

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

*State of Missouri ex rel. PEOPLE NOT* )  
*POLITICIANS., et al.,* )

Relators, )

v. )

No. \_\_\_\_\_

HON. CHRISTOPHER K. LIMBAUGH, )  
Judge of the Circuit Court )  
of Cole County, Missouri, )

Respondent. )

**SUGGESTIONS IN SUPPORT OF WRIT OF PROHIBITION**

Prohibition is warranted in this case for two independent but related reasons. First, it will prevent disruption of orderly court proceedings by a nakedly partisan Intervenor that had no legitimate basis to intervene in the first instance. A court's role "is not to act as a political arbiter between opposing viewpoints in the initiative process." *Missourians Against Human Cloning v. Carnahan*, 190 S.W.3d 451, 456 (Mo. App. 2006). Yet that is exactly what Intervenor Put Missouri First seeks.

From the moment its untimely motion to intervene was improperly granted, Intervenor has injected needless delay, invasive discovery and prejudice into an orderly, narrow case that has three times had its trial date postponed. A party with no legitimate interest to protect should never be permitted to appear for the first time at trial and derail the entire process. This Court should issue a writ to prohibit Respondent from permitting Put Missouri First to intervene. *See State ex rel. AJKJ, Inc. v. Hellman*, 574 S.W.3d 239

(Mo. banc 2019) (issuing writ of prohibition to vacate order improperly granting intervention); *State ex rel. Wolfner v. Dalton*, 955 S.W.2d 928 (Mo. banc 1997) (same).

Second, a writ should issue to prevent enforcement of a discovery order that compels irrelevant and disproportionate discovery and intrudes upon protected First Amendment associational interests. Respondent's order grants Intervenor sweeping discovery into the identities of referendum petition signers and circulators and Relators' internal campaign operations notwithstanding that the underlying litigation presents threshold justiciability and legal questions about the Secretary of State's authority and the timing requirements under Article III and Chapter 116. *See Friends of the San Luis v. Archdiocese of St. Louis, et al.*, 312 S.W.3d 476,483 (Mo. App. 2010); *Jackson Cnty. Bd. of Election Comm'rs v. City of Lee's Summit, Missouri*, 277 S.W.3d 740,745 (Mo. App. 2009). This irrelevant discovery, which Respondent compelled to be produced, is literally impossible to provide before trial commences on December 8.

Once compelled, disclosure and its chilling effect on political association cannot be remedied by appeal. "Judicial intervention is not an appropriate substitute for the give and take of the political process." *State ex rel. Humane Soc'y of Mo. v. Beetem*, 317 S.W.3d 669, 674 (Mo. App. 2010). Respondent was required to "decline [Intervenor's] invitation to pull the courts into what promises to be a fishing expedition ...—a foray that 'would likely distort and improperly expand the court's role beyond its limited function....'" *State ex rel. Kander v. Green*, 462 S.W.3d 844, 852 (Mo. App. 2015). This Court should issue a preliminary and permanent writ.

## **I. Brief Factual Background**

The two narrow issues presented by the Amended Petition are: (1) whether the Missouri Constitution's referendum rights require a signature from the Governor before a party can commence pursuit of a referendum on an act passed the General Assembly; and (2) whether a party seeking to refer an act passed by the General Assembly needs to wait for the Secretary of State's approval of the petition sample sheet as to form before collecting signatures that can be counted in support of the referendum.

The parties' filings crystallize the narrow issues in dispute. The Secretary's pretrial brief asserts Count I is moot following the Secretary's later approval of Relators' sample sheet and Count II is unripe because no signatures have been submitted or rejected by the State. On the merits, the Secretary argues only an enacted "law" can be the subject of a referendum and that signatures cannot be counted if collected before approval as to form. Those positions present purely legal and jurisdictional issues, not factual disputes about the identity, number, or internal handling of unfiled signatures.

On the day the case was set for trial, both the Plaintiffs and the State announced they were ready to proceed.<sup>1</sup> But Intervenor Put Missouri First was permitted to intervene over

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<sup>1</sup> The Parties had stipulated to all of the facts and simply needed to admit those into evidence and present oral argument as the Court might need or allow. "[Mr. Hatfield]: The Attorney General's office and the Secretary of State have been great about preparing this case for trial. We have joint stipulations that I understand Mr. Ellinger is not prepared to agree to today and we object to intervention." See Ex. 10 (Tr. of 11-13-2025 hearing at 3-4). "THE COURT: Okay. Here's what I'm going to do. I'm going to grant him his leave to intervene. Mr. Hatfield, are the plaintiffs ready to proceed? MR. HATFIELD: We are, your Honor. THE COURT: Ma'am [sic], on behalf of the Secretary are you ready to proceed. MR. MILLER: Yes, your Honor. THE COURT: Okay. Mr. Ellinger? MR. ELLINGER: Judge, I would object to the hearing proceeding right now on the basis that

Plaintiffs' objections.<sup>2</sup> Intervenor immediately took a change of judge, and fundamentally changed the course of this case. Having already squandered a trial date with its untimely motion to intervene, Intervenor subsequently sought extensive and invasive discovery. Intervenor's discovery demands seek: (i) all signed pages gathered before October 14, with signers' names and addresses; (ii) "counts" broken out by petition number; (iii) contracts with vendors for signature gathering; and (iv) internal "validity" reports. Intervenor asserts this information is needed to test Relators' allegations and stipulations, and disputes Relators' objections based on relevance, proportionality, and First Amendment protections. *See, e.g., Concerned Citizens for Crystal City v. City of Crystal City, Missouri et al*, 334 S.W.3d 519, 524 (Mo. App. 2011); Rule 56.01(b)(1). Relators sought a protective order on relevance, proportionality, and constitutional grounds. Respondent nevertheless granted the motion to compel.

we're entitled to a certain amount of discovery. And would ask you to rule on that verbal motion now. THE COURT: Verbal motion to continue the case? MR: ELLINGER: Yes, sir. THE COURT: Okay, I'm going to take that under advisement. We're going to have a hearing today..." At which point Mr. Ellinger presented an application for change of Judge, which was granted over the objections of Plaintiff because the hearing had started, which objection the Court said was "probably right." *Id.* at 5-7.

<sup>2</sup> Up to this point, the trial court had moved quite quickly, which is common in litigation dealing with referendum petitions. *See ACLU v. Ashcroft*, 577 S.W.3d 881 (Mo. banc 2019)(documenting the speed at which the trial court moved (*Id.* at 886) as well as the Supreme Court's expedited treatment (*Id.* at 887)).

## II. Argument

### **A. Respondent Abused his Discretion in Permitting Put Missouri First to Intervene**

Intervenor is a political committee that opposes the referendum and admits that its “sole purpose is to prevent the measure from appearing on or being approved through the ballot.” Ex. 4 at ¶ 43. This is not a legitimate purpose permitting Intervenor to participate in this case. The dispute between Relators and the Secretary of State relates to the Secretary’s legal duties to approve the form of a referendum petition and the validity of signatures collected on an approved form before the date of the Secretary’s approval. The resolution of both issues will *not* cause the measure to appear on or be approved through the ballot. Intervenor’s “sole purpose” is not a “direct and immediate claim to...the demand made ...by one of the parties in the original action.” *BMO Harris Bank v. Hawes Tr. Invs. LLC*, 492 S.W.3d 607, 618 (Mo. App. 2016).

Assuming signatures are submitted as expected seeking to place the referendum measure on the ballot (which has not yet occurred), the decision whether those signatures are sufficient to place the measure on the ballot will be made by the Secretary of State. After that decision, “any citizen” may challenge the Secretary’s decision by suit in Cole County Circuit Court. *See* § 116.200, RSMo. Nothing that occurs in this case will impair or impede Put Missouri First’s ability to protect its alleged interest.

Intervenor asks the Court to intervene on its side of a political dispute and prevent it from being required to campaign against a referendum process plainly authorized by the Missouri Constitution. This is an illegitimate interest that cannot support intervention.



The people, from whom all constitutional authority is derived, have reserved the ‘power to propose and enact or reject laws and amendments to the Constitution.’ Mo. Const. art. III, § 49. When courts are called upon to intervene in the initiative process, they must act with restraint, trepidation and a healthy suspicion of the partisan who would use the judiciary to prevent the initiative process from taking its course.

*Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990). Yet this is precisely what Intervenor is seeking – to “prevent the [referendum] process from taking its course.” This is not a legitimate interest that could sustain a right to intervene under Missouri law. Intervenor claims no interest in whether a referendum sample sheet should be approved or not, because it has no legal interest other than simply seeking to thwart the referendum itself. Respondent abused his discretion in permitting Put Missouri First to intervene to protect that illegitimate interest.

Respondent also abused his discretion in permitting intervention because the Intervenor’s interests are adequately represented by the Secretary in this matter. The Secretary, no less than Put Missouri First, has revealed himself to be an opponent of this initiative willing to take extraordinary – indeed unprecedented – steps to prevent the measure from being referred to the voters. The Secretary has gone so far as to sue the Relators in federal court seeking to enjoin collection and submission of signatures on a state-authorized referendum. *See Missouri General Assembly v. People not Politicians*, Case No. 4:25-cv-015350ZMB (E.D. Mo.). The issues in this case are narrow: whether the Secretary has authority to reject a referendum because the Governor has yet to sign a bill; and whether the Secretary has authority to invalidate signatures on a submitted (and later

approved) form because the referendum form was signed before the Secretary granted approval.

As to these narrow issues, there is no daylight between the defenses of the Secretary and the defenses interposed by the Intervenor. Both claim that Count I is moot because the Secretary later approved a petition as to form; both claim that Count II is unripe because the signatures have not yet been submitted; both claim that the act of the General Assembly is not subject to referendum under the Missouri Constitution. Exs. 13, 14, 15. As the Supreme Court declared in 2009, intervention is not proper when the Intervenor “merely reasserted the State’s defenses.” *Committee for Educational Equality v. State*, 294 S.W.3d 477, 487 (Mo. banc 2009). Neither Rule 52.12(a) or (b) permit intervention under these circumstances. *Id.* It was erroneous to permit intervention as a matter of right when the interests of intervenor are adequately represented by the existing parties.

Respondent also abused his discretion in permitting intervention granted on the day of trial. The parties were prepared for trial at the time intervention was granted over Plaintiffs’ objection. When exercising its discretion in determining whether an application is timely, the circuit court must examine more than merely the amount of time that has elapsed since the initial case was filed. Rather, circuit courts must examine the circumstances surrounding the proposed intervention and the prejudice that may result to the parties from allowing or preventing intervention.” *Corson v. Corson*, 640 S.W.3d 785, 789 (Mo. App. 2022). “The most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case.” *Frost v. White*, 778 S.W.2d 670, 673 (Mo. App. 1989).

Intervenor has already postponed trial in this matter for nearly a month. For the timeliness criteria to matter at all, there must be a point at which intervention is too late. The day of trial is that point. It was an abuse of discretion for Respondent to conclude otherwise.

**B. Respondent Abused his Discretion permitting invasive, disproportional, and prejudicial discovery.**

Respondent compounded the error by allowing irrelevant, burdensome discovery. Missouri discovery is confined to non-privileged matters relevant to a claim or defense and must be proportional to the needs of the case. Intervenor’s demands fail both requirements. *See Concerned Citizens for Crystal City*, 334 S.W.3d at 524; Rule 56.01(b)(1). Respondent was required to “decline [Intervenor’s] invitation to pull the courts into what promises to be a fishing expedition ...—a foray that ‘would likely distort and improperly expand the court's role beyond its limited function....’” *Kander*, 462 S.W.3d at 852 .

The core questions in the case—whether the Secretary exceeded authority by rejecting a sample sheet “as to form” because the underlying measure lacked gubernatorial signature and whether approval as to form is required before gathering signatures—are legal. They do not turn on who signed, whether any voter has yet signed, how many signatures were gathered on which date, or the terms of third-party vendor contracts. Even Intervenor’s narrative, which centers on Relators’ public assertions about signature counts, does not transform those assertions into facts “of consequence” for these legal determinations at this stage. *See Friends of the San Luis*, 312 S.W.3d at 483; *Jackson Cnty. Bd. of Election Comm’rs*, 277 S.W.3d at 745.



Intervenor’s motion to compel confirms it seeks discovery to “substantiate (or contradict)” estimates of signatures gathered before and after certain dates. But the signature estimates are wholly irrelevant to the legal issues before the Court.<sup>3</sup> It matters not whether there are no signatures or hundreds of thousands, Plaintiffs have a right to have their forms approved so that they may gather signatures—and they have the right to a declaration about whether what they *do* gather can be rejected based *solely* on the form of the referendum petitions. Allowing Intervenor to propound broad discovery now would distort the litigation and prejudice the parties. Indeed, if there is even one valid signature that the Secretary refuses to count based on his erroneous legal declaration, the referendum rights of Missouri citizens and Relators would be effectively undermined.

Even if marginal relevance existed, compelling production of tens of thousands of unfiled petition pages with personally identifying information would be profoundly burdensome and risk significant privacy harm. The same is true of contracts and internal “validity” materials. Missouri’s rules require consideration of burden, sensitivity, and availability of alternative mechanisms. Here, any signature-related adjudication lies in the post-submission verification process, not in party discovery at the behest of a political opponent. Intervenor’s request to preempt that framework is precisely the kind of fishing

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<sup>3</sup> Intervenor confirmed this to the trial court. “[Mr. Ellinger for the Intervenor]: “...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. . . 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...” Ex. 21, Tr. of 12-04-2025 at 20-21.

expedition Rule 56.01 rejects and the Court of Appeals has condemned. *See Kander*, 462 S.W.3d at 852 (granting writ of prohibition over irrelevant discovery because it “would likely distort and improperly expand the court’s role beyond its limited function...”); *Concerned Citizens for Crystal City*, 334 S.W.3d at 524.

Respondent’s discovery decision is a further abuse of discretion because Intervenor’s requests seek disclosure of protected associational information, including the identities of supporters and circulators and internal campaign operations, thereby chilling participation in core petitioning activity. *See NAACP*, 357 U.S. 449, 461–62 (1958); *Americans for Prosperity v. Bonta*, 594 U.S. 595, 607–08 (2021); *Peters v. Johns*, 489 S.W.3d 262, 271 (Mo. banc 2016) (citing *Buckley*, 525 U.S. 182). “It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *NAACP*, 357 U.S. at 462. Respondent’s order disregards those interests completely. Courts scrutinize compelled disclosures of associational information, and exacting scrutiny applies when disclosure risks chilling political association. *See Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 366 (2010).

Intervenor’s blanket demands are not tailored to any genuine, live issue, and Respondent’s order compels disclosure far beyond any lawful necessity. The harm from compelled disclosure and chilling cannot be remedied by appeal. Prohibition is therefore appropriate to prevent enforcement of the order. *See Malashock*, 502 S.W.3d 618, 619 (Mo. banc 2016); *Peabody Coal*, 863 S.W.2d 604, 608 (Mo. banc 1993). Intervenor asserts that signatory names and petition pages are public records and that contracts and internal

“validity” reports are commercial or operational rather than associational. That misstates both the posture and the nature of the materials. These petition pages are unfiled, not yet in the State’s possession, and encompass lists of supporters collected during active circulation. Compelled disclosure of such lists and internal campaign operations is a classic intrusion on association, particularly during an ongoing circulation campaign. To the extent that Intervenor is seeking only filed signature pages, the discovery dispute will become moot when those signature pages are filed with the Secretary of State later this week. But Intervenor seeks far more. Intervenor wants to use the discovery process to “pull the courts into what promises to be a fishing expedition ...—a foray that ‘would likely distort and improperly expand the court's role beyond its limited function....’” *Kander*, 462 S.W.3d at 852. This Court has issued writs to prohibit this type of discovery repeatedly before, *see id.*, *Humane Soc’y of Mo.*, 317 S.W.3d at 674, and in the overwhelming majority of initiative and referendum cases, the parties and timely intervenors abide by those rules. Here, Intervenor has sought broad, invasive discovery, and Respondent Limbaugh has abused his discretion and granted its Motion to Compel.

Intervenor also argues that Relators “placed at issue” precise numbers by stipulation. Not so. The number of signatures in the parties’ prior stipulation was always a good faith estimate, and it is ultimately irrelevant to the issues in this case.<sup>4</sup> As noted above, if there is even one valid signature the Secretary rejects due to his erroneous legal position, the

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<sup>4</sup> The approximate number of signatures gathered was stipulated to at the request of the Secretary of State’s counsel. Plaintiffs did not agree that it was necessary or relevant for the number to be included, but so stipulated in the spirit of cooperation and expedited proceedings. Ex. 19

rights of Missouri citizens under the First Amendment and the Missouri Constitution would be undermined. Number disputes are immaterial to the present legal questions and can be litigated, if ever, in the appropriate forum after submission and a decision by the Secretary on the sufficiency of the petition.

Given the constitutional stakes and the absence of any adequate post-judgment remedy, a writ of prohibition is the proper vehicle to restrain an order compelling irrelevant, disproportionate, and constitutionally intrusive discovery. The Court should grant a preliminary and permanent writ. *See Malashock*, 502 S.W.3d at 619; *Peabody Coal*, 863 S.W.2d at 608.

Respectfully Submitted,

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