

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

DR. ANNA FITZ-JAMES,)
) 23AC-CC03167 (lead),
Petitioner,) 23AC-CC03953,
) 23AC-CC04022,
v.) Case Nos. 23AC-CC04574,
) 23AC-CC04575, and
JOHN R. ASHCROFT,) 23AC-CC04576
MISSOURI SECRETARY OF STATE)
)
Respondent.)

JUDGMENT

This matter came before the Court on September 11, 2023. Petitioner and Respondent appeared through counsel and agreed to submit joint stipulated facts along with exhibits. The Court received the evidence and heard argument from the parties. The Court has reviewed the record and considered the issues pursuant to Section 116.190 of the Missouri Revised Statutes.

The Court’s role in the initiative process is limited. “Before the people vote on an initiative, courts may consider only threshold issues that affect the election itself.” *United Gamefowl Breeders Ass’n of Missouri v. Nixon*, 19 S.W.3d 137, 139 (Mo. banc 2000). Importantly, “to avoid encroachment on the people’s constitutional authority, courts will not sit in judgment on the wisdom or folly of the initiative proposal presented.” *Brown v. Carnahan*, 370 S.W.3d 637, 645 (Mo. banc 2012). Thus, this Court expresses no view on the merits of any of the six proposed initiatives presented.

Under Section 116.190, the Court’s review of summary statements is to ensure that their “language fairly and impartially summarizes the purposes of the measure[s].” *Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo. App. W.D. 1999). It is the Court’s duty to make certain voters are provided a summary of each initiative that is devoid of “bias, prejudice, deception and/or favoritism.” *Hill v. Ashcroft*, 526 S.W.3d 299, 308 (Mo. App. W.D. 2017). In other words, voters are entitled to a “fair[] and impartial[] summar[y].” *Union Elec. Co. v. Kirkpatrick*, 678 S.W.2d 402, 405 (Mo. banc 1984).

The Court is cognizant that the Secretary must operate with the constraint of a 100-word limit. However, the purpose of the summary statement is not to provide every detail about an initiative. Rather it is “intended to provide voters with enough information that they are made aware of the subject and purpose of the initiative and allow the voter to make an informed decision as to whether to investigate the initiative further.” *Hill*, 526 S.W.3d at 308.

The Court finds that certain phrases included in the Secretary’s summary statement are problematic in that they are either argumentative or do not fairly describe the purposes or probable effect of the initiative¹:

- “dangerous, unregulated, and unrestricted abortions”
- “from conception to live birth”

¹ Due to the time limits on review, the Court will dispense with a detailed analysis of these phrases. The Secretary’s proposals were not sent until 6:43 pm on September 18, 2023 notwithstanding the request of the Court for each side to bring their proposed judgments in electronically editable form to the September 11, 2023 hearing. The Court further notes that many of these claims are theoretically possible, that is not the same as probable.

- “without requiring a medical license”
- “without . . . potentially being subject to medical malpractice”
- “nullify longstanding Missouri law”
- “the right to life”
- “partial-birth abortion”
- “including a minor”
- “end the life”
- “unborn child”
- “at any time”
- “potentially including tax-payer funding”
- “prohibit any municipality, city, town, village, district, authority, public subdivision, or public corporation having the power to tax or regulate or the state of Missouri from regulating abortion procedures”

The Court further finds that while the proposals will have the greatest immediate impact on abortion, the absence of *any* reference to reproductive health care beyond abortion is insufficient in that it would cause a voter to believe that abortion is the only health care comprising the initiatives. This is especially true because these proposals might share a ballot with other initiatives that are limited to abortion. Voters should be able to differentiate between them.

Finally, the Court finds that the phrasing “require the government not to discriminate” to describe that the initiatives would prohibit government

discrimination would likely cause confusion; however, the non-discrimination provision is ancillary and does not warrant inclusion in the summary statement.

Based on the foregoing, judgment is entered in favor of Petitioner. Under Section 116.190 and *Hill*, she is entitled to different summary statements—one that will provide voters with enough information about the subject and purpose of the initiative to allowed them to make an informed decision whether to investigate further.

Count I

The Court certifies the following summary statement for Initiative No. 2024-085:

Do you want to amend the Missouri Constitution to:

- establish a right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid;
- remove Missouri’s ban on abortion;
- allow regulation of reproductive health care to improve or maintain the health of the patient;
- allow abortion to be restricted or banned after Fetal Viability except to protect life or health of the woman;
- allow General Assembly to enact a parental consent requirement for abortion with an alternative authorization procedure; and
- declare government funding of abortion is not required?

Count II

The Court certifies the following summary statement for Initiative No. 2024-078:

Do you want to amend the Missouri Constitution to:

- establish a right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid;
- remove Missouri’s ban on abortion; and
- allow regulation of reproductive health care to improve or maintain the health of the patient?

Count III

The Court certifies the following summary statement for Initiative No. 2024-080:

Do you want to amend the Missouri Constitution to:

- establish a right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid;
- remove Missouri’s ban on abortion;
- allow regulation of reproductive health care to improve or maintain the health of the patient;
- allow abortion to be restricted or banned after 24 weeks except to protect life or health of the woman; and

- allow General Assembly to enact a parental consent requirement for abortion with an alternative authorization procedure?

Count IV

The Court certifies the following summary statement for Initiative No. 2024-082:

Do you want to amend the Missouri Constitution to:

- establish a right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid;
- remove Missouri's ban on abortion;
- allow regulation of reproductive health care to improve or maintain the health of the patient; and
- allow abortion to be restricted or banned after 24 weeks except to protect life or health of the woman?

Count V

The Court certifies the following summary statement for Initiative No. 2024-086:

Do you want to amend the Missouri Constitution to:

- establish a right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid;
- remove Missouri's ban on abortion;

- allow regulation of reproductive health care to improve or maintain the health of the patient; and
- allow abortion to be restricted or banned after Fetal Viability except to protect life or health of the woman?

Count VI

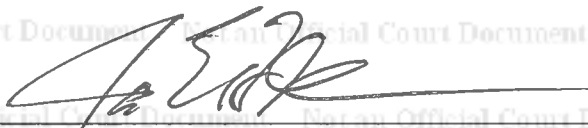
The Court certifies the following summary statement for Initiative No. 2024-087:

Do you want to amend the Missouri Constitution to:

- establish a right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid;
- remove Missouri's ban on abortion;
- allow regulation of reproductive health care to improve or maintain the health of the patient;
- allow abortion to be restricted or banned after Fetal Viability except to protect life or health of the woman; and
- declare government funding of abortion is not required?

SO ORDERED, ADJUDGED, AND DECREED.

On September 25, 2023



Hon. Jon E. Beetem, Division I
Circuit Judge