

**IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI**

Stephanie Coen, ET AL)	
a Jackson County resident/voter,)	
)	Case No. 2516-CV21560
Relators,)	
v.)	
)	Division: 10
The Kansas City, Missouri Election Board)	
)	
The Jackson County Election Board)	
)	
Respondents.)	
And)	
)	
Jackson County Election Board and KANSAS CITY ELECTION BOARD,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No.: 2516-CV21738
MARY JO SPINO)	
the Clerk of the Legislature, et al.)	Division 10
)	
Defendants.)	

**RELATORS'/CITIZENS'TRIAL BRIEF AND RELATORS' RESPONSE TO
RESPONDENTS' ELECTION BOARDS' BRIEF**

Relators submit as a Trial Brief and as a Response in opposition of Election Boards' Brief position that November 4, 2025 as the earliest available election day for the recall election of the Jackson County Executive and their request to enjoin scheduling the recall election to be held before November 4, 2025.

INTRODUCTION

It is undisputed and agreed by all parties that the citizens of Jackson County accumulated the appropriate number of registered voter signatures required by the Charter to call for a recall election of the Jackson County Executive. It is undisputed that

in Article XIV of the Jackson County Home Rule Charter, Section 1 states: "The people reserve the power to propose and enact all ordinances ***independent*** of the County Legislature by initiative....to **recall** an elective county officer. It is undisputed and agreed by all parties that the Election Boards certified the signatures. It is undisputed and agreed by all parties that Article XIV, Section 9 of the Charter provides, "A special election ***shall*** be held to consider recall of a county elected officer **within sixty days after the petitions are filed.**"

It is Relators' position that upon the receipt and certification of the qualified signatures, that is the vehicle that is notice for and instructs the Election Boards to act to schedule a recall election and it did not require a county legislative ordinance voted on by the legislature and a chance to veto the election by the County Executive. Relators have made arguments in other pleadings and will not restate but the plain language of the Charter separates the recall election issue from other calls for elections by the legislature and are not the same. Further, the simple effect of this Court's finding that after all the signatures are collected, the actual approval for or against a recall of a county official would be something the legislature and county executive could actually just simply vote down is an absurd conclusion and against public policy and the will of the people.

Relators do agree with the Election Boards that the central issue before this Court is when should the recall election of the Jackson County Executive be held. The Court has consolidated the related cases that argue two different triggering devices of the petitions being received by the Boards as the date the Boards received notice AND the receipt of the legislative ordinance that was overridden by the legislature as the date the Boards received notice. Either way, Relators do not want to argue for any position that would contradict or affect the goal of not **having** an election but it is important to review the

language and the process of the Charter provisions for recall elections for this case and the future.

The Boards are governed by the Charter to hold the election within 60 days of the receipt of the certified signatures and have no authority to interpret that order by the Charter. Relators disagree that November 4, 2025, is the earliest available election date authorized by statute on which a legally compliant recall election can be held and disagree that holding an election before November 4 would violate state and federal laws.

SUMMARY OF RELATORS/CITIZENS' POSITION

The Relators' position is summarized as follows:

1. Under the Jackson County Charter, the Jackson County Legislature has the authority to call elections but the Charter clearly differentiates “recall elections of county officers,” and explicitly allows citizens the ability to call for an election upon collection and receipt of signatures independently of the legislature’s action or an ordinance.

2. The recall petition process initiates the process and the certification of the signatures replaces any other notice and call for an election which is usually a Jackson County Legislature's ordinance in other instances.

3. The Charter expressly provides that the date shall be within 60 days to hold the recall election to allow the Boards to pick the most convenient time for them within the sixty days of receipt of the signatures. It would be up to the Boards to pick the most feasible date to conduct an election within those sixty days.

4. Missouri law (RSMo §115.123.1) requires most public elections to be held on authorized election days: general election day, primary election day, municipal election day, on the first Tuesday after the first Monday in November, the first Tuesday after the first Monday in August in nonprimary years, ***or on another day expressly provided by***

city or county. The Charter does expressly provide another day and even gives a large window of sixty days purposely to give the Boards the most flexibility. Scheduling and conducting the election within 60 days is not contradicted by Section 115 but actually supported by it.

5. The Jackson County Charter does establish "another day expressly provided" for elections as contemplated by statute in giving a window of possible time to conduct.

6. Article XIV, Section 9 of the Charter, which requires a recall election be held "within sixty days after the petitions are filed," does not conflict with Missouri law because it demands a date within a time frame that the Boards can choose that meets all other issues like a Tuesday and other concerns.

7. The recall election for Jackson County Executive must be held within 60 days or the next feasible date to meet other issues under Missouri law.

8. Attempting to hold the recall election on August 26, 2025 or at the most feasible time thereafter, would not violate multiple state and federal laws. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) primarily addresses voting in *federal* elections, ensuring that members of the uniformed services, merchant marines, commissioned corps, and U.S. citizens residing abroad can vote absentee in presidential, senatorial, and congressional elections. However, the UOCAVA does not directly mandate coverage for *state and local recall elections*. While UOCAVA mandates federal election coverage, states have the authority to implement their own laws, including whether or not to extend absentee voting protections for recall elections to UOCAVA voters. As a result, the extent to which UOCAVA voters can participate in recall elections varies depending on individual state laws. Missouri has not chosen to include recall elections under their UOCAVA provisions.

There is no violation of Missouri's absentee voting laws to conduct an election within sixty days or as soon after as feasible as Section 115.279 RSMo states an *“Application for an absentee ballot **may** be made by the applicant in person, or by mail, or for the applicant, in person, by his or her guardian or a relative within the second degree by consanguinity or affinity.”* There is no statutory requirement of timing. There are timeframes governing when the Boards can respond to an application and time frames of the process of handling those applications and absentee ballots but nothing infringing on the rights of someone to apply for an absentee ballot in a shorter election timeframe. An application for an absentee ballot is a power granted to a voter who may not be able to appear in person on election day and not a power the Boards enforce based on timeliness of an election.

There are no issues of notice that an election of sixty days or as soon as feasible thereafter would violate. *Section 115.125 RSMo* deals with notice of election, when given, exceptions, late notification, and procedure. The law even authorizes elections after eight weeks when it states in Section 3: *“No court shall have the authority to order an individual or issue be placed on the ballot less than eight weeks before the date of the election.”* Direct and clear within the notice statute of Missouri, it confirms and allows that there are certainly instances under Missouri law where there can be elections in eight weeks, but not before, and that the Court can order an election after 8 weeks which is approximately 56 days. So any election scheduled within 60 days or as soon as feasible thereafter does not conflict with state law.

The recall election can be held anytime either within sixty days after the receipt of the signatures, on August 26, 2025, or any other date the Court would deem feasible and nothing requires it to be held on November 4, 2025.

PROCEDURAL HISTORY

On July 9, 2025, Relators filed their original Writ of Mandamus naming the Election Boards, as Respondents, requesting the recall election of Frank White, Jr., be held on Tuesday, August 26 and then amended the request for relief to include the language of the option of scheduling the recall election “or as soon thereafter as feasible.”

On July 18, 2025, the Election Boards filed their Answer to Relators’ original Writ of Mandamus, raising several defenses of the legal impossibility of conducting an August 26, 2025, recall election.

The Amended Writ asks this Court to declare that “under The Jackson County Home Rule Charter upon receipt of the verified signature petitions in a recall election of a county official meeting the amount required under the Charter, the election board receipt/verification is the vehicle that triggers the recall election and no action from the legislature is required in a recall election.”

The Amended Writ further asks this Court to order that “under the Charter, the recall election shall be held within sixty days, but if the Court finds that is not legally possible under election laws, then to Order the Respondents to schedule the recall election at the soonest opportunity that allows under any other conflicting laws and not just automatically default to the November 2025 scheduled election.”

On July 22, 2025, this Court consolidated the Writ of Mandamus (Case No. 2516-CV21560) and the Petition of Declaratory and Injunctive Relief (Case No. 2516-CV21738) into this action.

ARGUMENT

The Jackson County Home Rule Charter does not “invade the province of general legislation involving public policy of the state as a whole.” *Pepper v. St. Charles Cnty.*,

517 S.W.3d 590, 595 (Mo. App. E.D. 2017). There is no conflict existing because the charter is not permitting anything that the statute prohibits” or “prohibits what the statute permits.” *Home Builders Ass’n of Greater St. Louis, Inc. v. City of Wildwood*, 107 S.W.3d 235, 238 (Mo. banc 2003). The Boards have cited caselaw relevant to conflicts but have not produced evidence of a conflict.

The Boards try to categorize a recall election with other regularly held elections in every cycle but refuse to acknowledge that a recall election is an exception to every rule. Recall elections are inherently different. A recall election is never scheduled as it only comes up in rare situations of application to remove an elected official by a local jurisdiction who is granted with the authority to govern its elected positions, terms, etc... These actions cannot be expected to confine to specific timeframes and the importance of expediency of having the voters deciding recall elections far outweigh the procedurally timing of a typical municipal, primary, or general election. They are unique actions under a democracy and much deference is given to the local jurisdiction doing so and should be given in this instance. Further, the Charter is clear with a time frame specifically to give the Boards the most flexibility. For the Boards to agree the language gives them a specific window to schedule the election, but it does not expressly give a date is an illogical argument that would void the entire initiative process.

This case has no conflict between state law and county charter provisions. Missouri's comprehensive election law establishes specific dates for when regularly held elections can be conducted but that does not prohibit the recall elections differences or void the provided for dates for a recall election. To the contrary, the law specifically allows for these anomalies of different dates being allowable when it states: **“or on another day expressly provided by city or county charter;”** thereby clearly putting the Boards on

notice that there are election date instances other than the regularly scheduled election dates that are valid to conduct an election.

The Jackson County Charter provision requiring a recall election within sixty days after petitions does not conflict with Missouri's statutory scheme for the conduct of elections, which includes specific requirements for election timing, certification deadlines, and military, overseas, and absentee voting deadlines. The Boards have not given any specific evidence of those conflicts and just casually mentioned that there are conflicts but Relators cannot find those exist to void a lawfully called recall election. The County Charter's sixty-day recall provision is valid and can be legally enforced.

**NOVEMBER 4, 2025 IS NOT THE EARLIEST AUTHORIZED DATE
FOR THE RECALL ELECTION AND THE COURT CAN WEIGH THE
CONCERNS AND ORDER AN EARLIER DATE**

While Section 115.123 establishes the permissible public election days in Missouri, there are many exceptions in the statute for special elections. And even though the special election exception in section 115.123.2 mentions "special elections to fill vacancies and to decide tie votes or election contests," it is only the Boards' opinion that a special election to recall an office holder is not a permitted exception to the public election days. As recall elections are so very rare, there is no conclusive evidence that the Missouri legislature's omission of mentioning specifically a city or county recall election in the list of special elections means it was a clear intent that recall elections must be held on a regular election day. Recall elections of city and county officials are always a local issue and the state legislature would not intend to prohibit it because of its omission because it is not a state issue. Every special election exception mentioned in Section 115.123 are for state election issues. The state defers to the city or county charter to govern the recall elections of their own office holders and always has.

The Boards do provide a great example of how the Charter of the City of Independence, Missouri, illustrates recall elections. In Independence, the recall election instructions on Article 7 Section 10 state, “The council, after receiving notification from the city clerk that the petition is sufficient, shall submit the question of recall to the registered qualified voters of the city or of the district.” There is no vote by the council or an ordinance but just the notification of the appropriate amount of signatures reached shall order the question to be sent to the voters. This language is exactly in line with the Jackson County Charter as in what triggers a recall election as there is no step of the elected body voting up or down on an ordinance to order an election.

However, the Boards have cited the Independence Charter as they have just recently changed the language in their charter on when that election should be held from “not less than thirty (30) days and not more than ninety (90) days after receiving the notification of the city clerk” to now read “to be held at the next legally available election.” This change was made in 2024. The Boards will argue that this language in the Independence Charter is an “expressly provided day” but the argument that the Jackson County Charter language of “within 60 days” is not an expressly provided time is a weak argument. Each Charter clearly gives direction to the Boards to pick a date based on the Boards’ election concerns but as expedient as possible. That is what is important to remember. Every single recall election in every jurisdiction in the state of Missouri calls for expediency first and foremost.

The Boards state that November 4, 2025, is the next available authorized election day, but these arguments fail after review.

1. The Boards state that under section 115.125, RSMo they must receive notice of an election within 10 weeks but agree there are exceptions to that rule for

special elections but disagree the recall election falls within that. On one hand that means, they can hold an election within ten weeks of the receipt of the signatures even though that would be after the sixty days or around the first couple weeks of September to meet any compliance time Section 115.125. On the other hand, the Jackson County Home Rule Charter gives clear and unequivocal notice that an election shall be held within sixty days and that notice was delivered upon certification of the signatures. The argument that the election can be only held on November 4, 2025 because of notice to the Boards is not valid and should be denied as a reason not to schedule an earlier election date.

2. The Boards state that Compliance with military and overseas voter requirements prohibits an earlier date than November 4, 2025 but as mentioned before; The federal act specifies state responsibilities “(a) *In general Each State shall— (1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.*” The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) primarily addresses voting in federal elections for eligible individuals, which include Members of the Uniformed Services on active duty and their families, Members of the Merchant Marine and their eligible dependents, Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration, and U.S. citizens residing outside the U.S. UOCAVA requires states to allow these individuals to register and vote absentee in federal elections. Most states also extend this to include state and local elections.

Regarding recall elections specifically, UOCAVA's primary function is to enable absentee voting for eligible citizens who are away from their registered address, including those overseas for regularly scheduled federal elections but not for all special elections. And the law is designed to make sure overseas voter can be involved if they choose to. Nothing in the timing of an election disallows an overseas voter from participating and the Boards can adjust timeframe of sending/receiving/counting of those ballots as they see fit. The urgency of special elections in recalls and even filling vacancies cannot abide by the long duration of the overseas process so is therefore not always applied in state and local special elections. This argument for not holding the election at the most feasible time based on the Boards not wanting to adjust absentee ballot process timeframes is not one that should be allowed. An overseas voter or military voter should always be able to be involved in regularly scheduled federal elections for office holders but not proceeding in the most expedient manner in conducting a recall election in a local jurisdiction outweighs that absentee voter's ability to be involved in such a specific and time sensitive issue.

3. The Boards claim that full access for absentee voters prohibit the election being held before November 4, 2025 but nothing prohibits the Boards from utilizing other avenues for absentee voters or disabled voters within the shortened election timeframe. It is their job to accommodate those voters regardless of timeframe.

4. The argument of an adequate time for voter registration and education is an irrelevant issue in regard to the timing of an election. The time to register to vote is the same in any election.
5. The Boards have a regularly scheduled primary election date on August 5, 2025 so they should have been preparing and testing voting equipment and that argument that they could not be prepared before November 5, 2025 is a disservice to the employees of the Boards that have moved mountains to make elections possible in the most recent example of during the pandemic.
6. Recruiting and training of election judges and securing polling locations are not reasons to withhold the public's right to an expedited recall election and are obstacles the Boards have overcome in the past many times.

Also, the Boards cite the election costs as a reason for a delay but the Boards do not pay for these costs and their opinion of what is an efficient use of county resources is irrelevant. The Boards are an administrative government agency that now are trying to exert some unauthorized policy arguments when they have not been granted such. Allowing these arguments to sway this issue will only allow the Boards authority to question any election issues they do not like. The Boards are not an elected body accountable to the people and for the Boards to make this sort of policy decision to the detriment of the people of Jackson County, the Jackson County Charter, and the Legislatures is ridiculous.

THE PETITION PROCESS AND PETITION VERIFICATION "TRIGGERS" **RECALL ELECTIONS BASED UNDER THE CHARTER**

The Boards mistakenly cite Relators position that they think the Election Boards have the legal authority to independently call elections because they do not. They are missing the first step. It is the receipt and verification of signatures that trigger the

election as is clear in the Charter. The Boards do not independently do that. They only certify and then follow the directive of the Charter to hold the election within 60 days. Of course, the Boards do not independently “call” for an election. The Charter specifically shows the process and that notice of the call for the election is clear in the Charter.

Relators agree that the Election Boards are administrative bodies with limited statutory powers and cannot and should not question calls for election whether they come from citizen petitions or legislative ordinance. The Boards should also not concern themselves on whether an issue is an appealable one as it is not in their purview as an administrative agency or they may have their own legal opinions about the next election issue and whether it could be appealed as a reason not to comply with a call for an election.

Relators further disagree with the Boards continued argument that the Charter explicitly assigns election-calling authority only to the County Legislature when the Charter clearly states that the citizen petition process election-calling process can be done independently of the legislature. It is in the very first line of the Charter dealing recall elections. The Boards then cite that the Election Boards lack authority to appropriate the substantial funds required for a special election. The Board argues that under Relators’ theory, unelected administrative bodies would gain the unprecedented power to commit county resources without legislative authorization but do not realize the Boards have no power to commit county resources as the Charter orders it and the legislature shall appropriate those funds. Again, an issue that is not relevant for the Boards to raise as the legislature has already agreed to the funding of the recall election.

The Boards are on point when they state while the Charter grants citizens the power to initiate the recall process through petitions, but this merely starts the process—it

does not bypass established governmental funding procedures. The Charter establishes the Election Boards as verifiers of petition signatures and does create the Board as an independent recall election ***scheduler*** within 60 days of their verification. Nothing in that interpretation creates the Election Boards operating as autonomous entities with authority to override both state election laws and the County Legislature's constitutional role. To the contrary, the Boards' position acknowledging that the citizens accumulate almost 43,000 signatures but then the county officials can vote yes or no on authorizing a recall election is the absurd result. Relators agree the Courts must avoid such unreasonable interpretations. See *State ex rel. Killingsworth v. George*, 168 S.W.3d 621, 623 (Mo. App. E.D. 2005).

Throughout this process the County Executive constantly has been conveying his "legal" position that it must be a legislative ordinance to call for an election for the sole reason that would allow him the opportunity to veto it and the Boards have followed along with that position. There seems to be an inherent conflict in the Boards fighting against a recall election for the County Executive. Jackson County Election Board employees' salaries are paid by Jackson County, (KCEB are paid in part by Jackson and in part by Kansas City), the employees have health care provided by Jackson County, and Board employees are "de facto" Jackson County employees arguably under the supervision of the County Executive. It is undisputed that the County Counselor under direction of the Executive has had numerous conversations and given legal advice to the Election Boards before, during, and after the signature certification. With this analysis, there is clearly motivation for some legal position in this matter when it is clear that the proper procedure for calling a recall election is that when the Boards certified the signatures, an election should be held within sixty days so the issue came to a halt. Only until Relators filed this

action, did the Boards then act. And then even after facing those biased legal opinions and to be safe, the Jackson County Legislature, in hearing the absurdity of the County Executive's and the Board's position, did follow through and passed an ordinance and picked a date within 60 days according to the direction of the Charter.

It seems from the Boards' argument that they have agreed that the ordinance passed by the legislature did trigger that an election WILL be held but disagree that WHEN an election should be held. But in citing they are working towards the will of the people of Jackson County, this administrative governmental body of the Elections Boards wants this Court to throw out the entire ordinance because of the date to prohibit a recall election at all?

Finally, the legal positions of the parties could not be more clear but weighing the grave importance of protecting the people's right to an election over an administrative bodies' complaints about timing could not be more different. There is no harm to the Boards in an earlier date than November 5, 2025. It is their directive to conduct elections and maybe a recall election has more timing issues than others, but that is their job to conduct elections. Period. And the sheer lack of not even offering a compromise date earlier than November shows their motive is not in the public's interest but a motive in creating a new power granted to them in enforcing their interpretation of the law over the clear mandate of the people and the Charter and of the elected members of the Jackson County Legislature. And maybe shows a bias of assisting the County Executive in remaining in office.

In Missouri, while election dates are primarily set by statute or specific bodies, judges play a role in certain circumstances. In special elections, Courts can call special elections to fill vacancies. They also have the authority to fix the date for these special

elections, provided the call is made at least 60 days in advance. Of course, in situations where there are legal challenges or disputes concerning an election, such as a tie in a non-judicial election, a judge may be involved in resolving the issue, which could indirectly affect the election process. Also, cases involving election-related legal issues, such as the minimum wage and paid sick leave vote, can be heard by the Court. Finally, the Missouri Supreme Court confirmed a governor's decision for an August vote on a Kansas City police funding after it was initially challenged. This highlights that while a body may have authority to move for a special election date, the court can still review or confirm such decisions and specifics on election issues and dates.

Relators agree that established election dates are often set by statute or bodies like election authorities, city councils, or county legislatures but judges typically intervene in specific legally defined situations related to elections. This recall election issue is rare but extremely important to the democratic process. The citizens have done their duty under the Charter to bring this issue to the voters for a recall election. The County Legislature has done its duty to call for an election to bring this issue to the voters for a recall election. Only the Election Boards and the person being recalled, want to deny an expedited election process in following the will of the people and this Court should rule that an election was triggered by the certification of the signatures and also was triggered by the county ordinance so there is no question that there **will** be a recall election. Further, the Court should evaluate the positions and rule that the election must be held either within sixty days of the certification of the signatures, on August 26 per the ordinance, or order the election be held in the most feasible expedited date and not have the people of Jackson County wait until November 4, 2025 due to technical arguments.

CONCLUSION

For the foregoing reasons, the Relators/Citizens respectfully request that this Court:

- A. Grant Relators' Amended Writ of Mandamus that under the Charter the certification of the signatures triggered the conclusion that a recall election **WILL** be held;
- B. Grant Relators' Amended Writ of Mandamus that under the Charter the Boards **shall** conduct the election within sixty days or as soon as feasible with their concerns, and the Court pick that date after hearing those issues;
- C. Or in the contrary, sever the Legislature's ordinance into two topics of: 1. **if** the election is to be called and 2. **when** the election is to be held; and for the Court to determine that the recall election shall be held **and** for the Court to pick the feasible date of the recall election and not wait over four months from when the citizens signatures were certified.
- D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above was e-filed in this matter to be transmitted to all parties pursuant to the Court's e-filing protocol.

A handwritten signature in black ink, appearing to read "Phil LeVota", written over a horizontal line.

Attorney for Petitioner