

Summary of SC92062, *Pat Dujakovich, et al. v. Robin Carnahan, et al., and Travis Brown, et al.*

Appeal from the Cole County circuit court, Judge Jon Edward Beetem
Argued and submitted April 4, 2012; opinion issued July 3, 2012

Attorneys: The challengers were represented by Sarah Baxter, Stephen D. Walsh and Galen P. Beaufort, assistant city attorneys for Kansas City, (816) 513-3124; the secretary of state and the state were represented by James R. Layton and Jennifer Redel-Reed of the attorney general's office in Jefferson City, (573) 751-3321; and Let Voters Decide was represented by Thomas W. Rynard, Marc H. Ellinger, James B. Deutsch and Stephanie Bell of Blitz, Bardgett & Deutsch LC in Jefferson City, (573) 634-2500.

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: Challengers appeal the circuit court's dismissal of their lawsuit against an initiative amending the statute authorizing Kansas City's earnings tax. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the circuit court's judgment as the challengers failed to demonstrate they were entitled to a declaration of rights. The amendment does not constitute an unconstitutional *de facto* appropriation because the amendment leaves at Kansas City's discretion both whether to seek its voters' approval for the earnings tax as well as any cost of an election to obtain such approval. The constitutional prohibition against unfunded mandates does not apply to law enacted through the initiative petition process. Further, the challengers failed to state a claim as to their allegation that the initiative violated the state constitution by not amending the city's charter.

Facts: The state legislature in 1963 enacted legislation, codified in chapter 92, RSMo, authorizing Kansas City to levy an earnings tax for general revenue purposes. In 2009, an initiative petition proposing to amend certain provisions of chapter 92, RSMo, was submitted to the secretary of state, who certified the ballot title to be placed before Missouri voters. Let Voters Decide subsequently circulated the petition to gather signatures of registered Missouri voters. The group submitted sufficient signatures, and the secretary of state certified the petition to appear as "Proposition A" on the statewide ballot in November 2010. Two individuals then filed suit challenging the proposition in August 2010, and Let Voters Decide and two other individuals intervened. A majority of those voting in the election adopted Proposition A. The parties in the lawsuit subsequently conducted discovery, and the challengers filed an amended petition joining the state as an additional defendant. The intervenors, the secretary of state and the state filed separate motions to dismiss the petition. Following a hearing, the circuit court in August 2011 dismissed all counts of the petition with prejudice (preventing the challengers from refiling the claims). The challengers appeal.

AFFIRMED.

Court en banc holds: (1) The amendment does not constitute a *de facto* appropriation in violation of article III, section 51 of the Missouri Constitution. The amendment permits Kansas

City to continue to maintain its earnings tax, but to do so, the city must seek approval of its own qualified voters. Whether the city seeks continued authorization to impose the earnings tax is purely discretionary; there is no mandate requiring an election. As such, any cost of an election is within the pure discretion of Kansas City, and there is no prohibition against the city using the money raised by the earnings tax to pay for the costs necessary to continue the city's authorization to assess a future earnings tax.

(2) The amendment does not violate article X, sections 16 through 24 of the state constitution, commonly called the Hancock amendment. Article X, section 21 places specific limitations on the legislature, state agencies and political subdivisions prohibiting them from requiring new or increased activities or services without also appropriating the funds necessary to pay for any increased costs. There is no mandate restricting the power of the people to govern themselves by initiative, which is a right protected by article III, section 49 of the state constitution.

(3) The challengers failed to state a claim on which relief can be granted as to their allegation that the amendment adopted through the initiative process improperly failed to amend the Kansas City charter. But Proposition A did not amend Kansas City's charter. Rather, it repealed and replaced statutory language in sections 92.210 through 92.300, RSMo. Accordingly, the constitutional requirements of article VI, section 20 regarding amendments to a city's charter are not applicable. Further, any perceived conflict between newly enacted statutory authority and a charter city must be resolved in favor of the state's statutory requirements.