



**CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102**

BILL L. THOMPSON
CLERK

TELEPHONE
(573) 751-4144

October 14, 2014

The Honorable Ms. Kay Brown
Christian County Clerk
100 W. Church, Room 206
Ozark, MO. 65721

In Re: Wes Shoemyer, Darvin Bentlage, and Richard Oswald, Plaintiffs, vs. Missouri Secretary
of State Jason Kinder, Defendant
Missouri Supreme Court No. SC94516

Dear Sir/Madam:

Pursuant to section 115.559, RSMo 2000, enclosed please find a certified copy of the petition for
election contest filed in the above-entitled cause.

Very truly yours,

Bill L. Thompson

BILL L. THOMPSON



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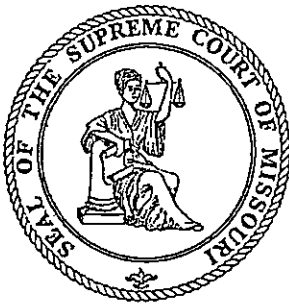
BILL L. THOMPSON
CLERK

TELEPHONE
(573) 751-4144

October 14, 2014

STATE OF MISSOURI -- SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the attached is a true and correct copy of the Petition for Election Contest, consisting of 17 pages, as fully as the same appears on file in my office in the proceeding styled: Wes Shoemyer, Darvin Bentlage, and Richard Oswald, Plaintiffs, vs. Missouri Secretary of State Jason Kander, Defendant. Supreme Court No. SC94516.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at my office in the City of Jefferson, State aforesaid, this 14th day of October, 2014.

Bill L. Thompson, Clerk

Qui S. Knaebel, Deputy Clerk

IN THE SUPREME COURT OF MISSOURI

WES SHOEMYER, DARVIN BENTLAGE,)
and RICHARD OSWALD,)

Contestants)

v.)

CASE NO:

MISSOURI SECRETARY OF STATE)
JASON KANDER,)

Serve at:)
Capitol Building, Room 208)
Jefferson City, MO 65101,)

Contestee.)

PETITION FOR ELECTION CONTEST

COME NOW Contestants Wes Shoemyer, Darvin Bentlage, and Richard Oswald, by and through counsel, pursuant to §155.553 R.S.Mo., and for their Petition for Election Contest state the following:

JURISDICTION AND VENUE

1. Constitutional Amendment No. 1 was submitted to Missouri voters for approval or rejection on the August 5, 2014, election ballot. The Constitutional Amendment No. 1 question appeared on ballots statewide.
2. Contestant Wes Shoemyer is a registered voter of the State of Missouri in Monroe County and has standing to bring this suit pursuant to § 115.553 R.S.Mo.
3. Contestant Darvin Bentlage is a registered voter of the State of Missouri in Barton County and has standing to bring this suit pursuant to § 115.553 R.S.Mo.
4. Contestant Richard Oswald is a registered voter of the State of Missouri in Atchison County and has standing to bring this suit pursuant to § 115.553 R.S.Mo.

5. Contestee Jason Kander is the duly elected and acting Secretary of State of the State of Missouri and is named as a Defendant in his official capacity pursuant to § 115.553 R.S.Mo.

6. Contestants bring this action pursuant to Mo. Rev. Stat. §§ 115.553.2 and 116.190.

7. Jurisdiction in this Court is appropriate pursuant to § 115.555 R.S.Mo. because Contestants are contesting the results of an election on a constitutional Amendment.

8. Venue is proper in this Court pursuant to § 115.553 R.S.Mo.

GENERAL ALLEGATIONS

9. Contestee Secretary of State initially certified the results of the August 5, 2014 election on August 25, 2014.

10. Upon reasonable belief, on or about August 26, 2014, Wes Shoemyer filed a Petition for Recount of the Results of the August 5, 2014 election votes cast regarding the Constitutional Amendment No. 1 question. (See Petition for Recount attached hereto as Exhibit A.)

11. From approximately September 4, 2014, through September 11, 2014, Contestee Secretary of State conducted a statewide recount of the votes cast regarding the Constitutional Amendment No. 1 question.

12. Contestee Secretary of State certified the results of the August 5, 2014 election Constitutional Amendment No. 1 recount on September 15, 2014.

13. The results of the Constitutional Amendment No. 1 recount were certified as the Amendment passing with 499,963 "Yes" votes and 497,588 "No" votes. (See August 5, 2014 Special Election Constitutional Amendment 1 Recount Certification attached hereto as Exhibit B.)

14. Contestants timely filed this contest within 30 days of the final certification pursuant to § 115.557 R.S.Mo.

ARGUMENT

15. The summary statement of the official ballot title of Constitutional Amendment No. 1 was insufficient, misleading, prejudicial, and unfair so as to constitute election irregularities of a sufficient magnitude to set aside the election results on Constitutional Amendment No. 1.

16. Missouri Revised Statute Section 116.155.2 allows the General Assembly to write its own summary statement for a proposed constitutional Amendment, but requires that it "be a true and impartial statement of the purposes of the proposed measure in language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure."

17. Under Missouri Revised Statute Section 116.155.2, the summary statement must include all information central to the purpose of the Amendment, including any limitations or contingencies contained therein. *See Seay v. Jones*, --- S.W.3d ---, 2014 WL 4495194 (Mo. App. W.D. Sept. 15, 2014).

18. Constitutional Amendment No. 1 added a Section 35 to Article I of the Missouri Constitution which reads:

That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri. (See H.J.Res. 11 & 7, 97th Gen. Assem., 1st Reg. Sess. (2013), attached hereto as Exhibit C.)

19. The summary statement for Constitutional Amendment No. 1, which appeared on the August 5, 2014, election ballots throughout the state read:

Shall the Missouri Constitution be amended to ensure that the right of Missouri citizens to engage in agricultural production and ranching practices shall not be infringed? (See Official Ballot Title attached hereto as Exhibit D, available at <http://www.sos.mo.gov/elections/2014ballot> (last visited Nov. 14, 2014).)

20. The summary statement was insufficient and unfair, deceived and misled voters, and failed to accurately reflect the legal and probable effects of the Amendment, in numerous ways, including, but not limited to, the following:

- a. The Amendment contained an explicit limitation on the right to farm, making it subject to the power of local governments under Article VI. The language of the summary statement, however, fails to state that such a limitation on this new right to farm would exist.

- b. The Amendment language applies to “farmers and ranchers,” regardless of citizenship. In contrast, the summary statement alleges to secure rights of “**Missouri citizens** engaging in farming and ranching practices.” (emphasis added). The disparate language between the Amendment and summary statement is misleading and inaccurate, because the plain language of the Amendment arguably protects the rights of non-Missouri citizen farmers and ranchers from being infringed, while the summary statement alleges that the Amendment only protects Missouri citizens. As such, the group identified in the summary statement as being allegedly protected by the Amendment is significantly different from the group actually protected by the Amendment itself.

21. The summary statement was only 24 words, excluding articles, out of an allowable 50 pursuant to § 116.155 R.S.Mo. The legislature could have included additional language remedying the prejudicial, insufficient and misleading aspects of the summary statement without exceeding the statutory limitation.

WHEREFORE, Contestants respectfully request this Court:

- A. Declare that the summary statement for Constitutional Amendment No. 1 as adopted in TAFP HJR 11 & 7:
 - i. is insufficient, unfair, and misleading;
 - ii. includes language that was likely to create prejudice for or against the Amendment;

- iii. constitutes an election irregularity of sufficient magnitude to cast doubt on the validity of the election on August 5, 2014, regarding Constitutional Amendment No. 1; and
 - B. Set aside the election results of August 5, 2014, or
 - C. Order that Constitutional Amendment No. 1 be remanded to the legislature;
- and
- D. any such other or additional relief as this Court deems necessary or proper.

Respectfully submitted,

SPEER LAW FIRM, P.A.

By: /s/ Charles F. Speer
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ATTORNEYS FOR CONTESTANT

**CERTIFICATE OF SERVICE OF PETITION UPON THE ATTORNEY
GENERAL PURSUANT TO § 527.110 R.S.Mo.**

I hereby certify that, on this 14th day of October 2014, a true and accurate copy of this Petition for Election Contest was served by U.S. Mail, first class postage prepaid, upon:

Chris Koster

Missouri Attorney General

P.O. Box 899

Jefferson City, MO 65102

and by e-mail to:

jeremiah.morgan@ago.mo.gov

/s/ Charles F. Speer
Attorney for Contestant

SC94516

EXHIBIT A

PETITION FOR RECOUNT

COMES NOW Contestant, Wes Shoemyer, president of Missouri's Food for America, and for his petition for a recount of votes, states and alleges as follows:

1. Contestant, Shoemyer, is, and at all times hereinafter mentioned, was, a registered voter residing in the State of Missouri.

2. Contestee, Jason Kander, (hereinafter the "Secretary"), is, and at all times hereinafter mentioned was, the Missouri Secretary of State. The Missouri Secretary of State was the election authority responsible for conducting the primary election for the State on August 5, 2014.

3. On May 14, 2013, Missouri's 97th General Assembly adopted a joint resolution to certify a constitutional ballot question to appear in the State's next election that would establish the constitutional right to farm (hereinafter the "Right to Farm Amendment").

4. On May 23, 2014, Missouri Governor Jay Nixon issued a proclamation that the Right to Farm Amendment would appear on the ballot in the State's August 5, 2014 primary election. See Press Release, Office of Missouri Governor Jay Nixon, Gov. Nixon Sets Election Dates for 2014 Ballot Measures (May 23, 2014), available at <https://governor.mo.gov/news/archive/gov-nixon-sets-election-dates-2014-ballot-measures>.

5. On August 5, 2014, Contestant cast a vote against the Right to Farm Amendment in the primary election.

6. The address on Contestant's voter registration form as of August 5, 2014 was 16350 Monroe Road 184 Clarence MO 63437.

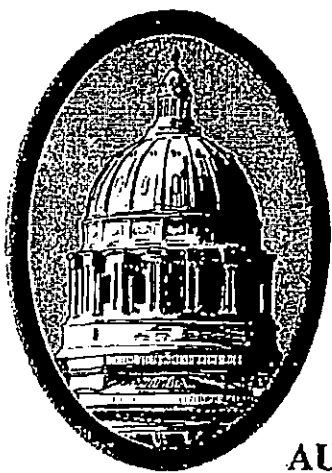
7. Although the Secretary has not yet officially announced election results, the unofficial results of the August 5, 2014 primary election yield 499,581 votes for and 497,091 votes against the Right to Farm Amendment. See Missouri Secretary of State, August 5, 2014 Primary Election Unofficial Results (last visited Aug. 21, 2014), <http://enr.sos.mo.gov/EnrNet/>. The unofficial margin of victory for the Right to Farm Amendment is 0.25%. See *id.*
8. The Right to Farm Amendment was defeated by less than 1 percent of the votes cast on the ballot question in the August 5, 2014 primary election, and Contestant is therefore authorized to a recount under Mo. Rev. Stat. § 115.601(1) (“[A]ny person whose position on a question was defeated by less than one percent of the votes cast on the question[] shall have the right to a recount of the votes cast . . . on the question.”).
9. Given the 0.25% margin of victory on the Right to Farm Amendment, Contestant requests, pursuant to Mo. Rev. Stat. § 115.601, that the votes on the question be recounted.

WHEREFORE Contestant prays that the Secretary order a recount pursuant to Mo. Rev. Stat. § 115.601; that the Secretary make such other and further orders as the Secretary deems just and proper; that the Secretary provides leave for Contestant to produce supporting evidence as needed; and that the costs of this proceeding be taxed to the election authority since the Contestant has a right to such recount pursuant to Mo. Rev. Stat. § 115.601.

Respectfully submitted,
Wes Stoenyer
President Missouri's Food for America

SC94516

EXHIBIT B



STATE OF MISSOURI

Office of
Secretary of State

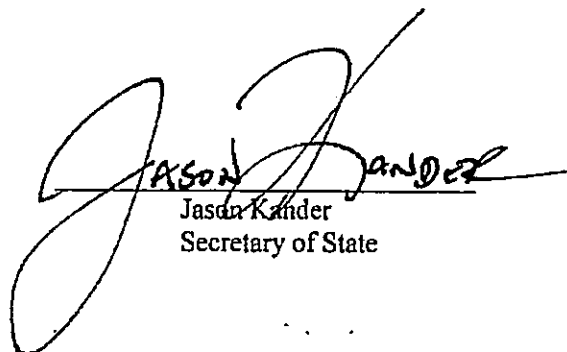
AUGUST 5, 2014 SPECIAL ELECTION CONSTITUTIONAL AMENDMENT 1 RECOUNT CERTIFICATION

I, Jason Kander, based upon the Report of Findings returned to me by the persons authorized to conduct or appointed to assist with the recount of Constitutional Amendment No. 1, do hereby certify the results of the recount as the official results in the election pursuant to Section 115.601, RSMo. The results of the recount are as follows:

Constitutional Amendment No. 1	Yes Votes	No Votes
RECOUNT TOTALS	499,963	497,588

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of my office in the City of Jefferson, State of Missouri, this 15th day of September, 2014.




 Jason Kander
 Secretary of State

SC94516

EXHIBIT C

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE NO. 2 FOR
SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
**HOUSE JOINT
RESOLUTION NOS. 11 & 7**
97TH GENERAL ASSEMBLY

0132H.05T

2013

JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to article I of the Constitution of Missouri, and adopting one new section relating to the right to farm.

Be it resolved by the House of Representatives, the Senate concurring therein:

That at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 2014, or at a special election to be called by the governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to article I of the Constitution of the state of Missouri:

Section A. Article I, Constitution of Missouri, is amended by adding thereto one new section, to be known as section 35, to read as follows:

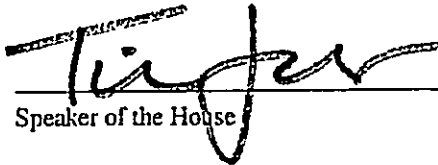
Section 35. That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

Section B. Pursuant to Chapter 116, RSMo. and other applicable constitutional provisions and laws of this state allowing the general assembly to adopt ballot language for the

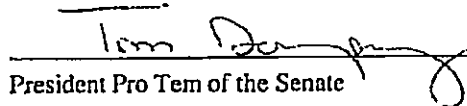
EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

3 submission of a joint resolution to the voters of this state, the official ballot title of the
4 amendment proposed in Section A shall be as follows:

5 "Shall the Missouri Constitution be amended to ensure that the right of Missouri
6 citizens to engage in agricultural production and ranching practices shall not be
7 infringed?"

✓


Speaker of the House



President Pro Tem of the Senate

SC94516


Electronically Filed - SUPREME COURT OF MISSOURI - October 14, 2014 - 01:51 PM

EXHIBIT D

2014 Ballot Measures

The following ballot measures have been certified for the *August 5, 2014* primary election.

Official Ballot Title
Constitutional Amendment 1

[full text] 

[Proposed by the 97th General Assembly (First Regular Session) CCS#2 for SS for HCS HJR Nos. 11 & 7]

Official Ballot Title:

Shall the Missouri Constitution be amended to ensure that the right of Missouri citizens to engage in agricultural production and ranching practices shall not be infringed?

The potential costs or savings to governmental entities are unknown, but likely limited unless the resolution leads to increased litigation costs and/or the loss of federal funding.

Fair Ballot Language:

A "yes" vote will amend the Missouri Constitution to guarantee the rights of Missourians to engage in farming and ranching practices, subject to any power given to local government under Article VI of the Missouri Constitution.

A "no" vote will not amend the Missouri Constitution regarding farming and ranching.

If passed, this measure will have no impact on taxes.