

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

DAVID KNIGHT AND RAY SALVA; Appellants

EDWIN P. MCKASKEL AND DR. HAROLD H. HENDRICK Plaintiffs

v.

ROBIN CARNAHAN, IN HER OFFICIAL CAPACITY AS SECRETARY OF
STATE OF MISSOURI, AND SUSAN MONTEE, IN HER OFFICIAL
CAPACITY AS MISSOURI STATE AUDITOR; AND EVERETT BAKE Respondents

DOCKET NUMBER **WD70257**

DATE: February 10, 2009

Appeal From:

Circuit Court of Cole County, MO
The Honorable Richard G. Callahan, Judge

Appellate Judges:

Special Division: Thomas H. Newton, C.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

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Deborah J. Blakely, Independence, MO	Counsel for Appellants
Donald L. Dickerson, Cape Girardeau, MO	Counsel for Appellants

Attorneys:

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Daniel Y. Hall, Jefferson City, MO	Counsel for Respondents, Carnahan and Montee

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

David Knight and Ray Salva, Appellants v. Robin Carnahan, in her official capacity as Secretary of the State of Missouri, and Susan Montee, in her official capacity as Missouri State Auditor; and Everett Blake, Respondents.

WD70257

Cole County

Before Special Division Judges: Newton, C.J., Smart, and Ellis, JJ.

Mr. David Knight and Mr. Ray Salva (Appellants) challenged the Secretary of State's certification of an initiative petition related to casinos and gambling for the November 2008 general election. They asserted a variety of constitutional and statutory claims, some of which were dismissed on the merits and others as untimely or premature. During the pendency of this appeal, Missouri voters passed the measure as Proposition A, thereby enacting it as Missouri law. Although Proposition A's passage raises questions of our jurisdiction, a thorough analysis shows the propriety of this court's review. We affirm.

AFFIRMED.

Special Division holds:

Appellants' request for injunctive relief is moot post-election. However, their request for declaratory relief was not rendered moot by the election. Although courts are reluctant to intervene in the initiative process, procedural safeguards must be followed in presenting a measure to the voters. Because Proposition A became Missouri law when passed by the voters, appellate review would be reserved to the Supreme Court if the claims as to the law's validity were real and substantial. We conclude that Appellants' claims are not real and substantial, so we retain jurisdiction.

The trial court ruled correctly that Proposition A did not violate the single-subject requirement of the Missouri Constitution. A measure may effect multiple changes and have a single subject if all its provisions are connected with a central controlling purpose. As the trial court found, the central purpose of Proposition A was the regulation of gambling and gambling revenue and the provisions for fund distribution were incidental to this purpose.

Appellants' claim that the measure violated section 116.050 was also without merit. The section requires initiative petitions to contain all matter that would be deleted or repealed. The intent of the chapter is to insure the integrity of the vote-gathering process, not to create burdens so onerous the initiative process is stifled. While section 116.050 may require petitions to include earlier law so contrary to or irreconcilable with those of the petition that only one of the two could stand in force, such was not the case here.

Appellants also assert error in the trial court’s dismissal of their challenge to the fiscal note as untimely filed. They argue that section 116.200 authorized filing their claim in August as a challenge to the secretary of state’s certification of the sufficiency of the petition. However, in section 116.190, the legislature provided a specific deadline for fiscal note challenges—as well as specific requirements and remedies. Because the more specific law controls and because we may not read legislative language as superfluous, section 116.190 required Appellants to bring their fiscal note challenge in February.

Appellants also assert error in the trial court’s dismissal of their other constitutional claims as premature before the election. While a reversal would have no practical effect on this point, we address the propriety of the trial court’s pre-election dismissal of substantive constitutional claims as an issue capable of repetition yet avoiding review. Here, the trial court’s dismissal was proper. Courts do not review the substance of a proposal prior to an election unless there is a constitutional violation so obvious as to constitute a matter of form. Appellants’ claims did not meet this standard.

Opinion by: Thomas H. Newton, C. J.

February 10, 2009

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