

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

Emmanuel Aziz, )  
)  
Maxine McArn, )  
)  
Thomas Bloom, )  
)  
Maria Barabtarlo Sapp, )  
)  
Joy Lieberman, )  
)  
Patrick Hitchins, )  
)  
Mary Shapiro, and )  
)  
Tina Hutchinson, )  
Plaintiffs, )  
v. )  
Robert N. Mayer, in his official capacity )  
as president pro tem of the senate, )  
201 West Capitol Avenue, Room 326 )  
Jefferson City, Missouri 65101; )  
)  
Steven Tilley, in his official capacity as )  
speaker of the house, )  
201 West Capitol Avenue, Room 308A )  
Jefferson City, Missouri 65101; )  
)  
Bill Stouffer, in his official capacity as )  
sponsor of Senate Joint Resolution )  
No. 2, 96th General Assembly )  
(2011), )  
201 West Capitol Avenue, Room 332 )  
Jefferson City, Missouri 65101; and )  
)  
Robin Carnahan, in her official capacity as )  
secretary of state, )  
600 West Main Street )  
Jefferson City, Missouri 65101; )  
Defendants. )

No.:

Division:

## Petition to Challenge Official Ballot Title

Plaintiffs, by and through their attorneys, pursuant to MO. REV. STAT. § 116.190.1, state for their Petition as follows:

1. Plaintiffs bring this action for the purpose of challenging the official ballot title, including the official summary statement, prepared by the general assembly and certified by the Secretary of State, of the proposed constitutional amendment to Article VIII of the Constitution of the State of Missouri (“Proposed Constitutional Amendment”) sought to be enacted by the statewide ballot measure referred to the voters.

### **PARTIES**

2. Plaintiff Emmanuell Aziz is a citizen of the State of Missouri. He is a registered voter. He is diagnosed with multiple sclerosis. As a result, he is confined to a wheelchair, is unable to drive, and no longer is employed. He has an expired Missouri driver’s license, but no other form of state-issued photo identification. The skilled nursing facility where he lives does not have ready access to public transportation. The cost of obtaining a new state identification would impose a significant hardship on him, in terms of getting to the offices necessary to get a certified copy of his birth certificate and a new identification as well as paying for the documents. Moreover, as a result of his disability, the quality of his handwriting has deteriorated, which causes his ability to replicate his signature to be unreliable; consequently, any provisional ballot he was permitted to cast that would be counted only upon a signature match would likely be discarded. He is concerned that the current ballot title fails to make clear the implications of the Proposed Constitutional Amendment for persons with disabilities and the ballot title encourages his fellow voters to amend the Missouri Constitution to impose barriers

upon the right to vote for persons like him without providing voters with a fair understanding of the effects of the Proposed Constitutional Amendment.

3. Plaintiff Maxine McArn is a citizen of the State of Missouri. After she retired in 1984, she stopped driving. When her driver's license expired, she obtained a permanent Missouri state identification that has no expiration date. She is concerned that requirement that would be permissible under the Proposed Constitutional Amendment would render her state identification insufficient proof of identity to allow her to vote even though she is a registered voter. Obtaining another state-issued identification card with an expiration date would impose a burden on her. She is concerned that the ballot title does not explain to her fellow voters that voters like her could be barred from using their existing identifications to vote if the Proposed Constitutional Amendment is adopted.

4. Plaintiff Thomas Bloom is a citizen of the State of Missouri. Even prior to his recent graduation from Saint Louis University, Bloom had become civically engaged in his community ever since registering to vote here in 2008. Yet as a student the only forms of photo identification he had in Missouri included a driver's license issued by the State of Iowa and a student identification issued by Saint Louis University, both of which are forms of identification currently accepted to prove identity on Election Day. Bills proposed by the General Assembly would prohibit registered voters like Bloom from using an out-of-state driver's license or a photo identification issued by a university in order to vote in person in Missouri. While such restrictions are currently prohibited by the Missouri Constitution, the Proposed Constitutional Amendment would change that. Bloom is concerned that the current ballot title encourages his fellow registered voters to amend the Missouri Constitution to disenfranchise students without fairly advising voters of that effect.

5. Plaintiff Maria Barabtarlo Sapp is a citizen of the State of Missouri. She was born in the former Soviet Union and came to the United States with her parents when she was three years old. She and her parents became naturalized citizens in 1986. She has had a valid Missouri driver's license since she was sixteen and has voted regularly since she was eighteen. She recently encountered difficulty in renewing her driver's license. Her birth certificate is in Russian and, therefore, Missouri officials will not accept it as adequate proof of her identity. She does not have a current passport. In addition, she has been required to pay to obtain a certified copy of her marriage certificate to demonstrate her name change. Under the Missouri Constitution, registered voters like Sapp can vote in person using forms of identification other than a current, unexpired government-issued photo identification. The Proposed Constitutional Amendment would change that. Sapp is concerned that the current ballot title encourages her fellow registered voters to amend the Missouri Constitution to disenfranchise persons, like her, who are unable to obtain a current, government-issued photo identification without significant barriers in getting the documents necessary to obtain such an identification, but does not fairly advise voters of this effect.

6. Plaintiff Joy Lieberman is a Missouri citizen. Since she registered to vote in 1952, she has voted in every election. She will have difficulty proving her identity once her driver's license expires. Her original birth certificate does not include her middle name, which is the name she uses and the name under which she is registered to vote. She has secured an amended birth certificate; however, it does not look official and, thus, might not be accepted as a form of identification necessary to obtain a state identification. In addition, she has developed a hand tremor, which renders her unable to reliably duplicate her signature. As a result, she worries that any provisional ballot she casts that would be counted only if her signature matches

would be discarded. She is concerned that the current ballot title encourages her fellow registered voters to amend the Missouri Constitution to impose barriers upon the right to vote for persons like her without a fair understanding of the effects of the Proposed Constitutional Amendment.

7. Plaintiff Patrick Hitchins is a citizen of the State of Missouri. He is about to begin his junior year at Saint Louis University. He currently has a driver's license issued by the State of Indiana, a student identification from Saint Louis University, and an international student identification. Any of these forms of photo identification is currently accepted to prove identity on Election Day. Bills proposed by the General Assembly would prohibit registered voters like Bloom from using an out-of-state driver's license or a photo identification issued by a private university in order to vote in person in Missouri. While such restrictions are currently prohibited by the Missouri Constitution, the Proposed Constitutional Amendment would change that. Hitchins is concerned that the current ballot title encourages his fellow registered voters to amend the Missouri Constitution to disenfranchise students without fairly advising voters of that effect.

8. Plaintiff Mary Shapiro is a citizen of the State of Missouri. She has been a registered voter in Missouri for more than sixty years. She no longer drives; her Missouri driver's license has expired. Because she no longer drives and is largely confined to her home, she would have great difficulty getting to the various government offices necessary to obtain the underlying certified documents needed to prove her identity and get a new state-issued photo identification. She is concerned that the current ballot title does not make clear to her fellow voters that senior citizens with expired identifications, like her, would be denied the right to vote.

9. Plaintiff Tina Hutchinson is a citizen of the State of Missouri and a registered voter in Missouri. She has been rendered disabled by an accident and, as a result, is no longer able to work and must sustain herself on a fixed income. She has no car or ready access to transportation. Because she has two plates and thirteen screws in her left leg, it is difficult for her to go places using any available transportation. She currently has a driver's license that will expire in 2013. The cost of securing the necessary documents to renew her driver's license, as well as the cost of the renewal itself, would impose a significant hardship for her. She believes that this hardship will prevent her from renewing her driver's license when it expires. She is concerned that the current ballot title does not make clear to her fellow voters the impact of the Proposed Constitutional Amendment on voters like her.

10. Defendant Robert N. Mayer is president pro tem of the senate. He is named as a party Defendant in his official capacity only pursuant to MO. REV. STAT. § 116.190.2.

11. Defendant Steven Tilley is speaker of the house. He is named as a party Defendant in his official capacity only pursuant to MO. REV. STAT. § 116.190.2.

12. Defendant Bill Stouffer is sponsor of Senate Joint Resolution No. 2, 96th General Assembly (2011). He is named as a party Defendant in his official capacity only pursuant to MO. REV. STAT. § 116.190.2.

13. Defendant Robin Carnahan is secretary of state. She is named as a party Defendant in her official capacity only pursuant to MO. REV. STAT. § 116.190.2.

#### **JURISDICTION AND VENUE**

14. Plaintiffs bring this action pursuant to Chapters 116 and 527 of the Revised Statutes of Missouri and Rules 87 and 92 of the Missouri Rules of Civil Procedure.

15. Venue is proper in this Court pursuant to MO. REV. STAT. § 116.190.1.

16. This action is brought within the prescribed time limit pursuant to MO. REV. STAT. §§ 1.040, 506.060, and 116.190.1.

### **FACTUAL ALLEGATIONS**

17. Defendant Bill Stouffer, in his official capacity as a senator, sponsored Senate Joint Resolution 2 in the Ninety-Sixth General Assembly (SJR 2).

18. SJR 2 refers to the voters a state-wide ballot initiative that would adopt the Proposed Constitutional Amendment.

19. Pursuant to MO. REV. STAT. § 116.155, the general assembly elected to include the official summary statement for SJR 2.

20. The official summary statement included by the general assembly is:

Shall the Missouri Constitution be amended to adopt the Voter Protection Act and allow the General Assembly to provide by general law for advance voting prior to election day, voter photo identification requirements, and voter requirements based on whether one appears to vote in person or by absentee ballot?

21. On or about May 9, 2011, SJR 2 was truly agreed to and finally passed.

22. On or about May 26, 2011, SJR 2 was delivered to the secretary of state.

23. On or about June 27, 2011, the secretary of state certified the official ballot title submitted by the general assembly.

### **COUNT I – THE SUMMARY STATEMENT IS INSUFFICIENT AND UNFAIR**

24. Plaintiffs incorporate Paragraphs 1 through 23 as if fully set forth herein.

25. The Proposed Constitutional Amendment would add four new sections to Article VIII of the Constitution of Missouri. A true and correct copy of SJR 2 is attached hereto as an exhibit and incorporated herein by reference.

26. MO. REV. STAT. § 116.155.2 provides:

The official summary statement approved by the general assembly shall, taken together with the approved fiscal note summary, be the official ballot title and such summary statement shall contain no more than fifty words, excluding articles. The title shall be a true and impartial statement of the purposes of the proposed measure in language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.

27. The summary statement here is insufficient and unfair because it deceives and misleads voters about what the Proposed Constitutional Amendment would do, and would not do, and, thus, is neither true nor impartial, but instead likely to create prejudice for the proposed measure.

28. The Proposed Constitutional Amendment does not, as the summary statement asserts, “adopt the Voter Protection Act.” This untrue statement is especially misleading because an unrelated initiative that may appear on the same ballot would, in fact, adopt a voter-initiative entitled the Voter Protection Act. The phrase “Voter Protection Act” appears nowhere in the Proposed Constitutional Amendment.

29. The Proposed Constitutional Amendment does not, as the summary statement asserts, allow the general assembly to provide by general law for advance voting prior to Election Day. The general assembly already has the existing authority to provide by general law for advance voting prior to Election Day. Contrary to the assertion of the summary statement, the Proposed Constitutional Amendment would curtail the authority of the general assembly to

provide by general law for advance voting prior to Election Day by placing strict limits on any advance voting that do not currently appear in the Constitution.

30. The Proposed Constitutional Amendment does not, as the summary statement asserts, merely allow the general assembly to provide by general law for voter photo identification requirements. Instead, the Proposed Constitutional Amendment allows the general assembly to strictly limit the types of photo identification that a registered voter must present in order to exercise his or her right to vote and to impose said requirements without exceptions or provisions for persons unable to obtain the type of photo identification the general assembly chooses to enumerate.

31. The Proposed Constitutional Amendment does not, as the summary statement asserts, allow the general assembly to provide by general law for “voter requirements based on whether one appears to vote in person or by absentee ballot” in that the general assembly already has the existing authority to provide for such requirements by general law.

32. In order to correct the foregoing deficiencies in the Summary Statement while keeping within the fifty-word limit, and to ensure that the Summary Statement is sufficient and fair and that voters will not be deceived or misled, Plaintiffs request, pursuant to MO. REV. STAT. § 116.190.3, that the Summary Statement be amended to state one of the following:

A. “Shall the Missouri Constitution be amended to:

- limit the time period during which the General Assembly may allow advance voting; and
- authorize the General Assembly to limit without exception the form of identification voters must provide to vote in person, but

- authorize the General Assembly to allow voters to vote absentee without providing photo identification?”, or in the alternative,

B. “Shall the Missouri Constitution be amended to:

- limit the time period during which the General Assembly may allow advance voting, and
- circumvent the Missouri Constitution’s protection of voting as a fundamental right by allowing the General Assembly to require registered voters to produce a government-issued photo identification prior to voting in person?”, or in the alternative,

C. “Shall the Missouri Constitution be amended to:

- limit the time period during which the General Assembly may allow advance voting; and
- authorize the General Assembly to limit without exception the form of identification voters must provide to vote in person while maintaining that absentee voters may be allowed to vote without providing photo identification?”

33. Because only the summary statement approved by the general assembly may be the official ballot title, the appropriate remedy is to vacate the secretary of state’s certification of the ballot title, or direct her to vacate the certification, and prohibit her from taking any further action to place the Proposed Constitutional Amendment on the ballot. *See* MO. REV. STAT. § 116.155.2 (“the official summary statement approved by the general assembly shall ... be the official ballot title”). In the alternate, the ballot title should be amended as set forth in ¶ 32.

34. Plaintiffs have no adequate remedy at law and, absent relief from this Court, Plaintiffs will suffer irreparable harm.

WHEREFORE, Plaintiffs pray that this Court:

- a. find that the summary statement of the official ballot title fails to comply with requirements of MO. REV. STAT. § 116.155.2;
- b. vacate the secretary of state's certification of the ballot title, or direct her to vacate the certification;
- c. prohibit her from taking any further action to place the Proposed Constitutional Amendment on the ballot, or, in the alternate, certify a summary statement that complies with MO. REV. STAT. § 116.155.2; and
- d. grant to Plaintiffs such other relief as the Court deems appropriate.

Respectfully submitted,

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