

**IN THE SUPREME COURT OF MISSOURI**

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**Case No. SC88018**

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**COMMITTEE FOR A HEALTHY FUTURE, INC., et al.**  
**Respondents/Cross-Appellants,**

**v.**

**ROBIN CARNAHAN, MISSOURI SECRETARY OF STATE,**  
**Respondent/Cross-Respondent,**

**and**

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

**and**

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

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**Appeal from the Circuit Court of Cole County**  
**Case No. 06AC-CC00707**  
**Honorable Thomas J. Brown, III**

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**APPELLANTS/CROSS-RESPONDENTS' SECOND BRIEF**

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A.

**INTRODUCTION**

Respondents/Cross-Appellants Committee for a Healthy Future, Inc., (hereinafter “Resp./Cross-App. Committee”) and Respondent/Cross-Respondent Secretary of State, (hereinafter “Resp./Cross-Resp. Secretary”) have failed to offer any substantial justification for why the proposed constitutional amendment should be validated by this Court. The amendment is insufficient in the number of signatures which it obtained and is in conflict with Article III, Section 51 and Section 50 of the Missouri Constitution. The signature flaws contained in the petition, and counted by the Secretary of State and/or by the trial court, rendered such signatures inappropriate and they should not have been counted. As a result, the petition is insufficient for failure to obtain signatures amounting to eight percent of the registered voters who voted in the last gubernatorial election in the 5<sup>th</sup> Congressional District. For the reasons outlined below, this Court should reverse the trial court and order the proposed constitutional amendment removed from the November 7, 2006, ballot.

Further, the proposed constitutional amendment appropriates existing state revenues in direct violation of Article III, Section 51 of the Missouri Constitution. For this reason this Court should reverse the trial court’s decision and hold that the initiative petition is in violation of Article III, Section 51 of the Missouri Constitution.

Additionally, the proposed constitutional amendment contains multiple subjects in violation of Article III, Section 50 of the Missouri Constitution. This Court should reverse

the trial court's decision and hold that the amendment is invalid for containing multiple subjects.

Finally, the Resp./Cross-App. Committee's appeal regarding the validity of the registration requirement contained in Section 116.080, RSMo, of circulators of petitions was properly determined by the trial court. The statutory registration requirements are valid under the Missouri Constitution and the United States Constitution and serve an important purpose in the administration of the state's initiative petition laws. The Resp./Cross-App. Committee has shown no reason why the circulator registration requirement should not be upheld and enforced by this Court. With respect to the circulator registration requirement, in Section 116.080, RSMo, the trial court's opinion should be affirmed as noted in Points VIII, IX and X herein.

## **B.**

### **(Generally Responds to Brief of Respondents/Cross-Appellants Arguments Relating to Appellants/Cross-Respondents' Points I through V)**

Except as set out under this point and the following one, the Resp./Cross-App. Committee does not raise any arguments under Points I to V of their brief that are not adequately rebutted by the corresponding argument in this party's initial brief. There is, however, a common thread that runs through the Resp./Cross-App. Committee's first five arguments that deserves to be addressed because it goes to the core purpose of the initiative and the role the courts have been asked to take with respect to the initiative petition now before the Court.

The Resp./Cross-App. Committee offers no justification for its failure to adhere to the statutory and constitutional requirements applicable to its initiative petition. It offers no excuse. It points to no circumstances in mitigation that rendered its compliance unnecessary. Instead, the Resp./Cross-App. Committee's position is that the Constitution will not permit even minimal threshold statutory requirements established for the exercise of the initiative, and that neither the people nor the legislature really intended that the specific provisions of law applicable to the process be followed. The Resp./Cross-App. Committee hides behind the maxim that provisions related to the initiative are to be liberally construed, asking the Court to expand that maxim well beyond matters of merely construing the language that is written, to rewriting provisions to remove the language found or to add language that is not there. The Resp./Cross-App. Committee would have the Court ignore the nature of the

initiative process and to focus only on making available to the people a mechanism to initiate laws outside the normal representative process.

As this Court noted in *Missourians to Protect the Initiative Process v. Blunt*, in adopting the provisions on initiative and referendum, “[t]he constitution has created two competing and contradictory concepts: the inherent right of the people to alter the constitution [or to initiate legislation], and the need for stable, permanent, organic law. Neither concept may be ignored to advance the other, but the two must be balanced.” 799 S.W.2d 824, 827 (Mo. banc 1990) (citation omitted). The Resp./Cross-App. Committee posits a power of initiative that is limitless and unrestrained, ignoring what this Court also said in *Missourians to Protect the Initiative Process*: “The people speaking with equal vigor through the same constitution, have placed limitations on the initiative power. That those limitations are mandatory is clear and explicit.” *Id.* What the Resp./Cross-App. Committee overlooks is that while the initiative involves the grant of the law-making power, it is a power that is wrapped in a method for exercising that power. The initiative, as this Court recognized in *Missourians to Protect the Initiative Process*, is a process for enacting laws, organic or otherwise, that is outside the normal process provided by the state Constitution for doing so. *Id.* (Initiative is a procedure for taking matters directly to the people by those who have failed to convince their elected representatives of the merits of their proposals). *See, also, State ex rel. Blackwell v. Travers*, 600 S.W.2d 110, 113 (Mo. App. 1980) (purpose of initiative is to allow electorate to resolve questions where elected representatives has failed to do so).

The initiative process is used for legislation in lieu of the representative process that is so firmly embedded in the systems of government established by the United States and Missouri Constitutions. The initiative may enable direct participation in the process of representative government by the public, but it is intended to supplement the normal and orderly process for law-making where certain conditions must be met. Just as the General Assembly is bound by procedural regulations on its law-making power, so too are the people in exercising their law-making power of initiatives.

The Court has also noted that the constitutional provisions on the initiative are “not laden with procedural detail” but must rely as a matter of course on legislation that is designed to implement its purpose. *United Labor Committee of Missouri v. Kirkpatrick*, 572 S.W.2d 449, 454-55 (Mo. banc 1978). Specifically as to Chapter 116, Initiative and Referendum, it is recognized that “[t]he virtual purpose of Chapter 116 is to vouchsafe the integrity of that process.” *Ketcham v. Blunt*, 847 S.W.2d 824, 830 (Mo. App. 1992). *See, also, Scott v. Kirkpatrick*, 513 S.W.2d 442, 444 (Mo. banc 1974)(statutory chapter on initiative and referendum implements the initiative and referendum provisions of the constitution). The requirements of Chapter 116 are not mere window dressing. They are the reasoned determinations by the legislature of what should be done to properly implement the extra-legislative power of the initiative and referendum and to properly vouchsafe its intended purpose.

That purpose is not, as the Resp./Cross-App. Committee suggests in its common assertion in the first five points of its brief, simply to open the flood gates of the electoral process to permit statewide ballot questions to be put before a vote of the people willy-nilly:

“The rationale behind the 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. . . .’ The fundament of that constitutional process is the gathered signatures of legal voters in the requisite number.”

*Ketcham*, 847 S.W.2d at 830, quoting *United Labor Committee of Missouri v. Kirkpatrick*, 572 S.W.2d 449, 454-55 (Mo. banc 1978). The United States Supreme Court has similarly recognized that states have a valid and significant interest in ensuring the existence of grass roots support before allowing resort to the initiative process and to take steps among “an arsenal of safeguards” to ensure the integrity of that process. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 119 S.Ct. 636, 642, 648-49 (1999).

The Resp./Cross-App. Committee, however, ignores the requirements of Chapter 116 which are designed to carry out these purposes, requirements that protect the State’s interest in ensuring adequate grass roots support and the integrity of its law-making process. Thus, it says the requirements of Sections 116.040 and 116.130, RSMo, relating to the verification of signatures (Points I and III), the required signer identification information (Point IV) and the notarization of circulator petitions (Point V), should not be enforced, even though they implement the State’s interest in ensuring the integrity of the initiative process. Similarly, the Committee says that the provisions requiring identification of the Congressional district for

and by each signer on the initiative petition (Point II) and the requirement that each signer be entitled to vote at the time of signing the petition (Point I) should also not be enforced, notwithstanding that they are part of the means chosen by the State to ensure the appropriate level of grass roots support exists, as required by Article III, Section 50 of the Constitution.

In asking this Court to not enforce these provisions, the Resp./Cross-App. Committee is effectively asking the Court to ignore them - - to abrogate this Court's duties. The courts stand in the role of gatekeeper along with the Secretary of State in the initiative process. The Secretary of State makes the initial determination of whether the initiative ballots comport with constitutional and statutory requirements and issues his or her certification accordingly. *Missourians to Protect the Initiative Process*, 799 S.W.2d at 828-29. But standing behind the Secretary of State are the courts which function not only to see that the Secretary has not barred entry to the electoral process to those who should have been allowed admission but also to see that no one is allowed to enter who should be barred. *Id.* (Courts have authority to review legal compliance of initiative petitions prior to the elections). In acting as gatekeeper, the single function of the courts is to determine whether the requirements and limitations of the initiative as expressed in the provisions setting out the procedure and form of initiative petitions have been followed. *Id.* It is the function of the courts to see that the requirements related to the initiative process are faithfully followed and this function cannot be performed without enforcing those requirements of law that have been established to implement and regulate the power of the initiative.

The Resp./Cross-App. Committee is not just asking the Court to abrogate its gatekeeper function, however. By asking the Court to ignore these requirements, it is also asking the Court to overstep the boundary that separates the judicial power from the legislative. The requirements of Chapter 116 which the Resp./Cross-App. Committee failed to follow are, as noted above, the legislative means to implement a constitutional end. They are the measures the legislature has determined, in the exercise of its legislative power, as necessary and essential to balancing and serving the purposes inherent in the initiative – to ensure grass roots support and to provide for integrity in the exercise of the right. In advocating that these provisions not be enforced, the Resp./Cross-App. Committee is asking that its judgment about their usefulness and sufficiency be substituted for that of the legislature; and that the Court adopt the Resp./Cross-App. Committee's judgment as its own over that of the legislature. This Court has a long history of eschewing such invitation to usurpation of the legislative power.

It is worth repeating the Court's words from *Missourians to Protect the Initiative Process*: "The constitution has created two competing and contradictory concepts: the inherent right of the people to alter the constitution [or to initiate legislation], and the need for stable, permanent, organic law. Neither concept may be ignored to advance the other, but the two must be balanced." 799 S.W.2d 824, 827 (Mo. banc 1990). In achieving the appropriate balance, the Court must avoid unduly elevating the right to propose and enact new laws by the initiative at the expense of the well-considered responsibilities that have been placed on the exercise of that right.

I.

**THE TRIAL COURT ERRED IN DECLARING THAT THERE WERE SUFFICIENT SIGNATURES ON THE TOBACCO TAX INITIATIVE PETITION IN THAT SIGNATURES OF REGISTERED VOTERS SIGNING AN INITIATIVE PETITION WITH A DIFFERENT ADDRESS THAN THAT ON THEIR VOTER REGISTRATION (RDA'S) ARE NOT VALID SIGNATURES BECAUSE ONLY SIGNATURES WHERE THE ADDRESS LISTED ON THE PETITION PAGE CORRESPONDS TO THE ADDRESSES ON THE VOTER REGISTRATION RECORDS ARE SIGNATURES OF LEGAL VOTERS UNDER SECTION 116.130.1, RSMO CUMM. SUPP. 2005 AND ARTICLE III, SECTION 50 OF THE MISSOURI CONSTITUTION.**

Under Point I of its brief, the linchpin of the Resp./Cross-App. Committee's argument on which its position relies is that the National Voter Registration Act of 1993, 42 U.S.C. §§1973gg-6, *et seq.*, and its implementation in Missouri has abrogated the holdings of *Yes to Stop Callaway Committee v. Kirkpatrick*, 685 S.W.2d 209, 211 (Mo. App. 1984), and *Payne v. Kirkpatrick*, 685 S.W.2d 891, 903 (Mo. App. 1984). (Brief of Resp./Cross-App. Committee at 35-41.) In this regard, it should be noted that the Resp./Cross-App. Committee does not contend that if the voter participation system imposed on the states by the NVRA was not intended by Congress to control registration requirements in state elections or, more importantly, the state initiative process, the holdings in *Yes to Stop Callaway Committee* and *Payne* are unaffected or that the regulations propounded by the Secretary of State continue to

stand. Throughout its argument on this point, the Resp./Cross-App. Committee stresses what the NVRA requires and why the NVRA was enacted. (Brief of Resp./Cross-App. Committee at 35-41). It further posits dire consequences that will befall the Secretary of State if the provisions of the NVRA are not enforced in Missouri. (Brief of Resp./Cross-App. Committee at 40).

The same argument being advanced by the Resp./Cross-App. Committee here was also at the heart of a challenge to the Nebraska Secretary of State's refusal to place two initiative measures on the ballot. *Dobrovlny v. Nebraska*, 100 F. Supp.2d 1012 (D. Neb. 2000). In Nebraska, as in Missouri, the eligibility of the initiative signatory referred to "registered voters." *Id.* at 1022. The circulators of the petitions sued under the NVRA claiming that the failure of the Secretary of State to properly follow the voter list maintenance requirements of the NVRA led to the improper rejection of the two initiative measures. The court held that there was no claim under the NVRA because the federal act did not extend to state election issues. Specifically, as to the relationship between the NVRA and state initiative measures, the court said:

Implicit in *Krislow [v. Rednour*, 946 F.Supp. 563 (N.D. Ill. 1996),] is the conclusion that signing a petition is one step removed from voting[.] Plaintiffs in the case before me are in the same position as the circulators of nominating petitions in *Krislow*. Their argument that the initiative petitions they supported would have been on the 1996 general election ballot absent alleged violations of NVRA voter registration list maintenance procedures is not an argument that their rights to vote in an election were

impaired. *Signing* an initiative petition is not *voting*, and does not relate to an election for *federal* office.

100 F.Supp.2d at 1031 (emphasis in original). The court in *Dobrovlny* went to great lengths to emphasize that Congress lacked the power to directly regulate state voter registration procedures, state elections or state ballot issues. *Id.* at 1028, 1029, 1030, 1031. Other courts have reached the same conclusion. *Association of Community Organizations for Reform Now v. Edgar*, 56 F.3d 791, 794 (7<sup>th</sup> Cir. 1995) (“motor voter” law does not alter state voter qualifications); *Gonzalez v. Arizona*, 435 F.Supp.2d 997, 1003 (D. Ariz. 2006) (NVRA does not prohibit states from enforcing their own laws regarding voter qualification). Following this same reasoning, the court in *Pree v. District of Columbia Board of Elections and Ethics* noted that a statutory requirement of a match between the address listed on a nominating petition for a candidate and the address on the voter registration roll was not superseded by the NVRA’s provision on address changes because the NVRA did not apply to a non-federal election. 645 A.2d 603, 605 (D.C. Ct. App. 1994).

The Resp./Cross-App. Committee cannot overcome the limited application of the NVRA by arguing that the changes to the provisions on qualification and registration of voters, §§115.132, *et seq.*, apply equally to state elections as well as federal. (Brief of Resp./Cross-App. Committee at 40). The proper construction of the meaning of “registered voter” under Section 116.060, RSMo., is not affected by the NVRA-induced changes to Section 115.165, RSMo, as a history of this issue and the nature of the change to Section 115.165 shows. In *Scott v. Kirkpatrick*, 513 S.W.2d 442 (Mo. banc 1974), this Court

considered the statute implementing the provision of Article III, Section 50, which limited the signers of initiative petitions to “legal voters.” That statute, while not employing the phrase “registered voter,” was construed to require the person to be a registered voter, i.e., a person who is a “qualified voter legally entitled to vote.” *Id.* at 444. *Scott* is important for two other reasons, as well. First, in recognizing that the statutory provisions on initiative and referendum were intended to implement the constitutional provision, the Court further recognized that any interpretation of the statutory section must be construed with an eye towards the constitutional provision’s limitation on the qualification of signers to “legal voters.” *Id.* at 444. Second, as the Court pointed out, a person’s qualification to be a signer was to be measured by whether he was legally entitled to vote on measure being proposed at the time the petition was presented to him for signature. *Id.* at 445.

Ten years later, the issue now before the Court in this case was presented to the Western District Court of Appeals in the first of two cases to present the issue. In that case, the court noted that the Legislature had reacted to the *Scott* decision by amending Section 116.060, RSMo, to provide that any registered voter could sign an initiative petition. *Yes to Stop Callaway Committee v. Kirkpatrick*, 685 S.W.2d 209, 211 (Mo. App. 1984). It also noted that “[t]he essence of *Scott* is that a person must be legally entitled to vote on the measure proposed by the initiative petition on the date that he signs it.” Importantly for this case, the court recognized that Section 115.165, RSMo, provided flexibility for the circumstance that in a mobile society people may move within the same jurisdiction of an

election authority between elections and enacted a procedure for transferring the registration to the new address. *Id.* Contrary to how the Resp./Cross-App. Committee would like to characterize the *Yes to Stop Callaway Committee* case, the case does not stand for the proposition that a person who failed to avail himself of the procedure for transferring registration between addresses was un-registered. What the court did hold was that “[s]uch a person is thus in the same posture as an unregistered person.” *Id.* (emphasis added). The court understood the context in which it was interpreting the language of Section 116.060 and was cognizant of what this Court said in *Scott*. For purposes of enforcing the requirements of Art. III, § 50, the term “registered voter” must be construed to be consistent with the term “legal voter” in the constitution and the person’s status or “posture” must be measured at the time the person is presented with the petition. *Id.* The final factor of note of the *Yes to Stop Callaway Committee* case closely related to the temporal aspect of measuring compliance with the requirements of both Section 116.060 and Art. III, § 50, is that the time for exercising the procedure to transfer the registration had not expired. *Id.* (initiative petitions were signed before the fourth Wednesday prior to the election at which the initiative would have been presented, the cut-off date for transferring the registration). The holding in *Yes to Stop Callaway Committee* is that, to properly implement this Court’s holding in *Scott*, only those persons who have taken all steps necessary to transfer their registration at the time the initiative petition is presented to them are in the posture of being a registered voter and are qualified to sign the petition. *Id.*

The Resp./Cross-App. Committee's argument, thus, is premised on a misconstruction of the controlling authority from this Court and the Court of Appeals. It is also flawed in its characterization of the amendments to Section 115.165, RSMo. Those changes did not work a fundamental change from what had gone before. The existing Section 115.165 does not eliminate the need for transferring one's registration in order to vote – it merely lengthens the time in which such a transfer can be accomplished and changes the locations where the transfer can be effectuated. The Resp./Cross-App. Committee has not pointed to, and cannot point to, any change of substance that distinguishes the circumstances before the court in *Yes to Stop Callaway Committee* and the circumstances before the Court today under the current language in Section 115.165. As this Court noted in *Scott*, the determinative factor on this issue is the state of affairs at the time the initiative petition is presented to the voter and whether at that time the person is a “qualified voter legally entitled to vote.” 513 S.W.2d at 444. Similarly, in applying the rule of *Scott* to the same issue presented here, the court in *Yes to Stop Callaway Committee* made the same determination. There, as here, it didn't matter that the signer was still within the time to effectuate a transfer of his registration to his new address. What was legally significant there, and is legally significant here, is that at the time the signers were presented with the initiative petition, they had not done the things that were required of them to make the transfer an accomplished fact. The signatures at issue here are in the same posture as those at issue in *Yes to Stop Callaway Committee* and in the words of that case, “[s]uch a person is thus in the same posture as an unregistered person.” 685 S.W.2d

at 211. The RDA signers were not qualified to sign the initiative petitions under either Section 116.060 or Article III, Section 50.

## **II through V**

Resp./Cross-App. Committee and Resp./Cross-Resp. Secretary have offered nothing in their response to App./Cross-Resp. Missourians Points II through V that merits a specific response. Thus, in the interest of judicial economy and of brevity, App./Cross-Resp. Missourians will not restate the arguments on Points II through V previously presented in their Appellants' Brief filed on September 22, 2006. App./Cross-Resp. Missourians would refer the Court to the general discussion regarding Points I through V, *supra*.

**VI.**

**THE COURT ERRED IN DECLARING THAT THE TOBACCO TAX INITIATIVE PETITION WAS SUFFICIENT IN THAT THE PROPOSED AMENDMENT VIOLATES ARTICLE III, SECTION 50 OF THE MISSOURI CONSTITUTION BECAUSE IT USES THE INITIATIVE TO APPROPRIATE EXISTING STATE REVENUES FOR THE PURPOSES OF THE AMENDMENT IN EXCESS OF THE REVENUES GENERATED BY THE PROPOSED TOBACCO TAX BY MANDATING ADDITIONAL GOVERNMENT EXPENDITURES TO ADMINISTER THE PROGRAMS WITHOUT PROVIDING FUNDS FOR SUCH ADMINISTRATION AND BY FIXING EXISTING APPROPRIATIONS FOR CERTAIN PROGRAMS.**

Resp./Cross-App. and the Resp./Cross-Resp. Secretary of State have failed to address or rebut the clear error of the trial court with respect to the proposed initiative petition violation of Article III, Section 51 of the Missouri Constitution by means of appropriating existing state revenues through the initiative. The plain language of Section 8 of the proposed constitutional amendment reflects that all payments out of the Healthcare Access to Treatment Account are dedicated solely and exclusively to transfer payments to healthcare providers and not for the administration of such services. See e.g., Section 8 of the proposed initiative petitions. Subsections 2, 3, 4 and 5 represent 64.75% of the money in the Healthcare Access and Treatment Account going for supplemental payments to physicians, safety net clinics, hospital emergency departments and trauma centers and ambulance

services, respectively. (Supp. L.F. 4). This language is significantly different than that found in subsection 7 of the Initiative Petition relating to monies in the Tobacco Use Prevention, Education and Cessation Account. (Supp. L.F. 3-4). Those provisions specifically include, amongst the uses for the money, “administration and management.” *Id.* Subsection 8 is completely devoid of any appropriation for administration and management.

Clearly, to verify poverty guidelines, develop supplemental fee schedules, calculate supplemental payments and oversee such general administrative actions, will require resources of the Department of Social Services to be in compliance with Section 8. There is no language authorizing any administration or management expense to come out of the Healthcare Access and Treatment Account.

Resp./Cross-App. Committee ignores the administrative cost issue and focuses instead upon the purposes to which the new revenue is to be directed. They simply brush off the entire concept of administrative costs with one conclusory sentence.<sup>1</sup> However, their own conclusory sentence fails to track to the direct language of the amendment. The amendment does not make any provision for administration of Department of Social Services matters. The most broad reading of the language contained in Section 8 of the proposed Initiative Petition shows that the money goes to healthcare providers who, perhaps, may be able to pay

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<sup>1</sup> At Resp./Cross-App. Committee’s Brief, page 71, “the language of the initiative clearly allows the funds to be used for the purpose of providing healthcare, which includes the administrative costs associated with that healthcare.”

for their administrative costs which would be a cost of healthcare. However, surely Resp./Cross-App. Committee does not believe that the Department of Social Services' staff creating payment schedules, calculating payments, etc., qualifies as "cost associated with healthcare." Such costs are the costs of the operation of the bureaucracy of state government; and there is no provision contained in Section 8 of the proposed Initiative Petition which authorizes expenditure of monies in the Healthcare Access and Treatment Account for such state agency operations. The state itself does not provide healthcare; through the Medicaid program it makes transfer payments. The amendment mandates that all monies from the Healthcare Access and Treatment Account must go through those transfer payments.

The State Auditor's Fiscal Note, reflecting information from the Department of Social Services, clearly notes that there would be a substantial cost involved in administering the programs. The cost is then rejected by Resp./Cross-App. based upon their assertion that the Department of Social Services "assumes" that the tobacco tax revenues would be authorized to be used to pay for administrative expense. The Department of Social Services, and the State Auditor, in writing fiscal notes, have the authority to come up and quantify dollars and cents, but not to make legal conclusions. The determination of whether administrative and management expenses of the Department of Social Services may come out of the constitutional amendment is a legal conclusion reserved for the province of the courts and not for executive agencies or officers. Moreover, an assumption cannot overcome the plain language contained in a proposed constitutional amendment.

Resp./Cross-App. ignore the plain language and intent of *State ex rel. Card v. Coffman*, 517 S.W.2d 78 (Mo. 1974). In *Card*, this Court was presented with a local ordinance that would raise firefighter salaries. There was no specific requirement in the ordinance that the City Council come up with exact dollars and cents to pay for those firefighter salaries. *Id.* at 80. This Court rejected the argument made here that since there was no specific language mandating an appropriation that Article III, Section 51 was not in play.

Resp./Cross-App. also cite *Chesterfield Fire Protection District v. St. Louis County*, 645 S.W.2d 367 (Mo. 1983) for the proposition that constitutional amendments should be broadly read. However, in a challenge under Article III, Section 51, the analysis must occur at the time the issue is presented, not after the amendment has been enacted and put into law, as was the case in *Chesterfield*. *Id.* at 370. This Court has reviewed constitutional amendments prior to their enactment and not found that they must be read broadly. See *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824 (Mo. banc 1990).

The mandating of additional administrative management costs by the Department of Social Services, without any corresponding revenue stream to pay for such costs, results in a violation of Article III, Section 51 of the Missouri Constitution, and thus the proposed amendment should be invalidated by this Court.

The language contained in subsection 12 of the proposed constitutional amendment also violates the prohibition on the appropriation of existing revenues. Subsection 12 cites

that the new money shall be “new and additional funding for the initiative’s 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 or programs.” (Supp. L.F. 5). This language could not be a clearer violation of Article III, Section 51. The mandating that all money from the proposed tobacco tax revenues must be new and additional funding for similar existing programs effectively prohibits the General Assembly from ever reducing the amount of money appropriated in any one of such programs. The following example shows the restrictions which will be placed upon the General Assembly: On July 1, 2006 (the beginning of the 2007 fiscal year) the General Assembly appropriated \$10 million from general revenue for safety net clinics. After the proposed tobacco tax was collected and distributed to safety net clinics an additional \$10 million would go to safety net clinics. If on July 1, 2007, the General Assembly decided it no longer wished (or even needed) to appropriate the \$10 million of general revenue money to the safety net clinics, they would be barred under the language of subsection 12 of the constitutional amendment from reducing that \$10 million appropriation. They are required to appropriate at least that amount. As a result, the proposed constitutional amendment limits of the General Assembly’s ability to appropriate existing state revenues and requires revenues to be appropriated. The general revenue appropriations made for fiscal year 2007 can never be reduced for programs in to which tobacco tax monies, from the proposed constitutional amendment, would be dedicated. By fixing the existing appropriation dollar in programs the new constitutional amendment clearly does appropriate existing state revenues. The Resp./Cross-App.’ view of the General Assembly’s desire for

new funding cannot overcome the plain language contained in the Constitution. The General Assembly is guaranteed, by the Constitution, the ability to control existing state revenues and appropriate them how it sees fit. By locking those revenues in, pursuant to subsection 12 of the proposed amendment, the legislature loses that power. This is the evil which Article III, Section 51 was designed to avoid and the evil which the amendment seeks to advance. This Court should reject the actions of this constitutional amendment to handcuff the General Assembly and lock in funding of existing state revenues by constitutional amendment.

The proposed constitutional amendment clearly is in conflict with Article III, Section 51 of the Missouri Constitution and Resp./Cross-App. and Respondent Secretary of State have offered no argument nor authority which provides an escape hatch from Article III, Section 51. The plain language of the proposed constitutional amendment and of Article III, Section 51 mandates that the amendment must fall.

## VII.

**THE COURT ERRED IN DECLARING THAT THE TOBACCO TAX INITIATIVE PETITION WAS SUFFICIENT IN THAT THE PROPOSED AMENDMENT VIOLATES ARTICLE III, SECTION 50 OF THE MISSOURI CONSTITUTION BECAUSE IT CONTAINS MULTIPLE SUBJECTS BY ADDING TOBACCO ISSUES AND A MAJOR MEDICAID PROGRAM EXPANSION AND ALTERING THE STATE AUDITOR'S DUTIES.**

Resp./Cross-App. Committee argues that the initiative petition only contains one subject but then admits that the State Auditor's duties are expanded beyond those authorized by Article XIV, Section 13. (Resp./Cross-App. Bf. at 76.) Resp./Cross-App. Committee relies on *United Game Fowl Breeders Ass'n of Missouri v. Nixon*, 19 S.W.3d 137 (Mo. banc 2000) to support its position that the initiative petition before this Court contains only one subject. The case is easily distinguishable. This Court held that the central purpose of that initiative petition was to prohibit fighting involving animals. This Court determined that baiting, bear wrestling, and possession of cockfighting implements all related to the central purpose of prohibiting fighting involving animals. *Id.* at 140. After editorializing about tobacco products, Resp./Cross-App. Committee then gives a laundry list of subjects of the proposed amendment. Resp./Cross-App. Committee suggests that the proposed amendment will "impose an additional tobacco tax, provide for the collection and disbursement of those funds, will fund a tobacco control program, and will bolster public health programs."

(Resp./Cross-App. Bf. at 74-76.) Through the above-described recitation, Resp./Cross-App. Committee has admitted that the amendment does not have a single subject. In none of the self-proclaimed subject matters proposed by Resp./Cross-App. Committee does an expansion of the duties of the State Auditor appear. Duties of the State Auditor do not relate to the alleged purpose of the initiative to fund tobacco control programs and bolster public health programs.

This Court has sensibly held that the particular language of each proposed amendment must be reviewed and the particular subject matter determined. *Missourians to Protect Init. Proc. v. Blunt*, 799 S.W.2d 824, 831 (Mo. banc 1990).

Though Resp./Cross-App. Committee asserts many purposes of the proposed amendment, including raising taxes and establishing new government programs, Resp./Cross-Resp. Secretary asserts that the controlling purpose is to improve the health of Missourians. (Resp./Cross-Resp. Bf. at 28.) This Court has held that when similarly situated parties such as Resp./Cross-App. Committee and Resp./Cross-Resp. Secretary cannot agree on an amendment's purpose, this is a strong indicator that the amendment contains multiple subjects. *Missourians to Protect Init. Proc. v. Blunt* at 832.

## VIII.

**THE TRIAL COURT PROPERLY DETERMINED THAT RESPONDENT/CROSS-RESPONDENT SECRETARY WAS CORRECT IN DISQUALIFYING SIGNATURES SUBMITTED BY CIRCULATORS WHO WERE NOT REGISTERED IN THAT SECTION 116.080, RSMO, REQUIRES INITIATIVE PETITION CIRCULATORS TO REGISTER AND SUBMIT CERTAIN INFORMATION TO THE SECRETARY OF STATE AND SECTION 116.120, RSMO, REQUIRES THE SECRETARY OF STATE NOT TO COUNT SIGNATURES COLLECTED BY CIRCULATORS WHO FAIL TO PROVIDE THE INFORMATION MANDATED BY SECTION 116.080, RSMO. (Responds to Respondents/Cross-Appellants' First Point Relied On)**

The court correctly held that when circulators did not register, the Resp./Cross-Resp. Secretary acted in accordance with Chapter 116, RSMo, by not counting the signatures collected by those circulators. The court also held that by failing to provide certain information to Resp./Cross-Resp. Secretary, including the name of the petition on which they were soliciting signatures, whether the circulator expected to get paid for their services and if so, the name of the payer, the public was denied full disclosure as to special interest involvement in the tobacco tax initiative process. The court held that substantial state interest as described in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 204,

119 S.Ct. 636 (1999) was involved in the requirement that circulators disclose the petition for which they are seeking signatures.

The App./Cross-Resp. Missourians vigorously dispute Resp./Cross-App. Committee's statement that 1,488 signatures, of the 1880 rejected signatures, were collected by a circulator registered for another petition. There is no evidence supporting that statement.

Section 116.080, RSMo sets forth the qualifications for petition circulators. Subsection 1 is the more general subsection and states that a circulator must be registered with the Secretary of State. Section 116.080.1, RSMo. Subsection 2 states that each petition circulator shall supply the name of the petition to the Secretary of State's Office. Section 116.080.2, RSMo. The petitions submitted to the Secretary of State's Office that did not have the name of the tobacco tax on the petition form did not comply with Section 116.080, RSMo, and thus should be disqualified. The rules of statutory construction hold that more general sections, such as Subsection 1, must fall to more specific and particular sections, such as Subsection 2, which lists specific information, which must be supplied to the Resp./Cross-Resp. Secretary's office.

When one subsection of a statute deals with a subject in a general way and a second subsection deals with a subject in a more specific way, the more specific subsection must be followed. See *Kansas City v. J.I. Case Threshing Mac. Company*, 87 S.W.2d 195 (Mo. 1935); *Boyd v. State Bd. of Registration for Healing Arts*, 916 S.W.2d 311 (Mo. App. E.D. 1995) (transferred denied). Subsection 2 specifies the particular information that is required for registration as a circulator. Section 116.080.2, RSMo. The specific requirements listed in

Section 116.080.2, RSMo must prevail over the generalized statements within Section 116.080.1, RSMo.

In addition, when there appears to be conflict between two subsections, the last subsection in order of position will control. See *Jacoby v. Missouri Valley Drainage Dist. of Holt County*, 163 S.W.2d 930 (Mo. 1942). The specific requirement that the petition be registered with Resp./Cross-Resp. Secretary for each and every petition which is being circulated is delineated in Section 116.080.2, RSMo, the latter subsection, which would prevail over Section 116.080.1, RSMo, the earlier subsection.

If two statutory provisions appear to be in conflict the court should attempt to harmonize them. *City of Clinton v. Terra Foundation, Inc.*, 139 S.W.3d 186 (Mo. App. W.D. 2004). Subsection 116.080.1, RSMo presents the introductory general requirements of a circulator. The following subsection, 116.080.2, RSMo continues with the requirements using more specific terms. The two subsections are not in conflict, but rather Subsection 116.080.1, RSMo is the introduction to Subsection 116.080.2, RSMo.

States have substantial interest in regulating the initiative petition process. *Buckley, supra*. Those substantial interests may be supported by statutes which further the goals of efficiency, veracity and clarity. *Id.* at 205. Though the *Buckley* Court struck down state statutory language that treated paid circulators differently than volunteer circulators, the Supreme Court, however, upheld state statutes which required a single subject per initiative limitation, a signature verification method, a large notice in English telling potential signers of petitions the laws' requirements and circulator affidavits. *Id.*

The Missouri statutory language that a circulator must register for the petition for which the circulator is seeking signatures assists Resp./Cross-Resp. Secretary in ensuring efficiency of the initiative petition collection process. If Resp./Cross-Resp. Secretary determines that a circulator was ineligible to collect signatures, she would need to decide which petitions should be invalidated. Unless she knows which specific petitions a particular circulator was distributing, she would be unable to determine which signatures should be invalidated. For example, considering the number of initiative petitions that have been processed in 2006, if Resp./Cross-Resp. Secretary wanted to determine which petitions certain circulators had collected signatures for and she was unable to acquire that information from the circulator, she could not make that determination unless she went through each petition page from each initiative petition. Those tedious procedures would not promote the substantial state interest that the initiative process be efficient and clear.

A state statute requiring that a circulator sign a disclosure statement regarding the amount of compensation he was going to receive has been held to be valid. *Protest of Brooks*, 801 N.E.2d 503 (Ohio App. 2003). The Ohio Court held that the requirement was valid as it applied to all circulators, both paid and volunteer, and that the regulation was necessary to deter fraud and abuse. *Id.* at 508. Similarly, the requirement that a circulator register for the petition for which he is seeking signatures applies to both paid and volunteer circulators. The statute also deters fraud and abuse as it enables the Resp./Cross-Resp. Secretary to determine which circulators are seeking signatures for particular initiative petitions.

The essential task for this Court is to determine whether the requirement that a petition circulator sign the name of the petition for which he is seeking signatures unduly burdens the public's right to access the initiative process. The *Buckley* Court held that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Buckley, supra* at 186, 287. The requirement that circulators register ensures that the Missouri initiative process is orderly.

When a North Dakota law was challenged regarding the requirements that the circulators had to be state residents and that they could not be paid on a commission basis, the Eighth Circuit Court of Appeals upheld both laws after determining that the statutes protected the integrity of the signature collection process, did not interfere with the circulation of petitions and comported with *Buckley, supra. Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8<sup>th</sup> Cir. 2001). The Court determined that the state had an important interest in preventing fraud and thus had the right and responsibility to regulate petition circulators. *Id.* In the case at bar, the requirement that a circulator disclose the petition for which signatures are being collected also prevents fraud. If there were complaints about the collection of signatures, Resp./Cross-Resp. Secretary would need to determine which circulator collected signatures for a specific petition in order to investigate such allegations. The requirement that the circulator be registered with Resp./Cross-Resp. Secretary meets that goal.

A statute should be considered constitutional and enforceable unless it plainly affronts the Constitution. *Blaske v. Smith and Entzeroth, Inc.*, 821 S.W.2d 822, 828 (Mo. banc 1991). Requiring a circulator to register with Resp./Cross-Resp. Secretary for each petition that person is going to circulate does not violate the Missouri Constitution.

The requirement that a circulator disclose the petition for which he is collecting signatures preserves the integrity of the state's elections and maintains an orderly ballot procedure while not unduly burdening the initiative process. The statutory requirement of putting the name on the petition ensures that the initiative process will be orderly, transparent and efficient.

“[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos is to accompany the democratic processes.’ *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274 39 L.Ed.2d 714 (1974); *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997); *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983).”

*Buckley, supra*, at 640.

Section 116.080, RSMo, provides order in the initiative petition process in the state of Missouri. The purpose of Chapter 116, RSMo, is to ensure integrity of the initiative process. *Ketcham v. Blunt*, 847 S.W.2d 824, 830 (Mo. App. W.D. 1992) *citing Scott v. Kirkpatrick*, 513 S.W.2d 442 (Mo. banc 1974) and *Payne v. Kirkpatrick*, 685 S.W.2d 891 (Mo. App. W.D. 1984). App./Cross-Resp. Missourians request that this Court uphold the trial court's

determination that Section 116.080, RSMo, be enforced in order to ensure openness and transparency in the initiative process.

**A. SECTION 116.080, RSMo, IS NOT AMBIGUOUS  
AND CIRCULATORS FAILED TO PROVIDE THE  
REQUIRED INFORMATION.**

Resp./Cross-App. Committee is requesting that this Court parse the two subsections of Section 116.080, RSMo, as if they were placed in different chapters of the statutes. This Court has held that in interpreting a statute, sections should be read as a whole and *in pari materia* with related sections. *Lane v. Lensmeyer*, 158 S.W.2d 218, 226 (Mo. banc 2005), citing *State, Mo. Dep't of Soc. Servs., Div. of Aging v. Brookside Nursing Ctr., Inc.*, 50 S.W.3d 273, 276 (Mo. banc 2001). A court should look to other related provisions of a statute *in pari materia* to provide a harmonious and common-sense construction of the whole. *Marre v. Reed*, 775 S.W.2d 953, 954 (Mo. banc 1989). Section 116.080, RSMo, requires that a circulator register with the Secretary of State on or before 5:00 p.m. on the final day of filing petitions and that each petition circulator supply certain information to Resp./Cross-Resp. Secretary, including the name of the petition. The language of the statute is clear and words should be given their plain and ordinary meaning. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 258 (Mo. banc 1998). A circulator is required to disclose to the Resp./Cross-Resp. Secretary the name of the petition for which he is collecting signatures.

Resp./Cross-App. Committee cites *State ex rel. Scott v. Kirkpatrick*, 484 S.W.2d 161, 165 (Mo. banc 1972) for its argument that the trial court erroneously construed the statute in

a manner with which Resp./Cross-App. Committee disagrees. The *Scott* case interpreted Article III, Section 50, of the Missouri Constitution but did not hand down any determination regarding statutory interpretation. *Id.* The *Scott* holdings are inapplicable to the case at bar.

Resp./Cross-App. Committee also cites *American Federation of School Administrators v. St. Louis Public Schools*, 666 S.W.2d 873, 875 (Mo. App. E.D. 1984) for its argument that the trial court incorrectly interpreted the statute. *American Federation* is easily distinguishable from the case at bar. In the *American Federation* case, the court determined that administrators were not teachers or non-certificated employees for purposes of laying off employees of the St. Louis School Board. *Id.* The *American Federation* court held that:

“When the language of a statute is unambiguous and conveys a plain and definite meaning, the courts have no business foraging among the rules of statutory construction to look for or impose another meaning. *Hudson*, 549 S.W.2d at 151-152 citing *DePoortere v. Commercial Credit Corp.*, 500 S.W.2d 724, 727 (Mo. App. 1973).”

The statute requires in plain language that a circulator register with Resp./Cross-Resp. Secretary and disclose specified information to her, including the name of the petition for which he is seeking signatures. The trial court’s determination should be upheld that the Resp./Cross-Resp. Secretary correctly disallowed the signatures collected by circulators who did not comply with Missouri law. Regarding the statutory requirements for registration of

circulators, the trial court read the statute in its plain, ordinary and usual sense and determined that registration included supplying of certain information, including the name of the petitioner to Resp./Cross-Resp. Secretary.

Resp./Cross-App. Committee cites *Abrams v. Ohio Pacific*

*Express*, 819 S.W.2d 338, 342 (Mo. banc 1991) to argue that an alleged good faith attempt by circulators to comply with the statute should be sufficient. The cited case dealt specifically with the worker compensation statute, Section 287.480, RSMo. *Id.* The court held that statutes relating to worker compensation appeals were remedial and should be construed liberally. *Id.* Section 116, 080, RSMo, is not a remedial statute and does not relate to an appeal process. The *Abrams* holdings have no application to the registration of circulators of initiative petitions.

**B. CIRCULATORS DID NOT COMPLY WITH SECTION 116.080.2, RSMo, WHEN THEY DID NOT IDENTIFY THE NAME OF THE PETITIONS WHICH WERE BEING CIRCULATED.**

Resp./Cross-App. Committee suggests that limited compliance with Section 116.080.2, RSMo, should be determined good enough by this court. When a similar argument was offered that circulators should not be required to follow state law, the Maine Supreme Court determined that its Secretary of State was authorized to invalidate petitions *in toto* when the circulator had not complied with statutory or constitutional requirements. *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75, 80 (2002). The court held that the state had a substantial interest in regulating circulators.

Resp./Cross-App. Committee cites *Rhodes Engineering v. Public Water Supply*, 128 S.W.3d 550, 561 (Mo. App. W.D. 2004) for its assertion that substantial compliance is adequate. *Id.* In *dicta* the court stated that it had held that in some circumstances substantial compliance might be sufficient, citing *Velting v. City of Kansas City*, 901 S.W.2d 119, 124 (Mo. App. W.D. 1995), which held that a pleading of substantial compliance was sufficient to deny a motion to dismiss for failure to state a claim. The court then held that it would not decide the issue of substantial compliance in that specific case. *Id.* at 561. When a statute is written with “... clear, direct and mandatory language ...,” the statute must be followed and it is not within a court’s authority to rewrite the statute and approve substantial compliance. *Brown v. Director of Revenue*, 34 S.W.3d 166, 174 (Mo. App. W.D. 2000). Section 116.080.2, RSMo, sets forth the requirement that a circulator must disclose the name of the petition for which he is seeking support in clear, direct and mandatory language, which should be upheld.

In *Fulkerson v. W.A.M. Investments*, 85 S.W.3d 745 (Mo. App. S.D. 2002), which Resp./Cross-App. Committee cites as support for its position, the court held that failure to have personal service was not substantial compliance with the mechanic's lien statute when no proper alternate method of service was shown. *Id.* at 749. In the case at bar, failure to have a circulator register for the petition which he is circulating is not substantial compliance with the requirements of Section 116.080, RSMo.

Resp./Cross-App. Committee cites *Ketcham v. Blunt*, 847 S.W.2d at 830 for its argument that the purpose of Chapter 116 is to "vouchsafe the integrity" of the signature-gathering process. The Maine Supreme Court has held that "... the integrity of the initiative and referendum process in many ways hinges on the ... circulator." *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d at 80. The Maine Supreme Court has determined that if a circulator does not adhere to specific requirements regarding circulator registration then the ability of the circulator to adhere to other matters regarding signature collection becomes questionable. *Maine Taxpayers Action Network, supra*, at 81. Compliance by circulators with Missouri state law vouchsafes the integrity of the signature-gathering process.

The United States Supreme Court has held that states which allow ballot initiatives have "considerable leeway to protect the integrity and reliability of the initiative process, ..." *Buckley, supra*, at 642. The Missouri legislature has determined that, in order to protect the integrity and reliability of the Missouri initiative process, a circulator must provide the name of the petition, for which he is collecting signatures, to the Secretary of State.

Resp./Cross-App. Committee argues that they should be able to pick and choose the statutory requirements regarding circulators that they are going to fulfill and that they, not the Missouri legislature, will determine whether specific statutory requirements protected the integrity and reliability of the initiative process.

The trial court was correct in holding that the state had a substantial interest in ensuring full pre-election public disclosure as to financial involvement of special interests in the initiative process. (L.F. 84.) The Supreme Court in *Buckley* determined that a substantial state interest was implicated. *Buckley, supra*, at 648.

Resp./Cross-App. Committee argues that the state's substantial interest regarding the involvement of special interests in initiative issues does not depend on the circulator requirements. The Supreme Court held that a state can provide for an array of initiative process measures that assist in the efficiency, veracity or clarity of the process. *Buckley, supra*, at 649. By requiring that a circulator register for specific petitions, the Secretary of State is able to determine for which petitions the circulator sought signatures. If an irregularity in signatures was found in one petition set, the statute would assist the Resp./Cross-Resp. Secretary in determining which other initiative petitions should be viewed to determine if the circulator had committed similar irregularities throughout his collection process.

Resp./Cross-App. Committee is requesting that circulators should only comply with random parts of Section 116.080, RSMo. Such random selectivity of adherence to state statutes does not protect the integrity and reliability of the initiative process.

## IX.

### **SECTIONS 116.080 AND 116.120, RSMo, ARE CONSTITUTIONAL AND THEIR PURPOSE IS TO PROVIDE OPENNESS AND ACCOUNTABILITY IN THE INITIATIVE PROCESS.**

Resp./Cross-App. Committee argues that Sections 116.080 and 116.120, RSMo, are unconstitutional. The burden to prove that a statute is unconstitutional must be borne by the parties challenging the statute. *Reproductive Health Services v. Nixon*, 185 S.W.3d 685, 688 (Mo. banc 2006). Resp./Cross-App. Committee has failed to meet its burden. Sections 116.080 and 116.120, RSMo, provides for the regulation of the initiative process in order to ensure that they are "... fair and honest and of some sort of order rather than chaos ... ." as required by the Supreme Court. *Buckley, supra*, at 640. Sections 116.080 and 116.120, RSMo, ensure Missouri voters that the initiative process will be fair and honest. Under the scenario proposed by Resp./Cross-App. Committee there should be no regulation of circulators and no oversight by the state's top election official, the Secretary of State of the initiative process. The proposal by the Resp./Cross-App. Committee that signatures should be counted on a petition even if the circulator violated state law has been addressed by the Maine Supreme Court and determined that validations of petitions that were circulated in violation of Maine state law was constitutional. *Maine Taxpayers Action Network, supra*. The Maine court held that a circulator who could not conform to state law could not be trusted to obtain signatures honestly. *Id.* at 81.

Statutes are considered to be valid and will not be declared unconstitutional unless they clearly contravene a constitutional provision. *Doe v. Phillips*, 194 S.W.3d 833 (Mo. banc 2006). Sections 116.080 and 116.120, RSMo, enable that signatures collected and ultimately counted for an initiative petition be collected in a fair, orderly and efficient manner. The Missouri General Assembly has directed the Secretary of State to ensure that initiative petitions are subjected to fair and transparent procedures. The determination by the Resp./Cross-Resp. Secretary not to count signatures listed on a petition collected by a circulator who had not conformed to state law ensures that all the voters in the state of Missouri, not just those located in the 5<sup>th</sup> Congressional District, can determine that their initiative petition procedures are being handled in a fair, efficient and orderly fashion.

Whether the initiative petition is sufficient or insufficient is the ultimate issue that this Court adjudicates. *Ketcham v. Blunt*, 847 S.W.2d 824, 831 (Mo. App. W.D. 1992). Respondent/Cross-Appellants Committee's argument that if eight percent of voters in the previous election sign the initiative petitions, the petitions should be determined sufficient is baseless. Under the Resp./Cross-App. Committee's assertion, anyone could go out and collect signatures on any form and under any conditions and if eight percent of signatures of legal voters were collected, the initiative petition would pass muster. This proposal ignores the holdings of this Court and the United States Supreme Court.

Resp./Cross-App. Committee has relied on *Rekart v. Kirkpatrick*, 639 S.W.2d 606 (Mo. banc 1982) to support their argument. Their reliance is misplaced. This court held that a statute allowing the withdrawal of signatures after the time allowed for filing of the

initiative petitions was unconstitutional because it interfered with the orderly process of the initiative procedure. *Id.* at 608. The court also held that a signature could be withdrawn after the petition had been filed if the signature had been secured illegally. *Id.* at 609. The *Rekart* court did carve out the exception and held that signatures could be withdrawn if they had been procured in violation of the law. In the case at bar, the signatures which Resp./Cross-Resp. Secretary did not count did not conform to state law as the circulator had not registered with Resp./Cross-Resp. Secretary. Resp./Cross-Resp. Secretary must ensure that the initiative petition process be conducted in an open, fair, orderly and efficient manner. Her adherence to the laws of the state of Missouri has provided assurance to all Missouri voters that the initiative petition process is being conducted fairly.

**X.**

**THE TRIAL COURT WAS CORRECT IN DETERMINING THAT SECTIONS 116.080 AND 116.120, RSMO, ARE CONSTITUTIONAL UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION IN THAT THE STATUTES ARE NECESSARY TO CARRY OUT THE STATE'S REASONABLE INTEREST IN ENSURING EFFICIENCY, VORACITY AND CLARITY IN THE CIRCULATION OF INITIATIVE PETITIONS. (Responds to Respondents/Cross-Appellants' Third Point Relied On)**

The Maine Supreme Court determined that the state's interest in preserving the integrity of the initiative process was a reasonable imposition upon First Amendment rights of voters. *Maine Taxpayers Action Network, supra*, at 82. Similarly, Sections 116.080 and 116.120, RSMo, ensure the integrity of the initiative process and do not violate voters' First Amendment rights.

The state of Missouri has a substantial state interest in determining that the circulators who are entrusted with securing petitions for the initiative process, have complied with the requirement that they list the petitions for which they seeking signatures. Resp./Cross-App. Committee asserts that Section 116.080.2, RSMo, is superfluous since other statutory sections require information regarding the circulators.

Chapter 116, RSMo, requires that circulators certify the information disclosed to the Secretary of State. Circulators have not complied with those statutory requirements either.

In 34 petition pages submitted for the tobacco tax petition, the circulator did not provide a full address. The non-compliance with that statutory requirement affected 341 signatures as determined by local election authorities. (L.F. 127.) On three petition pages, the name and/or the county in which the signatures were sought were not completed by the circulator. This non-compliance with the statute affected 14 signatures. (L.F. 128.) In three petition pages, the information regarding the circulator was illegible. Twenty-five signatures had been collected on these petition pages. (L.F. 128.) On two other petition pages, the handwriting within the affidavit did not match the circulator's and a circulator did not sign her name. Fifteen signatures were included in these two petition pages. (L.F. 128.)

Section 116.080.2, RSMo, provides a safeguard to Resp./Cross-Resp. Secretary. If she has questions regarding a circulator's process and procedure regarding the collection of signatures, they would be required to determine which specific petitions the circulator had been involved with. Section 116.080.2, RSMo, provides the mechanism to Resp./Cross-Resp. Secretary for determining the petitions which were circulated by specific circulators. Resp./Cross-Resp. Secretary is required to have this information in order to ensure order and a transparent process in the initiative petition procedures.

In addition, the information regarding the name of the petition for which the circulator is seeking signatures serves as a cross-check with Chapter 130, RSMo, which requires that proponents of a ballot measure file reports, showing expenditures, with the Missouri Ethics Commission. Thus the ability to cross-reference ethics reporting requirements with official

filings with the Secretary of State's office ensures that full disclosure is made under Chapter 130, RSMo.

App./Cross-Resp. Missourians also identified 15 petition pages in which the circulator did not secure the appropriate notarization as required by Missouri state law. (L.F. 125-126.) Resp./Cross-Resp. Secretary could determine that she wanted to check the circulator's compliance with Missouri state law on other petitions which the circulator had worked on. The information required by Section 116.080.2, RSMo, would assist the Secretary of State in that determination.

Unlike the badge requirement which was struck down by the *Buckley* court, the requirement that a circulator disclose to Resp./Cross-Resp. Secretary the name of the petition for which he is seeking signatures does not affect political discourse. The requirement regarding the naming of the petition does not inhibit communication with voters. As Resp./Cross-App. Committee has admitted, the information is filed with the Resp./Cross-Resp. Secretary and voters can access that information only if they request the specific data. The information requested by Resp./Cross-Resp. Secretary does not inhibit communication with voters. The First Amendment is not implicated by adherence to the statute. As admitted by Resp./Cross-App. Committee, the state has a substantial interest in providing an open, transparent and orderly process. Section 116.080.2, RSMo, supports those goals and should be upheld.

## **CONCLUSION**

For the purposes stated in App./Cross-Resp. Missourians initial brief and in this Reply Brief, the proposed initiative petition is insufficient for failure to obtain sufficient signatures, for appropriating by the initiative, and for containing multiple subjects. On any of these bases, a determination of this Court reversing the trial court will result in the initiative petition being insufficient. Thus the Court should order the initiative petition removed from the November 7, 2006, ballot.

Resp./Cross-App. Committee's allegation of error with respect to the circulator registration requirements in Section 116.080, RSMo, have no merit and should be rejected by this Court. With respect to the circulator registration requirements, the trial court's decision should be upheld on that point. The remainder of the trial court's decision should be reversed by this Court.

**WHEREFORE**, Appellants/Cross-Respondents Missourians Against Tax Abuse, et al., pray that this Court reverse the trial court's decision, determine that the proposed initiative petition is insufficient and/or invalid and order such proposed constitutional amendment to be removed from the November 7, 2006, general election ballot for the state of Missouri and for such other relief and this Court deems appropriate.

Respectfully submitted,

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### **CERTIFICATE OF ATTORNEY**

I hereby certify that the foregoing Appellants/Cross-Respondents' Second Brief complies with the provisions of Rule 55.03 and complies with the limitations contained in Rule 84.06(b) and that:

(A) It contains 11,118 words, as calculated by counsel's word processing program;

(B) A copy of this Brief is on the attached 3 ½" disk; and that

(C) The disk has been scanned for viruses by counsel's anti-virus program and is free of any virus.

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Marc H. Ellinger

## CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Appellants/Cross-Respondents' Second Brief and one disk containing said Brief was hand delivered to the following parties of record on this 29<sup>th</sup> day of September, 2006:

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