

Summary of SC94293, *D. Samuel Dotson III and Rebecca Morgan v. Jason Kander, Missouri Secretary of State, Senator Kurt Schaefer, et al., consolidated with Jennifer M. Joyce and Jean Peters-Baker v. Tom Dempsey, et al.*

Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted July 14, 2014; opinion issued July 18, 2014

Attorneys: Dotson and Morgan were represented by Charles W. Hatfield and Khristine A. Heisinger of Stinson Leonard Street LLP in Jefferson City, (573) 636-6263. Joyce and Peters-Baker were represented by Heidi Doerhooff Vollet of Cook, Vetter, Doerhoff & Landwehr PC in Jefferson City, (573) 635-7977, and Burton W. Newman of Burton Newman PC in Clayton, (314) 862-7999.

Secretary of State Kander was represented by Solicitor General James R. Layton, Deputy Solicitor General Jeremiah J. Morgan and Jonathan M. Hensley of the attorney general's office in Jefferson City, (573) 751-3321. President Pro Tem Dempsey and Senator Ron Richard were represented by Marc H. Ellinger of Blitz, Bardgett & Deutsch LC in Jefferson City, (573) 634-2500. Speaker Tim Jones was represented by James B. Deutsch of Blitz, Bardgett & Deutsch LC in Jefferson City, (573) 634-2500, and Deputy General Counsel David H. Welch of the Missouri House of Representatives in Jefferson City, (573) 522-2598. Senator Schaefer of the Missouri Senate in Jefferson City, (573) 751-3931, represented himself. Missourians Protecting the 2nd Amendment was represented by David G. Brown of Brown Law Office LC in Columbia, (573) 814-2375.

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: Individuals challenging a ballot issue scheduled for the August primary election appeal the trial court's judgment that their cases were moot because fewer than six weeks remained before the election was scheduled to be held. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri dismisses the appeal as moot. A statutory prohibition against a court from adding an issue to a ballot fewer than six weeks before the election also extends to modification of a ballot title.

Facts: In May 2014, the legislature passed a joint resolution, which was placed on the August 5 ballot. The secretary of state certified the official ballot title on June 13. Beginning that day, two sets of plaintiffs filed suit challenging the sufficiency and fairness of the summary statement in the ballot title. The trial court consolidated the cases and, on July 1, issued its judgment that the cases were moot because section 115.125.2, RSMo, prohibits changes to ballot titles fewer than six weeks before the election is scheduled to take place. The plaintiffs appeal.

DISMISSED.

Court en banc holds: Section 115.125.2 prevents this Court from granting effectual relief to the plaintiffs and, therefore, renders this case moot. If an event occurs that makes a court's decision unnecessary or makes granting effectual relief impossible, the case is moot and should be

dismissed. Section 115.125.2 provides that “[n]o court shall have the authority to order an individual or issue be placed on the ballot less than six weeks before the date of the election” – a deadline that passed before the trial court entered its judgment. While this statute specifically prohibits the addition of an issue to a ballot fewer than six weeks before an election, courts consistently over the last 10 years have interpreted this prohibition to extend to modifications of a ballot title, and the legislature has not changed this interpretation by amending section 115.125.2. The legislature’s decision to establish a six-week “drop dead” date for changes to the ballot was not arbitrary and coincides with other statutory requirements about printing and making available absentee and overseas military ballots as well as removing candidates’ names from the ballot. This interpretation of section 115.125.2 does not foreclose judicial review, as the plaintiffs may make post-election challenges.