

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

DR. ANNA FITZ-JAMES,)	
)	
Plaintiff,)	
)	Cause No.:
v.)	
)	Division:
JOHN R. ASHCROFT,)	
MISSOURI SECRETARY OF STATE)	
)	
Defendant.)	

**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. 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.

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

5. Defendant, John Ashcroft, is the Secretary of State for the State of Missouri and is named as a party Defendant in his official capacity pursuant to § 116.190.2 RSMo.

STATUTORY AUTHORITY AND VENUE

6. Plaintiff brings this action pursuant to § 116.190.1 RSMo.

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

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.¹

9. Ashcroft assigned the initiative No. 2024-077.

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. 234-2023 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. Ashcroft must include the approved summary statement as a portion of the ballot title.

13. The approved summary statement 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;

¹ The Exhibits attached to this Petition are each incorporated herein by reference.

- nullify longstanding Missouri law protecting the right to life, including but not limited to partial-birth abortion;
- require the government not to discriminate against persons providing or obtaining an abortion, potentially including tax-payer funding; and
- 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.

14. The summary statement 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 RSMo. “[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).

15. 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.

16. 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 voters by stating the Initiative would
“potentially” require “tax-payer funding” of abortion
although that is not included in the text of the initiative
nor and potential does not equate to probable and the
amendment explicitly states that it does not requires
government funding;
- g. It misleads voters by stating the Initiative would “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” although that is neither included in
the text of the initiative nor is a probable effect of the
Initiative.

- h. 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”;
- i. 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
- j. 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.

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

18. 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 that includes the right to make decisions about reproductive health care, including prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions;
- allow the state to regulate reproductive health care to improve or maintain the health of an individual seeking care, according to accepted standards and evidence-based medicine;
- declare government funding of abortion is not required;
- prohibit prosecution or government discrimination for exercising right to reproductive freedom or assisting another in doing so?

WHEREFORE, Plaintiff prays that this Court:

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

Respectfully submitted,

/s/ Anthony E. Rothert

Anthony E. Rothert, #44827

Tori Schafer, #74359

Jonathan Schmid, #74360

American Civil Liberties Union
of Missouri

906 Olive Street

Suite 1130

St. Louis, Missouri 63101

(618) 531-4184

arothert@aclu-mo.org

tschafer@aclu-mo.org

jschmid@aclu-mo.org