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therefore think the requirement in the Halliburton case, that the proposed amendment disclose the constitutional provisions it seeks to change, refers only to cognate provisions which are in direct conflict as were the ones in that case.

350 Mo. at 269, 165 S.W.2d at 663.

Moore does not require the makers of an initiative petition to “ferret out” and to list all the provisions which could possibly or by implication be modified by the proposed amendment. It only requires them to list provisions which would be in direct conflict. This is a reasonable requirement because it would succeed in substantially bringing out the effect of the proposed amendment without placing an excessive burden on those seeking change by way of the initiative. Any amendment dealing with tax limitations is bound to have widespread effects, because money affects every aspect of state and local government. That does not mean an initiative petition must descend to the level of detail advocated by appellants. To make such a requirement would tend to stifle the constitutional initiative process. It is sufficient if the petition points out “*cognate provisions* which are in direct conflict.” The Missouri Constitution does not require, as did the Michigan Constitution referred to in the *Moore* case, that along with the full text of the amendment there should be published “‘any existing provisions of the constitution which would be altered or abrogated thereby.’” 350 Mo. at 270, 165 S.W.2d at 664. There is no such requirement for our initiative provisions. That is not neces-

sary in order to give the prospective signer a fair realization of what he is being asked to sign. He is interested in the broad aspects of the proposed amendment, not the minute details.

Appellants cite various *constitutional provisions* that will be changed or affected by the amendment. Nowhere do they allege, and nowhere do we see, any provisions not listed on the petitions that are in direct conflict with or are irreconcilably repugnant to the Constitution. Following the reasoning in *Moore*, we must rule against appellants on this point.

Buchanan, 615 S.W.2d at 14-15 (emphasis added).

Even a cursory reading of *Buchanan*, let alone a careful one, shows the only requirement under article III, section 50 that opinion discusses is a requirement that the “full text” of the proposed constitutional amendment identify those existing cognate *constitutional provisions* “that are in direct conflict with or are irreconcilably repugnant to the [proposed amendment to the] Constitution.” *Id.* at 15. Nowhere in *Buchanan* – or in *Moore* or *Halliburton*, for that matter – is there even a hint of a suggestion that article III, section 50 (or its predecessor constitutional provision and related statutory provisions) requires a proposed constitutional amendment to identify all *statutes* that later may be declared invalid in whole or in part if the voters approve the constitutional amendment. Accordingly, the Court now holds article III, section 50 imposes no such requirement.¹²

12. *State ex rel. Scott v. Kirkpatrick*, 484 S.W.2d 161 (Mo. banc 1972), offers no assistance to Opponents and, in fact, provides an instructive comparison. In that case, the Court held: “That the petitions as filed fail to conform to such constitutional dictates [in

article III, section 50] is obviously apparent for they contain no enacting clause whatever.” *Id.* at 162. The requirement for – and exact phrasing of – such an “enacting clause” for an initiative petition proposing a constitutional amendment is expressly set forth in

[4] To the extent *Buchanan* holds article III, section 50 requires a constitutional amendment proposed by initiative to identify in the petition itself the existing cognate constitutional provisions that are in direct conflict with or are irreconcilably repugnant to the proposed amendment, Amendment 3 easily meets that requirement. In fact, in its lengthy brief to this Court, Opponents devote only a single paragraph and footnote to their argument that Amendment 3 fails to identify existing constitutional provisions that would be repealed if the voters approve the proposal.

They contend Amendment 3 would “repeal”: (a) that portion of article I, section 2, providing that “all persons are created equal and are entitled to equal rights;” (b) that portion of article I, section 10, providing that “no person shall be deprived of life, liberty or property without due process of law;” (c) article I, section 14, providing that “the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character;” and (d) article III, section 38(d).2(1) and (2) providing that “[n]o person may clone or attempt to clone a human being” and “[n]o human blastocyst may be produced by fertilization solely for the purpose of stem cell research.” Opponents do not attempt to show – other than by mere assertion – that Amendment 3 (if approved by the voters) would be in “direct conflict” with or “irreconcilably repugnant” to any of these provisions. Certainly, the circuit court found no such utter and complete conflicts with any existing constitutional provision, and this Court holds there are none.

article III, section 50. The requirement discussed by *Buchanan*, i.e., that such a petition must list the constitutional provisions the measure would repeal, is – if it exists at all – implied from the requirement petitions set forth the “full text” of the measure. It would be nonsensical to infer a constitutional re-

Nearly every case involving one constitutional provision also involves one or more others. The business of harmonizing such provisions and giving each of them all the effect the people intended them to have is the business of courts in general and this Court in particular. Such analyses are performed with extreme care and, one hopes, with delicate precision. This is in stark contrast with the meat axe approach Opponents would have the Court employ. *Moore* cautioned against such an approach, and *Buchanan* incorporated that warning into its discussion:

We have just indicated the views that existing constitutional provisions may be amended or repealed by implication through an initiative amendment. But in any case such repeals are not favored, and ***there must be irreconcilable repugnance*** between the two. . . . ***All the more should this be true when such repugnancy must be pointed out in the abstract, and not in a pending controversy based on facts.*** Time alone can ferret out all the consequential and remote conflicts between statutes [when an initiative proposes a statute] or constitutional provisions [when an initiative proposes a constitutional amendment] in all their implications. We therefore think the requirement in the *Halliburton* case, that the proposed amendment disclose the constitutional provisions it seeks to change, refers only to ***cognate provisions*** which are in ***direct conflict*** as were the ones in that case.

Buchanan, 615 S.W.2d at 15 (emphasis added) (quoting *Moore*, 165 S.W.2d at 663).

quirement that the “full text” of a constitutional amendment must include all constitutional provisions that would be repealed somehow also includes an obligation to set forth all statutes that would be repealed. The Court holds article III, section 50 imposes no such requirement.

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Suffice it to say, therefore, that nothing in Amendment 3 expressly rescinds any existing provision in the constitution and nothing about Amendment 3 is in such direct conflict with or is irreconcilably repugnant to the equal protection clause, the due process clause, the open courts clause, or the Missouri Stem Cell Research and Cures Initiative in article III, section 38(d) such that it fairly can be said Amendment 3 repeals and replaces those sections in all but name. *See Buchanan*, 615 S.W.2d at 15 (noting it is unnecessary to “list all the [constitutional] provisions which could possibly or by implication be modified by the proposed amendment” but, instead, only those that “would be in direct conflict”). For these reasons, the circuit court erred in entering judgment for Opponents on Count I, and this Court enters judgment for Proponents on that claim as well as the other two. *See* Rule 84.14.

B. Section 116.050.2(2) Does Not – and, in Any Event, Could Not – Impose a More Onerous Implied Repeal Disclosure Requirement Than Does Article III, Section 50

In the preceding section, this Court holds article III, section 50 requires no more than that a proposed constitutional amendment initiative petition identify all existing cognate constitutional provisions with which the proposal is in direct conflict or to which it is irreconcilably repugnant, and Amendment 3 does not violate that requirement. In an effort to avoid that obvious result, Opponents rely on section 116.050.2(2), and it appears the circuit court based its judgment (at least in part) on that statute. Section 116.050 states:

1. Initiative and referendum petitions filed under the provisions of this chapter shall consist of pages of a uniform size. Each page, excluding the text of the measure, shall be no larger than eight and one-half by fourteen inches. Each

page of an initiative petition shall be attached to or shall contain a full and correct text of the proposed measure. Each page of a referendum petition shall be attached to or shall contain a full and correct text of the measure on which the referendum is sought.

2. The full and correct text of all initiative and referendum petition measures shall:

(1) Contain all matter which is to be deleted included in its proper place enclosed in brackets and all new matter shown underlined;

(2) Include all sections of existing law or of the constitution which would be repealed by the measure; and

(3) Otherwise conform to the provisions of Article III, Section 28 and Article III, Section 50 of the Constitution and those of this chapter.

§ 116.050.

1. A Plain Reading of Section 116.050.2(2) Refutes Opponents’ Argument

[5] Opponents argue this statute requires the initiative petition for Amendment 3 to identify all sections of existing statutes *and* all constitutional provisions the measure would repeal. But that is not even what section 116.050.2(2) says. It says the petition shall include “all sections of existing law *or* of the constitution which would be repealed by the measure[.]” (Emphasis added). Because section 116.050 applies to (1) referendum petitions (by which voters seek to reject a bill passed by the general assembly), (2) initiative petitions proposing a statute for the voters’ approval, and (3) initiative petitions proposing a constitutional amendment for the voters’ approval, the requirements of subsection 2 must be stated in terms applicable to them all.

[6–8] Leaving aside the highly dissimilar referenda petition (when the bill originates in the general assembly), the plain language reading of subdivision 2(2) of section 116.050.2 is that initiative petitions proposing a **statute** must include all sections of existing **statutes** that would be repealed by the measure, and initiative petitions proposing a **constitutional amendment** must include all sections of the existing **constitution** that would be repealed by the measure. Nothing more. Had the General Assembly intended every initiative petition to include both, it would have said “and,” not “or.” But it did not, and this Court will not change the words it chose. Statutes bearing on the people’s reserved power of initiative must be “liberally construed so as not to interfere with the initiative process.” *Rekart*, 639 S.W.2d at 608 (citing *State ex rel. Voss v. Davis*, 418 S.W.2d 163, 167 (Mo. banc 1967)). This Court’s holding that section 116.050.2(2) requires, at most, what *Buchanan* states is required by article III, section 50 is such a construction. See *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990) (“*MPIP*”) (“Statutes that place impediments on the initiative power that are inconsistent with the reservation found in the language of the constitution will be declared unconstitutional.”).

This reading of section 116.050.2(2) not only comports with the plain language of the provision’s use of the word “or,” and is consistent with what *Buchanan* states is required by article III, section 50 for initiative petitions proposing a constitutional amendment (and what the court of appeals held in *Knight v. Carnahan*, 282 S.W.3d 9, 18–19 (Mo. App. 2009), is required by article III, section 50 for initiative petitions proposing a statute), but this reading also comports with the clear and unambiguous meaning of the word “repeal.” In *Knight*, the court of appeals construed the plain

language of section 116.050.2(2) and noted that:

Repeal means [t]he abrogation or annulling of a previously existing **law** by the enactment of a subsequent **statute** which declares that the former **law** shall be revoked and abrogated (which is called ‘express’ repeal), or which contains *provisions so contrary to or irreconcilable* with those of the earlier **law** that only **one of the two statutes can stand in force** (called ‘implied’ repeal).

Knight, 282 S.W.3d at 19 (quoting *Black’s Law Dictionary* 1299 (6th ed. 1990)).

[9] Accordingly, *Knight* holds new statutes can “repeal” by implication prior statutes (though such a conclusion is highly disfavored). And, *Buchanan* states a new constitutional amendment can implicitly “repeal” a previously existing constitutional provision. But nothing in the plain language of section 116.050.2(2) or in any of our cases, suggests a proposed constitutional amendment can (if approved) implicitly “repeal” all statutes that are, in whole or in part, in conflict with or irreconcilably repugnant to the constitutional amendment. The function of declaring a statute invalid under a constitutional provision (new or old) is a judicial function, and is in no way the same or similar to the legislative act of “repeal.” See *State ex rel. Missouri S. R. Co. v. Pub. Serv. Comm’n*, 259 Mo. 704, 168 S.W. 1156, 1164 (Mo. banc 1914) (“The repeal of a statute is a legislative act. To declare a statute unconstitutional is a judicial act.”).

The dissenting opinion suggests *Marsh v. Bartlett*, 343 Mo. 526, 121 S.W.2d 737 (Mo. banc 1938), which was not cited by any of the parties or relied upon by the circuit court, somehow aids the Opponents because it states that a constitutional amendment can “repeal” a statute. The Court disagrees. First, *Marsh* has nothing

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to do with the statutory construction of section 116.050.2(2), which had not been enacted at that time. Rather, *Marsh* is a habeas corpus decision involving a man convicted and put in jail for catching a bass out of season. *Id.* at 740. The man argued the statute under which he was convicted was no longer in force because it had been repealed by the 1936 constitutional amendment (proposed by initiative petition) creating the Conservation Commission and, more specifically, by a bass season regulation the Commission promulgated. *Id.* After much discourse about weighty matters involving the powers of administrative agencies, the Court held the statute under which Marsh was convicted had been repealed by the express language of the constitutional amendment, which stated that “all existing laws inconsistent herewith shall no longer remain in force or effect.” *Id.* There was another statute, which the Court concluded had not been repealed, imposing criminal penalties for violations of Commission bass season regulations, but that was not the statute under which Marsh had been convicted. As a result, the Court ordered him discharged. *Id.* at 744-45.

At the end of this lengthy opinion (which bears all the signs of the highly suspect practice of manufacturing “test case” litigation), the Court stated:

With statutes inconsistent with Amendment No. 4 we have nothing to do. Such as were inconsistent, including said section 8270, were expressly repealed by that instrument. Repeal in that manner is all-sufficient, for a statute may be nullified, in so far as future operation is concerned, by a constitution or a constitutional amendment as well as by statute; and the constitution or the amendment, as the highest and most recent expression of the lawmaking power, operates to repeal, not only all statutes that are expressly enumerated as re-

pealed but also all that are inconsistent with the full operation of its provisions. 12 C.J., sec. 97, pp. 725, 726. A provision may be so framed, however, that, while legislation is necessary to put into effect its affirmative principles, it repeals existing statutes inconsistent with it. *Id.*, pp. 727-728, sec. 4.

Marsh, 121 S.W.2d at 745.

[10] The Court holds *Marsh* sheds no meaningful light on the questions before it here, regardless of its indiscriminate and – so far as can be determined – entirely singular use of the term “repeal.” This is so for a variety of reasons. First, the Conservation Commission amendment was in effect, and no party contended it should not have been submitted to the voters because it failed to identify either existing constitutional provisions or existing statutes that were in direct conflict with the amendment or were irreconcilably repugnant to it. Second, the Conservation Commission amendment expressly stated that inconsistent statutes would no longer be in force or effect, while Amendment 3 has no such provision. Third, the Conservation Commission amendment does not use the term “repeal,” the Court in *Marsh* did. The way that term is used in the *Marsh* contradicts the plain language meaning set forth in *Black’s Law Dictionary*. Fourth, none of the parties nor the Court addressed the requirements of article III, section 50 or its predecessor initiative process provision in effect in 1936. And fifth, none of the parties or the Court could have addressed what section 116.050.2(2) requires because the legislature would not enact that statute for another 61 years. For these reasons, it should come as no surprise that *Marsh’s* use of the term “repeal” was less than precise and offers no persuasive (let alone binding) precedent for the construction of that word in section 116.050.2(2). Whatever the effect of the