

Report on hearing on State Constitutional Amendment case on November 10, 2016 before the Honorable Channing Bennett in the Marion County Circuit Court

Generally, the hearing went well. The judge was respectful, inquisitive, and genuinely trying to understand the task before him. He admittedly had not digested the nearly 200 pages of briefing he had received.

My impression was that the initiative and referendum powers were new territory for him. I went first so I was able to educate him about our perspective of the true extent of the people's power versus the limited judicially-recognized power. I think I was able to move him from his first blush idea of "why would you put something on the ballot if it violates the law" to understanding the bedrock principles, including the First Amendment, separation of powers, etc., that require that the people get to circulate petitions and vote on their proposed laws.

However, the case law is very bad for us and we need him to be able to look past that case law and affirm the people's initiative powers. He caught on that we are asking him to go out of a limb and turn a blind eye to the bad precedent. He remarked that he was a mere trial judge. I offered him a less controversial route to rule in our favor but he will still have to get past the bad case law even to be willing to go there.

After 2-1/2 hours, he still had not heard most of the strongest elements of the State's case, nor our full response to why they should not be followed, and he had not heard anything about why even if the Secretary had the authority to conduct pre-election review, he should find that she erred in her determination. But by that point, his brain seemed full and he had another hearing.

He said that he might ask for further briefing and/or oral argument. I think it would be best for our side if he did ask for another hearing. Stay tuned!