

AMENDMENT 1 – DNR SALES TAX RENEWAL - PARKS & SOIL & WATER

OVERVIEW

If ratified by Missouri voters on Nov. 8, Amendment 1 would reauthorize for another 10 years an existing one-tenth-cent statewide sales and use tax for the Missouri Department of Natural Resources. The tax generates roughly \$90 million a year, with half the revenue constitutionally dedicated for soil and water conservation programs and the other half for the operation and maintenance of state parks and historical sites.

Missouri voters first authorized the soil and water conservation/state parks tax in August 1984 with 50.1 percent support. It was set to expire after five years, but voters subsequently renewed the tax three times. The first extension passed with 68.7 percent support in November 1988; the second garnered 66.6 percent support in November 1996; and the third received 70.8 percent support in August 2006.

The General Assembly placed the original 1984 measure (Amendment 2) on the ballot. Initiative petition drives led to the first two renewal votes in 1988 (Amendment 7) and 1996 (Amendment 8).

When lawmakers passed the legislation placing the last renewal amendment on the 2006 ballot (Amendment 1), they added a constitutional provision that automatically resubmits the tax to voters every 10 years, assuming continuous renewal. So, neither new legislation nor an initiative petition was required to put the issue back before voters in 2016.

If voters ratify this year's Amendment 1, the tax will continue for another decade and will be subject to a renewal vote again in 2026. If Amendment 1 is defeated, the tax will expire as of July 1, 2018, reducing Missouri's overall statewide sales tax from the current 4.225 percent to 4.125 percent, saving taxpayers one penny for every \$10 spent.

According to the Department of Natural Resources, the soil and water conservation programs, which help combat soil erosion and the resulting contamination of water supplies, are entirely funded by the dedicated sales tax. The state parks system derives 75 percent of its funding from the tax.

The one-tenth-cent statewide soil and water conservation/state parks tax is not to be confused with a separate one-eighth-cent statewide sales and use tax that funds the Missouri Department of Conservation. The latter tax, established by voters through a constitutional amendment ratified in 1976, is permanent and not subject to periodic renewal.

The ballot language prepared for Amendment 1 by the Secretary of State's Office, followed by the official fiscal estimate prepared by the State Auditor's Office, reads:

Shall Missouri continue for 10 years the one-tenth of one percent sales/use tax that is used for soil and water conservation and for state parks and historic sites, and resubmit this tax to the voters for approval in 10 years?

The measure continues and does not increase the existing sales and use tax of one-tenth of one percent for 10 years. The measure would continue to generate approximately \$90 million annually for soil and water conservation and operation of the state park system.

As it has in the past, the renewal effort enjoys widespread support from a broad coalition of more than 20 groups representing agricultural, environmental and recreational interests. Those groups include the Association of Missouri Electric Cooperatives, the Conservation Federation of Missouri, the Missouri Coalition for the Environment, Missouri Farm Bureau, the Missouri Parks Association and the Sierra Club.

Just as with previous renewal measures, there doesn't appear to be any organized opposition to Amendment 1.

ARGUMENTS IN SUPPORT OF AMENDMENT 1

In the event the tax isn't renewed, lawmakers would have to fund to the soil and water conservation programs and the state parks system out of general revenue, which would leave less money available for other state services, including education, health care and public safety.

Amendment 1 doesn't increase taxes; it merely extends an existing tax that has been in place for more than three decades.

The tax costs just an additional penny for every \$10 spent in Missouri – a bargain considering the state's stellar state parks system and effective soil and water conservation efforts.

The state parks system is vital to Missouri's tourism industry and attracts more than 18 million visitors a year. Many of those visitors come from out of state, helping to contribute to the state's economy while they are here by patronizing local businesses and paying state and local taxes.

Eliminating the tax would save a family with a take-home income of \$20,000 a year that spends every dime of it in Missouri would save \$20.

Eliminating the tax would blow a \$90 million hole in the state budget, forcing lawmakers to make up the difference either by cutting spending for parks and soil and water conservation or by cutting other areas – such as education, health care or public safety – to make up the difference.

ARGUMENTS IN OPPOSITION TO AMENDMENT 1

Sales taxes are regressive and disproportionately impact lower income Missourians who can least afford to pay.

Constitutionally dedicated taxes such as this one make it more difficult for lawmakers to prioritize how taxpayer money is allocated and spent based on need, with spending for some programs protected while other, perhaps more important, programs must compete for scarce general revenue dollars.

Nice though it is, the state parks system is a luxury, not a necessity. As a luxury, it shouldn't enjoy a dedicated funding source while services that are far more essential to society are woefully underfunded.

AMENDMENT 2 – CAMPAIGN FINANCE

OVERVIEW

If ratified by voters on Nov. 8, Amendment 2 would add several pages of new provisions to the Missouri Constitution reinstating campaign contribution limits and establishing extensive regulations governing campaign finance in general.

Under Amendment 2, individual donors would be constitutionally prohibited from giving a candidate for statewide office, state senate, state representative or judicial office more than \$2,600 per election. Individual donors also would be barred from giving more than \$25,000 per election to the same political party. Those limits would be adjusted for inflation every four years, starting in 2019.

In addition, Amendment 2 contains several provisions intended to make it difficult for donors to circumvent the contribution limits. These include banning contributions from one candidate committee to another, prohibiting contributions from being made under fictitious names and prohibiting contributions that intentionally conceal the actual source of donation. A first offense for violating the concealment provision would merely require the donation to be returned. A second violation would be a misdemeanor crime, with subsequent violations upped to felonies.

Other provisions of Amendment 2 include restrictions on donations from corporations and labor unions, a ban on people being reimbursed for making political contributions or and a prohibition on candidates accepting donations made by non-U.S. citizens, foreign governments or foreign corporations. The measure also specifies that donations made in the name of a child under age 14 shall be attributed to the child's parents for the purpose of determining compliance with the \$2,600 individual contribution cap.

Violations of the campaign finance restrictions under Amendment 2 would carry a civil penalty of at least double and up to five times the amount of the illegal donation. Offenders also could be criminally prosecuted for a Class A misdemeanor, which carries a maximum penalty of a year in jail and a \$1,000 fine.

Amendment 2 was placed on the statewide ballot via an initiative petition largely funded by Fred Sauer, a wealthy St. Louis-area businessman who unsuccessfully sought the Republican nomination for governor in 2012.

The ballot language prepared for Amendment 2 by the Secretary of State's Office, followed by the official fiscal estimate prepared by the State Auditor's Office, reads:

Shall the Missouri Constitution be amended to:

- *establish limits on campaign contributions by individuals or entities to political parties, political committees, or committees to elect candidates for state or judicial office;*
- *prohibit individuals and entities from intentionally concealing the source of such contributions;*
- *require corporations or labor organizations to meet certain requirements in order to make such contributions; and*
- *provide a complaint process and penalties for any violations of this amendment?*

It is estimated this proposal will increase state government costs by at least \$118,000 annually and have an unknown change in costs for local governmental entities. Any potential impact to revenues for state and local governmental entities is unknown.

BACKGROUND

Missouri voters first imposed limits on the amounts individual donors can give candidates with the passage of Proposition A in November 1994 with 73.9 percent support. In 2008, however, the Republican-controlled General Assembly enacted Senate Bill 1038 to repeal Missouri's limits. The bill was signed into law by then-Gov. Matt Blunt.

At the time of the repeal, the caps on individual campaign contributions stood at \$325 per donor for House candidates, \$650 for Senate candidates and \$1,275 for statewide

candidates. The caps applied per election, so a donor who gave the maximum to a certain candidate during the primary could max out again for general election.

Political party committees were allowed to give candidates 10 times the limit on individual donors, which made party committees a popular way for donors to funnel additional money to favored candidates. The Democratic and Republican parties both established multiple separate party committees at the state, county and legislative district levels, which enabled them to make multiple maximum donations to individual candidates.

At the time repealing the limits was under debate, supporters argued that allowing unlimited donations would improve transparency since donors would no longer have to launder money through other committees to circumvent the limits. In some respects, that has proven true since a donor who wants to give, for example, \$50,000 to a certain candidate can just do so. However, for donors who don't want their identity publicly known, laundering funds through other committees to obscure the source remains a common practice.

During the years that Missouri has operated without campaign contribution limits, a handful of mega-donors have wielded increasing influence in Missouri politics. The most prominent Missouri mega-donors are retired billionaire financier Rex Sinquefeld of St. Louis and David Humphreys, the president and CEO of Joplin-based Tamko Building Products. The St. Louis Post-Dispatch reported in a Sept. 27 story that Sinquefeld has given more than \$11 million so far during the 2016 election cycle, according to the most recent campaign finance disclosure reports filed with the Missouri Ethics Commission. Humphreys and members of his family were close behind with more than \$10 million in political donations so far this cycle.

ARGUMENTS IN SUPPORT OF AMENDMENT 2

Allowing unlimited money to flow into our elections is inherently corrupting.

When a single wealthy donor can give \$50,000 or \$100,000 or \$1 million or more to a candidate, it creates the appearance – and in some cases the reality – that our state government is for sale.

If money is speech, then political speech is privilege afforded only to the wealthy.

In 1994, more than 1 million Missourians voted to impose campaign contribution limits. In 2008, the legislature and governor ignored their wishes by repealing them.

Ratifying Amendment 2 will allow Missourians to re-assert their will on politicians who prefer the anything-goes environment of unlimited donations. Since it is a constitutional change, lawmakers will have no power to repeal Amendment 2 like they did with Missouri's old campaign limits.

Amendment 2 imposes reasonable limits on campaign contributions and closes the loopholes that allowed politicians to get around Missouri's old limits.

In the years since Missouri's limits were done away with, a few wealthy donors have come to dominate our elections. Amendment 2 will limit that influence and give more electoral power back to the people.

ARGUMENTS IN OPPOSITION TO AMENDMENT 2

When Missouri previously had contribution limits candidates and donors found ways around them. If Amendment 2 passes, they will find ways around them again.

Although supporters claim Amendment 2 closes loopholes in campaign finance law, it is actually contains some pretty glaring ones. For example, while it imposes a strict \$2,600 donation limit on candidates for the state legislature or statewide office, it still allows unlimited donations to candidates for local office.

Amendment 2 is poorly drafted and since it's a constitutional amendment its flaws will be difficult to fix as they would require voters to approve another constitutional amendment.

Since federal courts have ruled that campaign contributions are a form of political speech, Amendment 2 likely violates the First Amendment.

Amendment 2 also is unconstitutional because it allows some businesses to make political contributions but prohibits others, such as banks and insurance companies, from making donations at all, denying them their right to participate in the political process.

With these and other legal problems, a lawsuit challenging Amendment 2 is already being prepared by opponents. As a result, Amendment 2 will be subject to years of costly litigation that could result in it being invalidated.

Even if you support campaign contribution limits, Amendment 2 is the wrong proposal to bring them back given its many flaws.

AMENDMENT 3 – CIGARETTE TAX - RAISE YOUR HAND FOR KIDS

OVERVIEW

Amendment 3 is the first of two competing measures to increase state tobacco taxes that will appear on the Nov. 8 statewide ballot. If ratified by voters, it would impose an

additional tax of 60 cents per pack, phased in over several years, on all cigarette brands, while immediately levying an additional wholesale fee of 67 cents per pack on certain discount brands. The wholesale fee would be subject to automatic increases of at least 3 percent a year.

The new tax would generate an estimated \$263 million to \$374 million annually in additional revenue. The bulk of the money would be constitutionally earmarked for early childhood education programs, with smaller portions dedicated for early childhood health care and smoking prevention and cessation programs. Because these would be constitutionally established spending directives, the General Assembly would be bound by them and prohibited from diverting the money for other purposes.

Missouri's current cigarette tax of 17 cents per pack is the lowest in the nation and hasn't been increased since the early 1990s. By contrast, 32 states have cigarette taxes that top \$1 per pack. Of those states, 15 impose taxes of \$2 a pack or more. New York has the highest cigarette tax in the nation at \$4.35 a pack.

Amendment 3's eventual 60-cent-per-pack tax hike would be implemented in four 15-cent-per-pack increments. The first would take effect on Jan. 1, 2017, with the others kicking on the first of the year in 2018, 2019 and 2020. The additional 67-cent-per-pack wholesale fee on certain discount brands would be imposed all at once on Jan. 1, 2017, and thereafter subject to annual automatic increases of 3 percent or the rate of inflation, whichever is higher.

Once the phase-in is complete, Missouri's cigarette tax would total 77 cents a pack for all brands and at least \$1.44 a pack for discount brands subject to the additional wholesale fee, although the actual total tax on those brands will be higher by 2020 due to the automatic annual hikes to the fee.

In the last 14 years, Missouri voters have narrowly rejected proposed tobacco tax hikes three times. The most recent was a 73-cent-per-pack increase in 2012 that received 49.2 percent voter support. The other unsuccessful measures were an 80-cent-per-pack hike that garnered just 48.6 percent support in 2006 and a 55-cent-per-pack increase that fell with 49.1 percent support in 2002.

Amendment 3 was placed on the ballot via an initiative petition launched by Raise Your Hands for Kids, a fundraising and advocacy group organized as a tax-exempt social welfare organization under Section 501 (c) (4) of the Internal Revenue Code.

The Missouri Petroleum Marketers and Convenience Store Association, a trade group representing many tobacco retailers, is leading the opposition to Amendment 3 and is backing a competing – and substantially smaller – cigarette tax that will appear on the November ballot as Proposition A.

On July 8, a three-judge panel of the Missouri Court of Appeals ruled that the original ballot language prepared for Amendment 3 by the Secretary of State's Office was

“insufficient and unfair” because it failed to mention the automatic annual increases to the extra wholesale fee. As a result, the court slightly rewrote the language to make note of the annual bumps to the fee.

The revised ballot language for Amendment 3, as ordered by the Missouri Court of Appeals Western District, followed by the official fiscal estimate prepared by the State Auditor’s Office, reads:

Shall the Missouri Constitution be amended to:

- *increase taxes on cigarettes each year through 2020, at which point this additional tax will total 60 cents per pack of 20;*
- *create a fee paid by cigarette wholesalers of 67 cents per pack of 20 on certain cigarettes, which fee shall increase annually; and*
- *deposit funds generated by these taxes and fees into a newly established Early Childhood Health and Education Trust Fund?*

When cigarette tax increases are fully implemented, estimated additional revenue to state government is \$263 million to \$374 million annually, with limited estimated implementation costs. The revenue will fund only programs and services allowed by the proposal. The fiscal impact to local governmental entities is unknown.

BIG TOBACCO v. LITTLE TOBACCO

The clash between supporters of Amendment 3 and the rival Proposition A, which included a protracted and ultimately unsuccessful legal battle to keep the former measure off the ballot, is serving as something of a proxy war between opposing factions of the tobacco industry, so-called Big Tobacco and Little Tobacco.

Big Tobacco, generally speaking, consists of the large tobacco companies that pay into the ongoing national settlement that was reached in 1998 with Missouri and 45 other states over the companies’ past deceptive marketing practices. Little Tobacco, on the other hand, refers to smaller companies that primarily offer discount cigarette brands. Most of those companies started in the years following the settlement and, therefore, don’t pay into the settlement.

Proposition A, which is backed by Little Tobacco, would increase the tax on all cigarette brands by 23 cents per pack and also impose an additional tax of 5 percent of the wholesale price of other tobacco products, such as chewing tobacco or cigars. Unlike the Big Tobacco-backed Amendment 3, Proposition A doesn’t include an extra wholesale fee on certain discount cigarette brands. This should come as no surprise since the brands targeted by the fee are those sold by Little Tobacco.

The annual payments Big Tobacco companies must make to the states under the national settlement largely are passed on to smokers in the form of higher prices. In an

effort to negate the price advantage this would provide to Little Tobacco, the settlement agreement requires non-participating companies to make escrow payments to account for the possibility of future litigation.

However, because of a loophole in Missouri law that the General Assembly has for years refused to close, the Little Tobacco companies essentially are able to get around the escrow payments. As a result, Little Tobacco brands enjoy a substantial price advantage over those produced by Big Tobacco. The imposition of the extra 67-cent-per-pack fee on Little Tobacco brands is intended to eliminate that advantage.

Because Amendment 3 would amend the Missouri Constitution, while Proposition A would change state statutes, the two measures don't appear to conflict. As a result, if Missouri voters approve both measures, both tax increases likely would be imposed, although the courts ultimately may be called upon to definitively decide the matter.

If the taxes in both measures are levied, Missouri's total cigarette tax – the existing tax plus the Amendment 3 and Proposition A increases – would be \$1 a pack for Big Tobacco brands and \$1.67 a pack for Little Tobacco brands.

OTHER AMENDMENT 3 PROVISIONS

Amendment 3 would constitutionally dedicate the new tax revenue it would generate to a newly established Early Childhood Health and Education Trust Fund. The money in the fund would be required to be spent in the following manner:

- At least 75 percent for grants to early childhood education programs, including preschool, home visitation, parent and family support, and professional development for early childhood education providers.
- At least 10 percent, but no more than 15 percent, for grants to Missouri hospitals for early childhood health and development programs, including obesity prevention, infant mortality prevention, and health and developmental screenings for children age 5 and under.
- At least 5 percent, but no more than 10 percent, for grants for smoking cessation and prevention programs for pregnant mothers and youth.

A new, 13-member Early Childhood Commission would be charged with administering the grants. The commission would consist of the directors of four state departments – health and senior services, mental health, social services, and elementary and secondary education – or their designees; one state senator and one state representative chosen by legislative leaders; the director of the state's Head Start program; three citizens appointed by the governor to respectively represent medicine, business and higher education; and three citizens appointed by the State Board of

Education to respectively represent early childhood education providers, local Head Start agencies and faith organizations.

Amendment 6 would prohibit any of its revenue from being used to fund abortion, stem cell research or tobacco-related research. It also would prohibit illegal immigrants from receiving services or benefits funded by the new revenue.

ARGUMENTS IN SUPPORT OF AMENDMENT 3

Strong early childhood education is essential to future academic success. Unfortunately, too many Missouri children have little or no access to quality pre-kindergarten programs.

Missouri ranks 38th in the nation for pre-kindergarten early childhood education funding.

Amendment 3 will provide a dedicated funding source to ensure that early childhood education will finally receive adequate resources.

Because Amendment 3's funding source is constitutionally protected, lawmakers won't be able to raid the money for other purposes.

Instead of letting politicians decide how the money is spent, those decisions will be made by an independent commission that is protected from political influence.

Missouri's lowest-in-the-nation cigarette tax is an embarrassment. Even tobacco producing states have cigarette taxes that are substantially higher than Missouri's.

Missouri has among the highest smoking rates in the nation. Making cigarettes more expensive would prompt many Missourians to quit.

Amendment 3 closes a loophole that unfairly allows certain companies to sell cigarettes at cut-rate prices.

ARGUMENTS IN OPPOSITION TO AMENDMENT 3

Amendment 3 is a Big Tobacco Protection Act disguised as an early childhood education and public health initiative. That's why public health advocacy groups, such as the American Cancer Society, that have long championed hiking cigarette taxes in Missouri, oppose Amendment 3.

Amendment 3 would give control over hundreds of millions of tax dollars to an unelected and unaccountable commission that would be subject to virtually no oversight.

Education groups, including the Missouri National Education Association and the Missouri Retired Teachers Association, also oppose Amendment 3 because it would allow public tax dollars to be spent on private schools, eroding a long-time constitutional prohibition on using taxpayer money to support private education.

Missouri's low cigarette tax is something of an economic boon for the state. Many smokers in neighboring states, particularly those near the St. Louis and Kansas City metropolitan areas, buy their cigarettes in Missouri because of its low tax. And while they're here, they buy other goods and services as well, generating additional tax revenue and economic activity for the state.

Cigarette taxes are regressive since the poor tend to smoke in disproportionate numbers. It's wrong to single out one segment of society to fund state services, especially people who can least afford to pay higher taxes.

PROPOSITION A – TOBACCO TAX INCREASE

OVERVIEW

Proposition A is the second to two competing measures to increase state tobacco taxes that will appear on the Nov. 8 statewide ballot. If approved by voters, Proposition A would change state law to impose an additional tax on cigarettes of 23 cents per pack, phased in over several years, and immediately add another tax of 5 percent of the wholesale price on other tobacco products, such as chewing tobacco and cigars.

The new taxes would generate an estimated \$95 million to \$103 million a year in additional revenue and purports to earmark the money for transportation infrastructure. Under the Missouri Constitution and state Supreme Court precedent, however, statutory earmarks of state revenue are unenforceable. As a result, the General Assembly would retain the constitutional authority to ignore the earmark and appropriate the money for other purposes, if it so chose.

Missouri's current cigarette tax of 17 cents per pack is the lowest in the nation and hasn't been increased since the early 1990s. By contrast, 32 states have cigarette taxes that top \$1 per pack. Of those states, 15 impose taxes of \$2 a pack or more. New York has the highest cigarette tax in the nation at \$4.35 a pack.

The phase-in of Proposition A's cigarette tax hike would begin with an increase of 13 cents a pack as of Jan. 1, 2017, followed by a pair of 5-cent hikes, one on Jan. 1, 2019, and another on Jan. 1, 2021. Once the phase-in is complete, Missouri's cigarette tax would total 40 cents a pack.

The additional tax of 5 percent of the wholesale price on other tobacco products would take effect all at once on Jan. 1, 2017, producing a new tax rate of 15 percent of the wholesale price.

In the last 14 years, Missouri voters have rejected proposed tobacco tax hikes three times, all narrowly. The most recent was a 73-cent-per-pack increase in 2012 that received 49.2 percent voter support. The other unsuccessful measures were an 80-cent-per-pack hike that garnered just 48.6 percent support in 2006 and a 55-cent-per-pack increase that fell with 49.1 percent support in 2002.

Proposition A was placed on the ballot via an initiative petition spearheaded by the Missouri Petroleum Marketers and Convenience Store Association, a trade group representing many tobacco retailers. Although the association led the opposition to each of the three previous tobacco tax proposals, it is pursuing Proposition A as an alternative to a significantly larger proposed tobacco tax hike that will appear on the November ballot as Amendment 3.

The ballot language prepared for Proposition A by the Secretary of State's Office, followed by the official fiscal estimate prepared by the State Auditor's Office, reads:

Shall Missouri law be amended to:

- *increase taxes on cigarettes in 2017, 2019, and 2021, at which point this additional tax will total 23 cents per pack of 20;*
- *increase the tax paid by sellers on other tobacco products by 5 percent of manufacturer's invoice price;*
- *use funds generated by these taxes exclusively to fund transportation infrastructure projects; and*
- *repeal these taxes if a measure to increase any tax or fee on cigarettes or other tobacco products is certified to appear on any local or statewide ballot?*

State government revenue will increase by approximately \$95 million to \$103 million annually when cigarette and tobacco tax increases are fully implemented, with the new revenue earmarked for transportation infrastructure. Local government revenues could decrease approximately \$3 million annually due to decreased cigarette and tobacco sales.

POISON PILL

Proposition A contains a "poison pill" provision intended to discourage future tobacco tax hikes. The provision states that if any future tobacco tax is placed on statewide or local ballots, then Proposition A's 23-cent-per-pack tax increase "shall immediately, automatically and permanently be repealed and reduced to zero." The repeal would be triggered merely by a tobacco tax proposal going on the ballot and wouldn't require voters to actually approve it.

The validity of this provision is highly dubious as it essentially would repeal the tax in a manner that is outside of and inconsistent with the legislative process set forth in the Missouri Constitution. However, Proposition A also contains a non-severability provision stating that if any section of it is ruled invalid, the entire act is invalid.

As a result, if a court were to rule the automatic repeal provision unconstitutional then the non-severability provision would compel it to strike down Proposition A in its entirety, which would achieve the same result sought by the repeal provision.

EARMARKED REVENUE

Proposition A would direct that the revenue generated from it be deposited in a newly created Transportation Infrastructure Fund, with the funds therein “used exclusively to fund transportation infrastructure.” Since the term “transportation infrastructure” isn’t statutorily defined, Proposition A appears to give lawmakers broad authority to use the money for any manner of transportation project.

However, the constitutional power of the General Assembly to determine state appropriations is absolute, except where specifically limited by Missouri Constitution. Although constitutional spending directives are binding on the General Assembly, such as the constitutionally dedicated one-eighth-cent sales tax for the Department of Conservation or the requirement that casino gambling proceeds be spent solely on education, statutory spending directives are not.

The Missouri Supreme Court repeatedly has ruled that general laws purporting to require the General Assembly to appropriate certain amounts of money for certain purposes or to earmark certain revenue sources for certain purposes are advisory only and can’t be enforced. The Supreme Court first stated this position more than a century ago in *State ex rel. Fath v. Henderson* (1901) 60 SW 1093. Two more recent cases on the subject, both from the Missouri Court of Appeals Western District and citing *Fath* as their authority, are *State ex rel. Kansas City Symphony v. State of Missouri* (2010) 311 SW 3d 272, and *State ex rel. Redmond v. State of Missouri* (2011) 328 SW 3d 818.

Kansas City Symphony involved a law stating that 60 percent of the revenue collected from the state’s athletes and entertainers tax “shall be transferred” to the Missouri Arts Council Trust Fund, which “shall be used solely from the promotion of the arts.” At issue in *Redmond* was a law that says the state “shall” deposit at least 25 percent of the money it annually receives from the national tobacco lawsuit settlement into the Life Sciences Trust Fund, with the money required to be spent for “research to better serve the health and welfare” of Missourians.

The General Assembly repeatedly has appropriated both revenue sources for purposes other than those designated by law, and the Court of Appeals ruled that lawmakers have the constitutional power to do so, regardless of any statutory limitations to the

contrary. As it usually does in cases involving this issue, the Supreme Court let both decisions stand without review.

Although the General Assembly can – and often does – voluntarily follow statutory spending directives, it can't be required to do so and would be free to appropriate the Proposition A revenue for other purposes. However, lawmakers no doubt would face substantial pressure to follow the wishes of voters and spend the money on transportation as the law directs.

ARGUMENTS IN SUPPORT OF PROPOSITION A

Dedicated taxes for transportation haven't been increased since 1996.

In the next couple years, the existing revenue streams that fund the Missouri Department of Transportation are expected to be insufficient to pay for even basic maintenance of the 34,000-mile state highway system.

Proposition A would provide about \$100 million a year in long-overdue new revenue for transportation.

Although \$100 million won't solve the looming transportation funding crisis, it will buy Missouri time to craft a more lasting solution.

Missouri's lowest-in-the-nation cigarette tax is an embarrassment. Even tobacco producing states have cigarette taxes that are substantially higher than Missouri's.

In part because of its ridiculously low tobacco taxes, Missouri has among the highest smoking rates in the nation. Making cigarettes more expensive would prompt many Missourians to quit.

ARGUMENTS IN OPPOSITION TO PROPOSITION A

Nothing would prevent lawmakers from raiding Proposition A's new revenue for purposes other than transportation.

Proposition A supporters who promise new money to improve our roads and bridges have no ability to keep that promise. Since the lawmakers who write the state budget made no promise to voters, they wouldn't be compelled to comply.

Missouri's low cigarette tax is something of an economic boon for the state. Many smokers in neighboring states, particularly those near the St. Louis and Kansas City metropolitan areas, buy their cigarettes in Missouri because of its low tax. And while they're here, they buy other goods and services as well, generating additional tax revenue and economic activity for the state.

Cigarette taxes are regressive since the poor tend to smoke in disproportionate numbers. It's wrong to single out one segment of society to fund state services, especially people who can least afford to pay higher taxes.

AMENDMENT 4 – SALES TAXES ON SERVICES

OVERVIEW

Amendment 4, if ratified by voters on Nov. 8, would constitutionally prohibit the state and local governments from charging sales or use taxes for services that weren't already subject to such taxes as of Jan. 1, 2015. Missouri's existing statewide sales tax of 4.225 percent is levied on most goods, but services are largely exempt.

Amendment 4 was placed on the ballot via an initiative petition spearheaded by the Missouri Association of Realtors, which also was the driving force behind a 2010 initiative that led to passage of a constitutional amendment prohibiting sales taxes from being levied on real estate transactions. Missouri voters ratified the 2010 measure, Amendment 3, with 83.7 percent support.

Amendment 4 would add a new provision to Article X of the Missouri Constitution. That provision, Section 26, would read in its entirety:

In order to prohibit an increase in the tax burden on the citizens of Missouri, state and local sales and use taxes (or any similar transaction-based tax) shall not be expanded to impose taxes on any service or transaction that was not subject to sales, use or similar transaction-based tax on January 1, 2015.

It is a preemptive strike against efforts by billionaire Rex Sinquefeld and his allies in the General Assembly to eliminate the state income tax and replace it with a higher and more broad-based sales tax, a proposal supporters refer to as the "fair tax."

The state income tax provides nearly 70 percent of Missouri's general revenue budget, an estimated \$6.52 billion for the 2017 fiscal year, which is currently underway. Although a massive boost in the statewide sales rate – at least 15 percent under some proposals – would be required if the state income tax were eliminated, the rate couldn't realistically be raised high enough to replace all of the lost revenue.

As a result, the scope of the statewide sales tax would need to be expanded to cover all manner of services that aren't currently taxed. The list of such services is nearly endless, but includes things such as rent, day care, home repair services and haircuts,

along with professional services such as banking, accounting, legal representation and doctor's visits.

Since Amendment 4 would constitutionally block lawmakers from expanding sales taxes to services not currently taxed, it would make attempts to eliminate the state income tax significantly more difficult.

The ballot language prepared for Amendment 4 by the Secretary of State's Office, followed by the official fiscal estimate prepared by the State Auditor's Office, reads:

Shall the Missouri Constitution be amended to prohibit a new state or local sales/use or other similar tax on any service or transaction that was not subject to a sales/use or similar tax as of January 1, 2015?

Potential costs to state and local governmental entities are unknown, but could be significant. The proposal's passage would impact governmental entity's ability to revise their tax structures. State and local governments expect no savings from this proposal.

In addition to the Realtors, the Missouri Bankers Association is also providing financial support for the Amendment 4 ratification campaign. There doesn't appear to be any organized opposition to the measure.

ARGUMENTS IN SUPPORT OF AMENDMENT 4

Sales taxes are regressive and disproportionately harm low-income families.

Applying sales taxes to most services would deliver a crushing blow to many Missourians who are already struggling to support their families.

Levying sales taxes on services would sharply increase the total cost of those services, which would also harm Missouri small businesses.

Since Amendment 4 doesn't stop the state or local governments from collecting any existing tax, it would have zero impact on the budgets of state and local governments.

By preventing sales taxes from being imposed on most services, Amendment 4 will make it harder to shift the tax burden from the wealthy to everyone else by eliminating the income tax.

ARGUMENTS IN OPPOSITION TO AMENDMENT 4

Most services in Missouri have never been subject to sales taxes and probably never will be, even without Amendment 4.

While Amendment 4 supporters say it is a preemptive strike against replacing the state income tax with a more expansive sales tax, such proposals reached the height of their popularity about five years ago and haven't been seriously pursued in recent years.

While there is little desire to expand the scope of sales taxes in Missouri today, the time could come years – even decades – from now when doing so would be a smart and necessary move.

We shouldn't constitutionally prevent future Missourians from properly responding to economic realities that we have no way of foreseeing today.

AMENDMENT 6 – PHOTO VOTER ID

OVERVIEW

Amendment 6, if ratified by voters on Nov. 8, would grant the Missouri General Assembly the constitutional authority to enact legislation requiring voters to show a government-issued photo identification card in order to exercise their constitutional right to vote.

The Republican-controlled General Assembly placed Amendment 6 on the ballot with the passage of House Joint Resolution 53 in May. Lawmakers passed HJR 53 on straight party-line votes of 24-8 in the Senate and 110-39 in the House of Representatives, with Republicans in support and Democrats opposed.

Amendment 6 is the latest move in a decade-long legislative effort to impose a photo voter identification requirement in Missouri. Otherwise eligible voters who don't possess a valid, government-issued photo ID, such as a driver's license, disproportionately tend to belong to certain demographic groups, most notably racial and ethnic minorities, the elderly and the disabled.

Under existing law, voters must show identification in order to vote, but it need not be driver's license or other type of government-issued photo ID. Other acceptable forms of ID include a voter registration card, student ID, paycheck, bank statement or utility bill.

The Missouri Supreme Court ruled the first attempt to enact a photo voter ID requirement violated the voting rights provisions of the state constitution by imposing additional restrictions on the right to vote not authorized by the constitution. Because of that decision, *Weinschenk v. State of Missouri* (2006) 203 SW 3d 201, the legislature cannot require a photo ID to vote unless voters first ratify a constitutional amendment granting lawmakers the authority.

In 2011, Republican lawmakers passed such a proposed constitutional amendment that was supposed to go on the November 2012 statewide ballot. However, the courts again intervened, with Cole County Circuit Judge Patricia Joyce ruling that the ballot language was “insufficient and unfair” and likely to mislead voters as to the proposal’s purpose. As a result, that measure didn’t end up on the 2012 ballot.

For Amendment 6, the General Assembly once again exercised its prerogative under state law to write its own ballot language as part of HJR 53 instead of letting the Secretary of State’s Office handle the task, as is traditional. The legislature’s ballot language, followed by the official fiscal estimate prepared by the State Auditor’s Office, reads:

Shall the Constitution of Missouri be amended to state that voters may be required by law, which may be subject to exception, to verify one’s identity, citizenship, and residence by presenting identification that may include valid government-issued photo identification?

The proposed amendment will result in no costs or savings because any potential costs would be due to the enactment of a general law allowed by this proposal. If such a general law is enacted, the potential costs to state and local governments is unknown, but could exceed \$2.1 million annually.

Although Amendment 6, if ratified, would grant the legislature the constitutional authority to enact legislation imposing a photo voter ID requirement, it doesn’t actually impose such a requirement, which instead would come from separate implementing legislation. Lawmakers rather prematurely enacted the implementing legislation (House Bill 1631) in May even though voters have yet to decide the fate of Amendment 6.

Gov. Jay Nixon vetoed that legislation, House Bill 1631, over the summer, but Republicans, who enjoy veto-proof supermajorities in both the Senate and House of Representatives, overrode the governor during the legislature’s annual veto session on Sept. 14. However, HB 1631 will only take effect if voters ratify Amendment 6.

FEDERAL COURTS AND PHOTO ID

If Missouri voters do ratify Amendment 6, both it and HB 1631 likely will be subject to legal challenges in federal court claiming that the two measures would unlawfully disenfranchise large numbers of otherwise qualified voters. According to the Missouri Secretary of State’s Office, more than 200,000 Missourians don’t have a government-issued photo ID.

When the U.S. Supreme Court issued its 6-3 ruling in *Crawford v. Marion County Election Board* (2008) 553 U.S. 181 that the U.S. Constitution doesn’t prevent states from imposing photo voter ID requirements, the majority said that at that time there was no evidence such requirements would prevent lawful voters from casting ballots.

With eight years of experience with photo voter ID showing otherwise, however, federal courts have started viewing the matter differently, and in recent months have struck down all or parts of photo voter ID laws in three states for intentionally seeking to disenfranchise minority voters. In those cases, judges found the negative impact on minority voting rights to be real, while deeming the stated reason for enacting them – preventing voter fraud – to be either pretextual or illusory.

In a decision by a three-judge panel of the 4th U.S. Circuit Court of Appeals striking down North Carolina’s law in August, Judge Diana Gribbon Motz wrote:

“Although the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist.”

In rejecting parts of Wisconsin’s law in July, U.S. District Judge James D. Peterson wrote:

“The evidence in this case casts doubt on the notion that voter ID laws foster integrity and confidence. The Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities. To put it bluntly, Wisconsin’s strict version of voter ID law is a cure worse than the disease.”

And in another July decision, the 5th U.S. Circuit Court of Appeals said that Texas’ photo voter ID law unlawfully discriminates against black and Hispanic voters and ordered a lower court to craft accommodations for lawful voters who lack a photo ID to cast a ballot in the November elections.

ARGUMENTS IN SUPPORT OF AMENDMENT 6

Requiring voters to prove who they are by showing a valid, government-issued photo ID is not asking too much.

Since most voters already have a photo ID, requiring one to vote will affect only a small minority of voters who don’t. If voting is important to them, they will make the effort to get a photo ID.

Just because no one has been caught engaging in voter impersonation fraud doesn’t mean it doesn’t take place. Photo voter ID will be an effective tool in ensuring our elections are fraud-free.

This is a simple, common-sense safeguard that will protect the integrity of our elections.

ARGUMENTS IN OPPOSITION TO AMENDMENT 6

Amendment 6 is costly, confusing and cuts people out of exercising their right to vote.

Photo voter ID requirements are nothing more than an attempt to disenfranchise large numbers voters.

As federal courts have increasingly acknowledged in striking down photo voter ID laws in other states, such laws do nothing to reduce fraud while unfairly depriving minority voters of their constitutional rights.

Although supporters like to say that a photo ID currently is required to do many things, none of those things are constitutional rights. Voting is.

While getting a photo ID isn't a big deal for most people, it is incredibly difficult for older Missourians whose supporting documentation, such as a birth certificate, was long ago lost or destroyed or, as was once common in many rural counties with spotty record keeping, never existed.

Amendment 6 is a burdensome solution to a non-existent problem.

As the Missouri Supreme Court said in the 2006 case striking down the first photo voter ID bill: "The Photo-ID Requirement could only prevent a particular type of voter fraud that the record does not show is occurring in Missouri, yet it would place a heavy burden on the free exercise of the franchise for many citizens of this State."

Lawmakers supporting photo voter ID have never been able to cite a single case of voter impersonation in Missouri.

Depriving people of their constitutional right to vote doesn't protect our elections, it undermines their legitimacy.