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Title IX SUFFRAGE AND ELECTIONS

Chapter 116



● Effective - 04 Nov 2014, 3 histories, see footnote



***116.030. Referendum petition, form — clerical and technical errors to be disregarded, penalties for false signature.** — The following shall be substantially the form of each page of referendum petitions on any law passed by the general assembly of the state of Missouri:

County _____

Page No. _____

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any referendum petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

PETITION FOR REFERENDUM

To the Honorable _____, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or City of St. Louis), respectfully order that the Senate (or House) Bill No. _____ entitled (title of law), passed by the _____ general assembly of the state of Missouri, at the _____ regular (or special) session of the _____ general assembly, shall be referred to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the _____ day of _____, _____, unless the general assembly shall designate another date, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

(Official Ballot title) _____

CIRCULATOR'S AFFIDAVIT

State Of Missouri,

County Of _____

I, _____, being first duly sworn, say (print or type names of signers)

DATE	VOTING	ZIP	CONGR.
NAME	SIGNED	ADDRESS	CODE DIST.
	(Street) (City,		
	Town or		(Printed
(Signature)	Village)		or Typed)

(Here follow numbered lines for signers)

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County.

FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY.

I am at least 18 years of age. I do _____ do not _____ (check one) expect to be paid for circulating this petition. If paid, list the payer _____

Signature of Affiant

(Person obtaining signatures)

(Printed Name of Affiant)

Address of Affiant

Subscribed and sworn to before me this _____ day of _____
A.D. _____

Signature of Notary

Address of Notary

Notary Public (Seal)

My commission expires _____

If this form is followed substantially and the requirements of section 116.050 and section 116.080 are met, it shall be sufficient, disregarding clerical and merely technical errors.

(L. 1980 S.B. 658, A.L. 1986 H.B. 1471, et al., A.L. 1997 S.B. 132, A.L. 1999 H.B. 676, A.L. 2013 H.B. 117)

Effective 11-04-14

*Revisor's Note: Section 560.021, as referenced in the form contained in this section, was repealed by S.B. 491, 2014, effective 1-01-17.

---- end of effective **04 Nov 2014** ----
[use this link to bookmark section 116.030](#)

- All versions

	Effective	End
116.030	11/4/2014	
116.030	6/16/1999	11/4/2014
116.030	9/28/1973	9/28/1973

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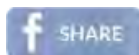


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History and Fun Facts





Title IX SUFFRAGE AND ELECTIONS

Chapter 116



Effective - 04 Nov 2014, 2 histories, see footnote



116.332. Petitions for constitutional amendments, statutory initiative or referendum, requirements, procedure. — 1. Before a constitutional amendment petition, a statutory initiative petition, or a referendum petition may be circulated for signatures, a sample sheet must be submitted to the secretary of state in the form in which it will be circulated. When a person submits a sample sheet of a petition he or she shall designate to the secretary of state the name and address of the person to whom any notices shall be sent pursuant to sections [116.140](#) and [116.180](#) and, if a committee or person, except the individual submitting the sample sheet, is funding any portion of the drafting or submitting of the sample sheet, the person submitting the sample sheet shall submit a copy of the filed statement of committee organization required under subsection 5 of section [130.021](#) showing the date the statement was filed. The secretary of state shall refer a copy of the petition sheet to the attorney general for his approval and to the state auditor for purposes of preparing a fiscal note and fiscal note summary. The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any.

2. Within two business days of receipt of any such sample sheet, the office of the secretary of state shall conspicuously post on its website the text of the proposed measure, a disclaimer stating that such text may not constitute the full and correct text as required under section [116.050](#), and the name of the person or organization submitting the sample sheet. The secretary of state's failure to comply with such posting shall be considered a violation of [chapter 610](#) and subject to the penalties provided under subsection 3 of section [610.027](#). The posting shall be removed within three days of either the withdrawal of the petition under section [116.115](#) or the rejection for any reason of the petition.

3. Upon receipt of a petition from the office of the secretary of state, the attorney general shall examine the petition as to form. If the petition is rejected as to form, the attorney general shall forward his or her comments to the secretary of state within ten days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward his or her approval as to form to the secretary of state within ten days after receipt of the petition by the attorney general.

4. The secretary of state shall review the comments and statements of the attorney general as to form and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted

the petition sheet of the approval within fifteen days after submission of the petition sheet. The secretary of state shall send written notice if the petition has been rejected, together with reasons for rejection, within fifteen days after submission of the petition sheet.

(L. 1985 H.B. 543 § 1, A.L. 1997 S.B. 132, A.L. 2013 H.B. 117)

Effective 11-04-14

(1991) That part of this section which limits submission to secretary of state of sample petitions to one year prior to the final date for filing signed petitions shortens time authorized by constitution, art. XII, sec. 2(b), during which constitutional amendment petitions may be circulated for signatures and is invalid. State of Mo., ex rel. Upchurch v. Blunt, 810 S.W.2d 515 (Mo. banc).

---- end of effective 04 Nov 2014 ----
[use this link to bookmark section 116.332](#)

- All versions

	Effective	End
116.332	11/4/2014	
116.332	8/28/1997	11/4/2014

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History and Fun Facts

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There are multiple enactments of 116.334

Title IX SUFFRAGE AND ELECTIONS

Chapter 116



Effective - 28 Aug 2025, 3 histories



***116.334. Petition approval required, procedure to obtain petition title or summary statement — rejection or approval of petition, procedure — circulation of petition prior to approval, effect — signatures, deadline for filing. —** 1. If the petition form is approved, the secretary of state shall make a copy of the sample petition available on the secretary of state's website. For a period of fifteen days after the petition is approved as to form, the secretary of state shall accept public comments regarding the proposed measure and provide copies of such comments upon request. Within twenty-three days of receipt of such approval, the secretary of state shall prepare and transmit to the attorney general a summary statement of the measure which shall be a concise statement not exceeding one hundred words. This statement shall be in the form of a question using language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure. The attorney general shall within ten days approve the legal content and form of the proposed statement.

2. Signatures obtained prior to the date the official ballot title is certified by the secretary of state shall not be counted. Once the secretary of state certifies the official ballot title, signatures may be collected, even if the ballot title is subject to an action in court challenging the sufficiency and fairness of the ballot title. If a court orders a change that alters the content of the official ballot title, then all signatures gathered before such change occurred shall not be invalidated based upon the fact that one or more signatures were gathered prior to the alteration of the official ballot title, regardless of whether those signatures were gathered on petition pages that displayed what was previously the official ballot title as certified by the secretary of state. Nothing in this subsection shall prohibit the invalidation of a signature for a reason otherwise allowed by this chapter.

3. Signatures for statutory initiative petitions shall be filed not later than six months prior to the general election during which the petition's ballot measure is submitted for a vote, and shall also be collected not earlier than the day after the day upon which the previous general election was held.

(L. 1985 H.B. 543 § 2, A.L. 1997 S.B. 132, A.L. 2013 H.B. 117, A.L. 2025 S.B. 22)

*Revisor's Note: This section was declared unconstitutional in *Nicholson v. State of Missouri, et al.* (see 2026 annotation below).

(2022) Section prohibiting the circulation of referendum petitions before official ballot title is certified and affixed to petition violates right of referendum under article III, §§ 49, 52(a). *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484 (Mo.banc).

(2026) Provisions of S.B. 22 from 2025 declared unconstitutional as violating the original purpose requirement of Article III, § 21 of the Missouri Constitution. Finding the offending provisions cannot be severed, the Court declared S.B. 22 invalid in its entirety. *Nicholson v. State of Missouri, et al.*, No. SC101308, January 23, 2026 (Mo.banc).

---- end of effective **28 Aug 2025** ----
 use this link to bookmark section **116.334**

- All versions

	Effective	End
116.334	8/28/2025	
116.334	11/4/2014	
116.334	8/28/2013	11/4/2014

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History and Fun Facts



III Section 49. Reservation of power to enact and reject laws. — The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.

Source: Const of 1875, Art. IV, § 57 (Amended November 3, 1908).

(1963) Initiative process could not be used as method of amending St. Louis County zoning ordinance. State v. Donohue (Mo.), 368 S.W.2d 432.

---- end of effective 27 Feb 1945 ----

[use this link to bookmark section III Section 49](#)

Click here for the [Reorganization Act of 1974 - or - Concurrent Resolutions Having Force & Effect of Law](#)

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History and Fun Facts





Words ▾

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2nd search term



Constitution

Effective - 27 Feb 1945, see footnote ↓

III Section 52(a). Referendum — exceptions — procedure. — A referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools) either by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state, or by the general assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.

Source: Const. of 1875, Art. IV, § 57.

(1952) Referendum petitions as to laws which become effective ninety days after recess under Art. III, Sec. 29, must be filed within ninety days after beginning of recess in order to be effective. State ex rel. Moore v. Toberman, 363 Mo. 245, 250 S.W.2d 701.

---- end of effective 27 Feb 1945 ----

use this link to bookmark section III Section 52(a)

Click here for the **Reorganization Act of 1974 - or - Concurrent Resolutions Having Force & Effect of Law**

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NO BANS ON CHOICE, American Civil Liberties Union of Missouri, and Sara E. Baker, Respondents,
v.

John R. ASHCROFT, in his official capacity as Missouri Secretary of State, Appellant.

No. SC 98879

Supreme Court of Missouri,
en banc.

Opinion issued February 8, 2022

Background: Challengers, which included individual and nonprofit organization, filed suit against Secretary of State alleging that statutes prohibiting collection of referendum petition signatures before referendum's official ballot was certified and affixed to petition were unconstitutional. The Circuit Court, Cole County, Jon E. Beetem, J., issued declaratory judgment invalidating statutes as conflicting with constitutional right of referendum. State appealed.

Holdings: The Supreme Court, Mary Rhodes Russell, J., held that:

- (1) statutes violated constitutional right of referendum;
- (2) challengers' claim that statutes were unconstitutional was not barred by res judicata;
- (3) challengers did not waive claim that statutes were unconstitutional;
- (4) challengers had standing to challenge constitutionality of statutes;
- (5) challengers' claim was capable of repetition yet evading review, as exception to mootness doctrine.

Affirmed.

Powell, J., filed dissenting opinion, in which Fischer, J., concurred.

See also 577 S.W.3d 881.

1. Statutes ⇌1771

General Assembly is permitted to enact reasonable implementations of referendum process. Mo. Const. art. 3, §§ 49, 52(a).

2. Constitutional Law ⇌655

If statute conflicts with constitutional provision, Supreme Court must declare that statute invalid.

3. Appeal and Error ⇌3173

Validity of statute is question of law reviewed de novo.

4. Constitutional Law ⇌996

Statute is presumed valid and will not be declared unconstitutional unless it clearly contravenes constitutional provision.

5. Statutes ⇌1772

Statutes' prohibition on collecting referendum petition signatures before Secretary of State certified referendum's official ballot title and affixed it to petition interfered with and impeded the constitutional right of referendum by unreasonably shortening the timeframe for petition circulation, and thus statutes were unconstitutional; full signature-collection period for referendum on measure passed on last day of legislative session was only 90 days, statutes permitted government to take away 51 of those days, in practice, statutes had proved to be hindrance to referendum process, and statutes allowed legislature opportunity to, in effect, control viability of any referendum. Mo. Const. art. 3, §§ 49, 52(a); Mo. Ann. Stat. §§ 116.180, 116.334.2.

6. Statutes ⇌1771

Purpose of the right of referendum is to provide the people a means of giving expression to a legislative proposition. Mo. Const. art. 3, §§ 49, 52(a).

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Mo. 485

Cite as 638 S.W.3d 484 (Mo. 2022)

7. Statutes ⇌1771

Referendum process ensures that those who have no access to or influence with elected representatives may take their cause directly to the people. Mo. Const. art. 3, §§ 49, 52(a).

8. Statutes ⇌1771

Referendum process serves as a check on the legislature. Mo. Const. art. 3, §§ 49, 52(a).

9. Statutes ⇌1772

Legislation to implement referendum process is presumed to be constitutionally valid. Mo. Const. art. 3, §§ 49, 52(a); Mo. Ann. Stat. § 116.010 et seq.

10. Statutes ⇌1772

Laws enacted to implement referendum process must be invalidated when they interfere with or impede right conferred by Constitution. Mo. Const. art. 3, §§ 49, 52(a); Mo. Ann. Stat. § 116.010 et seq.

11. Statutes ⇌1771

Minor details may be left for legislature without impairing self-executing nature of constitutional provisions, but all such legislation must be subordinate to constitutional provision and in furtherance of its purposes, and must not attempt to narrow or embarrass it.

12. Res Judicata ⇌419

Challengers' claim that statutes prohibiting collection of referendum petition signatures before referendum's official ballot was certified and affixed to petition violated constitutional right of referendum was not barred by res judicata based on previous suit against Secretary of State challenging rejection of proposed referendum petition; prior litigation involved entirely separate issue from validity of statutes, and while challengers did challenge ballot title provisions to extent they could

in course of the prior lawsuit, the constitutional validity of those provisions was not reviewed on the merits. Mo. Const. art. 3, §§ 49, 52(a); Mo. Ann. Stat. §§ 116.180, 116.334.2.

13. Election Law ⇌672

Challengers did not waive claim that statutes prohibiting collection of referendum petition signatures before referendum's official ballot was certified and affixed to petition violated constitutional right of referendum by conduct in previous litigation against Secretary of State challenging rejection of proposed referendum petition; time constraints on circulation of petition imposed by statutes did not affect challengers until after Court of Appeals, in prior litigation, had ordered Secretary to commence ballot certification process, such that challengers did not fail to present their constitutional question at the earliest possible moment. Mo. Const. art. 3, §§ 49, 52(a); Mo. Ann. Stat. §§ 116.180, 116.334.2.

14. Election Law ⇌672

Challengers, which included individual and nonprofit organization, had standing to challenge statutes prohibiting collection of referendum petition signatures before referendum's official ballot was certified and affixed to petition as violating constitutional right of referendum, where challengers were in midst of referendum campaign, in which they failed to collect requisite signatures in 14-day time frame they were left with to circulate petition as result of application of statutes. Mo. Const. art. 3, §§ 49, 52(a); Mo. Ann. Stat. §§ 116.180, 116.334.2.

15. Appeal and Error ⇌781(4)

Challengers' claim that statutes prohibiting collection of referendum petition signatures before referendum's official ballot was certified and affixed to petition violated constitutional right of referendum was capable of repetition, yet evading re-

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view, thus warranting appellate review of claim that might have been rendered moot once deadline to submit signatures to Secretary of State came to pass. Mo. Const. art. 3, §§ 49, 52(a); Mo. Ann. Stat. §§ 116.180, 116.334.2.

16. Res Judicata ⚡329

Res judicata requires the new claim to arise out of the same act, contract or transaction as the previous claim.

17. Election Law ⚡645

The standard for determining if a law violates the state constitutional right of referendum is whether the law interferes with or impedes the right of referendum, not whether it interferes with or impedes any particular referendum effort. Mo. Const. art. 3, §§ 49, 52(a).

18. Election Law ⚡645

A law need not prevent every individual referendum effort from being successful to interfere with or impede the right of referendum itself, as would violate the constitutional right of referendum. Mo. Const. art. 3, §§ 49, 52(a).

West Codenotes

Held Unconstitutional

Mo. Ann. Stat. §§ 116.180, 116.334.2

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY, The Honorable Jon E. Beetem, Judge

The state was represented by D. John Sauer and Jason K. Lewis of the attorney

1. All statutory references are to RSMo 2016, unless otherwise specified.
2. Missouri is one of 24 states that allows citizens to petition for elections on legislative enactments through a “popular referendum” without any involvement by the legislature.

general’s office in Jefferson City, (573) 751-3321.

The challengers were represented by Anthony E. Rothert, Jessie Steffan and Molly Carney of the ACLU Of Missouri Foundation in St. Louis, (314) 652-3114, and Gillian R. Wilcox of the ACLU of Missouri Foundation in Kansas City, (816) 470-9933.

Mary R. Russell, Judge

Amidst a ballot referendum campaign, Sara Baker, the ACLU of Missouri, and No Bans on Choice (collectively, “Challengers”) filed suit against the Missouri Secretary of State. The lawsuit challenged the constitutional validity of sections 116.180 and 116.334.2,¹ which prohibit the collection of referendum petition signatures before the Secretary has certified the referendum’s “official ballot title” and affixed it to the petition. The circuit court issued a declaratory judgment invalidating sections 116.180 and 116.334.2 because those provisions “interfere with and impede” the right of referendum and, therefore, conflict with article III, sections 49 and 52(a) of the Missouri Constitution. The judgment is affirmed.

Background

I. Referendum Process

[1] The voters of Missouri first adopted a constitutional amendment establishing the right of referendum more than 100 years ago in 1908. *Marsh v. Bartlett*, 343 Mo. 526, 121 S.W.2d 737, 742 (Mo. 1938).² The right of referendum is now contained in article III, sections 49 and

Initiative, Referendum, and Recall, Nat’l Conf. of State Legislatures, <http://www.ncsl.org/legislatures-elections/elections/initiative-referendum-and-recalloverview.aspx> (last visited Feb. 7, 2022).

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Mo. 487

Cite as 638 S.W.3d 484 (Mo. 2022)

52(a) of the Missouri Constitution. Article III, section 49 states: “The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.” Article III, section 52(a) further provides:

A referendum may be ordered . . . by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state *Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.*

(Emphasis added).³ The General Assembly is permitted to enact “reasonable implementations” of the referendum process. *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991). A framework for exercising the right of referendum was enacted by the legislature in chapter 116.

To initiate the process, the referendum proponent must first submit the proposed petition “in the form in which it will be circulated” to the Secretary, who must then send it to the Attorney General to conduct an independent review of its form and provide comments within 10 days. Sections 116.332.1, .3. The Secretary has the ultimate authority to approve or reject the form of the petition and must do so within 15 days after the petition was first submit-

ted and following the Attorney General’s review. Sections 116.332.3, .4. If the petition is approved, the Secretary is given 23 days to prepare a “summary statement” of the measure, and the State Auditor must prepare a “fiscal note” and “fiscal note summary.” Sections 116.334.1, 116.175.2. The Attorney General must then issue an opinion about the form and content of the summary statement and fiscal note summary. Sections 116.175.4, 116.334.1. Within three days of receiving the Attorney General’s approval for both summaries, the Secretary must combine those summaries to create the “official ballot title,” which must be placed on the ballot measure if it is put before the voters. Sections 116.010(4), 116.180. In sum, it may take up to 51 days from the time the proponent first submits the proposed petition until the official ballot title is certified.

Until 1997, proponents were able to circulate the referendum petition for signatures before the ballot title was certified. But, in that year, the legislature amended chapter 116 and enacted sections 116.180 and 116.334.2 to prohibit the circulation of referendum petitions before the official ballot title is certified and affixed to the petition. As a result of this legislation, a referendum proponent may be delayed up to 51 days before collecting signatures to have the measure placed on the ballot.

II. 2020 Referendum Effort

The General Assembly passed House Bill No. 126 on May 17, 2019, the last day to pass legislation during the 2019 session, and the bill was signed by Governor Par-

3. Article III, section 20(a) of the Missouri Constitution designates May 30 as the date of the final adjournment of the General Assembly. Article III, section 52(a)’s deadline for filing referendum petitions within 90 days of the final adjournment of the legislative session coincides with article III, section 29 of the Missouri Constitution, which states that,

with certain listed exceptions, laws passed by the General Assembly shall take effect 90 days after the final adjournment of the General Assembly. Together, these three provisions designate August 28 as both the deadline for filing referendum petitions and the date on which laws passed during the previous session of the General Assembly take effect.

son on May 24.⁴ Four days later, Baker, on behalf of the ACLU, submitted a proposed referendum petition on HB 126 to Secretary of State Ashcroft, seeking to place it on the ballot for the 2020 general election. On June 6, 2019, the Secretary notified Baker and the ACLU he was rejecting the proposed referendum petition because HB 126 contained an emergency clause, requiring some of its provisions to become effective immediately. The Secretary concluded the emergency clause exempted the entire bill from the referendum process because legislation may not be challenged via referendum after it becomes effective. *See State ex rel. Moore v. Toberman*, 363 Mo. 245, 250 S.W.2d 701, 706 (Mo. banc 1952).

Baker and the ACLU sued the Secretary, alleging such constitutional grounds were not a sufficient basis for rejecting the proposed petition. The circuit court ruled in favor of the Secretary, but on July 8, 2019, the court of appeals reversed and ordered the Secretary to immediately approve the sample sheet of the referendum petition as sufficient as to form pursuant to section 116.332.4 and proceed with the official ballot title certification process. *ACLU v. Ashcroft*, 577 S.W.3d 881, 899-900 (Mo. App. 2019). At that time, the Secretary and Attorney General had 36 days to complete the certification process pursuant to sections 116.334.1, 116.175.2, 116.175.4, and 116.180. The ACLU asked the court of appeals to shorten the statutory timeframe for certification to offset the delay caused by the emergency litigation, but the court ruled it had “no authority to modify the

provisions of that statute, including the times therein permitted for performance.” *Ashcroft*, 577 S.W.3d at 900 n.21.⁵

State officials ultimately used all 36 days to complete the official ballot title certification. The Secretary did not certify the official ballot title and approve the petition for signature circulation until August 14, 2019. As a result, Baker and the ACLU were left with 14 days to circulate the petition and submit 107,510 signatures to the Secretary in accordance with article III, section 52(a).⁶ On August 22, Challengers filed suit in the circuit court against the Secretary, arguing sections 116.180 and 116.334.2 violated the Missouri Constitution in that they conflicted with the right of referendum under article III, sections 49 and 52(a). Baker and the ACLU ultimately failed to collect the requisite signatures within the 14-day timeframe, and the referendum was not placed on the ballot. The circuit court subsequently issued a declaratory judgment that sections 116.180 and 116.334.2 were unconstitutional because they conflicted with article III, sections 49 and 52(a) in that they “interfere with and impede” the right of referendum.⁷

Standard of Review

[2–4] If a statute conflicts with a constitutional provision, this Court must declare that statute invalid. *Upchurch*, 810 S.W.2d at 516. The validity of a statute is a question of law reviewed *de novo*. *Trenton Farms RE, LLC v. Hickory Neighbors United, Inc.*, 603 S.W.3d 286, 290 (Mo.

4. HB 126 repealed sections 188.027 and 188.052 and enacted sections 188.026, 188.027, and 188.052 in lieu thereof.

5. The ACLU filed an emergency motion for rehearing or transfer, arguing those statutory timeframes were unconstitutional as applied in the case. The court of appeals overruled the motion. The ACLU then applied to this Court for transfer, which this Court denied.

6. Article III, section 52(a) requires referendum petitions to be signed by 5 percent of registered voters in two-thirds of Missouri’s congressional districts to be placed on the ballot.

7. This Court has jurisdiction pursuant to article V, section 3 of the Missouri Constitution.

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Cite as 638 S.W.3d 484 (Mo. 2022)

banc 2020). A statute is presumed valid and will not be declared unconstitutional unless it clearly contravenes a constitutional provision. *Id.*

Analysis

[5–8] The issue before this court is whether sections 116.180 and 116.334.2 violate the right to referendum as found in article III, sections 49 and 52(a) of the Missouri Constitution. In establishing the right of referendum, the people of Missouri constitutionally reserved a share of the legislative power for themselves. *State ex rel. Barrett v. Dallmeyer*, 295 Mo. 638, 245 S.W. 1066, 1068 (Mo. banc 1922).⁸ The purpose of this right is to “provide the people a means of giving expression to a legislative proposition[.]” *Toberman*, 250 S.W.2d at 706. The referendum process ensures that “those who have no access to or influence with elected representatives may take their cause directly to the people.” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990). The referendum also exists to

serve as a check on the legislature. *State ex rel. Drain v. Becker*, 240 S.W. 229, 230–31 (Mo. banc 1922).

[9–11] Legislation to implement the referendum process is presumed to be constitutionally valid. *Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. banc 1982). But laws enacted to implement the referendum process must be invalidated when they “interfere with or impede a right conferred by the constitution[.]” *Id.* In other words, “[m]inor details may be left for the legislature without impairing the self-executing nature of constitutional provisions . . . but all such legislation must be subordinate to the constitutional provision and in furtherance of its purposes, and must not . . . attempt to narrow or embarrass it.” *Musser v. Coonrod*, 496 S.W.2d 8, 11 (Mo. banc 1973).

[12–16] The circuit court concluded sections 116.180 and 116.334.2 unconstitutionally “interfere with and impede” the right of referendum.⁹ It determined that,

8. Immediately following its creation, the referendum was widely used. David C. Valentine, *Constitutional Amendments, Statutory Revision and Referenda Submitted to the Voters by the General Assembly or by Initiative Petition, 1910-2008*, Report 25-2008, at 3, <https://mospace.umsystem.edu/xmlui/bitstream/handle/10355/2524/ConstitutionalAmendmentsStatutoryRevision.pdf?sequence=1&isAllowed=y>. While it has been used more sparingly in the decades since, when the right to referendum is employed, voters are more often than not inclined to exercise the power reserved for them; 24 of the 26 referenda put before the voters between 1914 and 2008 have resulted in the rejection of bills enacted by the General Assembly. *Id.* at 2. Voters also struck down the General Assembly’s “right to work” bill in the only referendum put on the ballot since 2008. Scott Neuman, *Missouri Blocks Right-to-Work Law*, NPR, Aug. 8, 2018, <https://www.npr.org/2018/08/08/636568530/missouri-blocks-right-to-work-law> (last visited Feb. 7, 2022).

9. The Secretary asserts several arguments for why the circuit court should not have reviewed Challengers’ claim on the merits. First, the Secretary argues Challengers’ claim was barred by *res judicata* and waiver due to Baker and the ACLU’s previous litigation against the Secretary. *Res judicata* requires the new claim to arise out of the same act, contract or transaction as the previous claim. *Kesterson v. State Farm Fire & Cas. Co.*, 242 S.W.3d 712, 716 (Mo. banc 2008). But the prior litigation arose out of the Secretary’s rejection of the proposed referendum petition, which was an entirely separate issue from the validity of sections 116.180 and 116.334.2. While the parties did challenge the ballot title provisions to the extent they could in the course of the prior lawsuit, the constitutional validity of those provisions was not reviewed on the merits. See *ACLU v. Ashcroft*, 577 S.W.3d at 900 n.21. Similarly, Challengers’ claim was not waived because the time constraints on circulation imposed by sections 116.180 and 116.334.2 did not affect Baker

by prohibiting proponents from circulating a petition before the official ballot title is certified and affixed to the petition, the challenged statutes “dramatically reduce the time available for the circulation of a referendum petition, both in theory and in practice.” In reaching its decision, the circuit court cited three of this Court’s prior decisions to support the proposition that the State “may not constitutionally delay the circulation of a referendum petition for the purpose of certifying a ballot title.”

In the first case cited by the circuit court, *Boevig v. Kander*, 496 S.W.3d 498, 507 (Mo. banc 2016), this Court explained that the Missouri Constitution “*only* authorizes legislation detailing the requirement for an ‘official ballot title’ at the time [a] proposed constitutional amendment is put before the voters” and that there is “no similar express constitutional authorization” for legislation requiring an official ballot title *before* the petition may be circulated for signatures. This Court explicitly noted, however, that the question of whether such a pre-circulation ballot title requirement would be constitutionally permissible was not presented in the case. *Id.* at 508.

In the second case, *Union Electric Co. v. Kirkpatrick*, 678 S.W.2d 402, 405 (Mo. banc 1984), this Court held that, although the proponent’s title on a proposed ballot

initiative did not express clearly the subject matter of the proposal, petition signers could not have been deceived or misled at this stage of the initiative process because the full act appeared on the back of each petition. In the third case, *United Labor Committee of Missouri v. Kirkpatrick*, 572 S.W.2d 449, 454 (Mo. banc 1978), this Court noted that previous decisions “discussed the importance of the initiative and referendum, emphasizing that procedures designed to effectuate these democratic concepts should be liberally construed to avail the voters with every opportunity to exercise these rights.” *United Labor* held: “The ability of the voters to get before their fellow voters issues they deem significant should not be thwarted in preference for technical formalities.” *Id.* Together, these cases suggest that an official ballot title is not necessary to prevent individuals from being deceived at the petition-signing stage and that the ability to exercise the constitutional right of referendum should not be “interfered with or impeded” by a pre-circulation ballot title requirement.

The Secretary contends sections 116.180 and 116.334.2 leave sufficient time to gather signatures in “virtually all circumstances.” But Challengers argue the process of procuring the official ballot title prior to circulation is quite time-consum-

and the ACLU until *after* the court of appeals ordered the Secretary to commence the ballot title certification process. As such, the parties did not fail to present their constitutional question “at the earliest possible moment that good pleading and orderly procedure will admit. . . .” *Meadowbrook Country Club v. Davis*, 384 S.W.2d 611, 612 (Mo. banc 1964) (internal quotation omitted).

The Secretary also argues Challengers’ claim was not justiciable. Challengers, however, clearly had standing to challenge sections 116.180 and 116.334.2 in the midst of their referendum campaign. While the claim may have been rendered moot once the deadline to

submit signatures to the Secretary came to pass, the time-sensitive nature of the referendum process would place the claim squarely within the mootness exception of “capable of repetition, yet evading review.” *See State ex rel. Reser v. Rush*, 562 S.W.2d 365, 367 (Mo. banc 1978) (“The problem presented is one which is ‘capable of repetition, yet evading review,’ and needs to be resolved and put to rest. Accordingly, notwithstanding the suggestion of mootness, we will decide the case on the merits, being of opinion that the questions involved are matters of public rights or interests under conditions which may be repeated any time.” (internal citation omitted)).

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ing. As the circuit court explained, the full signature-collection period for a referendum on a measure passed on the last day of the legislative session is only 90 days, and sections 116.180 and 116.334.2 “permit the government to take away 51 of those days.” The Secretary points to testimony presented by Challengers indicating an organization could feasibly collect the requisite number of signatures within 39 days under the worst-case scenario. But not every citizen who may wish to utilize the right of referendum has access to the same resources as Challengers. For example, Baker testified that, in the time leading up to the signature-collection stage, she solicited contributions from donors who had sufficient available funds to pay a firm that specializes in signature-gathering. And the circuit court found “every day the time for signature collection on a referendum petition is reduced, the cost of gathering enough signatures to get the referendum before voters will go up.” The Missouri Constitution guarantees the right of referendum to *all* Missouri citizens, not just those capable of raising the necessary funds to complete a signature-collection effort within the tightest of timeframes.

In practice, the pre-circulation ballot title requirement has indeed proved to be a hinderance to the referendum process. The circuit court determined the average amount of time the State took to certify official ballot titles between 2016 and 2020 ranged from 35 to 47 days. For bills passed on the last day of session, this delay constitutes from more than one-third to more than one-half of the 90 days allotted for petition circulation. Further, since the challenged statutes were enacted in 1997, only one referendum campaign, the 2018 challenge to the “right-to-work” bill, collected enough timely signatures to have the measure placed on the ballot. That

campaign also benefitted from the challenged legislation being signed by the governor on February 6, 2017, which was 113 days before the final adjournment of the legislative session and, therefore, 203 days before the deadline to file a referendum petition under article III, section 52(a).

The legislature inherently has the power to reduce the time to circulate a referendum petition on any particular piece of legislation by delaying the passage of that legislation until the end of the legislative session. But by significantly reducing the allotted circulation period even further, sections 116.180 and 116.334.2 afford the legislature the opportunity to “interfere with or impede” the right of referendum by, in effect, controlling the viability of any referendum. The dissent notes that the legislature *may* pass legislation before the end of the legislative session and accordingly leave referendum proponents more than 90 days to circulate a petition for signatures, even when state officials use the full 51 days to complete the official ballot title certification process. But regardless of if or when the legislature chooses to pass legislation during its session, sections 116.180 and 116.334.2 “interfere with and impede” the right of referendum because they give the legislature the *power* to make any referendum effort untenable.

[17, 18] The Secretary argues that, to declare sections 116.180 and 116.334.2 invalid, this Court must determine that a referendum proponent could *never* successfully collect enough timely signatures to have a measure placed on the ballot. *See State v. Jeffrey*, 400 S.W.3d 303, 308 (Mo. banc 2013) (“Generally, to prevail in a facial challenge, the party challenging the statute must demonstrate that no set of circumstances exists under which the stat-

ute may be constitutionally applied.”¹⁰ But the standard for determining if a law violates article III, sections 49 and 52(a) is whether the law “interferes with or impedes” the *right* of referendum, not whether it “interferes with or impedes” any particular referendum effort. *See Rekart*, 639 S.W.2d at 608. A law need not prevent every individual referendum effort from being successful to “interfere with or impede” the right of referendum itself. Consequently, because sections 116.180 and 116.334.2 “interfere with and impede” the right of referendum, they can *never* be constitutionally applied.

As this Court has emphasized, the establishment of the constitutional right of referendum was a fundamental expression of the power held by the people:

Under our system, that intangible thing we call “government,” the existence of which is least felt when best administered, has its origin in and draws its life and inspiration from the people. They frame and adopt the organic law, which defines the limits of legislative action; they incorporate therein whatever provisions they may deem proper. Thus empowered, as are the people in all governments organized as is ours, the inevitable conclusion follows that if they determine, as they have in the adoption of the initiative and referendum, to limit the province or modify the purview of the Legislature in the adoption or rejection of laws, there is no power that can say them nay.

10. While the Secretary argued before the circuit court that sections 116.180 and 116.334.2 do not conflict with the Missouri Constitution, the Secretary never asserted that the Challengers must show there are no set of circumstances under which sections 116.180 and 116.334 could be constitutionally applied to prevail on their claim. As such, the Secretary arguably failed to preserve this argument for appellate review. *See State v. Davis*, 348

....

To any one familiar with the power for good or ill which the Legislature may wield, it cannot but be regarded as an act of prudence that the people, the repository of all power, and vitally interested in all that pertains to the conduct of public affairs, should reserve unto themselves the right to correct any evils which may result from unwise legislation.

Becker, 240 S.W. at 230-31. The legislature must not be permitted to use procedural formalities to interfere with or impede this constitutional right that is so integral to Missouri’s democratic system of government.

Conclusion

Sections 116.180 and 116.334.2’s prohibition on collecting referendum petition signatures prior to the Secretary’s certification of the official ballot title “interferes with and impedes” the constitutional right of referendum reserved to the people by unreasonably shortening the timeframe for petition circulation. As such, the circuit court’s judgment declaring those statutes constitutionally invalid is affirmed.

Wilson, C.J., Breckenridge, Draper, Ransom, JJ., concur; Powell, J., dissents in separate opinion filed; Fischer, J., concurs in opinion of Powell, J.

W. Brent Powell, Judge, dissenting.

I respectfully dissent because Sara Baker, the ACLU of Missouri, and No Bans on

S.W.3d 768, 770 (Mo. banc 2011) (“Because an appellate court is not a forum in which new points will be considered ... only those objections or grounds of objection which were urged in the trial court, without change and without addition, will be considered on appeal.” (internal quotation omitted)). Nevertheless, this Court will assume, *arguendo*, that the argument was properly preserved and address it on the merits.

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Choice (collectively, “Challengers”) have not demonstrated sections 116.180 and 116.334.2 are facially invalid.¹ While Challengers’ referendum rights may have been interfered with or otherwise impeded in the past, Challengers do not seek relief from the application of sections 116.180 and 116.334.2 during their previous ballot referendum campaign. As the principal opinion notes, Challengers specifically requested in their petition, and the circuit court ultimately granted, declaratory relief outright invalidating both statutes in all situations. Challengers, therefore, do not challenge the application of the statutes *as they were applied to them* in the past. Rather, Challengers mount a facial challenge seeking to invalidate the applications of the statutes *for everyone* going forward. Because circumstances exist in which sections 116.180 and 116.334.2 may be applied without interfering with or impeding the constitutional right of referendum guaranteed in article III, sections 49 and 52(a) of the Missouri Constitution, Challengers’ facial challenge seeking to invalidate these statutes must be rejected.

Analysis

“This Court reviews the constitutional validity of statutes *de novo*.” *Fowler v. Mo. Sheriffs’ Ret. Sys.*, 623 S.W.3d 578, 584 (Mo. banc 2021) (internal quotation omitted). The Court presumes a statute is constitutional, finding it unconstitutional only if “it clearly and undoubtedly contravenes the constitution.” *Adams By and Through Adams v. Children’s Mercy Hosp.*, 832 S.W.2d 898, 903 (Mo. banc 1992), *overruled on other grounds by Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 636 (Mo. banc 2012). “In order to mount a facial challenge to a statute, the challenger must establish that no set of circumstances exists under which the [statute] would be

valid.” *Donaldson v. Mo. State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. banc 2020) (alteration in original). Courts should rarely tolerate facial challenges to the constitutional validity of a statute:

Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of premature interpretation of statutes on the basis of factually barebones records. Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that [a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.

Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 450-51, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008) (alteration in original) (internal quotation and citation omitted).

Article III, section 52(a) provides, “Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.” The Missouri Constitution therefore, guarantees referendum proponents only 90 days to collect the necessary signatures to place the referendum on the ballot because referendum-contested legis-

1. All statutory references are to RSMo 2016.

lation may be passed on the last day of the legislative session. While the legislature may neither “impede” nor “interfere” with the right of referendum, *Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. banc 1982), the legislature has the power to enact reasonable, practical regulations to address the realities of implementing a constitutional right. *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991) (noting the legislature may “enact reasonable implementations of a constitutional directive”). As long as legislatively enacted regulations to the referendum process do not limit the 90 days set aside to collect signatures and submit petitions to the Secretary of State, the regulations would not interfere with or impede the time period guaranteed by the right of referendum and would be presumably reasonable and practical. *Adams*, 832 S.W.2d at 903 (The Court presumes a statute is constitutional, finding it unconstitutional only if “it clearly and undoubtedly contravenes the constitution.”).

Of course, the legislature may pass legislation before the end of the legislative session. Referendum proponents accordingly would enjoy in excess of the 90 days to collect signatures and comply with the relevant statutory regulations, even if state actors took the full 51 days Missouri statutes permit for reviewing and certifying the ballot title.² In such a circumstance, the referendum regulations would neither impede nor interfere with the 90 days set aside by the Missouri Constitution to collect signatures and submit the

referendum petitions to the Secretary of State. Because the legislature may enact reasonable, practical regulations to the referendum process and circumstances exist in which sections 116.180 and 116.334.2 would not impede or interfere with the right of referendum, Challengers’ facial challenge lacks merit, and the circuit court erred in invalidating these statutes.

The principal opinion insinuates the Secretary of State (“State”) failed to preserve its facial challenge argument by neglecting to raise the argument before the circuit court. The mere suggestion that the State’s facial challenge argument is unpreserved and unreviewable is untenable for many reasons. First, the State did answer Challengers’ claims, vehemently asserting the statutes were constitutional.³ Admittedly, the State cited no caselaw pertinent to facial constitutional challenges, but this omission is inconsequential. Even if the State had utterly failed to contend sections 116.180 and 116.334.2 were constitutional, which it did not, this Court could not eschew its duty to conduct *de novo* review applying controlling precedent to the circuit court’s judgment declaring sections 116.180 and 116.334.2 unconstitutional and invalidating acts of the legislature.⁴ As the principal opinion concedes, “[t]his Court reviews the constitutional validity of statutes *de novo*.” *Fowler*, 623 S.W.3d at 584 (internal quotation omitted). It also presumes statutes are constitutional. *Adams*, 832 S.W.2d at 903. Challengers, not the State, have the burden of rebutting this

2. See §§ 116.332.1, .3, .4; § 116.334.1; §§ 116.175.2, .4; § 116.010(4); § 116.180.

3. The State did so in its motion to dismiss, the affirmative defenses listed its answer to Challengers’ amended petition, and its pretrial brief.

4. A court could not raise constitutional challenges *sua sponte* on behalf of the party seek-

ing to strike down the statute. Such an act would put this Court in a position of advocacy, hinder its constitutional purpose of impartial review, and, therefore, would violate separation of powers. See e.g., *White v. U. S. Pipe & Foundry Co.*, 646 F.2d 203, 204 (5th Cir. 1981). The Court, however, does not act as an advocate when it independently retrieves caselaw supporting constitutional validity in a *de novo* review.

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presumption and demonstrating the reasons their claim merits the relief requested. *Id.* In conducting *de novo* review of a properly presented challenge to the constitutional validity of a statute, this Court has no authority to relieve Challengers of that burden of persuasion by requiring the State, or any other party, to make arguments supporting the validity of the statute.

These principles reflect this Court's constitutional function: "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803) (holding American courts may invalidate laws and statutes in conflict with the United States Constitution); *see also* Mo. Const. art. V, sec. 1 ("The judicial power of the state shall be vested in a supreme court[.]"); Mo. Const. art. V, sec. 3 ("The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of . . . a statute or provision of the constitution of this state[.]"). This Court cannot, and should not, relinquish its constitutional duty to review the validity of a statute merely because the State failed to identify the proper standard of review of a facial challenge in its argument to the circuit court. If this were possible, the State could collude with other litigants to orchestrate outcomes by declining to faithfully defend statutes and narrowing the scope of the caselaw reviewable by this Court.⁵ The State, acting through the Attorney General, would become the ultimate

arbiter of a statute's constitutional validity.⁶ The Missouri Constitution charges this Court, not the Attorney General or any other member of the executive branch, with exercising its judicial power to review a proper challenge to the constitutional validity of a statute. Mo. Const. art. V, § 1. This review necessarily includes considering this Court's precedents regardless of whether the State, or any other party supporting the constitutional validity of a statute, has properly presented and briefed the circuit court on the law related to facial challenges.

Conclusion

For these reasons, I disagree with the principal opinion's analysis and conclusion that sections 116.180 and 116.334.2 facially violate the right of referendum contained in article III, sections 49 and 52(a) of the Missouri Constitution. I would reject Challengers' arguments and reverse the circuit court's judgment.



5. Say, for example, a group of litigants filed an action mounting a facial challenge to a statute on the grounds that it violated the right to have an abortion guaranteed by *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). If the State, acting through the Attorney General, agreed with the litigants' viewpoint and purposefully limited its defense of the statute by raising only irrelevant arguments and abstained from mentioning law pertinent to facial challenges, would

this Court be precluded from conducting its own review of the merits of the litigants' constitutional claims?

6. Such action would likely also violate article II, section I of the Missouri Constitution, which prohibits each branch of government from exercising powers granted to a different branch.

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ORDER

Per Curiam:

Appellant Omar Muhammad was found guilty of murder in the second degree, armed criminal action, and receiving stolen property, following a jury trial in the Circuit Court of Jackson County. Muhammad appeals, claiming that the trial court abused its discretion in allowing two hearsay statements into evidence and erred when it denied his oral motion to sever the charges of second degree murder and armed criminal action from charges for burglary and possession of stolen goods. We affirm. Because a published opinion would have no precedential value, we have provided the parties an unpublished memorandum setting forth the reasons for this order, Rule 30.25(b).

sheet. The Circuit Court, Cole County, Daniel R. Green, J., dismissed the petition with prejudice. Organization appealed.

Holdings: The Court of Appeals, Cynthia L. Martin, J., held that:

- (1) as a matter of first impression, Secretary of State's authority to review sample sheet is limited to determining whether the sample sheet is substantially in the form required by statute;
- (2) Secretary had no authority to reject sample sheet on constitutional grounds;
- (3) organization could seek to compel Secretary to approve sample sheet; and
- (4) Secretary could be compelled by injunctive relief to approve sample sheet.

Reversed.

**1. Appeal and Error ☞71(3)**

The denial of interim injunctive relief is ordinarily interlocutory and ineligible for appellate review.

2. Appeal and Error ☞71(3)

Orders entered during the temporary injunction stage are not final, appealable orders; no appeal lies from the denial of a preliminary injunction.

3. Appeal and Error ☞70(5)**Declaratory Judgment ☞392.1**

Trial court's dismissal with prejudice of non-profit civil liberties organization's request for declaratory and permanent injunctive relief from Secretary of State's denial of referendum petition sample sheet was appealable; although court also issued non-appealable interlocutory order denying organization's motion for interim injunctive relief, court's dismissal of all claims mooted the request for interim injunctive relief.

**AMERICAN CIVIL LIBERTIES
UNION OF MISSOURI and
Sara E. Baker, Appellants,
v.**

**John R. ASHCROFT, et
al., Respondents.**

WD 82880

Missouri Court of Appeals,
Western District.

OPINION FILED: July 8, 2019

Background: Non-profit civil liberties organization that sought referendum vote on legislation related to regulation of abortions filed petition against state officials requesting temporary restraining order and injunctive and declaratory relief from rejection of referendum petition sample

4. Appeal and Error ☞758.3(3)

A multifarious point relied on appeal preserves nothing for appellate review. Mo. Sup. Ct. R. 84.04.

5. Statutes ☞1771

The purpose of referendum is to suspend or annul a law which has not gone into effect and to provide the people a means of giving expression to a legislative proposition, and require their approval before it becomes operative as a law. Mo. Const. art. 3, § 49.

6. Election Law ☞651

The phrase “sufficiency as to form” in the statute governing the secretary of state’s review of a referendum petition sample sheet refers to whether the sample sheet is in substantially the statutorily required form. Mo. Ann. Stat. §§ 116.030, 116.332.

7. Statutes ☞1155

When determining the legislative intent of a statute, no portion of the statute is read in isolation, but rather the portions are read in context to harmonize all of the statute’s provisions.

8. Statutes ☞1151

When interpreting a statute, the Court of Appeals must give meaning to every word or phrase of the legislative enactment.

9. Statutes ☞1156, 1374

Courts never presume that the legislature acted uselessly and should not construe a statute to render any provision meaningless.

10. Statutes ☞1158

If different terms are used in different subsections of a statute, then the legislature intended the terms to have different meaning and effect.

11. Election Law ☞651

The Secretary of State’s authority to review a referendum petition sample sheet for sufficiency as to form prior to collection of signatures is limited to determining whether the sample sheet is substantially in the form required by statute, and does not extend to substantive or constitutional matters; if the sample sheet substantially complies, the Secretary of State shall deem the sample sheet sufficient. Mo. Ann. Stat. §§ 116.030, 116.332.

12. Election Law ☞644

Constitutional and statutory provisions relative to initiative and referendum are liberally construed to make effective the people’s reservation of that power. Mo. Const. art. 3, § 52(a); Mo. Ann. Stat. §§ 116.030, 116.332.

13. Statutes ☞1774

Secretary of State, in conducting pre-signature review of referendum petition sample sheet submitted by non-profit civil liberties organization seeking referendum vote on legislation related to regulation of abortions, had no authority to reject sample sheet on constitutional grounds; Secretary’s pre-signature review authority was limited to determining whether sample sheet was sufficient as to form. Mo. Const. art. 3, § 52(a); Mo. Ann. Stat. §§ 116.030, 116.332.

14. Injunction ☞1002, 1546

An injunction is a remedy and not a cause of action; therefore it must be based on some recognized and pleaded legal theory.

15. Injunction ☞1348

Non-profit civil liberties organization could seek to compel Secretary of State to approve referendum petition sample sheet, although statute setting forth obligations of Secretary to review sample sheet did not impose sanction for noncompliance;

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whether Secretary's obligation was directory or mandatory was irrelevant since organization was seeking to compel compliance with statute and was not seeking sanctions. Mo. Const. art. 3, § 52(a); Mo. Ann. Stat. §§ 116.030, 116.332.

16. Injunction ⇐1348

Secretary of State could be compelled by injunctive relief to approve referendum petition sample sheet submitted by non-profit civil liberties organization, regardless of whether writ of mandamus would have been available remedy to organization; organization sought declaration of extent of Secretary's authority to review a sample sheet for sufficiency as to form, an issue that had to be decided before any remedy could be imposed. Mo. Const. art. 3, § 52(a); Mo. Ann. Stat. §§ 116.030, 116.332.

17. Injunction ⇐1012

Mandamus ⇐3(9)

Mandatory injunction may be invoked to compel the undoing of something wrongfully done; mandamus has been invoked for the same purpose.

18. Mandamus ⇐12

Similar to a mandatory injunction, the purpose of the extraordinary "writ of mandamus" is to compel the performance of a ministerial duty that one charged with the duty has refused to perform.

See publication Words and Phrases for other judicial constructions and definitions.

19. Declaratory Judgment ⇐62

In the context of a declaratory judgment action, a justiciable controversy exists where the plaintiff has a legally protected interest at stake, a substantial controversy exists between parties with genuinely adverse interests, and that controversy is ripe for judicial determination.

20. Mandamus ⇐7

Mandamus is a discretionary writ, not a writ of right.

21. Mandamus ⇐10

Mandamus will lie only when there is a clear, unequivocal, and specific right.

22. Appeal and Error ⇐4711

The Court of Appeals can give such judgment as the trial court ought to give in lieu of remanding for entry of judgment; this is particularly appropriate for judgments where the salient facts are not in dispute, but the only dispute is the legal significance of the facts. Mo. Sup. Ct. R. 84.14.

23. Appeal and Error ⇐4711

The Court of Appeals can render the judgment that the trial court should have rendered when the record and evidence give it confidence in the reasonableness, fairness, and accuracy of the conclusion reached. Mo. Sup. Ct. R. 84.14.

Appeal from the Circuit Court of Cole County, Missouri, The Honorable Daniel R. Green, Judge

Anthony E. Rothert and Jessie Steffan, St. Louis, MO and Gillian R. Wilcox, Kansas City, MO, for appellants.

D. John Sauer, St. Louis, MO, for respondents.

Before Special Division: Thomas H. Newton, Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Cynthia L. Martin, Judge

The American Civil Liberties Union of Missouri and Sara E. Baker (collectively "ACLU") appeal a trial court judgment dismissing its verified petition with prejudice and denying pending motions in a

proceeding where the ACLU sought a temporary restraining order, preliminary and permanent injunctive relief, and declaratory relief from State officials after a referendum petition sample sheet was rejected. Because the Secretary of State rejected the sample sheet on constitutional grounds at a point when the Secretary of State's exclusive authority was limited by section 116.332¹ to review of the sample sheet for sufficiency as to form, we reverse the trial court's judgment, and enter the judgment that should have been given pursuant to Rule 84.14.

Factual and Procedural Background

Unless otherwise noted, the salient facts are uncontested.²

On May 17, 2019, House Bill No. 126 ("HB 126") passed in the second chamber of the Missouri General Assembly and was sent to the Governor for approval. On May 24, 2019, Governor Michael Parson signed HB 126 into law.

HB 126 repeals seven statutes (sections 135.630, 188.010, 188.015, 188.027, 188.028, 188.043, and 188.052) and replaces the repealed statutes with seventeen new provisions. The new provisions all relate to the regulation of abortions. For one of the seventeen new provisions, section 188.028, an emergency clause applies, as follows:

Because of the need to protect the health and safety of women and their children, both unborn and born, the repeal and reenactment of section 188.028 of this act is deemed necessary for the immediate preservation of the public

health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 188.028 of this act shall be in full force and effect upon its passage and approval.

HB 126, sec. C. The remaining sixteen provisions of HB 126 do not contain an emergency clause.

On May 28, 2019, the ACLU submitted a referendum petition sample sheet ("Sample Sheet") to Secretary of State John ("Jay") R. Ashcroft ("Secretary of State"). The submission of a sample sheet is required by section 116.332, and is the first step required to exercise the referendum power reserved in the people by Article III, section 49 of the Missouri Constitution. The Secretary of State forwarded the Sample Sheet to Attorney General Eric S. Schmitt ("Attorney General") and to State Auditor Nicole Galloway ("Auditor") to be reviewed and processed as required by section 116.332.

On June 6, 2019, the Secretary of State notified the ACLU that its Sample Sheet was being rejected on constitutional grounds as follows: "Our legal department has determined that your referendum is not compliant with Article III, Section 52(a) of the Missouri Constitution." The Secretary of State concluded that because HB 126 contained an emergency clause, the act was constitutionally ineligible in its totality for the referendum process. The Secretary of State reported no other issues warranting rejection of the Sample Sheet.

1. All statutory references are to RSMo 2016 as supplemented through May, 2019, except as otherwise noted.

2. The pleadings in this case are limited to the ACLU's verified petition, its motion for interim injunctive relief with suggestions in support, and suggestions in opposition to that motion. In addition, there was a hearing on

the motion, with arguments made by counsel. The uncontested facts are thus drawn from the facts alleged in the ACLU's petition and motion for interim injunctive relief that were admitted by the suggestions in opposition to the motion, or during the hearing on the motion.

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After rejecting the Sample Sheet, the Secretary of State withdrew the Sample Sheet from the Attorney General and the Auditor.

On June 6, 2019, the ACLU filed suit in the Circuit Court of Cole County, Missouri against the Secretary of State, the Attorney General, and the Auditor, in their representative capacities (collectively referred to as “the State”). The ACLU’s verified petition sought a temporary restraining order, preliminary and permanent injunctive relief, and declaratory relief. The petition sought a declaration that HB 126 is not subject to an emergency clause that forecloses exercise of the power of referendum; a declaration that the Sample Sheet was sufficient as to form and should have been approved; permanent injunctive relief prohibiting the State from rejecting the Sample Sheet on the basis of the emergency clause applicable to section 188.028 of HB 126; permanent injunctive relief requiring the Secretary of State to approve the Sample Sheet, to prepare a ballot summary statement, and to certify the official ballot title; permanent injunctive relief requiring the Auditor to prepare a fiscal note and fiscal note summary; and permanent injunctive relief requiring the Attorney General to approve the ballot summary statement and fiscal note.

The ACLU then filed a motion for temporary restraining order and for a preliminary injunction, and set the motion for hearing on June 11, 2019. The ACLU’s motion was accompanied by suggestions in support which alleged that the Secretary of State had no authority to consider constitutional matters in connection with his review of the Sample Sheet for sufficiency as to form pursuant to section 116.332, and that in any event, the Secretary of State could not rely on the emergency clause applicable to section 188.028 to reject the Sample Sheet because a court must decide

whether an emergency clause is legitimate, and because the emergency clause did not apply to all of the provisions of HB 126. The ACLU noted the urgency of the circumstances, as it is prohibited from collecting signatures on a referendum petition until the Sample Sheet is approved, until the fiscal note and summary are prepared, and until the ballot summary and title are prepared and certified. The ACLU thus noted the urgency of time, as referendum petitions with sufficient signatures must be submitted no later than ninety days after adjournment of the general assembly.

The State filed suggestions in opposition to the motion. The State acknowledged that the Sample Sheet was rejected based solely on the emergency clause applicable to section 188.028 of HB 126. The State argued that temporary and preliminary injunctive relief could not be used to compel the Secretary of State to approve the Sample Sheet because interim injunctive relief is limited to preserving the status quo; that even if the Secretary of State was obligated to approve the Sample Sheet, the ACLU could not enforce that obligation because section 116.332 describes directory and not mandatory acts; and that in the alternative, the exclusive remedy available to the ACLU to compel the Secretary of State to approve the Sample Sheet is mandamus, relief not sought in the ACLU’s petition.

On June 11, 2019, the parties appeared by counsel to argue the ACLU’s motion. At the same time, counsel representing David Humphreys (“Humphreys”), the proponent of a separate referendum petition addressing HB 126, also appeared. Humphreys’ referendum petition sample sheet had been identically rejected by the Secretary of State. Humphreys filed his own lawsuit on June 7, 2019 which similarly sought a temporary restraining order,

preliminary and permanent injunctive relief, and declaratory relief.³ Though the ACLU's and Humphreys' lawsuits were not consolidated, the trial court consolidated the hearing on the ACLU's and Humphreys' motions for temporary and preliminary injunctive relief.

During a brief hearing on the pending motions where no evidence was taken,⁴ the parties repeated their arguments in support of and in opposition to the motions for temporary and preliminary injunctive relief. After hearing the parties' arguments, the trial court noted on the record:

I do believe that you're asking me to compel the State actor and the Secretary of State to do something, so I do think that a writ of mandamus would have to issue from the court. And I think [the State's counsel] is correct, that neither party has asked me to do that.

So I'll give you a choice. I know that this is a time sensitive case. Do you want leave to re-file your petition, or do you want me to dismiss it and you re-file? Or do you need a minute to talk . . . about that?

The trial court clarified that if leave to amend was afforded, the court presumed the parties would amend their petitions to add a request for a writ of mandamus. Alternatively, the trial court indicated it would "dismiss this case and you can re-file it." The ACLU and Humphreys were granted leave to file amended petitions by June 13, 2019, and the parties were directed to reconvene on June 17, 2019.

3. This action is styled *David Humphreys, et al. v. John R. Ashcroft, et al.*, Case No. 19AC-CC00249.

4. The transcript is only seventeen pages long.

5. Humphreys did file an amended petition which added a request for a writ of mandamus. That request for a writ of mandamus

The ACLU did not file an amended petition.⁵ On June 13, 2019, the trial court entered its order and judgment ("Judgment") in the ACLU's case as follows: Being fully advised, the Court dismisses [the ACLU's] petition and all claims with prejudice.

IT IS THEREFORE ORDERED AND DECREED:

1. [The ACLU's] petition is dismissed with prejudice.
2. All pending motions are overruled.

On June 19, 2019, the ACLU filed this appeal.

Expedited Disposition of Appeal

We have expedited the disposition of this appeal. Pursuant to Article III, section 52(a) of the Missouri Constitution, "[r]efendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded." Section 116.100 provides that "[t]he secretary of state shall not accept any referendum petition submitted later than 5:00 p.m. on the final day for filing referendum petitions." Section 116.334 prohibits the proponent of a referendum petition from beginning the signature collection process essential to filing a referendum petition until the steps described in sections 116.332 and 116.334 have been completed, one of which is the secretary of state's⁶ approval of a referendum petition sample sheet as sufficient as to form. The Secretary of State's rejection of the Sam-

was summarily denied without prejudice on June 17, 2019, and all other claims in Humphreys' amended petition were dismissed with prejudice. Humphreys' dismissed lawsuit is not the subject of this appeal.

6. We refer generally to the office of the secretary of state without capitalizations.

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ple Sheet has thus thwarted the ACLU's ability to proceed with signature collection, and has the effect of compressing the already limited time available to exercise the power of referendum.

Standard of Review

The trial court's Judgment dismissed the ACLU's petition *with prejudice*, and thus dismissed the petition's claims for declaratory and permanent injunctive relief. The Judgment also denied the ACLU's pending motion for interim injunctive relief.

[1-3] The denial of interim injunctive relief is ordinarily interlocutory and ineligible for appellate review.⁷ In any event, the Judgment's denial of the ACLU's motion for interim injunctive relief is mooted by the Judgment's dismissal with prejudice of the ACLU's requests for declaratory and permanent injunctive relief. We limit our review on appeal, therefore, to the Judgment's dismissal with prejudice of the petition's claims for declaratory relief and permanent injunctive relief.

When the Judgment was entered, no written motion to dismiss, for judgment on the pleadings, or for summary judgment, was pending. However, the State's suggestions in opposition to the ACLU's motion for interim injunctive relief, along with the State's argument at the hearing on the motion, clearly reflect the State's position that the ACLU's petition was without merit as a matter of law, even assuming all facts therein stated were true: (i) because the Secretary of State's obligation to review and approve a referendum petition

sample sheet is merely directory and not mandatory, and cannot be compelled; (ii) because the Secretary of State acted within his authority to reject the Sample Sheet because HB 126 includes an emergency clause, and the Missouri Constitution prohibits exercise of the power of referendum in connection with an act that includes an emergency clause; and (iii) because in any event, mandamus is the exclusive remedy available to compel a State actor to do that which is required by statute, and mandamus was not pled.

Because the trial court dismissed the ACLU's petition with prejudice before any evidence was taken, we conclude that the Judgment was in the nature of a judgment on the pleadings. "A trial court properly grants a motion for judgment on the pleadings if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law." *State ex rel. Nixon v. American Tobacco Co., Inc.*, 34 S.W.3d 122, 134 (Mo. banc 2000). Ordinarily, that requires us to treat all well-pleaded facts as admitted for purposes of our review. See *Emerson Electric Co. v. Marsh & McLennan Companies*, 362 S.W.3d 7, 12 (Mo. banc 2012). Here, there are no salient facts in dispute. Instead, the only issues before us are legal questions: whether the Secretary of State acted in excess of his statutory authority by rejecting the Sample Sheet on constitutional grounds, and if so, whether the ACLU is entitled to compel the Secretary of State to approve the Sample Sheet with permanent injunctive relief. We address these legal issues *de novo*. *Jones v. Fife*, 207 S.W.3d 614, 616 (Mo. banc 2006) (holding that where the

7. "[O]rders entered during the temporary injunction stage are not final, appealable orders. . . . No appeal lies from the denial of a preliminary injunction." *Eickelmann v. Eickelmann*, 724 S.W.2d 261, 262 (Mo. App. W.D. 1986) (other citations omitted). *But see, Furniture Mfg. Corp. v. Joseph*, 900 S.W.2d 642,

646 (Mo. App. W.D. 1995) (holding that an appeal from the denial of interim injunctive relief may be warranted where "the practical effect of a dismissal of the appeal would be to deprive the appellant of any equitable relief altogether").

issue on review is “purely a legal one,” we “review[] the trial court’s judgment de novo”).

Analysis

The ACLU raises a single point on appeal. The ACLU alleges that it was error to dismiss its petition with prejudice because: (i) the Secretary of State had no authority to review the Sample Sheet at this stage in the referendum process except for its sufficiency as to form; (ii) there is no emergent public need that justifies expediting an effective date for any section of HB 126; and (iii) even if an emergency clause is properly invoked as to section 188.028 of HB 126, that does not deprive the people of the power of referendum for the remaining sixteen sections of the act which are not subject to an emergency clause.

[4] As we hereinafter explain, the ACLU’s appeal can be resolved by addressing only the first of these multiple claims.⁸ That resolution requires us to explain the people’s reserved power of referendum, and to analyze the parameters of the secretary of state’s statutory authority to review referendum petitions, including sample sheets.

The Power of Referendum

[5] Article III, section 49 of the Missouri Constitution expressly reserves to the people the “power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.”

8. The ACLU’s point on appeal violates Rule 84.04, as it identifies three distinct and separate reasons why the trial court’s Judgment is allegedly in error. *Kirk v. State*, 520 S.W.3d 443, 450 n. 3 (Mo. banc 2017) (holding a point relied on violates Rule 84.04 if “it groups together multiple, independent claims rather than a single claim of error”). A multifarious point on appeal preserves nothing for appellate review. *Id.* However, as explained in

The “[p]urpose of referendum is to suspend or annul a law which has not gone into effect and to provide the people a means of giving expression to a legislative proposition, and require their approval before it become[s] operative as a law[.]” *Stickler v. Ashcroft*, 539 S.W.3d 702, 713 (Mo. App. W.D. 2017) (quoting *State ex rel. Moore v. Toberman*, 363 Mo. 245, 250 S.W.2d 701, 706 (Mo. banc 1952) (citation omitted)).

Consistent with this purpose, the “exception” to the people’s referendum power referred to in article III, section 49 is set forth in article III, section 52(a) of the Missouri Constitution, which provides in pertinent part as follows:

A referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriation for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools)[.]

The portion of the aforesaid exception addressing laws necessary for immediate preservation of the public peace, health or safety recognizes that the general assembly has the constitutional authority pursuant to article III, section 29 to express an emergency “in the preamble or in the body of [an] act” as to permit an act to take immediate effect. This is in lieu of the ordinary proscription that a law does not “take effect until ninety days after adjournment of the session . . . at which it

this Opinion, resolution of the first claim raised in the ACLU’s multifarious point on appeal is sufficient to resolve this appeal. We therefore exercise our discretion to review the merits of the first claim raised in the ACLU’s point on appeal. See *Griffitts v. Old Republic Insurance Company*, 550 S.W.3d 474, 478 (Mo. banc 2018); *Spence v. BNSF Ry. Co.*, 547 S.W.3d 769, 779 n. 12 (Mo. banc 2018).

was enacted.” Art. III, sec. 29 Missouri Constitution.

Here, an emergency clause applied to section 188.028. The emergency clause employed language drawn directly from the exception to the power of referendum described in article III, section 52(a) of the Missouri Constitution. The parties disagree about whether the general assembly’s declaration of emergency is self-actuating as to defeat the power of referendum as a matter of law, or instead remains subject to judicial review to determine its legitimacy. And the parties disagree about whether an emergency clause can circumvent the people’s power of referendum when it is only attached to one of multiple provisions in an act.

These disputed legal issues are important ones, and are the subject of the second and third claims raised in the ACLU’s point on appeal.⁹ However, these legal issues need not be addressed or resolved, *unless* the Secretary of State’s statutory authority to review the Sample Sheet for sufficiency as to form included the authority to consider the effect of the emergency clause in section 188.028. We therefore turn our attention to the secretary of state’s statutory authority to review referendum petition sample sheets, the subject of the first claim raised by the ACLU’s point on appeal. No Missouri case has addressed the parameters of the secretary of state’s authority to review a referendum petition sample sheet for sufficiency as to

form, rendering this an issue of first impression.

The Secretary of State’s Authority to Review Referendum Petition Sample Sheets

The process for exercising the power of referendum authorized by the Missouri Constitution is described in chapter 116. Chapter 116 describes two occasions where the secretary of state’s review is required during the referendum process: (i) the pre-signature collection review of a sample sheet authorized by section 116.332; and (ii) the post-signature collection review of a submitted referendum petition and its signatures authorized by section 116.120. *See Bradshaw v. Ashcroft*, 559 S.W.3d 79, 86 (Mo. App. W.D. 2018) (explaining that “chapter 116 bifurcates the secretary of state’s authority with respect to the initiative [and referendum] process into two stages: the pre-signature collection stage and the post-signature collection stage”).

The first step taken to initiate the referendum process is a proponent’s submission of a referendum petition sample sheet. Before a referendum petition can be circulated for signatures, “a sample sheet must be submitted to the secretary of state in the form in which it will be circulated.” Section 116.332.1. The secretary of state is then obligated to “refer a copy of the petition sheet to the attorney general for his approval and to the state auditor for purposes of preparing a fiscal note and fiscal note summary.”¹⁰ *Id.* “The secretary of

9. An amicus brief was filed on behalf of Speaker Elijah Haahr, Representative Nick Schroer, and President Pro Tem Dave Schatz in support of the Secretary of State and the Attorney General. The amicus brief was limited in its discussion to these two issues.

10. The Auditor did not file a brief in this appeal, because, as she advised this Court by letter dated June 27, 2019, following the Secretary of State’s referral of the Sample Sheet to her pursuant to section 116.332.1, the Au-

ditor complied with her statutory obligation to prepare a fiscal note and fiscal note summary as required by section 116.175.2. The Auditor advised this Court that she has already sent her fiscal note and fiscal summary to the Attorney General for review pursuant to section 116.175.4, and that once the Attorney General’s approval is received, she will immediately send the fiscal note and fiscal note summary to the Secretary of State.

state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any.” *Id.* The attorney general must forward his rejection of the petition as to form with comments, or his approval of the petition as to form, to the secretary of state within ten days.¹¹ Section 116.332.3. However, “[t]he secretary of state shall . . . make [the] final decision as to the approval or rejection of the form of the petition.” Section 116.332.4. Within fifteen days of submission of the petition sample sheet, the secretary of state shall send written notice to the person who submitted the petition sample sheet either that the sample sheet has been approved as to form, or rejected as to form. *Id.* If the secretary of state rejects the petition sample sheet as to form, the written notice of same shall include “the reasons for rejection.” *Id.*

If a referendum petition sample sheet is approved, the secretary of state must make the sample petition available on the secretary of state’s website to provide a fifteen day public comment period. Section 116.334.1. And, within twenty-three days of approval of the sample sheet, the secretary of state is required to “prepare and transmit to the attorney general a summary statement of the measure,” which the attorney general must thereafter approve as to “legal content and form” within ten days. *Id.*

11. During oral argument, the Attorney General’s office confirmed that it is the office’s ordinary practice to publish, as an opinion of the Attorney General, the Attorney General’s recommended approval or rejection of a submitted sample sheet, along with the reasons therefore. No such opinion has been published by the Attorney General for the ACLU’s Sample Sheet. However, the Attorney General opinions that are publicly posted expressly

Collectively, the procedures described in sections 116.332 and 116.334 could take as long as forty-eight days. Section 116.332.4; section 116.334.1. A referendum petition proponent cannot begin collecting signatures, however, until all of the steps required by section 116.332 and section 116.334 have been completed by the State. Section 116.334.2. At the same time, a referendum petition with the requisite number of signatures must be submitted no later than “ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.” Art. II, sec. 52(a), Missouri Constitution. It is self-evident, therefore, that delays in the State’s performance of its obligations in the pre-signature collection stage of the referendum process can have the practical effect of foreclosing meaningful exercise of the power of referendum.

Sections 116.332 repeatedly uses the phrase “sufficiency as to form” to describe the secretary of state’s statutory authority during the “pre-signature collection stage” of the referendum process to approve or reject a sample sheet. Though the phrase “sufficiency as to form” in section 116.332 is not afforded an express statutory definition, section 116.030 effectively serves as the definition for the phrase, as it addresses the required form of a referendum petition sample sheet, and includes an exemplar form. Importantly, section 116.030 provides that the exemplar form “shall be substantially the form of each page of referendum petitions on any law

state that review is pursuant to section 116.332, and is “simply for the purpose of determining sufficiency as to form,” and that the fact the Attorney General has not rejected the sample sheet “is not to be construed as a determination that the petition is sufficient as to substance.” See <https://ago.mo.gov/other-resources/ag-opinions/opinions-2010---2019/2019-opinions>

passed by the general assembly of the State of Missouri,” and that “[i]f this form is followed substantially and the requirements of section 116.050 and section 116.080¹² are met, *it shall be sufficient*, disregarding clerical and merely technical errors.” (Emphasis added.)

[6, 7] Because section 116.030 describes the required form of a referendum petition sample sheet, and directs that a sample sheet in substantially the form of the exemplar form “shall be sufficient,” we conclude that the phrase “sufficiency as to form” in section 116.332 refers to whether a sample sheet is in substantially the form required by section 116.030. “When determining the legislative intent of a statute, no portion of the statute is read in isolation, but rather the portions are read in context to harmonize all of the statute’s provisions.” *BASF Corp. v. Dir. of Revenue*, 392 S.W.3d 438, 444 (Mo. banc 2012) (per curiam).

This conclusion happens to comport with the plain and ordinary dictionary meaning of the word “form” when used in a context that is relevant to sample sheets. See *R.M.A. by Appleberry v. Blue Springs R-IV School District*, 568 S.W.3d 420, 431 (Mo. banc 2019) (holding terms in a statute that are not defined assume their plain and ordinary dictionary definition). The word “form,” when referring to a form of document, means: “4 a: manner, method, or style (as of proceeding) b: established

method of expression or practice: fixed or formal way or proceeding: procedure according to rule or rote c: a prescribed and . . . set order of words . . . e (1): a printed or typed document with blank spaces for insertion of required or requested specific information. . . .” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 892 (1993). Consistent with this dictionary definition, section 116.030 provides an exemplar form that uses a prescribed and set order of words, with blank spaces for insertion of required or requested information; and that directs that a submitted sample sheet “shall be sufficient” if its form is substantially in compliance with the exemplar.

[8, 9] Neither section 116.030 nor the dictionary definition of “form” permit the conclusion that review of a sample sheet for “sufficiency as to form” pursuant to section 116.332 extends to matters of substance, including constitutional compliance. Instead, the phrase “as to form” plainly qualifies the secretary of state’s authority to review the sufficiency of a sample sheet, an observation that is compelling in and of itself, as the qualifier “as to form” would be rendered unnecessary and superfluous if review of a sample sheet for “sufficiency” extended to all matters, including substantive and constitutional matters. “When interpreting a statute, this Court must give meaning to every word or phrase of

12. “Section 116.050 addresses other requirements for the form of [referendum] petitions, including page size, the requirement that each page of the [referendum] petition attach or contain a full and correct text of the proposed measure, and the format and content of the full and correct text of the proposed measure.” *Bradshaw*, 559 S.W.3d at 84 (citing sections 116.050.1 and .2). Section 116.050 also requires the form of initiative and referendum petitions to “conform to the provisions of Article III, Section 28 and Article III, Section 50 of the constitution and those of this chap-

ter.” Article III, section 28 addresses the reviving, renewing or amendment of bills, and is thus not applicable to the referendum process. Article III, section 50 addresses the signatures requirements for initiative petitions, and by its plain terms is not applicable to referendum petitions. “Section 116.080 addresses the required qualifications of and registration requirements for an initiative petition circulator[.]” *Id.* (citing section 116.080.1). No party argues that sections 116.050 or 116.080 are of any relevance in this case.

the legislative enactment.” *State ex rel. Jackson v. Dolan*, 398 S.W.3d 472, 479 (Mo. banc 2013). “Courts never presume that our legislature acted uselessly and should not construe a statute to render any provision meaningless.” *Caplinger v. Rahman*, 529 S.W.3d 326, 332 (Mo. App. S.D. 2017) (en banc).

[10] Bolstering this conclusion is section 116.120, which addresses the secretary of state’s authority to review the sufficiency of a referendum (or initiative) petition submitted *after* signatures have been collected, and thus as a part of the “post-signature collection stage” of the referendum process. *Bradshaw*, 559 S.W.3d at 86 (explaining that the secretary of state’s review authority during exercise of the initiative or referendum process is bifurcated into the pre-signature collection stage addressed in section 116.332 and the post-signature collection stage addressed in section 116.120). Section 116.120.1 provides in part that:

When an initiative or referendum petition is submitted to the secretary of state, he or she shall examine the petition **to determine whether it complies with the Constitution of Missouri and with this chapter.**

(Emphasis added.) Section 116.120 continues to describe the guidelines and processes to be employed by the secretary of state to determine the validity of signatures on a referendum (or initiative) petition. Importantly, in sharp contrast to the qualified authority extended to the secretary of state in section 116.332 to review a sample sheet for sufficiency as to form, section

116.120 authorizes the secretary of state to review a submitted referendum petition to determine compliance with the Constitution of Missouri and the provisions of chapter 116. “[I]f different terms are used in different subsections of [a] statute, then the legislature intended the terms to have different meaning and effect.” *City of Cape Girardeau v. Elmwood Farms, L.P.*, 575 S.W.3d 280, 283–84, 2019 WL 1029634 at *2 (Mo. App. S.D. April 11, 2019) (citation omitted).

[11] Based on the plain and unambiguous language of section 116.332, particularly when considered along with section 116.120.1, we conclude that the secretary of state’s authority to review a referendum petition sample sheet for sufficiency as to form is limited to determining whether the sample sheet is substantially in the form required by section 116.030, and if it is, that the secretary of state **shall** deem the sample sheet sufficient. Section 116.030. Correspondingly, we conclude that the secretary of state’s authority to review a referendum petition sample sheet for sufficiency as to form does not extend to substantive matters including, without limitation, determining compliance with the Missouri Constitution.¹³

Bifurcated review during the referendum process pursuant first to section 116.332, and then to section 116.120, and constrained by markedly different statutory authority, prevents the people’s reserved referendum power from being summarily and effectively foreclosed at the pre-signature collection stage by a suf-

¹³ We do not address, and express no opinion about, the effect of a submitted referendum petition on the suspension of the effective date of a referred act, should the secretary of state determine pursuant to section 116.120 that a submitted referendum petition fails to comply with the Missouri Constitution. See Article III, section 52(b) of the Missouri Constitution

which provides that “[a]ll elections on measures referred to the people shall be had at the general state elections.... Any measure referred to the people shall take effect when approved by a majority of the votes casts there on, and not otherwise.” That issue is beyond the scope of this Opinion.

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iciency determination that extends beyond the simple form of the sample sheet. Because the proponent of a referendum petition cannot begin to collect signatures unless the sample sheet is approved, rejection of a sample sheet based on the secretary of state's belief that a proponent is not constitutionally authorized to exercise the referendum power effectively forecloses the exercise of that power, given the short amount of time available to gather the requisite number of required signatures before a referendum petition can be submitted. In contrast, though a sample sheet is reviewed and approved as sufficient as to form pursuant to section 116.332, the secretary of state nonetheless retains the right to conduct broader review of a submitted referendum petition (complete with signatures) for compliance with the constitution and the provisions of chapter 116.¹⁴ Section 116.120.1.

[12] The aforementioned sections of chapter 116 reflect a calculated intent by the general assembly to balance procedural oversight of the referendum process with the people's ability to meaningfully exercise the power of referendum. Were we to construe section 116.332 to afford the secretary of state the authority to reject a referendum petition sample sheet for a reason other than its sufficiency as to form as defined by section 116.030, we would be sanctioning a process that could potentially foreclose exercise of the power of referendum, as litigating the rejection of a sample sheet on substantive or constitutional grounds before signatures can be collected erects a nearly insurmountable obstacle to exercise of the power of refer-

endum. We will not construe section 116.332 to impede the people's power of referendum, particularly when the plain and unambiguous language of section 116.332 supports a construction that preserves meaningful exercise of the power. Our Supreme Court has explained that our courts "zealously guard" the powers reserved by the people in the Missouri Constitution. *Boevig v. Kander*, 496 S.W.3d 498, 506 (Mo. banc 2016). As such, "[c]onstitutional and statutory provisions relative to initiative [and referendum] are liberally construed to make effective the people's reservation of that power." *Id.* (quoting *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990)).

The Secretary of State Rejected the ACLU's Sample Sheet for a Reason that was not Related to the Sufficiency as to Form of the Sample Sheet

[13] When the Secretary of State rejected the ACLU's Sample Sheet, he explained in writing his basis for doing so as required by section 116.332.4, and noted that because of the emergency clause in section 188.028 of HB 126, it was legal counsel's opinion that the Missouri Constitution prohibited exercise of the power of referendum. For the reasons we have explained, the Secretary of State's rejection of the Sample Sheet on constitutional grounds was not authorized by section 116.332. The Secretary of State's statutory authority to review the Sample Sheet pursuant to section 116.332 was limited to determining whether the Sample Sheet was sufficient as to form pursuant to sec-

¹⁴ Following section 116.120 review of a submitted referendum petition, the secretary of state must decide whether (or not) to certify the petition for inclusion on the ballot. Section 116.150. After that decision is made, any citizen, including the proponent of the referendum petition, can bring an action in the

Cole County Circuit Court within ten days to compel the secretary of state to reverse his decision to certify (or not) the petition for inclusion on the ballot. Section 116.200.1. The court's resolution of that dispute then controls whether the referendum petition will appear on the ballot. Section 116.200.2.

tion 116.030, a review that does not include determining compliance with the Missouri Constitution.¹⁵

The Secretary of State did not identify any other issue with the Sample Sheet, and has not asserted that the Sample Sheet failed to substantially comply with the exemplar form in section 116.030. The Secretary of State was therefore obligated by section 116.332 to approve the Sample Sheet as sufficient as to form within fifteen days of its submission. *See also* section 116.030.

The trial court therefore committed legal error when it dismissed the ACLU's petition with prejudice. The ACLU's petition asserted a claim for declaratory relief, and properly sought a declaration that the Secretary of State had no authority to reject the Sample Sheet on constitutional grounds, and was instead required to ap-

prove the Sample Sheet as sufficient as to form.

[14] The Secretary of State argues that even if we conclude (which we have) that the ACLU was entitled to a declaratory judgment declaring that the Secretary of State was required to approve the Sample Sheet as sufficient as to form, the ACLU cannot enforce that determined right. First, the Secretary of State alleges that the ACLU cannot remediate the Secretary of State's failure to approve the Sample Sheet because that obligation is merely directory, and not mandatory, in nature. Second, the Secretary of State argues that even if the obligation to approve the Sample Sheet can be enforced, mandamus and not injunctive relief is the only available means to do so.¹⁶ We address these claims in turn.

15. We are cognizant that in addressing pre-election constitutional challenges to ballot measures, our cases have held that pre-election challenges to an initiative or referendum petition can only be conducted by the courts if the challenge raises a "threshold issue[]" that affect[s] the integrity of the election itself," and when the constitutional issue is so clear a violation of required procedure that it "constitute[s] a matter of form." *Brown v. Carnahan*, 370 S.W.3d 637, 645 (Mo. banc 2012) (quotation omitted); *see also Missouri Electric Cooperatives v. Kander*, 497 S.W.3d 905, 912 (Mo. App. W.D. 2016). That discussion, however, is limited in its relevance to the issue of ripeness, and addresses the judiciary's limited authority to intervene or interfere in the initiative or referendum process. *Brown*, 370 S.W.3d at 645; *Missouri Electric Cooperatives*, 497 S.W.3d at 912. Determining whether a pre-election constitutional challenge to a ballot measure is ripe for judicial review is a wholly separate inquiry from determining the secretary of state's statutory authority pursuant to section 116.332 to review a sample sheet for "sufficiency as to form."

16. The Secretary of State and the Attorney General argue that the ACLU's appeal must

be dismissed because the ACLU's point on appeal has not challenged the Judgment on a basis on which it could be affirmed--namely, that mandamus is the only means available to compel the Secretary of State to approve the Sample Sheet. We disagree. The Judgment dismissed the ACLU's petition *with prejudice*. During argument on the ACLU's motion for interim injunctive relief, the trial court expressed no intent to dismiss the ACLU's petition *with prejudice* based on the ACLU's failure to request a writ of mandamus. Instead, the trial court said it would *either* grant the ACLU leave to amend its petition, *or* it would dismiss the petition and permit the ACLU to re-file--a dismissal that would have been *without* prejudice.

Moreover, even if we disregard the trial court's on-the-record comments, the Judgment dismissing the ACLU's petition *with prejudice* cannot be affirmed based on the ACLU's failure to request a writ of mandamus, as that issue had nothing to do with the merits of the ACLU's independent claim for a declaration that the Secretary of State exceeded his statutory authority when he rejected the Sample Sheet. The State does not challenge the ACLU's ability to seek a declaratory judgment to this effect--a claim that stands alone, and is independent of, any remedy the

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It is Irrelevant Whether the Secretary of State's Obligations under Section 116.332 are Directory or Mandatory because the ACLU is not Seeking a Sanction for the Secretary of State's Failure to Comply

[15] The Secretary of State argues that even though section 116.332 provides that the secretary of state “must” review a referendum petition sample sheet for sufficiency as to form and approve or reject the form of the petition, and “shall” send written notice if the sample sheet is rejected with fifteen days of its submission stating the reasons for rejection, a proponent of a referendum petition has no remedy if the secretary of state fails to take these admittedly required steps, or takes the steps in a manner that exceeds the secretary of state’s statutory authority. The Secretary of State argues that because section 116.332 does not impose a sanction on the secretary of state for non-compliance with the obligation to approve a sample sheet, the obligation is merely directory and not mandatory, and the courts are not free to fashion a sanction.

The Secretary of State relies on the Missouri Supreme Court’s holding in *Frye v. Levy*, 440 S.W.3d 405 (Mo. banc 2014). *Frye* is irrelevant to this case. In *Frye*, a statute obligated the Children’s Division to complete a hotline investigation within ninety days, but did not prescribe the ef-

fect should the Children’s Division fail to do so. *Id.* at 408. A parent who was the subject of a hotline investigation took the position that the Children’s Division’s failure to complete its investigation within ninety days resulted in the Division losing all authority to make the abuse determinations permitted by the statute. *Id.* The Supreme Court framed the issue before it as follows:

[W]hen (but only when) a statute imposes an obligation, the statutory construction question embodied in the distinction between “mandatory statutes” and “directory statutes” is whether the legislature intended to make all actions that fail to comply with that obligation void or ineffective.

Id. at 409. Determining whether the statute at issue was directory or mandatory was thus necessary because the parent sought a sanction for non-compliance—voiding or rendering ineffective the Division’s authority to investigate an abuse claim. *Id.* at 408. (“[t]he central issue in this case is not whether ‘shall’ means ‘shall’ but what sanction (if any) the legislature intended to apply when the Division fails to do what section 210.152.2 says it ‘shall’ do.”).

In contrast to the parent in *Frye*, the ACLU is not arguing that the Secretary of

ACLU might seek to enforce a determined right. The Judgment’s dismissal with prejudice of the declaratory judgment claim cannot be explained based on the ACLU’s failure to request a writ of mandamus.

Finally, the ACLU’s request for permanent injunctive relief is not a legal theory that can independently support (or fail to support) a right of recovery, and thus is not a “claim,” the merits (or lack thereof) of which could have supported dismissal of the ACLU’s petition *with prejudice* so early in the proceedings. “[A]n injunction is a remedy and not a cause of action; therefore it must be based on some recognized and pleaded legal theory.” *Goerlitz v. Maryville*, 333 S.W.3d 450, 455

(Mo. banc 2011). The only recognized and pleaded legal theory in the ACLU’s petition was the claim for a declaratory judgment. Whether an injunction was available as a remedy to enforce rights declared pursuant to this claim is not an issue that could have supported the entry of a Judgment dismissing the petition with prejudice. The trial court plainly recognized this fact, as it never threatened to dismiss the ACLU’s petition *with prejudice* based solely on the failure to request a writ of mandamus.

The Secretary of State’s and Attorney General’s motion to strike portions of the ACLU’s Reply Brief and to dismiss the ACLU’s appeal is denied.

State failed to make a decision about its Sample Sheet within 15 days as required by statute. The ACLU is not arguing that the Secretary of State's authority to review the referendum process has been voided or is now ineffective. Instead, the ACLU is arguing that the Secretary of State employed a standard for reviewing the sufficiency of its Sample Sheet that exceeded the Secretary of State's statutory authority. The ACLU is not seeking a sanction for the Secretary of State's act in excess of his authority. It is instead seeking to compel the Secretary of State to comply with his statutory obligations. In *Frye*, the Supreme Court recognized the difference:

Mother is not seeking a declaration that the Division had [a duty to complete its investigation in ninety days], nor is she seeking a writ of mandamus to compel the Division to perform that duty.

Id. at 408. In other words, the parent in *Frye* was not seeking to compel the Division to complete its investigation. It was attempting to sanction the Division for failing to timely complete its investigation. By highlighting what the parent in *Frye* was **not** seeking, the Supreme Court necessarily limited the relevance of its discussion about the directory or mandatory nature of a statute to scenarios where a sanction is sought to "punish" non-performance of a statutory obligation.

Because the ACLU is not seeking a sanction for the Secretary of State's non-performance of a statutory obligation, and is instead seeking to compel the Secretary of State to perform a statutory obligation, *Frye* is not applicable to this case. There is no authority whatsoever cited by the Secretary of State for the proposition that a State actor cannot be compelled to perform a duty or act required by statute.

Mandamus is not the Only Remedy Available to Compel the Secretary of State to Perform as Required by Section 116.332

The Secretary of State alternatively argues that if the Secretary of State's obligation to approve the Sample Sheet as sufficient as to form can be compelled, it can only be compelled by a writ of mandamus, relief not sought by the ACLU. The Secretary of State relies on *State ex rel. Westhues v. Sullivan*, 283 Mo. 546, 224 S.W. 327 (Mo. banc 1920) for the proposition that in challenging the Secretary of State's action under chapter 116, there are but two remedies: "(1) mandamus against the Secretary of State, in an action by a citizen, if such Secretary refuses to accept and file a legally sufficient petition; and (2) an injunction against such Secretary if he accept and file a legally insufficient petition." *Id.* at 333. According to the State, the ACLU's challenge falls into the first category, leaving mandamus as the only remedy available to compel the Secretary of State to act.

The Secretary of State's reliance on *Westhues* is misplaced. The State neglects to mention that the quoted material it cites from *Westhues* is not a holding, but merely a restatement by the court of the content of a statute then in effect, section 6750, R.S. 1909. In *Westhues*, our Supreme Court was asked to address the prematurity of a judgment enjoining the secretary of state from accepting a referendum petition that had not yet been filed. *Id.* at 332. The Supreme Court noted that resolution of the issue of prematurity was "determined by our statute (section 6750, R.S. 1909)" which provided the two remedies referenced in the Secretary of State's quote from the case. In other words, the statute in effect at the time controlled the remedies available, and directed mandamus where the secretary of state refused to

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accept and file a legally sufficient petition, and an injunction where the secretary of state accepted and filed a legally insufficient petition. Because the statute did not contemplate a remedy to prevent the filing of a petition, our Supreme Court reversed the trial court's judgment imposing an injunction. *Id.* at 342.

Westhues does not hold, therefore, that mandamus is the exclusive remedy available to compel the secretary of state to accept a filing. At best, *Westhues* addressed the remedies provided by a statute. That statute, section 6750, R.S. 1909, is no longer in force and effect, and has been replaced in substance by what is now section 116.200. As we have previously explained,¹⁷ section 116.200 addresses any citizen's right to file an action to compel the secretary of state to reverse a decision to certify (or not) a submitted referendum (or initiative) petition for inclusion on the ballot. Section 116.200 applies only to the secretary of state's post-signature collection review and certification of a submitted referendum (or initiative) petition pursuant to sections 116.120 and 116.150. Section 116.200 does not apply to the secretary of state's pre-signature collection review of a sample sheet for sufficiency as to form. And even if it did, section 116.200 does not identify or limit the "remedy" which can be employed to compel the secretary of state to reverse a petition certification decision.

It is noteworthy, in fact, that our Supreme Court observed in *Westhues* that "[t]his statute [section 6750, R.S. 1909] does not rob the courts of their power to use the equitable remedy of injunction, but it is a reasonable [statutory] limitation on the use of that remedy by the courts," referring to the fact that "[t]he purpose of fixing the point [by statute] at which the courts can intervene by injunction is to

give the state officer the right to first act, and should he act wrongfully, . . . the courts can then intervene by injunction, to the end that the very rights of the matter may be found." *Id.* at 333. That is exactly the scenario before us. Despite the Secretary of State's claim to the contrary, the ACLU is not seeking to compel the Secretary of State to accept its Sample Sheet for filing. It is instead seeking to compel the Secretary of State to reverse the decision to reject the Sample Sheet after it was filed, and to instead approve the Sample Sheet as required by section 116.332. The Secretary of State was given the right to first act, is alleged to have acted wrongfully, and the ACLU now seeks intervention by the courts by injunction as a part of the court's inherent equitable power "to the end that the very rights of the matter may be found." *Id.*

[16-18] We reject, therefore, the Secretary of State's contention that he can only be compelled by mandamus, and not by injunctive relief, to approve the Sample Sheet. Our cases recognize that injunctive relief and mandamus are, in fact, akin to one another. As our Supreme Court noted in *State ex rel. Shartel v. Humphreys*, 338 Mo. 1091, 93 S.W.2d 924, 926 (Mo. 1936), "in those states where the same court is vested with both legal and equitable jurisdiction (Missouri is such) there is very little difference in its practical results between proceedings in mandamus and by mandatory injunction. . . ." (quoting 7 McQuillin's Municipal Corp. (2d Ed.) section 1975). "Mandatory injunction may be invoked to compel the undoing of something wrongfully done." *Id.* at 926-27 (citing 32 C.J. 23; *Walther v. Cape Girardeau*, 149 S.W. 36 (Mo. App. St. L. Dist. 1912); *Place v. Union Township*, 66 S.W.2d 584 (Mo. App. Spring. Dist. 1934)). "However,

17. See footnote 14, *supra*.

mandamus has been invoked for the same purpose.” *Id.* at 927 (citing *State ex rel. Snow Steam Pump Works v. Homer*, 249 Mo. 58, 155 S.W. 405 (Mo. 1913)). Similar to a mandatory injunction, “[t]he purpose of the extraordinary writ of mandamus is to compel the performance of a ministerial duty that one charged with the duty has refused to perform.” *Manz v. Prairie Township Fire Protection Board*, 463 S.W.3d 831, 835 (Mo. App. W.D. 2015) (quoting *Furlong Companies, Inc. v. City of Kansas City*, 189 S.W.3d 157, 165-66 (Mo. banc 2006)).

[19] Here, the ACLU’s petition requested declaratory relief to first resolve the controversy regarding the Secretary of State’s rights and obligations with respect to review of the Sample Sheet. “In the context of a declaratory judgment action, a justiciable controversy exists where the plaintiff has a legally protect[ed] interest at stake, a substantial controversy exists between parties with genuinely adverse interests, and that controversy is ripe for judicial determination.” *Mercy Hosp. E. Cmtys. v. Missouri Health Facilities Review Comm.*, 362 S.W.3d 415, 417 (Mo. banc 2012) (internal quotations omitted). The Secretary of State does not quarrel with the ACLU’s right to seek declaratory relief on the issue of the parameters of the Secretary of State’s statutory authority to review the Sample Sheet for sufficiency as to form.¹⁸ Having determined, as explained above, that the ACLU’s claim for declaratory relief is meritorious, *Shartel* instructs that a permanent (mandatory) injunction, can be “invoked to compel the undoing of something wrongfully done.” 93 S.W.2d at 926.

18. Recall, as discussed earlier, that in limiting the reach of its discussion in *Frye*, our Supreme Court expressly noted that the plaintiff in that case *had not sought a declaration* that

[20, 21] It is worth noting, in fact, that even had the ACLU requested a writ of mandamus in lieu of permanent injunctive relief, the issuance of a writ would have remained subject to the trial court’s discretion. “Mandamus is a discretionary writ, not a writ of right.” *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 576 (Mo. banc 1994) (citation omitted). Moreover, “[m]andamus will lie only when there is a clear, unequivocal, and specific right.” *Id.* (citation omitted). The Secretary of State contests whether section 116.332 imposes a clear, unequivocal and specific duty to approve the Sample Sheet, and goes so far as to argue that the obligation to do so is merely directory and not mandatory. Because the parameters of the Secretary of State’s statutory authority to review a sample sheet for sufficiency as to form is a matter of first impression, it can hardly be said that the declaratory relief the ACLU sought on that subject addressed a “clearly established and presently existing” right—the essential requisites to mandamus. *Id.* (holding mandamus was “clearly inappropriate” where the “question of whether discovery is available in a contempt proceeding under section 536.095 **has not previously been decided by a Missouri court**”) (emphasis added) (citation omitted). We therefore question the availability of mandamus in this case of first impression, as before any remedy could be imposed, it was first necessary to adjudicate the extent of the secretary of state’s authority to review a sample sheet for sufficiency as to form pursuant to section 116.332. *Id.* (“[T]he purpose of the writ [of mandamus] is to execute, not adjudicate.”) (citation omitted). Regardless, whether mandamus would have been an available remedy in this case or not, mandamus is not the exclusive means by which

a State actor failed to act as required by statute, strongly suggesting that such relief is available. 440 S.W.3d at 408.

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the Secretary of State can be compelled to approve the Sample Sheet.

In light of the foregoing discussion, the first claim in the ACLU's point on appeal is granted. The second and third claims in the ACLU's point on appeal are not reached,¹⁹ and are denied as moot. To be clear, this Opinion expresses no opinion about, did not need to decide, and does not decide, whether the emergency clause applicable to section 188.028 of HB 126 is self-actuating to defeat the constitutional power of referendum or is subject first to a judicial determination of its legitimacy; or whether the emergency clause applicable solely to section 188.028 of HB 126 defeats the power of referendum for the remaining sixteen provisions of HB 126 which are not subject to emergency clauses. We decide only that the Secretary of State had no authority pursuant to section 116.332 to consider constitutional compliance when reviewing the ACLU's Sample Sheet for sufficiency as to form, and was instead limited to reviewing the Sample Sheet for sufficiency as to form as defined by section 116.030.

Conclusion and Entry of Judgment

The trial court's Judgment dismissing the ACLU's petition with prejudice is reversed. The Secretary of State was without authority under section 116.332 to reject the Sample Sheet on constitutional grounds. The Secretary of State identified no issues relating to the sufficiency as to form of the Sample Sheet, and concedes in these proceedings that the only basis for rejecting the Sample Sheet was on consti-

tutional grounds. The Secretary of State was thus obligated by section 116.332 to approve the Sample Sheet as sufficient as to form, as defined by section 116.030. The ACLU was entitled to enforce these declared rights by permanent mandatory injunctive relief.

[22, 23] Given the time exigencies in this case, in lieu of remanding this matter for the entry of a judgment consistent with this Opinion, we exercise our authority under Rule 84.14 to "give such judgment as the court ought to give" as to dispose finally of this case.²⁰

A Declaratory Judgment is hereby entered in favor of the ACLU and against the Secretary of State and the Attorney General. Neither the Secretary of State nor the Attorney General had the statutory authority pursuant to section 116.332 to reject the Sample Sheet on constitutional grounds, and because no issue with the sufficiency as to form of the Sample Sheet has been identified, the Secretary of State was obligated by section 116.332 to approve the Sample Sheet within fifteen days of its submission.

Based on these declared rights, judgment is hereby entered in favor of the ACLU and against the Secretary of State for permanent mandatory injunctive relief compelling the Secretary of State to immediately withdraw his rejection of the Sample Sheet and to immediately send written notice to the ACLU approving the Sample Sheet as sufficient as to form pursuant to section 116.332.4. The Secretary of State is not compelled to re-refer a copy of the

19. See discussion in footnote 8, *supra*.

20. Rule 84.14 allows our court to "give such judgment as the court ought to give" and instructs that "[u]nless justice otherwise requires, the [appellate] court shall dispose finally of the case." Reliance on Rule 84.14 "is particularly appropriate for judgments where the salient facts are not in dispute, but the only dispute is the legal significance of the

facts." *Malawey v. Malawey*, 137 S.W.3d 518, 525 (Mo. App. E.D. 2004) (citation omitted). "We can render the judgment that the trial court should have rendered when the record and evidence give us confidence in the reasonableness, fairness, and accuracy of the conclusion reached." *LaRocca v. LaRocca*, 135 S.W.3d 522, 526 (Mo. App. E.D. 2004).

Sample Sheet to the Auditor for purposes of preparing a fiscal note and fiscal note summary as required by section 116.332.1, as the Auditor has already prepared a fiscal note and fiscal note summary, and has already delivered same to the Attorney General. The Secretary of State is not compelled to re-refer a copy of the Sample Sheet to the Attorney General for review as required by section 116.332.1 and section 116.332.3, as review of the Sample Sheet by the Attorney General for sufficiency as to form would now be a superfluous and unnecessary act. Immediately following the Secretary of State's issuance of written notice to the ACLU approving the Sample Sheet as sufficient as to form, the Secretary of State and the Attorney General are compelled to proceed with performance of their obligations as contemplated by section 116.334.1.

All other claims for relief in the ACLU's petition are denied.²¹

It is so ordered.

All concur



21. The ACLU also requested that we compel the Secretary of State to certify an official ballot title by July 18, 2019, a date the ACLU deems significant to its ability to gather the requisite number of signatures to be able to timely submit a referendum petition. Section 116.334.1 addresses the secretary of state's obligation to prepare and ultimately certify a ballot summary and ballot title. That obligation is expressly conditioned, however, on approval of a submitted sample sheet pursuant to section 116.332. Section 116.334.1. By our Opinion, and the judgment herein entered, we have now directed the Secretary of State to approve the Sample Sheet. That will trigger the Secretary of State's and the Attorney General's obligations to perform the statutory duties outlined in section 116.334.1. Though our judgment generally directs the

Carlos GUERRA, Appellant,

v.

**LOCARNO PARTNERS,
LP, Respondent.**

WD 81885

Missouri Court of Appeals,
Western District.

OPINION FILED: July 9, 2019

Background: Tenant brought action against landlord for intentional interference with contract and breach of contract arising from landlord's cancellation of tenant's subleases. Landlord counterclaimed that tenant defaulted on his leases and owed rent and further damages for breached lease agreements. After bench trial, the Circuit Court, Jackson County, Jennifer M. Phillips, J., found in favor of landlord and against tenant. Tenant moved for a new trial, which was denied. Tenant appealed. Landlord moved to dismiss the appeal.

Holding: The Court of Appeals, Mark D. Pfeiffer, J., held that deficiencies in tenant's appellate brief warranted dismissal of his appeal.

Appeal dismissed.

Secretary of State and the Attorney General to perform their obligations pursuant to 116.334.1, we have no authority to modify the provisions of that statute, including the times therein permitted for performance. We therefore deny the ACLU's request to compel the Secretary of State to certify an official ballot title by July 18, 2019.

We recognize that if the Secretary of State and the Attorney General take all of the time permitted by section 116.334.1 to perform the obligations therein described, little time may remain for the ACLU to collect signatures on a referendum petition. That predicament underscores why it is beyond the Secretary of State's authority under section 116.332 to derail the referendum process by reviewing a sample sheet for anything other than its sufficiency as to form pursuant to section 116.030.

MAGGARD v. STATE

Mo. 411

Cite as 733 S.W.3d 411 (Mo. 2026)

Jake MAGGARD, et al., Appellants,

v.

STATE of Missouri, et**al., Respondents.****No. SC 101581**Supreme Court of Missouri,
en banc.

Opinion issued May 12, 2026

Background: Objectors, who were voters who had signed petition for referendum on newly enacted House bill that established new congressional districts even though there had been no certification of a new census to the Governor, filed a single-count petition for declaratory judgment and injunctive relief, alleging that bill was automatically suspended under the Missouri Constitution upon the referendum petition's filing. After a bench trial on joint stipulated facts and exhibits, the Circuit Court, Cole County, Brian K. Stumpe, J., 2026 WL 1328298, entered judgment dismissing objectors' petition and concluding that the filing of the referendum petition did not automatically suspend bill under the Missouri Constitution. Objectors appealed. The Supreme Court, on its own motion, granted discretionary transfer.

Holdings: The Supreme Court, Gooch, J., held that:

- (1) filing of referendum petition did not automatically suspend bill, and
- (2) to the extent statutes permitted Secretary of State to delay suspension of bill until issuance of a certificate of sufficiency of referendum petition, they were not in conflict with Missouri Constitution's referendum-related provisions.

Affirmed.

1. Declaratory Judgment ⚖️393

Supreme Court will affirm declaratory judgment unless there is no substantial evidence to support it, unless it is against weight of evidence, unless it erroneously declares law, or unless it erroneously applies law.

2. Declaratory Judgment ⚖️393

Since the facts were stipulated, the Supreme Court's review of trial court's judgment that dismissed objectors' single-count petition for declaratory judgment and injunctive relief and that concluded that the filing of a petition for referendum on newly enacted House bill that established new congressional districts, even though there had been no certification of a new census to the Governor, did not automatically suspend the enacted bill under the Missouri Constitution would be limited to determining whether the trial court properly declared and applied the law. Mo. Const. art. 3, §§ 49, 52(a), 52(b); Mo. Ann. Stat. §§ 128.345, 128.346, 128.348, 128.471 et seq., 116.130, 116.150.

3. Appeal and Error ⚖️3172

Questions of law involving constitutional interpretation are reviewed de novo.

4. Appeal and Error ⚖️3173

Constitutional challenges to a statute are reviewed de novo.

5. Statutes ⚖️1774, 1776

Filing of a petition for referendum on newly enacted House bill that established new congressional districts, even though there had been no certification of a new census to the Governor, did not automatically suspend the House bill under referendum-related provisions of Missouri Constitution; nothing in the relevant provisions said that the filing of a referendum petition automatically suspended the act of the General Assembly at issue, and one of the provisions set out a signature requirement