

IN THE
MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DR. ANNA FITZ-JAMES,
Appellant,

v.

Cause No. WD88392

DENNY HOSKINS,
CINDY O’LAUGHLIN,
JONATHAN PATTERSON,
AND ED LEWIS,
Respondents.

BRIEF OF THE LEAGUE OF WOMEN VOTERS OF MISSOURI AS *AMICUS CURIAE*

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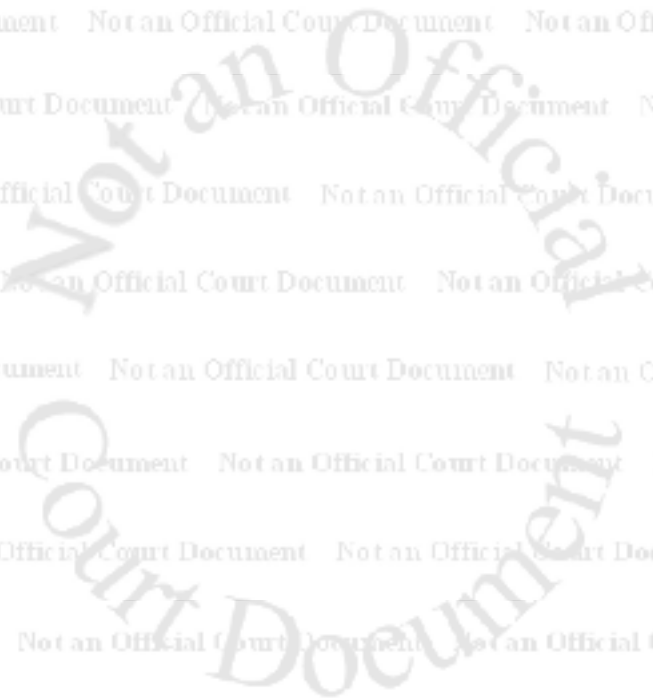


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IDENTITY AND INTERESTS OF AMICUS CURIAE

The League of Women Voters of Missouri is a chapter of the national organization formed in 1920 as the 19th Amendment granted women the right to vote. The League is a nonpartisan organization whose fundamental purpose is to educate and empower voters.

The League works to secure democracy's promise through voter education, issue advocacy, and citizen outreach. Current members are focused on securing a participatory democracy for the 21st century – a democracy where citizens are actively engaged in shaping governmental policies that affect their lives and where the government solicits and values citizen involvement. Members believe a strong democracy is where citizens are involved in their communities, participate in public policy debates, know what's on the ballot, and have a voice in every election. To nurture and sustain a healthy democracy, the League advocates for government transparency and the citizen's right to know and understand what they are voting on in each election.

Since its origin more than a century ago, the League has worked to maintain its reputation for nonpartisan efforts. Members of local Leagues across Missouri work to ensure that all eligible citizens are registered to vote, to educate the citizenry on election processes, and to provide clearly written guides that include pro and con effects of ballot issues. The League uses a variety of means to achieve this goal including print publications, public candidate and issue forums, speaker presentations, and online information to educate voters so they are empowered to make informed choices at the polls, regardless of their political beliefs.

The issues in this case go to the essence of the League’s purpose—to ensure that voters have adequate information to make their electoral choices.

STATEMENT OF FACTS

Amicus adopts the statement of facts in Appellant’s brief.

POINTS RELIED ON

I. The circuit court erred in approving the Summary Statement and Fair Ballot Language as fair and sufficient, because vital information has been omitted and the statements are unfair and misleading in that Missouri law requires summary statements to be fair, sufficient and impartial, thereby providing voters sufficient accurate information necessary to cast an intelligent and informed vote as guaranteed by Article I, § 25 and Missouri precedent.

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Lucas v. Ashcroft, 688 S.W.3d 204 (Mo. App. W.D. 2024)11

II. The circuit court erred in holding that HJR73 does not violate the Missouri Constitution’s prohibition on a proposed amendment containing more than one subject because HJR73 contains matters not properly connected with the subject of the measure as designated by the general assembly in the title to HJR73 in that HJR73 section 36(a)9 concerns the subject of gender transition surgery and medications for minors and section 36(a)10 concerns the subject of venue and intervention, neither of which are properly connected to the

subject of HJR73 “reproductive health care”, and are an attempt to manipulate the voter.

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STATEMENT OF CONSENT

This brief is filed with the consent of all parties and, pursuant to Special Rule 26, a certificate of consent accompanies this brief.

ARGUMENT

Introductory Summary

The purpose of Missouri law relating to ballot propositions that would amend the Missouri Constitution is to ensure that state officials will provide voters with ballot language that informs the voters of the effect of a proposed amendment so that the voters can make an informed choice when they vote. This noble purpose is congruent with the main purpose of *amicus curiae*, the League of Women Voters of Missouri, which works to ensure that voters understand the issues they are called upon to decide. The ballot language before the Court in this appeal – wording that the circuit court approved – fails the law’s test.

That test – the standard the law prescribes – is that the ballot language must be “fair” and “sufficient” “and impartial.” The purpose of the law’s standard is to ensure that voters will have a fair and sufficient summary of the proposition they are voting on so that their choices will be informed. The summary must be truthful and not misleading.

The ballot language before this Court is the result of a process that began with the passage of HJR 73, which contains a title and proposed ballot summary language; when the Secretary of State adopted that wording for the ballot, the wording was challenged in this lawsuit by Appellant Anna Fitz-James. The circuit court found the ballot summary statement and the Fair Ballot language unfair and insufficient and sent it back to the

Secretary of State for revision.¹ After a second revision, the circuit court approved the version that is before this Court in this appeal. For simplicity we will refer to this most recent version, on which the court entered judgment, as the circuit court's revision. Because the Fair Ballot Language is derived from the Ballot Summary, and the Ballot Summary is the only language that appears on the ballot, which is all that most voters read, this brief will address primarily the ballot summary language. Unless this Court says otherwise, the circuit court's revision will be on the ballot next year – it asks voters if they wish to amend the Missouri Constitution to:

- Guarantee women's medical care for emergencies, ectopic pregnancies, and miscarriages;
 - Ensure women's safety during abortions;
 - Ensure parental consent for minors;
 - Repeal Article I, section 36, approved in 2024; allow abortions for medical emergencies, fetal anomalies, rape, and incest; and
 - Prohibit sex-change procedures for minors?

I. The circuit court erred in approving the Ballot Summary Statement and Fair Ballot Language as fair and sufficient, because vital information has been omitted and the statements are unfair and misleading in that Missouri law requires summary statements to be fair, sufficient and impartial

¹ The Secretary followed a process adopted in a recent statute, 116.160, which requires sending disapproved ballot wording back to the Secretary of State for revision before the court gets involved in rewriting the ballot language.

thereby providing voters sufficient accurate information necessary to cast an intelligent and informed vote as guaranteed by Article I, § 25 and Missouri precedent

Missouri law requires that every ballot summary be “fair and sufficient”—that is, truthful, impartial, and free of advocacy—so that voters may understand the legal consequences of their choice. § 116.334, RSMo; *Dotson v. Kander*, 464 S.W.3d 190, 194–95 (Mo. banc 2015). The purpose of this requirement is “to allow voters to make informed decisions” and to prevent self-interested factions from misleading the electorate. *Id.* Likewise, Missouri law requires that a summary “state the consequences of the measure without bias, prejudice, deception, or favoritism.” *Brown v. Carnahan*, 370 S.W.3d 637, 653–54 (Mo. banc 2012); *Pippens v. Ashcroft*, 606 S.W.3d 689 (Mo. App. W.D. 2020). When ballot language fails that test, courts must intervene “to preserve the integrity of the electoral process.” *Lucas v. Ashcroft*, 688 S.W.3d 204, 213 (Mo. App. W.D. 2024).

A. The trial court’s ballot summary fails to inform voters that “Article 1 Section 36” is “The Right to Reproductive Freedom Initiative” added to the Constitution by the voters in 2024 which, among other things, establishes and protects a woman’s right to abortion care until the point of fetal viability, whereas the replacement proposed in HJR 73 bans abortion care in all cases except medical emergencies, fetal anomalies, rape or incest, and then only for the first 12 weeks of gestation in cases of rape or incest;

B. The ballot summary says that HJR 73 would “guarantee medical care for emergencies, ectopic pregnancies and miscarriages” whereas HJR 73 actually provides that an abortion “may be performed or induced” in such cases, not that it would be “guaranteed” or even available;

C. The ballot summary says that HJR 73 would “ensure women’s safety during abortions” when, in truth, it lists a number of specific restrictions unbounded by the requirements in the current Article 1, section 36 which provides that: “The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine and does not infringe on that person's autonomous decision-making.”

D. The ballot summary approved by the trial court is further misleading by implying that the First Bullet Point (“guarantee” of medical care) and Second Bullet Point (“Ensure women’s safety”) are new protections for pregnant women.

Most significantly, this ballot wording does not tell voters that the right to abortion care prior to fetal viability – which the voters approved in 2024 and now is codified in Article 1, section 36 – would be repealed and that all such abortions would be illegal

except for medical emergencies, fetal anomalies, rape and incest, and in the case of rape and incest, only in the first 12 weeks of pregnancy.

The average person could not discern this explanation from the above-quoted ballot summary; indeed, neither could the average or even above-average lawyer. Ask your spouse, or another loved one, or the smartest person you know: Do you know what Article 1, section 36 of the Missouri Constitution is?

The Missouri Constitution ultimately vests all political power in the people. Mo. Const. art. I, § 1. The people elect representatives, senators, and other officials to act on their behalf, but the people reserve to themselves the power to amend the constitution, to pass laws through the initiative, and to veto laws enacted by the General Assembly and approved by the governor. It therefore is essential to a functioning democracy that state officials – the legislature, the Secretary of State, and the courts – use words that fairly, sufficiently and truthfully describe proposals on which the people are to vote.

Obviously when a proposal such as HJR 73 is approved by the court, it enters the world of political campaigns. In that world, there are explanations that don't explain, manipulation of language, misleading as well as truthful statements of what the proposal means or says. HJR 73 should enter this campaign world without the benefit or burden of ballot wording that puts the state's thumb on the scale. Hence the requirement that the ballot wording be fair and sufficient. This requirement demands that the state be neutral, an honest broker, and that the state avoid deception, manipulation, omissions and false statements. State officials of course are not in a good position to correct or prevent

campaigns' deceptions or other bad behavior; the least that the people can expect from their officials, including the courts, is that the state be neutral.

The law also requires that the Secretary prepare and promulgate Fair Ballot Language to explain to voters what a proposal says and will do. (Sec. 116.025) The statute's purpose is to supplement the ballot summary, which has a strict word limitation. In the interest of brevity, Amicus will not separately address the Fair Ballot Language because its wording tracks the language of the ballot summary wording and the summary statement is on the ballot that every voter will see.² The critique in this brief of the ballot wording will, we hope, suffice to cover the deficiencies of the Fair Ballot Language.

² The Fair Ballot Language tells voters:

A "yes" vote will amend the Missouri Constitution to guarantee women's medical care for medical emergencies, ectopic pregnancies, and miscarriages; authorize laws to regulate abortion providers and facilities to ensure health and safety; require informed and voluntary consent for an abortion, including parental or judicial consent for minors; repeal Article I, Section 36, approved in 2024, and allow abortions in cases of medical emergency, fetal anomaly, rape, or incest, with a twelve-week gestational limit for rape or incest; require physicians to provide medically accurate information; prohibit public funding of abortions except in limited circumstances; and protect children from sex-change by prohibiting certain medical procedures and medications for minors, with exceptions for specific medical conditions.

A "no" vote will not amend the Missouri Constitution to guarantee women's medical care for emergencies, ectopic pregnancies, and miscarriages, require parental consent for minors' abortions, require health and safety standards for abortions, limit abortions to cases of medical emergency, fetal anomaly, rape, or incest, or to protect children from sex-change.

The circuit court’s wording currently before this Court uses comforting verbs—*guarantee*, *ensure*, *protect* – words that cast HJR 73 as a benevolent reform while not identifying that it would repeal the Right to Reproductive Freedom Amendment adopted in 2024 and reinstate Missouri’s abortion ban. The language’s structure and omissions mislead voters rather than inform them.

Where the state fails to inform voters properly with fair and sufficient ballot wording, it deprives many voters -- those who don’t do their own research before going to the polls – of their right to participate fully in the democratic process.

Truthful ballot language is the underpinning of a free and open election. Mo. Const. art. I § 25. When language conceals or distracts, the consent of the voters is not informed but is illusory. The ballot summary wording employs comforting verbs—*guarantee* and *ensure*—to cast HJR 73 as a benevolent reform while concealing that it would repeal the Right to Reproductive Freedom Amendment approved in 2024. This phrasing is not informative or impartial:

- **“Guarantee women’s medical care for emergencies…”** falsely implies the creation of new rights.
- **“Ensure women’s safety during abortions”** functions as a justification of renewed restrictions.
- **“Guarantee and “ensure”** imply the expansion of rights, while the measure in fact withdraws a constitutional right voters adopted just one year ago.

When Missourians adopted the Constitution of 1945, they began with a declaration of principle: “All political power is vested in and derived from the people.” Mo. Const.

art. I, § 1. That statement is more than a preamble; it is a promise that government exists only by the people's informed consent. Because the vote is the instrument through which that power is exercised, the Constitution protects the integrity of elections with uncompromising language: "All elections shall be free and open." Mo. Const. art. I, § 25.

The Missouri Supreme Court has recognized that "[f]ree and honest elections are the very foundation of our republican form of government"). *Trout v. State*, 231 S.W.3d 140, 151 (Mo. 2007), citing *Reynolds v. Sims*, 377 U.S. 533, 564 (1964). That freedom includes the right to understand the question presented. The people's sovereignty cannot survive without honesty by those in charge of their processes of self-government.

Missouri's constitution preserves the people's direct legislative power through the initiative and referendum process. Mo. Const. art. III, § 49. With respect to this process, the Missouri Supreme Court has observed that "nothing in our constitution so closely models participatory democracy in its pure form." *Missourians to Protect the Initiative Process v. Blunt (MPIP)*, 799 S.W.2d 824, 830 (Mo. banc 1990); see also *McCarty v. Missouri Secretary of State*, 710 S.W.3d 507 (2025) (the initiative process closely models participatory democracy in its pure form, underscoring the importance of fair and accurate ballot language in preserving this democratic mechanism).

Thus, these provisions "establish with unmistakable clarity that the right to vote is fundamental to Missouri citizens." *Weinschenk v. State*, 203 S.W.3d 201, 2011 (Mo. 2006). This fundamental right to vote is rendered hollow if the ballot language misleads Missourians about the implications of their votes.

Once the people amend their Constitution, their decision stands as the supreme act of lawmaking in Missouri. The Constitution itself recognizes that sovereignty resides in the people and that all branches of government derive their authority from it. Mo. Const. art. I, § 1. A second vote may lawfully revisit a prior amendment—but only through honest deliberation and truthful presentation of the issue. Misrepresentation despoils reconsideration. The ballot language for HJR 73 asks voters to overturn their own decision without realizing it—a perversion of democratic reconsideration that bears the form of popular sovereignty but none of its substance. See *Knight v. Carnahan*, 282 S.W.3d 9, 15 (Mo. App. 2009) (Where the people have demonstrated their will through their vote on initiative, the Court of Appeals' duty is to seek to uphold that decision).

Missourians voted in 2024 to enshrine the Right to Reproductive Freedom in Article I, § 36. That was a constitutional judgment—an exercise of sovereignty—not a mere policy preference. HJR 73's attempt to secure repeal through incomplete and misleading language treats that judgment as provisional and manipulable. The Constitution does permit the State to ask the people to undo their own work. But the people's right to change their Constitution presupposes the right to know what they are changing.

The Second Revised Summary Statement, rather than summarizing with impartiality, does so with advocacy. The court-approved language is not neutral; it presages the campaign for its passage. It uses comforting verbs—guarantee, ensure, protect—to cast HJR 73 as a benevolent reform while concealing that it repeals the Right

to Reproductive Freedom Amendment approved in 2024. It invites voters to act against their own prior decision without realizing it.

The phrase “*Guarantee women’s medical care for emergencies...*” found in bullet point 1 is both an attempt to mislead voters into thinking they are protecting the rights of pregnant women in medical crisis, and an attempt to answer for the harm women miscarrying in Missouri experienced when abortion was banned. Further, it falsely implies the creation of new rights. For example: the phrase “Ensure women’s safety during abortions” is actually justification for restrictions imposed by the measure; the “guarantee” and “ensure” language implies benevolent expansion of rights, while the measure in fact withdraws a constitutional right voters adopted just one year ago.

HJR 73 is, in substance, an abortion ban. By emphasizing limited and largely illusory exceptions, the ballot language misleads voters into believing the measure would expand care for women in medical distress, when in reality it would take those protections away. The deception is nowhere more egregious than in the claim that the measure would “allow abortions for rape or incest.” Victims of incest are most often children; many do not realize they are pregnant until well after 12 weeks. HJR 73 would compel such children to carry pregnancies to term. To tell voters that they are protecting incest victims’ rights when they are, in fact, stripping them away is neither fair nor impartial.

Bullet point 4 asserts that the measure would “repeal Article I, § 36, approved in 2024; allow abortions for medical emergencies, fetal anomalies, rape, and incest.” This phrasing conceals a falsehood. Victims of incest are most often children. When children

are impregnated by their abusers, they frequently do not realize they are pregnant until well after twelve weeks' gestation. These are the very patients most likely to require abortion care beyond the measure's rigid twelve-week limit. HJR 73 would force those children to carry pregnancies to term. Yet the language of HJR 73 tells voters they are protecting incest victims' right to abortion, when in truth they are taking it away.

Every misleading ballot corrodes voter confidence. The judiciary has recognized that deception in official election materials undermines faith in self-government. *Copenhaver v. Ashcroft*, 697 S.W.3d 601, 606 (Mo. App. 2024) (holding that summaries must reflect the "legal and probable effects" of a measure). Empirical research likewise demonstrates that governmental misinformation diminishes voter participation and long-term trust.

This pattern of disregard for voters and patients alike is reflected in the legislature's repeated attempts to manipulate the ballot process itself. The recently enacted "three bites at the apple" law used by the circuit court in this case—currently under constitutional challenge—illustrates the adversarial stance state officials have taken toward their own constituents. Instead of providing accurate summaries in the first instance, the legislature has written laws that can be described in misleading terms before a court can intervene.

The Court should not tolerate government by misdirection. Missourians have the right to govern themselves—and that right depends upon the state that tells them the truth. This Court should require language that forthrightly states that HJR 73 repeals Article I, § 36 of the Missouri Constitution and tell the voters what section 36 is. This

Court should reject the circuit court's ballot wording with the hope that, in the future, the respondents and other state officials will fulfill their duty to inform, not mislead, the people regarding the people's constitution.

POINT II

The circuit court erred in holding that HJR 73 does not violate the Missouri

Constitution's prohibition on a proposed amendment containing more than one

subject because HJR 73 contains matters not properly connected with the

subject of the measure as designated by the general assembly in the title to HJR

73 (reproductive health care) in that HJR 73 section 36(a)9 concerns the subject

of gender transition surgery and medications for minors and section 36(a)10

concerns the subject of venue and intervention, neither of which are properly

connected to the subject of HJR 73 "reproductive health care," and are an

attempt to manipulate the voter.

A. Constitutional provisions with regard to drafting a Joint Resolution

placing a measure on the ballot prohibit more than one subject per

measure

HJR 73 is a resolution drafted and passed by the general assembly to place a constitutional amendment on the ballot. It is subject to constitutional provisions relating to both legislation (Art. III) and amendments to the constitution proposed by initiative petition or by an act of the General Assembly (Art. XII). (See *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 830 (Mo. banc 1990))

“Petitions for constitutional amendments shall not contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith ... Petitions for laws shall contain not more than one subject which shall be expressed clearly in the title” Art. III §50

“No such proposed amendment shall contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith.” Art. XII §2(b)

B. The Constitutional single subject requirement’s purpose is to protect the voters

A fundamental purpose of the single subject requirements of the Missouri Constitution is to protect voters from deception by preventing “logrolling”³ and the addition of unpopular riders⁴ to otherwise passable measures and by discouraging legislative game-playing by improving legislative transparency. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101-102 (Mo. banc 1994). The single subject requirement “is intended to discourage placing voters in the position of having to vote for some matter which they do not support in order to enact that which they earnestly support.”

Missourians to Protect the Initiative Process supra at 830.

³ Logrolling refers to the process of combining provisions that alone do not command sufficient support, but which together can do so. *Hammerschmidt* supra at 101

⁴ Riders refers to provisions added to an unrelated bill to surmount obstacles and manipulate the legislative process. *Schaefer v. Koster*, 342 S.W.3d 299, 306 (Mo. banc 2011)

The single subject requirement is also meant to “facilitate orderly procedure” and ensure that the subject of a proposed law or constitutional amendment can be “better grasped and more intelligently discussed.” *Hammerschmidt* supra at 101. Including unrelated provisions in the proposed amendment raises the risk that voters will not have sufficient knowledge of all of the potential significant effects of the amendment.

C. Title of HJR73 in relation to the definitions (or lack thereof) included in the text of the measure

The title of HJR73, approved by the general assembly, is “Submitting to the qualified voters of Missouri an amendment repealing Section 36 of Article I of the Constitution of Missouri, and adopting one new section in lieu thereof *“relating to reproductive health care”* (emphasis added). The general assembly clearly and unambiguously identified the purpose of the amendment as “reproductive health care.”

The general assembly chose not to attempt to define “reproductive health care.” However, in section 12 it did provide definitions for “gender transition surgery” and “puberty blocking drugs”. The language of these definitions make it clear the general assembly did not intend these procedures and medications to be connected to reproductive health care. Neither section 36(a)9 nor these definitions even refer to “reproductive health.” All three specify they relate only to procedures relating to gender affirming and transition care for minors.

The phrase reproductive health care, as used in Mo. Const. Art. 1, sec. 36, refers to medical care involving the reproductive system’s natural functions — conception, pregnancy, childbirth, and contraception. The General Assembly’s own statutes define sex

in immutable, biological terms and tie it to reproductive anatomy. Gender-affirming care, which involves interventions to alter secondary sex characteristics for purposes of gender identity, bears no relation to those reproductive functions. Accordingly, even under the legislature’s own definitional framework, gender-affirming care is categorically distinct from, and cannot be subsumed within, reproductive health care.

4. Terms used by court to determine whether the challenged provision is within the subject matter of the law or amendment as expressed in the title:

“Fairly related to” - *Giudicy v. Mercy Hospital East Communities*, 645 S.W.3d 492, 499 (Mo. banc 2022)

“Properly connected with the purpose” - Missouri Const. Article III §50 and Article XII §2(b)

“Have a connection with” - *Giudicy* at 499

“Germane” – *Byrd v. State*, 679 S.W.3d 492, 495 (Mo. banc 2023)

“Congruous” – *Calzone v. Interim Commissioner*, 584 S.W.3d 310, 321 (Mo. banc 2019)

“A means to accomplish the subject as expressed in the title” – *Byrd* at 495

As discussed above, Section 36(a)9 does not satisfy any of these requirements.

Although Section 36(a)10 does include the phrase “reproductive health” in connection with litigation concerning laws relating to that subject, it is not a means to accomplish anything actually relating to reproductive health care. Its main purpose relates to venue and intervention rights. Its connection is too tenuous and remote to escape the constitutional ban on multiple subjects. (*Hammerschmidt supra* at 103)

CONCLUSION

Amicus curiae League of Woman Voters respectfully urge this Court to remedy the violations of the “fair and sufficient” standard for ballot wording, and the violations of the constitutional requirement that a proposal to amend the constitution be limited to a single subject, by entering judgment that HJR 73 violates the standards of the law and the constitution and should be barred from being placed on the ballot, **or in the alternative:**

1. Strike the section (paragraph 9 and related definitions in paragraph 12 of HJR 73) and corresponding ballot wording regarding transition care for minors and venue provisions for ballot language challenges (paragraph 10 of HJR 73) so that HJR 73 will contain only one subject, as the constitution mandates; and
2. Write a proper Ballot Summary Statement, and accompanying Fair Ballot Language, that are fair and sufficient and remand to the circuit court for further proceedings, and
3. Grant Appellant such further relief as the Court may deem just and equitable.

Respectfully submitted,

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Certificate of Service

On November 3, 2025, a copy of the foregoing was sent by electronic mail via the Missouri eFiling System to all counsel of record.

Certificate of Compliance

This brief complies with the limitations contained in Supreme Court Rule 84.06 and Local Rule 41. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 4,581 excluding the cover, table of contents, table of authorities, signature block and this certificate. The font is Times New Roman 13-point type.

/s/Michael A. Wolff

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