

Summary of SC93195, *City of Kansas City, Missouri v. Karen Chastain, et al.*

Appeal from the Jackson County circuit court, Judge Sandra C. Midkiff

Argued and submitted October 3, 2013; opinion issued February 4, 2014

Attorneys: The proponents of the initiative petition were represented by Jeffrey Jay Carey of the Carey Law Firm in Lee’s Summit, (816) 246-9445; and the city was represented by Sarah Baxter of the city attorney’s office in Kansas City, (816) 513-3124.

Maranda Reynolds d/b/a/ Springfield Cannabis Regulation, Show-Me Cannabis Regulation Inc. and American Victory Coalition Inc., which filed a brief as friends of the Court, were represented by Joseph D. “Chip” Sheppard III, Christiaan D. Horton and Austin J. Preston of Carnahan, Evans, Cantwell & Brown PC in Springfield, (417) 447-4400.

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: Proponents of a local initiative petition proposing a city ordinance imposing two new taxes appeal the circuit court’s judgment in favor of the city that found the proposed ordinance was unconstitutional. In a 7-0 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. Although Missouri law permits pre-election review of the facial validity of an initiative petition and authorizes such challenges to be raised in actions for declaratory judgment (asking the court to determine legal rights), the circuit court erred in concluding the proposed ordinance here violates the state constitution. It also erred in dismissing the proponents’ counterclaim to require the city to put the proposed ordinance to a public vote.

Judge Paul C. Wilson concurs in the principal opinion but writes separately merely to emphasize what the Court is *not* holding. That the Court is remanding the case does not suggest any view about the merits or outcome of the proponents’ counterclaim, about which the Court expresses no opinion. He also expresses doubt that any city ordinance proposed pursuant to an initiative right reserved to the people by their city charter could violate the state constitution’s limit on initiatives to amend the state constitution or laws.

Facts: Kansas City is a constitutional charter city that permits citizens to propose ordinances by initiative petition. In July 2011, Karen Chastain and others (collectively, Chastain) submitted to the city clerk an initiative petition seeking adoption of an ordinance that would impose additional sales taxes “for the benefit of the city.” The preamble to the proposed ordinance states that the purpose of the sales taxes is to construct a light rail system, but the only action mandated by the proposed ordinance is the imposition of two taxes – one for “capital improvements” and one for “transportation purposes” – no particular project is mandated. After committee review and a public hearing, the city council determined the city was not required to place the proposed ordinance before the voters. Chastain requested the city clerk place the ordinance on the ballot. The city declined and then filed a petition for a judgment declaring that the proposed ordinance was facially unconstitutional pursuant to article III, section 51 of the state constitution because the ordinance failed to provide the revenue necessary to construct the transportation system.

Chastain filed a counterclaim seeking to require the city to put the proposed ordinance to a public vote. The trial court dismissed Chastain's counterclaim and entered final judgment for the city, finding that the proposed ordinance was unconstitutional and that the city legally was justified in refusing to place it on the ballot. Chastain appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) The circuit court had the authority under Missouri law to engage in pre-election review of the facial constitutional validity of the initiative petition and proposed ordinance and to enter a declaratory judgment regarding such a review. Missouri law not only permits pre-election review of the facial constitutional validity of an initiative petition – given the cost and energy expended for elections and to avoid potential public confusion – but it also expressly allows such a challenge to be raised in an action for declaratory judgment.

(2) The circuit court erred in concluding that the proposed ordinance violates article III, section 51. This constitutional provision generally prohibits the appropriation of money by initiative, except that an initiative may appropriate revenues created by the initiative proposal. The plain language of the proposed ordinance mandates the imposition of two additional sales taxes. Although the preamble represents that the new taxes would be used to help fund certain transportation projects, the ordinance itself does not mandate that the city spend any money, make any plans or do anything at all other than impose the two new sales taxes. Because the proposed ordinance imposes no unfunded financial obligations on the city, either expressly or through practical necessity, there is no appropriation and no violation of article III, section 51.

(3) The circuit court incorrectly dismissed Chastain's counterclaim. The court denied the counterclaim on grounds that the proposed ordinance violates the constitution, which it does not. Further, the city charter provides that, after an initiative petition receives the required number of signatures and has met the charter's procedural requirements, the council "shall" submit the proposed ordinance to the voters within a specified time frame.

(4) The Court expresses no opinion about the ultimate merits of Chastain's counterclaim or any other issues not before the Court.

Concurring opinion by Judge Wilson: The author concurs in the reasoning and disposition of the principal opinion but writes separately merely to emphasize what the Court is *not* holding. The Court does not hold, nor should its disposition of this appeal be taken to suggest, that Chastain's counterclaim should be granted; the Court expresses no opinion about that question. The state constitution's limit on the power preserved to Missourians of initiatives regarding amendments to the constitution does not limit the people's initiative power reserved in their city charter. The author expresses doubts, therefore, that any city ordinance proposed pursuant to an initiative right preserved to the people in their city charter can violate article III, section 51. A 1954 decision of this Court that suggested otherwise was based solely on the now-discredited analysis of an older case and is contradicted by a more recent decision of this Court.