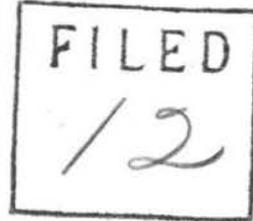


LAW: Construction of.  
INITIATIVE OR REFERENDUM PETITION: How to compute the number of legal voters necessary.

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August 28, 1943

Honorable Dwight H. Brown  
Secretary of State  
Jefferson City, Missouri



Honorable Sir:

We are in receipt of your letter of August 23rd, requesting an opinion, which letter is as follows:

"Inquiry has been received by this office as to how and in what manner the total number of votes cast for Justice of the Supreme Court shall be determined, upon which to base the percentage of legal voters necessary to sign an initiative or referendum petition before filing, in conformity with Section 57, Article IV, Missouri Constitution.

"This question arises in connection with the amendment of Article VI of the Constitution, adopted November 5, 1940, and relating to the method of selecting Supreme Court and other Judges.

"Will you kindly so advise this office."

Article IV, Section 57 of the Constitution of Missouri is in part as follows:

"\* \* \* The first power reserved by the people is the initiative, and not more than eight per cent of the

legal voters in each of at least two-thirds of the congressional districts in the State shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. \* \* \* The whole number of votes cast for Justice of the Supreme Court at the regular election last preceding the filing of any petition for the initiative, or for the referendum, shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. \* \* "

Article VI, Section 4 of the Constitution, as amended, provides for the form of ballot to be used in the election of a Judge. Each voter is entitled to vote "Yes" or "No" on the question of whether or not a certain Judge of the Supreme Court be retained in office. The last paragraph of said section, as it appears in Laws of Missouri, 1941, page 724, is as follows:

"Whenever a declaration of candidacy for election to succeed himself is filed by any judge under the provisions of this section, the Secretary of State shall not less than thirty (30) days before the election certify the name of said judge and the official title of his office to the clerks of the county courts, and to the boards of election commissioners in counties or cities having such boards, or to such other officials as may hereafter be provided by law, of all counties and cities wherein the question of retention of such judge in office is to be submitted to the voters, and, until legislation shall be expressly provided otherwise therefor, the judicial ballots required by this section shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes

counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative."

From the foregoing laws it appears that such voter is entitled to cast one vote for each Judge who is running for the Supreme Court. He may either vote for or against the retention of such Judge in office.

It seems that the only reasonable construction that could be placed on the word "for", as used immediately preceding the words "Justice of the Supreme Court", would be that it means "with respect to" or "with regard to". In the case of *Elmore-Schultz Grain Co. v. Stonebreaker*, 202 Mo. App. 81, 214 S. W. 216, it was held that under Revised Statutes of 1909, Section 4780, denouncing as gambling and void all purchases and sales or contracts and agreements for the purchase of grain, without the intention of receiving or delivering the property, the word "for" may be treated as equivalent to the words "with respect to". In the case of *State v. Consolidated Virginia Mine Company*, 16 Nev. 432, it was held that the word "for" in Const., Art. 4, Secs. 20 and 21, prohibiting the passage of any local or special law for the assessment and collection of taxes, means "with respect to", or "with regard to".

If only the votes for the retention of a Supreme Court Justice were counted and the votes against the retention of such Judge were ignored, such total may not represent a fair comparison with the total number of voters casting ballots at such election, and it seems that it was the intention of the lawmakers that the figure used would compare favorably with the total number of voters who cast their votes in the last preceding election.

Article IV, Section 57, in providing that the whole number of votes cast for a Justice of the Supreme Court at the regular election last preceding the filing of any petition for an initiative, obviously means the whole number of votes cast for and against one Judge of the Supreme Court. It appears that it was the intention of the lawmakers to

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ascertain the number of voters who cast ballots in the last preceding election and to require not more than eight per cent of the regular voters, in each of at least two-thirds of the congressional district, to sign such petition.

CONCLUSION

It is therefore the opinion of this department that the total number of votes cast for a Justice of the Supreme Court shall be determined by ascertaining the number of votes cast for and the number cast against a Judge of the Supreme Court at the last preceding election, and adding these two items. Such total will constitute the total number of votes cast for a Justice of the Supreme Court.

Respectfully submitted,

LEO A. POLITTE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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