

**No. SC100742**  
**IN THE SUPREME COURT OF THE STATE OF MISSOURI**

**MARY ELIZABETH ANNE COLEMAN, et. al.,**  
**Plaintiff-Respondents**

**v.**

**JOHN R. ASHCROFT, in his official capacity as Missouri Secretary of State,**  
**Defendant,**

**and**

**ANNA FITZ-JAMES, et al.**  
**Defendant-Intervenors and Appellants,**

**Appeal from the Circuit Court of Cole County, The Hon. Christopher Limbaugh**  
**Case No. 24AC-CC07285**

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**BRIEF OF MAYOR QUINTON LUCAS OF KANSAS CITY, MAYOR**  
**TISHUARA JONES OF ST. LOUIS, MAYOR BARBARA BUFFALOE OF**  
**COLUMBIA, AND ST. LOUIS COUNTY EXECUTIVE DR. SAM PAGE AS**  
**AMICI CURIAE**  
**IN SUPPORT OF APPELLANTS**

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## **STATEMENT OF INTEREST**

Mayor Quinton Lucas is Mayor of Kansas City; Mayor Tishuara Jones is Mayor of St. Louis; Mayor Barbara Buffaloe is Mayor of Columbia; and Dr. Sam Page is County Executive of St. Louis County. Together, they represent approximately two million Missourians whose ability to exercise their constitutional rights are imperiled by the circuit court's judgment. As public officials, they know firsthand the importance of citizens having the opportunity to vote on the laws that govern them. They submit this brief to highlight from a local-government perspective the importance of officials facilitating the will of the people.

These local executives are deeply concerned about the trend of partisans' undermining Missouri voters' right to free and fair elections. These anti-democratic actions—whether done through refusing to perform ministerial duties, misleading voters, or pursuing last-minute judicial intervention—undermine constitutional guarantees of civic participation and disrespect the people's right to self-government.

The Mayors of Kansas City, St. Louis, and Columbia and County Executive of St. Louis County thus submit this brief in support of Appellants' request to allow the voters to vote on Amendment 3.<sup>1</sup>

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<sup>1</sup> No counsel for a party authored the brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici*'s counsel made a monetary contribution to the preparation or submission of this brief.

## ARGUMENT

### **I. The Judicial Role, Pre-Election, Is To “Make Effective” The Citizen Initiative Power So The People May Vote On Certified Ballot Measures**

In Missouri, “all political power is vested in and derived from the people.” Mo. Const. art I, § 1. The people “reserve power to propose and enact . . . amendments to the Constitution by the initiative, independent of the general assembly.” Mo. Const. art. III, § 49. Courts are to “make effective the people’s reservation of that [initiative] power.” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990). Effectuating the reservation of power and avoiding “encroachment on the people’s constitutional authority” to amend the Constitution requires Missouri courts to resist “the partisan who would use the judiciary to prevent the initiative process from taking its course.” *Brown v. Carnahan*, 370 S.W.3d 637, 645 (Mo. banc 2012) (quoting *Missourians to Protect the Initiative Process*, 799 S.W.2d at 827).

Before an election, this democratic commitment narrows judicial intervention to only the rarest case: where intervention is necessary “to promote an informed understanding . . . of the probable effects of the proposed amendment.” *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 11-12 (Mo. banc 1981). Courts limit pre-election rule to compliance with constitutional and statutory procedures that are “designed” for this informational purpose. Judicial efforts should be aimed at “assur[ing] that the desirability of the proposed amendment may be . . . judged by the people in the voting booth.” *Id.*

## II. Judicial Protection Of The Initiative Power Is Needed Here

*Amici* urge this Court to resolve all doubts in favor of allowing voters to vote on Amendment 3. As the circuit court acknowledged, there is no “direct precedent”—or precedent at all since Article III § 50 was adopted—for a court to strike a measure from the ballot because a secretary of state-certified ballot text was insufficient. *See* Judgment at 10. This Court may someday be presented a case requiring it to delineate, after thorough consideration, the precise requirements of Section 116.050. But it makes little sense on this rushed posture to break that new ground. It makes even less sense to rush through a decision that would irrevocably deprive the current Missouri electorate the opportunity to vote on Amendment 3. *See Missourians to Protect the Initiative Process*, 799 S.W.2d at 827 (courts aim to effectuate the people’s right to the initiative power).

Wielding Section 116.050 to remove Amendment 3 from the ballot is particularly inappropriate because that Section’s purpose—ensuring voters are sufficiently informed to cast meaningful votes—has been fulfilled. *See Buchanan*, 615 S.W.2d 6. Here, voters have an “informed understanding” of the “probable effects” of the amendment. *Id.* at 11-12. They know that Amendment 3 will likely, after significant consideration by the judicial branch, substantially alter existing abortion and reproductive health laws. The subject of Amendment 3—reproductive health care including abortion—is understood by voters who experience it in their everyday lives: through their own or a loved one’s prenatal visits, labor and delivery, miscarriage care, abortion, infertility care, and through engagement in public discussion of these issues.

Across the localities that *amici* serve, approximately 200,000 Missouri citizens have expressed their desire to vote on Amendment 3, joining hundreds of thousands of other citizens from across the state.<sup>2</sup> Highly publicized and debated, Amendment 3 has been discussed in the media, in political campaigns, and in public fora for many months. At each step of petition gathering, certification, and court challenges, journalists have reported details about what the proposal says and analysis of what they predict it would do if passed.

Removing Amendment 3 from the ballot would improperly deprive voters of their substantive constitutional right to the initiative in order to elevate non-constitutional technicalities over substance. Determination of any technical errors should be reasoned through in a post-election challenge. *Id.* at 6; *Knight v. Carnahan*, 282 S.W.3d 9, 16–17 (Ct. App. W.D. 2009) (the question of whether the constitutional and statutory requirements for a validly enacted law were followed in this case may be considered post-election”). The fundamental purpose of the people’s initiative power is letting voters choose at the ballot box. The voters should have the opportunity to vote on Amendment 3.

### **III. Allowing The People To Vote On Certified Ballot Measures Strengthens Citizen Respect For The Law**

Missouri’s initiative power “preserv[es] for liberty loving Missourians the greatest degree of democratic representation” by “encourag[ing] people to participate in government.” *Verbatim Stenotype Transcription of the Debates of the 1943-1944 Constitutional Convention of Missouri*, Mr. Phillips (pp. 381, 386). When legislators shy

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<sup>2</sup> The petition garnered more than 53,000 signatures in St. Louis, more than 30,000 in Kansas City, and more than 19,000 in Columbia, and more than 90,000 signatures were collected in St. Louis County.

away from contested topics or become captured by minority interests, the initiative power is “a check on inaction” that asks the voters to decide what laws will govern their families and communities. *Id.*, Mr. McClure (p. 402). The Constitution’s reservation of the initiative power expressly contemplates regular people putting questions of considerable public interest to their fellow voters through the initiative process. Inherent in that constitutional commitment is the understanding that lay people will write the language, that lay people’s understanding is the proper measure, and that voters will decide at the ballot box whether to approve the measure.

Citizen initiatives may look different from legislators’ bills that are riddled with statutory code references. Such shorthand is meaningful to other legislators but incomprehensible to regular voters. That is a feature not a bug: the initiative power is a people’s power. Nothing else in the Constitution “so closely models participatory democracy in its pure form.” *Missourians to Protect the Initiative Process*, 799 S.W.2d at 827.

In recent years, Missourians have been active participants in seeking to create law. The Missouri Secretary of State’s website reflects Missourians’ interest: in the last decade, Missourians have filed dozens, sometimes hundreds, of proposed ballot initiatives each election cycle.<sup>3</sup> Perhaps half are approved for signature gathering, many fewer are submitted to the Secretary of State with sufficient numbers of signatures, and very few—on average less than three per two-year ballot initiative cycle—are certified for placement

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<sup>3</sup> See, e.g., Mo. Sec’y of State, 2022 Initiative and Referendum Petitions Filed (mo.gov), <https://perma.cc/6HNF-4VN6>.



on the ballot.<sup>4</sup> Each certified citizen initiative ballot measures reflects tremendous voter interest in expressing their will. It should be a high bar for a court to decide that hundreds of thousands of citizens signed initiative petitions without meaningfully understanding the issue, not least because initiatives address weighty matters of public importance and high public visibility. In recent years, the following citizen initiatives have been certified to the ballot:

- decriminalizing marijuana (passed: Amd 3, 2022 & Amd 2, 2018; failed: Amd 3 and Prop C, 2018);
- expanding access to health care for poor people (passed: Amd 2, 2020);
- campaign finance reform (passed: Amd. 1, 2018);
- increasing the minimum wage to \$12 per hour worked (passed: Prop B, 2018);
- regulating campaign contributions (passed, judicially overturned: Amd 2, 2016);
- increasing cigarette taxes (failed: Amd 3 & Prop A, 2016);
- limiting sales and use taxes (passed: Amd 4, 2016);
- tying teacher pay to performance reviews (failed: Amd 3, 2014).

As significant as each of these proposals may be, they do not all become law. The voters pass some certified measures and others fail. Post-election, courts may invalidate or overturn improper measures passed by voters. *See e.g., Free & Fair Election Fund v. Missouri Ethics Comm’n*, 252 F. Supp. 3d 723 (W.D. Mo. 2017), *aff’d* 903 F.3d 759 (8th

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<sup>4</sup> Ballotpedia, Ballot Initiative Certification Rates In Missouri 2010-2020 (showing an average of fewer than three citizen ballot initiatives certified per two-year election cycle despite initial filings of 23 to 373 proposed initiatives), <https://perma.cc/UZ77-7XKG>.

Cir. 2018) (striking, as violative of the First Amendment, many of the limitations on campaign contributions passed as Amendment 2 (2016)).

*Amici* have found respect for civic participation to be essential for building social cohesion and effective governance. For example, Kansas City puts great effort into increasing civic participation in public policy efforts. The Mayor and City Council recognize that all residents, regardless of station or circumstance, can make valuable contributions to policy decisions. Resolution No. 230998.<sup>5</sup> Creating a thriving city requires engaged community stakeholders who give input into decisions that affect their lives. *Id.* By listening to community input, public officials develop policies that are better suited to people's needs. *Id.* Across the cities that *amici* represent, leadership recognizes that when people are allowed to help shape policy, they are more committed to getting involved in the hard work of making their communities better.

The initiative process, by giving citizens more of a say in the laws that govern them, likewise adds legitimacy to the law in two ways. First, it is substantively more likely that the law will reflect the will of the people. Second, by providing a process through which those who are dissatisfied with the law can take reforms directly to the people, the initiative increases acceptance of the law. These benefits will fade if courts deprioritize voter protections in response to sustained anti-democratic efforts.

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<sup>5</sup> Resolution 230998 directs Kansas City's City Manager to develop a Public Engagement Plan. Resolution text available at <https://perma.cc/7DKU-5DQP> (last visited Sept. 8, 2024).

Accordingly, it would be a mistake to take away at the last minute the voters' opportunity to weigh in on a duly certified measure. In an era of public mistrust of government, judicial branch invalidation of citizen efforts threatens to reinforce a myth that Missouri's government does not listen to its people.

### **CONCLUSION**

For the reasons stated above, *amici* respectfully ask this Court to reverse the circuit court's judgment, to uphold the Secretary of State's certification of Amendment 3's sufficiency for placement on the November 5, 2024 general election ballot, and to allow the people to vote on Amendment 3.

Dated: September 9, 2024

Respectfully submitted,

/s/ Arin Smith

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*\*Pro hac vice* motions forthcoming

**CERTIFICATE OF COMPLIANCE**

I hereby certify that pursuant to Mo. S. Ct. Rule 84.06(c), this brief (1) contains the information required by Mo. S. Ct. Rule 55.03; (2) complies with the limitations in Mo. S. Ct. Rule 84.06(b); and (3) contains 2087 words determined using the word count feature in Microsoft Word.

/s/ Arin Smith  
Arin Smith

**CERTIFICATE OF CONSENT**

I hereby certify that all parties have consented to the filing of this brief.

/s/ Arin Smith  
Arin Smith

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed electronically with the Court's electronic filing system on September 9, 2023. Service will be effectuated by the Court's electronic notification system upon all parties and counsel of record.

/s/ Arin Smith  
Arin Smith

Dated: September 9, 2024