

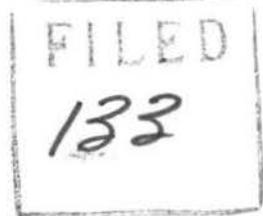
ELECTIONS:

Section 118.510, RSMo 1969 is valid.

OPINION NO. 133

May 22, 1972

Mr. John T. Wiley, Chairman  
Board of Election Commissioners  
City of St. Louis  
208 South 12th Boulevard  
St. Louis, Missouri 63102



Dear Mr. Wiley:

Your recent opinion request referred to an annotation that appears both in the Election Laws booklet published by the office of the Secretary of State and in the Missouri Revised Statutes 1969. This annotation, beneath Section 118.510, RSMo 1969 states:

"This section, held invalid under the equal protection provisions of the state and federal constitutions because it provides for the keeping of challengers at registration and voting places by the two major parties only. Preisler v. Calcaterra, 362 Mo. 662, 243 S.W. (2d) 62."

Your question is, in view of the decision in Preisler v. Calcaterra, 243 S.W.2d 62 (Mo. banc 1951), is Section 118.510, RSMo 1969, to be held invalid?

The Missouri Supreme Court's decision in Preisler v. Calcaterra clearly stated that the entire section was invalid. The Missouri Supreme Court, at 243 S.W.2d 66, stated:

"We must, therefore, hold Section 118.510 unconstitutional as an arbitrary violation of the equal protection provisions of our State and Federal Constitutions. . . ."

The Court thus held, in 1951, that the then existing statute limiting to the two dominant political parties the right or privilege of designating and keeping their challengers and watchers at elections was violative of the equal protection provisions of the federal and state constitutions.

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The Court considered whether the constitutionally infirm provisions of Section 118.510 necessitated the finding of non-constitutionality of the entire provision or whether the remaining provisions were severable and in force. The Court explained its decision that the entire statute was unconstitutional and void as follows:

" . . . However, if the elimination of such clauses leaves the remaining portions of this statute so that they do not express the true legislative intent but are instead in conflict with it, the statute should not be upheld.

. . .

"It seems obvious that to strike out these clauses [the unconstitutional provisions] in Section 118.510 would broaden its scope as to subject matter because it would make it include all political parties in its authorization for challengers and watchers when the clear legislative intent was to confine it to only two. We must, therefore, declare the whole section unconstitutional. . . ." 243 S.W.2d 66.

The Court did not create a gap in this area and leave the City of St. Louis without any law providing for challengers and watchers. After reviewing the legislative history of Section 118.510, it concluded that ". . . Section 49 of the Act of 1921, Section 10613, RS 1929, is still in force and effect as to the City of St. Louis." 243 S.W.2d 66.

In 1957, the General Assembly of the State of Missouri repealed Section 118.510, RSMo 1949, the provision declared unconstitutional by the Missouri Supreme Court, and enacted in lieu thereof, a new Section 118.510, Laws 1957, p. 768. This provisions supplanted Section 10613, RS 1929. The new Section 118.510 is found in the Election Laws book issued by the office of the Secretary of State and may also be found in the Revised Statutes of Missouri, 1969 edition. The new Section 118.510 omits the provisions relating to challengers and poll watchers found unconstitutional by the Court in Preisler. It does not restrict challengers to the two major parties only. Subparagraph 1 of the new section permits each political party named on the ballot to designate and keep challengers at polling places. It further provides, in subsections 2 and 3, for the participation of challengers representing each party named on the ballot and other aspects of the voting process previously restricted to those challengers of the two major parties only.

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By permitting the presence of challengers representing all parties on the ballot, the new Section 118.510 avoids the constitutional infirmity discussed in the Preisler v. Calcaterra decision. Therefore, the new Section 118.510 enacted by House Bill No. 213 of the 69th General Assembly in 1957 is valid and in effect in the City of St. Louis.

CONCLUSION

It is the opinion of this office that Section 118.510, RSMo 1969 is valid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Peter H. Ruger.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, sweeping initial "J".

JOHN C. DANFORTH  
Attorney General