RELATORS PEOPLE NOT POLITICIANS, Et Al. PETITION FOR PROHIBITION

EXHIBIT 21

IN THE CIRCUIT COURT OF MISSOURI

COLE COUNTY, DIVISION 4

HONORABLE CHRISTOPHER K. LIMBAUGH

PEOPLE NOT POLITICIANS,

Plaintiff,

vs.) Case No. 25AC-CC07128

MISSOURI SECRETARY OF STATE DENNY HOSKINS,

Respondent.

TRANSCRIPT OF PROCEEDINGS

12-04-2025

On December 4, 2025, the above cause came on for hearing before the HONORABLE CHRISTOPHER K. LIMBAUGH, Judge of Division 4 of the Circuit Court of Cole County, Missouri, at Jefferson City.

Candice K. Perez, Certified Court Reporter

Official Court Reporter, Division 4 19th Judicial Circuit, Cole County

APPEARANCES

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12-04-2025

THE COURT: Court calls 25AC-CC07128 People Not Politicians versus Hoskins. Would the attorneys announce themselves and whom they represent?

MR. HATFIELD: Your Honor, Chuck Hatfield and Alix Cossette for the Plaintiffs, People Not Politicians and Richard Von Glahn.

MR. MILLER: Good morning, Your Honor, Graham Miller for Secretary Hoskins.

MR. ELLINGER: Good morning, Judge, Marc Ellinger on behalf of Intervenor Put Missouri First.

THE COURT: And we are here today to take up several pretrial motions. We're going to proceed in the following order: A motion to reconsider intervention, a motion for protective order, a motion to strike, a motion to compel, and then two motions to dismiss -- well, cross-motions -- or no, I'm sorry. Both motions to dismiss, both from respondents. Is that correct?

MR. ELLINGER: I think so, yes, Judge.

THE COURT: Yes.

MR. HATFIELD: It sounds like a good plan, Judge.

THE COURT: All right. Well, I guess we'll figure it out as we go. This case is set for trial this coming Monday. The Court will note for the record; however, we will go ahead and take up these motions right now. So let's proceed with the

motion to reconsider intervention.

MR. HATFIELD: Thank you, Judge. Your Honor may remember from a previous conversation, this case has actually been set for trial three times; twice by Judge Green and once by Judge Walker. Due to some changes of judge, we are here and set for trial on Monday.

In the -- on the night before the second trial, before the setting before Judge Green, there was a motion to intervene that was filed that evening with a motion to shorten time. It was presented to the Court and he granted it. We did not have a lot of time, and I will confess to the Court that although -- that although Ms. Cossette had read it, I didn't read the motion that -- before we went in that day. Judge Green just granted it. The transcript will show there wasn't a ton of argument on it. My main objection was that we were ready for trial. Judge Green granted it, and then you know there were some other issues that we're actually going to get to today.

So that's why I want you to reconsider because after going back and reading the motion to intervene, I don't think that the intervenor actually has a right to be here or a protectable interest. We didn't really get into any of that with that Judge Green, understandably because we were moving really quickly, so I just wanted to bring that to Your Honor's attention.

I have -- so this is the -- if I could approach, Judge.

THE COURT: You may.

MR. HATFIELD: This is the motion to intervene that was filed, and I have highlighted some things I wanted to talk about. So on the petition, as Your Honor knows as you've -- you've looked at some of the pleadings in the motion to dismiss, our petition is really pretty straight forward. Number one, did the Secretary of State improperly reject as to form, a petition page that was submitted. And we think under 536.150, we're entitled to review that decision. Did that form comply with the statute and should it have been approved. That's what we're -- that's what we're alleging in count one.

In count two, we want the Court to look at the fact that the Secretary announced publicly a standard that he says he is going to apply to signatures that end up being gathered. And that standard we believe is wrong, and we want Your Honor to say that that's an incorrect standard. So we will talk a lot about that I'm sure within the next hour. So here is the motion to intervene, and if Your Honor can flip over to page -- well, it doesn't have what page numbers -- it's paragraph 21. As you know under the rule for intervention, the plaintiff has to show an interest, and they have to show that the practical matter of that interest is going to be repeated. The plaintiff

-- I'm sorry. The Intervenor, as they're required to do, filed a verified petition, explaining what their interest was and what they want to protect. Paragraph 21, which I have highlighted, if this Court were to overturn the Secretary of State's finding and certified referendum for the ballot, Intervenor would be required to immediately deploy substantial financial organizational resources. We are not requesting that. We are not asking the Court to certify this referendum for the ballot at all. It's not alleged anywhere, it's not part of our request for relief. There are other paragraphs that Your Honor could read.

Paragraph 25, which I have highlighted, "A judicial determination that nullifies the secretary's invalidation of signatures would negate or materially diminish the value." So you know both parties have filed a motion to dismiss, saying that we're not ripe because there hasn't been a validation of signatures. That is true. We're -- we're not asking the Court to rule if signatures are valid or not valid. We're asking the Court to declare if the form we submitted complied with the statute; that means you can gather signatures, and that's really important.

And then second, we are asking for a declaration. And this may be -- you know, kind of where the legal issue is. We are asking for a declaration of the criteria that the Secretary announced they will apply, are wrong. But

we're not asking you to say how these signatures count or what signatures don't count. I mean that's not part of what we're doing. I did want to point out that on -- maybe on the next page, page 29, the Intervenor's interests are political, operational, and motion-specific -- this is paragraph 29. Then in paragraph 43, which I have also highlighted, Intervenor's sole purpose is to prevent the information from appearing on or being approved through the ballot. I get it, I understand. Intervenor does not want this information to go to the people. They certainly have the right to take that position, they certainly have the right to advocate about that, they certainly have the right to bring lawsuits later about whether it should be on the ballot, and all of that. I -- I understand that -- that they want to do that, and I accept, and I think the Court must accept, that their sole purpose is to keep it off the ballot.

That is not what we're doing in this case, and they don't have any interest to be protected here because we're not here to decide whether this goes on the ballot or not. That is it. Thank you.

THE COURT: All right. Thank you. Is there a response to that?

MR. ELLINGER: Yes, Judge. Thank you.

I think their own amended petition, which is the offer they'd gotten over here, kind of satisfies the issue here. And -- and just to make this thing a short and brief discussion, intervention particularly in the ballot cases is liberally granted. We filed a motion, there's some case law and I'm not going to restate all of the case law. I -- I would simply look at paragraph 25 on our motion to intervene, which opposing counsel has highlighted, which talks about the validation of signatures. And that I think there is no question that when you're an opponent to a measure, anything that would overturn the potential in validation of signatures has a deleterious and negative effect on your ability to pursue a campaign, particularly in light of the fact that we wish not to have this on the ballot, but if it is on the ballot, we wish to defeat it. But if you look at the amended petition -- and apologies, Judge, I do not have copies of it, but I will point out the paragraph. In the prayer of relief paragraph, which is on page 12, paragraph F, they specifically ask for an order from this Court to prohibit the Secretary of State and anyone acting in concert with him for rejecting signatures gathered on plaintiffs' referent petition because these signatures were gathered prior to the approval referenced in the sample sheet. That is exactly what they're asking for.

They're asking for an order of this Court to effectively confirm the validity of signatures; not whether they are registered voters, not whether it's actually the person's signature, but to confirm the validity of signatures. That in it of itself on their own pleadings is the basis by which an opponent should have -- has an interest and has a right to be in the matter.

We've gone through our motion to intervene, we've laid out all the factors that are required for intervention. A political opponent and a committee that has been newly formed in the state of Missouri has the right to intervene, has a legal and protectable interest, has -- that interest would be impaired in this litigation; and as a result, we believe that intervention was appropriately granted by Judge Green, and that the motion to reconsider should be denied.

THE COURT: The motion to reconsider intervention is denied. Okay. Let's at this time take up the motion for protective order.

MR. HATFIELD: Judge, can I suggest we just do the motion to strike real quick.

THE COURT: That's fine with me.

MR. HATFIELD: So the issue on motion to strike is there was a certificate of service filed on Casenet that certifies some discovery that -- I think it's fair to say was

referring to a different case. I think that's what it was. When I -- I -- I may not have articulated myself very well in the motion. What I wanted to strike was whatever discovery was originally certified to us, which we never got. And I think the Plaintiffs' response -- or the Intervenor's response makes clear that the thing that they certified they served, they -- that's not what they served. So I -- I don't know that I need you to strike if they are agreeing that -- that what they served was the documents that we are here on a protective order about. I -- I think maybe we have solved that.

MR. ELLINGER: The documents that we are here on the protective order -- what were or are the documents which the certificate sort of had some errors in it -- initially there were errors in it. We filed an amended and corrected certificate of service. They are the documents that have been responded to with objections that we're here on the motion for a protective order and a motion to strike on. They're the ones we talked about in court two weeks ago, and -- and set the date for a response on the discovery that they are issuing to us.

MR. HATFIELD: And so the discovery we have, the certificate was filed out of time under the rule. But what I wanted to strike was whatever other discovery that we never got.

MR. ELLINGER: I don't know if that is --

MR. HATFIELD: Well --

(Simultaneous speaking.)

THE COURT: Okay. I need one person speaking at a time and I need you guys to speak up.

MR. ELLINGER: -- other discovery, except for the discovery in which we had sent to you.

MR. HATFIELD: I --

MR. ELLINGER: -- that.

MR. HATFIELD: I accept that on-the-record, that there wasn't this discovery that went in --

MR. ELLINGER: -- there was not.

MR. HATFIELD: -- that was certified as served, then filed with this Court.

THE COURT: So do you still stand on your motion to strike?

MR. HATFIELD: Yes, but as a practical matter, with the assurance we got. I mean I -- I agree. We got some discovery in this case and we responded to it. We answered most of the interrogatories, we objected to I think all of the requests for production we got.

THE COURT: So I'm inclined to deny the motion to strike. And if there is some other discovery issues, you can always renew that motion and we can take it up prior to trial.

MR. HATFIELD: Thank you.

THE COURT: Okay. So I'm going to just deny that for now, and then the motion for protective order.

MR. HATFIELD: Yes. So, Judge, on the motion for a protective order, this is plaintiffs' motion related to a request for production of documents. And Your Honor has I think exhibits to the motion for protective order and the -- the motion to compel that show you what those requests were.

Just as a little bit of background, some of those requests were the stipulation that we entered into with the state in preparation for the trial that I told you about. And as is indicated in our suggestions in support of the motion for protective order --

MS. COSSETTE: Suggestions in opposition to motion of compel.

MR. HATFIELD: -- and suggestions in opposition of the motion to compel. We attached an e-mail with Mr. Seidleck as co-counsel for the Secretary of State. We had asked for some stipulations, and the state had generally agreed to those. And then the state said to us, as is reflected in e-mail, "Would you please tell us how many signatures you've already gathered?" This wasn't something that we requested; they asked for it. We're doing stipulations and we said, "Sure. That sounds fine." So we stipulated to a number. We -- we didn't really need that stipulation, but the State wanted it. Since then the Intervenors have objected to those stipulations. The parties have now entered into new stipulations, everybody has signed them, they were filed with the Court yesterday or this

morning --

MS. COSSETTE: Yesterday.

MR. HATFIELD: -- there are new stipulations. Those stipulations talk about the fact that petitions are in fact being circulated. So that particular stipulation that -- again, I didn't ask for it, the State wanted it, has now been withdrawn. So that's how the stipulation about how many signatures were gathered came about, and that is the subject of at least some of the request for production of documents, not all of them for sure. Now what the Intervenors want is copies of actual signed petition pages, and there would be -- if -- if we were going to put on evidence of the hundreds of thousands of signatures, which I'm not planning to do, that would be a lot of documents I guess. And -- and they're asking for it. They asked for it on the eve of trial. And by the way, Judge Green said, "Let's go ahead and go to trial and I'll take up the issue of whether you need discovery after. I'll leave the case open, let's put on evidence, and then I can rule on whether you're entitled to additional discovery." That is when intervenors took a change of Judge. So that's how Judge Green was going to handle this, but here we are.

So let me tell you about it just a little bit.

These -- this is a request for petition pages and in some case contracts about petition pages that have actually been signed, but not turned in yet. So one of the first

issues we raised -- well, the first issue is whether any of this is relevant, but it's -- it's been interesting to me in the past -- past few days, the United States Supreme Court is currently considering a case about a subpoena from, I believe it's the state of New Jersey, to a series of what I'm going to call a crisis of pregnancy counseling centers or -- or basically pro-life groups where the state has subpoenaed their donor list. The issue is that they have a First Amendment right to keep those things private, and the -- the Supreme Court is taking that up right now. There's a case called Alabama versus NAACP, which we talk about in our pleadings that says we've got a First Amendment and Associational right to do things like gather signatures and to keep that stuff confidential. And we're going to turn them in at some point, and when we turn them in, they'll be public records. There's no doubt about that, but right now what they're asking for is these signed petition pages that have not been turned in.

And by the way, it may be that not all of them are turned in. It might be that our client looks at some pages and says, "You know what, we're not going to turn those in because the circulator didn't sign it right or whatever it is, but we're not going to do it." So that is what they want. The most important thing is -- and we think there's a First Amendment problem with that, and

that we have a right to confidentiality of all of that information; but -- but more importantly, it is irrelevant to this case. It -- it doesn't matter if those particular signatures are valid or invalid.

Now Mr. Ellinger pointed to you a portion of our petition, exhibit -- I'm sorry -- request for relief number F. And you know, Your Honor can read. What we are asking for in count two is to prohibit the Secretary of State from rejecting signatures gathered because of those signatures were gathered prior to the approval of the sample sheet. That is true, but the Secretary can reject signatures for all sorts of reasons; I mean if the signatures don't match, if the people aren't registered voters, they can move all of that. All what we are asking Your Honor to do is -- and -- and this is something that we need to talk through in the motion to dismiss because it is count two -- the -- all we're asking Your Honor to say is that particular reason is not the sole basis on which you can reject a signature. We're not asking you to rule that any particular signature is valid. And I for the life of me can't understand how it matters whether Chuck Hatfield had signed one of those petition pages or not. It -- it -- it is irrelevant. If there are signatures out there -- I mean we have stipulated that the petitions are being circulated. If there are signatures

out there, then the whole issue is can the Secretary reject for that reason. That is all we are here about. We stipulated to everything that we think we need to try the case. And by the way, we stipulated everything the Intervenor asked us to stipulate to. They -- they -- we said, "What do you guys want?" And we now have stipulations including everything they asked us for, yet they are still here asking us for discovery on these.

Again, referring back to the Intervenor's motion to intervene, their sole purpose is to keep this off measure off the ballot. They exist for the purpose of campaigning against the measure. We get that and we certainly understand that, but that needs to happen outside of the courtroom. What -- what we think is happening here is an attempt to get access to these signature pages to get a head-start on a signature challenge later on. They -- that's the only reason you need all of these pages and all of these signatures.

And finally, it is extremely disproportionate to the needs of this case, even if Your Honor thinks for some -- for some reason we need to go through hundreds of thousands of signatures in order to make these fairly early determinations about whether the forms complied with the statute or whether the Secretary has announced the wrong criteria, even if need to go through all of those.

Again, we've been set for trial three times and we're set for trial on Monday. It is extremely burdensome to try to get together all of this information if -- and we'll get to this in the motion to compel -- if I can even identify exactly what documents they're talking about. And I'm getting ahead of myself; but again, the state asked us to stipulate, we came up with a number in good faith based on information that plaintiff Von Glahn had. We didn't actually go through and identify exactly which pages those were. So even if I could identify them, the burden to get all of that ready, and again we have a trial on Monday, I mean it's impossible. So it's disproportionate to the needs of the case.

We think you should grant a protective order because it's irrelevant to the case, it's burdensome and disproportionate in the context of this case, and ordering production that would violate my clients' First Amendment rights.

THE COURT: Okay. Thank you. Is there a response to that?

MR. ELLINGER: Yes. Thank you, Judge.

Judge, I think probably the way to make this easiest and most understandable is to just start off by understanding the concept of discovery, and in litigation. a plaintiff files a petition, they make factual, legal

obligations. The Plaintiffs have done that in this case. They filed an amended petition and made factual and legal allegations. They -- they drafted their own petition, nobody -- I presume nobody else did; they drafted their own petition; they filed their own petition; they've represented to the Court that the factual allegations contained therein are true; and as a result in the normal course of litigation, you are entitled to discovery on those factual allegations. Intervenors filed discovery and that discovery is focused on factual allegations contained in the petition.

So let's just start off with the petition. Paragraph 57 in the petition says, and I quote, "To date," and that's the date in that the petition -- in which the petition -- petition was filed, "Plaintiffs' campaign has gathered more than 20,000 signatures of Missouri voters supporting referent of House Bill 1." Now if you look at their claims for relief, their claims for relief include that no one can reject -- the Secretary of State or anyone else can reject or invalidate signatures that were collected before the form was approved. So they have put into question what those signatures are, and they have put into question on their own volition, how many signatures they argue were gathered at that time. The joint stipulation of facts, I would point out, actually supports

issuing discovery or allowing the discovery, denying the protective order.

And -- and again, Judge, there's also a motion to compel, and we've kind of overlapped as you can tell. It -- it really mitigates towards doing that because they have added additional factual statements into the record. Now that has been withdrawn from the record now, but those factual statements are out there and some parties thought they were relevant; relevant enough to stipulate, relevant enough to put them out in a pleading, and relevant enough to allow for a new part.

So let's -- let's deal with the signature pages because I think they're the most relevant ones to the argument that you just heard. They allegedly have 20,000 signatures. They have stipulated to put out there that they have 32,600 signatures before the Governor signed the bill, and another 70,200 signatures after the Governor signed the bill, but before the Secretary of State approved the petition as to form. First of all there are three petitions -- four patients in question in this case. There is -- well, it's 2026 is the reference term. There is 001, 002, 003, and 004. So 001 and 002 were filed on September 12th, which is the date in which the legislature adjourned; then there was 003, which was filed on the 15th, three days later on the Monday; and then there is

004, which was filed later there on, and has been approved by the Secretary of State for circulation. So any -- any signatures that are related to 004 are irrelevant. Any signatures that are after -- that were collected after the approval date on Petition 004 are irrelevant. We haven't asked for them, they are not in question.

The question in this case has to do with signatures that were gathered on 001, 002, and 003. They put those into question, they have asked for relief on those, they made a factual allegation about it. We've simply asked for the evidence to backup their factual allegation. The only thing they have responded is in their interrogatory saying, "Well, it was a good faith estimate." Well, they put the number in the pleadings, we are entitled to be able to see that. They pledge the fact, they've used this information of our stipulation. Their own actions show that they believe it's relevant.

Why would you file irrelevant factual pleadings? That violates -- that violates the concept of the pleading used with the state. They have asked to have signatures validated or collected before that date. Again, not to verify this -- whether they are registered voters or not, but that they can't be rejected for that purpose. They've asked for that relief, and we don't even know what the scope of that relief is. It could be 500 signatures, it

could be 5000 signatures. They have reported that it is well over 100,000 signatures. I think we are entitled to find out what that scope actually is, and then identify which ones they are because they are the ones that are in question in this case. They are the ones that have -- they put in the question in this case.

You know, we -- we need have that discovery so that we can pursue our trial strategy to determine what the -- what the realm of what your scope of relief is going to entail, and what the effects of that are, and to be able to properly examine any witnesses that are called.

He has raised the NAACP case, and then I'm not familiar with the Planned Parenthood case out of New Jersey he is referencing from the Supreme Court, but it -- but it sounds to me like it's just like the NAACP case. State action being taken to obtain internal records -- state action being taken to obtain internal records. In the NAACP case, that was the case where the state was trying to get membership lists to the NAACP. The state was taking action. That is not the case we have here. The Court ultimately held out that in state action, those are our internal private records that are subject to certain protections. We don't have that situation in this case. So first of all, there is no state action being taken here. The action is actually being brought by the

plaintiffs. They put these signatures into question.

I think if you also look at the Buckley case and the MIRA case, which are cited in his -- in the pleadings that are before you, those cases also dealt with affirmative government action. That is not the case that we have here. They put their claims forward again. These are not totally internal documents -- excuse me. Opposing counsel even noted, that eventually these will be filed. They are public facing documents. They also go to the question of is there an actual claim or cause to be adjudicated here. That will get into our motion to dismiss later on, but that is a -- that's a legitimate issue that will be put on at trial if the motion to dismiss compiled -- filed. For example, they haven't filed any pages, and they might not file any pages. Well, if they haven't filed any pages and they don't file any pages, there's no claim at all. The entire case is moot. If they do file the pages, they're publicly available; yet they have asked for a preliminary advisory opinion now that they can't be invalidated for that purpose. We need to know what the scope of that is. We need to know the scope of that for the relief they've asked for in this case. If you look at the case law on discovery in Missouri, and we've briefed it all and we've got many, many pages of briefing here, you'll see that the scope of discovery is factual allegations that are pled

are subject to discovery. And that's all we're asking for in this case is discovery on the allegations that the plaintiffs themselves have put into question in this case.

And for that reason, the motion for a protective order should be denied, and the motion to compel should be granted.

THE COURT: Thank you. Mr. Hatfield, who -- for the signature pages, for lack of a better term, that have not been turned in -- I know you mentioned that there were some if not plenty of those -- who possesses those documents?

MR. HATFIELD: My client.

THE COURT: Okay.

MR. HATFIELD: In most cases, my client. They're -- they're -- I'm not arguing that they're not in their position. I'll just put it that way. They're in various states of being kept.

THE COURT: Okay.

MR. HATFIELD: So there may be other people that have some. Actually, let me withdraw -- withdraw that, Judge, just to be really clear. I think what he's asking for is historical information that at a point in time that was some weeks ago, and my client has -- has those.

THE COURT: Okay.

MR. HATFIELD: Let me more -- let me be very clear on that.

THE COURT: Okay. Thank you for that. As to the motion for a protective order and to compel those two motions, I'm going to take those under advisement. I'll have some type of order out today. I do know that time is of the essence depending on which way it goes, but the parties will know where I'm going with that here shortly.

MR. HATFIELD: Judge, one sentence. If you -- if you choose to require production, we would ask that you consider the attorneys eyes only order.

THE COURT: Actually that was going to be one of my other questions. If I do order the production, is there any opposition to me putting an order that would essentially be a protective order on that? Yes. I guess how you put it would be attorneys' eyes only.

MR. ELLINGER: No objection to it being covered as a protective document for purposes of --

THE COURT: Okay.

MR. ELLINGER: -- to anybody outside of --

MR. HATFIELD: Or used for any other purpose --

MR. ELLINGER: Or used for any other purpose outside of the scope of this litigation.

THE COURT: Okay. Well, depending on which way I go, I will certainly consider that request. Okay. I think this brings us to the motions to dismiss. Let's go ahead and take those up. I'm not sure who filed the first motion to dismiss,

but I'll let you all decide --

MR. ELLINGER: The state -- the state did by a day I think.

THE COURT: Okay. Well, I will allow the state or the movant to go first.

MR. MILLER: Good morning, Your Honor, may I please the Court?

I'm Graham Miller on behalf of Secretary Hoskins.

First this Court should dismiss plaintiffs' petition as non-justiciable. Plaintiffs' count one, which claims the Secretary illegally rejected their sample sheets, is moot.

Plaintiffs' count two, which argues the Secretary must count signatures collected prior to approval of the referendum spreadsheet is not to ripe.

Alternatively, if this Court finds there is a judicial controversy, this Court cannot grant relief on plaintiffs' claims. Under the Missouri Constitution, he can only have a referendum on an enacted law. There's no law without the Governor's signature. Thus, the Secretary properly rejected premature sample sheets and no signatures can be counted before there is a valid referendum petition.

Beginning with justiciability, plaintiffs' first count is planning moot. When the Secretary approved as to form plaintiffs' most recently submitted stamp sheet on

October 14, the case became moot. The Plaintiffs -- as plaintiffs have admitted to you previously, this petition is identical to previously submitted sample sheets. Plaintiffs have their requested relief and there is no more effectual relief this Court can offer. A decision here is unnecessary. This -- Missouri courts do recognize a public interest exception. The issue must be of general public interest, will recur, and will evade appellate review in future live controversies. This public interest exception does not apply here. Assuming this issue is of general public importance, plaintiffs nowhere have shown that this issue has ever occurred before, and much less that it will occur. As a Western District said in Jackson County Board of Election Commissioners ex rel. Brown versus City of Lee's Summit, plaintiffs must point to circumstances, which take the possibility or recurrence out of the realm of pure speculation.

Even then, plaintiffs have not shown this controversy is of such limited duration that it will evade appellate review and future controversies. For example in ACLU of Missouri versus Ashcroft, both this Court and the Western District issued rulings within 32 days of the ACLU filing its petition. This is less than the 45 days the Governor has to sign the bill after the adjournment. Plaintiffs have never requested emergency relief, so it would now be

incongruous to allow them to proceed under a theory that this controversy would evade -- evade appellate review.

Turning to signatures, plaintiffs' count two is not ripe. Plaintiffs have not filed their referendum petition, so any fear about future signatures turns on a hypothetical, future injury. Any number of events could happen. Plaintiffs could fail to gather the requisite number of signatures, plaintiffs could gather a sufficient number of signatures after the Secretary's approval that any signatures before are irrelevant. Plaintiffs' referendum petition could be ruled a violation of the U.S. Constitution's Elections Clause in a pending federal case, or plaintiffs could submit signatures gathered before approval and need them to meet the Constitution's signature threshold. But how these future events unfold is entirely spectacle and it is premature for this Court to make a decision.

Even if this Court disagrees and decides plaintiffs' claims are justiciable, plaintiffs fail to state a claim on which this Court can grant relief. Beginning with plaintiffs' claim that the Secretary improperly rejected the three stamp sheets submitted before the Governor signed House Bill 1 into law, the Missouri Constitution and statutes only allow for a referendum of laws, not on un-enacted bills.

Statutes implementing the referendum process are

presumed to be constitutionally valid. As the Missouri Supreme Court has long held, a statute is only unconstitutional if it interferes with or impedes the right of referendum.

Starting with section 116.030 under which plaintiffs bring their claim, it effectively defines what is sufficient as to form. Section 116.030 explicitly codifies that it only permits a referendum on a law. This is in two places. First, it permits a referendum on, quote, "Any law passed by the general assembly" end quote. Two, in filling out the form, there is a blank spot for the petitioners to file a, quote, "title of the law," end quote. This Court must give effect to the General Assembly's chosen words.

Other statutory clues reinforce this requirement. Section 116.050 requires a petitioner in filling out his referendum petition to include all sections of existing law, which would be repealed. A bill is not yet an active law, so it cannot be repealed. As the statutory text of Section 116.030 requires a law, the only way plaintiffs can have a valid claim is by showing that the statute interferes with or impedes the right of referendum. Beginning with the right of referendum in Article 3, Section 49, it says, that with a couple of exceptions, the people reserve the power to approve or object by referendum any act of the general assembly. So this dispute boils down to whether an act as used in section 49 is a bill or a law. Constitutional text and longstanding

precedent show that it is indeed a law.

Section 49 reserves the power to reject laws by the initiative, whereas the referendum language is to reject acts, but the initiative provides the people that positive power to adopt legislation while the referendum is the negative check on the legislature's power. So it would make little sense to allow, for the rejection of only laws by initiative, while allowing the rejection of bills by referendum. The other referendum provisions confirmed as understanding.

The first section -- sentence of Section 52A, establishes how a law can be referred to the people: A submitted petition with sufficient signatures or a referral from the General Assembly. But notably, it excepts, and I quote, "Laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations." The use of laws is meaningful. It would make no sense to except emergency or appropriations laws, but allow a referendum to proceed on an emergency or appropriations bill, prior to it becoming a law.

Section 52(a) does use "bill" in the second sentence about when a referendum petition must be filed, but "bill" is part of the restrictive clause, which passed the bill on which the referendum is demanded.

The -- the restrictive clause gives essential information about time requirements. So it stands to reason

that the Constitution would link the time of submission with the General Assembly's part of the legislative action passing the bill. It does not stand reason that the use of bill here makes a synonymous act. Only permitting a referendum on a law harmonizes Section 52(a) with Section 49.

And precedent from when the referendum provision was originally adopted confirms that "An act of the General Assembly is a law." In 1921 in State ex rel. Lashly v Becker, the Missouri Supreme Court held that the referendum provision, quote, "preserved", end quote, the Governor's role in passing legislation. As the Court said, the legislative act referred to the people whose, quote, "The approval and veto power of the Governor," end quote. The 1945 Constitution preserved the referendum provision in a materially identical form, and this early understanding has not shifted as the Missouri Supreme Court stated in State ex rel. Moore versus Toberman, no one will contend that the old phrase was brought forward with a different meaning. And recently the Missouri Supreme Court again recognized the referendum provision deals only with laws. In No Bans on Choice, the Supreme Court commented that a referendum can be benefited -- benefited when, quote, "The challenged legislation was signed by the Governor 113 days before final adjournment of the legislative session," end quote. Notably, the Supreme Court did not say that the campaign benefited when the General Assembly passed the Bill.

It said, "Signed by the governor."

Therefore, an act of the General Assembly means an enacted law, the Secretary of State properly rejected plaintiffs' referendum petitions submitted prior to enactment, and plaintiffs failed to state a claim.

Shifting to count two over approval of signatures, it also fails to state a claim. I will divide the signatures into two groups: Pre-enactment and post-enactment, but still pre-approval. Plaintiffs suggest that Section 52(a) guarantees them at least 90 days to gather signatures, but this is wrong for three reasons: One, that is not what the plain language that Section 52(a) says. Section 52(a) says, "Referendum petitions shall be filed with the Secretary of State not more than 90 days after filing adjournment." Plaintiffs reading would be both, not more than 90 days, to at least 90 days, and then also change Section 52(a) language of filed to gather signatures.

Two, plaintiffs' reading of disharmonized constitutional provisions. The Western District and ACLE of Missouri versus Ashcroft, harmonized Sectioned 52(a)'s90 day final deadline with Article 3, Section 29, which prevents any law of taking effect until 90 days after adjournment. As the Western District said, these time requirements are, quote, "consistent," end quote, with one another.

Three, that the General Assembly passed House Bill 1

on the last day of the legislative session does not change the constitutional requirements. As the Missouri Supreme Court recognized in No Bans on Choice, delaying the passage of legislation until the end of the legislative session does not alter when a petition is due. Plaintiffs' aspirational interpretation must give way to the Section 52(a) actual plan meaning.

Turning to other pre-approval signatures, Section 116.332 provides the filing signature and collection requirements for a referendum petition. It states, and I quote, "Before a referendum petition may be circulated for signatures, a sample sheet must be submitted to the Secretary of State," end quote. Logic dictates that this means the petitioners must have a valid spreadsheet on which they collect signatures. In ACLU of Missouri versus Ashcroft, the Court called this time period when the Secretary is reviewing as to form, quote, "pre-signature collection stage." This makes sense because unlike ballot title certification, the Secretary's approval of the referendum petition occurs at the beginning of the process. As the Missouri Supreme Court recognized in Coleman, this is important for preventing any errors. This early review allows for correction of minimum disruption to the citizens' power.

The Secretary's approval as to form provides a clear line of demarcation. A holding to the contrary could sow

confusion on behalf of Missourians seeking to sign this or a future referendum petition. For example, a voter may sign an invalid referendum petition, such as any of the first three submit by plaintiffs, but when later approached with a valid petition, she may not sign it believing she already had. Her signature would go uncounted; or alternatively, a voter believing the petition he had signed to be -- to be invalid, to later signing a second petition, potentially exposing himself liability for ballot fraud; but also potentially undermining petitioners' efforts to get their measure on the ballot due to not being able to rely on duplicated signatures.

Therefore, this Court should rule that the Secretary cannot account any signatures collected before his approval and that plaintiffs have failed to state a claim.

I welcome any questions this may have.

THE COURT: I don't have any questions at this time. Let's go ahead and hear arguments for the intervenor's arguments for their motion to dismiss, and then I'll let you respond to both motions. How about that?

MR. HATFIELD: Makes sense, Judge.

THE COURT: All right. Thank you. You may proceed.

MR. ELLINGER: Thank you, Judge. And I'll try to be brief, simply because counsel for the Secretary did a very thorough job on going through those items.

First of all just a couple of things to point out. I

think what we're doing here is (inaudible due to trailing off.) This is kind of the definition of seeking advisory. There have been no petition pages submitted. Now they might submit them, they might not submit them. We don't know, and we don't actually have any control over that. But if they do submit those petitions, there's a specific statutory process laid out in Chapter 116 on what happens. They have made note that the Secretary in I think a press release has indicated that he probably will reject signatures that were collected before the form is approved. That is not a final action. You can't come into court, challenging something that is not a final action. Until there is a final action, all this Court can grant is an advisory opinion, and as Missouri has said forever and every court in the state has said, courts do not grant advisory opinions. I think what's important to note here is -- and I'm going to hand you if you don't mind me approaching, Judge, a couple of statutes --

THE COURT: You can approach.

MR. HATFIELD: Thank you, sir.

THE COURT: Thank you.

MR. ELLINGER: First thing I've handed you is Section 116.120. So Section 116.120 is part of that process, and I just call it the first sentence. The rest of it is a sample of signature verification. When an initiative or referendum

petition -- referendum petition is submitted the Secretary of State, he shall examine the petition and determine whether it complies with the Constitution of Missouri, and with this chapter. I note that the next section -- the next sentence starts with, "Signatures on petition pages that have been collected by any person who is not properly registered with the Secretary of State as a circulator shall not be counted as valid." Section 116.120 is talking about the submission of executed signature pages. Now that goes through a verification process that we talked about making sure that they're registered voters, their signatures are their own signatures, and other form related issues of very important significance. For example, the circulator has to sign before a notary, has to execute his affidavit, and then the Secretary of State makes a decision.

And I'm going to hand you another statute that kind of follows this one.

MR. HATFIELD: Thanks.

MR. ELLINGER: This is Section 116.200. This is particularly important because the Secretary certifies the petition as being sufficient or insufficient. That occurs after signature verification. And I -- I'd point that if you just read 116.200, after the Secretary certifies the petitions certifies the petition as sufficient or insufficient, any citizen may apply the Circuit Court of Cole County to compel

him to reverse this decision. It is an expedited review. They have to bring their action within ten days. The Court effectively has to put it at the top of the docket. We understand that elections have time frames.

This is an expedited process that's been done in this court many, many times over the years. The Cole County Circuit Court to its credit, has always been able to escalate these cases, get them in the top of the docket, get them adjudicated in time for if the decision to reverse is to put it on the ballot, to allow it to be on the ballot. And if the decision to reverse is taken off the ballot, to take it off the ballot before elections. That is the process. That is what's trying to be subsumed here. They're trying to jump ahead of this process.

We're trying to get an answer now, when the statutes say you don't get an answer now. You can get an answer after you submit your signatures, after they go through the verification process. And guess what, then you get to find an answer to these questions. And that's particularly important in this case because the Secretary hasn't rejected any signatures. You can't because he hasn't been presented any signatures. He can't reject any signatures.

About an hour ago -- I guess now it's about two hours ago. About a hour before we walked in here, opponents

filed suggestions in opposition to motions to dismiss. And with respect to this issue, they make great hay on the case in this. The Missouri Association Nurse -- sorry for my tongue tie. It's anesthetist.

First, the state ordered registration for the Healing Arts. It's a 2011 Supreme Court case. And in that case, the board had issued a letter saying that they didn't believe that nurse -- I hope you guys can say that better than I can.

MR. HATFIELD: I call it Kunkel.

MS. COSSETTE: I say anesthetist.

MR. ELLINGER: That they didn't believe they were entitled to administer certain drugs. Well, that was all well and good, and then the board did something that was really crooked. The Board started disciplining the doctor for allowing the nurse anesthetists to do that. The Supreme Court said, you know, once you start taking actual action and you started disciplining people, that's a lot of controversy. And we know that not just because the Supreme Court said that in that case.

I was avoiding this. Let me hand you another case, Judge. We cited this in our motion to dismiss also. That's because ten years later in 2021, the court cop came back again and talked all about this. And if you take a look at the highlighted language I provided that's on page

7, it says, "Unlike in the nurse anesthetists case, the conduct," and this is the case where the board of probation and parole had issued a letter saying that if you didn't pay certain fees, that she might be in violation of your probation or your parole and that there might be action taken on that. And I think that's the analysis we have here where the Secretary of State has said, "If you submit signatures that were collected before the Governor signed the bill or before the form was approved, it may be rejected and it could be rejected, it will be rejected." It's not a final decision because you haven't taken any action because he can't take any action. It's a press release. And the Court in here found that you couldn't maintain an action based upon the statement of the Board of Probation and Parole. And actually it talks extensively about the nurse anesthetists in this case, and emphasizes that it was the action in the nurse case -- say that -- of taking enforcement that made it a final decision, a final policy decision, a final actual decision that then allowed the merit to be ripe in the judicial controversy. We don't have that here. We don't have that because we know under Section 116.120, you can't have a final action until the signatures are submitted; and we know that after the signatures are submitted and the process is done, the Secretary issues a certificate of

sufficiency or insufficiency. That hasn't happened and it can't happen because signatures haven't been seen.

Even sometime in the near future, if the signatures are submitted, it can't happen then because they have to go through the verification process first. There is no ability to put the cart before the horse here and say, "Well, these signatures are good or these signatures are bad." We don't actually know what the Secretary of State is going to do. I mean just think about it, Judge. The Secretary of State might change his opinion. It's always possible that he might find they didn't even submit enough signatures in the first place, regardless of the things that are implied. He might determine that they submitted raw signatures; but after verification, there's so many unregistered voters that there's not enough signatures. They may not have qualified in one of the six of the eight congressional districts. There are all sorts of steps that come a long way, and we haven't gone through any of those steps; and yet, plaintiffs here are asking you to jump ahead and tell the Secretary what he has to do before he is even statutorily or constitutionally mandated to make a decision.

And that also goes to the fact that in this case there is no injury. They've already -- the plaintiffs have already admitted that they been collecting

signatures. Where is the injury at? They're out collecting. They haven't filed the signatures, so they can't say that they've been rejected, so there is no injury there. There's no final certification saying that it's not sufficient; there's no injury there. Their injury seems to be this hypothetical that they may be invalidated at some point in the future. It's speculative; it relies on future contingencies that aren't here. Those contingencies are contained in the statutory process that was created by the General Assembly pursuant to the constitutional referendum right because the constitutional referendum right mandates those activities. You can't put a referendum on the ballot without enough verified signatures; you can't do. They're trying to put the cart before the horse here; and for that reason, this case is unripe.

I think the public interest and the public policy also really goes to this. There are time limits that are entangled here. The Court and the General Assembly have recognized over the years that once you file your signatures and you get your certificate, they have to move quickly to give an answer. Any relief you give today would be premature; any relief that you give tomorrow would be premature to that. The appropriate thing to do would be to dismiss this case, let the process work, let

them submit their signatures, and then let the Secretary do his job, let all the election authorities do their job, and then come back to this Court if they are unhappy. Let's move forward then. That's how this process is supposed to go. It's not now, not today. There is no reason to move forward with this action today.

I also finally note, Judge, with respect to this issue, that the Plaintiffs are the ones that have affirmative action that they have to take. They haven't done that yet. I don't know how you can see that you have an injury when you haven't taken affirmative action. The petitions, whether they're valid or not, are a question that's subsumed insufficiency. That is a question for a future date. Let's let the Plaintiffs do their job and submit their paperwork. Let's let the Secretary do his job, review the paperwork, evaluate the signatures and issue the certificate, and then let's come back here to talk about this.

For those reasons, the petition should be dismissed.

THE COURT: Thank you, counsel. Is there a response to that?

MR. HATFIELD: There is, Judge, but that was a short version. So a couple of comments, and then we dive into the -- into the -- as Your Honor probably knows because we all know, there are about six cases, maybe eight cases related to

congressional redistricting right now. There are a lot of different things going on out there. I don't have all of them, but I have a few of them.

I was struck during this argument by two things.

First of all, the Secretary of State argues that the case is not ripe, yet the Secretary of State is in Federal Court in front of Judge Bluestone, asking for an injunction against my client turning in any signatures. They are specifically telling Judge Bluestone that the case is ripe for determination and that he should enter an order; and yet they're here telling you that the case is not really ripe, and there's not really any injury or dispute to anybody. In that case, the Secretary of State says they'll be injured by having processed signatures among many other things.

So number two, Mr. Ellinger argued that under 116.120, the Secretary of State -- I'm sorry 200, the Secretary of State cannot make decisions on things like constitutionality until everybody turns in, and at that point he can then make these decisions and -- and -- and gather all of that. That is exactly the argument I just made to Judge Walker in a case called Johnson versus Hoskins, where the Secretary of State told Judge Walker that they can make these determinations at any time. And in section 116.200 does not limit the time in which they

can make sufficiency. So in Johnson the Secretary of State rejected my clients' petition pages sample sheets as to form because he said they contained more than one subject. We said, "Hey. You're supposed to be doing that later." The Secretary of State says, "No. We can do that whenever." So now they're telling you, or at least the Intervenor is telling you, that they can't do it until the signatures are turned in. So I'd be interested in -- because I'd like to tell Judge Walker what the Secretary of State's position is on this particular issue. Can they make a decision early on whether it complies with the Constitution or can't they?

However, let me just dive into a few things there. We're conflating two counts, and as Your Honor thinks through this, I think it's really important to keep them straight. I do think that the argument on count two about whether it's ripe yet, requires analysis. I think our analysis is the correct one. On count one I don't see how there could be an argument that that's not ripe. My client has an absolute right to submit a sample sheet and receive a determination on whether that sample sheet is sufficient or complies as to form -- I should use that word, not sufficient -- have an absolute right to submit a sample sheet and get a determination on whether it complies as to form with the statute.

I will tell Your Honor that sometimes people submit sample sheets, and then they never even get their signatures on them. They just want to get the process started and see what the ballot title is going to look like. And by the way, that is No Bans -- that's the No Bans case exactly. They actually didn't end up gathering signatures in that case. So when Your Honor reads the case, keep that in mind.

But on count one, the Secretary of State made their determination that a petition page sample sheet is better for us to use, and that the sample sheet is just a blank form -- he said, "This is insufficient. I reject it." We are entitled to have that decision reviewed under 536.150, not contested case review. We are entitled to have Your Honor look at that petition page and -- and make a decision as to whether it is complies with the statute or not. I said I was going to talk about both counts, but I realized I should pause there.

The Secretary of State argues that the case is moot because they did approve a later page that was submitted, and they are identical. They say in the suggestions in support of their motion to dismiss on page 16, quote, "The Secretary's approval of the most recently submitted referendum petitioner, has given plaintiffs what they wanted." And so I'm not sure exactly what that means.

The secretary is saying that he agrees now that the original petition page that was submitted -- well, the one that was submitted on September 15th, that one should have been approved. But if he doesn't agree with that and he stands by his decision to reject that page on September 15th, then we have a lot of controversy and we're entitled to have a review of that. I -- I -- I think we'd argue maybe is we don't have any injuries.

It's not that it's not ripe, but we do have injury because intervenors had pointed out that if we're downgrade on a signature page that didn't comply, then no signatures are going to count. That's -- so that's the injury. So that's count one. I really feel like on count one that there's -- there's really no doubt about. I -- I want to start -- Judge, again, we're not asking you to put this thing on the ballot, we're not asking you to rule on whether you can have congressional redistricting -- that's another case you've got. This is -- this is a dispute about the ministerial actions of the Secretary of State and for announcements the Secretary of State has made. You -- you are not ruling on the final argument.

Count one is pretty simple, pretty straight forward. In No Bans versus Ashcroft, the -- there was an argument about mootness be -- and we just urge you to read that case I guess. What they said there is that you're

entitled to have a decision on -- on that count -- you know, what does the Secretary have to do, what are his administrative duties. There -- it had to do with whether it prepared a ballot summary, which is really similar to what we're talking about here. And in that case, the Supreme Court took out statutes and said that certain statutes are actually unconstitutional. We're not asking you to do that, we're just asking you to rule that under the statutes that exist in the plain reading of them, our form should've been approved. That's count one. I think that's really simple.

I think count two, if I were Your Honor, it -- it requires a little bit more thought. I think Mr. Ellinger has introduced a case at least that is appropriate to talk about there, which is what do you do when the government has announced its position, and it has taken a position that is detrimental to someone, threatens their ability to operate. Can the Court consider that? And in that Missouri anesthetists case, which I call Kunkel because Judge Beetem always called it Kunkel, Judge Beetem said, "Well, you're not right. So what if the Missouri Nurse Anesthetist Board said something. Who cares? You're not entitled to a declaratory judgment." Missouri Nurse Anesthetists, the case we cite, overruled him. It said, "No. You are entitled to a declaration." If you read the

case, and I know Your Honor will, at the time it was filed, there -- there was no action at the time it was filed.

Now it's true that later there was -- there was action and that helps litigate, but -- but you know, there's a whole line of cases I think that we talked about and -- and I love the phrase -- you know, you don't have to wait for the axe to fall.

MS. COSSETTE: --

MR. HATFIELD: You don't have to operate with the Sword of Damocles hanging over you. And I think that -- you know, somebody in the argument said -- you know, we don't give advisory opinions. Well, I said that myself, but the declaratory judgment act under Missouri statutes that Your Honor has, was actually pretty broad. When you look through there, I'm sure you'll see that. So I think count one is quite clear.

On count two this -- the Secretary has announced, and there's a stipulation on file about this, that he considers any signature -- hypothetical signature that may be gathered before a certain time, to be invalid. Now I assume he sticks by that, and no one is here today to tell me that he was misrepresenting about that or that he wasn't sure when he made that decision. We have a pronouncement of the Secretary of State; which again,

they're telling Judge Walker that they have the right to make it this time. And by the way, in that case we are going to be needing a certificate of sufficiency to actually make that determination. In that case they just sent a letter from the Deputy General Counsel, and they say that's sufficient. Here we have a press release quoting -- well, actually two, but a pressure release from officially the Secretary of State. We've got stipulations that the Secretary of State stated, this is the Stipulation 29, in -- on -- in an October 15th press release that, quote, "Under Missouri law, no signature gathered before this approval date, no signatures are valid." We want Your Honor to rule on whether that's a correct statement of the law that's being applied to us. So that is count two. Now let me just make sure I'm not missing anything.

We have alleged that the Secretary of State disproved I guess, a form that complied with state law. So our allegation is factually this form complied and that legally it was in peius with the law, and we want Your Honor to review that decision. That is count one and I think that's straightforward.

Count two we have alleged the Secretary is not going to count certain signatures before -- there is actually a couple of different dates that we have to get through.

One of is -- has to do with the other signature, and the other has to do with when he approves. I think this -- those stated claims -- and by the way, we're trying this case on Monday, Judge.

I -- I think that you should take these motions to dismiss with the case. I mean we all know we are going to the Court of Appeals here on most of these issues. So I think the best thing to do is let us all present our record. If you decide after we present our record that the Secretary of State or the intervener are correct, you can say that in the judgment, that you know they were right all along; but that way we've got a good record, and we can let the Court of Appeals review everything. So that's what I would recommend. On the art of the matter, which Your Honor will have to deal with in the final judgment, we -- we did file suggestions in opposition to the motion to dismiss earlier today. And I'm -- I'm not going to go through all of the legal arguments because I know Your Honor takes all of these pleadings seriously and reads all of them. I just want to point out that the Secretary of State's counsel argued that the referendum can only be on a law. I'm not sure that's correct; but if it is correct, then the question is what does the word "law" mean? And as we point out in our suggestions filed today on page 12, in 1952 there was an attempt to conduct

a referendum on congressional redistricting, and in a case called Moore versus Toberman 250 S.W.2d 701, page 12 and 13 of our suggestions. The Missouri Supreme Court talked about what is a law passed by the General Assembly. And I'm going to paraphrase it for you because we -- we just literally block pasted a huge quote which I know is not considered good writing style; but it was so thorough and so specific, that we wanted to put it all in there. I'm just going to paraphrase for you that the Missouri Supreme Court said in Toberman, "Law passed by the General Assembly is different than law passed by the General Assembly and approved by the Governor; and a law passed by the General Assembly is basically just something that has been agreed, truly agreed and finally passed by the General Assembly," which is what we have here.

And our argument actually, I don't think you have to even go that far, the Constitution says that we are entitled to referendum on, quote, "an act of the General Assembly," so the thing that my client seeks a referendum on, says "act" at the top of the -- whatever session of the General Assembly it was. And we make much arguments about -- we will make arguments to you about how the timing of all of that works.

But sort of to close it out on that particular point, in ACLU versus Ashcroft -- no. In No Bans, the -- the --

the Court talks a little bit about this 90 day window, and that the -- the -- the referendum process -- you really -- you only have 90 days from the date this session ends. And so when you have a bill like we have here that was passed, and then later that day they adjourned, your clock starts -- your 90 days start. And the Secretary's argument, and I guess the Intervenor's argument, would mean that we don't 90 days -- my client doesn't have 90 days because it's 90 days from adjournment. So if you have to wait for the Governor's signature, and then you have to wait for approval of forms from the Secretary of State, I mean I think after this we are down to 60 --

MS. COSSETTE: No.

MR. HATFIELD: So --

MS. COSSETTE: -- 60, and then --

MR. HATFIELD: We're down to 60 I think. I'm not sure where we are right now; but anyway, you shorten the 90 days. What they said in No Bans versus Ashcroft is the statutes that did that in that case on the ballot title, unconstitutional, stricken, void. We're not even asking you to do that. You don't have to do that. If you read the statutes, I think it's pretty clear that my client has 90 days from the date of the General Assembly adjourned, which was Friday September 12, to get their signatures turned in; and there is no action of any these state actors that can shorten that.

They have got a First Amendment right to do that.

Now they -- they -- they may lose this vote. There may be other cases that say you don't have a right to a referendum. That's the Secretary wants the Federal Court to say; fine, it's all outside of this courtroom. All we're talking about here is approving these forms and deciding whether the Secretary pronouncements of the law are correct or not.

Is that everything I wanted to say?

MS. COSSETTE: I think it's everything you wanted to say.

MR. HATFIELD: I'm keeping an eye on the clock, Your Honor. Unless the Court has any questions, thank you.

THE COURT: I do not, counsel. I'll allow time for a brief response to that if there is one.

MR. MILLER: Yes, Your Honor. I'll respond briefly. I'll let intervenor on count two -- or yeah. In Toberman, as plaintiffs have raised, the statute issue is over this Section 29, which begins, "No law passed to the General Assembly," and then Section 49 says, "any act to the General Assembly," so it doesn't do what plaintiff suggests. But importantly in their end of their block quote, it says that no one would contend that the phrase in the old constitute of provision was brought forward into the present with different meaning. We have pointed to the constitute -- or the 1921 in state ex rel.

Ashley v. Becker, which says that the referendum provision is the -- the law, and that preserved the Governor's signature a veto. So I think that takes up Toberman.

No Bans on Choice, the Plaintiffs are correct because if the statutes interfere with the referendum, the process is defined by the Constitution. But here there are Constitutional texts is what is at issue. The Constitutional text can't interfere or impede the Constitutional text. Section 52(a) gives 90 days to file the referendum petition after adjournment. It doesn't say anything about guaranteeing 90 days to collect signatures, so that's in the merits.

Regarding mootness of count one, plaintiffs are -- they have a valid referendum. Secretary of State has approved their last submitted referendum petition, their collected signatures. If this Court says that the first three (inaudible due to trailing off) it's -- they already have their referendum petition. No effectual relief (inaudible due to trailing off).

THE COURT: Thank you.

MR. ELLINGER: Judge, just one thing I really want to say on count one very briefly.

THE COURT: I'm sorry. Can you speak up? The court reporter can't --

MR. ELLINGER: Sure. There's one thing -- there's

one thing I would -- I would like to address on count one very briefly.

So we talked about acts and laws, and then the constitutional provision. And -- and I think what I heard from the Plaintiffs in their response was, well, once the General Assembly does something, that's an act and you can have a referendum, but I'm not sure that -- that they thought out what that actually logically means. I mean -- you know, and it's -- it's probably ludicrous. Does that mean when a bill passes to committee that there's an act in the General Assembly and you get a referendum? No. I don't think anybody can argue that that's the case.

MR. HATFIELD: Nope.

MR. ELLINGER: If it passes one house to the other, I don't think anybody could argue that's the case.

MR. HATFIELD: Nope.

MR. ELLINGER: When it passes both houses in the same form, that seems to be where plaintiffs believe now you have a law that you could do your referendum on.

MR. HATFIELD: Yes.

MR. ELLINGER: But what if you -- what if you are really efficient -- if you're really efficient and you did -- you get all the petitions signed, and their position holds that you can sign the petitions from the moment the General Assembly adjourns; and you get all your petitions signed in 42 days, and

then the Governor vetoes the bill? This bill is struck from the ballot. You can only have a referendum on law, you can't have a referendum on something that's not a law. I mean we already went through the fact that a bill passed by the committee is not a law; a bill passed in one chamber is not a law; and in fact a bill passed in two chambers and has one word different in it, is not a law. If the Governor vetoes a bill, this determines that -- if the Governor vetoes a bill, it's never going to be a law; except under plaintiffs' extension, which is, yes it is because we got our signatures in and they're what we can vote on. They get to vote on a veto bill, which is not a law, when the Constitution says you get a vote on the law. So that's -- that is the only thing that I would say to count one.

With respect to count two, I think the greatest case completed is the Kunkel's case, I think it completely negates it. It does show that affirmative action of a rejection -- in that case a discipline. An affirmative action to discipline is what's required, not press release. Maybe if the Secretary of State, whenever they turn their petitions in, says, "I'm not taking your petitions. No," that would be affirmative action. He shared a press release saying, I think the quote was, "Under Missouri law, the signatures can't be counted." I don't think that's a binding action on the Secretary of

State. I think there's a relief for that. It comes after the signatures that are verified, that's 116.200. The press releases is just that. It is just an opinion, it's a statement. There's no force or effect here. You have to have an action, and with respect to count two, there is no action. And I notice plaintiffs again said that we are set for trial on Monday, but just check the motion of the case. Of course they'd say that, and I would say that too if I knew my case was determined to be dismissed because I don't want to have to file something on the dismissal, I want to file something after I've spent all the time at trial. That's why they asked you to do that. They know that their petition is flawed. They know that their petition should be dismissed. They just asked you to wait until after this trial, and I don't think that's a good basis to deny a valid motion to dismiss in this litigation, and to let the Court of Appeals figure it out if they choose to take it there, or perhaps they won't take it there. So perhaps what they'll do is file signatures, and then they'll take it up under 116.200, which is the right process, and then nobody can object as to whether they came at the right time.

Thank you, Judge. I may answer any questions.

THE COURT: Thank you. Is there anything else we need to put on-the-record?

MR. HATFIELD: Not from plaintiffs, Judge.

MR. MILLER: No, Your Honor.

MR. ELLINGER: Nothing for intervenor.

THE COURT: Okay. Well, I'll put something on-the-record here real quick. As to the motions to dismiss, the Court is going to take those under advisement as well. And as the Court had previously mentioned as to these discovery issues, there should be some guidance on that one way or the other at some point today, so just stay tuned.

MR. HATFIELD: Thank you, Judge.

MR. ELLINGER: Thank you, Judge.

THE COURT: Thank you everybody. We're off-the-record.

(Court adjourned.)

REPORTER'S CERTIFICATE

I, Candice Perez, Certified Court Reporter, hereby certify that I am the official court reporter for Division 4 of the Cole County Circuit Court, that on 4th of December 2025, I was present and reported all of the proceedings. I further certify that the foregoing *57 pages contain a true and accurate reproduction of the ordered portions of the proceedings transcribed.

Transcript completed: 12/05/2025

/s/ Candice K. Perez
Candice Perez, C.C.R
Official Court Reporter, Div. 4