IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

PEOPLE NOT POLITICIANS *et al.* Plaintiffs, v. MISSOURI SECRETARY OF STATE DENNY HOSKINS, Defendant.	Case No. 25AC-CC07128

COMBINED SUGGESTIONS IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR JUDGMENT ON THE PLEADINGS AND INTERVENOR'S MOTION TO DISMIS

The Court should deny the Motions to Dismiss (or for Judgment on the Pleadings) filed by the State and the Intervenor. The claims are not moot, they are ripe for determination and, assuming all allegations are tried, the petition states a claim. As an over-arching matter, however, this case is set for trial in a few days, so the Court should take the Motions with the case.

I. Count I is not moot, and even if it is, it falls in an exception to the mootness doctrine.

Plaintiffs' Count I is not moot. Even a cursory review of the Amended Petition indicates there is a live controversy regarding the Secretary's denial of Plaintiffs' referendum petition forms. But, even if this Court is inclined to agree that Plaintiff's claim is moot, an exception to mootness applies and this Court should exercise its discretionary jurisdiction over Count I.

A. Legal Standard

"When an event occurs that makes a court's decision unnecessary or makes granting effectual relief by the court impossible, the case is moot and generally should be dismissed." *State ex rel. Griffith v. Precythe,* 574 S.W.3d 761, 763 (Mo. banc 2019)(cleaned up). There are, however, two exceptions to the mootness doctrine: "(1) where the case becomes moot after it has been argued and submitted, and (2) where the case presents an unsettled legal issue of public interest and importance of a recurring nature that will escape review unless the court exercises its discretionary jurisdiction." *Id.* (cleaned up). "If either of these exceptions exist, [a court] may choose to exercise its discretion to decide the case, notwithstanding that it has become moot." *Id.* (cleaned up).

B. Plaintiffs' claim is not moot.

Defendant fundamentally misunderstands Plaintiffs' claim in Count I and the referendum process. Plaintiffs are seeking a referendum on House Bill 1. The first step in that process is to draft a referendum petition sample sheet and submit it to the Secretary of State. The Secretary has the obligation to review the sample sheet *only* for matters of form and has 15 days to do so.

The timing of this review matters. Plaintiffs have 90 days to gather signatures. Plaintiffs assert and the plain language of the Constitution supports, that no action can shorten this 90-day window for gathering signatures including 15 days for the Secretary to review and approve or reject the form of the petition. But, if Plaintiffs are wrong and approval as to form is necessary prior to gathering signatures, then the date of the approval as to form is the first day signatures can

be gathered. It logically follows that the earlier the Secretary approves the form of the petition, then signature gathering could occur sooner.

Plaintiffs submitted a referendum sample sheet on September 15. The Secretary then rejected that form. The Secretary argues Count I is moot because the Secretary approved a form at a later date, and the forms are the same. But that later approval does not moot Plaintiffs' Count I. If the Secretary is also correct that a referendum sample sheet must be approved as to form prior to gathering signatures, then Plaintiffs will have been deprived of essential days to gather signatures by only counting those signatures gathered *after* the later form approval. If the Secretary would like to stipulate that approval as to form is not necessary prior to gathering signatures, then perhaps Plaintiffs would consider dismissing Count I. But that seems unlikely.

C. Even if Count I is moot, it falls in an exception to the mootness doctrine.

Even if this Court is inclined to agree that Count I is moot (it's not), it falls squarely in the second exception to mootness. Due to the expedited time frame for referendum campaigns, it is certainly likely that legal questions about referenda are "capable of repetition, yet evading review." One could certainly imagine this scenario recurring again on a future referendum petition but not being reviewed in time by any court.

The Missouri Supreme Court recognized as much when considering another referendum petition in 2022, even though the deadline to submit signatures for that referendum was in 2019. "While the claim may have been

rendered moot once the deadline to submit signatures to the Secretary came to pass, the time-sensitive nature of the referendum process would place the claim squarely within the mootness exception of "capable of repetition, yet evading review." *No Bans on Choice v. Ashcroft,* 638 S.W.3d 484, 490 (Mo. banc 2022).

The Secretary argues that "[t]here is no indication that this kind of controversy will recur." Mot. to Dismiss at 17. But that ignores the recent history of substantial controversy (and two appellate court opinions) about a referendum less than five years ago. To say it is unlikely that there will not be a future case about referendum petitions and likely this specific issue is to be an ostrich in the face of danger.

The other argument in the Secretary's motion is that Plaintiffs did not "expedite" this litigation, and if they had only done so this type of case would not evade appellate review. Plaintiffs need not remind this Court of the timeline of this case in detail, but needless to say, Plaintiffs had a trial date scheduled merely 6 weeks after filing their lawsuit. Intervening events knocked this case off course. It is likely that political forces in the future would use similar tactics to delay resolution of matters related to referendums in order to avoid review by this and appellate courts.

II. Count II of Plaintiffs' Amended Petition is ripe.

The Secretary's own words undermine his legal argument. He has made clear that he intends to reject signatures solely because they were gathered prior to the date he approved the form of the referendum petition sample sheet. This

makes the dispute ripe for this Court's consideration. Intervenor also filed a Motion to Dismiss addressing this issue. The argument below is applicable to both the Secretary's and Intervenor's Motions to Dismiss.

A. Legal Standard

This is a review of agency action. "Determining whether a particular case is ripe for judicial resolution requires a two-fold inquiry: a court must evaluate (1) whether the issues tendered are appropriate for judicial resolution, and (2) the hardship to the parties if judicial relief is denied." *Missouri Ass'n of Nurse Anesthetists, Inc. v. State Bd. of Registration for the Healing Arts* ,343 S.W.3d 348, 355 (Mo. banc 2011).

B. Plaintiffs are not required to wait for serious penalties in order to challenge the Secretary's decision.

In *Missouri Nurse Anesthetists v. State,* the Court considered a challenge to a letter issued by the Board of Healing Arts to doctors regarding delegation of authority to nurse anesthetists. Although the Board had not meted out consequences regarding this letter, the Court found that the issue was ripe. As to the first factor of ripeness review, the Court said that "the letter expresses the Board's opinion that APN's do not have the appropriate training, skill or experience to perform fluoroscopic injections." *Id.* (cleaned up). The Court also found substantial hardship for plaintiffs when "faced with the dilemma physicians now face: comply or take a potentially more costly alternative of

risking serious penalties by continuing and waiting for the ax of Agency to fall." *Id.* (cleaned up).

So it is here. The Secretary has made his position regarding signature collection and validation clear. In his October 15 press release, the Secretary said:

> The Secretary's approval authorizes the sponsor to begin collecting signatures from registered Missouri voters. Under Missouri law, no signatures gathered before this approval date are valid, and doing so constitutes a misdemeanor election offense.

Jt. Stip. Ex. 14. The Secretary publicly expressed his opinion (and the policy of his office) that (1) signature collection cannot start until after approval as to form, (2) signatures gathered prior to that approval are not valid, and (3) failure to comply with this policy is a misdemeanor election offense.

After reviewing this statement, it is not hard to conclude that Plaintiffs (and potentially the public) face potential hardship. Plaintiffs face the consequences of having signatures deemed invalid *and* possible charges for misdemeanor election offenses. This is also true of the public, with the additional potential hardship of having their signatures (and expressing of their first amendment rights) deemed invalid by the Secretary.

Under Defendant's theory, Plaintiffs would have to wait until they turned in signatures and the Secretary deems them invalid before they can bring a lawsuit. But that's too late for Plaintiffs to do anything to qualify their referendum petition for the ballot. It cannot be the case that Plaintiffs must wait

for the ultimate consequence (an invalid referendum petition) in order to challenge the Secretary's position. Plaintiffs' claim is ripe.

III. Plaintiffs' Amended Petition states a claim.

Defendant avoids the basic motion to dismiss analysis because he knows that the only possible outcome of said analysis is that Plaintiffs state a claim in both counts in their Amended Petition. Counts I and II are challenges to agency decision-making. Count I challenges the Secretary's decision, under Section 116.030, to not approve Plaintiffs' petition sample sheet (this is a non-contested case challenge) and Count II challenges the Secretary's pronouncement that signatures may only be gathered after an approval as to form. Assuming all of the allegations in the Amended Petition are true (as this Court must), Plaintiffs easily clear the bar of stating claims in both Counts I and II.

A. Legal Standard

A motion to dismiss for failure to state a claim "is solely a test of the adequacy of the petition." *Missouri State Conference of the National Association for the Advancement of Colored People, et al., v. State of Missouri,* 601 S.W.3d 241, 246 (Mo. banc 2020)(cleaned up). "When considering whether a petition fails to state a claim upon which relief can be granted, this Court must accept all properly pleaded facts as true, giving the pleadings their broadest intendment, and construe all allegations favorably to the pleader." *Id.* (cleaned up).

To state a claim for declaratory judgment, "the court must be presented with: (1) a justiciable controversy that presents a real, substantial, presently-

existing controversy admitting of specific relief…(2) a plaintiff with a legally protectable interest at stake…(3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law." *Id.* (cleaned up).

B. Assuming all of the allegations in Count I are true, Plaintiffs state a claim for a declaratory judgment.

The statutes require a proponent of a referendum petition to submit a sample sheet of said referendum to the Secretary of State for review and approval/rejection of the form of the petition. The Court of Appeals has been clear about what constitutes a matter of form and what does not.

Here, the Secretary rejected the form of Plaintiffs referendum petition because the governor had not signed the bill upon which the referendum is being requested. Plaintiffs allege that this is not a matter of form and the Secretary improperly rejected the form of Plaintiffs referendum petition.

This certainly states a claim. The Secretary made a decision as to the form of Plaintiffs' referendum sample sheets. Plaintiffs allege that decision is unlawful and under 536.150, Plaintiffs have a non-contested case challenging an administrative action. Defendant makes no attempt to argue that Count I does not state a claim (because it certainly does), rather, Defendant skips right to merits and contends Plaintiffs are wrong on the law.

While that might be, that is not a proper decision for a motion to dismiss. Whether Plaintiffs are entitled to a referendum at all is not the question before

the Secretary during the form review. The Court of Appeals rejected a similar attempt to forestall a referendum for a non-form issue. *See ACLU v. Ashcroft*.

Plaintiffs state a claim as to whether the form review was lawful. Any substantive question about the referendum is not before this Court and will be adjudicated at a later date.

C. Whether the Governor signed the bill on which the referendum is being requested is not a matter of form.

The Secretary says whether the governor signs the bill on which a referendum is requested prior to submitting a sample sheet to the secretary is a matter of form and references language in Section 116.030. But that language says nothing about the governor signing nor requires that a proponent wait to submit a referendum sample sheet until the governor signs a bill. § 116.030 RSMo. This is not a matter of form and the Secretary was not authorized to reject Plaintiffs' sample sheets for this reason.

We've been here before. The Court of Appeals has already admonished the Secretary of State's Office for rejecting the form of referendum sample sheets for reasons other than form. *See ACLU v. Ashcroft*, 577 S.W.3d 881 (Mo. App.2019). Secretary Hoskins ignored this precedent.

In *ACLU v. Ashcroft*, 577 S.W.3d 881 (Mo. App.2019), the Court of Appeals addressed whether the Secretary of State was authorized to reject the form of a referendum petition sample sheet because the bill upon which the referendum was requested contained an emergency clause. The Court concluded that the

Secretary's review as to form of a referendum petition sample sheet does not extend "to matters of substance, including, constitutional compliance." *ACLU,* 577 S.W.3d at 891. "Neither section 116.030 nor the dictionary definition of 'form' permits the conclusion that review of a sample sheet for 'sufficiency as to form' pursuant to section 116.332 extends to matters of substance, including constitutional compliance." *Id.*

But that's exactly what Secretary Hoskins did here. The Secretary of State rejected the form of Plaintiffs' referendum petition sample sheet because the bill upon which the referendum was being requested had not yet been signed by the Governor. That is a matter of substance—whether the Plaintiffs may lawfully conduct a referendum at all— not the form of their paperwork.

Although "sufficiency as to form" is not defined in statute, "section 116.030 effectively serves as the definition for the phrase, as it addresses the required form of a referendum petition sample sheet, and includes an exemplar form." *Id.* at 890. Section 116.030 "provides an exemplar form that uses a prescribed and set order of words, with blank spaces for insertion of required or requested information; and that directs that a submitted sample sheet shall be sufficient if its form is substantially in compliance with the exemplar." *Id.* at 891 (cleaned up). It was. Plaintiffs' referendum petition sample sheets comply with the form as outlined in Section 116.030. In fact, the Secretary admitted as much. He impermissibly and unlawfully rejected those sample sheets as to form.

The Secretary tries to use the words of this form to preclude a referendum sample sheet from being approved as to form prior to the governor signing the bill. That's not what the language says and as discussed more below, even using the word "law" does not mean that a referendum sample sheet may not be submitted prior to the Governor signing a piece of truly agreed and finally passed legislation.

D. A referendum sample sheet may be properly submitted before the governor signs a bill.

If whether the governor signs a bill is a matter of form (it most certainly is not), the plain language of the Constitution and case law make clear that a referendum may be requested on an act of the general assembly or bill.

Defendant gives the game away when he says that "[t]he initiative-petition process is the proper vehicle for citizens looking to preempt enactment of bills." Mot. to Dismiss at 33. Ignoring that the Secretary incorrectly refers to the referendum as the initiative-petition process (they are not the same), he admits that the purpose of a referendum petition is to *stop* a bill from becoming a law. Therefore, it can only make sense that a referendum petition sample sheet can be submitted prior to the governor signing the bill.

A short review of how a bill becomes a law puts this into sharp focus. As an initial step, the General Assembly drafts, debates, and votes on legislation (also known as a bill). If both houses of the General Assembly approve a piece of legislation, this is an act of the general assembly and it is sent to the Governor for

his consideration. The Governor can choose to sign a bill or not (the Governor can also "pocket sign"). But once he signs it, a bill still is not a law. A piece of legislation does not "take effect until ninety days after the adjournment of the session…at which it was enacted." Mo. Const. art. III, § 29. Assuming the Secretary's argument is correct that a referendum can only be had on a law, a referendum would never be possible as the 90 days for signature gathering would toll before enactment of the law.

That can't be. A referendum proponent has ninety days to gather signatures for a referendum petition. That ninety days begins after the general assembly truly agrees and finally passes a piece of legislation ("an act of the general assembly"). That time period coincides with the 90 days between the adjournment of a session and when a bill is enacted into law. That just makes sense.

The Missouri Supreme Court said as much in *State ex rel Moore v. Toberman.*

> No one questions the fact that a law becomes effective only after approval of the governor or his veto thereof or failure to return it is overridden by the legislature … and then only at the time prescribed by the Constitution, which is either ninety days after adjournment of the session or ninety days from the beginning of a recess of more than thirty days and the prior adoption of a joint resolution…
>
> The phrases 'law passed by the general assembly' and 'laws previously passed'…cannot be limited to laws passed by the general assembly *and approved*

> *by the governor*. The governor is no part of the general assembly. The Constitution, § 1, Art. III, expressly states: 'The legislative power shall be vested in a senate and house of representatives to be styled 'The General Assembly of the State of Missouri.'' Thus only the general assembly *passes* laws. When it has passed a *bill*, if that word is preferred, the bill is a *law* insofar as the legislative power is vested in the general assembly to make it so; and we think that is the clearly intended meaning of the word 'law' as used in the aforesaid phrases of § 29.
>
> The distinction between 'law passed by the general assembly' and 'law passed by the general assembly *and approved by the governor*' is made quite clear by reference to § 36, art. 4, of the Constitution of 1875... from which present § 29 is taken. The old section provides: 'No law passed by the General Assembly, except appropriation acts, shall take effect or go into force until ninety days after enactment and approval thereof as otherwise provided by this Article, * * *.' There the distinction is specifically stated. No one will contend that when the phrase in old § 36, 'No law passed by the General Assembly,' was brought forward into present § 29 a different meaning was given it...

State ex rel. Moore v. Toberman, 250 S.W.2d 701, 704, 363 Mo. 245, 255–56 (Mo. 1952)

Reading the Constitution's plain language in addition to the case law and basic understanding of the legislative process leads to the undeniable conclusion that a referendum sample sheet may be submitted and approved as to form prior to the governor signing the legislation upon which the referendum is being requested.

IV. Plaintiffs State a Claim in Count II

The State also fails at the basic analysis on a motion to dismiss with Count II. The question before this court is not the substance of the law, but rather, assuming all of the allegations in the amended petition are true, do Plaintiffs state a claim for a declaratory judgment. They most certainly do. There is a present controversy (whether signatures may be gathered prior to approval of the sample sheet form); a plaintiff with a legally protectable interest at stake (Plaintiffs as the proponents of the referendum petition have a protectable interest in the success of the referendum petition); (3) a controversy ripe for judicial determination (the referendum process is now occurring and the question about when the signature gathering may occur is ripe) and (4) an inadequate remedy at law (there is no other remedy)." *CITE*.

Instead, Defendant skips right to the merits of Plaintiffs' second claim, further demonstrating that there is certainly a substantial legal question as to the interpretation of the statute in light of the constitutional right to the referendum.

The Constitution requires that "[r]eferendum petitions [are] filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded." Mo. Const. Art. III, §52(a). This is easy enough to understand. The General Assembly is free to pass legislation at any time during a legislative session. Depending on when the General Assembly passes the legislation, a proponent of a referendum may have more than ninety days to gather signatures. This is what happened when the General Assembly passed so called "Right to

Work" legislation in 2018. The General Assembly passed that legislation in February of the regular session and did not adjourn until May.[1] Therefore, the proponents of the referendum petition on "Right-to-Work" had the entire time during the legislative session *and* ninety days after the adjournment of the session to collect signatures.

Defendant says that "the constitutional right of referendum does not depend on when in the legislative session the General Assembly passed the legislation." Mot. to Dismiss at 38. That is correct and proves Plaintiffs' point. Regardless of what point in session the legislation is passed, Plaintiffs have *at least* ninety days to gather signatures. Proponents in other situations may have more (like with so-called Right to Work), but they can never have less than 90 days. This is a safeguard to prevent the general assembly from shenanigans to foreclose the referendum right on regular legislation.

Much of Defendant's argument relies on a fundamental misreading of the decision in *State ex rel. Upchurch v. Blunt*. That case is not a blank check for the general assembly to regulate the referendum process or for a reading that ignores the *time limits* in the constitution. Rather, the Court there made clear that "[a]ny limitation of the period authorized is in conflict and invalid. That part…that limits submission to the secretary of state of a sample petition to one year prior to

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1 https://www.senate.mo.gov/17info/BTS_Web/Actions.aspx?SessionType=R&BillID=57095277; Mo. Const. art. III, §20(a).

the final date for filing the signed petition with the secretary, and thereby shortens the time authorized by the constitution during which the constitutional amendment petition may be circulate for signatures, is invalid." *Upchurch*. Apply *Upchurch* to the situation at bar requires a simple reading of the constitution—there are 90 days to gather signatures. There may be more time, but there cannot be less. Defendant relies on a convoluted argument that ignores the plain pronouncement in Section 52(a) of the time frame for signature gathering. This Court should reject that.

Finally, the State makes purported policy arguments for why signature gathering must wait for the Secretary's approval as to form. These arguments are without merit, most fundamentally because they are forwarded with the purpose of limiting the people's fundamental right to a referendum. And more specifically, there is little confusion with referendums (much less so than initiative petitions). The legislation itself is attached to the referendum page. People know what they are signing. They do not need the Secretary to approve a form of a signature page to intelligently exercise their fundamental rights.

CONCLUSION

This case is set for trial in just a few days. The Court should hold that trial and allow the parties to present their evidence and arguments on the merits. Although the Court should deny the Motions, if the Court has any doubt, the Court certainly has the ability to address all of the issues raised by the Motions to

Dismiss in a final judgment. That is the most efficient and fair way to approach these issues.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically via the Missouri Case.net e-filing system, which notified all counsel of record on this 4th day of December, 2025.

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