

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

SHEILA DUNDON, et al,)	
)	
Plaintiffs,)	
)	Case No. 16AC-CC00338
v.)	
)	
JASON KANDER,)	
)	
Defendant.)	

ORDER

Proponents of Initiative Petition 2016-135, which would legalize medical marijuana in Missouri, challenge the Secretary of State’s determination that the number of petition signatures gathered in the Second Congressional District was 2,242 less than the number necessary to certify the petition for the November 8, 2016 ballot, under Mo. Const., art. III, § 50. During a two-day bench trial on September 19 and 20, 2016, Proponents presented evidence regarding 2,500 signatures deemed invalid by the local election authorities (“LEAs”) for various reasons. If valid, this number of signatures would be enough to qualify the measure for the ballot. The Secretary and Intervenors stipulate that 683 of the signatures Proponents seek to rehabilitate are valid and should be counted. Another 1,308 signatures are challenged by either the Secretary or Intervenors. Proponents refer to the remaining 509 signatures as “Wrong County” signatures, that is, signatures purportedly from voters in

the Second Congressional District who reside in counties other than the one designated by the circulator in the affidavit and in the upper right-hand corner of the petition page the voter signed.

Under § 116.060 RSMo, “each page of an initiative or referendum petition shall contain signatures of voters from *only one county*.” (emphasis added). “Each petition page filed with the secretary of state shall have *the county where the signers are registered* designated in the upper right-hand corner of such page.” *Id.* (emphasis added). “Signatures of voters from counties other than the one designated by the circulator in the upper right-hand corner on a given page *shall not be counted as valid*.” *Id.* (emphasis added). Section 116.130, RSMo, provides in part, “[T]he election authority shall count as valid only the signatures of persons registered as voters in the county named in the circulator’s affidavit.” Based on §116.060 and §116.130, local election authorities and the Secretary did not count any of these “Wrong County” signatures toward the total necessary to certify the initiative petition for the ballot.

Proponents argue that what they refer to as the “Wrong County Rule” embodied in § 116.060 and §116.130 violates the initiative petition right guaranteed in Mo. Const. art. III, § 49, *et seq.* They urge the court to declare §116.060 and §116.130 unconstitutional as applied to the 509 “Wrong County” signatures. The parties agree that Proponents cannot prevail in their effort to

reverse the Secretary's Certificate of Insufficiency unless some number of the 509 "Wrong County" signatures are counted. Thus, the constitutionality of §116.060 and § 116.130 is a dispositive issue. Upon full consideration of the parties' briefs, evidence, and oral arguments and being duly advised as to the law, the Court concludes that neither § 116.060 nor § 116.130 is "clearly and undoubtedly" unconstitutional, the standard required to overcome the presumption of constitutionality enjoyed by duly enacted legislation. *Franklin County ex rel. Parks v. Franklin County Com'n*, 269 S.W.3d 26, 29 (Mo. banc 2008). Consequently, Proponents may not rely on any of the 509 "Wrong County" signatures. Once those signatures are removed from the evidence presented at trial, Proponents cannot prevail even if the Court were to rule in their favor as to the validity of the other signatures they propose should have been counted. Accordingly, there is no need for the Court to make a line-by-line determination as to the validity of the remaining 1,308 signatures proffered by the Proponents and the court has not made any review of those signatures.

Proponents' Motion for Judgment on the Pleadings as to the constitutionality of §§ 116.060 and 116.130 is therefore DENIED.

IT IS SO ORDERED.

9/21/2016

Date



Circuit Judge