

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

JEREMY CADY,)	
)	
Plaintiff,)	
)	Case No. 20AC-CC00209
vs.)	
)	
MISSOURI SECRETARY OF STATE,)	
JOHN ASHCROFT,)	
)	
Defendant,)	
and)	
)	
HEIDI MILLER and)	
LAURA DOMINIK,)	
)	
Intervenor-Defendants.)	

RYAN JOHNSON)	
)	
Plaintiff,)	
)	Case No. 20AC-CC00210
vs.)	
)	
MISSOURI SECRETARY OF STATE,)	
JOHN ASHCROFT,)	
)	
Defendant,)	
and)	
)	
HEIDI MILLER and)	
LAURA DOMINIK,)	
)	
Intervenor-Defendants.)	

FINAL JUDGMENT AND ORDER

This case concerns Initiative Petition 2020-63 (the “Initiative”) and whether it violates Article III, Section 51 of the Missouri Constitution’s prohibition on appropriating by initiative. On June 2, 2020, the Court held a bench trial on stipulated facts and exhibits. Plaintiff Ryan Johnson was

represented by Edward D. Greim, Plaintiff Jeremy Cady was represented by Marc H. Ellinger, Defendant Secretary of State was represented by Jason K. Lewis, Intervenor-Defendant Heidi Miller was represented by Lowell Pearson, and Intervenor-Defendant Laura Dominik was represented by Charles W. Hatfield.

Based on the stipulated facts and exhibits, the arguments presented, and the applicable law, the Court makes the following findings of fact and conclusions of law and enters its Final Judgment and Order in favor of the Defendants.

FINDINGS OF FACT

1. Plaintiff Jeremy Cady is a Missouri citizen and taxpayer. Stip. ¶ 1.
2. Plaintiff Ryan Johnson is a Missouri citizen and taxpayer. Stip. ¶ 2.
3. Defendant John (Jay) Ashcroft is the duly elected and acting Secretary of State of Missouri (the “Secretary”). Stip. ¶ 3.
4. Intervenor-Defendant Heidi B. Miller, MD, is the proponent who submitted the Initiative to the Secretary for certification. Stip. ¶ 5.
5. Intervenor-Defendant Laura Dominik is a Missouri citizen and taxpayer who signed the Initiative and plans to campaign for its passage.
6. On May 2, 2019, Heidi Miller submitted to the Secretary an initiative petition sample sheet proposing to create a new Section 36 within Article IV of the Missouri Constitution. Stip. ¶ 7.
7. The Secretary denominated this petition as IP 2020-63. Stip. ¶ 8.
8. The Missouri State Auditor prepared a fiscal note and fiscal note summary for IP 2020-63. Stip. ¶ 9.

9. If enacted, the Initiative would add a category of individuals who will be eligible to participate in the Missouri Medicaid program, called MO HealthNet, beginning July 1, 2021. Stip. Ex. A.

10. If voters approve the Initiative, individuals aged 19 to 65 with income up to 133% of the federal poverty line will be eligible to receive coverage for the health benefits service package through MO HealthNet. *Id.*

11. The Auditor's fiscal note summary indicates the Initiative has the potential to save the State up to \$1 billion. Stip. Ex. B.

12. On June 13, 2019, the Secretary certified the official ballot title for the Initiative. The ballot title reads:

Do you want to amend the Missouri Constitution to:

- adopt Medicaid Expansion for persons 19 to 64 years old with an income level at or below 133% of the federal poverty level, as set forth in the Affordable Care Act;
- prohibit placing greater or additional burdens on eligibility or enrollment standards, methodologies or practices on persons covered under Medicaid Expansion than on any other population eligible for Medicaid; and
- require state agencies to take all actions necessary to maximize federal financial participation in funding medical assistance under Medicaid Expansion? Stip. Ex. D.

13. On May 1, 2020, Heidi Miller submitted nearly 250,000 signatures supporting the Initiative to the Secretary.

14. On May 22, 2020, the Secretary examined the Initiative Petition and the submitted signatures for compliance with Chapter 116, RSMo. The Secretary certified IP 2020-063 to be placed on the ballot as Amendment 2. Stip. ¶ 13; Stip. Ex. E.

15. On May 26, Missouri Governor Mike Parson moved the date for voting on the Initiative from November 3, 2020, to August 4, 2020. Stip Ex. K.

16. The Missouri General Assembly provides spending authority for the MO HealthNet program in the appropriation bills for the Department of Social Services (“DSS”) and Department of Health and Senior Services (“DHSS”) and, if needed, supplemental appropriation bills. Stip. ¶¶ 15-16.

17. None of the appropriations bills stipulated to by the parties contain any discussion of who is eligible to participate in Medicaid.

18. The Initiative does not, on its face, set aside funds, either by specific reference to a dollar amount, reference to a specific percentage of funds that must be spent for Medicaid, or by mandating specific payments to Medicaid participants or providers.

CONCLUSIONS OF LAW

I. The Initiative Survives the Limited Pre-Election Review Available

1. Pre-election challenges to ballot measures “are limited to claims that the procedures for submitting a proposal to the voters were not followed.” *City of Kansas City v. Kansas City Bd. of Election Commissioners*, 505 S.W.3d 795, 798 (Mo. banc 2017) (citing *Boeving v. Kander*, 496 S.W.3d 498, 511 (Mo. banc 2016)).

2. The law “prohibit[s] preelection challenge to what a ballot proposal would do, if approved by the voters.” *Id.*

3. Challenges under Article III, § 51 (the appropriation-by-initiative provision) “go[] to what [a measure] will or may do if approved by the voters and put into operation, not to whether [the measure] is properly put before the voters at all.” *Boeving*, 496 S.W.3d at 509.

4. Plaintiffs correctly note that several cases have stated pre-election review is available for Article III, § 51 challenges. *See, e.g., Mo. Elec. Coops. v. Kander*, 497 S.W.3d 905, 914 (Mo. App.

2016); *City of Kansas City, Missouri v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014). Those cases, however, pre-date the Supreme Court’s decision in *Boeving*.

5. After *Boeving*, the Supreme Court decided *Kansas City Bd. of Election Commissioners*, where it explained there is now a “bright-line test prohibiting pre-election challenges to what a ballot measure would do, if approved by the voters.” 505 S.W.3d at 798.

6. Plaintiffs invite the Court to delve into the hypothetical interaction between the Initiative (if passed), Missouri appropriations law, and substantive Medicaid law. These are complicated issues and the answers to the questions Plaintiffs raise may depend on what the legislature chooses to do in the future. Regardless, *Boeving* and *Kansas City Bd. of Election Commissioners* make clear that review of this depth is appropriate only *after* the election, should the Initiative pass.

7. Accordingly, the Court rejects Plaintiffs’ request to adjudicate their Article III, § 51 challenges on the merits and concludes the Initiative passes pre-election muster under the *Boeving* and *Kansas City Bd. of Election Commissioners* standard because it does not on its face set aside a sum of money for a specific purpose.

II. The Initiative Does Not Violate Article III, Section 51 Because it Does Not Appropriate "On Its Face."

8. The standard to judge whether an initiative violates Article III, section 51 is whether the words on the page appropriate existing funds. “[T]he salient point in this pre-election contest is that there is nothing on the face of Amendment No. 3 that clearly and unavoidably purports to appropriate previously existing funds.” *Boeving*, 496 S.W.3d at 510-11.

9. The Initiative does not use the phrase “stand appropriated,” or any similar phrase that would indicate an appropriation of existing funds.

10. Plaintiffs incorrectly rely on *Kansas City v. McGee*. 269 S.W.2d 662 (Mo. 1954).

11. In *McGee*, plaintiffs challenged a local initiative petition proposing changes to the control of Kansas City's finances. 269 S.W. 2d at 666. The plaintiffs took issue with a section of the initiative requiring the City to make payments into a pension fund. The Court concluded the initiative violated Article III, § 51 because it was as though the funds in the ordinance stood appropriated. *Id.* The Court reached this conclusion because there was language *on the face* of the initiative requiring an appropriation. Specifically, the initiative stated: "on recommendation of the trustees the city council **shall from time to time appropriate** additional contributions by the City." *Id.*

12. Here, there is no language in the Initiative that appropriates existing funds or directs the legislature to do so. Accordingly, the Initiative does not violate Article III, § 51.

III. The Initiative Does Not Amend Article III, § 36 or Article IV, §§ 24-28 of the Missouri Constitution.

13. Plaintiff Cady also argues that this Initiative failed to identify constitutional provisions that it will repeal or amend, in particular Article III, § 36 and Article IV, § § 24-28.

14. An initiative petition is required to identify provisions that it repeals or amends when "the petition [is] in direct conflict with or irreconcilably repugnant to existing law." *Ritter v. Ashcroft*, 561 S.W.3d 74, 95 (Mo. banc 2018)(quotations omitted).

15. Article III, section 36 directs the General Assembly that funds must be appropriated in order to be spent and the process through which to appropriate those funds.

16. The Initiative does nothing to change how the General Assembly appropriates funds.

17. Article IV, sections 24-28 govern the Governor's participation in the appropriation process.

18. The Initiative does nothing to change how the Governor may play a role in the appropriation process.

19. And even if the Initiative did either of those, this Court must “attempt to harmonize all provisions of the initiative’s proposal with the constitution.” *Comm. for a Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503, 510 (Mo. banc 2006).

20. As such, Plaintiff Cady’s claim that the Initiative amends Article III, section 36 and Article IV, sections 24-28 requires an overly broad reading of the of the Initiative to get to that result.

21. The Initiative does not purport to appropriate existing funds nor does it implicate the Governor's role in the appropriation process.

22. The Court must read the initiative to harmonize it with these provisions and treat it merely as an amendment to MO HealthNet's eligibility criteria, subject to the legislature's appropriation power.

IT IS THEREFORE ORDERED, ADJUGED, AND DECREED AS FOLLOWS:

1. Defendants are entitled to judgment in their favor because Plaintiffs’ pre-election challenges under Article III, § 51 are, for all of the reasons set for above, not ripe.

2. Initiative Petition 2020-63 does not on its face or by necessary implication require the appropriation of existing funds and does not violate Article III, § 51.

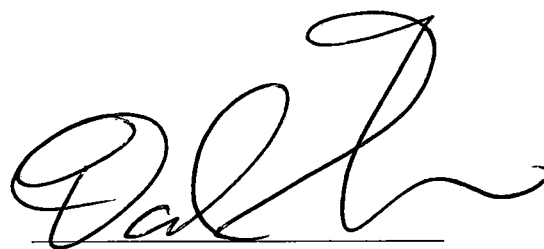
3. Initiative Petition 2020-63 satisfies the requirements of Article III, § 50 and § 116.050.2, RSMo.

4. Initiative Petition 2020063 shall stay on the August 2020 primary election ballot for voters to consider its merits.

5. Any remaining claims not specifically addressed by this Judgment are found in favor of Defendants.

IT IS SO ORDERED.

Dated: 6/2/20

A handwritten signature in black ink, appearing to read 'D.R. Green', written in a cursive style. The signature is positioned above a horizontal line.

The Honorable Daniel R. Green
Circuit Judge