

## **Missouri's Statewide Ballot Questions – Nov. 6<sup>th</sup>, 2012**

### *Analysis and Recommendations from Missouri Family Network*

Here in Missouri registered voters often have the opportunity to vote on statewide ballot measures which are proposed to change State Statutes (Propositions) or the State Constitution (Constitutional Amendments). These ballot measures come from two sources, either the State Legislature or citizen initiatives. The citizen's initiative process is regulated by the State Constitution and is always designated to appear on the next General Election ballot following their successful completion of the signature gathering process. Those statewide ballot questions put forward by the Legislature may have a designated election date embedded in the proposal, otherwise such issues default to the next General Election date, or another election as directed by the Governor.

On November 6, 2012 Missouri voters will see four statewide ballot questions. Two have come from the General Assembly of the Legislature, and two have come to the ballot through citizen initiative efforts. Of the four, one is a Constitutional Amendment and three are Propositions seeking to change State statutes.

The purpose of this article is to help provide voters with some additional information on each of these four ballot questions so you can make a more informed vote. Here at Missouri Family Network we provide our recommendations of "YES" or "NO" votes so voters understand the perspective of our analysis up front. All voters are challenged to take the time to seek out opposing information and vote your convictions with clarity.

### **Constitutional Amendment 3 - Vote YES (Proposed by the General Assembly, SJR 51)**

Official Ballot Title: *(what voters will see in the voting booth)*

**Shall the Missouri Constitution be amended to change the current nonpartisan selection of supreme court and court of appeals judges to a process that gives the governor increased authority to:**

- **appoint a majority of the commission that selects these court nominees; and**
- **appoint all lawyers to the commission by removing the requirement that the governor's appointees be nonlawyers?**

There are no estimated costs or savings expected if this proposal is approved by voters.

Fair Ballot Language:

A "yes" vote will amend the Missouri Constitution to change the current nonpartisan selection of supreme court and court of appeals judges to a process that gives the governor increased authority to appoint a majority of the commission that selects these court nominees. This measure also allows the governor to appoint all lawyers to the commission by removing the requirement that the governor's appointees be nonlawyers.

A “no” vote will not change the current constitutional provisions for the nonpartisan selection of supreme court and court of appeals judges.

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

**Analysis:** Constitutional Amendment 3 addresses the infamous Missouri Nonpartisan Court Plan. Falsely reported to be of such popularity that several States have used it as a pattern for their own applications, the truth is that no State has duplicated it without first making significant alterations! Now, for the first time, Missouri voters have an opportunity to address some of the faults of this constitutional provision that have led our State into judicial darkness.

Under the current nonpartisan court plan, all higher court judges (State Supreme Court and Appeals Court judges) and certain specified Circuit Court judges are appointed rather than elected. This has led to widespread confusion and frustration among voters, and insulation from accountability for the judges.

Currently these judges are pre-selected by a non-elected judicial commission. When a vacancy occurs on these courts a judicial commission fields applications from interested individuals. A slate of potential finalists are presented to the sitting Governor, who in turn makes the final appointment from the slate. Once appointed judges serve on the bench, they face an initial retention vote on the ballots of voters from the appropriate jurisdictions, and repeated retention votes thereafter. However, due to the nature of the process there are no campaigns or advertising related to these retention votes resulting in voters having no idea how to discern anything about such judges. Human nature leads the majority of voters to support status quo and 99% of judges never lose their retention. To make matters worse these retention votes can take as long as twelve years (Supreme Court members) to recycle!

It is all too common for voters to go to the polls on election day and see judge retention questions for the very first time, not knowing they were even going to be on the ballot. When anything questionable regarding a judge comes up, there is no one to hold accountable. The appointing Governor points to the judicial commission for not advancing better finalists to pick from. The commission members wash their hands saying it was the Governor who appointed a judge. No lawmaker had anything to do with the appointment. Voters end up with no way to hold anyone accountable.

To make matters worse, the Missouri Bar Association, and the trial lawyers in particular, control the process behind the scenes to elevate their own selections without approval from or accountability to the voters. Only until recent months, and following years of high profile criticism, has the judicial commission process even allowed public access to the interviews conducted with applicants for vacant judgeships.

Constitutional Amendment 3 realigns the appointments and tenure of members of the judicial commission to coincide with the sitting Governor. This creates a political environment that removes the excuses used to avoid accountability. While the commissioners never have to face voters, at least the Governor cannot pass blame if voters can tie the commission’s slate of finalists to the Governor. This provides some degree of accountability, and possible recourse for voters.

Other changes include expanding the number of finalists presented to the Governor to appoint from. The current three finalists would grow to four. This increases the possibility of a pro-life applicant to survive the process during years in which a pro-life Governor is in office.

The end result of Constitutional Amendment 3 is that a poor quality Governor will continue to appoint judges which voters would never elect. But voters would have opportunities to hold a Governor accountable for doing so. However, a pro-life Governor would be in a much better position to bring pro-life judges forward by appointing conscientious commission members.

Missouri Family Network recommends a “YES” vote for constitutional Amendment 3 as a vote for accountability. It is not a magic pill to fix everything wrong with Missouri’s judiciary, but at least it is a step in the right direction.

**Proposition A - Vote YES** (Proposed by a citizen’s initiative petition.)

Official Ballot Title: *(what voters will see in the voting booth)*

**Shall Missouri law be amended to:**

- **allow any city not within a county (the City of St. Louis) the option of transferring certain obligations and control of the city’s police force from the board of police commissioners currently appointed by the governor to the city and establishing a municipal police force;**
- **establish certain procedures and requirements for governing such a municipal police force including residency, rank, salary, benefits, insurance, and pension; and**
- **prohibit retaliation against any employee of such municipal police force who reports conduct believed to be illegal to a superior, government agency, or the press?**

State governmental entities estimated savings will eventually be up to \$500,000 annually. Local governmental entities estimated annual potential savings of \$3.5 million; however, consolidation decisions with an unknown outcome may result in the savings being more or less than estimated.

Fair Ballot Language:

A “yes” vote will amend Missouri law to allow any city not within a county (the City of St. Louis) the option of establishing a municipal police force by transferring certain obligations and control of the city’s police force from the board of police commissioners currently appointed by the governor to the city. This amendment also establishes certain procedures and requirements for governing such a municipal police force including residency, rank, salary, benefits, insurance, and pension. The amendment further prohibits retaliation against any employee of such municipal police force who reports conduct believed to be illegal to a superior, government agency, or the press.

A “no” vote will not change the current Missouri law regarding St. Louis City’s police force.

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

**Analysis:** Proponents of Prop. A primarily argue from a “local control” perspective, as well as outlining the history of the current law. Opponents focus on the concern of mismanagement and/or possible corruption at risk from placing the St. Louis Police board under the control of the City.

MFN rejects the bulk of both positions and makes our final recommendation of a “YES” vote based on citizen’s control. Allow me to explain:

Let’s first look at “local Control.” This is not a fully valid reason for changing current policies and practices. The principles of local control come from the historic debates surrounding education. At the base of these education debates are divided philosophies regarding any government’s jurisdiction over education in the first place. While government may provide a free system of public education, it certainly has no moral authority to dictate education policy to those not interested in government schools. In fact many effectively argue the State has no compelling purpose for being involved. (This is an ongoing debate.) Because education ultimately resides with the will of parents alone, local control principles play an incredibly important role.

However, law enforcement is in fact one of the basic purposes of government. Thus the local control argument in this case does not fit well. To make the case stronger is the fact that while the State of Missouri should rightfully be seen as a sovereign State (in relationship to other States, nations, and even our own Country, the United States of America), it is also THE sovereign political/civil entity. All cities, towns, villages, counties, townships, precincts, etc. are subservient to the State as the sovereign authority which allows all the others to exist, and in what form. In all matters of political sub-divisions within the State, the authority of the State ultimately trumps local control. The single legitimate use of this argument resides in the values of locally directed and customized control that is often only realized at the local level and bearing the benefits of efficiency not otherwise recognized or appreciated from a central planning bigger government.

Secondly we reject opponents’ concerns over possible mismanagement and/or corruption. If the City of St. Louis is this untrustworthy we should be hearing ongoing cries for disbandment of the City’s charter, or a state take-over of City management. (Stick with me a moment longer please.) No one claims the City does not have significant political problems. However, among the hundreds of thousands of residents, there are many fine citizens who work tirelessly to improve the City and support efforts to hold people accountable. And amazingly, there is no hue and cry for the City to be dissolved. Yet this writer has seen several towns and villages come and go in less than 50 years, including urban, suburban, and rural communities!

Facts: Over 150 years ago the State’s population distribution was weighted within the City of St. Louis by staggering proportions. With the Civil War bearing down the Governor and State leaders realized that the St. Louis Police Department was by far the largest para-military force both in Missouri as well as west of the Mississippi River! To risk divided factions targeting control of this force was a major concern for the State and the safety of thousands. As a result of these developing political/military dynamics, the State asserted its Sovereignty and took over control of the police department.

So here we are over 150 years later and the State has never restored Control of the St. Louis Police Department back to the citizens of the City! What if this were your local police, fire department, or

other service providers or local infrastructure? In fact the citizens of every other community in the state regulates its own services through the constitutional republic methods of civil structure. As a result people can hold local politicians accountable for any mismanagement and/or questions of corruption.

It has proven to be inefficient and costly to Missouri taxpayers to have the members of our State Legislature micro-manage the policies of the local police in St. Louis City. To save Missouri taxpayers money and to treat St. Louis City citizens with proper respect, it is incumbent upon Missouri voters to say “YES” to Proposition A.

**Proposition B** - Vote “NO” (Proposed by a citizen’s initiative petition.)

Official Ballot Title: (*what voters will see in the voting booth*)

**Shall Missouri law be amended to:**

- **create the Health and Education Trust Fund with proceeds of a tax of \$0.0365 per cigarette and 25% of the manufacturer's invoice price for roll-your-own tobacco and 15% for other tobacco products;**
- **use Fund proceeds to reduce and prevent tobacco use and for elementary, secondary, college, and university public school funding; and**
- **increase the amount that certain tobacco product manufacturers must maintain in their escrow accounts, to pay judgments or settlements, before any funds in escrow can be refunded to the tobacco product manufacturer and create bonding requirements for these manufacturers?**

Estimated additional revenue to state government is \$283 million to \$423 million annually with limited estimated implementation costs or savings. The revenue will fund only programs and services allowed by the proposal. The fiscal impact to local governmental entities is unknown. Escrow fund changes may result in an unknown increase in future state revenue.

Fair Ballot Language:

A “yes” vote will amend Missouri law to create the Health and Education Trust Fund with proceeds from a tax on cigarettes and other tobacco products. The amount of the tax is \$0.0365 per cigarette and 25% of the manufacturer's invoice price for roll-your-own tobacco and 15% for other tobacco products. The Fund proceeds will be used to reduce and prevent tobacco use and for elementary, secondary, college, and university public school funding. This amendment also increases the amount that certain tobacco product manufacturers must maintain in their escrow accounts, to pay judgments or settlements, before any funds in escrow can be refunded to the tobacco product manufacturer and creates bonding requirements for these manufacturers.

A “no” vote will not change the current Missouri law regarding taxes on cigarettes and other tobacco products or the escrow account and bonding requirements for certain tobacco product manufacturers.

If passed, this measure will increase taxes on cigarettes and other tobacco products.

**Analysis:** Proposition B is a massive tax increase at best, which should be rejected. At its worse, it is a politically correct attack on the tobacco industry and an attempt at social engineering that must be rejected. Giving proponents the benefit of the doubt, let's simply evaluate the tax perspective.

Just a few years ago Missouri shared in the "tobacco settlement agreement" brought about by the 1990's politically motivated attacks and resulting litigations created by a democrat congress angry over tobacco industry support of republican candidates over democrats. Hundreds of billions of dollars were distributed to the States, including Missouri, with little going to cessation programs or assistance for those harmed by tobacco. Basically the money was absorbed by the State to prop up its 1990's government growth spurt (a time in which state government doubled in size and costs).

Now we are being asked to accept a tobacco tax increase for the purpose of funding tobacco related medical services and education. (What supporters of Prop B need to do is go back to the Legislature and ask them to reallocate current state revenues to make up for the funds already spent that should have provided these programs.)

There are two groups of voters facing this tax increase:

First are consumers who would face a significant tax jump on their tobacco products. For these folks a "NO" vote is easy. However, they may find it more difficult to sway their friends – so take a puff, or bite off a chaw and read on about the second group, the non-tobacco users who pitch their tents in two different camps.

The first camp of non-tobacco users see tobacco use as a personal choice. These campers believe smokers have been warned for decades that tobacco use is harmful and that more taxes will not create any resolve for the problems associated with tobacco use. For these folks let us consider the implications of such a new tax within the context of a politically correct culture. Governments today believe they can dictate such things as the size of your soft drinks? (You get the picture.) What may be the next target of politically motivated taxes? Fast food? Non-eco friendly products? ???

The second camp of non-tobacco users see tobacco as a vice, or a sin. For these folks let's consult Scripture. Let's see, how many times does the Bible point to civil government leaders being blinded to the victims of vice because of tax revenues received? (Check out the minor prophets and the teachings of Proverbs, as well as other precepts.) This is exactly why the State cannot bring itself to stop casinos or alcohol abuse. There is just too much money coming into State coffers while the social costs (which are higher) gush out through multiple agencies and services.

So for tobacco users and non-users, a huge tobacco tax increase is not an attractive proposal. Missouri Family Network recommends a "NO" vote for all citizens heading to the polls on November 6<sup>th</sup>, no matter which group or camp they reside in.

**Proposition E - Vote YES** (Proposed by the General Assembly SB 464)

For your understanding of the issue we have provided both the original version of the ballot question (which was rejected by the court as misleading) as well as the replacement question which will appear on your ballot as written by the court. Our analysis will follow.

<p>Official Ballot Title: <i>(Original Version)</i>  <i>(what voters would have seen in the voting booth)</i></p> <p><b>Shall Missouri law be amended to deny individuals, families, and small businesses the ability to access affordable health care plans through a state-based health benefit exchange unless authorized by statute, initiative or referendum or through an exchange operated by the federal government as required by the federal health care act?</b></p> <p>No direct costs or savings for state and local governmental entities are expected from this proposal. Indirect costs or savings related to enforcement actions, missed federal funding, avoided implementation costs, and other issues are unknown.</p> <p>Fair Ballot Language:</p> <p>A “yes” vote will amend Missouri law to deny individuals, families, and small businesses the ability to access affordable health care plans through a state-based health benefit exchange unless authorized by statute, initiative or referendum or through an exchange operated by the federal government as required by the federal health care act.</p> <p>A “no” vote will not change the current Missouri law regarding access to affordable health care plans through a state-based health benefit exchange.</p> <p>If passed, this measure will have no impact on taxes.</p>	<p>Official Ballot Title: <i>(NEW Version)</i>  <i>(what voters <u>will</u> see in the voting booth)</i></p> <p><b>Shall Missouri Law be amended to prohibit the Governor or any state agency, from establishing or operating state-based health insurance exchanges unless authorized by a vote of the people or by the legislature?</b></p> <p>No direct costs or savings for state and local governmental entities are expected from this proposal. Indirect costs or savings related to enforcement actions, missed federal funding, avoided implementation costs, and other issues are unknown.</p> <p>Fair Ballot Language:</p> <p>A “yes” vote will amend Missouri law to prohibit the Governor or any state agency, from establishing or operating state-based health insurance exchanges unless authorized by a vote of the people or by the legislature.</p> <p>A “no” vote will not amend Missouri law to prohibit the Governor or any state agency, from establishing or operating state-based health insurance exchanges unless authorized by a vote of the people or by the legislature.</p> <p>If passed, this measure will have no impact on taxes.</p>
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**Analysis:** Proposition E simply asserts that without voter approval, or that of the citizen’s duly elected members of the State House and Senate, the Governor nor his agencies shall enable ObamaCare on his own.

Last year a group of Missouri State Senators and the Lt. Governor’s office discovered and diverted plans by certain members of Governor Nixon’s administration to create the health care exchanges for implementing ObamaCare in Missouri. These healthcare exchanges provide the administrative

framework for enabling the federal government's healthcare takeover and is opposed by a supermajority of Missouri citizens. (See Prop. C, 71% adoption vote, August 3, 2010)

Following the revelations of what many citizens consider a "scandal" the State Legislature passed SB 464 which seeks to prohibit the Governor, or any state bureaucracies from establishing such exchanges without voter approval or that of the voter's elected members of the General Assembly.

After passage of the legislation proposing this constitutional amendment, the Secretary of State (Robin Carnahan) in tandem with the Attorney General (Chris Koster) drafted the summary ballot question for voters to read in the polling booth. But because their ballot question was so misleading and designed to taint the election, Lt. Governor Peter Kinder and a large host of republican members of the Legislature filed suit challenging the legality of the ballot title.

Implementation of the "Affordable Care Act" requires a new healthcare exchange system which carries a price tag of upwards to fifty million tax dollars (\$50,000,000.00). However the federal government is willing to provide the money (which still comes out of our pockets) if Missouri's Governor or another state agency agrees to accept it. Thus it is important to expressly prohibit such a move through the executive orders of the Governor or other actions by unelected bureaucrats.

Missouri Family Network recommends that citizens concerned about the various implications of ObamaCare should cast a "YES" vote for Constitutional Amendment 3 in order to reserve such a move to themselves. As a constitutional republic it is wholly appropriate to restrict such authority to voter approval or that of the 197 member Legislature.