

Summary of SC93944, *Earth Island Institute d/b/a Renew Missouri, Missouri Coalition for the Environment, et al. v. Union Electric Company d/b/a Ameren Missouri, and Public Service Commission of the State of Missouri*

Appeal from the Missouri Public Service Commission

Argued and submitted September 18, 2014; opinion issued February 10, 2015

Attorneys: Earth Island Institute was represented by Henry B. Robertson and Kathleen G. Henry of the Great Rivers Environmental Law Center in St. Louis, (314) 231-4181. The Empire District Electric Company was represented by L. Russell Mitten II, Paul A. Boudreau and Diana C. Carter of Brydon, Swearingen & England PC in Jefferson City, (573) 635-7166. The public service commission was represented by Jennifer Leigh Heintz of the commission in Jefferson City, (573) 751-7504.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The public service commission held that a statute passed by the legislature did not conflict with an initiative adopted by the people in November 2008 but that the initiative was invalid to the extent that it overlapped with contrary provisions in the statute. Earth Island Institute appealed. In a 5-2 opinion written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the commission's order. Contrary to the commission's order, the statute and the ballot initiative conflict. The statute was adopted after the wording of the initiative had been finalized and approved for circulation, but before the initiative's passage at the general election. The legislature cannot undo preemptively the effect of a ballot initiative before it has even been voted on by the people and make the people's later vote a meaningless act as to the subject of the statute. This would infringe on the constitutionally protected initiative rights of the people. If the people adopt a proposed initiative at an election, then a statute the legislature enacts during the interim between the initiative's approval for circulation and its passage is impliedly repealed to the extent of any conflict between the statute and the initiative.

Judge Zel M. Fischer dissents. He would affirm the commission's decision. Neither the language nor the history of the Missouri Constitution limits the legislature's power to modify, amend or repeal statutes passed by initiative – before, during or after the initiative petition. Well-settled principles of statutory construction require the Court to give effect to and harmonize both relevant statutory provisions – one passed by initiative and the other by the legislature.

Judge Lisa Van Amburg – a judge of the Missouri Court of Appeals, Eastern District – sat in this case by special designation in place of Judge Paul C. Wilson

Facts: In February 2008, the secretary of state approved for circulation a ballot initiative petition, later designated Proposition C, proposing a statutory “Renewable Energy Standard” for utility companies operating in Missouri. Proposition C included two specific provisions concerning solar energy, a solar carve out and a solar rebate. In May 2008, after Proposition C was certified for placement on the November 2008 general election ballot, but before it could be considered by voters in that election, the legislature passed a bill creating certain exemptions from any solar

carve out or solar rebate “notwithstanding any other provision of law.” This new legislation was codified as section 393.1050, RSMo, and became effective in August 2008. If given full effect, it would create an exemption from the requirements of Proposition C before the voters could consider Proposition C. Renew Missouri filed a complaint with the public service commission arguing that section 393.1050 was invalid. The commission denied the complaint, determining: the pendency of Proposition C did not prevent the legislature from passing related legislation; Proposition C did not impliedly repeal section 393.1050 because the two laws could be harmonized; and section 393.1050 is not a special law. Renew Missouri appeals.

REVERSED.

Court en banc holds: Proposition C repealed section 393.1050 by implication. Proposition C and section 393.1050 conflict despite the inclusion of a “notwithstanding any other provision of law” clause in the statute. The legislature does not have the authority to use language such as “notwithstanding any other provision of law” to negate or repeal in advance the portion of an initiative with which it is inconsistent and that the people later adopt. Permitting the legislature to modify preemptively an initiative under these circumstances would allow the legislature to undercut or undo a law initiated by the people before the people ever could vote on that initiative merely by passing a related statute with more specific terms or containing the clause “notwithstanding any other provision of law.” Once the people have voted to adopt an initiative, it becomes a statute like any other and can be amended like any other statute. But it cannot be amended prior to the time it is voted on by the people. Such unilateral, preemptive action would violate the people’s constitutional right to enact legislation by ballot initiative.

Judge Fischer’s dissent: The author would affirm the commission’s decision. Well-settled principles of statutory construction require this Court to give effect to and to harmonize the two relevant statutory provisions – one passed by initiative and the other by the legislature – both of which support the policy decision to encourage the use of renewable energy. There is no text in the Missouri Constitution or historical support that initiative legislation was to have special treatment over representative legislation. The people’s power to legislate by initiative, therefore, is on equal footing with the legislature’s power to legislate; neither is less than nor greater than the other. Accordingly, the legislature is free to modify, amend or repeal statutes passed by initiative – before, during or after the initiative petition.