

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

ANNA FITZ-JAMES,

Petitioner,

v.

JOHN R. ASHCROFT,  
MISSOURI SECRETARY OF STATE,

Respondent.

Case No. 24AC-CC06970

JUDGMENT

The matter is before the Court on Plaintiff's petition challenging the fair ballot language published by the Secretary of State for Amendment 3, a proposed amendment to Missouri's constitution that will appear on the ballot in the November 5, 2024 general election, as brought through Initiative Petition 2024-086. This case was briefed and tried on an expedited basis given the timelines governing challenges to an official ballot title under RSMo §116.190.

The Court held a bench trial on September 4, 2024, and the parties presented stipulated facts, stipulated exhibits, and legal arguments. Petitioner was represented by attorneys Tori Schafer, Jonathan Schmid, and Christopher Grant and Respondent (Missouri's Secretary of State or "Secretary") was represented by Assistant Attorney General Andrew Crane.

After considering the record before the Court and the arguments of the parties, the Court concludes the fair ballot language for Amendment 3 is unfair, insufficient, inaccurate, and misleading in violation of RSMo §116.025 and §116.190. Accordingly, the Court finds in favor of Petitioner on Count I. The Court rewrites the fair ballot language (as set forth in this Judgment and

consistent with the Court of Appeals' previous scrutiny of the issues surrounding this initiative petition). The rewritten fair ballot language contained herein is certified to the Secretary of State. Counsel for the Secretary has stated the Secretary will use the rewritten language in official public communications. The Court dismisses Count II as moot because Petitioner receives all of the relief to which she is entitled in Count I and further based upon the representations of Counsel for Respondent at trial as set forth in the conclusions below.

**FINDINGS OF FACT**

The Court enters the following findings of fact from the parties' Joint Trial Stipulations which included statements of fact and exhibits, which the Court considered in entering its Judgment:

1. Petitioner Dr. Anna Fitz-James is a resident, citizen, taxpayer, and legal voter of Missouri.
2. Respondent John R. Ashcroft is the Secretary of State of Missouri.
3. On March 8, 2023, Petitioner submitted to Secretary Ashcroft an initiative petition to amend the Missouri Constitution ("the Initiative").
4. A true and accurate copy of the sample sheet submitted by Petitioner, with the full text of the Initiative was attached to the Joint Trial Stipulations as Exhibit 1 and considered as evidence.
5. On July 26, 2023, Secretary Ashcroft certified the official ballot title for the Initiative, numbered as 2024-086.
6. A true and accurate copy of the ballot title as certified by Secretary Ashcroft on July 26, 2023, was attached to the Joint Trial Stipulations as Exhibit 2 and considered as evidence.

7. The summary statement drafted by Secretary Ashcroft read as follows:

Do you want to amend the Missouri Constitution to:

- allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice;
- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- allow for laws to be enacted regulating abortion procedures after Fetal Viability, while guaranteeing the right of any woman, including a minor, to end the life of their unborn child at any time; and
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding?

Exhibit 2.

8. Petitioner filed suit against Secretary Ashcroft challenging the summary statement.

9. The Circuit Court of Cole County, Judge Beetem presiding, entered judgment on September 25, 2023. The Court found certain portions of the summary statement for the Initiative to be insufficient or unfair and certified new language for the summary statement.

10. Following an appeal by Secretary Ashcroft, the Court of Appeals, Western District, in its opinion dated October 31, 2023, affirmed in part and reversed in part the judgment, and certified a summary statement to Secretary Ashcroft for inclusion in the official ballot title for the Initiative. *Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. App. W.D. 2023).

11. Secretary Ashcroft sought transfer of the decision of the Court of Appeals, and the Missouri Supreme Court denied the motion for transfer.

12. The summary statement certified by the Court of Appeals for the Initiative is as follows:

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;
- require the government not to discriminate, in government programs, funding, and other activities, against persons providing or obtaining reproductive health care; and
- allow abortion to be restricted or banned after Fetal Viability except to protect the life or health of the woman?

*Fitz-James*, 678 S.W.3d at 217.

13. On May 3, 2024, Missourians for Constitutional Freedom submitted to the Secretary of State signed petition pages for the Initiative for the purposes of signature validation.

14. A true and accurate copy of the receipt of the petition pages dated May 3, 2024, was attached to the Joint Trial Stipulations as Exhibit 3 and considered as evidence.

15. On August 13, 2024, Secretary Ashcroft issued a certificate of sufficiency for the Initiative, approving it to appear as Amendment 3 on the November 5, 2024, general election ballot.

16. A true and accurate copy of the certificate of sufficiency issued by Secretary Ashcroft on August 13, 2024, was attached to the Joint Trial Stipulations as Exhibit 4 and considered as evidence.

17. Also on August 13, 2024, Secretary Ashcroft first published to the public the “fair ballot language” for Amendment 3 on the Secretary of State’s official website.

18. A true and accurate screen print of the 2024 Ballot Measures page on the Secretary of State's official website, printed on August 16, 2024, at 10:44 a.m. was attached to the Joint Trial Stipulations as Exhibit 5 and considered as evidence.

19. The ballot title and fair ballot language for Amendment 3 displayed on the Ballot Measures page of the Secretary of State's official website at the time of trial is the same as the language shown in Exhibit 5.

20. The fair ballot language statement drafted by Secretary Ashcroft reads as follows:

A "yes" vote will enshrine the right to abortion at any time of pregnancy in the Missouri Constitution. Additionally, it will prohibit any regulation of abortion, including regulations designed to protect women undergoing abortions and prohibit any civil or criminal recourse against anyone who performs an abortion and hurts or kills the pregnant women.

A "no" vote will continue the statutory prohibition of abortion in Missouri.

If passed, this measure may reduce local taxes while the impact to state taxes is unknown.

Exhibit 5.

### CONCLUSIONS OF LAW

The Court first considers Petitioner's Count I.

Petitioner, a citizen, taxpayer, resident, and legal voter, timely filed her action under RSMo §116.190 against Respondent Secretary of State John Ashcroft.

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 follow 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 Amendment 3.

RSMo §116.025, the section that directs the Secretary to draft fair ballot language, requires challenges to such language comply with the procedures of §116.190. Courts apply the same sufficiency and fairness standard to fair ballot language challenges as they do to summary statement challenges. *Fitzpatrick v. Ashcroft*, 640 S.W.3d 110, 125 (Mo. App. W.D. 2022). Those standards have been discussed in many cases. “[I]nsufficient means inadequate; especially lacking adequate power, capacity, or competence and unfair means to be marked by injustice, partiality, or deception.” *Brown v. Carnahan*, 370 S.W.3d 637, 653-654 (Mo. banc 2012). The language “should accurately reflect both the legal and probable effects of the proposal.” *Pippens v. Ashcroft*, 606 S.W.3d 689, 701 (Mo. App. W.D. 2020). The purpose is to “give[] voters a sufficient idea of what the proposed amendment would accomplish, without language that is intentionally unfair or misleading. The idea is to advise the citizen what the proposal is about.” *Fitzpatrick*, 640 S.W.3d at 125 (quoting *Sedey v. Ashcroft*, 594 S.W.3d 256, 263 (Mo. App. W.D. 2022)).

In this case, concerning Initiative Petition 2024-086, the Secretary’s fair ballot language about a “yes” vote is comprised of two sentences. The Court concludes that these sentences, on their own and taken together, are unfair, inaccurate, insufficient and misleading.

First, the phrase in the first sentence that a “yes” vote will enshrine the right to abortion *at any time of pregnancy* in the Missouri Constitution is unfair, insufficient, inaccurate and misleading. It is contrary to the language of the Amendment and gives voters the wrong idea of what the Amendment will accomplish. As held by the Court of Appeals ruling in the summary statement case regarding this same initiative petition, the Amendment allows government regulation of abortion to some degree. *Fitz-James*, 678 S.W.3d at 204. To say that the Amendment enshrines the right of abortion “at any time of pregnancy” misleads voters into believing that no

regulation of abortion will be allowed at any stage of pregnancy even post-fetal viability, which is not a probable effect of the measure.

Second, the portion of the second sentence that a “yes” vote “will prohibit any regulation of abortion, including regulations designed to protect women undergoing abortion...” is unfair, inaccurate, insufficient, and misleading. It is contrary to the language of the Amendment and states the opposite of the effect of the Amendment. As held by the Court of Appeals in the summary statement case regarding this same initiative petition, the Amendment allows “regulation of reproductive health care to improve or maintain the health of the patient.” *Fitz-James*, 678 S.W.3d at 217. The portion of the second sentence that states otherwise misleads voters into thinking that the Amendment will not permit any regulation, and that is inaccurate.

Third, the phrase in the second sentence of the fair ballot language, that the Amendment will “prohibit any civil or criminal recourse against anyone who performs an abortion and hurts or kills the pregnant woman” is unfair, inaccurate, insufficient, and misleading. It is contrary to the language of the Amendment and will give voters the mistaken impression that the Amendment will allow physicians to perform abortions negligently or criminally. The Court of Appeals in the summary statement case regarding this same initiative petition held that “disallowing health and safety regulation — including requirements that physicians perform abortions and that they maintain medical malpractice insurance — is not a probable effect of the initiative[.]” *Fitz-James*, 678 S.W.3d at 208. Therefore, in saying that the Amendment will prohibit civil recourse, the fair ballot language falsely suggests that the Amendment will shield abortion providers from liability for medical malpractice when it has no such effect. Likewise, in saying the Amendment will prohibit criminal recourse, especially when paired with the Secretary’s use of the phrase “hurts or kills,” the fair ballot language falsely suggests the Amendment permits a doctor to murder a

pregnant person on the operating table without any risk of prosecution, when the Amendment has no such effect.

Fourth, the fair ballot language drafted by the Secretary in total is unfair, inaccurate, insufficient, and misleading because it makes no reference to other reproductive health care. This issue too was discussed in detail in the summary statement case regarding this same initiative petition. While the access to and regulation of abortion is one of the features of the Amendment, the right to make decisions about all reproductive health care, including pre-natal care and contraceptives, and the prohibition against governmental discrimination for providing or obtaining reproductive health care are also features. Accordingly, “inclusion of all reproductive health care, not just abortion, . . . is necessary to give voters ‘a sufficient idea of what the proposed amendment[] would accomplish.’” *Fitz-James*, 678 S.W.3d at 204 (quoting *Fitzpatrick*, 640 S.W.3d at 125). The singular focus of the fair ballot language on abortion misleads voters into believing that abortion is the only topic of the measure, when it is not.

The Secretary of State’s fair ballot language is further unfair, insufficient, inaccurate, and misleading when viewed next to the official ballot title. On the Secretary’s website, and soon at polling places, voters can and will see both side by side. The fair ballot language as drafted by the Secretary says the Amendment will enshrine the right of abortion at any time, while the official summary statement says the Amendment will allow abortion to be restricted or banned after Fetal Viability. The Secretary’s fair ballot language says that the Amendment will prohibit any regulation of abortion while the summary statement says the Amendment will allow regulation of reproductive health care to improve or maintain the health of the patient. It is not possible to reconcile these conflicting statements. Intentional or not, the Secretary’s language sows voter confusion about the effects of the measure.



The Court rejects the Secretary's arguments that the fair ballot language accurately describes its effects and that it is fair and sufficient. The Secretary's argument at trial focused on subsection 5 of the Amendment, which, he claims, grants "immunity" to pregnant women and health care providers and thereby enshrines abortion at any time and nullifies any regulation of abortion. This is not the case and such argument ignores that subsection 5 must be read with the entirety of the Amendment. Specifically, subsection 3 clearly allows the state to impose regulations to protect the health and safety of the patient. The Court of Appeals in the summary statement case regarding this initiative petition already ruled the Amendment must be interpreted in its entirety and that it permits regulation. *Fitz-James*, 678 S.W.3d at 205 ("the provisions of a constitutional amendment are 'construed together and read in harmony' with the entire amendment"). In addition, the Secretary ignores, with respect to health care providers, that the protection from prosecution (1) hinges on the patient's consent and (2) is coextensive with the right to reproductive freedom and its regulation. The Secretary's assertion that subsection 5 grants complete immunity is inaccurate. The Secretary's argument that an exception in the Amendment swallows the rule and nullifies all regulation has previously been rejected by the Court of Appeals.

Petitioner does not challenge the "no" and tax portions of the fair ballot language statement. Therefore, the Court need not address those portions of the fair ballot language statement.

This Court recognizes it must, where warranted, give deference to ballot language prepared by the Secretary, recognizing that "ten different writers would produce ten different versions" of ballot language 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). However, where necessary as in this case, the Court has the authority to rewrite the fair ballot language, which the Secretary must then use. *Fitz-James*, 678 S.W.3d at 214 ("[A] circuit court is authorized

to rewrite any language of the summary statement that is not fair and sufficient. Thus, if the circuit court correctly concludes that all of the language is not fair and sufficient, then the circuit court is authorized to rewrite the entire summary statement.”).

For the reasons explained herein, the Court rewrites the fair ballot language statement for Amendment 3. Fortunately, there is a simple solution in this case. The Court follows the summary statement already approved by the Court of Appeals almost verbatim. Therefore, this Court rewrites and certifies the fair ballot language as follows:

A **“yes”** vote establishes a constitutional right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid; removes Missouri’s ban on abortion; allows regulation of reproductive health care to improve or maintain the health of the patient; requires the government not to discriminate, in government programs, funding, and other activities, against persons providing or obtaining reproductive health care; and allows abortion to be restricted or banned after Fetal Viability except to protect the life or health of the woman.

A **“no”** vote will continue the statutory prohibition of abortion in Missouri.

If passed, this measure may reduce local taxes while the impact to state taxes is unknown.

Petitioner has requested the Court to prohibit the Secretary from publishing or disseminating his original fair ballot language statement on his website or otherwise. Counsel for the Secretary represented at trial that there was no evidence that the Secretary will not comply and replace the inaccurate language from the website with the fair ballot language certified by the Court. (In fact, on the Court’s inquiry during trial, counsel for both parties could not cite an example where a Secretary of State in Missouri had ever published or disseminated language that was different from such language certified by the Court of authority.) Therefore, the Court believes this Secretary will swiftly act in accordance with the Court’s decision and construes Counsel’s representation as an affirmative expression of the Secretary’s intent to conduct his

official public communications about the fair ballot language statement in conformity with this Court's decision, and finds it unnecessary to grant Petitioner's request for an injunction.

The Court next considers Petitioner's Count II.

Petitioner pleads Count II in the alternative to Count I. Because the Court has found in Petitioner's favor on Count I, and has found it unnecessary to grant injunctive relief on Count I beyond rewriting the fair ballot language in light of the Secretary's representations, Petitioner has received all the relief to which she is entitled, and Count II is moot.

### ORDER AND JUDGMENT

It is hereby ordered, adjudged, and decreed that:

A. The Secretary of State's fair ballot language statement for Amendment 3 is unfair, inaccurate, insufficient and misleading and is hereby vacated;

B. Judgment is entered in favor of Petitioner and against Respondent on Count I;

C. The following fair ballot language statement for Amendment 3 is certified to Respondent Ashcroft and shall be used for purposes of RSMo §116.025 and other laws on fair ballot language, in all respects, for the November 2024 general election:

A **"yes"** vote establishes a constitutional right to make decisions about reproductive health care, including abortion and contraceptives, with any governmental interference of that right presumed invalid; removes Missouri's ban on abortion; allows regulation of reproductive health care to improve or maintain the health of the patient; requires the government not to discriminate, in government programs, funding, and other activities, against persons providing or obtaining reproductive health care; and allows abortion to be restricted or banned after Fetal Viability except to protect the life or health of the woman.

A **"no"** vote will continue the statutory prohibition of abortion in Missouri.

If passed, this measure may reduce local taxes while the impact to state taxes is unknown.

D. Count II is dismissed as moot;

E. Each party shall bear their own costs;

F. Any other relief sought, including Petitioner's request for attorneys' fees, is denied.

IT IS SO ORDERED.

On September 5<sup>th</sup>, 2024.



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