

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

DR. ANNA FITZ-JAMES,	)	
Petitioner,	)	
v.	)	Cause No. 23AC-CC03167
JOHN R. ASHCROFT,	)	
MISSOURI SECRETARY OF STATE	)	
Respondent.	)	

**SECOND AMENDED PETITION CHALLENGING  
SUMMARY STATEMENT PORTION OF OFFICIAL  
BALLOT TITLE FOR INITIATIVE PETITION**

1. Dr. Anna Fitz-James brings this challenge to the sufficiency and fairness of the summary statement portion of the Secretary of State’s official ballot title for the Right to Reproductive Freedom Initiative Petition (“the Initiative”). If adopted by a majority of Missourians, the Initiative will create a new section in the Missouri Bill of Rights to be found at Article I, § 36 of the Missouri Constitution.

2. The Initiative establishes a state constitutional right to reproductive freedom, which would safeguard Missourians from government interference in their decisions about reproductive health care—including prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions. It also allows the general assembly to

enact restrictions needed to improve or maintain the health of the person seeking care and to regulate abortion care after fetal viability.

3. This action to secure a different summary statement is necessary because the Secretary of State disregarded his duty to craft a sufficient and fair summary statement and instead certified one that is argumentative against adoption of the Initiative, is misleading as to the Initiative’s probable effects, and prejudicial to Initiative. Missourians are entitled to a sufficient and fair summary statement that will allow them to cast an informed vote for or against the Initiative without being subjected to the Secretary of State’s disinformation.

**PARTIES**

4. Petitioner, Dr. Anna Fitz-James, is a citizen of the State of Missouri and a retired physician.

5. Respondent, John Ashcroft, is the Secretary of State for the State of Missouri and is named as a party in his official capacity pursuant to § 116.190.2.<sup>1</sup>

**STATUTORY AUTHORITY AND VENUE**

6. Petitioner brings this action pursuant to § 116.190.1.

7. Venue is proper in this Court. § 116.190.1.

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<sup>1</sup> All statutory citations are to RSMo. Supp. 2017, unless otherwise noted.

FACTS

8. On March 8, 2023, Dr. Fitz-James, on behalf of Missourians for Constitutional Freedom, submitted the Proposed Initiative to Ashcroft for preparation of a ballot title. A copy of the submission is attached as Exhibit A.<sup>2</sup>

9. Ashcroft assigned the initiative No. 2024-085.

10. On April 13, 2023, Ashcroft sent to the Attorney General for review and approval a proposed summary statement portion for the ballot title, a copy of which is attached as Exhibit B.

11. On April 24, 2023, the Attorney General issued Opinion Letter No. 242-2023 to Ashcroft, which approved the content and form of the summary statement portion for the ballot title and a copy of which is attached as Exhibit C.

12. On July 20, 2023, the Attorney General issued Opinion Letter No. 300-2023 approving the Auditor's fiscal note summary. A copy is attached as Exhibit D.

13. On July 21, 2023, the Auditor sent notice of the Attorney General's approval of the fiscal note summary to the Secretary of State. A copy is attached as Exhibit E.

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<sup>2</sup> Each of the Exhibits attached to this Petition is incorporated herein by reference.

14. On or about July 26, 2023, Ashcroft certified the official ballot title, which includes the approved summary statement. A copy is attached as Exhibit F.

15. The summary statement concocted by the Ashcroft and approved by the Attorney General is:

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?

16. The Initiative will “be submitted to the electors. . . by official ballot title.” Mo. Const. art. XII, § 2(b); § 116.010(4).

17. The summary statement portion of the ballot title must be “a concise statement not exceeding one hundred words” that “in the form of a

question using language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.” § 116.334.1.

“[T]he summary statement must be adequate and state the consequences of the initiative without bias, prejudice, deception, or favoritism,” using language that “fairly and impartially summariz[es] the purposes of the measure so that voters will not be deceived or misled,” and “accurately reflect[s] the legal and probable effects of the proposed initiative.” *Brown v. Carnahan*, 370 S.W.3d 637, 654 (Mo. banc 2012) (quotations and citations omitted).

18. The summary statement here is neither sufficient nor fair because it is intentionally argumentative, fails to advise voters of the Initiative’s purpose and probable effects, is deceptive and misleading, and creates prejudice against the Initiative by, among other things, referring to effects that are not probable.

19. The summary statement is insufficient and unfair for each of the following reasons:

- a. It fails to advise voters that the Initiative would establish a right to reproductive freedom, which would safeguard Missourians from government interference their decisions about reproductive health care, including prenatal care,

childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions;

b. It fails to advise voters that the Initiative would allow the general assembly to enact restrictions needed to improve or maintain the health of the person seeking care;

c. It fails to advise voters that the Initiative prohibits prosecution or government discrimination based on exercising right to reproductive freedom or assisting another in doing so;

d. It misleads voters by stating the Initiative would “allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice” although that is neither included in the text of the initiative nor is a probable effect of the Initiative;

e. It misleads voters by stating the Initiative would “nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion” although that is neither included in the text of the initiative nor is a probable effect of the Initiative;

- f. It misleads and confuses voters by acknowledging the Initiative allows for regulation of abortion procedures after Fetal Viability, then contradictorily (and argumentatively) stating the Initiative guarantees the “right of any woman, including a minor, to end the life of their unborn child at any time,” although that is not included in the text of the initiative nor is it a probable effect of the Initiative;
- g. It misleads voters by stating the Initiative would allow a minor to obtain an abortion at any time, despite the Initiative including a provision for the legislature to enact laws regulating parental consent requirements;
- h. It misleads voters by stating the Initiative would “potentially” require “tax-payer funding” of abortion even though the Initiative states nothing in it requires government funding of abortion procedures;
- i. It confuses voters by using awkward wording such as, for example, stating the Initiative “requires the government not to discriminate” rather than telling voters straightforwardly that it “prohibits the government from discriminating;”

- j. It does not adequately describe how the Initiative would change current Missouri law by omitting, for example, the fact that the Initiative would prohibit the prosecution for exercise of the right to reproductive freedom; and
- k. It attempts to create prejudice against the amendment by failing to mention any aspect of the right to reproductive freedom that the Initiative would create other than abortion and using language that is intentionally argumentative or prejudicial.

20. To correct the deficiencies in the certified summary statement, Dr. Fitz-James requests this Court certify a different summary statement.

21. The Initiative can be sufficiently and fairly summarized in a manner that is neither argumentative nor likely to prejudice voters for or against the Initiative and keeping within the 100-word limit as follows:

Do you want to amend the Missouri Constitution to:

- establish the right to reproductive freedom: to make decisions about reproductive health care, including prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions;
- allow regulation of reproductive health care to improve or maintain patient health;

- allow, in addition, regulation of abortion care after Fetal Viability and parental-consent requirement, with protections for health and safety;
- prohibit prosecution or government discrimination for exercising right to reproductive freedom or assisting another; and
- declare government funding of abortion is not required?

WHEREFORE, Petitioner prays that this Court:

- Consider the petition, hear arguments, and certify to Respondent a summary statement that is sufficient and fair;
- Enter Judgment in her favor against Respondent; and
- Allow to her such other and further relief as is just and proper.

Respectfully submitted,

/s/ Anthony E. Rothert  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2023, the foregoing was filed through the Court's electronic filing system to be served electronically on all counsel of record.

/s/ Anthony E. Rothert

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