

IN THE SUPREME COURT OF MISSOURI

No. SC101801

PEOPLE NOT POLITICIANS, *et al.*,

Appellants,

v.

SECRETARY OF STATE DENNY HOSKINS, *et al.*,

Respondents.

Appeal from the Circuit Court of Cole County
The Honorable Christopher K. Limbaugh

APPELLANTS' REPLY BRIEF

STINSON LLP

Charles W. Hatfield, No. 40363

Jeremy A. Root, No. 59451

Alexander C. Barrett, No. 68695

Alixandra S. Cossette, No. 68114

Greta M. Bax, No. 73354

Carleigh M. Cavender, No. 73661

230 W. McCarty Street

Jefferson City, Missouri 65101

573.636.6263 (phone)

573.636.6231 (fax)

chuck.hatfield@stinson.com

jeremy.root@stinson.com

alexander.barrett@stinson.com

alixandra.cossette@stinson.com

greta.bax@stinson.com

carleigh.cavender@stinson.com

Attorneys for Appellants

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INTRODUCTION

The Secretary and Intervenor ask this Court to look away from some serious constitutional questions. They claim this case should be dismissed as moot because Appellants ultimately collected enough signatures to qualify the referendum for the ballot. They are wrong. This case presents issues of vital public importance—issues that will recur in every future referendum and that will evade appellate review if not decided now. The Court should reach the merits and reverse.

On the merits, the Secretary’s arguments fail. He contends that “act of the general assembly” really means “an act signed by the governor,” and that the people cannot begin a referendum until the Governor acts. But Article III, Section 49 says otherwise: the people may refer “any act of the general assembly”—not any law. The Governor’s veto power “shall not extend to measures referred to the people.” Mo. Const. art. III, § 52(b). The Secretary’s reliance on century-old dicta from *Drain v. Becker* cannot override the constitutional text.

The Secretary also argues that signatures collected before he “approved” the petition form are invalid—even though the statute requires only that the form be “submitted” before circulation, not approved. He and Intervenor invoke dicta from *ACLU v. Ashcroft* for support, but that dicta cannot rewrite Section 116.332. If approval were required before any signature counts, the Secretary could run out the clock on any referendum simply by withholding approval. That is precisely what happened here.

The procedural issues should also be decided in Appellants’ favor. The Circuit Court granted intervention to a political opponent formed solely to defeat this

referendum—then held the case in abeyance for nearly nine months, sua sponte, while statutes required adjudication without delay. The result: one-third of the signatures supporting the referendum were never even checked, and one-third of the constitutionally allotted collection period was consumed. Appellants overcame these obstacles only through extraordinary effort and expense.

None of the Secretary’s or Intervenor’s arguments withstand scrutiny. The Court should hold that: (1) the Governor’s signature is irrelevant to the referendum right; (2) signatures collected on a form later approved by the Secretary are valid; (3) intervention was improperly granted to a political opponent with no direct interest; and (4) the Circuit Court exceeded the bounds of its discretion in entering abeyance. Appellants respectfully request that the Court reverse the judgment below.

ARGUMENT

I. **The People Don't Have to Wait for the Governor Before They Start a Referendum on an Act of the General Assembly**

The Secretary had no authority to reject Plaintiffs' referendum sample sheets on the basis that the Governor had not signed House Bill 1 ("HB 1"). The Constitution makes clear the Governor plays no role in the referendum process—the people may refer "any act of the general assembly," and the Governor's veto power "shall not extend to measures referred to the people." Mo. Const. art. III, § 49; Mo. Const. art. III, § 52(b).

Because the constitutional text resolves this issue, the Secretary's rejection was improper. But even setting aside the Constitution, Section 116.030 limits the Secretary's authority to reviewing the sample sheet's form, not substantive matters like whether the Governor has signed the bill.

A. The Governor Plays No Part in the Referendum Process

The Secretary argues that where a bill has been presented to the Governor, it must be signed before it can be referred. (Resp. Br. at 18–19.) But the Secretary misreads the constitutional provisions. Article III, Section 49 states in its entirety:

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.

Mo. Const. art. III, §49 (emphasis added).

The words “and also” join two separate ideas: first, the people reserve power to propose, enact, and/or reject laws “by the initiative”; second, the people reserve power to approve or reject by referendum any act of the General Assembly.

The Secretary first focuses on the word “laws” which relates to initiatives (which propose laws that might be enacted or rejected) rather than the word “referendum” which clearly applies to “any act of the general assembly.” He then argues that “act of the general assembly” really means “an act signed by the governor.” (Resp. Br. at 21.)

Nonsense. There is no textual support for reading “act of [the] general assembly” to include the Governor’s signature. “A court may not add words by implication [to the Constitution] when the plain language is clear and unambiguous.” *Gray v. Taylor*, 368 S.W.3d 154, 156 (Mo. banc 2012). The “act” in Article III, Section 49 is the same thing referenced on every bill: “An Act to repeal” (See D67:P2.)

The Governor does not “enact” an act of the General Assembly. *See id* (“*Be it enacted by the General Assembly of the State of Missouri, as follows . . .*”). For acts not referred to the people, Article III, Section 31 gives the Governor a role: sign them (or not) and they become law within 90 days of adjournment, or veto them and give the General Assembly an opportunity to override.

Article III, Section 52(b) is equally unequivocal: “The veto power of the governor shall not extend to measures referred to the people.” Mo. Const. art. III, § 52(b). If the Governor lacks veto power—as Section 52(b) expressly provides—his signature on referred measures also has no effect. Section 52(b) goes on to confirm that: “Any measure referred to the people shall take effect when approved by a majority of the votes

cast thereon, and not otherwise.” *Id.* The Governor’s signature (or lack thereof) has no impact on whether a referred bill becomes law. That decision is made “by a majority of the votes cast thereon.”

The time to gather signatures also excludes the Governor’s role. Article III, Section 52(a) gives citizens ninety days “after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.” Mo. Const. art. III, § 52(a). Nothing is triggered off the Governor’s signature (or veto). The only construction of Article III, Sections 31, 49, 52(a), and 52(b) that is faithful to the text, harmonious, and causes no constitutional infringement is that the Governor has no role in referenda.

In the face of the plain language, the Secretary cites *State ex rel. Drain v. Becker*, 240 S.W. 229, 232 (Mo. banc 1922), *overruled in part on other grounds by Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27 (Mo. banc 2015), for the proposition that “[t]he people cannot refer a measure until it has been adopted by the General Assembly and signed by the Governor.” (Resp. Br. at 2, 18, 27.) That sentence was dicta—that case (which pre-dates the 1945 Constitution) did not involve the Governor’s signature on a referred bill. *Drain* has no bearing here.

This Court made that clear in 1956 in *Brown v. Morris*, when it held that the referendum is an express constitutional “substitute[] for the governor’s approval.” 290 S.W.2d 160, 166 (Mo. banc 1956). When an act is referred and placed on the ballot, voters stand in the Governor’s shoes as the final step in the lawmaking process.

Maggard v. State, 733 S.W.3d 411, 419-20 (Mo. banc 2026), read the Constitution correctly. A “legal, sufficient, and timely” referendum petition suspends effectiveness of any act passed by the General Assembly. *Id.* at 419-20. The referred act—signed or not—becomes “law” only if approved by Missouri voters. The People need not concern themselves with what the Governor does when they exercise their right to a referendum.

B. Nor is There Statutory Authority for the Secretary’s Position

The Constitution ends the inquiry. But Section 116.030 also prevents the Secretary from refusing to count signatures that have been gathered before the Governor signs an act, so long they are on proper sample sheets. Section 116.030 governs the form of referendum sample sheets.

It shows the proper format and instructs: “If this form is followed substantially and the requirements of section 116.050 and section 116.080 are met, [the sample sheet] shall be sufficient, disregarding clerical and merely technical errors.” § 116.030, RSMo. This sets the limits of the Secretary’s power to reject sample sheets for form-related reasons.

The Governor’s signature (or lack thereof) is not a defect in the form of the sample sheets. The Secretary first rejected forms submitted before the Governor had signed House Bill 1 but later approved the identical sample sheet.

Section 116.030 does not permit rejection on this basis. The Court of Appeals has correctly held the Secretary’s authority is “limited to determining whether the sample sheet is substantially in the form required by section 116.030, and if it is, [] the secretary of state **shall** deem the sample sheet sufficient.” *Am. Civil Liberties Union of Mo. v. Ashcroft*

(“*ACLU*”), 577 S.W.3d 881, 892 (Mo. App. 2019). That court expressly foreclosed the Secretary’s actions here:

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

ACLU, 577 S.W.3d at 891.

Although it’s not needed, the doctrine of constitutional avoidance also compels interpreting Section 116.030 this way. *State ex rel. Parson v. Walker*, 690 S.W.3d 477, 485 (Mo. banc 2024). To avoid infringing the referendum right, Section 116.030 cannot require the Governor’s signature before proponents gather signatures. The only statutory requirement before circulation is that the sample sheet be “submitted to the secretary.” § 116.332 RSMo.

II. Nor Do the People Need the Secretary’s Approval to Conduct a Referendum

There is of course a second issue. Regardless of whether the signature gathering starts as soon as the General Assembly acts or whether it must wait for the Governor, the Secretary believes he can control signature gathering further by delaying his “approval” of the form until the last day allowed by the statute. (Resp. Br. at 38–43.)

A. The Statute Requires Only Submission, Not Approval

As a straightforward statutory interpretation issue, the Secretary is wrong. Section 116.332 tells us when the petition may be circulated for signatures: “Before 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.” § 116.332, RSMo (emphasis added). The legislature does not command the Secretary to invalidate signatures collected prior to approval on a form that is ultimately approved. Because the legislature has specified signatures that “shall not be counted as valid,” § 116.120, RSMo, the Secretary cannot add words to invalidate signatures on *other* grounds. *Roland v. St. Louis City Bd. of Election Commissioners*, 590 S.W.3d 315, 323 (Mo. banc 2019).

The statute is explicit and does not require “approval” before the referendum may be circulated for signatures. To “submit” means “to present or propose to another for review, consideration, or decision” or “to deliver formally.” *Submit*, Merriam-Webster’s *Collegiate Dictionary* (11th ed. 2020). The record is clear on when the sample sheets were submitted and any signature gathered after that point should have been counted.

The Secretary claims Section 116.332 is silent on early signature gathering (Resp. Br. at 39–40), but that is wrong. The provision permits signature gathering after a sample sheet has been *submitted*. Construing it otherwise ignores the plain language and well-established rules of statutory construction.

B. Requiring Approval Would Unconstitutionally Impede the Referendum Right

If the Court were to find otherwise, it would give the Secretary and Attorney General a way to dock fifteen or more days from signature-collection time while reviewing form compliance under Section 116.332. This would “afford the legislature [and the Secretary] the opportunity to interfere with or impede the right of referendum”—which is impermissible. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 491 (Mo. banc 2022) (cleaned up).

The Secretary and Intervenor rely on the Court of Appeals’ 2019 *ACLU* opinion, 577 S.W.3d at 893, which stated in passing that “[t]he proponent of a referendum petition cannot begin to collect signatures unless the sample sheet is approved.” (Resp. Br. at 15; Intervenor’s Br. at 39.) But that was dicta by the Court of Appeals and, more important, is not what the statute says. Section 116.332 requires only submission before circulation. Neither this Court nor the Court of Appeals has “authority to modify the provisions of that statute.” *ACLU*, 577 S.W.3d at 900 n.21.

Neither *No Bans on Choice* nor *Coleman v. Ashcroft*, 696 S.W.3d 347, 354 (Mo. banc 2024), supports preventing signatures collected on a valid form prior to approval from counting. The statute requires submission. *Coleman* reflects the wisdom of early review to “protect the people’s interest.” But the question here is whether signatures collected *on an indisputably proper form* count.

R-003 and R-004 were the numbers given to the same form submitted two different times. The Secretary admitted at trial they are identical—completely

invalidating Intervenor’s “voter confusion” concern. (Intervenor’s Br. at 42.) There is no evidence of confusion in the record, nor could there be since the forms were identical and later approved. If the forms had been invalid, the circumstances might differ. But the forms always complied with statutory requirements. The Secretary simply refused to process signatures collected before his approval. No statute grants that authority.

The Secretary and Intervenor next analogize to *State ex rel. Basinger v. Ashcroft*, 677 S.W.3d 562 (Mo. App. 2023), where an initiative proponent tried to collect signatures for the 2024 election before the 2022 election. (Resp. Br. at 40–41; Intervenor’s Br. at 40.) *Basinger* has no bearing here. Here, the General Assembly passed the act, the referendum petition was timely submitted, and the only thing improperly withheld was the Secretary’s approval as to form.

C. The Secretary Cannot Invent Restrictions Not Found in Statute

This is an even easier call than prior efforts to disallow signatures. The legislature’s other express limitation on counting signatures was found unconstitutional by this Court. *See No Bans on Choice*, 638 S.W.3d at 492 (invalidating Section 116.334’s prohibition on counting “signatures obtained prior to the date the official ballot title is certified”). The Court should not permit the Secretary to invent new reasons not in the statutes—any such requirement would interfere with the referendum right.

The Secretary’s argument that fifteen days “is hardly enough time for gamesmanship to impede the right to referendum” is belied by the record. (Resp. Br. at 43.) If approval as to form is required before any signature counts, the Secretary could improperly reject the form, force litigation, and only after reversal on appeal could

signature collection begin. That is *precisely* what happened in *ACLU v. Ashcroft*, where the Court of Appeals’ decision reversing the Secretary’s rejection did not become final until July 8, 2019—removing over half the available time.

As the Court of Appeals held, presaging *No Bans on Choice* and *Coleman*, “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.” 577 S.W.3d at 890. In *No Bans*, this Court invalidated a statute for creating an unconstitutional impediment to the referendum right. Here, no statute authorizes the Secretary not to count signatures collected on a valid form prior to approval. The Court need only declare that decision unlawful.

This Court should reverse and hold that signatures collected on a referendum form later approved by the Secretary are valid so long as they were collected *after* the form was submitted (as all were here). This is all the statutes require. A contrary conclusion invites interference with the referendum.

III. This Case Is Not Moot

Respondents ask this Court to avoid these issues and leave them for another day. (Resp. Br. Part I; Intervenor’s Br. Part I.) This Chapter 527 Declaratory Judgment Action is not moot. There remains a live dispute between the State and Plaintiffs concerning the referendum petition sample sheet process and when signatures count. And this case is very important for the referendum process and the facts prove it out. When the General Assembly passed HB 1, proponents had 90 days to gather more than 100,000 signatures in six congressional districts. When the Secretary rejected their referendum pages, they

had gathered around 100,000 already. That means they were faced with a terrible choice: should they assume those 100,000 signatures would count or should they go gather more?

Those who had signed also faced a dilemma. Under Section 116.090 RSMo, it is a Class A misdemeanor to knowingly sign one's name more than once to the same measure. If their first signature is valid, they cannot sign again. But if their first signature is not valid and they do not sign again their voice is denied. The Secretary used this dilemma to his advantage to discourage individuals from signing the referendum petition. See D79; D80.

Plaintiffs, therefore, had to go gather 100,000 *more* signatures than the Constitution requires. And many who signed the first time may have been understandably reluctant to subject themselves to potential criminal penalties by signing again. Yet, all were denied the opportunity to have those questions answered when it mattered. And it is quite likely to happen again. The rapid succession of *ACLU*, *No Bans*, *Coleman*, and the cases currently before the Court illustrate that.

This is a textbook case of an exception to the mootness doctrine. It is “of general public interest and importance, recurring in nature, and will otherwise evade appellate review,” it is not moot. *D.C.M. v. Pemiscot Cnty. Juvenile Office*, 578 S.W.3d 776, 780 (Mo. banc 2019). That exception applies here.

A. The People's Right of Referendum is of General Public Interest and Importance

This Court has repeatedly held that the referendum right is vitally important. In 2022, it described the referendum as “integral to Missouri's democratic system of

government.” *No Bans on Choice*, 638 S.W.3d at 491. This holding is built on over a century of jurisprudence. See *Drain*, 240 S.W. at 231; *State ex rel. Moore v. Toberman*, 250 S.W.2d 706 (Mo. 1952); *United Labor Comm. v. Kirkpatrick*, 572 S.W.2d 449, 454 (Mo. banc 1978). The referendum exists “to lessen the limits of legislative power.” *Drain*, 240 S.W. at 231. It ensures that “those who have no access to or influence with elected representatives may take their case directly to the people.” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. banc 1990).

The Secretary’s mootness argument takes the Court through the looking glass: “If the number of signatures made any difference to whether the referendum qualifies for the ballot, the Court could decide the question.” (Resp. Br. at 11.) Article III, Section 52(a) makes signature count *the only* constitutional requirement to qualify. This case was filed after the General Assembly adjourned, with the clock ticking on signatures. The number of signatures was vital to this referendum effort’s success and will be equally important to all future campaigns.

B. The Issues in this Case are Recurring in Nature

Next, the issues in this case are recurring in nature. The referendum is a tool that the people know and do use. See *No Bans on Choice*, 638 S.W.3d at 489 n.8. When they do, they must submit a proposed form for approval. Each time, the Constitution sets a 90-day limit from adjournment to deliver the referendum to the Secretary. The statutory and constitutional issues here will recur.

Respondent and Intervenor miss the mark. Respondent claims *No Bans* and *State ex rel. Reser v. Rush*, 562 S.W.2d 365 (Mo. banc 1978), involved “known and repeated

problems—as opposed to potential one-offs.” (Resp. Br. at 11.) The constitutional and statutory provisions governing referenda are not “one-offs.” As this Court held in 1978, “the questions involved are matters of public rights or interests under conditions which may be repeated any time.” 562 S.W.2d at 367.

Intervenor argues mootness because the Secretary admitted in a separate pending case that sufficient signatures were submitted even after exclusion. (Intervenor’s Br. at 23.) Although sufficient valid signatures were ultimately submitted, no future referendum should require 100,000 extra signatures above the constitutional target. Withholding a decision here would likely lead to that outcome.

C. These Issues are Likely to Evade Review

This case’s posture also demonstrates these issues will evade review. Plaintiffs challenged the Secretary’s authority to refuse to count signatures on September 15—before the lawsuit was filed. Plaintiffs sought a ruling well before the Secretary’s August 4 certification. The Circuit Court’s decision to hold the matter in abeyance until after certification should not prevent this Court from reviewing its judgment.

Notably, the Circuit Court reached these issues *on the merits*. It did not refuse to decide because the case was moot—and the Secretary will surely rely on its holdings in future referendum cases. Refusing to decide would endorse the Circuit Court’s conclusion that the Secretary properly invalidated over 100,000 signatures based on collection date. And circuit courts could withhold decisions on challenges to the Secretary’s conduct, insulating that conduct from review. This Court should not wait for the next opportunity to tell the Secretary whether that authority was lawfully exercised.

Intervenor’s reliance on signature-review cases where Section 116.200 challenges were resolved fails to show this conduct would not evade future review. (Intervenor’s Br. at 43). This case was *not* a signature challenge (and oddly, neither is the Court’s other case involving this referendum). It challenged the Secretary’s authority to approve a petition as to form and the consequences of pre-approval signature collection. How would a future proponent obtain review if Plaintiffs cannot? The best way to ensure these issues do not evade review (and do not recur) is for this Court to decide them now.

This Court should do what it did in 2022 and 1978 when challenged referendum conduct was argued to be moot: decide the questions. *See No Bans on Choice*, 638 S.W.3d at 490 n.9 (“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 also Reser*, 562 S.W.2d at 367 (“The problem presented is one which is ‘capable of repetition, yet evading review,’ and needs to be resolved and put to rest.”).

IV. Intervenor Should Not Have Been Permitted to Intervene as a Matter of Right or Permissively.

A. Intervenor Lacks a Direct Interest Sufficient for Intervention as of Right

Regardless of what the Court chooses to do with the other issues, it should resolve the issue of who may intervene in form challenges. In *Toder v. Hoskins*, 730 S.W.3d 129 (Mo. App. 2026), the Court of Appeals, which sees a lot of election-related traffic, warned against allowing intervention for parties with political interests in ballot-measure challenges: “[o]pening intervention of right to citizens solely because they have a differing political view as to the ballot initiative would open the floodgates to oppressive

intervention.” *Id.* at 137 (cleaned up). It is correct and this case is a glaring example of why.

The Circuit Court granted intervention as of right to a partisan political committee that sprung into being *solely* to thwart this referendum. Intervention as of right requires that the proposed intervenor “is concerned in the outcome or result thereof because he has a legal right which will be directly affected thereby or a legal liability which will be directly enlarged or diminished by the judgment.” *Prentzler v. Carnahan*, 366 S.W.3d 557, 561–62 (Mo. App. 2012).

But Intervenor’s asserted interests are consequential and remote, not direct. Plaintiffs challenged the Secretary’s form-approval duties. Intervenor’s argument is that “it will be required to deploy—or forgo deploying—substantial financial and organizational resources depending on whether PNP’s referendum is on the ballot.” (Intervenor’s Br. at 52.) But a timely ruling here would never have placed the referendum on the ballot or prevented it from appearing on the ballot. Whether the Secretary has authority to reject a petition sample sheet for form reasons does not impact Intervenor at all. Intervenor “will either gain or lose” nothing “by direct operation of the judgment.”

State ex rel. Nixon v. Am. Tobacco Co., 34 S.W.3d 122, 128 (Mo. banc 2000). At most, Intervenor has a downstream campaign-timing interest contingent on multiple intervening steps. Intervenor might have had an interest in creating the confusion discussed above and costing Plaintiffs valuable resources scrambling to get enough signatures without knowing whether the goalposts had moved; but that is not a legitimate interest that supports intervention under Rule 52.15.

Rather, the Secretary adequately represented any legitimate interest Intervenor may have claimed. The Secretary raised identical defenses—mootness, ripeness, failure to state a claim, lack of standing—and actively opposed Plaintiffs at every turn, even suing them in federal court seeking to enjoin submission of the referendum petition.

Intervenor claims a “unique” defense in raising “lack of demonstrated harm” at trial. (Intervenor’s Br. at 55.) This is neither unique nor valid. Plaintiffs, like all petition proponents, were harmed by the Secretary’s *ultra vires* refusal to certify 100,000 signatures; they had to spend time, money, and resources collecting replacement signatures. Plaintiffs were harmed by time lost to the Secretary’s gamesmanship. And 100,000 citizens were harmed when the Secretary invalidated their signatures.

B. The Motion was Untimely and Caused Prejudice

The motion was untimely and caused prejudice. Filed less than 24 hours before trial in a time-sensitive election case, it triggered change-of-judge proceedings, 25 days of delay, and vexatious discovery Plaintiffs could not produce on the compressed timeline. Under *Corson v. Corson*, 640 S.W.3d 785, 790 (Mo. App. 2022), all four timeliness factors weigh against intervention.

Intervenor’s contention that Plaintiffs waived their objections is unsupported by the record. (Intervenor’s Br. at 54.) Appellants did not file a written opposition before the motion was granted because it was never properly noticed for hearing and was presented *less than 24 hours after filing*.¹ The record shows Plaintiffs objected at the time the

¹ Of course, neither the Rules of Civil Procedure nor Cole County’s local rules require a written opposition to a Motion to Intervene, even one that is properly noticed for hearing.

motion was presented, Tr. of Nov. 13 Hearing, immediately sought reconsideration, and asked the Court of Appeals to review by extraordinary writ—a writ not denied until after judgment because Plaintiffs then had a right to appeal. There was no waiver.

C. Permissive Intervention was Also Improper

Permissive intervention is discretionary, and the severe prejudice—delay, burdensome discovery, and interference with constitutional referendum rights—confirms the circuit court’s decision “shock[ed] the sense of justice.” *State ex rel. Nixon*, 34 S.W.3d at 131.

Intervenor cites *Allred v. Carnahan*, 372 S.W.3d 477 (Mo. App. 2012). This Court need not decide whether to endorse *Allred* because it is distinguishable. There, the trial court denied intervention to the proponent of the initiative petitions and was reversed on appeal. “A proponent of an initiative petition generally has a greater interest in the initiative petition than someone, for instance . . . as a political supporter and signer of the initiative petitions.” *Id.* at 484. Intervenor is not the proponent but a political opponent. That proponents can intervene in ballot-title challenges does not give political opponents the same rights.²

This Court should make clear that Rule 52.12 does not open courthouse doors to partisan political actors. This case is the perfect vehicle: an intervenor formed to oppose a

² Both ballot title cases and challenges to a sufficiency determination are governed by statutes. § 116.190, RSMo; § 116.200, RSMo. Neither statute allows intervention *at all*. *Cf. State ex rel. Brentwood Sch. Dist. v. State Tax Comm’n*, 589 S.W.2d 613, 614 (Mo. 1979) (explaining if the legislature had meant to allow school districts to intervene in tax assessment appeals, it would have said so).

referendum during the campaign then intervened only to delay trial and conduct discovery against its political target.

V. The Circuit Court Lacked Authority to Hold This Matter in Abeyance

A. Statutes Require Swift Adjudication of Election Cases

Here is another issue where the Court should give guidance regardless of how it addresses the substantive issues in this case. Multiple statutes require swift adjudication of matters like these without delay. See § 115.535, RSMo; § 115.551, RSMo; § 116.190, RSMo; § 116.200, RSMo. These directives matter because ignoring them jeopardizes strict ballot-initiative deadlines. This Court warned that litigants must initiate form-related claims at the beginning of the process. *Coleman*, 696 S.W.3d at 354. That is what Plaintiffs attempted here.

In entering an abeyance order sua sponte, the Circuit Court acted contrary to those mandates, exceeded the bounds of its discretion, and erred as a matter of law. As outlined in Plaintiffs' opening brief, there was no proper basis for abeyance.

Whether Plaintiffs later collected enough signatures does not resolve these issues. This case concerns whether the Secretary wrongfully rejected the petition as to form and wrongfully relied on that rejection to invalidate over 100,000 signatures. Later-acquired signatures were irrelevant to those legal issues.

Appellants took this Court's *Coleman* caution to heart, seeking to resolve all form-related matters at the earliest date. After delays from intervention, the case was tried. The facts were stipulated. The matter was ripe. No one sought abeyance. Yet the circuit court declined to adjudicate for nearly nine months.

B. The Abeyance Order Caused Substantial Prejudice

The prejudice to Plaintiffs—including costs to collect signatures to replace the 100,000 tied up in the Secretary’s form decisions—cannot be overstated. Those signatures could have provided extra insulation from signature attacks. The Secretary’s decision, coupled with the abeyance order, effectively denied 100,000 citizens the right to participate in the referendum.

The Circuit Court issued a decision on the merits. But it did not issue that decision until it was too late to verify the discarded signatures. The judiciary’s role in resolving disputes is a constitutional obligation that cannot be deferred indefinitely. Permitting prolonged abeyance in time-sensitive election matters undermines the rule of law. The Circuit Court exceeded the bounds of its discretion in holding this matter in abeyance sua sponte.

C. This Issue is Properly Before the Court

Intervenor argues the abeyance decision cannot be appealed. (Intervenor’s Br. at 46.) But Plaintiffs appealed from the final judgment and identified abeyance as an abuse of discretion. Nothing further is required to preserve this issue. Given the circumstances and this Court’s *Coleman* holding, it should hold the circuit court abused its discretion.

At a minimum, it should provide guidance to the lower courts in its general superintending authority to disallow the practice in cases like these. Mo. Const. art. V, § 4.

The Secretary and Intervenor also argue this issue is moot because no relief can now be afforded. As detailed in Section III, the case should be decided within the

mootness exception. Missouri citizens' right to participate in a referendum—and have their signatures counted—is at stake and was thwarted by the circuit court's decision to withhold resolution until too late. This Court should hold the Circuit Court abused its discretion.

VI. Intervenor's Standing Argument Lacks Merit

Demonstrating that intervention's prejudice extends to this Court, Intervenor dedicates thirteen pages to a perplexing standing argument. (Intervenor's Br. at Part VII.) Intervenor claims Plaintiffs lack standing because they do not have evidence of the 100,000 signatures the Secretary refused to approve. Intervenor is wrong.

Before Intervenor's interference, Plaintiffs and the Secretary stipulated as to how many signatures were collected before the approval as to form. Plaintiffs offered into evidence the December 3 Amended Joint Stipulation among all parties (D65), its exhibits (D66-D80), and the October 28 Joint Stipulation between the Secretary and Plaintiffs (D14), admitted over Intervenor's objection. Tr. at 18:19-23:16. Intervenor objected on foundation. Tr. at 20:7-21:1.

Plaintiffs and the Secretary filed their original stipulation with the Circuit Court; its authenticity is beyond dispute. Plaintiffs offered it not as a stipulation but as an admission by the Secretary to the facts therein, including signature counts. See Tr. at 21:4–15. That Intervenor did not join the stipulation and objected to its admission is irrelevant to whether the Secretary agreed to those facts. This is competent evidence supporting the signatures. The Circuit Court admitted it and said it would decide what weight to give it.

Post-trial, the parties acknowledged the Secretary refused to deliver over 16,000 referendum petition pages to Local Election Authorities for verification. The Circuit Court entered factual findings based on the October 28 stipulation. (See D116 ¶¶ 43–44.) Now Intervenor acknowledges these facts (Intervenor’s Br. at 20) but . . . argues they are not actually facts?

There is no basis for Intervenor’s contention that Plaintiffs lack standing. Intervenor’s evidentiary objection went to weight, not admissibility. The Circuit Court exercised discretion to admit it. The Circuit Court also had discretion to give it weight. *Ivie v. Smith*, 439 S.W.3d 189, 200 (Mo. banc 2014). Intervenor has not demonstrated any abuse of discretion.

Plaintiffs—whose referendum sample sheets were rejected as to form—clearly have standing. See *ACLU*, 577 S.W.3d at 894-99 (rejecting argument that referendum proponents cannot challenge the Secretary’s form decisions). Intervenor’s contrary arguments pollute this Court’s record and confirm that granting intervention was an abuse of discretion.

CONCLUSION

Plaintiffs’ Amended Petition invoked Sections 536.150, 527.010, and 527.100 and requested the following declarations:

- Declare that the Secretary of State may not reject a referendum petition sample sheet because the governor has not signed the bill upon which the referendum is being requested;

- Declare that Plaintiffs' referendum sample sheets are valid as to form because they substantially comply with the requirements of Section 116.030, RSMo;
- Declare that Signatures may be gathered once a sample sheet is submitted to the Secretary of State and such signatures may not be rejected because they were gathered prior to the Secretary issuing an approval of the sample sheet as to form; and
- Award equitable and just costs because the Secretary of State's actions in rejecting the referendum sample sheets were intentional misconduct to thwart Plaintiffs' referendum rights.

(D2:P11-12.) This Court should reverse the judgment of the Circuit Court and enter the judgment that ought to have been entered. Rule 84.14.

Respectfully submitted,

STINSON LLP

/s/ Charles W. Hatfield

Charles W. Hatfield, No. 40363

Jeremy A. Root, No. 59451

Alexander C. Barrett, No. 68695

Alixandra S. Cossette, No. 68114

Greta M. Bax, No. 73354

Carleigh M. Cavender, No. 73661

230 W. McCarty Street

Jefferson City, Missouri 65101

573.636.6263 (phone)

573.636.6231 (fax)

chuck.hatfield@stinson.com

alexander.barrett@stinson.com

alixandra.cossette@stinson.com

greta.bax@stinson.com

carleigh.cavender@stinson.com

Attorneys for Appellants

CERTIFICATE OF SERVICE AND COMPLIANCE

A copy of this document and the appendix were served on counsel of record through the Court's electronic notice system on August 27, 2026.

This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 6,317 excluding the cover, signature block, appendix, and this certificate. The font is Times New Roman 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

/s/ Charles W. Hatfield
Attorney for Appellants