

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

ANNA FITZ-JAMES,)
)
Relator,)
) No. 23AC-CC02800
v.)
)
ANDREW BAILEY, in his)
official capacity as Attorney)
General for the State of Missouri,)
et al.,)
)
Respondents.)

INTERESTS OF *AMICI CURIAE*¹

Amicus Susan B. Anthony Pro-Life America is a network of more than one million pro-life Americans nationwide, dedicated to ending abortion by electing national leaders and advocating for laws that save lives, with a special calling to promote pro-life women leaders. It believes the legal precedents and principles governing abortion should be informed by the most current medical and scientific knowledge on human development. A more complete account of its interest in this

¹ All parties have either consented to the filing of this brief or have stated they have no objection. The undersigned counsel represents that no party or party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparation or submission of this brief; and that no person other than the amici and counsel identified herein contributed money that was intended to fund preparation or submission of this brief.

matter is contained in Exhibit A (comment of *amicus* lodged with the Missouri Secretary of State on April 6, 2023), attached hereto and incorporated herein.

Amicus Vitae Foundation is a research and education organization that has specialized in the topic of abortion for the past 30 years. Its national office is located in Cole County in Jefferson City, Missouri. It has an interest in contributing research and experiential data that will illuminate the patterns of the abortion industry to push people to make decisions without all of the facts. It believes it would be detrimental to allow the abortion industry to utilize these deceitful tactics in the initiative petition process. A more complete account of Vitae Foundation's interest in this matter is contained in Exhibit B (comment of *amicus* lodged with the Missouri Secretary of State on April 6, 2023) and Exhibit C, attached hereto and incorporated herein.

Amicus Thomas More Society (TMS) is a national public interest law firm dedicated to restoring respect in the law for the right to life, freedom of speech and religious liberty. A 501(c)(3) nonprofit incorporated in Illinois with offices in Chicago, Illinois and Omaha, Nebraska, TMS pursues its purposes through civic education, litigation, and related activities. In this effort, TMS has represented many individuals and organizations in federal and state courts and filed numerous *amicus curiae* briefs with the aim of protecting the right to life and the rights of

individuals and organizations to communicate their political and social views, as well as to faithfully practice their religion, as guaranteed by the Constitution.

ARGUMENT

The essential constitutional section providing for ballot initiatives, MO. CONST. Article III, § 50, is not self-implementing. Chapter 116 of the Revised Statutes of Missouri sets forth the detailed plan for how a ballot initiative proceeds from a proponent, through the signature process and onto a ballot. The three statewide officials charged with executing the plan are the Secretary of State, the Attorney General and the Auditor.

The Relator in this case proposes that the statutory plan for creating ballot titles be dismantled by the Court as unconstitutional. Relator's Suggestions in Support, p. 24, May 16, 2023. Instead of statewide officials determining the content of ballot titles for her 11 proposed initiatives, Relator thinks that task should fall to her. *Id.* at 19.

I. The goal of transparent fairness would not be served by granting Relator's demand that the ballot title procedure be found unconstitutional.

Relator's untenable proposition defies Missouri court precedent, which steadfastly observes, as the Supreme Court reiterated in *Brown v. Carnahan*, 370 S.W.3d 637, 654 (Mo. 2012), that summary statements must be as transparently fair as possible:

- “[T]he summary statement must be adequate and state the consequences of the initiative without bias, prejudice, deception, or favoritism. *See State ex rel. Humane Soc’y of Missouri*, 317 S.W.3d at 673 (internal quotations omitted)”;
- “The language used should ‘fairly and impartially summariz[e] the purposes of the measure so that voters will not be deceived or misled.’ *Missouri Mun. League v. Carnahan*, 364 S.W.3d 548, 552 (Mo.App.2011) (internal quotations omitted).”
- “[The summary statement] should accurately reflect the legal and probable effects of the proposed initiative. *Missouri Mun. League*, 303 S.W.3d [573] at 584 [Mo.App.2010].”
- “Sometimes it is necessary for the secretary of state’s summary statement to provide a context reference that will enable voters to understand the effect of the proposed change. *See Missouri Mun. League*, 364 S.W.3d at 553.”

The proponent of ballot initiatives is often not the person most likely to achieve these goals. Relator, or any proponent of a ballot initiative, including groups like the ACLU of Missouri, can submit a proposed summary statement or ballot title, which the relevant Missouri statewide elected official is free to adopt verbatim if it is found to be accurate, non-prejudicial, and impartial. What a proponent cannot do is use state courts to supersede the legislatively created process of assessing a

proposed ballot initiative and force her summary onto the ballot. By contrast, the thoughtful offerings of *amici*, as contained in Exhibits A, B and C, along with the comments of other interested individuals and organizations, are designed to lead to the goals of accuracy, fairness and impartiality, in that they are submitted for evaluation by public, statewide officers, just as the legislature decided when it determined how ballot titles would be written.

Amici are concerned that voters be made aware, in the ballot titles, of the anticipated probable effects of the proposed amendments, as well as the facts about what these amendments would do to current Missouri law, which has been decades in the making (what the courts refer to as “context”). More specifically, “References to current law to provide context to a summary statement do not render the summary statement unfair or prejudicial.” *Brown v. Carnahan*, 370 S.W.3d at 360.

II. Because courts show so much deference, the goal of achieving good ballot titles would not be advanced by allowing private proponents like Relator to write their own ballot titles.

When reviewing ballot title language, Missouri courts show deference to the statewide officials tasked by the legislature with writing it. As the Supreme court held in *Brown v. Carnahan*,

That the court might believe that the additional information about the rate limit would render a better summary is not the test. *See Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo.App.1999) (rejecting claims by an initiative's opponents who alleged that the secretary of state's summary statement for the initiative

was vague, ambiguous, and insufficient; finding that “even if the language proposed by [the opponents] is more specific, and even if that level of specificity might be preferable, whether the summary statement prepared by the Secretary of State is the best language for describing the referendum is not the test”).

370 S.W.3d at 664.

“Courts are understandably reluctant to become involved in pre-election debates over initiative proposals. Courts do not sit in judgment on the wisdom or folly of proposals.” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. 1990). “Our role is not to act as a political arbiter between opposing viewpoints in the initiative process . . .” *Missourians Against Human Cloning v. Carnahan*, 190 S.W.3d 451, 456 (Mo. App. W.D. 2006).

“The burden is on the opponents of the language to show that the language was insufficient and unfair, and the burden was not met.” *Hancock v. Sec’y of State*, 885 S.W.2d 42, 49 (Mo.App. W.D. 1994), *opinion adopted and reinstated after retransfer* (Oct. 31, 1994).

Given the deference granted by Missouri courts to the drafters of ballot titles, it would be outrageous to shift that responsibility to a private proponent of the ballot initiative.

CONCLUSION

Amici submit that, for at least the foregoing reasons, the Court should reject Relator's demand that Missouri's ballot title procedure be declared unconstitutional.

Respectfully submitted,

/s/ Timothy Belz

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2023, this brief was filed electronically with the Clerk through the Court's electronic filing system, which will accomplish service on all counsel.

/s/ Timothy Belz

Timothy Belz
Counsel for Amici