

# CITY LAW 101: BALLOT QUESTIONS & CANDIDATE ISSUES

## **MMAA Summer Seminar 2021**

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# OVERVIEW

- **Setting the Table** – Definitions; Parties Involved; Scope; Dates of Elections
- **Ballot Questions:**
  - **Certifying a Question** – Mechanics of how to Certify a Question to the Election Authority; Timing
  - **Wording of the Question** – Requirements; Types & Interpretation of Question; Information vs. Advocacy
- **Candidates:**
  - Candidate Statements and Qualifications
  - Unusual Circumstances
- **Challenges** – Mechanics; Types of Challenges Heard; Remedies

## SOURCES OF ELECTION LAW IN MISSOURI

- Specialized boards and elections such as: [Chapter 190 RSMo.](#) (emergency medical services, ambulance districts, emergency services boards, etc.), [Chapter 321](#) (fire protection districts), [Chapter 162](#) (school boards), etc.
- Statutes relating to City classification (Chapters 67 (political subdivisions); [71](#) (all cities and towns); [77](#) (3<sup>rd</sup> class cities); [79](#) (4<sup>th</sup> class cities); [80](#) (Towns and Villages); [81](#) (Special Charter Cities and Towns); [82](#) (Home Rule Charter Cities))
- **HOWEVER – if there is a conflict, Chapter 115 prevails.** *Reed v. Brown*, 706 S.W.2d 866, 868 (Mo. banc 1986)

- “The right to contest an election is not a natural right, but it exists only under constitutional or statutory provisions, and one seeking relief under such provisions must bring himself strictly within their terms.” *State ex rel. Conaway v. Consolidated School Dist. No. 4 of Iron County*, 417 S.W.2d 657, 659 (Mo. banc 1967).
- “[T]he authority of the trial court ‘is confined strictly to statutory provisions governing election contests and the letter of the law is the limit of its power.’” *State ex rel. Dienoff v. Galkowski*, 426 S.W.3d 633, 640 (Mo. App. 2014) (citing *Bushmeyer v. Cahill*).



WHY IS THE  
PROCEDURE  
SO  
IMPORTANT?



## DEFINITIONS

- **“Question”** – “Any measure on the ballot which can be voted ‘yes’ or ‘no.’” 115.013(24) RSMo. **NOTE:** a “Question” is different from a “Candidate,” as a “Candidate for Office” is not a Yes/No Question.
- **“Candidate”** is not defined in Chapter 115
- **“Initiative”** – Citizen initiated new legislation
- **“Referendum”** – Citizen initiated repeal of existing legislation
- **“Legislatively Referred State Statute/Constitutional Amendment”** or **“Referral”** – A Statute or Constitutional Amendment that the General Assembly directs to be placed on the state-wide Ballot for a popular vote. *Example:* Amendment 3 on November 3, 2020 regarding redistricting, lobbying and campaign finance after prior passage of “Clean Missouri”

# WHO ARE THE PARTIES INVOLVED?

- **Voters**
- **Election Authority** – Usually the County Clerk (see § [115.015 RSMo.](#)), except where there is a Board of Election Commissioners (see § 115.017 RSMo.):
  - (1) In each county with over 900,000 people (i.e., St. Louis County);
  - (2) St. Louis City;
  - (3) Kansas City;
  - (4) In each county of the first classification containing any part of a city which has over three hundred thousand inhabitants; provided that the county commission of a county which becomes a county of the first classification after December 31, 1998, may, prior to such date, adopt an order retaining the county clerk as the election authority. The county may subsequently establish a board of election commissioners as provided in subdivision (5) of this section;
  - (5) In each county of the first class which elects to have such a board through procedures provided in section 115.019.
- **Candidates themselves**
- For Initiative Petitions or Referendum – 3<sup>rd</sup> Class with City Manager or Commission Form; Charter Cities with Charters providing for Initiative procedures, City of Savannah; or State-wide Initiatives under Chapter 116.

## WHEN ARE THE ELECTIONS, GENERALLY?

- **115.121. General election, when held — primary election, when held — general municipal election day, when held. —**
  - 1. The general election day shall be the first Tuesday after the first Monday in November of even-numbered years.
  - 2. The primary election day shall be the first Tuesday after the first Monday in August of even-numbered years.
  - 3. The election day for the election of political subdivision and special district officers shall be the first Tuesday after the first Monday in April each year, and shall be known as the general municipal election day. {Includes water districts under § 247.180 RSMo.}
- See also § 115.123 for bond elections, primaries if in Charter City/County if in charter before August 28, 1999, other specific circumstances

# BALLOT QUESTIONS

SO, WHAT IS THE  
TIMING FOR  
GETTING A  
BALLOT TO THE  
ELECTION  
AUTHORITY?

- You must give notice to Election Authorities responsible for conducting Election, in writing, with a legal notice required by **not later than 5:00 P.M. on the 10<sup>th</sup> Tuesday prior to any Election.**
- The legal notice “shall include the date and time of the election, the name of the officer or agency calling the election and a sample ballot . . .” § 115.127.2 RSMo.
- ***If you’ve got a Court Order***, you may make “late notification” to the Election Authorities—for you have until **5:00 P.M. on the 8<sup>th</sup> Tuesday prior to any Election, to get your Question “placed on” the Ballot.**
- **Once you are within 8 weeks before the Election, you cannot get a Ballot Question onto the Ballot.**
- “The provisions of [§] 115.125 *are mandatory, not directory.*” [\*State ex rel. Referendum Petitioners Committee Regarding Ordinance No. 4639 v. Lasky\*](#), 932 S.W.2d 392 (Mo. banc 1996).

## WHAT CAN MY BALLOT QUESTION SAY ON THE BALLOT?

- **115.245.** All questions on the ballot must be phrased so as to require a "YES" or a "NO" answer.
- Immediately beside or below each question shall be printed, the following instruction: "If you are in favor of the question, place an X in the box opposite 'YES'. If you are opposed to the question, place an X in the box opposite 'NO'."

# WHAT ELSE CAN MY BALLOT QUESTION SAY ON THE BALLOT?

- See *State ex rel. Dienoff v. Galkowski*, 426 S.W.3d 633 (Mo.App. 2014) – upheld ballot language for “Proposition Lifesavers,” which would’ve expanded the tax for ambulance service, and read as follows:
  - St. Charles County Ambulance District serves all of the municipalities and unincorporated areas of St. Charles County by providing paramedic-staffed ambulances that respond to the emergency medical needs of a growing and aging population. In order to prevent significant reductions in staff, a decrease in the number of available ambulances, and delays in response times to 911 calls, shall the Board of Directors of St. Charles County Ambulance District be authorized to levy an additional general tax, for the first time since the District's inception over 38 years ago, of not more than eleven cents per one hundred dollars assessed valuation, the revenues from which shall be deposited into the general fund?
- *City of Raytown v. Kemp*, 349 S.W.2d 363 (Mo. banc 1961) – when a statute uses the words, “**to be substantially in the following form: . . .**,” the requirement is merely directory and not mandatory. Thus, failure to mirror the ballot language provided in a “substantially in the following form,” statute **is not fatal** to a ballot that does not exactly match the statute.
- **BUT! REMEMBER THAT § 115.646 RSMO. STRICTLY PROHIBITS SPENDING PUBLIC FUNDS TO ADVOCATE FOR A QUESTION’S PASSAGE—IF THE CITY SPENDS MONEY PREPARING THE BALLOT LANGUAGE, AND THAT LANGUAGE CLEARLY ADVOCATES FOR PASSAGE (use of conjecture instead of facts, etc.) THEN IT MAY VIOLATE SECTION 115.646 RSMo.!\*\*\*\***
  - **But also note, 115.646 RSMo. was recently ruled unconstitutional!**

BUT NOW  
HOW STRICT  
WILL  
ENFORCEMENT  
OF THAT  
LANGUAGE BE?

- Ballot called for bonds to be used to **expand** county facility so funds couldn't be used to **construct** a facility (*Armstrong v. Adair County*, 990 S.W.2d 64 (Mo. App. 1999))
- County put a measure to a vote that included the payment of “**law enforcement operating expenses**,” the County was able to contract with a consulting firm on cost allocation to determine “shared expenses” of law enforcement throughout the County, **as paying the consulting firm was a part of the “law enforcement operating expenses.”** (*White v. Cole County*, 426 S.W.3d 27, 33 (Mo. App. 2014)). See also *Dunn v. Jasper County*, 490 S.W.3d 723 (Mo.App. 2015)
- *Hovis v. Daves*, 14 S.W.3d 593 (Mo. banc 2000) (Local tax for capital improvements without a sunset date, passed pursuant to § 67.700, was valid for an indefinite period going forward.)

CANDIDATES

## CONSTITUTIONAL RIGHTS TO ACCESS BALLOT AND CHOOSE ELECTIVE OFFICERS

- “Statutes that regulate access to the ballot are to be construed, if possible, to **prevent disqualification of the candidates.**” *State ex rel. Brown v. Shaw*, 129 S.W.3d 372, 374 (Mo. banc 2004)
- “...statutes imposing qualifications should receive **a liberal construction in favor of the right of the people to exercise freedom of choice** in the selection of officers. The Missouri decisions have given a liberal construction to this and similar sections prescribing requirements of eligibility to elective offices.” *State ex inf. Mitchell ex rel. Goodman v. Heath*, 132 S.W.2d 1001, 1004 (Mo. 1939)
- But, “A candidate’s access to the ballot or the right to run for office is **not a ‘fundamental right’ subject to strict scrutiny.**” *Coyne v. Edwards*, 395 S.W.3d 509, 517 (Mo. banc 2013) (internal citations omitted)



## THE CITY CLERK'S ROLE

- Receive candidate filings for office
- Provide MEC summary booklet when potential candidate files for office and get signature of receipt. [§ 105.973 RSMo](#). *Jackson County Bd. of Election Comm'rs v. Paluka*, [13 S.W.3d 684 \(Mo.App.W.D. 2000\)](#)
- Maintain personal financial disclosures filed by candidates and officials for public inspection and copying during normal business hours. [§ 105.485.4\(4\) RSMo](#).
- Designate where candidates form a line to file for office. [§ 115.124.2 RSMo](#).
- Notify the election authority of the election. [§ 115.125 RSMo](#).
- Swearing newly elected officials in (unless done in court instead)
- “City clerk argues that she had the duty [...] to determine the eligibility requirements of [candidates]. **We disagree.**” [State ex rel. Thomas v. Neely](#), [128 S.W.3d 920, 926 \(Mo.App. S.D. 2004\)](#)

## ELECTIONS IN FOURTH CLASS CITIES

- [§ 79.030 RSMo.](#) Election of officers. – An election for the elective officers of each city of the fourth class shall be held after the organization of such city under the provisions of this chapter, and on municipal election days every two years thereafter, except that cities may provide by ordinance that beginning with the election of a collector after January 1, 1990, collectors shall be elected every four years.
- [§ 79.040 RSMo.](#) Election ordered. – If, at any time, by reason of nonacceptance, resignation, refusal to qualify, or for any other cause, there shall be no officers of the city to order an election, any commissioner of the county commission, or association circuit judge of the county, is empowered to order and hold an election for city officers.

## ELECTIONS IN THIRD CLASS CITIES

- [§ 77.040 RSMo.](#) **Election of officers — option to appoint certain officers — terms.** — A general election for the elective officers of each city of the third class shall be held after the organization of the city under the provisions of this chapter and on municipal election days every two years thereafter, the city council may by ordinance provide for the nomination of officers by primary election; and provided, that all certificates of nomination and petitions therefor **shall be filed with the city clerk and not with any other officer.** Any city organizing under the provisions of this chapter may elect a mayor and may elect or provide for the appointment of such other officers as may be necessary to carry this chapter into effect, who shall hold office until their successors are elected or appointed and qualified; provided, that the assessor shall hold office until the first day of September and until his successor is elected or appointed and qualified, and the term of office of the assessor in such cities shall commence on the first day of September after the election at which he is elected or at such time as the city shall set the beginning of his appointive term, if appointed.
- [§ 77.050 RSMo.](#) — **Election may be ordered, how, when.** — If, at any time, by reason of nonacceptance, resignation, refusal to qualify, or for any other cause, there shall be no officers of the city to order an election, any associate circuit judge or commissioner of the county commissioner of the county is empowered to order an election for city officers

# ELECTIVE OFFICERS

- Third Class Cities (See: [§ 77.040 RSMo](#); [§ 77.370.1 RSMo](#))
  - Mayor
  - Councilmen
  - Police judge
  - Attorney (unless enact an ordinance providing appointed) [§ 77.370.3 RSMo](#).
  - Assessor
  - “The council, by ordinance, may provide that **any officer** of the city except the mayor and councilmen shall be appointed instead of elected. Such ordinance shall set the manner of appointment, in accordance with section 77.330, and the term of office for each appointive officer, which term shall not exceed four years.” [§ 77.370.6 RSMo](#).
- Fourth Class Cities (See: [§ 79.050 RSMo](#).)
  - Mayor
  - Aldermen
  - Unless ordinance provides otherwise: city marshal and collector
  - Optional (must be done by ordinance if desired): city assessor, city attorney, city clerk and street commissioner.
- Charter Cities



# CANDIDATE STATEMENTS AND QUALIFICATIONS

# GETTING ON AND OFF THE BALLOT

- “The election authority shall print the official ballot as the same appears on the sample ballot, and no candidate's name or ballot issue which appears on the sample ballot or official printed ballot shall be stricken or removed from the ballot except on death of a candidate or by court order, but in no event shall a candidate or issue be stricken or removed from the ballot less than eight weeks before the date of the election.”

[§ 115.127.3 RSMo.](#)

- “Disqualified’: a determination made by a court of competent jurisdiction, the Missouri ethics commission, an election authority or any other body authorized by law to make such a determination that a candidate is ineligible to hold office or not entitled to be voted on for office.” [§ 115.013\(7\) RSMo.](#)



# CANDIDATE FILING REQUIREMENTS

Affirmation of tax payments and bonding requirements ([§ 115.306.2 RSMo](#))

Declaration of Candidacy

Financial Interest Statements. ([§ 105.483 RSMo](#); [§ 105.485 RSMo](#)).



## CANDIDATE REQUIREMENTS

- Must not be in delinquency for:
  - State income taxes
  - Personal property taxes
  - Municipal taxes
  - Real property taxes on place of residence (as stated on declaration of candidacy)
  - Bonus for past/present corporate officers: **any fee office that owes any taxes to the state**
  - [§ 115.306.2 RSMo.](#)
- Must have not been found (or pled) guilty to a felony (federal or state) (or an offense in another state that would be considered a felony in Missouri) [§ 115.306.1 RSMo.](#)
- Personal Financial Disclosure must be filed in time!
- Residency, age and other requirements.
  - Check city statutes as well for more specific qualifications and requirements
  - For example, councilmen for third class cities must be at least 21 years of age prior to taking office and a U.S. citizen. [§ 77.060 RSMo.](#)

## CRIMINAL LAW-RELATED DISQUALIFICATION

- No person shall qualify as a candidate for elective public office in the state of Missouri who has been
  - **found guilty OR pled guilty to a felony**
  - Federal or state felony (OR a crime in another state that would be considered a felony in Missouri)
  - [§ 115.306.1 RSMo.](#)
- This is not an unconstitutional retrospective law. *State v. Young*, 362 S.W.3d 386 (Mo. banc 2012)
- It's about the plea, not necessarily the conviction. **EVEN IF PARDONED.** *Fay v. Stephenson*, 552 S.W.3d 753 (Mo.App.W.D. 2018)



AFFIRMATION OF TAX PAYMENTS AND  
BONDING REQUIREMENTS:

I hereby declare under penalties of perjury that I am not currently aware of any delinquency in the filing or payment of any state income taxes, personal property taxes, municipal taxes, real property taxes on the place of residence, as stated on the declaration of candidacy, or that I am a past or present corporate officer of any fee office that owes any taxes to the state, other than those taxes which may be in dispute. I declare under penalties of perjury that I am not aware of any information that would prohibit me from fulfilling any bonding requirements for the office for which I am filing.

\_\_\_\_\_ Candidate's Signature  
\_\_\_\_\_ Printed Name of  
\_\_\_\_\_ Candidate

## FINANCIAL REQUIREMENTS

- Must be filed with the department of revenue
- Must include a copy of the affidavit with the declaration of candidacy
- “Upon receipt of a complaint alleging a delinquency of the candidate in the filing or payment of any state income taxes, personal property taxes, **municipal taxes**, real property taxes on the place of residence, as stated on the declaration of candidacy, or if the person is a past or present corporate officer of any fee office that owes any taxes to the state, the **department of revenue shall investigate** such potential candidate to verify the claim contained in the complaint.”
- DOR will give the candidate 30 days to remit the outstanding taxes owed (if not in dispute) **b/w department and candidate.**
- If not cured in time → disqualified from current election and barred from refiling for entire election cycle **EVEN IF PAID LATER**
- [§ 115.306.2\(3\) RSMo.](#)

# FINANCIAL INTEREST STATEMENTS

- Who must file a Personal Financial Disclosure Statement?
  - “Each elected official, candidate for elective office, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of each political subdivision with an **annual operating budget in excess of one million dollars**, and each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules or regulations with the force of law, **unless the political subdivision adopts an ordinance, order or resolution pursuant to subsection 4 of section 105.485.” § 105.483(11) RSMo.**
  - “Any person who is designated as a **decision-making public servant** by any of the officials or entities listed in subdivision (6) of section 105.450.” § 105.483(12) RSMo.



# DISCLOSING CONFLICT OF INTEREST ORDINANCE

- [§ 105.485.4 RSMo.](#)
- Must be adopted biennially
- **Ordinance, order or resolution**
- **Open meeting by September 15 of the preceding year**
- **Must establish and make public the political subdivision's method of disclosing potential conflicts of interest and substantial interest**
- **Certified copy of the ordinance, order or resolution must be sent to MEC within 10 days of its adoption**
- Minimum requirements
  - Disclosure in writing of the following transactions (if engaged in during the calendar year)
    - Transactions with the political subdivision greater than \$500 (including relations within one degree of consanguinity) (other than taxes, fees or penalties or payment of utilities or no-consideration transfers)
    - Chief administrative officer/chief purchasing officer of political subdivision must disclose additional information
    - Financial interests applicable to officials, officers and employees of the political subdivision as may be required by ordinance/resolution
    - Duplicate disclosure reports made pursuant to this subsection must be filed with the MEC and governing body of the political subdivision. The clerk of such governing body shall maintain such disclosure reports available for public inspection and copying during normal business hours.



## DECISION-MAKING PUBLIC SERVANTS

- (6) "**Decision-making public servant**", an official, appointee or employee of the offices or entities delineated in paragraphs (a) through (h) of this subdivision who exercises supervisory authority over the negotiation of contracts, or has the **legal authority to adopt or vote on the adoption of rules and regulations with the force of law** or exercises **primary supervisory responsibility over purchasing** decisions. The following officials or entities shall be responsible for designating a decision-making public servant:
  - (a) **The governing body of the political subdivision with a general operating budget in excess of one million dollars;**
  - (b) A department director;
  - (c) A judge vested with judicial power by Article V of the Constitution of the state of Missouri;
  - (d) **Any commission empowered by interstate compact;**
  - (e) A statewide elected official;
  - (f) The speaker of the house of representatives;
  - (g) The president pro tem of the senate;
  - (h) The president or chancellor of a state institution of higher education;



# FILING PERIOD

- Open: 8:00 a.m. 17<sup>th</sup> Tuesday before the election for almost everyone
- Close: 5:00 p.m. 14<sup>th</sup> Tuesday before the election
- UNLESS OTHERWISE PROVIDED BY CHARTER
- [§ 115.127.5 RSMo.](#)



## SWEARING IN

- “Before taking office, all civil and military officers in this state shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this state, and to demean themselves faithfully in office.” [Mo. Const. of 1875, Art. XIV § 6; VII Section 11.](#)
- Villages: “Every trustee, before entering upon the duties of his office, shall take the oath prescribed by the constitution of this state, and that he will faithfully demean himself in office.” [§ 80.060 RSMo.](#)
- Third and Fourth class cities: “Every officer of the city and his assistants, and every councilman [aldermen for fourth class cities], before entering upon the duties of his office, shall take and subscribe to an oath or affirmation before some court of records in the county, or the city clerk, that he possesses all the qualifications prescribed for his office by law; that he will support the Constitution of the United States, and of the state of Missouri, the provisions of all laws of this state affecting cities of this class, and the ordinances of the city, and faithfully demean himself in office; which official oath or affirmation shall be filed with the city clerk...” [§ 77.390 RSMo](#) (third class) [§ 79.260 RSMo.](#) (fourth class)
- Bond may be required too



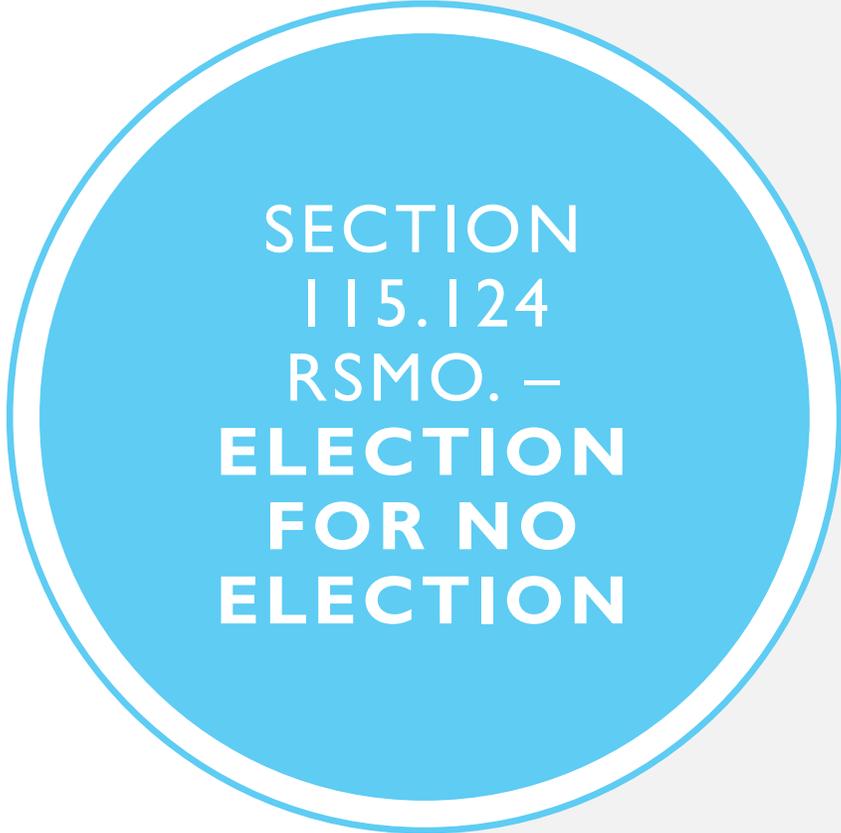
A large field of black umbrellas is shown from a high angle, filling most of the frame. The umbrellas are wet, with water droplets visible on their surfaces. In the lower-left foreground, one umbrella is a vibrant red, standing out from the sea of black. The background shows a cloudy sky with soft, diffused light. A white rectangular box with a thin black border is centered in the image, containing the text.

# UNUSUAL CIRCUMSTANCES

- Political subdivisions with a population of 2,000 or less may certify a Question on the ballot that would allow elections to not be held for offices if the specific requirements are met:
  - **If number of candidates for each office equals the number of positions for each office to be filled at an election\*;** and
  - **No other items that the political subdivision would need to pay for is on the ballot (i.e., no questions submitted by the City)**

Then no election shall be held, and the candidates shall assume the responsibilities of their offices at the same time and in the same manner as if they had been elected.

- *\*Note, if the number of candidates filing would exceed number of positions to be filled at the election, even if a sufficient number withdraw from the election so that the number of candidates equals the positions to be filled, then the election shall still be held.*
- If this question is proposed and passed, it becomes effective for “all nonpartisan elections **remaining in the year in which the proposal was adopted and for the six calendar years immediately following such approval.**”
- **After this 6-year period, the Question must be readopted by a majority of the qualified voters as provided in 115.124 RSMo.**



SECTION  
115.124  
RSMO. –  
ELECTION  
FOR NO  
ELECTION

## WHAT IF THERE IS A TIE?

- ORDER A SPECIAL ELECTION! § [115.517.3 RSMo.](#)
- Or, if all relevant parties agree, can draw by lot. § [115.517.4 RSMo.](#)



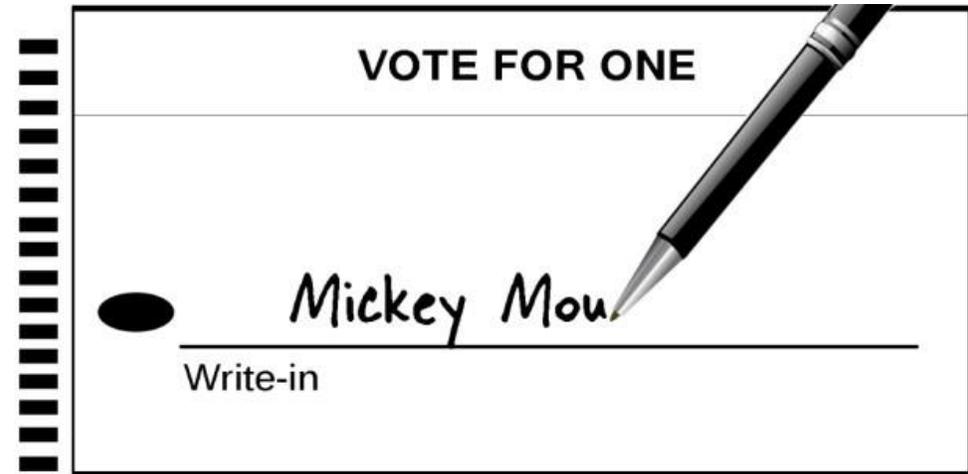
# WHAT IF THE CANDIDATE DIES?

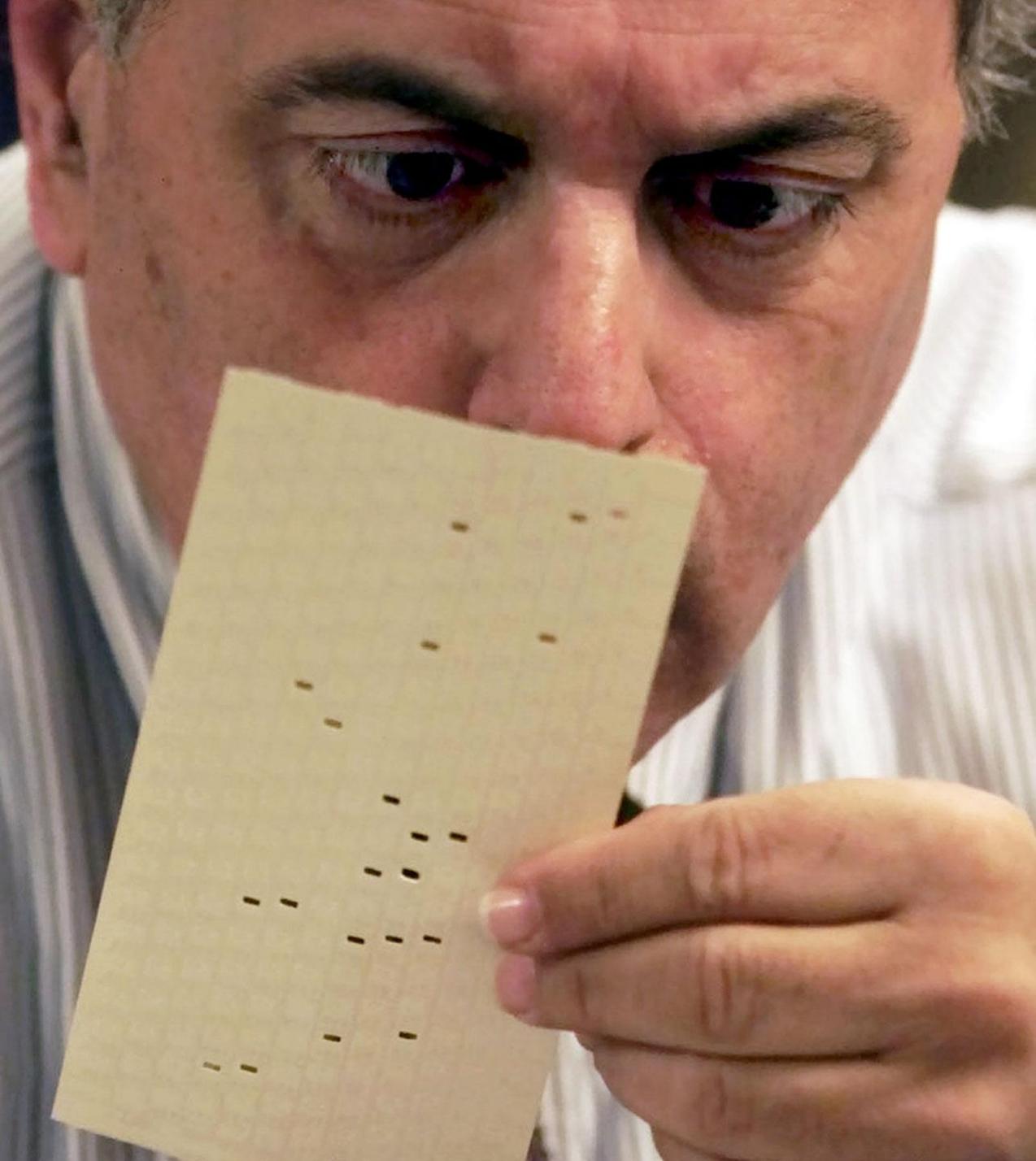
- “...Except as otherwise provided by law, whenever a candidate for nomination or election to an office dies, withdraws or is disqualified prior to the election, such candidate’s name shall not be printed on the official ballot.” [§ 115.526.5 RSMo.](#)
- “The election authority shall print the official ballot as the same appears on the sample ballot, and no candidate’s name or ballot issue which appears on the sample ballot or official printed ballot shall be stricken or removed from the ballot except on death of a candidate or by court order, but in no event shall a candidate or issue be stricken or removed from the ballot less than eight weeks before the date of the election.” [§ 115.127.3 RSMo.](#)



# WRITE-IN VOTES

- Write-in votes shall be counted **only for candidates for election to office who have filed a declaration of intent to be a write-in candidate** for election to office with the proper election authority, who shall then notify the proper filing officer of the write-in candidate prior to 5:00 p.m. on the second Friday immediately preceding the election day;
- No person shall file a declaration of intent to be a write-in candidate for election to any municipal office unless such person is qualified to be certified as a candidate under section [115.306](#);
- [§ 115.453\(4\) RSMo.](#)





## CHALLENGES

# ANNOUNCEMENT OF RESULTS

- **115.507. Announcement of results by verification board, contents, when due — abstract of votes to be official returns.**
  - 1. **Not later than the second Tuesday after the election**, the verification board shall issue a statement announcing the results of each election held within its jurisdiction and shall certify the returns to each political subdivision and special district submitting a candidate or question at the election. The statement shall include a categorization of the number of regular and absentee votes cast in the election, and how those votes were cast; provided however, that absentee votes shall not be reported separately where such reporting would disclose how any single voter cast his or her vote. When absentee votes are not reported separately the statement shall include the reason why such reporting did not occur. Nothing in this section shall be construed to require the election authority to tabulate absentee ballots by precinct on election night.
  - 2. The verification board shall prepare the returns by drawing an abstract of the votes cast for each candidate and on each question submitted to a vote of people in its jurisdiction by the state and by each political subdivision and special district at the election. The abstract of votes drawn by the verification board shall be the official returns of the election.
  - ...
- **115.508. Certification of election prohibited prior to noon on Friday after election day. — Notwithstanding any other provision of law to the contrary, no election authority or verification board shall certify election results, as required under section 115.507, before noon on the Friday after election day.**

# STATUTORY AUTHORITY FOR A CHALLENGE

## **For Ballot Questions:**

- The result of any election on any question may be contested by one or more registered voters from the area in which the election was held.
- The petitioning voter is the 'contestant' and the election authority is called the contestee.
- The proponents and opponents of the ballot question shall have the right to engage counsel to represent in all matters regarding the contest.

(§ 115.553.2 RSMo.)

## WHERE TO FILE, TIMING OF CONTESTS

- **Where filed**
  - For questions in the circuit court of any circuit, selected by the contestant in which all or any part of the election was held and in which any alleged irregularity occurred.
  - If filed in wrong county, court will transfer it  
(§ 115.575 RSMo)
  - The circuit court in which the petition is filed shall have exclusive jurisdiction over all matters relating to the contest and may issue appropriate orders to all election authorities in the area in which the contested election was held. (§ 115.577 RSMo.)
- **When filed:**
  - Not later than thirty days after the official announcement of the election result by the election authority (§ 115.577 RSMo)
  - **Cannot be filed prior to Election Authority's certification of results.** See *Wells v. Nolden*, 679 S.W.2d 889, 891 (Mo.App. 1984)

- **115.591. Contestant to post bond, when.** — In each case of a contested election, the court or legislative body may require the contestant to post bond for the costs and expenses of the election contest. ***The costs and expenses of any election contest***, including the cost and expense of a recount, ***may be adjudged against the unsuccessful party with payment of the costs and expenses enforceable as in civil cases.***

DON'T  
FORGET—  
CONTESTS  
REQUIRE A  
BOND &  
POTENTIALLY  
PAYMENT OF  
COSTS!

WORDING OF A BALLOT  
QUESTION IS MATTER FOR  
ELECTION CHALLENGE

**Challenges to the wording of a Ballot Question *is expressly an election challenge.***

- See *Beatty v. Metropolitan St. Louis Sewer Dist.*, 700 S.W.2d 831, 838 (Mo. banc 1985) (“**The wording of the proposition on a ballot . . .** [is an] issue[] cognizable only in an election contest.”) (emphasis added); see also *McCollum v. Director of Revenue*, 906 S.W.2d 368, 369 (Mo. banc 1995); *State ex rel. Indus. Serv. Contractors, Inc. v. County Comm’n of Johnson County*, 918 S.W.2d 252, 254-55 (Mo. banc 1996)

**Further, if an election challenge is cloaked in another cause of action, the Circuit Court still shall not have authority to review such a claim as something other than an election challenge. See *Clark v. City of Trenton*, 591 S.W.2d 257 (Mo.App. 1979).**

NOT “IRREGULAR”  
ENOUGH

- **“Irregularities of sufficient magnitude to cast doubt on validity of the election” (§ 115.593.)**:
  - *Must be important*: “While there were doubtless some irregularities shown, such as insufficient election booths and a separation of the election booths furnished, and a shortage of printed ballots . . . We do not believe such irregularities should be regarded as important.” *Nelson v. Watkinson*, 262 S.W.2d 872, at 873 (Mo.App. 1953)
  - Vote would have been different if not for irregularity (Where Petitioner did “not allege the voters were misled or that the vote would have been different if public money were not spent” not a sufficient irregularity) *Gerrard v. Board of Election Com’rs*, 913 S.W.2d 88, at 90 (Mo.App. 1995)

# ELECTION CHALLENGES - CANDIDATES

- **Any candidate** can challenge the **declaration of candidacy or qualifications** of any other candidate for nomination to the same office to seek or hold such office or to have his name printed on the ballot. [§ 115.526.1 RSMo.](#)
- Petition must be filed not later than **5 days after the latest date for certification of a candidate by the officer responsible for issuing such certification**
  - If disability occurs after deadline – 5 days after disability occurs/is discovered.
- **There is a right of appeal. § 115.526.3 RSMo.**
- “The contested election shall have **preference in the order of hearing to all other cases and shall be commenced at the date set and heard day to day, including evenings and weekends if necessary**, until determined. There shall be no continuances except by consent, so that the case may be **concluded not later than the tenth Tuesday prior to the general election.**” [§ 115.535 RSMo.](#)
- “Except as otherwise provided by law, whenever a candidate for nomination or election to an office dies, withdraws **or is disqualified prior to the election**, such candidate's name shall not be printed on the official ballot.” [§ 115.526.4 RSMo.](#)

- “**Any candidate** for election to any office may challenge the **correctness of the returns** for the office, charging that irregularities occurred in the election. The result of any election **on any question** may be contested by one or more registered **voters** [...]. The petitioning voters shall be considered the contestant and the officer or election authority responsible for issuing the statement setting forth the result of the election shall be considered the contestee...” [§ 115.553 RSMo.](#)
- “While the term ‘irregularities’ is not defined by Chapter 115, courts have considered **the violation of election statutes to constitute an irregularity that can be addressed by an election contest.**” *Miller v. Frank*, 519 S.W.3d 472, 476 (Mo.App. E.D. 2017), citing *Dotson v. Kander*, 464 S.W.3d 190, 194 (Mo. banc 2014)
- “**Notably, the violation of a candidate-qualification statute does not constitute an election irregularity.**” *Id.* (citing *Kohrs v. Quick*, 264 S.W.3d 645, 647 (Mo.App. W.D. 2008)) **\*\*note, other remedies may still exist, such as quo warranto\*\***
- “Section 115.526 provides the procedure for challenging the qualifications of a candidate. **A contestant should not be allowed to circumvent the deadline of section 115.526.2 by alleging a violation of a qualification statute constitutes an irregularity in the election.**” *Kohrs v. Quick*, 264 S.W.3d 645, 647 (Mo.App. W.D. 2008)



115.553 RSMO.  
ELECTION  
IRREGULARITY  
CHALLENGE

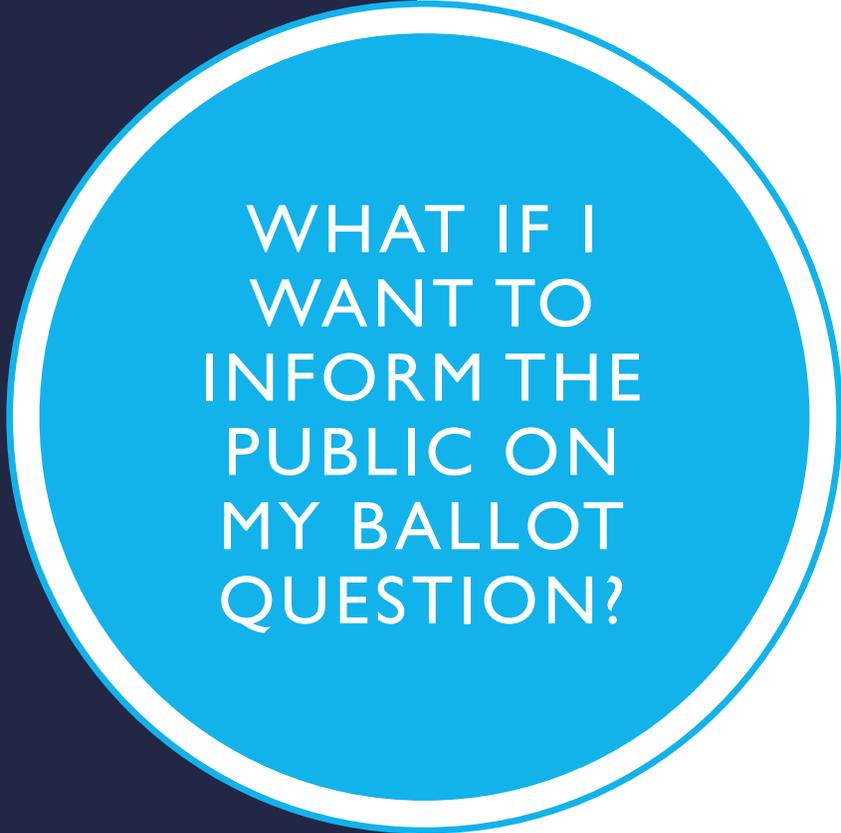
## REMEDIES

- Recounts
  - “A recount is authorized where irregularities affect only the result of the election. . . . [T]he circuit court may order a recount where there is a ‘prima facie showing of irregularities which place the result of any contested election in doubt.’ While the conduct of an election obviously affects its outcome, the ‘result’ of an election is the official announcement of the winning candidate.” *Board of Election Com’rs of St. Louis County v. Knipp*, 784 S.W.2d 797, at 798 (Mo. banc 1990)
  - **115.601 prescribes automatic recounts if within 0.5%**
- New Elections
  - “A new election, however, is a more drastic remedy, reserved for those situations in which the court finds ‘there were irregularities of sufficient magnitude to cast doubt on the validity of the initial election’ . . . A new election tosses aside the aggregate of the citizens’ votes, both those properly and improperly cast, and for that reason, a new election remedy is appropriate where the validity of the *entire election* is under suspicion, not simply the *result* of the election.” *Knipp*, at 798-99.



# NEW ELECTIONS ORDERED

- **115.593. New election ordered, when.** — If the court or legislative body trying a contested election determines there were irregularities of sufficient magnitude to cast doubt on the validity of the initial election, it may order a new election for the ... contested question. The order shall set the date of the election and shall be sent by the clerk of the court ... to each election authority responsible for conducting the special election. In its order, the court ... shall specify ... the ballot title of the question to be voted on at the special election, and the election shall be conducted and the votes counted as in other elections. Notice of the election shall be given in such manner as the court ... directs. ... [T]he question submitted at the special election shall be deemed approved if a majority of the votes at the special election are cast in favor of the question.
- **What happens in the meantime?**
- **115.595. Person holding certificate of election to hold office pending outcome — question shall be deemed decided as shown by returns pending outcome.** — 1. ...
- 2. In each case of a pending election contest on a question, the question shall be deemed approved or disapproved as shown by the official returns of the election until the contest is decided. When the contest is decided, the question shall be deemed approved or disapproved in accordance with the decision as of the day the contest is decided, or as of the day it would otherwise have been deemed approved or disapproved, whichever is later.



WHAT IF I  
WANT TO  
INFORM THE  
PUBLIC ON  
MY BALLOT  
QUESTION?

- **115.646. Public funds expenditure by political subdivision officer or employee, prohibited — personal appearances permitted. —** No contribution or expenditure of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office. This section shall not be construed to prohibit any public official of a political subdivision from making public appearances or from issuing press releases concerning any such ballot measure.\*\*\*
- \*\*\*115.646 RSMo. was recently ruled unconstitutional in *City of Maryland Heights v. State of Missouri* – 19 AC-CC00206
- This issue, and the potential effects now that the Missouri General Assembly has repassed 115.646 RSMo., will be discussed in the afternoon session.



“PAID FOR  
BY ...”

- The Missouri Ethics Commission requires certain “printed matters” published, circulated, or distributed to contain the words “Paid for by” with an identification of who is sponsoring the “printed matter.”
- (§ 130.031.8) **additionally requires: “Paid for by City of X” and:**
  - **1) name of the City’s Principal Officer and**
  - **2) the City’s Mailing Address to be included.**
- So if the City plans on publishing, circulating, or distributing factual materials, make sure to include the “Paid for By” as required by statute.

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