IN THE CIRCUIT COURT OF THE CITY ST. LOUIS
STATE OF MISSOURI

MARY ERIN NOEL, et al.,

Plaintiffs,

vs.

BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF ST. LOUIS, et al.,

Defendants.

Case No. 1422-CC00249

POST-TRIAL BRIEF

I. Introduction

The initiative process is a powerful tool available to citizens. It allows the people to bypass their elected representatives and govern themselves directly by enacting beneficial measures. History shows that too often elected officials avoid or even refuse to consider controversial legislation, opposed by wealthy and powerful special interests, despite overwhelming support by the electorate. This case presents just such an issue. The City of St. Louis has consistently supported unsustainable energy producers through a variety of financial incentives without regard to sustainable energy policy. In reaction, tens of thousands of voters signed the initiative petition at question. Plaintiffs now seek to deny voters an opportunity to vote on this important public policy matter, and in doing so, squash the power of direct democracy. Intervenors respectfully oppose and ask the Court to deny Plaintiffs' continued request for an injunction and enter judgment against Plaintiffs and in Defendants' favor.

II. Courts May Not Address Matters of Substantive Interpretation Prior to Election.

The law is well settled that "[w]hen courts are called upon to intervene in the initiative process, they must act with restraint, trepidation and a healthy suspicion of the partisan who would use the judiciary to prevent the initiative process from taking its course." *Committee for a Healthy Future v. Carnahan*, 201 S.W.3d 503 (Mo. 2006). This is because an opponent's lawsuit attacks the very power of initiative petition. The St. Louis City Charter gives citizens the authority to bypass the Board of Aldermen and to vote on and enact ordinances and amendments to the City Charter on their own if and when their elected representatives fail to act. City Charter, Art. V, Section 1 ("The people shall have the power, at their option to propose ordinances, including ordinances proposing amendments to this charter, and to adopt the same at the polls . . . "). This populist system confirms that the power to govern ultimately resides in the people. A lawsuit which seeks to thwart the initiative process, and deny a vote on a matter at the polls, takes the power to govern from the people. *See Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 833 (Mo. 1990) (Rendlen, J., dissenting) ("[a] lawsuit to strike an initiative or referendum from a ballot is one of the deadliest weapons in the arsenal of the measure's political opponents.").

Missouri Courts have repeatedly confirmed that "before the people vote on an initiative, courts may consider only those threshold issues that affect the integrity of the election itself and that are so clear as to constitute a matter of form." *United Gamefowl Breeders' Ass'n of Missouri v. Nixon*, 19 S.W.3d 137, 139 (Mo. 2000). "Courts do not sit in judgment on the wisdom or folly of proposals. Neither will courts give advisory opinions as to whether a particular proposal would, if adopted, violate some superseding fundamental law...." *Missourians to Protect the*

Initiative Process, 799 S.W.2d at 827. As such, when initiative petitions are challenged, the Court's duty is to determine "whether the constitutional requirements and limits of power, as expressed in the provisions relating to the procedure and form of initiative petitions, have been regarded." *Id.* at 827.

Courts have the authority to engage in pre-election review of the facial constitutionality of an initiative petition. *City of Kansas City v. Chastain*, 2014 Mo. LEXIS 8 (Mo. Feb. 14, 2014). However, "facial constitutionality" means procedure and form only. In cases where opponents have challenged an initiative, the Missouri Supreme Court has assessed whether the measure requires an appropriation of money, whether it contains more than one subject, whether a measure's title is clear, and whether it comports with procedural requirements for passing a law. *See, e.g., Chastain, supra* (whether petition requires an appropriation); *United Gamefowl Breeders Ass'n of Missouri, supra* (one subject and clear title rules); *Missourians to Protect the Initiative Process, supra* (single subject rule); *Buchanan v. Kirkpatrick*, 615 S.W.2d 6 (Mo. 1981) (single subject, listing of provisions; and appropriation); *City of Kansas City v. McGee*, 269 S.W.2d 662 (Mo. 1954) (appropriation); *Baum v. City of St. Louis*, 123 S.W.2d 48 (Mo. 1938) (compliance with procedural requirements for enacting an ordinance). The Court does not consider issues external to the initiative petition process. The Court limits itself to whether the proposed measure violates a provision in the Missouri Constitution or controlling state or local law that specifically dictates "conditions precedent" to placing a measure on the ballot. *Missourians to Protect the Initiative Process*, 799 S.W.2d at 828 (pre-election review to determine if "conditions precedent" have been met).

"Courts do not address matters of substantive interpretation prior to an election." *State ex rel. Trotter v. Cirtin*, 941 S.W.2d 498, 500 (Mo. 1997) (refusing to hear pre-election claim that

initiative petition on zoning conflicts with more specific provisions in city charter regarding zoning and is preempted by provisions of Chapter 89 of state law on zoning); *see also Union Elec. Co. v. Kirkpatrick*, 678 S.W.2d 402, 405-06 (Mo. 1984) (claims that proposal "draws an unreasonable distinction between electrical corporations and other utilities" and is preempted by federal legislation do not rise to level of facial unconstitutionality and are not ripe for decision); *State ex rel. Dahl v. Lange*, 661 S.W.2d 7 (Mo. 1983) (refusing to consider constitutionality of initiative petition before people have voted on it). Courts should not rush to review the legal effects of an initiative before the people vote on it because such matters are not ripe. In *Craighead v. City of Jefferson*, 898 S.W2d 543 (Mo. 1995), the city counselor for Jefferson City refused to process seven different initiative petitions submitted by citizens asking whether riverboat gambling should be allowed in the City. The counselor claimed that a vote on the issue was preempted by state law on gambling. *Id.* at 544. The plaintiffs filed suit, seeking an order from the court directing the City to approve the petitions for circulation. The Court ruled in the plaintiff's favor. It held that the issues of law raised by the City were "not so clear or settled as to constitute matters of form," *id.* at 545, and declined to "rush to review the possible legal effect of such matters so prematurely," *id.* at 547.

Although in *State ex rel. Hazelwood Yellow Ribbon Comm'n v. Klos*, 35 S.W.3d 457 (Mo. App. E.D. 2000), the Missouri Court of Appeals found an initiative petition requiring two-thirds' voter approval for TIF projects and restricting a city's power of eminent domain to conflict with state law, as argued below, the *Hazelwood* case is distinguishable. Moreover, as seen in the *Trotter* and *Craighead* cases, the Missouri Supreme Court has never gone so far. This Court should not follow the *Hazelwood* case down the slippery slope of determining whether the

legality of the substance of an initiative petition is "clear and settled." This short-circuits the initiative petition process by allowing a judge to issue an advisory opinion about a measure..

The Missouri Supreme Court has also specifically held that courts should not consider in a pre-election challenge whether a measure violates the U.S. Constitution. *Brown v. Carnahan*, 370 S.W.3d 637, 645 (Mo. 2012) ("To avoid encroachment on the people's constitutional authority, courts will not sit in judgment on the wisdom or folly of the initiative proposal presented, nor will this Court issue an advisory opinion as to whether a particular proposal, if adopted, would violate a superseding law of this state *or the United States Constitution*.") (emphasis added); *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. 1990) ("Neither will courts give advisory opinions as to whether a particular proposal would, *if adopted*, violate some superseding fundamental law, such as the United States Constitution.") (emphasis in original); *see also Knight v. Carnahan*, 282 S.W.3d 9, 21-22 (Mo. App. W.D. 2009) (affirming trial court's dismissal, as premature, of a pre-election rational-basis equal protection challenge under the Missouri Constitution because plaintiffs "bore a heavy burden to present a viable challenge to the measure's constitutionality, much less to assert a claim so facially apparent that it comprised a matter of form"). The limits imposed by the U.S. Constitution, like potential conflicts with state law, are external to the initiative petition process. They are not "conditions precedent" to the process and thus not a matter appropriate for pre-election review.

The power of the people to propose and vote on laws by initiative petition is akin to the legislative process. *Pittman v. Drabelle*, 83 S.W. 1055, 1057 (Mo. 1916). Just as a court would not issue an injunction against the Board of Aldermen for considering and debating a measure that may conflict with state law or violate the U.S. Constitution -- whether it be licensing of

street performers, or restrictions on ammunition clips for automatic weapons, or campaign donations – the trial court should not enjoin this measure from being placed on the ballot. The judiciary may decide the question of its constitutionality after it passes, but should not do so before.

III. The Initiative Petition Does Not Conflict with State Law.

A. The City of St. Louis has all of the legislative power the state legislature has..

As a constitutional home-rule city, the Missouri Constitution grants the City of Saint Louis, and by extension her citizens when acting in their lawmaking capacity, all powers the legislature has except where limited or denied by the Missouri Constitution or by state statute. The Constitution states:

> Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law.

Mo. Const. Art. VI Sec. 19(a). Power can be denied only by the constitution or by statute and ordinances are presumed to be valid. *McCollum v. Director of Revenue,* 906 S.W.2d 368, 369 (Mo. 1995).

Generally speaking, Missouri courts will defer to municipal authority and construe municipal ordinances that regulate in the same manner or area as state statutes so as to harmonize the two: "[u]nder Missouri's new model of home rule, the municipality possesses all powers which are not limited or denied by the constitution, by statute, or by the charter itself." *City of Kansas City v. Carlson*, 292 S.W. 3d 368,371 (Mo. App.W.D. 2009) (internal citations omitted). The question is not whether a municipal ordinance conflicts with state law, but whether the state statute limits or denies municipal authority to enact the ordinance. Only where the terms of the

municipal ordinance are expressly inconsistent or in irreconcilable conflict with the state statute or where the municipal ordinance seeks to regulate in an area or in a manner specifically reserved in the constitution or in state statute will the court find a denial of municipal power. *Cape Motor Lodge v. City of Cape Girardeau*, 706 S.W.2d 208, 212 (Mo. 1986). Otherwise, municipalities have broad authority to legislate.

In *Cape Motor Lodge*, the leading case on the boundaries of denial of municipal authority, the City of Cape Girardeau sought a tax increase to fund a multi-use facility to be operated in cooperation with the South Eastern Missouri University. The plaintiffs in *Cape Motor Lodge* sought to strike down the voter-approved tax increase, claiming that the state statute that authorized cooperation between municipalities and state agencies, Section 70.220, R.S. Mo., denied the City the power to cooperate with universities, which were not enumerated in the cooperation statute.

The *Cape Motor Lodge* court acknowledged the fundamental shift in jurisprudence following the adoption of section 19(a) of the Constitution, stating:

> "Section 19(a) grants to a constitutional charter city all the power which the legislature could grant. Prior to the adoption of section 19(a) in 1971, this Court felt compelled to find some grant of authority in the constitution, statutes or the charter. *See Halbruegger v. City of St. Louis*, 302 Mo. 573, 262 S.W. 379, 384(banc 1924). Under section 19(a), in the absence of an express delegation by the people of a home rule municipality in their charter, the municipality possesses all powers which are not limited or denied by the constitution, by statute, or by the charter itself." *Hannah ex inf. Christ v. City of St. Charles*, 676 S.W.2d 508, 512 (Mo. 1984)."

Cape Motor Lodge, 706 S.W.2d at 212. Thus the question at issue is not "whether state statute conflicts with a municipal ordinance" but rather "whether a state statute limits a muncipality's authority to enact an ordinance."

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The plaintiffs in *Cape Motor Lodge* argued that since the university was not a municipality, a political subdivision, or a state agency -- the three categories of entities defined in Section 77.200 with which a city could cooperate -- the exclusion of universities from the state statute expressly denied the City's authority to cooperate with universities. *Cape Motor Lodge*, 706 S.W.2d at 212. The Court disagreed noting that a mere grant of authority to cooperate with municipalities did not, by itself, limit municipal power, and that the test for determining whether a state statute constitutes a denial of municipal authority is "whether the 'ordinance permits what the statute prohibits' or 'prohibits what the statute permits.'" *Id.* The Court held that the municipality was within its constitutionally-granted scope of authority in passing the ordinance because the language of the cooperation statute and the municipal ordinance were not "expressly inconsistent, nor in irreconcilable conflict." *Id.* The Court's analysis denies that the state statute in question "operate[s] as both authorization and limitation" since they do not contain any indication that the list of entities named are to be an exclusive list, nor any intent to preempt the field through an explicit limitation. *Id.*

The Court stressed the importance of deference to the constitutional grant of authority: "In carrying out the intent behind section 19(a), caution should be exercised in finding that a power granted to non-home rule cities places an implied limitation on the powers derived from section 19(a), unless such an intent is clear from the constitution or statute itself." *Id.* Applying this deference in their legal reasoning, the Court found that since there was no indication in the state statute governing municipal cooperation that the list of entities named was exclusive, and since the statute did not contain an expression of legislative preemption, that the statutory grant of authority did not limit municipal power. "Section 70.220 and section 16 of article VI do not 'operate as both authorization and limitation.' These provisions contain no indication that the

express enumerations of the entities named are to be considered as the exclusion of others not named." *Id.* Silence is not prohibition.

B. There is no statutory denial of power to the City of St. Louis to adopt the initiative.

The relevant state statutes here, governing Tax Increment Financing and the creation of Special Business Districts are simply statutory authorizations and do not deny the city the authority to adopt the initiative. The purpose of the state TIF statute is simple -- the statute grants municipalities the authority to, within their discretion and according to procedural and evidentiary conditions, grant tax incentives to real estate developers or businesses. The Special Business District statutes grant authority to municipalities to create special business districts and then specific powers to those districts to self-govern in a limited capacity. Nothing in the statutes covers the issue raised in the initiative petition.

As held in *Cape Motor Lodge*, an omission from a statute is not a denial of authority. The initiative merely supplements what the statutes provide. It does not prohibit what they provide. There is no denial of authority. Similarly, the state TIF statute contains authorizing but not limiting language. While the statute provides an explicit ban on granting TIFs to gambling facilities,§ 99.810.1(6), R.S.Mo., there is no expression that the legislature intended to limit the list of industries or establishments excluded from receiving TIFs to gambling facilities, merely that the state desired to shape municipal discretion in granting TIFs. Further, nowhere in the state TIF statutes does the Missouri legislature express an intent to "occupy the field." The provision that sets out the bare minimum requirements for a redevelopment plan *specifically anticipates* municipal discretion: "Each redevelopment plan shall set forth in writing a general description of the program to be undertaken to accomplish the objectives and shall include, *but need not be limited to,* [requirements]" § 99.810.1, R.S.Mo. (emphasis added).

Likewise, the state statutes governing Special Business Districts, § 71.790, R.S.Mo *et seq*., defer to municipalities, providing in the authorizing provision that municipalities "*may* establish special business districts in the manner provided hereafter…" §71.790.1, R.S.Mo (emphasis added). The remainder of the Special Business District statutes provide enumerated lists of powers that are listed as inclusive ("including") but not exclusive ("limited to"). Since the Special Business District statute contains no explicit intent to legislate the entire field of Special Business Districts, and indeed since such intent would defeat the purpose of Special Business Districts (that municipalities may decide in their sole discretion whether or not to create a Special Business District and what such a District should include), the statutory grant of authority in no way denies the city of St. Louis its constitutional grant of authority to decide how best to redevelop itself.

Where municipal ordinances seek to supplement statutory authority, Missouri courts have repeatedly held that where the statute does not exclusively regulate, cities may elaborate upon and extend the state statutes.

For example, in *Frech v. City of Columbia,* 693 SW 2d 813 (Mo. 1985), Plaintiffs sought to overturn a municipal ordinance that authorized judges in the home rule city of Columbia to issue administrative warrants in connection to the city's apartment licensing process. Plaintiffs argued that Chapter 542, RSMo 1978, which authorized the issuance of search warrants for criminal matters by appellate judges and judges with original jurisdiction over the criminal matter, constituted a denial of any municipal attempt at issuing civil search warrants. *Frech*, 693 S.W.2d at 815. The court disagreed, noting that Chapter 542 covered only criminal offenses, and that "[i]t would be unreasonable to think that in enacting the various provisions of Chapter 542 the legislature intended to forever preclude the issuance of search warrants for a purpose other

than to investigate or prosecute criminal offenses," and that "We have carefully studied Chapter 542 and are unable to find any provision or language which is reasonably susceptible to the restrictive meaning plaintiffs would read into the statute." *Id.*

Similarly, the listing of exclusions does not create an affirmative right to entities not excluded. This issue arose in *Passler v. Johnson,* 304 S.W.2d 903 (Mo. 1957)**,** which dealt with Missouri's Liquor Control Act and Non-Intoxicating Beer Law. The state's liquor control act provided, in relevant part, that

> Wholesalers shall not directly or indirectly be or become financially interested in the retail liquor business and shall not, directly or indirectly, furnish credit to a retailer for liquor or nonintoxicating beer purchased by such retailer except on these terms, to wit, cash payable no later than 30 days after delivery for intoxicating liquor other than malt beverage, and cash on or before the 15th day of the month next succeeding the month of delivery to the retailer for malt beverage and nonintoxicating beer; and no wholesaler shall sell intoxicating liquor or nonintoxicating beer to any retailer at any time when such retailer is indebted to such wholesaler for money due for intoxicating liquor, malt beverage, or nonintoxicating beer beyond the time limits of the terms above set forth.

Passler, 304 S.W.2d at 906. The home rule city of Kansas City passed an ordinance preventing retailers who owed money to a wholesaler so they could no longer purchase from that wholesaler from purchasing liquor or beer from any other wholesaler. *Id.* Noting that since the state Liquor Control Act was a "comprehensive but not all-inclusive plan" to regulate the sale of liquor, the court held that "the fact, therefore, that the state has enacted regulations governing liquor wholesalers does not prohibit a municipality from exacting additional requirements from such wholesalers so long as there is no conflict between the statute and the ordinance." *Id.* at 907. The Court found for the city, holding that where "[a statute] does not attempt to preclusively regulate but, on the contrary, specifically authorizes municipalities to enact ordinances, consistent with the state law [. . .] we construe the prohibition contained in the ordinance as only an enlargement of the same type of prohibition contained in the state law. We are of the view,

therefore, that the ordinance and the statute may coexist in harmony. [internal citations omitted]." *Id.* Similarly, the Initiative Petition merely enlarges on the prohibition against gambling facilities included in the state TIF statute.

Finally, in *City of Kansas City v. Carlson,* 292 S.W.3d 368 (Mo. App. W.D. 2009), the City of Kansas City passed an indoor smoking ban that forbade smoking in bars and pool halls, which were exempt under the state's Indoor Clean Air Act. Plaintiff, a pool hall owner fined $100 for violating Kansas City's smoking ban, argued that the specific exemption in the state statute denied the city the authority to prohibit smoking in her establishment. The Court of Appeals disagreed, deferring to the constitutional grant of municipal authority and to principles of statutory construction: "We presume ordinances are valid and lawful. *McCollum,* 906 S.W.2d at 369. We follow the principle of '*ut res magis valeat quam pereat* (that the thing may rather have effect than be destroyed).' *LaRose,* 524 S.W.2d at 117. We construe ordinances to be upheld "unless the ordinance is expressly inconsistent or in irreconcilable conflict with the general law of the state." *McCollum,* 906 S.W.2d at 369." *Carlson,* 292 S.W.3d at 372. The court rightly held that in absence of an explicit limitation on further regulation by a municipality or the creation of an affirmative right to an entity, municipalities may enact ordinances that operate more strictly than relevant state statutes, stating where an ordinance "merely prohibits *more* than the state statute, the two measures are not in conflict." *Id.* at 371 (emphasis in original *citing Kansas City v. LaRose,* 524 S.W.2d 112, 117 (Mo. 1975)).

As in *Cape Motor Lodge, Frech, Passler* and *Carlson*, we have a question as to whether the existence of statutes, specifically Missouri's TIF statutes or Special Business District statutes limit or deny St. Louis' constitutional grant of authority. The initiative petition prohibits the city of St. Louis from granting TIFs and other Public Financial Incentives to Unsustainable Energy

Producers. Nowhere in the state's TIF statutes are municipalities expressly or implicitly forbidden from prohibiting TIFs to such businesses. Therefore in no way does the ordinance prohibit what the statute permits.

C. Missouri cases that found a denial of constitutional home rule authority are distinguishable.

In the cases where state statutes have been found to deny the Constitutional grant of municipal authority, conflict has either been explicit and irreconcilable, or premised upon powers that should rightfully be narrowly construed.

First, *ACI Plastics, Inc v. City of St. Louis,* 724 S.W.2d 513 (1987), cited in the Court's Memorandum and Order, deals entirely with statutory proscriptions on the process surrounding sales tax increases and the requirement that ballot initiatives deal solely on a single subject, neither of which apply to the case at issue. The court acknowledges in dicta, however "the considerable latitude granted to a constitutional charter city in the exercise of its powers, including the taxing power, as granted under § 19(a)." *Id. at 516* as well as a city's right to legislate in a field occupied by the state. *Id.* (citing *Ruggeri v. City of St. Louis,* 441 S.W.2d 361, 365 (Mo.1969)).

The problem in *ACI* was procedural rather than substantive — state statutes laid out a specific way for sales tax increases to be posed and required that initiative petitions constrain themselves to a single subject matter. The initiative petition in *ACI* failed to conform to those procedures and thus the Court decided the city had acted in a manner denied by state statute. The denial issues here deal with substantive matters rather than procedural, and as demonstrated above, the initiative petition is a valid enactment of municipal authority.

Courts may find denial if a statute grants a limited authority to be used only in that way. An example is *Springfield v. Brechbuhler,* 895 S.W.2d 583 (1995), where the conflict resolved

around a single, conditional grant of authority. The statute provided that a city could condemn land inside its own boundaries as well as land outside its own boundaries but inside the county in which it was located. The city of Springfield attempted to condemn land in an adjacent county. The court found that the statute denied the city's ability in that casebecause there was no ambiguity as to what was included and what was omitted. *Id. at 586.* However, the court's reasoning illuminates an important basis behind the *Cape Motor Lodge* decision. The court reasoned that in *Cape Motor Lodge*, like in the present case:

> there are three categories within the potential scope of section 70.220: 1) those which local governments are authorized to cooperate with, which are listed in the statute; 2) those which local governments are prohibited from cooperating with, which are not listed in the statute; and 3) those which the legislature has not considered, which also are not listed in the statute. There is no basis in the statute to distinguish the latter two categories from each other; thus the impact of being omitted from the statute is ambiguous.

Id., at 585, 586. Since the TIF statutes are written such that there is no basis for determining whether legislators intended to limit the authority of municipalities to forbid granting TIFs to specific types of institutions, a plain reading must give way to the constitutional grant of municipal authority**.**

Plaintiffs and the Temporary Restraining Order both rely on *State ex rel. Hazelwood Yellow Ribbon Committee v. Klos,* 35 SW 3d 457 (Mo. Ct. App. E.D. 2000), because the case involves an Initiative Petition and the TIF statute. However, the initiative petition in *Hazelwood* sought to require a referendum on every proposed TIF, in violation of the procedural requirements of § 99.835.3, R.S.Mo., which states "No referendum approval of the electors shall be required as a condition to the issuance of obligations pursuant to sections 99.800 to 99.865." The conflict between statute and ordinance was explicit and irreconcilable, in that the ordinance sought to permit what the statute prohibited. In addition, the initiative in Hazelwood sought to

deny the City the power of eminent domain for TIFs, which was expressly granted by state statute. By contrast, in the case at issue here, the initiative petition merely seeks to extend the TIF law by shaping municipal discretion. It is not changing the TIF process and it is not denying the City the use of any power for a TIF. Thus the measure does not conflict with state law.

IV. The Initiative Petition Does Not Violate Plaintiffs' Rights under Equal Protection.

Plaintiffs have failed to demonstrate that the initiative would violate their rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution or under the Missouri Constitution. Plaintiffs would not be adversely affected by the initiative even remotely. Moreover, they have failed to meet their steep burden of establishing that the initiative is not rationally related to any conceivable legitimate government interest. Taken as a whole, the initiative seeks to encourage a shift in the city's economic mix away from environmentally harmful nonrenewable fuel extraction industries, and towards other, more sustainable industries. Its chosen mechanisms (removal of direct and indirect public subsidies and development of a sustainable energy plan) are rationally related to these interests. Finally, the initiative is far from an arbitrary or punitive measure; equal protection does not prohibit economic regulations that favor one industry over another, and the initiative relies on a rational economic theory to address legitimate government interests. And while that economic theory can (and should) be debated on its merits in the political arena, plaintiffs have failed to show that it is so far beyond the pale of all rational thought as to be facially unconstitutional.

A. Plaintiffs lack standing to assert an equal protection violation.

Plaintiffs were required to make a three-part standing demonstration:

> In the context of an equal protection challenge to a statute, standing requires the plaintiff to: (1) identify a statutory classification that distinguishes between similarly-situated persons in the exercise of a right or the receipt of a benefit; (2) show that the plaintiff is a member of the disadvantaged class; and (3)

> demonstrate that, but for the challenged classification, the plaintiff would be eligible for the right or benefit.

Glossip v. Missouri Dep't of Transp. & Highway Patrol Employees' Ret. Sys., 411 S.W.3d 796, 803 (Mo. 2013); *see also Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 484-86 (Mo. 2009) (in equal protection challenge to state school funding formula, carefully parsing standing of three different categories of plaintiffs with respect to four different claims).

Plaintiffs, three individuals and a small law firm, have not even pled, let alone offered evidence, that any plaintiff is a member of a disadvantaged class. No plaintiff has offered evidence of qualifying as either a "primary" Unsustainable Energy Producer (UEP), i.e., an "entity or organization . . . that engages primarily in the mining or extraction" of non-renewable fuels, or a "secondary" UEP, i.e., an "entity or organization . . . that transacts at least $1,000,000 of business per calendar year with" a primary UEP, (Initiative § 3(c)), nor of being otherwise eligible for public financial incentives.

Plaintiffs cannot bootstrap standing for their equal protection claim through taxpayer standing by claiming that they will suffer the expense of a useless election if the initiative passes and is later overturned. If the initiative had been passed by the city's elected representatives, these plaintiffs would not be able to challenge it—ever—because they are not members of a disadvantaged class. *See Glossip*, 411 S.W.3d at 803. But if these same plaintiffs could prevent it from even reaching the ballot through a jurisprudential sleight-of-hand in which taxpayer standing enables any interloper to challenge anything, then initiatives would be vulnerable to judicial invalidation on grounds that could never invalidate a bill passed by elected politicians, and the voter initiative process would be fundamentally disabled. Moreover, the prosecution of this challenge by plaintiffs with no demonstrated connection to the purportedly disadvantaged class means that the court lacks the benefit of a truly adversarial presentation. *Cf. State ex rel.*

Reser v. Rush, 562 S.W.2d 365, 369 (Mo. 1978) ("One of the primary objectives of the standing doctrine . . . is to prevent parties from creating controversies in matters in which they are not involved and which do not directly affect them.").

Plaintiffs' inability to persuade any potentially affected UEPs to join their action is not curable at this late stage. Plaintiffs had ample opportunity (more than seven months from initiative certification to trial) to recruit even one sympathetic UEP to sign onto their challenge, and it would be inequitable to allow them to further delay this ballot measure by scrambling to find a potential ally among those actually affected by the initiative.

B. Plaintiffs bear a steep burden of negating every possible legitimate government interest and rational relationship to the initiative.

Since the distinction in the challenged initiative between UEPs and non-UEPs does not impact a fundamental right or involve a suspect class, it "is accorded a strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319 (1993). Consequently, the court must sustain the initiative if it "can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous." *Romer v. Evans*, 517 U.S. 620, 632 (1996). Such a classification is "constitutionally valid if there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decision maker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." *Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2080 (2012) (quotation marks and citation omitted); *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 106-08 (2003) (rejecting equal protection challenge law favoring riverboat casinos over racetracks). And the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), did not purport to reverse decades of cases holding that

government may, consistent with equal protection, distinguish among business entities. The Court continues to apply the same equal protection analysis in cases involving the regulation of business. *See Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 426 (2010) (reviewing, post-*Citizens United*, standard equal protection principles as applied to business regulation); *Koyo Corp. v. United States*, 899 F. Supp. 2d 1367, 1372 (Ct. Int'l Trade 2013) (rejecting claim that *Citizens United* implicitly overturned equal protection precedent regarding differential regulation of businesses).

Under rational-basis review, "courts do not question the wisdom, social desirability or economic policy underlying a statute." *Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 378 (Mo. 2012) (quotation marks and citation omitted). Accordingly, plaintiffs' burden is exceptionally steep. To sustain a rational-basis challenge, "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." *Heller*, 509 U.S. at 320 (quotation marks and citation omitted); *Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 103 (Mo. 1997) (same).

C. Supporters of a ballot initiative subject to a rational-basis challenge may defend it through lay witness testimony and generally available documents.

The party defending against a rational-basis challenge "has no obligation to produce evidence to sustain the rationality of a statutory classification." *Heller*, 509 U.S. at 320. Rather, the law must be sustained "if there is *any reasonably conceivable state of facts* that could provide a rational basis for the classification." *FCC v. Beach Comm., Inc.*, 508 U.S. 307, 313 (1993) (emphasis added). Indeed, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Beach Comm.*, 508 U.S. at 315. Consequently, the court "is *obligated* to seek out other conceivable reasons for validating [a state statute]" besides those that the parties advanced or the legislature

contemplated. *Powers v. Harris*, 379 F.3d 1208, 1217 (10th Cir. 2004) (emphasis in original; quotation marks and citation omitted).

When the legislative body—or, as here, the committee of petitioners—*does* in fact proffer a factual basis in support of the legislation, the court does not inquire whether that factual basis is true. Rather, it asks only whether "the legislative facts on which the classification is apparently based rationally *may have been considered to be true* by the governmental decision maker." *Armour*, 132 S. Ct. at 2080 (emphasis added; quotation marks and citation omitted). Plaintiffs can negate the factual basis for the challenged law only by showing "that the legislative facts on which the classification is apparently based *could not reasonably be conceived to be true* by the governmental decision maker." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981) (emphasis added; quotation marks and citation omitted).

For a legislatively-enacted statute, the legislature would be entitled to consider witness testimony and documents from any source through legislative hearing and committee processes. The court's role in evaluating such evidence is *not* to engage in "courtroom fact-finding." *Beach Comm.*, 508 U.S. at 315; *see also Clover Leaf Creamery Co.*, 449 U.S. at 464 (emphasizing that "litigants may not procure invalidation of the legislation merely by tendering evidence in court that the legislature was mistaken"). The question in such a case is not whether the evidence available to the legislature is *true*, but whether it might "rationally may have been considered to be true by the governmental decision maker." *Armour*, 132 S. Ct. at 2080.

For a ballot initiative, the same deferential analysis applies to evidence submitted by initiative supporters. The closest case is *MSM Farms, Inc. v. Spire*, 927 F.2d 330 (8th Cir. 1991), in which the Eighth Circuit rejected an equal protection challenge to a Nebraska ballot initiative that prohibited non-family farm corporations from owning farmland. The court

observed that "[b]ecause the law was adopted through the initiative and referendum process, there is little traditional legislative history regarding its purpose." *Id.* at 332. Instead, it cited the arguments made by defendant-intervenors who were not experts, but rather "Nebraska farmers . . . and supporters of the initiative." *Id.* The court noted that "[a]ccording to evidence presented by defendant-intervenors, supporters of the Nebraska initiative believed that a rise in corporate farming in Nebraska would lead to the decline of the family farmer," and that "[s]upporters further maintained that corporate farming would lead to absentee landowners and tenant operation of farms." *Id.* at 332-33. The court cited approvingly the farmer-intervenors' affidavits, which included "attached studies prepared by the Center for Rural Affairs . . . [and] the Agricultural Extension Services." *Id.* at 333.

Under *MSM Farms*, this court may rely on two forms of evidence that might be unusual in a typical civil proceeding—(1) lay witness testimony regarding initiative supporters' beliefs, conclusions, and even speculations, and (2) generally available studies and reports that, in another context, might be inadmissible hearsay—to establish legislative facts of the type that a legislature might rely on in its deliberations. To be sure, the *MSM Farms* court did not purport to find that the testimony of the lay witnesses, or the information in the publications that they provided, was *correct*. Rather, the court explained, "[i]t is up to the people . . . not the courts, to weigh the evidence and decide on the wisdom and utility of measures adopted through the initiative and referendum process." *Id.* at 333. The only question is whether these "legislative facts . . . rationally may have been considered to be true." *Armour*, 132 S. Ct. at 2080; *see also SDDS, Inc. v. South Dakota*, 843 F. Supp. 546, 561 (D.S.D. 1994) ("[T]he issue before this Court is not whether the Referendum in fact ensured environmental safety. Rather, the issue is whether there *was evidence before the electorate from which the electorate reasonably could have*

believed that the classification would further the purpose of environmental safety.") (emphasis added), *rev'd on other grounds*, 47 F.3d 263 (8th Cir. 1995).

D. The initiative addresses the two legitimate government interests of environmental pollution and urban redevelopment.

Intervenors introduced extensive evidence regarding two legitimate government interests underlying the initiative: limiting environmental pollution from unsustainable energy production, and promoting an approach to urban development in St. Louis that does not rely on tax breaks and other public financial incentives to large businesses. These two interests converge in the larger goal of encouraging a shift in the city's economic mix away from environmentally harmful nonrenewable fuel extraction industries and towards other, more sustainable industries. (*See* Initiative § 1(b) ("a sustainable energy future for the city").)

In arriving at these goals, Arielle Klagsbrun, a key initiative drafter, examined respected sources regarding the impacts of climate change on St. Louis and the region. (Trial Trans. p.17, ll. 3-16.) These included reports produced by the United States government and two nongovernmental organizations that assert that St. Louis, and the region, are likely to experience adverse impacts from climate change. (Intervenors' Ex. A-C.)[1] Plaintiffs did not introduce any evidence to negate the legitimate government interest in addressing environmental harms from unsustainable energy production.

Similarly, Ms. Klagsbrun examined respected sources regarding the failure of current approaches to urban redevelopment that depend on subsidizing large downtown businesses which employ few St. Louisans. (Trial Trans. p.17, ll. 3-16.) An East-West Gateway Council of Governments report on the impacts of TIFs and other public financial incentives in the St. Louis

[1] These documents are not hearsay because they were not offered to prove the truth of the matters asserted. (Trial Trans. p.37, l.7 & p.38, l.21.) The court may credit them to establish that a reasonable voter could *rationally believe* that the impacts of climate change on St. Louis are of concern, just as the Eighth Circuit credited the agricultural studies introduced by the farmer-intervenors in *MSM Farms*. *See* 927 F.2d at 332-33.

region emphasizes that "the use of these tax incentives has been ineffective . . . to produce a significant increase in quality jobs." (Intervenors' Ex. H at iii.) That report also concludes:

> 1. There has been a massive public subsidy of private development – more than $5.8 billion – in the last 20 years across the St. Louis region. * * *
>
> 3. Local governments in the region are under fiscal stress. * * *
>
> 4. The use of tax incentives has exacerbated economic and racial disparity in the St. Louis region. * * *
>
> 10. Broad measures of regional economic outcomes strongly suggest that massive tax expenditures to promote development have not resulted in real growth. * * *

(See Intervenors' Ex. H. at iv-vi; *see also* Intervenors' Ex. I at 32) (noting that "there are 216,000 jobs inside the borders of St. Louis, yet less than 55,000 are held by city residents").

Plaintiffs did not negate the legitimate government interest in promoting an alternative model of urban redevelopment. To be sure, Rodney Crim testified that the initiative would render certain businesses ineligible for public financial incentives for which they are eligible under current law. (Prelim. Hearing Trans. pp. 20-21.) But this testimony does not refute the *legitimacy* of a potential government interest in reallocating public financial incentives from one type of business to another; it reflects his personal view regarding the wisdom of pursuing that interest, which is a question for voters rather than the court. *Cf. Estate of Overbey*, 361 S.W.3d at 378 ("[C]ourts do not question the wisdom, social desirability or economic policy underlying a statute.") (quotation marks and citation omitted).

E. The initiative is rationally related to the identified legitimate government interests.

The initiative attempts to address the two identified legitimate government interests through two mechanisms. First, it prohibits the city from granting "Public Financial Incentives" to two classes of "Unsustainable Energy Producers." (Initiative §§ 2(a), 3(a)-(c).) Second, it

requires the city to develop and publish a "Sustainable Energy Plan." (*Id.* § 2(b).) Plaintiffs challenge the classification of the two types of UEPs as lacking a rational relation to a legitimate government interest.[2]

The initiative must be sustained if, taken as a whole (including the sustainable energy plan provisions of Section 2(b)), it bears a rational relationship to any combination of legitimate government interests. *Cf. Fitzgerald*, 539 U.S. at 108 (noting that the law challenged there under rational-basis review "like most laws, might predominantly serve one general objective . . . while containing subsidiary provisions that seek to achieve other desirable (perhaps even contrary) ends as well, thereby producing a law that balances objectives but still serves the general objective when seen as a whole"). And, the standard for evaluating the rationality of the legislation is "whether the measure under attack was debatably calculated to reach the targeted evil." *Mid-State Distrib. Co. v. City of Columbia*, 617 S.W.2d 419, 424 (Mo. Ct. App. 1981). Plaintiffs cannot prevail by arguing that "the law seems unwise or works to the disadvantage of a particular group, or [that] the rationale for it seems tenuous," *Romer*, 517 U.S. at 632, or that "there is an imperfect fit between means and ends," *Heller*, 509 U.S. at 321; *Starlight Sugar, Inc. v. Soto*, 253 F.3d 137, 146 (1st Cir. 2001) ("[E]qual protection does not demand that a State employ less burdensome alternatives if those are available."). Particularly in "the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classification is imperfect." *St. Louis S. Park, Inc. v. Missouri Dep't of Soc. Servs.,* 857 S.W.2d 304, 307 (Mo. Ct. App. 1993).

[2] Count VI only challenges Section 2(a), but Section 2(b) is relevant as part of the larger whole.

Intervenors introduced evidence supporting the rational relation between the initiative's classification and two legitimate government interests.

1. The interest in reducing environmental harms

The initiative aims to reduce public subsidies to primary UEPs (entities that engage directly in unsustainable energy production) because of their contributions to environmental harms. (Trial Trans. p.42, ll. 16-20.) Reducing public subsidies to such primary UEPs could raise their costs of engaging in unsustainable energy extraction, thereby making their products slightly more expensive, and thereby decreasing purchase and use of their unsustainable fuels.

Intervenors introduced a study that quantifies the cumulative total of anthropogenic (human-made) global warming pollution attributable to a likely primary UEP that is headquartered in St. Louis: Peabody Energy. (Intervenors' Ex. D, at 9 (page 237 in original).) It asserts that Peabody is responsible for almost 1% of all cumulative emissions of carbon dioxide and methane over the years 1751-2010. *See id.* The precise accuracy of this calculation is not critical to disposition of this case. The point is that a voter could *reasonably believe* this information to be true. Peabody Energy has received substantial public financial incentives in recent years. (Intervenors' Ex. E (St. Louis City Ordinance 68701 granting incentives to Peabody),[3] Ex. G (St. Louis Post-Dispatch article), Ex. K (response to public records request regarding incentives given to Peabody).)

Because Peabody is such a major contributor of global warming pollutants, and receives substantial municipal largesse, a voter could reasonably believe *either* that an increase in the cost of business for Peabody could diminish global warming emissions, *or* that the city should not

[3] While Exhibit E is not a certified copy, both Ms. Klagsbrun's testimony and the document itself indicate that it derives from the city's own web site, (Trial Trans. p.22 ll. 17-23; Intervenors' Ex. E, at 1), and its terms are consistent with the description in the St. Louis Post-Dispatch article, (Intervenors' Ex. G). Consequently, a reasonable voter could rely on it for the reasonable belief (as a "legislative fact") that the city had passed an ordinance granting substantial tax breaks to Peabody.

further subsidize this contribution to its residents' own projected suffering. (Intervenors' Exs. A-C (discussing projected impacts of climate change in Missouri); *see also* Initiative § 1(b) (interest in "the ability of residents to enjoy a healthy and pleasant quality of life indefinitely").)

Similarly, prohibiting the City from granting public financial incentives to primary UEPs' major business partners reduces an indirect subsidy on the primary UEPs' unsustainable energy production and is therefore rationally related to the legitimate government interest of limiting pollution.[4] If major ($1 million/year) customers of primary UEPs (e.g., electric power generators that buy fuel from primary UEPs) receive public financial incentives, then they have more money with which to purchase unsustainable fuels from primary UEPs, and consequently may purchase more unsustainable fuels. Eliminating these incentives could reasonably be believed to exert market pressure, even if small, away from unsustainable fuels: either major customers will continue to purchase large amounts of unsustainable fuels but will have less money with which to do so, or they will reduce their purchases of unsustainable fuels so as to retain their eligibility for municipal subsidies. Either outcome is "debatably calculated to reach the targeted evil," *Mid-State Distrib. Co.*, 617 S.W.2d at 424, by reducing extraction and consumption of unsustainable fuels.

Similarly, if major *suppliers* to primary UEPs (e.g., mining equipment vendors, law or lobbying firms, or commercial banks) receive public financial incentives, then they can charge a primary UEP slightly lower prices than they otherwise might without those incentives. This in turn reduces the primary UEP's business costs, which enables it to sell its unsustainable fuels at a lower price, which in a competitive market enables it to extract and sell more of such

[4] The City has granted substantial public financial incentives granted to entities that may qualify as secondary UEPs, such as utilities, law firms, and banks. (Intervenors' Ex. F (incentives given to Laclede Gas), Ex. M (incentives given to Lewis Rice Fingersh), Ex. N (incentives offered to Thompson Coburn), Ex. O (Thompson Coburn web page describing its services to "oil and gas, coal and minerals" producers), Ex. Q (incentives given to Wells Fargo), Ex. R at S-46 (Peabody prospectus describing a $22.75 million loan from Wells Fargo).)

unsustainable fuels, resulting in greater environmental harms attributable to extraction and consumption. Elimination of these public financial incentives could reasonably be believed to exert market pressure (even if small) away from unsustainable fuels, in two ways.

First, the major suppliers may continue to transact substantial business with primary UEPs, but raise their prices to unsubsidized market levels. That, in turn, could cause primary UEPs to raise the prices of their unsustainable fuels slightly to account for the increased cost of doing business, and thereby result in their selling less of their unsustainable fuels, leading to less environmental harm from extraction and consumption of such fuels. Alternatively, these suppliers might shift their business towards servicing non-extractive industries so as to retain their eligibility for municipal subsidies, (Trial Trans. p.43, ll. 10-20), thus forcing the UEP to seek other suppliers, perhaps at greater cost. Either outcome would be "debatably calculated to reach the targeted evil" by reducing extraction and consumption of unsustainable fuels.

To be sure, this economic theory relies on an indirect subsidy analysis that some voters may reject. Some voters may believe that such indirect economic pressure is a distasteful policy tool; some may fear that it could create a risk of UEPs leaving St. Louis. But plaintiffs, who bear the burden "to negative every conceivable basis which might support" the initiative, *Heller*, 509 U.S. at 320, have provided no evidence (e.g., expert economic testimony) showing that the theory is *irrational*. Indeed, indirect subsidy analysis is used by the federal government. *See* Alice O'Brien, *Countervailing Low Wage Subsidies: A Counter to the Leveling of Labor Conditions*, 4 Transnat'l L. & Contemp. Probs. 825, 840 (1994) (noting that Department of Commerce "has found that providing preferential loans to an upstream producer confers an indirect subsidy on the ultimate manufacturer"). And the court may not invalidate the measure just because the underlying economic theory "seems tenuous," *Romer*, 517 U.S. at 632.

Furthermore, while it is true that transacting business with primary UEPs is itself lawful, and many of the categories of secondary UEPs have not historically been subject to special regulation, these are not the operative questions in rational-basis review. Rather, the question is whether the plaintiffs have demonstrated that the measure is not even "*debatably* calculated to reach the targeted evil." *Mid-State Distrib. Co.*, 617 S.W.2d at 424 (emphasis added). The voters have not yet had that debate, and the wisdom, economic efficacy, or righteousness of this approach is not before the court. *See Estate of Overbey*, 361 S.W.3d at 378.

2. The interest in promoting an alternative model of urban redevelopment

The initiative also bears a rational relationship to the legitimate government interest of promoting an alternative approach to urban redevelopment. The evidence introduced at trial shows that the city has granted major municipal subsidies to large downtown businesses in recent years, (Intervenors' Exs. F, M, N, Q), and that a significant portion of these subsidies have gone to expenses that many St. Louis voters might not deem worthy of subsidization. For example, a public records request yielded a list of equipment that Peabody apparently purchased with funds derived from public financial incentives, including (among many other items) 130 high-end "Aeron" chairs costing almost $78,000, and furniture for Peabody's law department. (Intervenors' Ex. K, at 6-7 (equipment list; numbered pages 1-2 in original).)

While there is nothing improper about upgrading office equipment, voters might reasonably conclude that large businesses—major energy companies and related businesses that are capable of transacting a million dollars per year—should do so with their own funds, and that the city's limited resources should not be directed to major downtown businesses purchasing luxury office furniture. They might conclude that such public financial incentives should be reallocated towards the types of entities that have been identified as key assets in revitalizing

legacy cities, such as universities, hospitals and medical centers, (Intervenors' Ex. I, at 12-13), or to small businesses such as renewable energy generators, software startups, and the like.

To be sure, the initiative does not prohibit the city from granting public financial incentives to *all* businesses above a certain size, but only to nonrenewable energy companies and their major business partners. However, the fact that the measure does not address the *entire* problem does not mean that it is not *rationally related* to that problem. Voters, like legislatures, may address a problem in steps. *See Williamson v. Lee Optical of Oklahoma Inc*., 348 U.S. 483, 489 (1955) ("Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind."). Moreover, voters, like legislatures, may rationally favor certain types of businesses over others without offending the Equal Protection Clause. *See Powers*, 379 F.3d at 1221 (holding that "favoring one intrastate industry over another is a legitimate state interest").

Finally, the initiative's incremental approach to the second legitimate government interest (promoting an alternative approach to urban redevelopment) dovetails with the first legitimate government interest (addressing environmental harms). The identified subset of public financial incentive recipients is the same category that the initiative sponsors have identified for elimination of subsidies based on the legitimate government interest of reducing environmental pollution. (*See* Trial Trans. p.44, ll. 10-14.) Just one legitimate government interest suffices; two such interests provide both belt and suspenders.

Plaintiffs failed to negate the rational relationship between the initiative and its asserted legitimate government interests. Plaintiffs' equal protection case rests largely on two prongs: (1) illustrating that the secondary UEP definition is far-reaching, and (2) casting aspersions on

initiative proponents.

> The fact that the secondary UEP definition is broad does not negate its rational relationship to the legitimate government interests.

Plaintiffs questioned Mr. Crim and Ms. Klagsbrun regarding hypothetical scenarios regarding potential secondary UEPs. (Prelim. Hearing Trans. pp. 9-17; Trial Trans. pp. 55-62.) The fact that the initiative may be far-reaching (and applies to entities that are only indirectly connected to nonrenewable energy extraction) does not negate the rational relationship to a legitimate government interest. *Cf. Romer*, 517 U.S. at 632 (a law does not fail rational-basis review just because "the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous").

As to the hypothetical scenario questioning, Intervenors timely objected at trial to questions seeking a legal interpretation of a measure not yet enacted. If the ballot initiative passes, then a court can interpret it in a concrete case.[5] Asking Ms. Klagsbrun or Mr. Crim to testify in court as to the precise legal application of a not-yet-enacted initiative is like asking legislators supporting and opposing a pending bill to so testify. Voters, like legislators, are entitled to pass a bill in the expectation that certain fact-specific interpretive questions will be resolved by courts in the context of concrete, ripe, and adversarial disputes.

Moreover, plaintiffs propounded some unsupported interpretations of the initiative. First, Mr. Crim testified that airlines would qualify as secondary UEPs. (Prelim. Hear. Trans. p. 11.) Plaintiffs offered no evidence that airlines buy fuels from drilling companies that "engage[] primarily in the mining or extraction" of oil, *cf.* Initiative § 3(c), as opposed to specialized fuel resellers or distributors.

Second, plaintiffs' counsel questioned Ms. Klagsbrun regarding a mythical category of

[5] The prospect that resolution of this matter might require legal interpretation of terms within the initiative reinforces why judicial review is unripe at this stage. *See Union Elec. Co. v. Kirkpatrick*, 678 S.W.2d 402, 405-06 (Mo. 1984).

tertiary UEPs that appears nowhere within the initiative. Counsel inquired whether an entity that itself had no dealings with primary UEPs, but transacts one million dollars of business per year with a secondary UEP, would itself qualify as a UEP. (Trial Trans. p.55, ll. 17-25.) The initiative simply is not phrased that way. (*See id.* p.58, ll. 2-8.) The initiative's secondary UEP definition applies to "any entity or organization . . . that transacts at least $1,000,000 of business per calendar year with any entity or organization described *in the previous sentence*." Initiative § 3(c) (emphasis added). The "previous sentence," in a two-sentence definition, unambiguously refers to the first sentence, i.e., primary UEPs that "engage[] primarily in the mining or extraction of . . . other energy sources that are non-renewable." *Id.* Thus, if a furniture company sells $1 million of furniture to a construction company, which in turn does $1 million of work for an oil extraction company, the furniture company is neither a primary UEP (since it does not itself engage in mining or extraction of nonrenewable energy sources) nor a secondary UEP (since it does not itself transact $1 million of business with a primary UEP).

Plaintiffs proposed alternative hypothetical initiatives and questioned Ms. Klagsbrun regarding those nonexistent alternatives. For example, counsel inquired whether the initiative could have simply been written to deny public financial incentives to "corporations." (Trial Trans. p.77, ll. 7-15.) It is irrelevant to rational-basis review whether the initiative could have been written more broadly. The question is whether *this* initiative bears a rational relationship to a legitimate government interest, not whether a different initiative that has never been proposed, submitted for signature gathering, or certified for the ballot might *also* bear a rational relationship to a legitimate government interest, let alone be more administrable, advantageous, or artful. *See Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 813 (1976) ("That [the state] might have furthered its underlying purpose more artfully, more directly, or more completely,

does not warrant a conclusion that the method it chose is unconstitutional.").

Plaintiffs cannot impeach the initiative by casting aspersions on its supporters.

Plaintiffs attempt to impeach the initiative by inquiring about other activities that Ms. Klagsbrun's employer engages in when it is not involved in supporting the initiative, and media quotes that do not capture all the initiative's nuances, to suggest that initiative supporters harbor a larger and somehow improper agenda. (Trial Trans. pp. 78-82.)

The suggestion that Ms. Klagsbrun bears some sort of generalized animus to certain types of business entities is irrelevant. The initiative is not comparable to the law invalidated in *Romer*; UEPs, unlike homosexuals in Colorado in the 1990s, are not a disfavored minority that requires judicial protection from democratic process. *Cf. United States v. Carolene Prods. Co.,* 304 U.S. 144, 153 n.4 (1938) (rejecting equal protection challenge to business regulation but noting that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry"); *see also State ex rel. Webster v. Lehndorff Geneva, Inc*., 744 S.W.2d 801, 805 (Mo. 1988) ("[C]orporations are not a suspect class."). Moreover, rational-basis review does not require examination of a legislature's (or initiative proponent's) subjective motives. *See Powers*, 379 F.3d at 1223 (rejecting analogous argument based on legislature's subjective motives, and citing "prohibition on looking at the legislature's actual motives, and [court's] obligation to forward every conceivable legitimate state interest on behalf of the challenged statute") (internal citations omitted). The question is whether the initiative bears a rational relationship to even one legitimate government interest, and the court "is *obligated* to seek out [any] conceivable reasons for validating [the initiative]," *id.* at 1217 (emphasis in original), not to seek extraneous reasons

for invalidating it. Plaintiffs' attempts to make campaign fodder is legally irrelevant to an equal protection challenge under rational basis review.

V. The Initiative Petition Complies with Applicable State and Local Requirements.

A. Missouri's Constitution does not prohibit citizen-passed amendments to the St. Louis City Charter.

Missouri's Constitution states that proposals to amend the St. Louis City Charter be "submitted by the lawmaking body of the city to the qualified voters thereof . . . ." Mo. Const Art. VI., Sec. 32(a). The Charter gives citizens the power to "[propose] amendments to this charter, and to adopt the same at the polls, *with the same effect as if adopted by the board of aldermen and approved by the mayor.*" City Charter, Article V, Section 1 (emphasis added).

Plaintiffs' claim that the City Charter conflicts with Article VI, Section 32(a) of the Missouri Constitution ignores the plain language of the Constitution and case law. The Constitution gives the power of amendment to the "lawmaking body" of the City, not specifically to the Board of Aldermen. The Missouri Supreme Court holds that "The citizens, alone, delegate their power to representative instruments such as the municipal charter." *State ex rel. Chastain v. City of Kansas City*, 289 S.W.3d 759 (Mo. App. W.D. 2009) (citing *State ex rel. Childress v. Anderson*, 865 S.W.2d 384, at 387 (Mo. App. 1993)). For purposes of initiative, the registered voters of the City are the "lawmaking body" of the City consistent with the meaning of the Constitution. More specifically, per the process set forth in the City Charter, when the Board of Aldermen failed to adopt the measure at issue, citizens gave themselves the right to vote on it.

Article VI, Section 32(a) began life as Article IX, Section 22 under the Missouri Constitution of 1875. In *State ex rel. Hussman v. City of St. Louis*, 5 S.W.2d 1080 (Mo. 1928), the Court noted that the -framers of the St. Louis City Charter provided for amendment of the Charter by initiative proposal and that the constitutional delegation of power to frame a new

charter includes the delegation of power to indicate "a method or methods of amending the same," including "the exercise of the people's power by initiative, 'at their option' to initiate proposals for amendments." *Id.* at 1083. At that time, Article IX, Section 22 read:

> The charter so ratified may be amended by proposals therefor submitted by the lawmaking authorities of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals and accepted by three-fifths, of the qualified voters voting for or against each of said amendments so submitted.

The language is almost identical to that in Article VI, Section 32(a). Instead of the term "lawmaking body," Article XI, Section 22 uses the term "lawmaking authorities," but these terms are synonymous. Thus, as the Court in *Hussman* noted that citizens had the power to amend the City Charter under Article IX, Section 22 by initiative, they have that power under Article VI, Section 32(a).

Plaintiffs' argument ignores a long history of efforts to amend the City Charter via initiative, through 2007's successful proposition restricting the sale and lease of City park land. *See* City Charter, Article XXVI. Plaintiffs' argument also ignores the vast bulk of Missouri law, which holds, generally, that the people retain the right to legislate through initiative petitions. Article VI, Section 20 of the Missouri Constitution states that amendments to "any city charter" may be made by initiative petition. It is the very essence of free government, consistent with the Constitution, for the people to retain the right to amend their Charter by initiative when representatives fail to act. *See Pitman v. Drabelle,* 183 S.W. 1055 (Mo. 1916) (charter provisions giving citizens the right to legislate by initiative does not conflict with Missouri Constitution). Plaintiffs' argument would eviscerate this power granted in the Charter for the City of St. Louis. This is an absurd result.

B. The proposal is not being used for the appropriation of money.

Article III, Section 51 of the Missouri Constitution states that the "initiative shall not be used for the appropriation of money other than of new revenues created and provided thereby." In the past, Courts have struck down municipal-level measures that require a city to expend money, such as for the creation of a firemen's pension fund. *See, e.g., Kansas City v. McGee*, 269 S.W.2d 662 (Mo. 1954).[6]

Here, nowhere does the text of the initiative mandate the expenditure of funding for sustainable energy alternatives. The initiative states that the Mayor shall create a sustainable energy plan, which includes "concrete opportunities for Public Financial Incentives toward Renewable Energy Producers and Sustainable Energy Initiatives;" but, the position of the Missouri Supreme Court is that financial incentives such as tax credits are *not* expenditures of public funds. *Manzara v. State*, 343 S.W.3d 656, 663 (Mo. 2011). Likewise, making City property available for sustainable energy purposes and using "locally generated energy wherever possible" does not require the City to expend money. These provisions only require the City to use existing resources, such as available land and available money to purchase power, which does not affect the power of the Board of Aldermen to increase or decrease funding for available land or purchasing power. The measure does require any increase in funding for land or power. *See Committee for a Healthy Futures v. Carnahan*, 201 S.W.3d 503, 510 (Mo. 2006) (initiative does not require appropriation where it does not affect General Assembly's ability to increase or decrease funding for existing programs).

Plaintiff bases its argument on testimony from Mary Ellen Ponder that preparing a new plan would require a new line item in the budget and that an annual sustainability plan would

[6] It is questionable whether Article III, Section 51 applies to city-level initiative petitions. Two judges on the Missouri Supreme Court recently noted that reasoning in past cases is based on now discredited analysis from a case that has been overruled and that Article III, Section 49 limits Article III, Section 51 to state-wide initiatives. *See City of Kansas City v. Chastain*, 2014 Mo. LEXIS 8 (Mo. Feb. 4, 2014) (Wilson, J., concurring).

costs a minimum of $500,000 a year. (Prelim Trial Trans. pp. 29, 35.) This testimony is irrelevant. Ms. Ponder based this figure on what the City's current sustainability plan requires. She stated that "a group of consultants," in a "three year planning process" with meetings with citizens, "focus groups," and "summits" were necessary for the City's current plan. (Prelim Hearing Trans. p. 34.) But, the plans required by the proposed measure do not require any of this. The initiative petition simply requires the City's Mayor to identify ways to reduce use of unsustainable energy systems and support sustainable energy instead. It does not require the expenditure of any money. Ms. Ponder's testimony about the cost of the City's current plan, which is different, does not establish that the plans required by the initiative petition would cost anything.

Plaintiffs also argue that it would require an appropriation to draft the Sustainability Energy Plan. But, the evidence does not demonstrate that line items in the City's budget restrict or dictate the ability of the Mayor to think about certain issues and assign tasks to himself (or existing staff) to implement priorities. At the very least, this evidence does not establish facial unconstitutionality. Whether there is a line item or grant for a current sustainable energy plan or in the future, the Mayor may draft a plan. Doing so only requires the exercise of brain power. It does not require an appropriation, like funding pension benefits for firefighters.

Plaintiffs may argue that certain campaign material states that the initiative would require the City to appropriate money. This is an incorrect reading of the material. Proponents believe that the City could invest money from large tax breaks that it may otherwise give to unsustainable energy producers towards new "green" jobs. (Pl.'s Ex. 11; Trial Trans. pp. 15-17, 64, 81.) They also would like to see more creative use of vacant land. (Pl.s Ex. 11; Trial Trans. pp. 72-74, 90.) But, under the initiative, the City retains the discretion to increase funding for

sustainable projects. Moreover, whether the initiative petition requires an appropriation is a question of law. *City of Kansas City v. Chastain*, 2014 Mo. LEXIS 8 (Mo. Feb. 14, 2014) (whether proposed ordinance violates Missouri Constitution, including provision on appropriations, is a legal question). The plain language of the petition is controlling and the plain language does not require an appropriation.[7]

C. The form of the Initiative Petition is sufficient.

It is undisputed that the Committee for Petitioners properly submitted the initiative to the Board of Elections ("BOE"), per the City Charter, with a sufficient number of signatures. Moreover, it is undisputed that the Board of Aldermen failed to act on the measure, and then in accordance with the City Charter the BOE provided for submitting the petition to the voters. There is no evidence that the BOE suffered any confusion on what to do with the petition. Nor is there any record evidence that any single person who signed the petition, let alone the tens of thousands that signed it, did not understand what they were signing.

The City Charter sets forth few requirements for initiative petitions. Here, the Committee of Petitioners met all of them.

The City Charter requires a petition to be "filed with the Board of Election Commissions as one instrument." City Charter, Article III, Section 5 & Article V, Section 3. There is no dispute that Plaintiffs filed the petition with the BOE. The Charter does not require any petition language directed to the Board of Election. The fact that the petition included language directed to the Board of Aldermen does not negate the fact the petition was properly filed with the BOE.

[7] At trial, counsel for Plaintiffs asked Ms. Klagsbrun whether the plan required by the initiative would require the City to spend any money on sustainables. Ms. Klagsbrun's opinion does not change the plain language of the statute. But, for what it is worth, Ms. Klagsbrun's answer was "no." (Trial Trans. p. 72.) Counsel for the City also asked about funding for the sustainability plans. Ms. Klagsbrun expressed her opinion about how the City could fund such plans if it wanted to fund them in that way. (Trial Trans. p. 89-90.) But, this opinion does not mean that the initiative petition requires an appropriation. And, again, Ms. Klagsbrun said that there would not be a cost associated with creation of the petition's sustainability plans. (Trial Trans. pp. 90-91.)

In addition, the petition accurately states the process the BOE follows after a petition is filed and certified as sufficient and informs the Board of Aldermen of the proposed measure. The form of the petition reads: "if the Board of Aldermen fails to adopt it, that it will be submitted to the voters of the City of St. Louis at the first election at which such submission may lawfully be had . . . ." The City Charter requires the BOE to certify a petition's sufficiency to the Board of Aldermen together with a copy of the petition. City Charter, Article V, Section 4. In this context, the petition's language directed to the Board of Aldermen is reasonable. It explains to petition signers that the Board of Aldermen may adopt the measure.

Section 115.700, R.S.Mo states that where the form of a petition is not provided by law for local issues, "the provisions of Section 115.019 shall, as far as possible, govern the form of the petition." Here, the form of initiative petition substantially complies, as far as possible, with Section 115.019. It includes a request that the petition be placed on the ballot, includes language that each person signing the petition is a registered voter, and includes a circulator's affidavit. Other provisions of Section 115.019 cannot and do not govern. Notably, the form of the petition in Section 115.019 is to establish a board of election and is directed to a county clerk. Section 115.019 does not require a petition to be directed to a board of elections in other instances. Neither does Section 115.700 nor Section 115.019 specifically make an error in form language fatal to a petition.

Plaintiffs argue that the petition's enacting clause is faulty. Notably, the City Charter does not require an enacting clause for initiative petitions.[8] Plaintiffs' reliance on the Missouri Constitution and state statutes is unavailing. The provisions in the Missouri Constitution for enacting clauses for initiatives apply only to state-wide initiative petitions, as they refer only to

[8] Compare Article X, Section 10.010.3 of the St. Louis County Charter, which states that each petition shall contain an enacting clause with specific language. *See* St. Louis County Charter, Article X, at http://ww5.stlouisco.com/county_charter/char10.html (last visited April 8, 2014).

"the people of the state of Missouri." Mo. Const. Art. III, § 50. On their face, these provisions do not apply to municipal-level petitions. Moreover, Missouri courts have ruled that the City Charter's provision on enacting clauses is directory, not mandatory. *St. Louis Terminals v. City of St. Louis*, 535 S.W. 2d 593 (1976) (requirement of ordaining clause is directory and not mandatory and omission will not invalidate ordinance). If an ordinance enacted by the Board of Aldermen is valid despite problems with its enacting clause, then so is an ordinance that is proposed and enacted by the people.

Plaintiffs also complain that the petition form does not list other provisions of the City Charter it allegedly amends. However, none of the Charter provisions cited by Plaintiffs are in "direct conflict" with the initiative. *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 15 (Mo. 1981) (makers of petition not required to ferret out and list all provisions which could possibly be modified by proposal but only those that are in direct conflict). Plaintiffs apparently interpret the proposed measure to mandate the Mayor to make appropriations without an ordinance or recommendation for the Board of Estimate or Apportionment and to add to the Mayor's powers. It does neither. The initiative petition requires the Mayor to draft a Plan, in some sense like plans the City has implemented in the past, and no more. Plaintiffs' one-sided interpretation of the measure does not amount to a "direct conflict" with other Charter provisions.

Even if the form of the petition suffers from some minor errors, it is still sufficient. In matters relating to elections, absent mandatory language, Missouri courts apply a principal of substantial compliance. *State v. Holman*, 296 S.W.2d 482, 495 (1956). Here, the Committee for Petitioners substantially complied with requirements by properly submitting the initiative petition to the BOE. There is no evidence that the BOE did not properly process the petition. None of the alleged defects in form affect a material change upon the plain intended meaning of

the initiative petition. The mistakes, if any, were clerical and technical and should not subvert the right of the people to vote on this matter. *See United Labor Committee v. Kirkpatrick*, 572 S.W.2d 449, 453-545 (Mo. 1978) (failure of petitioners to have signatures properly notarized is not fatal to petition where state law does not specifically make such error fatal; "the ability of the voters to get before their fellow voters issues they deem significant should not be thwarted in preference for technical formalities.").

D. The summary statement on the petition, even though not required, is fair and sufficient.

The petition includes a summary statement. It reads:

> A proposed ordinance submitting to the registered voters of the City of St. Louis an amendment to the City Charter enacting a new Article XXVII setting forth the right to a sustainable energy future; requiring the City to create and publish annual and 5-year Sustainable Energy Plans; and prohibiting the City from granting any Public Financial Incentives to any Unsustainable Energy Producer (the full text of which appears attached to this petition)

The City Charter does not set forth any requirement for a summary statement for an initiative. It requires that the petition contain the "proposed ordinance in full." City Charter, Article V, Section 2. There is no dispute that the initiative petition included the proposed ordinance in full, and thus complied with the City Charter. The Committee of Petitioners added a summary statement to the form, but just as the Charter does not require a summary, it does not prohibit one.

In addition, no state law requires (or prohibits) a summary statement for municipal level initiative petitions. State law requirements for summary statements apply to state-wide initiative petitions, not to municipal level petitions. *See* § 116.020, R.S.Mo. ("This chapter shall apply to elections on statewide ballot measures."). In addition, Plaintiffs cite no law giving it a right to challenge a summary statement for a municipal level initiative petition.

Even if considered, the petition's summary statement is not misleading. In the context of state-wide initiative petitions, a summary statement must be adequate and state the consequences of the initiative petition without bias, prejudice, deception of favoritism. *Brown v. Carnahan*, 370 S.W.3d at 654. The language used should fairly and impartially summarize the purposes of the measure that the voters will not be deceived or mislead. *Id.* Even if other language would "provide more specificity and accuracy," the test is not whether the language used is the best language. *Missourians Against Human Cloning v. Carnahan*, 190 S.W.3d 451, 456 (Mo. App. W.D. 2006) (citing *Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo. App. W.D. 1999). The summary "need not set out the details of the proposal." *Id.* (citing *United Gamefowl Breeders*, 19 S.W.3d at 141)).

The summary statement here tracks the language of the proposal. It sets out major portions of the measure, including the right to sustainable future (Section 1), the requirement for annual and 5-year sustainability plans (Section 2), and the prohibition on the granting of public financial incentives to any unsustainable energy productions (Sections 2 and 3). The summary describes the primary objective of the measure – to promote a sustainable energy future for the City. It also states the consequences and effects of the measure. The summary explains what the measure requires (sustainability plans) and what it prohibits (the grant of public finanicial incentives to unsustainable energy producers).

The summary statement is not biased because it omits definitions of "Public Financial Incentives" and "Unsustainable Energy Producers" and or because it is silent on the extension of the definition of unsustainable energy producer to embrace entities doing more than $1,000,000 worth of business with oil or coal extraction companies. This level of specificity is not required. A summary does not need to set forth the details. *Brown*, 370 S.W.3d at 661 (not necessary to

detail "super-escalator provision" to render summary statement for minimum wage petition fair and sufficient); *Archy v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012) (summary for initiative petition on St. Louis Police Department is fair and sufficient even though it does not detail exemption to Sunshine Law or greater access to tax records, where summary describes primary objective of initiative). Additionally, the summary statement's use of terms from the proposal itself is not misleading. In *Missourians Against Human Cloning v. Carnahan*, 190 S.W.3d 451 (Mo. App. W.D. 2006), opponents challenged the summary statement for an initiative petition on stem cell research, claiming that the phrase "ban human cloning or attempted cloning" was insufficient and unfair because the summary did not also state that the initiative petition would allow "human theraputetic cloning." *Id*. at 454. The Court disagreed. Among other things, it noted that the initiative defined the term "human cloning." *Id.* at 457. The Court held that the summary accurately described what the initiative said it would do, in using a term defined in the initiative itself, and that the exclusion of aspects which opponents would have like to have seen included did not render the summary statement insufficient or unfair." *Id.* at 457.

Here, the summary uses terms that are defined in the petition. The summary capitalizes the terms Public Financial Incentives and Unsustainable Energy Producer and refers the reader to the full text of the measure, making it apparent that these terms have a meaning defined in the text. Plaintiffs mistakenly argue that the summary fails to explain that the measure would deny government services, such as police protection, to unsustainable energy producers. Plaintiffs are simply wrong. The measure covers "incentives," not services. Plaintiffs also offer hypotheticals concerning entities that may do $1,000,000 worth of business with oil and coal companies, such as airlines. But, regardless, the exclusion of detail which opponents would have like to have

seen, when the summary uses terms defined by the measure, does not render the summary statement insufficient or unfair.

Plaintiffs may argue that materials used by proponents misled voters about the petition. This type of evidence is irrelevant. The question of whether a summary statement is fair and sufficient is one of law. The motives and strategies of proponents are irrelevant. *Missouri ex rel. Humane Soc'y of Mo. v. Beetem*, 317 S.W.3d 669, 674 (Mo. App. W.D. 2010). Nonetheless, campaign materials identified businesses that did more than $1,000,000 with extraction companies as entities that are unsustainable energy producers. (Trial Trans. p. 57.) Ms. Klagsbrun also testified that, when she circulated the petition, she talked to signers about "anybody that does businesses with [extraction companies]." (Trial Trans. p. 65.)[9] By contrast, Plaintiffs have not offered evidence from thousands of petition signers that they were misled by the summary.

Even if the summary statement is misleading, which it is not, the trial court lacks authority to do anything about it. Plaintiffs cite no statute or provision of the City Charter authorizing the trial court to review a summary statement for an initiative petition, let alone take a measure off the ballot if it finds the summary to be unfair or insufficient. Plaintiff cannot complain simply "on general principles." *Missouri ex rel. Dienoff v. Galkowski*, 2014 Mo. App. LEXIS 55 (Mo. App. E.D. Jan. 27, 2014) (trial court lacked authority to re-write ballot language on municipal measure based "on general principles"). Tens of thousands of citizens signed the petition. There is no support for the drastic remedy of enjoining an election when Plaintiffs may still campaign against the measure. The proper way to resolve the matter is to allow an election, where opponents can campaign against the measure and the people may vote on it.

[9] Counsel for Plaintiffs also argued at trial that the measure could extend down the chain to entities that do $1,000,000 of business with entities that do $1,000,000 of business with extraction companies. As noted above, in Section IV.E.2., the plain language of the measure does not support this interpretation.

E. The Board may use the full text of the measure on the ballot.

Article V, Section 5 of the City Charter states that the ballot shall "state the nature of the proposed ordinance." Putting the entire text of the measure on the ballot satisfies this requirement. The Merriam-Webster Dictionary defines "nature" as the "inherent character or basic constitution of a person or thing." Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/nature (last visited April 9, 2014). The term "nature" does not require a summarization. A full description of an initiative petition just as much describes its inherent character as a summary. Moreover, it is strange to argue that voters should not see the full text of the measure on the ballot, but be limited to a summary. Voters will benefit from having the opportunity to read the entire measure themselves while in the ballot booth, so they can assess it themselves. This is consistent with the Charter's requirement that a petition contain the full text of the measure, so that signers can assess its meaning themselves. Requiring a summary but prohibiting use of the full text would only diminish the opportunity for voters to make an informed decision, which is contrary to democratic principles.

VI. Conclusion

The court should reject plaintiffs' effort to prevent an election based on incorrect interpretations of the TIF statute, meritless equal protection claims which they lack standing to raise, and a grab-bag of invented procedural challenges that serve no purpose other than to defeat citizens' ability to amend the St. Louis charter by initiative. For these reasons, the court should enter judgment for defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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