

**Summary of SC94516, *Wes Shoemyer, Darvin Bentlage and Richard Oswald v. Missouri Secretary of State Jason Kander***

Original proceeding – election contest

Argued and submitted February 25, 2015; opinion issued June 30, 2015

**Attorneys:** The individuals who filed the election contest were represented by Anthony L. DeWitt of Bartimus, Frickleton, Robertson & Goza PC in Jefferson City, (573) 659-4454. The secretary of state was represented by Deputy Solicitor General Jeremiah J. Morgan and Jonathan M. Hensley of the attorney general’s office in Jefferson City, (573) 751-3321. The legislator-intervenors were represented by David H. Welch, deputy general counsel of the Missouri House of Representatives in Jefferson City, (573) 522-2598, and Todd Scott, chief of staff for the president pro tem’s office in Jefferson City, (573) 751-1141. Missouri Farmers Care was represented by Mark F. (Thor) Hearne II and Stephen S. Davis of Arent Fox LLP in St. Louis, (314) 296-4000.

*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:** In an election irregularity proceeding, individuals challenge the summary statement of the title of a ballot issue that voters passed during the August 2014 election. In a per curiam decision that cannot be attributed to any particular judge but that is joined by four judges, the Supreme Court of Missouri holds the election results are valid. As in *Dotson v. Kander*, also decided today, the ballot title may be challenged post-election. The challenge was not untimely. The 30-day time limit for post-election challenges does not begin until the secretary of state certifies the results of an election following any recount. The ballot title was sufficient and fair, and so there was no election irregularity.

Judge Richard B. Teitelman concurs in result without opinion.

Judge Laura Denvir Stith dissents. She would hold that the challenge is untimely because it was not brought prior to the election as mandated by chapter 116, RSMo, and because such a challenge may not be brought after the election under chapter 115, RSMo.

**Facts:** In its 2013 session, the legislature referred a constitutional amendment to voters to add section 35 to article I of the state constitution. The summary statement of the ballot title the legislature drafted that appeared on the ballot asked: “Shall the Missouri Constitution be amended to ensure that the right of Missouri citizens to engage in agricultural production and ranching practices shall not be infringed?” The amendment was placed on the August 2014 ballot, and voters approved it. After the secretary of state certified the results following a recount, three individuals filed an election contest in this Court pursuant to section 115.555, arguing the ballot title was insufficient and unfair.

**ELECTION RESULTS VALID.**

**Court en banc holds:** (1) The individuals may challenge the ballot title post-election. In *Dotson v. Kander* (SC94482, also decided today) this Court held that challenges to the summary statement of a ballot title may be brought either before the election pursuant to section 116.190 or after voters have adopted the measure in an election contest under chapter 115, so long as the issue previously has not been litigated and determined. The individuals' challenge was not untimely. Because the results of a recount could moot an election contest, the 30-day filing period in section 115.577 does not begin until the secretary of state certifies the recount results.

(2) Because the ballot title was sufficient and fair, there was no election irregularity. While the "right to farm" is subject to local government regulation under article VI of the state constitution, the availability of the right is not dependent on local governments passing an appropriation or other condition precedent. The summary's omission of the limitations by article VI is not problematic; each section of the constitution is subject to limitations that may be found elsewhere in the constitution. The amendment does not alter article VI in any way, nor does article VI limit the "right to farm" because local governments always have had the authority granted them under that article. Because there was no change in the law, the omission did not render the ballot title insufficient or unfair. Because any limitation on the "right to farm" by article VI did not go to the purpose of the amendment, it did not need to be referenced in the summary statement. It also was not insufficient or unfair to use "citizens" rather than "farmers and ranchers" in the ballot title.

**Dissenting opinion by Judge Stith:** The author disagrees with the principal opinion's construction of chapter 115 to apply to challenges to a ballot title. Chapter 115 governs challenges to election irregularities, not challenges to ballot titles. Ballot title errors are not "irregularities" in an election as contemplated by chapter 115. Instead, chapter 116 governs ballot-title challenges and mandates that a ballot-title challenge must be brought within 10 days of certification of a matter for the ballot. Chapter 116 does not provide that, alternatively, such a challenge may be brought after the election under chapter 115. Because the challenge was not brought prior to the election as mandated by chapter 116, the author would hold that the challenge is untimely.