IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ANNIE BUSCH, ROSEANN BENTLEY, and JOHN D. SCHNEIDER,	)))	
Appellants,	))	
v.	))	WD72257
ROBIN CARNAHAN, SECRETARY OF STATE,	))))	Opinion Filed: August 24, 2010
Respondent,	))	
and	))	
JAMES HARRIS,	))	
Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
The Honorable Patricia S. Joyce, Judge

Before Special Division: Lisa White Hardwick, Chief Judge, Joseph M. Ellis, Judge
and Cynthia L. Martin, Judge

On October 2, 2009, James Harris submitted an initiative petition to the Missouri

Secretary of State that, if enacted, would amend the Missouri Constitution by repealing

the nonpartisan court plan and require that all judges be elected in partisan elections.

The Secretary of State denominated that petition as Initiative Petition 2010-071. After receiving the initiative petition, the Secretary of State sent a copy of it to the Attorney General to review the sufficiency of the petition. On October 8, 2009, the Attorney General issued Opinion Letter No. 222-2009 opining that the petition should be approved as to form. Subsequently, on October 19, 2009, the Secretary of State officially approved the petition as to form.

The Secretary of State then prepared a summary statement for the initiative petition, and the State Auditor prepared a fiscal note and a fiscal note summary. On November 12, 2009, the Secretary of State issued the Certification of Official Ballot Title for the Initiative Petition.

On November 20, 2009, Appellants Annie Busch, Roseann Bentley, and John Schneider filed a petition in the Circuit Court of Cole County challenging the Secretary of State's approval of the initiative petition. The petition was in three counts. Count I generally alleged that the proposed initiative petition did not comply with the requirements of Sections 116.050,[1] 116.180, and 116.010(4), and Sections 50 and 28 of Article III of the Missouri Constitution, and therefore the Secretary of State should have rejected the initiative petition as part of her review of the petition pursuant to Section 116.332 and 116.334, and no summary statement or official ballot title should have been formulated as a consequence. Count II asserted that if the Secretary of State was not under a duty to reject the initiative petition, as alleged in Count I, then the circuit court had jurisdiction and should reject the initiative petition. And Count III

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[1] All statutory references are to RSMo 2000 unless otherwise noted.

alleged that if the initiative petition was not rejected under Counts I or II, the court should determine that the Summary Statement for the Proposed Initiative Petition was "insufficient or unfair" under Section 116.190.

Harris sought leave to intervene in the action, was granted permission to do so, and filed a motion for judgment on the pleadings. After a hearing on Harris's motion, the circuit court issued its judgment concluding that the Secretary of State's summary statement was sufficient and fair and that none of the other issues raised by Appellants were ripe for adjudication. The court concluded that those issues could not be adjudicated under § 116.200 until after signatures were collected and the Secretary of State certified the petition as sufficient or insufficient.

Appellants bring four points on appeal from that judgment. In their first two points, Appellants claim the trial court erred in determining that their assorted challenges to the form of the initiative petition were not ripe for adjudication. In their third point, Appellants argue that the trial court should have decided their claim that certain provisions in the initiative petition were facially unconstitutional because that issue was likewise ripe for adjudication. In their final point, Appellant's challenge the trial court's conclusion that the summary statement for the initiative petition drafted by the Secretary of State was neither insufficient nor unfair within the meaning of § 116.190. Additionally, in their reply brief, Appellants reasserted a claim, previously raised by motion, that the matters raised on appeal are rendered moot by virtue of preliminary indications regarding the insufficiency of the number of signatures collected

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to place this initiative petition on the ballot.[2]

The appeal was placed on the Court's expedited docket and was argued and submitted on July 22, 2010. Subsequently, on August 3, 2010, the Secretary of State certified the petition as insufficient because not enough valid signatures were obtained to place the initiative petition on the ballot, and no timely suit was filed to challenge that determination pursuant to Section 116.200.

As conceded by all parties hereto at oral argument, such a determination by the Secretary of State renders moot the points raised in this appeal. "A claim is moot when the judgment sought would have no practical effect in a controversy." ***Knight v. Carnahan***, 282 S.W.3d 9, 15 (Mo. App. W.D. 2009). Any decision this Court could reach on the issues raised on appeal would have no effect on the fate of the ballot initiative. While Respondents did observe that the issue of whether a contest regarding the form of the petition is ripe for litigation prior to the Secretary of State's certification of the initiative petition could theoretically fall within the exception to the mootness doctrine relating to matters which might otherwise evade review, neither Appellants, who requested that this court dismiss their appeal as moot, nor any of the Respondents have argued that we should apply this exception. We thus decline to do so.

The appeal is dismissed as moot.

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Joseph M. Ellis

All concur.

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[2] Appellants previously filed a motion to dismiss the appeal for mootness, asserting that they had secured, via a Sunshine Law request for documents, copies of all the petitions filed by Harris with Secretary of State, and based on their count, the initiative petition lacked sufficient signatures in at least four congressional districts. This motion was denied by the Court.