

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MISSOURI ELECTRIC )  
 COOPERATIVES, doing business as )  
 ASSOCIATION OF MISSOURI )  
 ELECTRIC COOPERATIVES, )  
 )  
 DAVID KLINDT, )  
 )  
 and )  
 )  
 LEGENDS BANK )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 MISSOURI SECRETARY OF STATE )  
 JASON KANDER, )  
 Serve: )  
 State Information Center )  
 600 West Main Street )  
 Jefferson City, MO 65109, )  
 )  
 Defendant. )

Case No. \_\_\_\_\_

**PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

For their cause of action against Defendant Kander, Plaintiffs Missouri Electric Cooperatives, doing business as Association of Missouri Electric Cooperatives, David Klindt and Legends Bank allege as follows:

**PARTIES**

1. Plaintiff Missouri Electric Cooperatives, doing business as Association of Missouri Electric Cooperatives ("AMEC") is a Missouri benevolent corporation doing business in the State of Missouri. It is organized pursuant to the provisions of Chapter 352, RSMo.

2. AMEC is an association of 47 nonprofit cooperative systems, which are organized pursuant to the provisions of Chapter 394, RSMo.

3. Association of Missouri Electric Cooperatives Political Action Committee ("AMEC-PAC") is a political action committee authorized by chapter 130, RSMo, and formed and maintained by AMEC.

4. AMEC and its members have in the past and desire to continue to make contributions to AMEC-PAC.

5. AMEC-PAC has in the past and desires to continue to make and receive contributions to/from other political action committees.

6. Plaintiff David Klindt ("Klindt") is an individual residing in Jefferson City, Missouri.

7. Plaintiff Legends Bank ("Legends") is a Missouri state chartered bank doing business in the State of Missouri. It is organized pursuant to the provisions of Chapter 362, RSMo.

8. Legends has in the past and desires to continue to make contributions to political action committees formed by members of the Missouri Bankers Association.

9. Defendant Jason Kander is the duly elected and acting Secretary of State of the state of Missouri.

### **JURISDICTION AND VENUE**

10. Plaintiffs bring this action pursuant to the Revised Statutes of Missouri Chapter 116, Chapter 527, Chapter 536, and Missouri Rules of Civil Procedure 87 and 92.

11. Pursuant to Section 116.200, RSMo, any citizen may apply to the circuit court of Cole County to compel the Secretary of State to reverse a decision to place an initiative petition on the ballot.

12. Venue is proper in this Court.

**ALLEGATIONS COMMON TO ALL COUNTS**

13. On December 2, 2014 Todd Jones submitted to Secretary of State Kander an initiative petition sample sheet proposing to amend Article VIII of the Missouri Constitution, by adding Section 23.

14. This submission was identified by the Secretary of State by the number 2016-007 (the "Initiative Petition Sample Sheet 2016-007").

15. A complete and accurate copy of Initiative Petition Sample Sheet 2016-007, including the text of the proposal (the "Proposed Measure"), is attached as Exhibit 1 and incorporated by reference as if fully set forth herein.

16. On January 13, 2015, Defendant Kander certified the official ballot title.

17. Defendant Kander must certify the sufficiency or insufficiency of the initiative petition by August 9, 2016.

18. Upon information or belief, Defendant Kander intends to certify the Proposed Measure for the ballot.

**Count I: The Proposed Measure Violates Plaintiffs' Right of Free Speech**

19. Plaintiffs incorporate the preceding paragraphs of this Petition as if fully set forth herein.

20. Subsection 12 of Section 23.3 of the Proposed Measure specifically prohibits political action committees from receiving contributions from any entity other than "individuals; unions; federal political action committees; and corporations, associations and partnerships formed under chapters 347 to 360, RSMO."

21. Section 23.3 therefore prohibits Missouri state chartered banks formed under chapter 362, such as Legends, and state political action committees, such as AMEC-PAC, from making contributions to political action committees.

22. Section 23.3 also prohibits the chapter 394 members of AMEC from making contributions to AMEC-PAC.

23. Plaintiffs have a history of contributing to state political action committees and desire to do so in the future in order to exercise their right of free speech and association.

24. Section 23.3 also prohibits AMEC-PAC from receiving contributions from other state political action committees.

25. AMEC-PAC has a history of receiving contributions from state political action committees and desires to do so in the future in order to exercise its right of free speech and association.

26. Subsection 16(c) of Section 23.3 of the Proposed Measure prohibits campaign committees, candidate committees, continuing committees, exploratory committees, political party committees, and political parties from receiving contributions from "any foreign corporation that does not have the authority to transact business in this state pursuant to Chapter 347, RSMo."

27. Section 23.3 therefore prohibits foreign corporations from making contributions to Missouri candidates for office or committees which might support them.

28. Plaintiffs' ability to participate in the political process and to associate with like-minded entities is completely thwarted by the provisions of the Proposed Measure which prohibit political action committees from receiving contributions from Plaintiff Legends and AMEC-PAC, and prohibit Plaintiff AMEC-PAC from receiving contributions from other state political action committees.

29. Section 23.3 of the Proposed Measure is an unreasonable restriction on speech and freedom of association in that it is neither reasonably related nor narrowly tailored to address any interest of the State of Missouri.

30. Section 23.3 of the Proposed Measure creates an unreasonable restriction on speech and association in violation of the First Amendment to the United States Constitution and Article I, section 8 of the Missouri Constitution.

WHEREFORE, Plaintiffs pray this Court find that the Proposed Measure in Initiative Petition 2016-007 facially violates the First Amendment of the United States Constitution and Article I, section 8 of the Missouri Constitution; reverse any decision the Secretary has made certifying that Initiative Petition 2016- 007 complies with the Missouri Constitution; prohibit the Secretary from issuing a certificate of sufficiency for Initiative Petition 2016-007; prohibit the Secretary from taking any other action to place Initiative Petition 2016-007 on any ballot for consideration by voters; and for such other relief as this Court deems appropriate.

**Count II: The Proposed Measure Violates Plaintiffs' Equal Protection Rights**

31. Plaintiffs incorporate the preceding paragraphs of this Petition as if fully set forth herein.

32. Section 23.3 of the Proposed Measure treats similarly situated entities differently in violation of the Fourteenth Amendment to the United States Constitution and Article I, section 2 of the Missouri Constitution.

33. There is no rational basis for Section 23.3 of the Proposed Measure's disparate treatment of corporations, associations and partnerships formed under chapters 347 to 360, banks formed under chapter 362, political action committees, and foreign corporations.

WHEREFORE, Plaintiffs pray this Court find that the Proposed Measure in Initiative Petition 2016-007 facially violates the Fourteenth Amendment of the United States Constitution and Article I, section 2 of the Missouri Constitution; declare Section 23.3 of the Proposed Measure unconstitutional and unenforceable; reverse any decision the Secretary has made certifying that Initiative Petition 2016-007 complies with the Missouri Constitution; prohibit the Secretary from issuing a certificate of sufficiency for Initiative Petition 2016-007; prohibit the Secretary from taking any other action to place Initiative Petition 2016-007 on any ballot for consideration by voters; and for such other relief as this Court deems appropriate.

**COUNT III: The Proposed Measure Violates the Privileges and Immunities Clause**

34. Plaintiffs incorporate the preceding paragraphs of this Petition as if fully set forth herein.

35. Subsection 16(c) of Section 23.3 of the Proposed Measure prohibits campaign committees, candidate committees, continuing committees, exploratory committees, political party committees, and political parties from receiving contributions from "any foreign

corporation that does not have the authority to transact business in this state pursuant to Chapter 347, RSMo." Only foreign limited liability companies may register under Section 347.153 to transact business in Missouri. Foreign general business corporations may not register under Missouri's limited liability company code.

36. Section 23.3 therefore prohibits foreign corporations from making contributions to Missouri candidates for office or committees which might support them, but allows Missouri corporations and foreign limited liability companies registered under Chapter 347, RSMo to contribute to these same candidates or committees.

37. Article IV, Section 2 of the United States Constitution states: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

38. Section 23.3 of the Proposed Measure treats foreign corporations differently than domestic corporations in violation of the Privileges and Immunities Clause found in Article IV, Section 2 of the United States Constitution.

39. There is no rational basis for Section 23.3 of the Proposed Measure's disparate treatment of domestic corporations and foreign corporations.

WHEREFORE, Plaintiffs pray this Court find that the Proposed Measure in Initiative Petition 2016-007 facially violates Article IV, Section 2 of the United States Constitution; declare Section 23.3 of the Proposed Measure unconstitutional and unenforceable; reverse any decision the Secretary has made certifying that Initiative Petition 2016-007 complies with the Missouri Constitution; prohibit the Secretary from issuing a certificate of sufficiency for Initiative Petition 2016-007; prohibit the Secretary from taking any other action to place Initiative Petition 2016-007 on any ballot for consideration by voters; and for such other relief as this Court deems appropriate.

Respectfully submitted,

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