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Koch-Tied Org. Urges Miss. Justices To Keep Medical Pot Vote

By **Jack Queen**

Law360 (January 19, 2021, 4:30 PM EST) -- Koch-backed advocacy group Americans for Prosperity has urged the Mississippi Supreme Court to toss a challenge to the state's medical marijuana legalization vote, saying the measure's opponents are pushing for an "absurd" outcome that would cripple voters' ability to change laws.

Americans for Prosperity Mississippi, an arm of the libertarian advocacy group, said in an amicus brief Friday that challenger Mary Hawkins Butler — the Republican mayor of Madison, Mississippi — is incorrectly interpreting a provision of the state's constitution that became obsolete when it lost one of its five congressional districts nearly 20 years ago.

That provision holds that no more than one-fifth of signatures in support of a ballot measure may come from a single congressional district. Butler and her supporters, including the American Medical Association, argue this is mathematically impossible now that Mississippi has only four districts, meaning the ballot measure should have never qualified.

Americans for Prosperity countered that the provision clearly referred to the number of congressional districts at the time of its passage in 1992 and was intended as a way of ensuring diverse geographic support for ballot measures.

"That interpretation would also avoid an absurd and clearly unintended disposition such that the people's power to voter initiative ceased less than a decade after it was approved by the voters when Mississippi lost a congressional district because of Census results," the group said.

Butler's narrow interpretation would undo every ballot measure passed since Mississippi lost a district in 2002, Americans for Prosperity said.

Finding the provision inoperable would not only "invalidate those three measures now embodied in the constitution, it would also render highly uncertain when and if ever the people would regain their right to directly amend the constitution," the group said, noting that the state legislature has failed to fix the problem multiple times and can't be counted on to do so.

The brief also cites the textualist jurisprudence of the late U.S. Supreme Court Justice Antonin Scalia — specifically the presumption of validity principle, which holds that when a text can be interpreted multiple ways, the interpretation that preserves it should be favored over one that destroys it.

"It would neither be reasonable nor permissible to interpret a constitutional provision in such a way that it is self-defeating or 'mathematically impossible' to exercise," Americans for Prosperity said.

Americans for Prosperity, which has been funded in part by Charles Koch and his late brother David Koch, advocates for libertarian policies and has generally been supportive of marijuana and drug reform efforts nationwide.

Butler **filed her challenge** in October and was joined in December by the American Medical Association and Mississippi State Medical Association, which filed a joint brief backing Butler's constitutional arguments and claiming that medical pot would be dangerous for public health and

burdensome for doctors.

"Making sure the constitutional amendment map is followed is always important, but given the nature of the initiative at issue and the substantial ramifications it poses for Mississippi's public health and the medical community, particular care is warranted here," the groups said.

Counsel for the parties did not immediately respond to requests for comment Tuesday.

Americans for Prosperity is represented by Spencer M. Ritchie of Forman Watkins & Krutz LLP.

Butler is represented by Kaytie Pickett, Adam Stone and Andrew Harris of Jones Walker LLP and Madison City Attorney Chelsea Brannon.

The Mississippi secretary of state is represented by Deputy Solicitor General Krissy Nobile and Assistant Solicitor General Justin Matheny.

The case is Mary Hawkins et al. v. Michael Watson, case number 2020-IA-01199, in the Mississippi Supreme Court.

--Additional reporting by Sam Reisman. Editing by Steven Edelstone.

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