

Summary of SC95924, Jim Boeving, Patty Arrowood, Robert E. Pund and Robert A. Klein v. Missouri Secretary of State Jason Kander, Raise Your Hand for Kids and Erin Brower

Appeal from the Cole County circuit court, Judge Jon E. Beetem

Argued and submitted September 15, 2016; opinion issued September 20, 2016

Attorneys: Boeving and Arrowood were represented by Charles W. Hatfield, Erin M. Naeger and Jeremy A. Root of Stinson Leonard Street LLP in Jefferson City, (573) 636-6263. Pund and Klein were represented by Heidi Doerhoff Vollet, Dale C. Doerhoff and Shelley A. Kintzel of Cook, Vetter, Doerhoff & Landwehr PC in Jefferson City, (573) 635-7977. The secretary of state was represented by Solicitor General James R. Layton and Jason K. Lewis of the attorney general's office in Jefferson City, (573) 751-3321. Raise Your Hand for Kids and Brower were represented by Jane E. Dueker, Arthur D. Gregg and John J. Coatar of Spencer Fane LLP in St. Louis, (314) 863-7733; and Edward D. Greim and Alan T. Simpson of Graves Garrett LLC in Kansas City, (816) 256-3181.

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: Opponents to a proposed constitutional amendment scheduled for the November 2016 ballot – for which the official ballot title was changed by court order after the proponents submitted the signed initiative petition to the secretary of state – appeal a trial court's judgment permitting the amendment to move forward as scheduled. In a 7-0 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the judgment.

The proponents submitted a sufficient number of valid signatures. There is no clear and unequivocal statutory or constitutional requirement that the secretary of state not count – or invalidate – the signatures the proponents gathered and submitted to him before there was a decision to change the ballot title, nor is there anything in the statutes or constitution that required the proponents to start over and seek signatures for the new ballot title. The proposed amendment, on its face, does not amend or create more than one article of the state constitution. The proposed amendment does not violate the state constitutional prohibition against “appropriation by initiative.” The remainder of the opponents' substantive challenges are premature because they all relate to what the proposed amendment may do if approved by the voters and put into operation, not whether the proposed amendment satisfies the constitutional requirements to be put before the voters in the first place.

Judge James M. Dowd – a judge on the Missouri Court of Appeals, Eastern District – sat in this case by special designation in place of Judge Laura Denvir Stith.

Facts: The statutory procedure by which citizens may seek to amend the state constitution by initiative petition is governed by chapter 116, RSMo. In November 2015, Missouri non-profit corporation Raise Your Hand For Kids Inc. and one of its directors, Erin Brower (collectively, proponents), submitted to the secretary of state an initiative petition proposing to amend article IV of the Missouri Constitution. The secretary of state drafted a summary statement and the state auditor drafted a fiscal note summary to form the official ballot title, which the secretary of state

certified January 5, 2016. The proponents affixed the official ballot title to the initiative petition and began gathering signatures. Ten days after the secretary of state certified the official ballot title, Jim Boeving filed a lawsuit challenging the official ballot title. On May 7, 2016, the proponents submitted to the secretary of state signatures in support of their proposed amendment. Each signature page contained the full text of the amendment and the official ballot title. Twelve days later, the trial court entered its judgment in Boeving's suit. On appeal, the court of appeals held the fiscal note summary was fair and sufficient but the summary statement was not. The appeals court certified corrected summary statement language for inclusion in the official ballot title. In July 2016, the secretary of state certified the ballot title with the changes ordered by the appeals court. On August 9, 2016, the secretary of state certified that the proponents had submitted sufficient valid signatures to have their proposed amendment put before voters on the November 2016 general election ballot. In response, Boeving and three other individuals (collectively, opponents) filed lawsuits seeking to compel the secretary of state to reverse this decision. All the cases were heard at the same time, on a common record, and were resolved in a common judgment, which determined that: the secretary of state properly found the proponents had submitted a sufficient number of valid signatures for the amendment to appear on the ballot; the amendment did not violate the state constitution's single article or single subject requirements; and the opponents' remaining claims that the proposed amendment's language violated substantive constitutional provisions were not ripe (that they only could be raised if and after voters approved the amendment). The opponents appeal.

AFFIRMED.

Court en banc holds: (1) The proponents submitted a sufficient number of valid signatures. This Court rejects the opponents' contention that, essentially, the signatures submitted to the secretary of state in May should not be counted because the official ballot title on those signature pages later was changed by a court, and no signatures were submitted in support of the new official ballot title certified in July pursuant to the appeals court mandate.

The secretary of state fully complied with his statutory obligations in certifying and delivering the official ballot title for the proposed amendment to the proponents, who then fully complied with their statutory obligations in affixing this official ballot title to each signature page before circulating the petition for signatures. When the proponents submitted their signed petition to the secretary of state in May, all of the signed petition pages contained the only official ballot title that had been certified up to that point. The ultimate judgment (the appeals court mandate) ordering the secretary to change the official ballot title did not issue until July 15, more than two months after the proponents submitted their signed petition to the secretary. The secretary then complied with the mandate to certify the new, court-ordered official ballot title.

There is no clear and unequivocal requirement anywhere in chapter 116 that the secretary of state not count – or invalidate – the signatures the proponents gathered and submitted to him May 7, nor is there anything in the statutes that required the proponents to start over and seek signatures for the new ballot title. Further, although the state constitution clearly requires that constitutional amendments proposed by initiative petition be identified by “official ballot title” when put before the voters, there is no similar express constitutional requirement that an “official ballot title” or title of any sort be displayed on the pages of initiative petitions proposing constitutional

amendments before they may be circulated for signatures. In the absence of any such clear and unequivocal requirement, this Court has no occasion to consider any effect on the proponents' right to seek to amend the state constitution by the initiative petition process specifically reserved to the people in article III, section 49 of the state constitution.

(2) The proposed amendment, on its face, does not amend or create more than one article of the state constitution. The opponents concede that, on its face, the proposed amendment purports to amend only article IV of the state constitution by creating a new section 54 and new subsections 54(a)-(c). The proposed amendment does not amend, by implication, article IX, section 8 of the state constitution. By its terms, article IX, section 8 prohibits the payment of public funds for certain purposes by "the general assembly" or "any county, city, town, township, school district or other municipal corporation." The proposed amendment, however, creates a new constitutional commission and authorizes that commission to make grants of public funds to various entities for various purposes. The fact that the proposed amendment notes that the restrictions of article IX, section 8 will not apply to the proposed constitutional commission does not purport to and does not have the effect of amending article IX, section 8.

(3) The proposed amendment does not violate the prohibition against appropriation by initiative in article III, section 51 of the state constitution. The opponents' argument goes to what the proposed amendment may do if approved by the voters and put into operation, not whether it properly is put before the voters at all. Such challenges to the effect of a proposed amendment if enacted – rather than to the sufficiency of the initiative petition process – are premature, burdensome on those seeking to avail themselves of the initiative process power reserved to the people, and better addressed in the context of an actual, not hypothetical, application. The challenge here is not the same type of "appropriation by initiative" claims the Court has considered before the election because it does not create an unavoidable and irreconcilable conflict with article III, section 51.

(4) The remainder of the opponents' substantive challenges are premature because they all relate to what the proposed amendment may do if approved by the voters and put into operation, not whether the proposed amendment satisfies the constitutional requirements to be put before the voters in the first place. This Court will not issue an advisory opinion as to whether a particular proposal, if adopted, would violate a superseding state law or state or federal constitutional provision. Challenges based on the requirements in article III, section 50 for the form of initiative petitions proposing constitutional amendments or statutory enactments, the "single article" and "single subject" limitations on the text of those proposals, signature requirements and filing deadlines may be asserted before the election. The Court also will entertain "appropriation by initiative" challenges only to the extent that such a purpose and effect are plainly and unavoidably stated in the language of the proposal. If and when voters approve the proposed amendment, there will be time to hear challenges regarding its substance later.