA petition signers are valid signatures of registered voters. This Court should reject the Tax Abuse Intervenors' attempt to invalidate those signatures and deprive Missouri citizens of their core right to petition government based on a misreading of a Court of Appeals case decided when the voter registration rules were completely different. The Secretary of State's regulations properly ensure that those rights are protected.

**B. Tax Abuse Intervenors Have Not Preserved Their
Challenge to the Validity of the Regulations Permitting
Minor Name and Address Variations.**

Beginning at the bottom of page 37 and continuing through the top of page 39 of their Brief, Tax Abuse Intervenors insert a completely distinct issue within the argument supporting their First Point Relied On. They argue that 15 CSR 30-15.010 is also invalid, because it permits minor name and address variations between the information provided on the petition and the voter registration rolls. TAI Brief 37-39. They believe that under the *Yes to Stop Callaway* opinion the name and address must be “identical” to the name and address on the voter registration rolls in every respect. TAI Brief 38. This argument is not addressed at all in their Point Relied On. TAI Brief 26. The issue of whether minor name and address variations are permissible is completely separate from the issue of whether RDA signatures can be counted as valid. Since they did not raise the issue in a Point Relied On, Tax Abuse Intervenors have waived that argument and cannot challenge the validity of the regulations on that basis in this appeal. Rule 84.04(d)(1); *Hastings v. Coppage*, 411 S.W.2d 232, 235 (Mo. 1967) (“Contentions not presented in the points to be argued in an appellate brief are abandoned and will not be considered.”).

If this Court does choose to reach the merits of the challenge, it should uphold the validity of the regulation. Contrary to the allegations in Tax Abuse Intervenors’ Brief, the *Yes to Stop Callaway* court never considered whether a

name or address that is the same as the name or address on the voter registration rolls with minor variations should be counted. 685 S.W.2d at 210-12.

In *Payne v. Kirkpatrick*, the Court of Appeals was faced with names which had “inconsequential variations.” 685 S.W.2d 891, 901 (Mo. App. 1984) . For example, a middle initial was missing or a nickname was used for a formal name. *Id.* The trial court had counted those names as valid. *Id.* The Court of Appeals agreed that they were properly included. *Id.* Likewise, for 64 signatures, the address contained “minimal variations.” *Id.* Those addresses were “harmonized” by the Greene County Clerk and counted as valid. *Id.* The Court of Appeals agreed that those signatures were also properly counted. *Id.* Thus, the Court of Appeals has held that inconsequential and minimal variations in name and address do not affect the validity of signatures. *Id.*

Shortly after the *Payne* case was decided, the Secretary of State filed proposed rules identifying permissible name variations. Proposed Rulemaking, 10 Mo. Reg. 2136 (Dec. 16, 1985). In 1992, the Secretary of State filed proposed rules identifying permissible address variations. Proposed Rulemaking, 17 Mo. Reg. 703-04 (May 18, 1992). Those rules were subsequently adopted, and the name and address variations are the same as the name and address variations permitted by the current version of the regulation. 15 CSR 30-15.010.

Thus, far from being arbitrary or unreasonable, the minor name and address variations permitted by the Secretary of State’s rules implement an express holding of the Court of Appeals. They also make common sense. Individuals

frequently sign their name and address differently depending on the circumstances. The way a person signs his or her name may change over time. For example, someone who shares the same name as his father may sign his name “John A. Doe, Jr.” while his father is alive, but change his signature to “John A. Doe” after his father dies. Signatures will also vary depending on the information requested. This problem is acutely demonstrated by the voter registration forms produced by the local election authorities. Some forms ask for first name, middle *name*, and last name, while other forms ask for first name, middle *initial*, and last name. Compare P. Ex. 212-1006, with P. Ex.212-2004. Some forms include a space for suffixes and some do not. Compare P. Ex. 212-1007, with P. Ex. 212-1006. The petition form prescribed by statute only asks for the “name” of the petition signer. § 116.040, RSMo. It does not specify in what detail the person must sign their name. Finally, petition signers may be constrained by the limited amount of space available for them to write their name, address, and other information. Petition pages can be no wider than 8 ½ inches by statute. § 116.050, RSMo. Accordingly, a voter whose full first, middle, and last name was “John Andrew Doe, Jr.” might sign as “John Doe” or “John A. Doe” to accommodate the limited space on the signature line. Or, a person who lives at “123 Main Street Apt. A” may list their address as “123 Main Street.”

Tax Abuse Intervenors would apparently condition a citizen’s constitutional right to sign an initiative petition on that citizen’s ability to remember the exact information requested by and provided to election authorities when that person

registered to vote some 5, 10, 15, or even 20 years ago. Their interpretation completely ignores the purpose of performing name and address matches. The names and addresses of petition signers are not compared against the voter registration records to see how good the petition signer's memory is. That comparison is done to determine whether the person who signed the petition is in fact a registered voter.

Tax Abuse Intervenors claim that the minor name and address variations permitted by 15 CSR 30-15.010 are inconsistent with the Secretary of State's authority to adopt rules to ensure uniform, complete, and accurate checking of petition signatures. *See* TAI Brief 39. They would favor a standard requiring a letter-for-letter match to the voter registration rolls. *Id.* at 38. While that standard might be uniform, it ignores the need to also ensure "complete" and "accurate" signature checking. § 116.130.5. Since individuals often sign their names and addresses with inconsequential variations, many signatures would be disqualified. Verifications conducted pursuant to such a standard would neither be complete nor accurate, because they would exclude the signatures of many persons who were in fact qualified to sign the petition. The Secretary of State's rules strike an appropriate balance and are consistent with her rulemaking authority.

Finally, Tax Abuse Intervenors claim that more stringent standards have been sustained against constitutional attack by other courts. TAI Brief 41. But, there is no claim that the regulations are unconstitutional. The only issue is whether the Secretary of State's rules are reasonable and a permissible

interpretation of the statute. Where there are only “inconsequential” or “minimal” variations in the name or address, the signature can be readily identified as the same person who signed the petition and should be counted. The Court of Appeals has expressly so held. *Payne*, 685 S.W.2d at 901. *See also United Labor Comm. of Mo.*, 572 S.W.2d at 454 (“The ability of the voters to get before their fellow voters issues they deem significant should not be thwarted in preference for technical formalities.”). This decision is imminently reasonable, especially in light of the fact that election authorities also compare every petition signature to the signature on file with their office. 15 CSR 30-15.010(4). The Secretary of State’s rules are reasonable and should be upheld, if this Court chooses to reach the merits of the Tax Abuse Intervenors’ challenge.

**II. The Trial Court Properly Determined That Signatures Of
Petition Signers Without A Congressional District
Designation Must Be Counted As Valid Pursuant To
§ 116.130.3, RSMo, And 15 CSR 30-15.010-15.020,
Because The Presence Or Absence Of A Correct
Congressional District Designation Does Not Affect The
Validity Of Signatures In That The General Assembly
And Secretary Of State Have Both Expressly Determined
That A Correct Congressional District Is Not A Required**

**Element Of A Valid Signature. (Responds to Appellants’
Point Relied On II.)**

The Tax Abuse Intervenors seek to disqualify signatures of legal voters that match the voter registration records on the basis that those signers did not complete the congressional district column. Their attack is baseless. Missouri statutes and regulations expressly provide that failure to provide the correct congressional district does not affect the validity of a signature. Rather, local election authorities are required to provide the correct district designation when a petition signer does not provide that information.

Standard of Review

The standard for review for this Point is the same as the standard for Point Relied On I. Likewise, Tax Abuse Intervenors again challenge the validity of 15 CSR 30-15.010 and 15.020 as they relate to congressional district designations. For the same reasons described in response to Point Relied On I, the Secretary of State’s interpretations of the statute are entitled to “great weight” and can be overturned only for “weighty reasons.”

The initiative petition form includes a column for petition signers to designate their congressional district. *See* § 116.040. Tax Abuse Intervenors contend that failure to complete this column invalidates the signature. But, § 116.130.3 specifically states that failure to provide a congressional district number is not a basis for invalidating a signature:

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 secretary of state shall correct the congressional district number on the petition page. *Failure of a voter 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 Supp. 2005 (emphasis added).

Pursuant to the General Assembly's grant of rulemaking authority, the Secretary of State has directed local election authorities to cross out incorrect congressional district numbers and write in the correct congressional district number. 15 CSR 30-15.020(1)(G). More importantly, the Secretary of State's regulations expressly confirm that a valid congressional district number is not required for a valid signature: "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) (emphasis added).

Thus, the local election authorities properly counted petition signatures as valid, even if the congressional district number was missing. This rule makes common sense. Petition signers may not know their congressional district when

they sign an initiative petition. In contrast to well-known political boundaries (like county and school district lines), congressional district boundaries have little day-to-day impact on voters' lives. For the most part, they are only relevant every two years when voters elect Representatives to Congress, and may be completely redrawn every ten years. U.S. const. art. I, § 2. The General Assembly and Secretary of State have thus concluded that otherwise valid petition signatures should not be disqualified simply because signers did not record their congressional district. § 116.130.3; 15 CSR 30-15.010(5).

Tax Abuse Intervenors believe the General Assembly has taken a Jekyll and Hyde approach to the two types of incorrect congressional districts. They agree that petition signatures are valid where the signers write in the wrong congressional district, but argue that the absence of a congressional district is completely fatal to the signature. TAI Brief 46. They base their argument on the provisions of § 116.130.3 and 15 CSR 30-15.020(1)(G) that require local election authorities to supply the correct Congressional District number when the wrong number is written on the petition. *Id.* at 46-49. They construe those laws strictly and narrowly to mean that any other variation in the Congressional District completely invalidates the signature. *Id.* 46-49. Their argument is wrong for three reasons.

First, they focus only on a portion of the relevant statutes and regulations. They ignore the second half of § 116.130.3, which specifically states that the “[f]ailure of a voter to give the voter’s correct congressional district number shall

not by itself be grounds for not counting the voter's signature." Clearly, this language covers voters who supply an incorrect congressional district *and* voters who do not designate a congressional district at all. In either case, the voter has failed to give a correct congressional district. Likewise, 15 CSR 30-15.010(5) specifies that: "Failure of any other information [i.e., any information other than name, address and signature] is not a reason to fail to certify a name as being qualified." Under the regulations, a correct congressional district number is not required for the voter's name, address or signature to be acceptable, and therefore its absence cannot be a basis for invalidating signatures pursuant to the regulation.

Second, Tax Abuse Intervenors claim that there is no support in any Missouri statute for 15 CSR 30-15.010(5). To the contrary, the General Assembly expressly directed the Secretary of State to promulgate rules to ensure "uniform, complete, and accurate checking of petition signatures." § 116.130.5, RSMo. In *United Labor Committee of Missouri*, the Supreme Court directed that "the validity of the signatures is the heart of the ultimate determination" under the constitution and the statutes. 572 S.W.2d at 455. The Court specifically cautioned that form should not rule over substance. *Id.* at 454. In implementing the General Assembly's direction, the Secretary of State has appropriately focused on the heart of the ultimate determination – were the persons who signed the petition registered voters and are their signatures genuine? To that end, the petition signer's name, address, and signature are checked against the voter registration rolls. 15 CSR 30-15.010(5). While other information may assist in the verification process, those

are the core elements of a valid signature and failure of other information does not disqualify a signature. *Id.* This rule ensures that each local election authority has the same focus in checking the petition signatures, and that genuine signatures of registered voters are not thrown out for technical non-compliance.

This Court has repeatedly held that all such statutes must be construed broadly in favor of counting valid signatures: “Constitutional and statutory provisions relative to initiative are liberally construed to make effective the people’s reservation of that power.” *Missourians to Protect the Initiative Process*, 799 S.W.2d at 827. *See also United Labor Comm. of Mo.*, 572 S.W.2d at 454; *State ex rel. Voss v. Davis*, 418 S.W.2d 163, 167 (Mo. 1967); *State ex rel. Blackwell v. Travers*, 600 S.W.2d 110, 113 (Mo. App. 1980) (“Liberal construction of provisions which reserve to the people the power of the initiative is particularly favored so as to make effective this reservation of power.”). Thus, the Tax Abuse Intervenors’ premise that initiative petition statutes should be strictly construed against petition signers is false.

Third, the Tax Abuse Intervenors’ argument elevates procedure over substance. Specifically, the clear purpose in having a congressional district column on the petition page is to facilitate the signature checking process. Voters who know their congressional district can supply that information, which will help with the verification process. But, local election authorities must still verify that the voter’s designation is correct. Here, the local election authorities did determine the correct congressional district number for each valid signature. L.F.

78; J. Ex. P 17:1-14; J. Ex. Q 76:17-77:16. They certified their valid signature counts to the Secretary of State by congressional district. L.F. 78. The Tax Abuse Intervenor's argument that those signatures should be rejected for failure to supply information that has been independently verified borders on the absurd. It is certainly contrary to the settled law in this state. *United Labor Comm. of Mo.*, 572 S.W.2d at 454 ("The ability of the voters to get before their fellow voters issues they deem significant should not be thwarted in preference for technical formalities.").

Under the statutes and regulations, genuine signatures of legal voters cannot be rejected for the technical reason that they failed to designate a congressional district. This Court should decline the Tax Abuse Intervenor's invitation to read those laws strictly and narrowly in order to reject valid petition signatures.

III. The Trial Court Properly Found Signatures To Be Valid When The Signature Matched The Record On File With The Local Election Authorities And The Address Matched The One Local Authorities Had Entered Into The Statewide Voter Registration System. (Responds to Appellants' Point Relied on III.)

In their third point relied on, Tax Abuse Intervenor's argue that signatures on the Initiative Petition which matched the signatures on file with local election authorities should not have been accepted by the trial court when the "names and

addresses” on the petition matched the statewide voter registration database but did not match the “hard copy” registration on file with the local election authority. Tax Abuse Intervenors claimed this argument disproves the validity of 47 signatures which the Committee rehabilitated. L.F. 123. Of course, if the Court rules against Tax Abuse Intervenors on Point I, related to RDA, then the signatures at issue in Point III are valid signatures even if the address on the petition match *neither* the statewide database nor the hard copy registration documents – the signers were legal voters registered at an address different from the one they listed on the Initiative Petition. Essentially, Point III is a back up argument this Court should not reach.

Standard of Review

The standard of review for this Point is the same as the standard recited in the response to Point I.

Since January 1, 2006, federal and state law have required states to maintain one official list of registered voters at the state level. 42 U.S.C. § 15483; § 115.158, RSMo Supp. 2005. The “Missouri Voter Registration System” was Joint Exhibit A before the trial court. It is the statewide database mandated by the legislature in section 115.158, RSMo. Supp. 2005. It is “the *single* system for storing and managing the official list of registered voters throughout Missouri.” Section 115.158(2), RSMo Supp. 2005 (emphasis added). It “serve[s] as the official voter registration system for the conduct of all elections in Missouri.” *Id.*, subsection (2). The local election authorities are expressly authorized to use the

system as part of the initiative verification process. 15 CSR 30-15.020(5). In spite of Tax Abuse Intervenor's implication that the data in the system are not reliable, the data are entered in the system by the local election authorities from their records. J. Ex. S 22:21-25. Therefore, the statewide voter registration system is the "voter registration record[] in the election authority's jurisdiction" as discussed in 116.130. This conclusion is self-evident when the overarching constitutional objective is considered. Local election authorities search voter registration records because the constitutional test for determining whether a person is a "legal voter" is whether the person is legally entitled to vote for the measure. *Scott*, 513 S.W.2d at 444. Obviously, the "single system" and "official list" of registered voters used in all Missouri elections is good evidence of the registered voting addresses of petition signers.

The Tax Abuse Intervenor's brief refers to comparisons made by the "local election authorities." At trial, their only objection to use of the statewide database was lodged against signatures rehabilitated by Committee. L.F. 123. Committee assumes their argument before this Court is the same. To the extent they are attempting to broaden their argument to also challenge signatures originally verified by the local election authorities, that attempt must be rejected. First, they cannot raise new issues for the first time on appeal. Second, if Tax Abuse Intervenor believed that any valid signatures identified by the local election authorities using the statewide voter registration database were not in fact valid,

they were required to produce specific evidence to disprove their validity. They did not do so.

Tax Abuse Intervenors did identify 47 signatures rehabilitated by the Committee for which the address on the petition matched the address listed on the computerized “official list of registered voters,” but did not match the address in the hard copy paper files. L.F. 123. There was no evidence below concerning which address was the address of the signer at the time of his signing the petition. For example, a voter might have provided a change of address card to election authorities who entered the new address in the system, but the hard copy of the change was not scanned or produced. Tax Abuse Intervenors produced no evidence to show that the hard copy document was, in fact, correct.

The Committee met its burden in matching the addresses on the petition using the “official list of registered voters.” That statutory official list of registered voters is the correct list to use in verifying voter addresses. The trial court so found, and discredited the Tax Abuse Intervenors’ contrary arguments. Tax Abuse Intervenors’ Point III must be denied.

IV. The Trial Court Properly Determined That The Tax Abuse Intervenors Did Not Disprove The Validity of Signatures On The Initiative Petition Because Tax Abuse Intervenors Did Not Produce Evidence That The Petition Signers Were Not Legal Voters In That Their Evidence At

**Most Only Showed Discrepancies In The Completion Of
The Signature Lines And Did Not Establish That The
Signatures Were Not Genuine Or That The Persons Who
Signed The Initiative Petition Were Not Registered
Voters. (Responds to Appellants' Point Relied On IV.)**

In their Fourth Point Relied On, the Tax Abuse Intervenors allege that certain defects in the completion of signature lines should disqualify those signatures. Their argument is wholly technical. That is, they do not allege that any particular signer was not a registered voter or that any particular signature was not genuine. Rather, they allege that technical non-compliance is sufficient to disqualify a signature, even if the signature is the genuine signature of a registered voter. Since Tax Abuse Intervenors had the burden of proof on this issue, their argument fails.

Standard of Review

The trial court's factual findings must be affirmed unless they are against the weight of the evidence. *Murphy*, 536 S.W.2d at 32. Legal conclusions are reviewed *de novo*. *Id.*

Tax Abuse Intervenors' Fourth Point Relied On is not supported by any Missouri case, statute, or regulation. Rather, they rely on the decision of a Pennsylvania trial court. *In re Nader*, 865 A.2d 8 (Pa. Comm. 2004). That 258 page decision has no application to this case. That court was interpreting Pennsylvania statutes, which are wholly different from Missouri statutes.

Missouri law is clear. The Committee's evidence established that the Initiative Petition contained more than the required number of signatures from the Fifth Congressional District. Those signatures were supported by the presumption of validity, verified by the local election authorities, and/or supported by documentary evidence. The Tax Abuse Intervenors could still disprove the validity of those signatures, but *they bore the burden* of overcoming the presumption of validity and other evidence which supported the validity of the signatures. *Kaesser*, 243 S.W. at 350. They presented their allegations to the trial court, and it determined that they were too general and not persuasive. L.F. 143-45. Accordingly, the trial court rejected them.

The Committee will briefly review the evidence that led the trial court to reject those allegations. First, Tax Abuse Intervenors submitted a list of signature lines with alleged defects. D. Int. Ex. A. That list included signature lines that the local election authorities had already determined were invalid, as well as valid signature lines. Their list also included signature lines on petition pages that the Secretary of State had determined were circulated by a person who did not properly register. For these two reasons, the signature lines identified by the Tax Abuse Intervenors included signatures that were not ultimately counted by the Secretary of State. Accordingly, even if their allegations had been credited by the court as a matter of law and fact, their evidence did not suffice to inform the trial court by how many valid signatures the certified count would be reduced.

Second, the discrepancies alleged were not sufficient to carry their burden of proving that the person who signed the petition was not actually a legal voter. They alleged discrepancies in the completion of the “date signed” column on the petition page. L.F. 129. But, they did not introduce evidence of any signature that was wrongly counted as valid because the signer was not registered to vote on the day that they signed the petition.

Tax Abuse Intervenors alleged that certain names and addresses on the petition were illegible. L.F. 131-32. The local election authorities, however, were able to read that information. For each valid signature from Jackson County, the line-by-line computer printouts –which were in evidence as Joint Exhibits D and E – showed the name and address of the specific registered voter who the local election authority had verified as signing the petition. If Tax Abuse Intervenors believed that person did not in fact sign the petition, they could have introduced evidence to show that the person identified by the local election authority as the petition signer was not the person who signed the petition. They did not do so and the trial court rejected their claim as a matter of fact.

They allege that certain petition signers printed their names in both name blanks or signed their names in both name blanks. L.F. 130-31. Such actions would only invalidate a signature if the name was not readable because it was signed in both places or if the signed name did not match the signature on file with the local election authority. For signature lines where the name was signed in both places, the local election authorities were able to identify the name of that petition

signer. J. Ex. D, E. Tax Abuse Intervenors have introduced no evidence that they incorrectly made that determination. For signature lines where the name was printed in both places, the Tax Abuse Intervenors introduced no evidence to suggest that those persons' signed names are not the same as their printed names. Some people only print and do not write in cursive. Voters who are unable to sign are expressly permitted to make their mark. § 116.070, RSMo. To show that those signatures were invalid, Tax Abuse Intervenors would have needed to obtain their signatures from the local election authority and prove via expert witness testimony that the signatures did not match pursuant to 15 CSR 30-15.010(4). They did not do so and the trial court rejected their claim as a matter of fact.

Finally, Tax Abuse Intervenors alleged instances where someone other than the petition signer completed one or more of the columns on the petition page *other than the signature*. L.F. 133-34. That fact is completely irrelevant. Nothing in Missouri law prohibits a third person from filling in information (other than the actual signature) on the petition form for petition signers. A petition circulator might assist an elderly or infirm voter by filling in their information. Or, a petition circulator going door-to-door might complete that information for petition signers while discussing the merits of the amendment or making small talk about the weather.

The statutory initiative petition form specifically recognizes that someone other than the signer may complete information – other than the signature – on the form. It requires petition signers to affirm that they have “personally signed” the

petition. § 116.040. But, petition signers must only agree that their address and city of residence “are correctly written” after their name. *Id.* The use of the passive voice in this instance clearly permits the address to be written by someone other than the petition signer. The form also states that the names of signers may be “printed or typed.” § 116.040. Moreover, in certain instances, circulators are not only permitted, but are actually *required* to supply the requested information for a voter who is unable to sign their name. § 116.070, RSMo. Quite simply, if an individual signs the petition for himself or herself, no statute or regulation prohibits a third person from filling in the other information for the petition signer.

The trial court reviewed the Tax Abuse Intervenors’ general allegations and determined that they simply were not sufficient to disprove the validity of any signatures. L.F. 143-45. The trial court’s findings of fact are well-supported and are not contrary to the weight of the evidence. They are controlling here. This Court should deny Tax Abuse Intervenors’ Fourth Point.

**V. The Trial Court Properly Determined That Signatures On
Petition Pages With Alleged Irregularities In Notarization
And/Or Circulator Affidavits Must Be Counted As Valid
Pursuant To § 116.130.1, RSMo, And 15 CSR 30-15.010
And 15.020, Because Irregularities In Notarization
And/Or Circulator Affidavits Do Not Affect The Validity
Of Signatures That Have Been Verified By Local Election**

**Authorities Or Otherwise. (Responds to Appellants’
Point Relied On V.)**

The Tax Abuse Intervenors argue that certain alleged defects in the circulator affidavit or notarization of petition pages invalidate every signature on those pages. However, this Court need not engage in a page-by-page review to evaluate such defects, because it has previously held that the types of defects alleged by the Tax Abuse Intervenors – even if true – do not invalidate signatures that have been independently verified by local election authorities. As a matter of law, the defects alleged by the Tax Abuse Intervenors do not suffice to invalidate those signatures.

Standard of Review

The legal issue under this Point – whether irregularities in circulator affidavits or notarizations invalidate signatures that have been independently verified – is a question of law, which this Court review de novo. If this Court were to overrule prior precedent and determine that such errors may invalidate signatures, each page would need to be reviewed to determine whether there were in fact defects. The trial court did not reach that issue, because it applied the prior precedent and found that such errors – even if they existed – did not affect the validity of the signatures.

Tax Abuse Intervenors alleged the following defects in notarization: one page was not notarized, four pages were missing a notary seal, one page had the seal of a different notary, six pages had irregularities in the dates of notarization,

and three pages had additional markings around the date of notarization. L.F. 99-102. For three of those pages, the Secretary of State had determined that the circulator was not properly registered and therefore did not count any of the signatures on those pages. L.F. 126; First Stip. Ex. 3. Excluding those three pages, Tax Abuse Intervenors' allegations implicate 91 signatures that had been verified as valid R or RDA signatures by the local election authorities. L.F. 127.

Tax Abuse Intervenors alleged the following defects in circulator affidavits: 34 pages had the circulator's street number and street address but no city and zip code information, one page had handwriting which they claimed was internally inconsistent, three pages had blanks that had not been completed, one page had a circulator who had not signed her name, and three pages had allegedly illegible circulator information. L.F. 102-06. For one of those pages, the notary information for one page had already been disputed. L.F. 128. For six of those pages, the Secretary of State had determined that the circulator was not properly registered and therefore did not count any of the signatures on those pages. L.F. 128. Excluding those seven pages, Tax Abuse Intervenors allegations implicate 383 signatures that had been verified as valid R or RDA signatures by the local election authorities. L.F. 129.

Overall, Tax Abuse Intervenors' allegations put 474 signatures at issue. The Committee disagrees with many of their allegations. For example, the notary seal on two of the petition pages was faint but apparent, the irregularities in the dates of notarization were clear typographical and clerical errors, the circulators

provided all required address information, and the circulator names that were alleged to be illegible could be read. L.F. 99-106.

In *United Labor Committee of Missouri v. Kirkpatrick*, the Supreme Court considered whether signatures on petition pages that have been improperly notarized could be counted as valid. 572 S.W.2d 449, 450-51 (Mo. banc 1978) . In that case, the statutory form for petition pages stated that petition circulators must attest in the presence of a notary public that each person who signed the petition page did so in the circulator's presence, and that they correctly stated their names and were qualified Missouri voters. *Id.* at 451. The statute specified that these requirements were "mandatory." *Id.* The initiative petition was submitted, and it was discovered that circulators signed 1,538 petition pages containing 12,960 signatures outside of the notary's presence. *Id.* at 452. Those petition pages were sent to the local election authorities who verified the validity of the signatures on the petition pages. *Id.* at 452-53. The opponents of the petition, however, argued that failure to follow the mandatory form invalidated all signatures on those petition pages, irrespective of the local election authorities' independent verification. *Id.* at 453.

This Court rejected that argument. Because they are supported by a circulator affidavit, initiative petition signatures are presumed valid. *Id.* at 453 & n.5 (quoting *Kaesser v. Becker*, 243 S.W. 346, 352 (Mo. banc 1922))). But, "[w]hen irregularities in circulator affidavits or notary attestations are found, those irregularities rebut the prima facie validity of the petition (in accord with

§ 126.061).” *Id.* Those signatures, however, are not completely invalidated for all purposes. *Id.* Their validity can be independently shown by reference to voter registration list checks or direct testimony. *Id.* In so holding, the Court reasoned that “the validity of the signatures is the heart of the ultimate determination.” *Id.* at 455. Circulator affidavits and notary attestations provide only a “double check” on the validity of signatures. *Id.* at 454. Those requirements are important, but irregularities in such extra safeguards cannot be allowed to disqualify signatures that can be otherwise verified: “the 12,960 registered voters who suffered the happenstance of having signed the petitions which were subsequently improperly notarized . . . , should not have their signatures invalidated due to the conduct of [the notary].” *Id.* at 454. Though the statutory form was mandatory, the General Assembly had not stated that failure to follow that form was fatal to the signatures, and the Court refused to invalidate signatures that had been independently verified by the local election authorities. *Id.* at 456.

In 1992, the Court of Appeals affirmed the continuing validity of the *United Labor* holding. Opponents of an initiative petition sought to disqualify 4,900 signatures based on irregularities in circulators’ affidavits. *Ketcham v. Blunt*, 847 S.W.2d 824, 832 (Mo. App. 1992). Relying on *United Labor*, the trial court found and the Court of Appeals agreed that: “Irregularities 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.” Id. (emphasis added). Accordingly, the Court of Appeals rejected the challenge to the validity of those 4,900 signatures.

Thus, even if the notaries and circulators made mistakes in completing the circulator affidavits, the signatures on those petition pages have been independently verified by local election authorities. That verification supports the determination that those signatures are valid. The Tax Abuse Intervenors do not challenge the genuineness of those signatures, nor dispute their underlying validity. They claim only that “strict compliance” with the circulator affidavit provisions is a necessary pre-requisite to a valid signature. TAI Brief 65. The *United Labor* and *Ketcham* decisions have already decided this issue against them, and this Court could only rule in their favor by overruling those cases.

The Tax Abuse Intervenors invite this Court to do just that, going so far as asserting that the Court of Appeals “rejected” the *United Labor* analysis in the *Yes to Stop Callaway* case. TAI Brief 52 n.3. Of course, the Court of Appeals could not and has not rejected this Court’s controlling precedent. Mo. Const. art. V, § 2 (Supreme Court “decisions shall be controlling in all other courts”). The *United Labor* case was not even cited or discussed in the *Yes to Stop Callaway*, because that case concerned a completely different issue - the legal requirements for being a registered voter. In the only appellate case to consider this issue since *United Labor* was decided, the Court of Appeals faithfully applied that holding by rejecting an attempt to disqualify signatures based on circulator affidavit irregularities. *Ketcham*, 847 S.W.2d at 832.

The rationale of *United Labor* remains sound. Tax Abuse Intervenors repeatedly assert that *United Labor* is “old,” “outdated,” “obsolescent,” “tired” and “no longer good law.” TAI Brief 52 n.3, 63, 66. They do not cite to any Missouri case, statutory change, or constitutional amendment that has undermined its holding. In fact, the *United Labor* case has only been cited favorably by subsequent Missouri Supreme Court and Court of Appeals cases. Tax Abuse Intervenors note that other states follow more restrictive rules, and that those rules have been upheld under their constitutions or the federal constitution. TAI Brief 64-66. By following Missouri precedent rather than cases from other jurisdictions, they claim the trial court ensured that “chaos will rule and that the statutes of the state of Missouri, relating to initiatives, are meaningless and can be avoided and evaded by any person, foreign or domestic.” TAI Brief 66. Putting aside their misunderstanding of the role of precedent in Missouri courts, this Court need not be overly concerned about the prospect of “chaos.” Out of 2,907 petition pages from Jackson County, the Tax Abuse Intervenors were able to identify one petition page that was not notarized, and a handful of other pages with clerical and technical errors in the notary attestation or circulator affidavit. The “chaos” appears neatly confined to a very manageable number of petition pages.

Since *United Labor* was decided, the General Assembly has followed its teaching. In revising chapter 116, RSMo, it has specifically identified defects that are fatal to the validity of signatures. *See* §§ 116.080.1, 116.100, 116.120.1, 116.175.5, 116.180, 116.334, RSMo & Supp. 2005. Despite specifically

amending § 116.080 in 1980 and 1999, the General Assembly has *never* specified that failure to comply with the notarization requirement of § 116.080.4 is fatal to the validity of signatures. Thus, the General Assembly clearly agrees that such irregularities do not affect the validity of signatures.

Over the past 30 years, this Court, the Court of Appeals, and the General Assembly have all agreed that circulator affidavit and notary attestation irregularities do not affect the validity of initiative petition signatures that are independently verified. This Court should follow the settled law of this state and hold that – even if the defects alleged by the Tax Abuse Intervenors exist – they only rebut the initial presumption of validity. Because these signatures have been independently verified, they are valid and were properly counted by the local election authorities and Secretary of State.

VI. The Trial Court Did Not Err When It Found That The Initiative Petition Complied With Article III, §51 Of The Missouri Constitution Because the Petition Generates New Revenue and Properly Appropriates that New Revenue. (Responds to Appellants’ Point Relied On VI.)

The trial court held that "the tobacco tax initiative petition does not violate" article III, § 51 of the Missouri Constitution. In so holding the trial court found that “[t]he petition imposes a new tax on tobacco products, distributes only those

proceeds, and does not divert money from existing funds.” L.F. 151. The trial court was correct.

Standard of Review

This Point raises an issue of law, which this Court reviews *de novo*.

Article III, § 51 of the Missouri Constitution states, in relevant part, 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 supplied). Based on this section, Missouri courts have invalidated initiative petitions that attempted to create new programs *without* providing new revenues. *See Kansas City v. McGee*, 269 S.W.2d 662 (Mo. 1954) (invalidating new firemen's pension fund that required city council to provide appropriation when requested by trustees); *State ex rel. Sessions v. Bartle*, 359 S.W.2d 716 (Mo. 1962) (invalidating wage schedules that mandated additional appropriation of \$500,000 without providing new revenue). *Cf. Moore v. Brown*, 165 S.W.2d 657 (Mo. banc 1942)(case predating art. III, § 51 that invalidated initiative seeking to set aside \$29,000,000 of state budget for incapacitated adults and children without providing new revenue).

However, these cases in no way alter the plain reading of Art. III § 51 -- that new programs can be enacted and funded using the initiative process. Indeed, there is a "proper" method of appropriating by initiative—provide new revenue to fund the new programs. *See Conservation Fed'n of State v. Hanson*, 994 S.W.2d 27 (Mo. 1999). The tobacco tax initiative does precisely that. It establishes a

tobacco tax and funds certain programs with the proceeds of the tax. Those programs are funded only to the extent revenues are obtained via the new tax. *See e.g., Initiative Petition, S.L.F. 2-5.* Moreover, the tobacco tax initiative goes above and beyond mere compliance with constitutional requirements and specifically refunds revenues collected under the new tax that might be lost to other currently-existing funds based on a potential reduction in smoking. *See id.* § 5. In other words, all programs that are created by the tobacco tax initiative are funded exclusively by the new tobacco tax. No revenue is diverted from existing revenues. As the trial court recognized, the Initiative Petition is a model for how to create new programs and new revenue for those programs. *See Hanson, 994 S.W.2d 27.*

In their brief, Tax Abuse Intervenors argue that the Initiative Petition violates Article III, § 51 for two reasons: they say Section 8 of the initiative mandates administrative costs but does not provide revenue and that Section 12 of the initiative appropriates existing revenues. TAI Brief 67-70. On both counts, Tax Abuse Intervenors simply misread the initiative.

The Initiative Petition provides new revenue for its programs—revenue that is to be completely separate from the general state revenue. In fact, the tax is to be considered "new and additional funding" for the programs enacted.

**A. Section 8 of the Proposed Amendment Properly Provides
New Revenue For The Purpose of Providing Health
Services.**

Section 8 provides that new money generated by the tax shall be deposited into a separate fund and used “solely to provide additional funds for the purpose of” providing health services. Tax Abuse Intervenors never quote from the section but instead paraphrase that it “mandate[s] that every penny of the new tobacco tax, devoted for Medicaid purposes, be distributed through direct transfer payments with none retained by the Department of Social Services.” TAI Brief 68. The initiative proposes a constitutional amendment. As such, its terms will be construed broadly once it is enacted. *Chesterfield Fire Protection District v. St. Louis County*, 645 S.W.2d 367, 370 (Mo. 1983). The language of the initiative clearly allows the funds to be used for the purpose of providing health care, which includes the administrative costs associated with that health care. Tax Abuse Intervenors’ narrow construction of the language is inconsistent with both the plain language of the petition and well accepted rules of constitutional construction.

Nor does the plain language of the tobacco tax initiative require a grand administrative scheme for distributing these new revenues. Tax Abuse Intervenors point to a fiscal note prepared by the Missouri State Auditor and included in their Appendix. This evidence was not in the record below and is not part of the record here. Respondent Committee has moved to strike the document by way of a separate motion. But even if the Court considers this evidence, it supports the trial court’s decision. The Department charged with administering the program, reviewed the petition language and “assumes this funding [for administrative

costs] would come from the tobacco tax revenue.” Appendix to Appellant/Cross-Respondent’s Brief, A99. Likewise, the Auditor’s summary of the fiscal impact of the petition did not project any costs to the state, but rather correctly read the initiative to provide and appropriate only the new revenue generated by the tobacco tax. *Id.*

**B. Section 12 of Proposed Amendment Properly Protects
New Revenue From Being Directed by The General
Assembly.**

Nor did the Auditor’s fiscal note summary agree with Tax Abuse Intervenor’s reading of Section 12. Intervenor’s claim Section 12 would “handcuff the General Assembly with respect to funding for existing programs.” TAI Brief 70. Section 12 reads:

“[t]he net proceeds from the tax imposed by this section shall constitute new and additional funding for the initiatives and programs described in this section and shall not be used to replace existing funding as of July 1, 2006 for the same or similar initiatives and programs.”

The clear mandate of this section is to preclude the General Assembly from using the revenues generated by the new tobacco tax to fund currently existing programs that happen to be similar to the ones proposed by the tobacco tax. In other words, Section 12 further clarifies that the new tobacco tax revenues are not part of the “total state revenue” within the meaning of sections 17 and 18 of article X of the Missouri Constitution and are not available to the General

Assembly for programs other than those outlined in the initiative. To the extent that new revenues are generated, the tobacco tax initiative dictates that they are to be used only for the new programs. Such a restriction is perfectly legitimate and indeed prudent in light of the General Assembly's appetite for new sources of revenue. *See Hanson*, 994 S.W.2d 27.

Tax Abuse Intervenor's reliance on *State ex rel. Card v. Kauffman*, 517 S.W.2d 78 (Mo. 1974) is quite misplaced. *Card* stands for the simple proposition that an initiative cannot appropriate existing revenues not generated by the initiative itself. The *Card* court specifically acknowledged there was "no pretense that [the measure at issue] creates or provides new revenue." *Id.* at 80. Tax Abuse Intervenor's arguments are either contradicted by the express language of the tobacco tax initiative or rely on an extremely convoluted and mangled reading of the language. Quite simply, the arguments are without merit. The Initiative Petition is the precise method authorized by the Missouri Constitution for creating new programs—it generates new revenues for those programs. The trial court read the initiative correctly and properly ruled against Tax Abuse Intervenor. That decision must be upheld.

VII. Trial Court Properly Determined That The Proposed Amendment Contains Only One Subject and Matters Properly Connected Therewith Because Every Provision Of The Proposed Amendment Relates To The Imposition, Collection, And

**Disbursement Of An Increased Tobacco Tax. (Responds to
Appellants' Point Relied on VII.)**

The Tax Abuse Intervenors assert that the “tobacco tax initiative petition” violates article III, section 50 and article XII section 2(b) of the Missouri Constitution, because it does not have a single purpose. TAI Brief 73-80. This claim fails on its face. The central purpose of the Initiative Petition is clearly to impose an additional tobacco tax, and provide for the collection and disbursement of those funds.

Standard of Review

This Point raises a question of law, which this Court reviews *de novo*.

Proposed constitutional amendments must encompass “one subject and matters properly connected therewith.” Mo. Const. art. III, § 50; Mo. Const. art. XII, § 2(b). “An initiative petition has one subject if all of its provisions are properly connected with a central purpose.” *United Gamefowl Breeders Ass’n of Mo. v. Nixon*, 19 S.W.3d 137, 140 (Mo. banc 2000). An amendment may revise multiple articles of the constitution or make several changes and incidents, if all are germane to one purpose. *Id.*; *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 830-31 (Mo. banc 1990). “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*, 799 S.W.2d at 830-31.

In *Buchanan v. Kirkpatrick*, 615 S.W.2d 6 (Mo. banc 1981), the Missouri Supreme Court reviewed the Hancock Amendment to determine whether it encompassed a single subject. 615 S.W.2d 6 (Mo. banc 1981). That amendment provided for: “(1) Taxation lid (§§ 16, 17 and 18) upon State Government; (2) Spending lid (§§ 18, 19 and 20) upon State Government; (3) Directive dictating the manner (§ 21) in which the funds must be spent by State Government; (4) Taxation lid (§ 22) upon local governments; (5) Limitation upon local governments (§ 22) in obtaining revenues based upon assessments and property; and finally, (6) A novel grant of original jurisdiction to the Supreme Court.” *Id.* at 18-19 (Rendlen, dissenting). Yet, a five judge majority of the Court was “unable to perceive” how “any of the sections of the amendment are not ‘properly connected’ with the central or primary purpose of the amendment to limit taxes and government expenditure.” *Id.* 14.

Similarly, the initiative petition that is the subject of this litigation proposes an increase on the taxes on tobacco products. The clear single purpose of the amendment is to raise and disburse a tobacco tax. Every provision of the amendment relates to the imposition, collection, and disbursement of the revenue raised by that tax. First. Stip. Ex. 1. The Tax Abuse Intervenors claim that it has multiple subjects because the tobacco tax revenue would fund a tobacco prevention program and expanded health care access. TAI Brief 75. Their professed inability to find “one general purpose” for the amendment is belied by the fact that they referred to the initiative petition as the “the *tobacco tax* initiative

petition” throughout their trial court pleadings. L.F. 30-41 (emphasis added). Clearly, Tax Abuse Intervenors understand that the purpose of the amendment is to raise and disburse a “tobacco tax.” Tobacco products have a deleterious effect on public health, and the amendment properly disburses the proceeds to fund a tobacco control program and to bolster public health programs (including specifically addressing tobacco-related illnesses). S.L.F. 4. All such matters are properly connected to the same general subject. The Missouri Constitution expressly recognizes that an initiative petition amendment may be used to appropriate new revenues created and provided for thereby. Mo. Const. art. III, § 51.

The Tax Abuse Intervenors also take issue with the provisions for Auditor oversight of expenditure of the funds. They complain that it expands the Auditor’s duties beyond those authorized by Article IV, § 13. While that is certainly true, the Auditor’s new duties are limited to oversight of the tobacco tax funds. Those new duties are intimately connected to the purpose of the proposed amendment.

Since the provisions of the proposed amendment are all encompassed within a single subject and matters properly connected therewith, Tax Abuse Intervenors’ Seventh Point must be denied.

**VIII. The Trial Court Erred As A Matter Of Law In Holding
That Petition Circulators Who Registered With The
Secretary of State, But Did Not Provide Every Piece Of**

Information Required By §116.080.2 RSMo, Were Not Properly Registered Because The Circulators Complied or Substantially Complied with § 116.080 In That The Circulators Reasonably Complied With The Registration Requirement of § 116.080.1 By Providing Their Contact Information To The Secretary of State And Strict Compliance With An Ambiguous Statute Should Not Be Required. (Committee’s First Point Relied On As Cross-Appellant.)

The trial court upheld the Secretary of State’s refusal to count 1880 valid, verified signatures because the Secretary of State believed the individuals gathering those signatures had not properly registered with her office. This Court should reverse the decree or judgment of the trial court if it erroneously declares or applies the law. *Murphy*, 536 S.W.2d at 32. It is undisputed that, for 1,488 of the valid signatures rejected by the Secretary of State, the circulators provided a registration form to the Secretary of State which included their names and addresses, but did not include the name of the Initiative Petition. The trial court erroneously applied the law in upholding the Secretary’s decision.

“The rationale behind initiative amendments is that a sufficient number of registered voters deem an issue important enough that the issue should be put to a vote before the people.” *Ketcham*, 847 S.W.2d at 830 (quoting *United Labor Comm.*, 572 S.W.2d at 453). “The assertion of this constitutional right by the

required number of legal voters should not be lightly cast aside.” *Id.* The construction of a law that would disenfranchise a large body of voters because of an *error of a single individual* should never be adopted where the language is fairly susceptible of another construction. *United Labor Comm.*, 572 S.W.2d at 454. To allow form to rule over substance is to permit an error in form to defeat the initiative submission in spite of the fact that the proper number of voters have done all they can to comply with the initiative procedure. *Id.* Procedures designed to effectuate the initiative process should be liberally construed to give voters every opportunity to exercise these rights. *Id.* “The ability of the voters to get before their fellow voters issues they deem significant should not be thwarted in preference of technical formalities.” *Id.*

A. The Circulators Complied with an Ambiguous Statute by Providing Their Names and Contact Information.

Section 116.080.1 requires that a "petition circulator shall be ... registered with the secretary of state" before 5 p.m. on the last day to submit signatures and that "[s]ignatures collected by any circulator who has not registered with the secretary of state pursuant to this chapter ... shall not be counted." Subsection 1 of 116.080, on its face, does not mandate a method for registration nor has the Secretary of State promulgated regulations concerning the method of registration.

L.F. 79. Section 116.080.2 requires petition circulators to provide certain information to the Secretary of State. It does not, however, specify that this

information must be provide in order for a petition circulator to become registered. It is undisputed that a substantial number of the disallowed circulators were in fact registered with the Secretary of State. *Id*; First Stip. Ex. 6 (reproduced in the Appendix at A-70-101). What is disputed is whether they were “properly” registered for the Initiative Petition. *Id*. The trial court held that petition circulators must provide the Secretary of State with the information specified in § 116.080.2 for each initiative petition in order to be registered and therefore their signatures should not be counted. L.F. 84.

The trial court erred as a matter of law in finding that § 116.080 is the registration process for petition circulators. If the General Assembly had intended to make provision of the information required by § 116.080.2 part and parcel of the registration process, it would have used words such as “register” or “registration” in that subsection. Courts do an injustice when they insert words into a statute that do not appear in the plain language. *State ex rel. Scott v. Kirkpatrick*, 484 S.W.2d 161, 165 (Mo. banc 1972). *See also American Federation of School Administrators v. St. Louis Public Schools*, 666 S.W.2d 873, 875 (Mo. App. E.D. 1984) (legislature is presumed to mean only “teachers” when it uses the term “teachers” and not “teachers and administrators”).

Section 116.080.2 requires only that petition circulators “supply” certain information, including the name of the petition, the name and address of the circulator, whether the circulator is being paid and, if paid, by whom. It provides for no consequences (i.e. disqualification of signatures) if a petition circulator fails

to supply the specified information. Because the statutes and regulations lack a mandated method of becoming registered, petition circulators are left to guess at how to become properly registered. Therefore, any reasonable method a petition circulator used to “register” with the Secretary of State should be acceptable. This Court has held that where a statute regarding timelines for an appeal of worker’s compensation case was unclear, any good faith attempt to comply would be sufficient. *Abrams v. Ohio Pacific Express*, 819 S.W.2d 338, 342 (Mo. banc 1991). In light of this Court’s mandates concerning liberal construction of statutes relating to the initiative, the same rule must be applied here. Circulators who provided their names and addresses to the Secretary of State, in a form that made the Secretary aware they had circulated petition, were registered.

B. If § 116.080.2 is Part and Parcel of The Registration Requirement, Circulators Substantially Complied.

If this Court reads § 116.080.1 to require all of the information listed in § 116.080.2, it should find substantial compliance with the latter statute. The trial court held that petition circulators that failed to fill out a registration form for each petition they would be circulating did not substantially comply with the registration requirement for petition circulators. L.F. 84.

When the purpose of a statute can be met by substantially complying with its mandatory provisions, the same is considered compliance. *Rhodes Engineering v. Public Water Supply*, 128 S.W.3d 550, 561 (Mo. App. W.D. 2004)(emphasis added). This allows for the legislative intent to be carried out even when the exact

letter of the law is not. *Fulkerson v. W.A.M. Investments*, 85 S.W.3d 745, 748 – 749 (Mo. App. S.D. 2002). The purpose of Chapter 116 is to “vouchsafe the integrity” of the signature gathering process. *Ketcham v. Blunt*, 847 S.W.2d at 830. The trial court first erred in that it misunderstood the state’s interest in the regulation of the initiative process.⁴ It compounded that error by requiring that misunderstood substantial interest to be met in order to satisfy the substantial compliance test. *Id.*

The integrity of the signature-gathering process is adequately ensured when petition circulators have provided all of the § 116.080.2 information, with the exception of whether they are being paid for a particular petition. As previously stated, the rationale of the initiative petition is that a sufficient number of

⁴ The trial court erred in that it held the state has a substantial interest in compelling disclosure of the name of the petition for which a petition circulator will be soliciting signatures, whether the circulator expects to get paid for circulating that petition and, if so, the name of the payor. L.F. 84. Under the Supreme Court’s holding in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, the state’s interests in the regulation of the initiative process are the disclosure of the source of money supporting the initiative and preventing fraud. *Buckley v. American Constitutional Law Foundation*, 525 U.S. at 202. The disclosure interest is satisfied by imposing disclosure requirements on the proponent – *not* petition circulators. *Id.* at 203.

registered voters deem an issue important enough that it should be put to a vote of the people. *Ketcham*, 847 S.W.2d at 830. The integrity of the process is ensured by having only real registered voters sign a petition. When signatures are forged, the process' integrity is jeopardized. The state interest in preventing fraud is legitimate. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 202 (1999). In order to pursue and prosecute those who forge signatures, certain information is needed regarding those who turn in the signatures. All necessary information for that purpose was provided by the petition circulators in the affidavit portion of each and every petition page submitted to the Secretary of State. *See* 116.030; First Stip. Ex. 5. That same information was again provided when the circulators registered, providing their names and address as well as the names of other petitions they were circulating. The identification of the payor adds nothing to the state's fraud prevention interest. Thus, circulators have substantially complied with the statutes when they provide their name and address to the Secretary. Interpreting Chapter 116 in this manner would again be consistent with the principles of statutory interpretation outlined above for statutes regulating the initiative process.

In analyzing the purpose of circulator registration, it is important to remember that the statutes do not require pre-registration. Section 116.080.1 requires petition circulators to be registered before 5 p.m. on the last day on which petitions may be submitted. Therefore, the registration requirement is clearly not intended to provide notice of who is paying the circulator or to allow would-be

petition signers to confirm that their signature will be counted because the petition circulator has pre-registered. The only legitimate basis for restricting the First Amendment liberties at issue – fraud prevention – was substantially accomplished when the circulators provided their contact information as required by the statute.

IX. The Trial Court Erred As A Matter Of Law In Holding That §§ 116.080 and 116.120 RSMo, Are Constitutional Because Those Statutes Conflict With Article III, §§ 49, 50, and 53 of the Missouri Constitution In That They Condition The Validity Of Legal Voters' Signatures On Whether Petition Circulators Properly Register. (Committee's Second Point Relied On as Cross-Appellant.)

The people of Missouri have reserved for themselves the right to initiate laws and amendments to their constitution independent of the General Assembly. Mo. Const. art. III, §49. The people have also placed several restrictions on the process to initiate laws and amendments to their constitution. Mo. Const. art. III, §§ 50, 51. The constitution guarantees that when 8% of the legal voters in two-thirds of the state's congressional districts sign an initiative petition to amend the constitution, they have lawfully agreed to ask their fellow citizens to vote on the proposal. Mo. Const. art. III, § 53. The total number of legal voters shall be determined using the total vote for governor at the last general election. Mo. Const. art. III, § 53. If all or part of a statute conflicts with constitutional

provisions, the statute must be held invalid. *Farmer v. Kinder*, 89 S.W.3d 447, 453 (Mo. banc 2002) (legislature may not add to the constitutional duties of the State Treasurer).

If § 116.080 and § 116.120 really require the Secretary of State to disqualify valid signatures because a circulator did not register, they are in direct conflict with the constitution because they impair the right of initiative reserved by the people in their constitution. In essence, §§ 116.080 and § 116.120 now increase both the 8% requirement contained in the article III §50 and the number of legal voters authorized by article III, § 53 because they disqualify legal voters who sign an initiative petition when the circulator later fails to register *after the signer has made his voice heard*. This case provides a good example of the problem with the statute. Here, the local election authorities verified that 8% of the legal voters, as measured by the vote for Governor in the last general election, did in fact sign the petition. But, the Secretary of State disqualified some of those legal voters because their circulator had not registered and denied the constitutional right of initiative to the 8% of legal voters who wanted a vote on the measure. Nothing in the constitution permits the Secretary of State or General Assembly to disqualify signatures of undisputed legal voters because a third party over whom they had no control failed to register with the Secretary of State. Legislative enactments that remove signatures for that reason are in direct conflict with the constitution.

While requiring petition circulators to register is not inherently unconstitutional, the penalty imposed *on legal voters* of having their signatures thrown out because of the petition circulators' failure to register is unconstitutional. A penalty imposed on the circulators for failing to register might be appropriate. However, to penalize legal voters by removing their names from those counted toward the 8% constitutional requirement is clearly unconstitutional.

In *Rekart v. Kirkpatrick*, this Court acknowledged the mandates of article III, section 49 and invalidated a statute allowing for removal of signatures from an initiative petition. *Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. banc 1982) . The proponents of the signature removal petition argued that the statute authorizing signature removal petitions was merely procedural legislation to implement the initiative process. *Id.* The statute allowed for the withdrawal of signatures after the time allowed for filing. *Id.* The Court recognized that removal of signatures was not inherently unconstitutional. *Id.* at 608 - 609. In striking down the statute as an unconstitutional interference and impediment to the initiative process, the Court noted, “[p]roponents of an initiative petition must be able to rely upon signatures they have obtained.” *Id.* at 608.

Similar to the statute in *Rekart*, §§ 116.080 and 116.120 unconstitutionally interfere with and impede the initiative process. The current statutes, however, are much more egregious. *Rekart* dealt with proponents' ability to rely on signatures obtained from legal voters who ultimately did not want their signatures to be

counted. Here, we are dealing with legal voters who want their signatures to be counted.

The constitution is plain in its language. It simply requires 8% of legal voters in two-thirds of the state's congressional districts to sign the initiative petition. The constitution does not require that the signatures of 8% of the legal voters in two-thirds of the state's congressional districts signatures be collected by registered circulators. The Initiative Petition received signatures from 8% of the legal voters in two-thirds of the state's congressional districts. L.F. 78. That is all that is required under the constitution. Mo. Const. art. III, §50. The initiative petition should therefore be deemed sufficient and statutes that purport to make it otherwise held unconstitutional.

X. The Trial Court Erred In Holding §§ 116.080 and 116.120, RSMo Are Constitutional Under The First Amendment to the United States Constitution Because Those Statutes Restrict Core Political Speech and Are Not Substantially Related To An Important State Interest In That They Require The Disclosure Of The Names Of Paid Petition Circulators When Other Statutes Meet The State's Interest. (Committee's Third Point Relied On As Cross-Appellant.)

Petition circulation is core political speech because it involves interactive communication concerning political change. *Buckley v. American Constitutional Law Foundation*, 525 U.S. at 186. The First Amendment guards against undue hindrances to political conversations and the exchange of ideas. *Id.* Restrictions on an initiative process that significantly inhibit communication with voters about proposed political change must be “substantially related to important governmental interests.” *Id.* at 202. The *State has the burden* of showing that such a restriction on speech is substantially related to an important governmental interest. *Id.*

In *Buckley v. American Constitutional Law Foundation*, the United States Supreme Court considered several issues relating to regulation of those who circulate petitions, including the requirement that they be registered voters. *Buckley v. American Constitutional Law Foundation*, 525 U.S. at 188. The Court pointed out that the Government’s legitimate interest in requiring circulator registration is to be able to locate the circulators later if there are allegations of fraud or misconduct. *Id.* at 196. The Court also acknowledged Colorado’s interest in deterring actual or perceived corruption in the electoral process. *Id.* at 202. The statute directed at doing this required disclosure of the names and addresses of each paid circulator and the amount the circulator was paid. *Id.* at 201. This was in addition to the required disclosure of the names of the initiative proponents and the total amount they spent to collect signatures. *Id.* at 202. The Court struck down the disclosure requirement for the circulators but upheld the requirement for

the proponents. *Id.* The Court believed the “[d]isclosure of the names of initiative sponsors, and the amounts they have spent to gather support for their initiatives, responds to [the state’s] substantial interest.” *Id.* at 202-203. Further, the Court noted, “[t]he added benefit of revealing the names of paid circulators and amounts paid to each circulator...is hardly apparent.” *Id.* at 203.

The benefit from Missouri’s statute is even less apparent. Similar to the Colorado statutes at issue in *Buckley*, if § 116.080.2 RSMo, requires circulators to provide every single piece of information in the statute before signatures may be counted, it is not substantially related to an important governmental interest. As stated above, the state has a substantial interest in protecting the integrity of the initiative petition signature-gathering process and preventing impropriety or the appearance thereof in the initiative process as a whole. Missouri already has adequate provisions that address each of these. Circulators are already required to sign an affidavit disclosing their names and addresses on each and every petition page they submit to the Secretary of State. §116.040 RSMo. These pages are the ones that are shown to the signers of the petition. Therefore, the state and the signers know exactly which petition was circulated and by whom. Providing the address on the petition page allows the state to locate the circulator later if necessary. In no way is the electorate better informed or is the state’s interest in detecting fraud furthered by requiring a redundant registration. To the extent § 116.080.2 requires anything other than a name and an address, it is unconstitutional.

Further, Missouri requires disclosure of the amounts spent by initiative proponents in gathering support for their initiatives. *See* §130.011, RSMo (defining “committee” to include persons who accept contributions or make expenditures for the passage or defeat of a ballot measure); §130.041, RSMo (requiring all committees to make reports to the Missouri Ethics Commission of contributions received and expenditures made); §130.057, RSMo (mandating the Missouri Ethics Commission make records as accessible as possible to the public). The State’s interest in deterring actual or perceived corruption in the initiative petition process is in no way furthered by requiring petition circulators to disclose – after the fact – whether they were paid or not. “What is of interest is the payor, not the payees.” *Buckley v. American Constitutional Law Foundation*, 525 U.S. at 203.

Missouri’s registration requirement is unconstitutional on its face. But the State also failed to meet its own burden below of establishing its substantial interest. *Id.* at 202. In *Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614, 615 (8th Cir. 2001), a North Dakota law prohibiting the payment of petition circulators on a per-signature basis was challenged and upheld. *Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614, 615 (8th Cir. 2001). The case reiterates that states have an interest in preventing signature fraud. *Id.* at 618. North Dakota produced substantial evidence that fraud had been committed when payment on a per-signature basis was allowed. *Id.* Here, neither the state nor the intervenors produced evidence that fraud had been committed when petition

circulators did not disclose whether they were paid and if so by whom. This type of evidence would be necessary in order to prove the disclosure requirement is substantially related to the important government interest of preventing signature fraud.

Section 116.080 significantly inhibits the ability of voters to communicate a political message. While regulation of the signature gathering process may be necessary to prevent fraud, those regulations must be substantially related to an important government interest. This statute is not and is therefore unconstitutional under the First Amendment to the United States Constitution and the Supreme Court's holding in *Buckley v. American Constitutional Law Foundation*.

CONCLUSION

For these reasons, this Court should AFFIRM the judgment of the trial court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(g)

The undersigned certifies:

1. That this Brief complies with Rule 84.06(g) of this Court; and
That this Brief contains 23,191 words according to the word count feature of Microsoft Word Version 2002 SP-2 software with which it was prepared.
 2. That the disks accompanying this Brief have been scanned for viruses, and to the best of his knowledge are virus-free.
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CERTIFICATE OF SERVICE

I hereby certify that two true and accurate copies and one copy on diskette of the foregoing were served by hand-delivery, facsimile transmission, certified mail or United States mail, postage prepaid, this 25th day of September, 2006, to:

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