

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

ELIZABETH DE LAPEROUSE, *et al.*, )

Plaintiffs, )

v. )

Case No.: 24AC-CC05894

REPRESENTATIVE DEAN )

PLOCHER, *et al.* )

Defendants. )

JUDGMENT

Plaintiffs' lawsuit challenges the fairness and sufficiency of the summary statement that the General Assembly prepared for Senate Joint Resolution (SJR) 78, as well as the Secretary of State's fair ballot language for the resolution. Plaintiffs Elizabeth de Laperouse and Eric Bronner were represented by attorneys Charles Hatfield and Alixandra Cossette. Defendants, Secretary of State John Ashcroft, Speaker of the House Dean Plocher, Senate President Pro Tem Caleb Rowden, and Senator Ben Brown were represented by Assistant Attorneys General Samuel Freedlund and Jason Lewis.

The case was tried on stipulated facts and exhibits, and the parties presented argument at a bench trial on July 29, 2024. This case was briefed and tried on an expedited basis given the timelines governing challenges to an official ballot title under Section 116.190 and ballot-change deadlines in Section 115.127.3 RSMo. Having considered the parties arguments, the stipulations, and applicable law, this Court concludes that the summary statement for SJR 76 is fair and sufficient.

## FINDINGS OF FACT

This Court makes the following findings of fact that are relevant to the decision in this matter, which are drawn the parties' joint stipulations of facts and exhibits. (The Court considered all fact stipulations of the parties but does not reiterate all twenty-four (24) paragraphs agreed to by the parties.):

On May 17, 2024, the General Assembly truly agreed and finally passed SJR 78. On May 30, 2024, the Speaker Plocher and Senate President Pro Tem Rowden signed SJR 78. On that same day, SJR 78 was delivered to the Secretary of State.

The General Assembly adopted the following summary statement for SJR 78:

Shall the Missouri Constitution be amended to:

- Make the Constitution consistent with state law by only allowing citizens of the United States to vote;
- Prohibit the ranking of candidates by limiting voters to a single vote per candidate or issue; and
- Require the plurality winner of a political party to be the single candidate at a general election?

The Secretary of State certified the official ballot title, which contains that summary statement, for SJR 78 on July 1, 2024.

The Secretary of State also prepared and certified Fair Ballot Language for SJR 78. The Fair Ballot Language is:

A “yes” vote will amend the Missouri Constitution to specify that only United States citizens are entitled to vote, voters shall only have a single vote for each candidate or issue, restrict any type of ranking of candidates for a particular office and require the person receiving the greatest number of votes at the primary election as a party candidate for an office shall be the only candidate for that party at the general election, and require the person receiving the greatest number of votes for each office at the

general election shall be declared the winner. This provision does not apply to any nonpartisan municipal election held in a city that had an ordinance in effect as of November 5, 2024, that requires a preliminary election at which more than one candidate advances to a subsequent election.

A “no” vote will not amend the Missouri Constitution to make any changes to how voters vote in primary and general elections.

If passed, this measure will have no impact on taxes.

SJR 78 will be designated as Amendment 7 on the election ballot. Also relevant to the discussion, in November 2020, voters in St. Louis City passed Proposition D, a copy of which the Court received into evidence.

### CONCLUSIONS OF LAW

#### A. *Standard of review and applicable legal principles.*

“[W]hen courts are called upon to intervene in the initiative process, they must act with restraint, trepidation and a healthy suspicion of the partisan who would use the judiciary to prevent the initiative process from taking its course.” *Brown v. Carnahan*, 370 S.W.3d 637, 645 (Mo. 2012). “Under [section] 116.190.3, ‘[t]he party challenging the language of the summary statement [or fair ballot language] bears the burden to show that the language is insufficient or unfair.’” *Pippens v. Ashcroft*, 606 S.W.3d 689, 701 (Mo. App. W.D. 2020) (quoting *Hill v. Ashcroft*, 526 S.W.3d 299, 308 (Mo. App. W.D. 2017)).

The purpose of an official ballot title “is to give interested persons notice of the subject of a proposed [law] to prevent deception through use of misleading titles. If the title gives adequate notice, the requirement is satisfied.” *Missourians Against*

*Human Cloning v. Carnahan*, 190 S.W.3d 451, 456 (Mo. App. W.D. 2006)) (quoting *Union Elec. Co. v. Kirkpatrick*, 606 S.W.2d 658, 660 (Mo. banc 1980)). The summary statement, which composes part of the official ballot title, “must be adequate and state the consequences of the initiative without bias, prejudice, deception, or favoritism.” *Brown*, 370 S.W.3d at 654.

Courts reviewing ballot title challenges give deference to the Secretary’s summary statements, recognizing that “ten different writers would produce ten different versions” and “there are many appropriate and adequate ways of writing the summary ballot language.” *Asher v. Carnahan*, 268 S.W.3d 427, 431 (Mo. App. W.D. 2008). In reviewing a summary statement for a ballot measure, the burden is on the opponents of a summary statement to show that the language is “insufficient or unfair.” § 116.190.3, RSMo. Insufficient and unfair means “to inadequately and with bias, prejudice, deception, and/or favoritism state the consequences of the [initiative].” *Hancock v. Secretary of State*, 885 S.W.2d 42, 49 (Mo. App. W.D. 1994). “Even if [a plaintiffs] substitute language would provide more specificity and accuracy in the summary ‘and even if that level of specificity might be preferable,’” this is not the test. *Missourians Against Human Cloning*, 190 S.W.3d at 457 (quoting *Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo. App. W.D. 1999)).

The summary statement “need not set out the details of the proposal to be fair and sufficient.” *Id.* at 656. Rather, the summary statement should convey the “purpose” or “primary objective” of a proposed initiative. *Archev v. Carnahan*, 373 S.W.3d 528, 533 (Mo. App. W.D. 2012). And because not all details of a ballot measure

can be identified in the word limitations provided by law, courts have consistently held that the summary statement must address merely the “central features” of the measure. *Boeving v. Kander*, 493 S.W.3d 867, 875 (citing *Seay v. Jones*, 439 S.W.3d 881, 891 (Mo. App. W.D. 2014)); *Hill v. Ashcroft*, 526 S.W.3d 299, 327 (Mo. App. W.D. 2017) (“All the specifics of an initiative petition need not be identified in the summary, however, for the summary to be fair and sufficient.”). So long as a measure’s central features are addressed, voters can “make an informed choice on whether to investigate the matter further.” *Protect Consumers’ Access To Quality Home Care Coal., LLC v. Kander*, 488 S.W.3d 665, 671 (Mo. App. W.D. 2015).

Finally, “section 116.025 directs that challenges to fair ballot language shall be conducted in accordance with section 116.190.” *Fitzpatrick v. Ashcroft*, 640 S.W.3d 110, 125 (Mo. App. W.D. 2022).

*B. The summary statement is fair and sufficient.*

Based on the parties’ joint stipulation and the plain language of Section 116.190, Plaintiffs have standing to bring this suit. The Court concludes that the summary statement for SJR 78 is fair and sufficient. The Court’s analysis is guided by the 50-word limit imposed for summary statements prepared by the legislature. § 116.155, RSMo. The summary statement contains three bullet points. The Court concludes that each bullet point contains one of SJR 78’s central features.

The first bullet point asks Missouri voters whether the Missouri Constitution should be amended to make the Constitution consistent with state law by only allowing citizens of the United States to vote. SJR 78 proposes to amend Article VIII,

Section 2 by changing first word of the first sentence, “all” to “only.” Thus, whereas the provision presently reads, “all citizens of the United States [who are residents of Missouri and meet other requirements not relevant here] are entitled to vote at all elections by the people,” SJR 78 proposes to amend the provision to read “only citizens of the United States . . . [.]”

This is a central feature of the measure and the first bullet point of the summary statement conveys the feature “without bias, prejudice, deception, or favoritism.” *Brown*, 370 S.W.3d at 654. SJR 78 proposes to amend Article VIII, Section 2 to take what could be read as a constitutional floor (a rule that says at least all US citizens who meet the other requirements have the constitutional right to vote in applicable elections, without this language speaking on anybody besides US Citizens) and amend it to a constitutional ceiling (*only* U.S. citizens who meet the other applicable requirements may vote in Missouri elections). In attempt to make this intent clear, at trial, the Court asked Defendants’ counsel their position on whether Missouri law currently prohibits non-citizens from voting. Counsel did not provide a definitive answer. However, the Court doubts whether the Defendants or their counsel actually believe that non-citizens are currently allowed to vote.

In fact, Missouri currently has statutes that prohibit non-citizens from voting in public elections. Section 115.155, for example, requires that voters certify that they are a U.S. citizen when they register to vote. The legislature determined that the Constitution does not clearly contain that same requirement in its present state. The summary statement for SJR 78 therefore informs the voters that, if the resolution is

passed, the Constitution will be amended to make it consistent with such state law which is in fact a state statute. The Court does not believe that a reasonable voter will be misled or deceived into what the measure will do, or that the word "law" is unfair and insufficient insofar as it is used as a synonym for state statute. Moreover, even if "statute" may be preferable to "law" by Plaintiffs, the Court is mindful that the judiciary must intervene only when necessary "to prevent to prevent deception through use of misleading titles. If the title gives adequate notice, the requirement is satisfied," *Missourians Against Human Cloning*, 190 S.W.3d at 456, not to change individual words to make a summary statement slightly more precise in the absence of unfairness or insufficiency.

The second bullet point asks voters whether the Missouri Constitution should be amended to "prohibit the ranking of candidates by limiting voters to a single vote per candidate or issue." This is also a central feature of the measure, and it is summarized fairly and sufficiently. Plaintiffs argue that a better description would be that voters are limited to "a single vote per office," rather than a single vote per candidate. The Court finds that the use of the word "candidate" does not render the summary statement insufficient or unfair under the principles for analyzing summary statements described above. The Court does not believe that any voter will be misled into thinking that when casting future ballots if SJR 78 is adopted, that they can only vote for one specific person on the ballot and no others. The second bullet point gives "interested persons notice of the subject of a proposed [law] to prevent deception through use of misleading titles. If the title gives adequate notice,



the requirement is satisfied.” *Missourians Against Human Cloning*, 190 S.W.3d at 456. The second bullet point provides notice so that voters can “make an informed choice on whether to investigate the matter further.” *Protect Consumers Access*, 488 S.W.3d at 671.

The Court also concludes that the summary statement need not include a reference to St. Louis City specifically or the general exception to “any nonpartisan municipal election held in a city that had an ordinance in effect as of November 5, 2024, that permits voters to cast more than a single vote for each issue or candidate on which such voter is eligible to vote.” Legislatively-drafted summary statements must be 50 words, and that exception itself is already near the word limit. The Court concludes that the exception is not a central feature of the entire measure; and that sole exception is not weightier than the other central features already in the summary statement. The Court’s task here is not to draft the summary statement from scratch, but rather to review the existing language under the principles of fairness and sufficiency. The Secretary of State prepared and certified the Fair Ballot Language (discussed below) which contains the referenced exception.

In any event, there is insufficient evidence presented whether there are any other municipalities besides St. Louis City that may fall within that exception to the single-vote provision in SJR 78 on the date of the election. Even if St. Louis City currently qualifies, the exception states that it applies only as to “any nonpartisan municipal election held in a city that had an ordinance in effect as of November 5, 2024[.]” That date is in the future. The Court of Appeals in *Hill* confronted a similar



situation, holding that it was not necessary for a summary statement to include a context reference to another law. “[I]t is unnecessary for the summaries to include information regarding SB19 for voters to understand generally the impact of the Initiative Petitions. Although including additional information regarding the passage of SB19 would certainly give additional context and information to voters, ‘[a]ll that is required is that the language fairly summarizes the proposal in a way that is impartial and does not deceive or mislead voters.’” *Hill v. Ashcroft*, 526 S.W.3d at 315 (quoting *Mo. Mun. League v. Carnahan*, 364 S.W.3d 548, 553 (Mo. App. W.D. 2011)).

The third bullet point is fair and sufficient for similar reasons, and Plaintiffs raised similar challenges against it. Plaintiffs also alleged that the third bullet point inaccurately conveys to voters that there will only be one candidate at a general election. The Court concludes that no reasonable voter will be misled into thinking that SJR 78 would make that change to the Constitution. A reasonable voter will understand that the third bullet point conveys that the plurality winner of a political party’s primary election candidate. The Court concludes that the third bullet point conveys a central feature of SJR 78 (only the person receiving the greatest number of votes in a party’s primary election shall advance to the general election, and voters will select from those candidates) and summarizes it fairly and sufficiently. Finally, as SJR 78’s summary statement is already near 50 words, if this Court were to add words to the third bullet point to make it more specific as Plaintiffs contend (e.g., “Require the plurality winner of a political party primary to be *only that party’s*

single candidate at a general election?”), the Court may also need to revise other bullet points, which this Court has already found to be fair and sufficient.

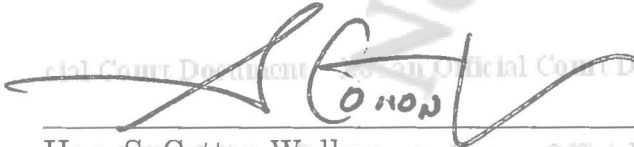
C. *The Fair Ballot Language is fair and sufficient.*

Plaintiffs’ only claims against the fair ballot language is that it is unfair and insufficient for the same reasons that the first bullet point in the summary statement is unfair and insufficient. Fair ballot language challenges are reviewed in the same manner as summary statement challenges. *Fitzpatrick*, 640 S.W.3d at 125; § 116.025. This Court incorporates its analysis and conclusions as to the first bullet point of the summary statement. To the extent Plaintiffs have raised any other claims against the fair ballot language, the Court has reviewed the language and concludes that it is fair and sufficient under the principles applicable to fair ballot language challenges.

The Court has considered all arguments in each of the five Counts in Plaintiffs’ Petition. To the extent any claims remain not addressed in the analysis above, the Court rejects all remaining claims in those Counts because both the summary statement and fair ballot language are fair and sufficient. The Court notes that Count IV does not appear to raise a distinct claim under Section 116.190 or identify specific language in the summary statement that is deficient. Count IV and V do not appear to ask for any specific relief not included in Counts I, II and/or III. To the extent necessary for clarity, the Court concludes that the summary statement is not untrue or partial, and it does not use language that is intentionally argumentative or likely to create prejudice for the measure nor does it incorrectly describe SJR 78.

It is therefore ORDERED, ADJUDGED, and DECREED that judgment be entered for Defendants on all Counts that the summary statement and fair ballot language for Senate Joint Resolution 78 are fair and sufficient, and under Section 116.190 this Court "certif[ies] the summary statement portion of the official ballot title[s] to the secretary of state" as the language originally prepared by the General Assembly.

Dated: August 12, 2024

A handwritten signature in black ink, appearing to read "S. Cotton Walker", written over a horizontal line.

Hon. S. Cotton Walker  
Circuit Court Judge, Division III  
19<sup>th</sup> Judicial Circuit, State of Missouri