IN THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI

STEPHANIE COEN, et al. Plaintiffs, v. JACKSON COUNTY BOARD OF ELECTIONS, et al., Defendants, AND JACKSON COUNTY ELECTION BOARD, et al. Plaintiffs, v. MARY JO SPINO, et al. Defendants.	)	Consolidated Case Nos.: 2516-CV-21560 (lead) 2516-CV-21738

DEFENDANT MARY JO SPINO'S TRIAL BRIEF

Mary Jo Spino, in her official capacity as the Clerk of the Jackson County Legislature ("Clerk Spino"), by and through her undersigned counsel and pursuant to the Court's Order of July 29, 2025, hereby submits this Trial Brief in support of her position on the final merits in this consolidated case. Ms. Spino urges the Court to find (1) the date of the recall election must be set as all prerequisites in Section 9 of the Jackson County Charter have been satisfied, and (2) the election should be set at the earliest possible date

consistent with Missouri and federal election law to the extent it applies to a recall election in a constitutional charter county.

In support thereof, Clerk Spino respectfully states as follows:

I. INTRODUCTION

In this consolidated dispute, Clerk Spino's role as Clerk of the Jackson County Legislature ("the Legislature") is almost entirely ministerial. When the requisite conditions under Article XIV, Section 9 of the Jackson County Charter are met—and the requisite number of signatures calling for the recall are obtained—her role is to certify and send the resulting resolution or ordinance from the Legislature regarding the recall to the relevant election authorities. The Clerk lacks any discretion beyond that straightforward duty. *State ex rel. Ferro v. Oellermann,* 458 S.W.2d 583 (Mo. App. 1970) (holding that city clerk's certification of signatures for city-wide recall petition was a purely ministerial act). That same logic applies to the other governmental officials and bodies who are also parties to this consolidated action. Once the requisite number of voters have called for a recall, the Jackson County Charter directs that all county officials and bodies to act to place the measure before a vote, without any room for discretion. *Id. citing State ex rel. Voss v. Davis, Mo*., 418 S.W.2d 163, 167 (Mo. 1967). ("It is not in keeping with such construction to allow those [recall] rights to be thwarted by the act of a single individual, who makes no explanation for her action and who now contends that such action is not subject to judicial review.")

The positions reflected in the pleadings filed to date do not dispute that the requisite acts have been taken under the Charter to authorize a recall vote. The petition was submitted, signatures verified by the boards, and the Jackson County Legislature and Clerk have acted on the petitions with as much immediacy as is possible. The lone remaining issues for the Court are whether the existing ordinance directing a recall election on August 26, 2025[1] can be severed and cured, and when that election should be held in accordance with applicable law.

Although the recall election must conform to federal and state election statutes to the extent they apply, it does not also mean that the recall election should default to the next scheduled general election as suggested by some of the parties. Instead, the intent of Article XIV, Section 9, and the whole reason the people of Jackson County "reserved the right" to recall their county officials, is to allow the people of Jackson County to exercise political accountability over office holders *outside* the normally scheduled election cycle. This right to recall has long been recognized as a "right[] reserved by the people, and as such are to be construed to make effective the reservation of power to the people." *State ex rel. Ferro v. Oellermann*, 458 S.W. 2d 583 (Mo. 1970). Though the Court cannot give literal effect to the 60-day timeframe of Article XIV, Section 9, it may still effectuate the

[1] Clerk Spino acknowledges that the August 26, 2025 election date directed in the Ordinance does not comply with notice provision of Chapter 115 if the Chapter is found to apply to recall votes authorized by a constitutional county charter, which is an open question of law in this state.

underlying and clear *intent* by setting a recall election the Tuesday first available under state and federal law. Clerk Spino respectfully suggests that date would be as soon as September 30, 2025.

The Charter further provides how such relief may be granted, given the apparently mandatory deadlines in the Charter and the express date in the authorizing ordinance. Article XIII, Section 15 of the Charter[2] provides the remedy: provisions of the Charter severable if in conflict with state or federal law. Chapter 1, Section 120.11 of the Jackson County Code does the same with respect to each and every provision of an ordinance.[3]

---

[2] Article XIII, Section 15. The articles, sections, paragraphs, sentences, clauses, and all other parts of this charter are severable, it being the purpose of this charter to provide for the government of Jackson County, Missouri, in compliance in all respects with the constitution of Missouri and with the laws of Missouri except insofar as said laws are legally modified or legally supplanted by this charter. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any one or more articles, sections, paragraphs, sentences, clauses or other parts of this charter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this charter, but the effect thereof shall be confined to the articles, sections, paragraphs, sentences, clauses or other parts of this charter so adjudged to be invalid or unconstitutional.

[3] Chapter 1, 120.11 Severability.

The provisions of every ordinance are severable. If any provision of an ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the ordinance are valid unless:

a. Inseparably Connected With Void Provisions. The court finds the valid provisions of the ordinance are so essentially and inseparably connected with and so dependent on the void provision that it cannot be presumed the County Legislature would have enacted the valid provisions without the void one;

"This allows the Court to "blue pencil" (amend) the portions of the Charter and ordinance that conflict with state and federal law (here, the August 26 date of the election), but still give effect to the intent by granting the alternative remedy sought by the voter's mandamus action: setting the recall election on the soonest date that complies with state and federal election laws. By giving effect to the intent behind Section 9 and the ordinance, the Court's use of the "blue pencil" is a proper exercise of judicial intervention that has been recognized by the Missouri Supreme Court. *Legends Bank v. State*, 361 S.W.3d 383, 387 (Mo. 2012) (allowing severance if the remaining "valid provisions, standing alone" are complete and "capable of being executed in accordance with the [people's] intent.")[4]

Finally, as fully set out below, the Court should not be constrained from setting the election on the first available Tuesday by considerations of cost or conserving resources. Such a suggestion is contrary to the plain language of the Charter and the express intent that the election be held as soon as lawfully possible. The popular and statutory right of County residents to recall their elected officials cannot be thwarted or delayed for the sake of a more convenient time or an arguably more "cost-effective" process. Such

---

b. Valid Provisions Incomplete. The court finds that the valid provisions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

(Ord. 1142, Eff. 01/01/84)

[4] Clerk Spino is aware of no case directly on point for severance with respect to a county charter or ordinance, but the cited case with regards to the doctrine as to state statutes, such as *Legends Bank,* should guide if not control the Court's treatment of the issue.

considerations are not part of the analysis; if they were, language to that effect would appear in Article XIV, Section 9 or in Missouri statute. They do not, and such considerations are not germane to the issues before the Court. In fact, as with all county elections, it is Jackson County who pays the costs of the election, not the relevant election boards or any other body.

II. REVIEW OF THE PROCEDURAL RECORD

Before delving into the substance of this dispute, it is critical to note, that other than a discretionary act of the county executive, all officials acted upon the recall petition in the most expeditious manner possible. To the extent it is implied that there was delay, there was none from any of the entered parties, other than the executive's decision to veto the Jackson County Legislature's ordinance.

On Friday, June 27, 2025, petitioners filed with the election boards a petition with the requisite number of signatures to initiate a recall vote. The election boards verified the petition on Monday June 30, 2025. Stipulation, ¶¶14, 15. Exactly one week later, on July 7, 2025, the Jackson County Legislature adopted both an ordinance and resolution that placed the question on the ballot for an election on August 26, 2025. Id. ¶¶16, 17. The only arguable delay in carrying out the ministerial acts by the officials in setting the recall vote was due to the actions of the County Executive. The Jackson County Charter provides the Executive with as much as ten days in which to approve or veto an ordinance. On the final day, July 17, 2025, the Executive issued his veto, claiming the election date violated state and federal law. ¶22 The very next day, July 18, 2025, the Jackson County Legislature

overrode the Executive's veto, and Clerk Spino forwarded the ordinance to the election boards that same day. ¶¶23, 24.

The Court should be mindful that if it precludes a recall vote due to concerns about absentee and overseas voters, those defects did not arise from any dilatory action on the part of the petitioners, the election boards in certifying signatures, Jackson County Legislature in passing the ordinances/resolutions, or Clerk Spino in forwarding on the same to the Boards. The time frame issues raised by the Boards with regard to overseas and absentee ballots would almost certainly be present in any recall case that might have arisen under the Charter.

That is certainly the case with two other infirmities raised by the Boards regarding authorized election days under Sec. 115.123, RSMo. and the notice provision of Sec. 115.125, RSMo. are even more inherent to the Charter authorized process. The Boards' position, for instance, that the date of August 26, 2025 could never be authorized in the first place because it would not be a date allowed by Sec. 115.123 RSMo, and the notice period required by Sec. 115.125, RSMo. Indeed, the boards seemingly suggest notice should have been made a week before the petition was even submitted. If the Court accepts the boards' position—and it should not—then the Court will effectively nullify the recall right that the people of Jackson County reserved for themselves in their Charter. The boards' argument would mean Chapter 115 causes *any* special recall election under the charter to fail the instant the signatures are placed in hands of the election boards.

If this is truly the position of the Boards, then the filing of this declaratory judgment action on July 17, 2025 is curious. The boards themselves received the recall petition on June 27, 2025, and verified signatures the following Monday, June 30, 2025. The purported infirmity due to sections 115.123 and 115.125 was known to them on that date, and the controversy was certainly real: the election boards had properly determined that the requisite voters of Jackson County had signed the petition. Yet their declaratory judgment petition pointing out this infirmity came only weeks later.

If the Court finds procedural violations of the recall vote—and it need not —then the Court cannot act to wholly thwart the recall vote in total. "In initiative and referendum [of which the right to petition a recall is included], the people are exercising power reserved to them… [and those provisions] are given a liberal construction to effectuate the policy thereby adopted [and so] construed so as to make effective the reservation of power by the people.'" *State ex rel. Voss v. Davis,* 418 S.W.2d 163, 167 (Mo. 1967) (further finding that the procedural rules pertaining to initiative and petition rights should not be interpreted as if they were "a rule in a checker game…"). Whatever the final disposition of the case, the case law requires the Court to afford every interpretation in favor of preserving the recall vote that more than 42,000 citizens of Jackson County demanded and the duly elected Legislature that passed the ordinance.

III. STANDARDS FOR RECALL ELECTIONS

From the outset, recall petitions—like initiative petitions—which arise from direct action by the people, are treated differently under Missouri law. Initiative, referendum and

recall are rights reserved by the people, and as such are to be construed to make effective the reservation of power by the people. State ex rel. Ferro v. Oellermann, 458 S.W.2d 583, 586 (Mo. App. 1970) citing *State ex rel. Voss v. Davis, Mo*., 418 S.W.2d 163(Mo. 1967). "Provisions reserving to the people the powers of initiative and referendum are given a liberal construction to effectuate the policy thereby adopted. Such provisions should be construed so as to make effective the reservation of power by the people." *Voss,* 418 S.W.2d at 167. In interpreting all matter of law in this case, the Court must under the case law adopt an interpretation of the Charter, and state statutes consistent with and in deference to holding the recall vote.

Indeed, the case law in this state would suggest that even if a given procedural part of Chapter 115 is violated in some way, it could not be a basis for invalidating a recall vote due to importance, since "[w]here a statute merely requires certain things to be done and does not prescribe the result if they are not done the statute is deemed directory rather than mandatory, and not essential to the validity of the proceeding." *State ex rel. Ferro v. Oellermann*, 458 S.W.2d 583, 586–87 (Mo. App. 1970) citing *State ex inf. Atty. Gen. ex rel. Lincoln et al. v. Bird*, 295 Mo. 344, 244 S.W. 938(3) (setting recall matter for vote even though the requirements of clerk certification was not satisfied under the stated principle.)

IV. THE PROVISIONS OF CHAPTER 115 MAY NOT CONSTITUTIONALLY BE APPLIED IN SUCH A WAY AS TO STRIP THE PEOPLE OF JACKSON COUNTY OF THEIR RIGHT TO RECALL THEIR COUNTY OFFICIALS

As the parties stipulate, Jackson County is a constitutional Charter County formed by a vote of the people of Jackson County under Article VI of the Missouri Constitution. The Missouri Supreme Court has recognized that the Missouri Constitution specifically mandates that charter counties "***alone*** [have] the right to determine 'the number, kinds, manner of selection, terms of office and salaries' of its county officers" and that such decisions are not subject to statutory restrictions by the General Assembly's statutes. *State on Info. of Dalton ex rel. Shepley v. Gamble*, 365 Mo. 215, 224, 280 S.W.2d 656, 660 (Mo. 1955) (emphasis added). The Supreme Court's recognition of the exclusive right to manage purely county-level office holders is tied to the very first, and most fundamental, provisions of the Missouri Constitution, that is the notion that "the people of the state are sovereign" and that the people of a county "have the inherent, sole and exclusive right to regulate the internal government and police thereof. . ." *Id. citing* Mo. Const. Art. I, Sec. 1, 3.

Article XIV, Sec. 9 of the Jackson County Charter makes it clear that when the people of Jackson County created and voted for their Constitutional Charter Government, they specifically "reserved" their right to "recall" county officials pursuant to the procedures set forth in the charter. *State ex rel. Ferro v. Oellermann,* 458 S.W.2d 583, 586 (Mo. App. 1970) ("Initiative, referendum and recall are rights reserved by the people, and as such are to be construed to make effective the reservation of power by the people.") The boards' reading of Chapter 115, which might entirely strip the recall right away from the people of Jackson County, would effectively use a state statute to excise the constitutionally protected right to manage their own county officials. That result would

violate the Missouri Constitution's guarantee that the people of a charter county alone have the right to define the "manner of selection, and terms of office and salaries of county officials" without interference by the General Assembly. Mo Const. Art. VI, Sec. 18(b).

Indeed, the right to recall a county office holder is effectively a modification of the term of office—all officials in Jackson County are elected for a "term" of a certain number of years, *unless* recalled by the voters prior to that term, and the case law confirms this tying the right to recall with the reservation of powers for charter jurisdictions to determine the "terms" of office. *See State ex rel. Voss v. Davis,* 418 S.W.2d 163, 171 (Mo. 1967*)* (noting that proposed petitions which shorten the term of charter office "is to effect a change in the terms of the elected officials generally. Which is preserved by constitutional guarantee.") Additionally, the Court noted that the terms of charter officers could already be shorted by the right to "submit recall petitions seeking the removal from office of an elected official.") It is true, that Article XIV, Sec. 18(m) contains the proviso that the constitutional grant of authority to the county is plenary "except [as to] those powers to regulate and provide for free and open elections" but that exception does not change this principal for three reasons.

First, it is not clear that the cited provisions of Chapter 115 even pertain to recall elections at all. The Boards are correct that the General Assembly knows how to specify "recall" elections when it so wishes. But they have only done so in two places in Chapter 115: the statement in Sec. 115.637(6), RSMo. that "recall petitions" are included in the matters which may give rise to criminal liability if an employer attempts to prevent an

employee from participating in the petition process, and second, the types of votes which are not subject to the Mail Ballot Election Act in Sec. 115.655(4), RSMo. Other than those two isolated sections, Chapter 115 gives no express treatment regarding any statewide regulation of a "recall election" or a "recall petition." That makes sense, because recall elections in this state only occur at the local level; it is a foreign concept to any statewide vote. Thus, if anything, the absence of any express treatment the provisions of Chapter 115 regarding recall elections or procedure should be deemed as a legislative choice to leave said matters to local authorities and not subject them to statewide regulation. The response to this may be to point out that the Chapter broadly applies to any "public election" but the Missouri Supreme Court has noted that that term is actually not defined. *See e.g. Salamun v. Camden Cnty. Clerk,* 694 S.W.3d 424, 430 (Mo. 2024), reh'g denied (Sept. 3, 2024) (noting that election of lake area business district advisory board under Sec. 67.1175.1, RSMo. was not a "public election" as defined by Chapter 115).

Second, to accept that Chapter 115 falls writ large into the proviso of Article VI, Sec. 18(m) would require the Court to believe that any election held which is not subject to specific provisions cited by the Boards are inherently not "open and fair" (e.g. that any election without 10 weeks' notice to the election board is presumably unfair). But that cannot be the case, because Chapter 115 itself does not even apply the cited requirements to every vote conducted in the state—exceptions acknowledged by the Board as existing but asserted to not applicable to this case (e.g. special elections, vacancy elections, or disposition of property). Indeed, the board's argument is really that holding the election at

any other time election other than November 4, is not that such election would be "unfair" or "closed" but rather that it would not meet the strict reading of Chapter 115 and further would be prohibitively costly and difficult to administer.[5]

Third, the application of these statutes would effectively read the general exemption for laws guaranteeing "free and open" elections to invalidate the very specific grant of constitutional authority to constitutional charter counties to manage their own purely county officials. It would be reading a conflict into Art. VI, Sec. 18(m) itself, which is not something that the Court need to do if it can avoid it.

Regardless, this conflict only occurs if the Court was to interpret Chapter 115 in a strict manner, which it need not do. And it can be further avoided under the doctrine of severance, which the County Charter and the Ordinances specifically allow as a remedy to preserve the fundamental guarantees to the people in the charter.

V. SECTION 9 OF THE CHARTER MANDATES A RECALL ELECTION AT THE EARLIEST POSSIBLE DATE

On November 16, 2018, the voters of Jackson County adopted the most recent version of the Jackson County Charter, and within that document, the voters specifically created the right to recall their elected officials pursuant to Article XIV. Three provisions are critical to understanding the issues in this case. First, in Section 1, the Charter

[5] In a proposed stipulation draft, the Boards asked the parties to stipulate to the purported cost to hold a special election before the November 4 general election. Various parties declined to stipulate to that fact because cost is not germane to the issues before the Court. However, the Boards' desire to include such facts in the stipulation reveals perhaps the true, practical complaint they have with carrying out a special setting for the recall vote.

specifically denotes that the recall and initiative powers were specifically "reserved" by the people of Jackson County. Article XIV, Sec. 1 ("The people reserve the power…recall an elective county officer.") By virtue of the people "reserving" this political right, the elected and appointed government officials cannot frustrate or otherwise countermand the people of Jackson County when they decided to exercise this reserved right.

Article XIV, Section 7 sets the trigger *when* the people's right to a recall must be carried out by the various county officials:

> Petitions demanding the recall of any elected county officer shall be signed by registered voters equal in number to at least twenty percent of the total vote cast for County Executive, in the district or county, in the last election in which a County Executive was elected.

From the stipulated facts, Section 7 has been satisfied and a requisite number of signatures calling for recall of the county executive have been submitted. With that trigger, each county official and body is charged with carrying the intent of the people, by promptly effecting the placement of the recall vote before the voters. As Clerk Spino stated from the outset regarding her specific duties, each official's duty to act is ministerial, and there and there no discretion to delay or otherwise frustrate this process once Section 7 is triggered.

Article XIV, Section 9 sets the deadlines for the recall to be placed before the voters, and that provision is what animates the legal dispute in this case:

> Initiative and referendum issues shall be submitted to the voters at the next regular election held within ninety days after the petitions are filed, or if there is no regular election within such time, a special election shall be held within sixty days after the petitions are filed. A special election shall be held to consider recall of a county elected officer within sixty days after the petitions are filed.

"The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning." *Howard v. City of Kan.* City, 332 S.W.3d 772, 779 (Mo. banc 2011) (internal quotation omitted). "Ascertaining the legislature's intent in statutory language should not involve hyper technical analysis 'but instead should be reasonable, logical, and should give meaning to the statutes.'" *R.M.A. v. Blue Springs R-IV Sch. Dist.*, -- S.W.3d --, 2025 WL 1645216, at *4 (Mo. June 10, 2025).

Here the plain language standing alone dispenses with the argument that the recall can be held in compliance with the Charter on the already scheduled November 4, 2025 election. Section 9 plainly states in clear language that a recall should *only* be set for an already scheduled general election if said election is to be "held within ninety days after the petitions are filed." The stipulated facts plainly state that when the petitions were filed, no general election was scheduled within 90 days of the filing date—the November 4, 2025 election was outside this window. Thus, the next clause of Section 9 directs what must happen, a special election must be called within 60 days. Bolstering that point, the very next sentence directs a special election within 60 days of the recall.

The intent behind this is plain. The people of Jackson County reserved the right to recall officials promptly and expeditiously if the requisite number of signatures were ever obtained. The 60-day deadline put mandatory directives to carry out that clear purpose. With that clear intent shown, the question for the Court is how to address the specific issue

confronting the parties: what if setting an election within that time frame would violate state or federal law? The answer is to carry out the intent as best the Court is able and order a prompt and legally compliant special election.

VI. THE COURT MAY EXERCISE THE JUDICIAL REMEDY OF SEVERANCE TO EFFECT THE PROPER REMEDY

The judicial mechanism for achieving this outcome is answered by the Charter as well. In Article XIII, Section 12, the Charter states that:

> Section 15. The articles, sections, paragraphs, sentences, clauses, and all other parts of this charter are severable, it being the purpose of this charter to provide for the government of Jackson County, Missouri, in compliance in all respects with the constitution of Missouri and with the laws of Missouri except insofar as said laws are legally modified or legally supplanted by this charter. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any one or more articles, sections, paragraphs, sentences, clauses or other parts of this charter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this charter, but the effect thereof shall be confined to the articles, sections, paragraphs, sentences, clauses or other parts of this charter so adjudged to be invalid or unconstitutional.

A similar provision in the Jackson County Ordinances allows for severance as well for County Ordinances using a highly similar, if not identical standard. With this in mind, the only provision of Article XIV, Sec. 9 that is creating the conflict with state and federal election law is the term "60 days" and only as applied to this specific set of facts. If that provision is "blue penciled" for purposes of this as applied conflict, the Section would read as follows:

> Section 9. Initiative and referendum issues shall be submitted to the voters at the next regular election held within ninety days after the petitions are filed, or if there is no regular election within such time, a special election shall be

> held ~~within sixty days~~ after the petitions are filed. A special election shall be held to consider recall of a county elected officer ~~within sixty days~~ after the petitions are filed.

Section 9, with the blue pencil applied, would dictate that a special election must be called for a date after the petitions are filed. As reformed, a special election would be set (by order of the Court) which would be *before* the next general election (since it was scheduled more than 90 days beyond when the petitions were filed) and could satisfy the requisite requirements of the state and federal election law cited by the election board parties. This is the quintessential use case for judicial severance and satisfies each element to invoke the remedy.

First, the Court must be convinced that the provision the struck portion is "not essential to the efficacy of the [law.]" *St. Louis County v. Prestige Travel, Inc.,* 344 S.W.3d 708, 716 (Mo. banc 2011). Here, the people's retained right to recall officials does not require strict adherence to the 60 day window for the law to be efficacious, or to put it another way, be effective—so long as a recall vote is held at some point prior to the general election, the end result is the same: the voters have the opportunity outside the normal election cycle to hold a county official politically accountable with a vote of the people.

The second question is to ask "if the valid provisions of the [law] are so essentially and inseparably connected with, and so dependent on, the void provision that it cannot be presumed the [people] would have enacted the valid provisions without the void one." *Legends Bank v. State*, 361 S.W.3d 383, 387 (Mo. 2012). To fail that test, the Court must believe that people of Jackson County when passing the Charter believe that if they could

not have a recall within 60 days, they would rather dispense with their rights to a recall altogether. That is an absurd notion.

The last question is whether "the valid provisions, standing alone, are []complete and are []capable of being executed in accordance with the [people's] intent." *Legends Bank v. State,* 361 S.W.3d 383, 387 (Mo. 2012). Removing the phrase "within 60 days" leaves Section 9 with provisions that are complete and capable of being executed. The provision would direct that a special election to consider the recall occur *after* the filing of the petition, but before the next general election (since it was schedule to occur more than 90 days after the filing of the petition). The fact that it remaining provisions are silent as to the specific date for the special election is of no consequence. Indeed, Section 9 without the application of the blue pencil does not prescribe a specific date for the recall election (e.g. something to the effect of "the first Tuesday of the following month"). Instead, the *intent* of the 60 day provision was to direct officials to set a date *promptly*. That intent can be executed by the Court by ordering the alternative mandamus relief proposed by the voters and setting a special election for the soonest available Tuesday allowed by state and federal election law.

As stated, the present situation is the ideal case for exercising severance. The Charter specifically allows it. Using the blue pencil prevents Section 9 from being invalid—as applied—in light of federal and state law, all while carrying out the intent of the provision and the political will of over 42,000 voters who signed the petition.

VII. ALL OF THE CITED ELECTION PROCEDURES REGARDING TIME FRAMES MAY BE SATISFIED WITH A LATER DATE FOR THE RECALL VOTE

For each of the procedural provisions regarding specific timelines cited by the Boards, to the extent they apply to the recall vote, each may be satisfied by setting the vote for a date beyond August 26, 2025 but before November 4, 2025. The Court may accommodate the 42 day time frame for Sec. 115.277(2), RSMo. and the 45 day time frame for 52 U.S.C. § 20302 by setting the date beyond August 26, 2025, which it can do utilizing severance of the charter and ordinances. For the 10 week notice period, the Board admits that it received notice at the latest on July 18, 2025, so that would dictate that an election could occur as early as September 29, 2025. Sec. 115.127, RSMo.

The only remaining issue is the Boards' citation to Sec. 115.123, RSMo. which mandates that public elections only occur on certain days. First, as noted above, there is no mention in this provision about recall petitions one way or another, so the board's interpretation would require the Court to add in the words "recall" to the statute, even though they argue that the General Assembly "knew" to include "recall" in the exceptions to the election days in the exceptions in subsection 2 and chose not include such in the statute. But that same logic cuts against their argument since it does not appear in subsection 1 either. And when interpreting any statute in light of a recall right, the Court must under the case law construe the statute *in favor of the right to recall being effective*, not against it. *State ex rel. Ferro v. Oellermann,* 458 S.W.2d 583, 586 (Mo. App. 1970).

Second, while section 115.123 lists specific days for public elections, it also allows for elections on any other days "expressly provided by city or county charter." As discussed above, the county charter here contains a recall procedure requiring an election within an express timeframe. The Boards repeatedly argue that section 115.123 bars "floating" election dates and requires only "fixed" dates for elections, but section 115.123 contains no such requirement. True, the statute uses the word "expressly" but "expressly" just means clearly or explicitly, not fixed for all time.[6] Again, here the charter explicitly provides for a special recall election outside the regular election cycle and within a specified time. The purpose of the phrase "or on another day expressly provided by city or county charter" is to allow elections on dates other than those enumerated in section 115.123 so long as the County does so through its charter, which the County has done here.

VIII. CONSIDERATION OF COST OR OTHER COLLATERAL ISSUES ARE IRRELEVANT TO THE COURT'S DETERMINATION

Finally, the boards' suggest that scheduling the recall on the November 4 general election would do no harm, all while "saving" taxpayers the expense of a special election, and making for the "efficient use of County resources." That argument can be summarily denied by simply looking at Article XIV and the case law pertaining to the people's right to recall in *Voss, Davis,* . There is not a single word of the Charter that conditions the people's exercise of rights they expressly chose to "reserve" for themselves on issues of "costs" or the "convenience" of governmental officials. "In construing a [law], courts

[6] *Express*, Blacks Law Dictionary (12th ed. 2024) ("[c]learly and unmistakably communicated; stated with directness and clarity.").

cannot add…language where it does not exist; rather, courts must interpret the… language as written..." *Peters v. Wady Indus., Inc.,* 489 S.W.3d 784, 792 (Mo. banc 2016). Giving any effect to "cost-savings" or purported difficulty or any other consideration *other than* compliance with state and federal law would effectively be adding text to the Charter, and judicially imposing restrictions which Jackson County voters never chose to impose on themselves when they reserved their right to recall officials in the Charter.

To the extent the Court has any question regarding costs, the only pertinent one is whether the political branches will pay for the recall. Clerk Spino's opening point controls this as a purely legal matter—once the people have a exercised their right to call a recall, the county officials and government entities *must* carry out that right and have no discretion to frustrate that right. Just as Clerk Spino's duty to transmit the resolution is ministerial, the obligation of the all officials to carry out their own duties leave them no discretion to do otherwise. But as a practical matter, the Court may be assured that the Jackson County Legislature has stated that it will appropriate said funds for a special election. The political branches will carry out their ministerial duties to implement the remedies that Court ultimately orders.

Finally, any argument that scheduling a recall election for the next regular election effectively is "the same thing" misses the point of people's right to recall government officials. All elective offices are subject to the political accountability of a vote taken at regular intervals whether a recall right exists or not—that is the baseline proposition for a representative democracy. But when the people specifically retain the right to recall their

officials—as the Jackson County voters have done here—the fundamental premise is to assert political accountability on officials *outside* the normal election cycle. Setting the recall vote for just the next regularly scheduled election, frustrates the foundational reasons for the people having a recall right in the first place.

The Court should not set this matter on the November 4th ballot believing it to be the essentially the same thing as a special election." It is not. The Charter's plain language does not authorize defaulting the election to next regularly scheduled one. Instead, the Court should give effect to the intent that underscores the people's right to recall in Article XIV, Sec. 9, and order that the recall election of the County Executive be carried out on the next available Tuesday which will otherwise comply with state and federal law.

Respectfully submitted,

SPENCER FANE LLP

/s/ Patrick A. McInerney

Patrick A. McInerney MO #37638
Brian T. Bear MO #61957
SPENCER FANE LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106-2140
Tele: 816-474-8100
Fax: 816-474-3216
pmcinerney@spencerfane.com
bbear@spencerfane.com

Attorneys for Defendant
Mary Jo Spino, in her Official Capacity as the Clerk of The Jackson County Legislature

CERTIFICATE OF SERVICE

I certify that, on July 30, 2025, a true and accurate copy of the foregoing was filed using the court's electronic filing system along with a courtesy copy via email to:

/s/ Brian T. Bear
Attorney for Defendant Mary Jo Spino