




IN THE 19TH JUDICIAL CIRCUIT, COLE COUNTY, MISSOURI

Judge or Division: COTTON WALKER	Case Number: 23AC-CC05352
Plaintiff/Petitioner: PAUL L BERRY III	Plaintiff's/Petitioner's Attorney/Address PAUL L BERRY III 11932 BARBARA DRIVE MARYLAND HEIGHTS, MO 63043
Defendant/Respondent: MISSOURI STATE AUDITOR	Court Address: PO BOX 1870 301 E HIGH ST JEFFERSON CITY, MO 65101
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: MISSOURI STATE AUDITOR
Alias:

NICOLE GALLOWAY
301 WEST HIGH STREET
ROOM 880
JEFFERSON CITY, MO 65109

COURT SEAL OF

COLE COUNTY

SERVICE COPY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

8/28/2023 /s/MEICHHOLZ/ter
Date Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above Summons by: (check one)

delivering a copy of the summons and petition to the defendant/respondent.
 leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with _____, a person at least 18 years of age residing therein.
 (for service on a corporation) delivering a copy of the summons and petition to: _____ (name) _____ (title).
 other: _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:
 Subscribed and sworn to before me on _____ (date).
 (Seal) My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Sheriff's Deputy Salary \$ 10.00
 Supplemental Surcharge \$ 10.00
 Mileage \$ _____ (_____ miles @ \$._____ per mile)
Total \$ _____

A copy of the summons and petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI
CIVIL DIVISION

FILED

AUG 28 2023

COLE COUNTY
CIRCUIT COURT

PAUL BERRY III,

Plaintiff,

vs.

Case Number: 23AC-CC05352

SCOTT FITZPATRICK,
*in his official capacity as Auditor
of the State of Missouri; and*

JOHN R. ASHCROFT,
*in his official capacity as Secretary of State
of the State of Missouri,*

Defendants.

**PETITION CHALLENGING CERTIFICATIONS, BALLOT SUMMARIES, FISCAL
NOTES AND FISCAL NOTE SUMMARIES OF MISSOURI INITIATIVE PETITIONS**

COMES NOW Plaintiff Paul Berry III for his Petition Challenging Certification, Ballot Summaries, Fiscal Notes and Fiscal Note Summaries of Missouri Initiative Petitions, states as follows:

INTRODUCTION

1. Plaintiff Paul Berry III, as a resident of St. Louis County and citizen of the state of Missouri, is afforded the protection of each right afforded by Missouri Constitution agreed upon by the people of Missouri, in exchange for, Berry's submission to the laws of the state of Missouri, which includes Berry challenging before the Court any action related to any threatened

violation of Berry's Missouri or Federal constitutional rights sanctioned by the state of Missouri certifying any constitutional ballot initiative petition that is "repugnant to the Constitution of the United States."

2. Article 1, section 3 of the Missouri Constitution states:

"That the people of this state have the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States."
(underline added)

3. The state of Missouri by legislative fiat can not establish any Missouri law that provides (or can be interrupted by the Court to provide) for the denial of Berry's request for declaratory, injunctive or writ relief to enforce any Missouri constitutional right against the state of Missouri pursuant to article 1, section 3 of the Missouri Constitution, which may be enforced by Berry irrespective of any Missouri initiative petition statutes at any time when Berry is threatened by any change to the Missouri Constitution that is "repugnant to the Constitution of the United States."

4. The Missouri Secretary of State certified three Missouri initiative petitions ("Edwards Initiative Petitions") on August 16, 2023, which seek to implement changes to the Missouri Constitution that are clearly "repugnant to the Constitution of the United States", and as such, violate article 1, section 3 of the Missouri Constitution.

5. Based upon different legal theories, the Missouri Supreme Court has barred the Missouri Attorney General, Missouri Secretary of State or any citizen of the state of Missouri from

challenging the constitutionality of any Missouri initiative petition prior to the certification by the Missouri Secretary of State, and in many instances, prior to the ballot elections held for such Missouri initiative petitions.

6. Berry charges that any Missouri initiative petition that is clearly “repugnant to the Constitution of the United States” may be challenged by otherwise appropriate declaratory, injunction and writ relief unrestricted by any Missouri initiative petition statutory procedures clearly not established for the purpose of reviewing or enforcing Berry’s constitutional rights pursuant to article I, section 3 of the Missouri Constitution, and as such, Berry seeks a hearing before the Court requesting leave to amend this Petition to include constitutional challenges to Edwards Initiative Petitions pursuant to article 1, section 3 of the Missouri Constitution, which are suggested prohibited by Missouri Supreme Court case law in the instant under different legal theories.

7. Further, the unequal application and exercise of firearms rights provided by Edwards Initiative Petitions to Missourians also runs afoul and “repugnant” to the Equal Protection Clause of the Fourteenth Amendment and violates article I, section 2 of the Missouri Constitution, which states:

“That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.” (underline added)

8. Nevertheless, Edwards Initiative Petitions are fatally deficient for failing to comply with

subsection 1 of section 116.332 RSMo and subsection 2 of 116.050 RSMo, and as a matter of Missouri law pursuant to section 116.200 RSMo, Berry is entitled to an order from this Court requiring the Missouri Secretary of State to reject certifications of Edwards Initiative Petitions, post haste.

9. In the alternative, the ballot summaries, fiscal notes and fiscal note summaries authorized by the Missouri Secretary of State for each Edwards Initiative Petitions are insufficient and unfair, and as such, are challenged by Berry pursuant to section 116.190 RSMo.

PARTIES

10. Plaintiff Paul Berry III (“Berry”) is a resident of St. Louis County and a citizen of the state of Missouri.

11. Defendant John R. Ashcroft (“Missouri Secretary of State”) is the Missouri Secretary of State and is sued in his official capacity pursuant to the requirements of 116.190 RSMo and 116.200 RSMo.

12. Defendant Scott Fitzpatrick (“Missouri Auditor Fitzpatrick”) is the Missouri State Auditor and is sued in his official capacity pursuant to 116.190 RSMo.

VENUE

13. This Court is the exclusive circuit court venue for all petitions filed pursuant to 116.190 and/or 116.200 RSMo.

STATEMENT OF UNCONTROVERTED FACTS

14. Berry, as a resident of St. Louis County and a private “citizen” of the state of Missouri, is

authorized pursuant to 116.200 RSMo and 116.190 RSMo to seek judicial review before the Circuit Court of Cole County of the Missouri Secretary of State's certification of Missouri Initiative Petitions 2024-114, 2024-115 and 2024-117, which were certified by the Missouri Secretary of State on August 16, 2023.

15. 116.200 RSMo states:

- “1. After the secretary of state certifies a petition as sufficient or insufficient, any citizen may apply to the circuit court of Cole County to compel him to reverse his decision. The action must be brought within ten days after the certification is made. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible.
2. If the court decides the petition is sufficient, the secretary of state shall certify it as sufficient and attach a copy of the judgment. If the court decides the petition is insufficient, the court shall enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot.
3. Within ten days after a decision is rendered, any party may appeal it to the supreme court.”

16. 116.190 RSMo states:

- “ 1. Any citizen who wishes to challenge the official ballot title or the fiscal note prepared for a proposed constitutional amendment submitted by the general assembly, by initiative petition, or by constitutional convention, or for a statutory initiative or referendum measure, may bring an action in the circuit court of Cole County. The action must be brought within ten days after the official ballot title is certified by the secretary of state in accordance with the provisions of this chapter.
2. The secretary of state shall be named as a party defendant in any action challenging the official ballot title prepared by the secretary of state. When the action challenges the fiscal note or the fiscal note summary prepared by the auditor, the state auditor shall also be named as a party defendant. The president pro tem of the senate, the speaker of the house and the sponsor of the measure and the secretary of state shall be the named party defendants in any action challenging the official summary statement, fiscal note or fiscal note summary prepared pursuant to section 116.155.
3. The petition shall state the reason or reasons why the summary statement portion of the official ballot title is insufficient or unfair and shall request a different summary statement portion of the official ballot title. Alternatively, the petition shall state the reasons why the fiscal note or the fiscal note summary portion of the official ballot title is insufficient or unfair and shall request a different fiscal note or fiscal note summary portion of the official ballot title.

4. The action shall be placed at the top of the civil docket. Insofar as the action challenges the summary statement portion of the official ballot title, the court shall consider the petition, hear arguments, and in its decision certify the summary statement portion of the official ballot title to the secretary of state. Insofar as the action challenges the fiscal note or the fiscal note summary portion of the official ballot title, the court shall consider the petition, hear arguments, and in its decision, either certify the fiscal note or the fiscal note summary portion of the official ballot title to the secretary of state or remand the fiscal note or the fiscal note summary to the auditor for preparation of a new fiscal note or fiscal note summary pursuant to the procedures set forth in section 116.175. Any party to the suit may appeal to the supreme court within ten days after a circuit court decision. In making the legal notice to election authorities under section 116.240, and for the purposes of section 116.180, the secretary of state shall certify the language which the court certifies to him.

5. Any action brought under this section that is not fully and finally adjudicated within one hundred eighty days of filing, and more than fifty-six days prior to election in which the measure is to appear, including all appeals, shall be extinguished, unless a court extends such period upon a finding of good cause for such extension. Such good cause shall consist only of court-related scheduling issues and shall not include requests for continuance by the parties.”

A. MR. EDWARDS FILING OF SENSIBLEMO COMMITTEE ORGANIZATION FORM WITH EDWARDS INITIATIVE PETITION BEFORE THE MISSOURI SECRETARY OF STATE DOES NOT QUALIFY AS THE CORRECT FORM OF POLITICAL COMMITTEE PURSUANT TO 116.332 RSMO AND SENSIBLEMO COMMITTEE ORGANIZATION FORM IS VOID OF THE INFORMATION REQUIRED BY SUBDIVISION 10 OF SUBSECTION 5 OF 130.021 RSMO

17. SensibleMO, a Missouri political action “continuing committee”, was established with the Missouri Ethics Commission on June 23, 2023 (“SensibleMO Committee Organization Form”); any Missouri political action “continuing committee” is defined pursuant to subsection 10 of 130.011 RSMo.

18. Between June 28th and 29th, 2023, Mr. Jimmie Edwards (“Mr. Edwards”) filed before the Missouri Secretary of State three (3) Missouri initiative petitions (“Edwards Initiative Petitions”), each attached with SensibleMO Committee Organization Form and Missouri Secretary of State Initiative Petition Submission Sheet (“Edwards Initiative Petition Submission

Sheet”); Mr. Edwards purports by his Edwards Initiative Petition Submission Sheet that SensibleMO funded the drafting and submission of Edwards Initiative Petitions to the Missouri Secretary of State.

19. Edwards Initiative Petitions were certified for circulation to 2024 Missouri General election voters by the Missouri Secretary of State on August 16, 2023.

20. Subsection 1 of section 116.332 RSMo states:

“1. Before a constitutional amendment petition, a statutory initiative petition, or a referendum petition may be circulated for signatures, a sample sheet must be submitted to the secretary of state in the form in which it will be circulated. When a person submits a sample sheet of a petition he or she shall designate to the secretary of state the name and address of the person to whom any notices shall be sent pursuant to sections 116.140 and 116.180 and, if a committee or person, except the individual submitting the sample sheet, is funding any portion of the drafting or submitting of the sample sheet, the person submitting the sample sheet shall submit a copy of the filed statement of committee organization required under subsection 5 of section 130.021 showing the date the statement was filed. The secretary of state shall refer a copy of the petition sheet to the attorney general for his approval and to the state auditor for purposes of preparing a fiscal note and fiscal note summary. The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any.” (underlined added)

21. Subsection 5 of section 130.021 RSMo states:

“5. The treasurer or deputy treasurer acting on behalf of any person or organization or group of persons which is a committee by virtue of the definitions of committee in section 130.011 and any candidate who is not excluded from forming a committee in accordance with the provisions of section 130.016 shall file a statement of organization with the appropriate officer within twenty days after the person or organization becomes a committee but no later than the date for filing the first report required pursuant to the provisions of section 130.046. The statement of organization shall contain the following information:

(1) The name, mailing address and telephone number, if any, of the committee filing the statement of organization. If the committee is deemed to be affiliated with a connected organization as provided in subdivision (11) of section 130.011, the name of the connected organization, or a legally registered fictitious name which reasonably identifies the connected organization, shall appear in the name of the committee. If the

committee is a candidate committee, the name of the candidate shall be a part of the committee's name;

(2) The name, mailing address and telephone number of the candidate;

(3) The name, mailing address and telephone number of the committee treasurer, and the name, mailing address and telephone number of its deputy treasurer if the committee has named a deputy treasurer;

(4) The names, mailing addresses and titles of its officers, if any;

(5) The name and mailing address of any connected organizations with which the committee is affiliated;

(6) The name and mailing address of its depository, and the name and account number of each account the committee has in the depository. The account number of each account shall be redacted prior to disclosing the statement to the public;

(7) Identification of the major nature of the committee such as a candidate committee, campaign committee, continuing committee, political party committee, incumbent committee, or any other committee according to the definition of committee in section 130.011;

(8) In the case of the candidate committee designated in subsection 3 of this section, the full name and address of each other candidate committee which is under the control and direction of the same candidate, together with the name, address and telephone number of the treasurer of each such other committee;

(9) The name and office sought of each candidate supported or opposed by the committee;

(10) The ballot measure concerned, if any, and whether the committee is in favor of or opposed to such measure." (underline added)

22. Edwards Initiative Petitions were each filed before the Missouri Secretary of State with section 7 of SensibleMO Committee Organization Form left blank by SensibleMO.

23. Section 7 of SensibleMO Committee Organization Form seeks information as required by subdivision 10 of subsection 5 of section 130.021 RSMo regarding any ballot initiative supported or opposed, specifically: "Ballot Measure Supported Opposed (campaign committees must complete this section)", which required SensibleMO to provide (a) "Name of Ballot Measure", (b) "Election Date & Political Subdivision" and (c) "Support or Oppose".

24. Subsection 8 of 130.011 RSMo states:

(8) "Campaign committee", a committee, other than a candidate committee, which shall be formed by an individual or group of individuals to receive contributions or make

expenditures and whose sole purpose is to support or oppose the qualification and passage of one or more particular ballot measures in an election or the retention of judges under the nonpartisan court plan, such committee shall be formed no later than thirty days prior to the election for which the committee receives contributions or makes expenditures, and which shall terminate the later of either thirty days after the general election or upon the satisfaction of all committee debt after the general election, except that no committee retiring debt shall engage in any other activities in support of a measure for which the committee was formed”. (underline added)

25. Subsection 10 of 130.011 RSMo states

“(10) "Continuing committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee or campaign committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter.” (underline added)

26. A “continuing committee” is permitted pursuant to subsection 10 of 130.011 RSMo to “receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter”, although, a “continuing committee” does not qualify “to support or oppose the qualification and passage of one or more particular ballot measures in an election” in the manner permitted by a “campaign committee” pursuant to subsection 8 of 130.011 RSMo. (underline added)

27. The Missouri Secretary of State was without statutory authority pursuant to subsection 1 of section 116.332 RSMo to accept, consider or certify Edwards Initiative Petition because (a) SensibleMO Committee Organization Form does not qualify as a “statement of committee

organization required under subsection 5 of section 130.021” and (b) SensibleMO Committee Organization Form does not provided any response to section 7 of SensibleMO Committee Organization Form, required under subdivision 10 of subsection 5 of section 130.021 and as such, Missouri Secretary of State’s certification of Edwards Initiative Petitions for circulation to Missouri voters is void, unlawful, otherwise unenforceable and constitutes illegal circulation of Edwards Initiative Petitions by SenseibleMo to Missouri 2024 General election voters.

B. EDWARDS INITIATIVE PETITIONS SEEK TO IMPLIED REPEAL ARTICLE I, SECTION 23 OF THE MISSOURI CONSTITUTION WITHOUT INCLUDING TEXT OF ARTICLE I, SECTION 23 OF THE MISSOURI CONSTITUTION TO BE REPEALED BY EDWARDS INITIATIVE PETITIONS, IN VIOLATION OF SUBSECTION 2 OF 116.050 RSMO

28. Edwards Initiative Petition 2024-114 is published by Secretary Ashcroft on the Missouri Secretary of State in PDF format at the the following internet link:

<https://www.sos.mo.gov/CMSImages/Elections/Petitions/2024-114.pdf>

29. Edwards Initiative Petition 2024-115 is published by Secretary Ashcroft on the Missouri Secretary of State in PDF format at the the following internet link:

<https://www.sos.mo.gov/CMSImages/Elections/Petitions/2024-115.pdf>

30. Edwards Initiative Petition 2024-117 is published by Secretary Ashcroft on the Missouri Secretary of State in PDF format at the the following internet link:

<https://www.sos.mo.gov/CMSImages/Elections/Petitions/2024-117.pdf>

31. Edwards Initiative Petitions certified by Secretary Ashcroft seek to amend article I, section 23 of the Missouri, which states in its entirety:

“Right to keep and bear arms, ammunition, and certain accessories — exception — rights to be unalienable. — That the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned. The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those adjudicated by a court to be a danger to self or others as result of a mental disorder or mental infirmity.”

32. Edwards Initiative Petitions each fail to meet the statutory requirements of 116.050.2

RSMo because Edwards Initiative Petitions fail to include “all sections of existing law or of the constitution which would be repealed by the measure.”

33. Section 116.050 RSMo states in its entirety:

“116.050. Initiative and referendum petitions, requirements. — 1. Initiative and referendum petitions filed under the provisions of this chapter shall consist of pages of a uniform size. Each page, excluding the text of the measure, shall be no larger than eight and one-half by fourteen inches. Each page of an initiative petition shall be attached to or shall contain a full and correct text of the proposed measure. Each page of a referendum petition shall be attached to or shall contain a full and correct text of the measure on which the referendum is sought.

2. The full and correct text of all initiative and referendum petition measures shall:

- (1) Contain all matter which is to be deleted included in its proper place enclosed in brackets and all new matter shown underlined;
- (2) Include all sections of existing law or of the constitution which would be repealed by the measure; and
- (3) Otherwise conform to the provisions of Article III, Section 28 and Article III, Section 50 of the Constitution and those of this chapter.”

34. Berry suggests that subsection 2 of 116.050 RSMo provides two distinct statutory requirements upon Edwards Initiative Petitions. First, subdivision 1 of subsection 2 of 116.050 RSMo clearly requires Edwards Initiative Petitions to “(c)ontain all matter which is to be deleted included in its proper place enclosed in brackets and all new matter shown underlined”. Second,

subdivision 2 of subsection 2 of 116.050 RSMo provides Edwards Initiative Petitions “(i)nclude all sections of existing law or of the constitution which would be repealed by the measure”.

35. The term “repeal” provided by subdivision 2 of subsection 2 of 116.050 RSMo was defined by the Missouri Appellate Court in *Ritter v. Ashcroft*, Mo: Court of Appeals, Western Dist. 2018, which states:

“In order for provisions proposed in an initiative petition to be in "direct conflict" with existing law, it is not enough that the provisions of existing law "will be changed or affected by the amendment." *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 15 (Mo. banc 1981). Instead, the provisions of the petition must be "in direct conflict with or . . . irreconcilably repugnant" to existing law. *Id.* As explained in *Knight v. Carnahan*, 282 S.W.3d 9 (Mo. App. W.D. 2009), "repeal" as used in § 116.050 means [t]he abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated (which is called 'express' repeal), or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force (called 'implied' repeal).

[BLACKS LAW DICTIONARY] 1299 [(6th ed. 1990)] (emphasis added).”

36. It is undisputed that the provisions of article I, section 23 of the Missouri Constitution generally provides in practice the right for all law-abiding and mentally stable Missourians to open or conceal carry a firearm without any government permit.

37. Edwards Initiative Petitions extinguishes the current Missouri constitutional right for all law-abiding and mentally stable Missourians to open or conceal carry a firearm without any government permit whatsoever pursuant to the current version of article I, section 23 of the Missouri Constitution, in favor of, Edwards Initiative Petitions authorizing Missouri local jurisdictions to enact ordinances to:

a. “regulate the possession, carrying and transfer of firearms within the limits of the city of county notwithstanding any other provision of law”;

b. establish local firearms regulation waivers to certain classes of elected and government officials, which waives such local firearms regulations for such elected and government officials when carrying a firearm in a personal or private capacity, while simultaneously denying laymen Missourians who are not elected or government officials from the same firearms regulation waivers; and

c. establish exclusive authority for Missouri local governments implement firearms seizures, incarceration, criminal penalties and exposure to other negative aspects of the criminal justice system for conduct that would have been lawful and constitutionally-protected by the current version of article I, section 23 of the Missouri Constitution.

38. Berry contends Edwards Initiative Petitions violates subdivision 2 of subsection 2 of 116.050 RSMo because Edwards Initiative Petitions (a) “implied repeals” the current language of Article I, Section 23 of the Missouri Constitution and (b) Edwards Initiative Petitions fails to incorporate the current language of article I, section 23 of the Missouri Constitution to be “implied repealed”, and as such, Missouri Secretary of State’s certification of Edwards Initiative Petitions for circulation to Missouri voters is void, unlawful, otherwise unenforceable and constitutes illegal circulation of Edwards Initiative Petitions to Missouri 2024 General election voters.

C. IN THE ALTERNATIVE, EDWARDS INITIATIVE PETITION BALLOT SUMMARIES ARE INSUFFICIENT OR UNFAIR PURSUANT TO 116.190 RSMO BECAUSE EDWARDS INITIATIVE PETITION BALLOT SUMMARIES DO NOT WARN MISSOURI VOTERS OF THE CENTRAL INTENT OF EDWARDS INITIATIVE PETITIONS, THE LOSS OF CURRENTLY ENJOYED MISSOURI

**AND UNITED STATES CONSTITUTIONAL RIGHTS AND GRANTING LOCAL
CONSTITUTIONAL AUTHORITY TO PASS FIREARMS LAWS IN EXCESS OF
THE AUTHORITY OF THE ELECTED MISSOURI GENERAL ASSEMBLY**

39. Berry charges Edwards Initiative Petitions Ballot Summaries violate the “insufficient or unfair” provisions of 116.190 RSMo, Edwards Initiative Petitions Ballot Summaries each state in their entirety:

“Do you want to amend the Missouri Constitution to:

- authorize for the regulation by ordinance of the possession or carrying of firearms, to apply to any individual within any county and cities of Kansas City and St. Louis with exemptions;
- authorize any county and cities of St. Louis and Kansas City to pass ordinances which could supersede the Second Amendment Preservation Act;
- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances; and
- allow for a fee to cover the cost for the issuance of permits or certificates?

(Missouri Initiative Petition 2024-114)

- authorize for the regulation by ordinance of the possession, carrying or transfer of firearms, to apply to any individual within any county and cities of Kansas City and St. Louis with exemptions;
- authorize any county and cities of St. Louis and Kansas City to pass ordinances which could supersede the Second Amendment Preservation Act;
- require a referendum vote of any ordinance except in Jackson and St. Louis counties and cities; and
- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances?

(Missouri Initiative Petition 2024-115)

“Do you want to amend the Missouri Constitution to:

- authorize for the regulation by ordinance of the possession or carrying of firearms, to apply to any individual within any county and cities of Kansas City and St. Louis with exemptions;
- authorize any county and cities of St. Louis and Kansas City to pass ordinances which could supersede the Second Amendment Preservation Act;

- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances; and
- allow for a fee to cover the cost for the issuance of permits or certificates?

(Missouri Initiative Petition 2024-117)”

40. Fatal to Edwards Initiative Petitions Ballot Summaries, each does not inform Missouri voters that passage of Edwards Initiative Petitions will not only supercede “the Second Amendment Preservation Act”, such passage of Edwards Initiative Petitions will also eliminate the current authority of the Missouri General Assembly to create Missouri statutes that are in excess authority of any local firearms regulation ordinances, which is the most prominent “central feature” of Edwards Initiative Petitions.

41. Berry does not contend the actual text of Edwards Initiative Petitions Ballot Summaries were drafted by the Secretary Ashcroft or approved by Attorney General Bailey in a maliciously despective manner; Edwards Initiative Petitions Ballot Summaries may have been approved by Attorney General Bailey and Secretary Ashcroft in the instant due to the unintended result of the Missouri Supreme Court and Missouri case law generally restricting both from ascertaining the constitutionality of any Missouri initiative petition language until after Edwards Initiative Petitions are approved for circulation by Secretary Ashcroft.

42. Edwards Initiative Petitions Ballot Summaries identify a Missouri statutory act that would be affected by passage of Edwards Initiative Petitions, specifically, point 2 of Edwards Initiative Petitions, which states:

“authorize any county and cities of St. Louis and Kansas City to pass ordinances which could supersede the Second Amendment Preservation Act;”

43. Berry's review of the entire file maintained by Secretary Ashcroft attached to Edwards Initiative Petitions supports the reasonable theory that Attorney General Bailey and Secretary Ashcroft may have purposely refrained from informing Missouri voters by Edwards Initiative Petitions Ballot Summaries that Edwards Initiative Petitions will substantially restrict or eliminate an active Federal constitutional right (see: (a) Secretary Ashcroft declaring Edwards Initiative Petitions may "authorize any county and cities of St. Louis and Kansas City to pass ordinances which could supersede the Second Amendment Preservation Act", and not providing the same notification to Missouri voters regarding Edwards Initiative Petitions may supercede the constitutional rights guaranteed by the United States Constitution and (b) Attorney General Bailey's Opinion Letters 304-2023, 305-2023 and 306-2023 stating, inter alia, that Edwards Initiative Petitions violate the United States Constitution), yet no ballot summary text was dedicated by Edwards Initiative Petitions Ballot Summaries addressing substantial changes to the current enjoyment of substantive citizen rights provided by the United States Constitution.

44. Berry theorizes without personal knowledge to such effect that Edwards Initiative Petitions Ballot Summary may be void of notifying Missouri voters of the "central intent" of Edwards Initiative Petitions is to eliminate permitless universal open and conceal carry in the state of Missouri currently provided by the current version of article one, section 23 of the Missouri Constitution, because Missouri case law suggests in a different context that Attorney General Bailey and Secretary Ashcroft may not consider whether any initiative petition language violates the United States Constitution, and as such, Attorney General Bailey and Secretary

Ashcroft are prohibited by the same Missouri case law to establish ballot summary language that informs Missouri voters of the effect on the Federal constitutional rights upon passage of the related initiative petition, a legal conclusion Berry absolutely rejects as the intent of any such Missouri Supreme Court rulings or otherwise provided by Missouri law.

45. Berry challenges whether Edwards Initiative Petitions Summary language that constitutes “insufficient or unfair” ballot language pursuant to 116.190 RSMo due to the text of Edwards Initiative Petitions not explaining the “central feature” of such proposed amendments to the Missouri Constitution, specifically, in the event any of Edwards Initiative Petitions were enacted by Missouri 2024 General election voters, Edwards Initiative Petitions will severely restrict the constitution right to bear firearms in the manner currently enjoyed by all law-abiding Missourians, as provided by the constitutions of Missouri and the United States of America.

46. PIPPENS v. Ashcroft, Mo: Court of Appeals, Western Dist. 2020, addressed the duty of Edwards Initiative Petitions Summaries to declare to Missourians any “central feature[s] of the initiative or referendum proposal”, which states:

“Under § 116.190.3, “[t]he party challenging the language of the summary statement bears the burden to show that the language is insufficient or unfair.” Hill v. Ashcroft, 526 S.W.3d 299, 308 (Mo. App. W.D. 2017) (citation omitted). “Insufficient means “inadequate; especially lacking adequate power, capacity, or competence.” The word “unfair” means to be “marked by injustice, partiality, or deception.”” Id. (citations omitted).

The summary statement “should accurately reflect both the legal and probable effects of the propos[al].” Shoemyer v. Sec’y of State, 464 S.W.3d 171, 174 (Mo. 2015) (citing Brown v. Carnahan, 370 S.W.3d 637, 654 (Mo. 2012)). We have explained that “[t]he summary statement should inform voters of the ‘central feature[s]’ of the initiative or referendum proposal.” Stickler v. Ashcroft, 539 S.W.3d 702, 709 (Mo. App. W.D. 2017) (citation omitted). This principle derives from “[t]he commonly understood meaning of a ‘summary,’” namely, “a short restatement of the main points (as of an argument) for

easier remembering, for better understanding, or for showing the relation of the points." Id. at 709 n.4 (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY OF THE ENGLISH LANGUAGE 2289 (unabridged ed. 1993)).

While a summary statement should describe a ballot measure's central features, it "need not set out the details of the proposal to be fair and sufficient." Stickler, 539 S.W.3d at 709 (quoting Brown, 370 S.W.3d at 656). "The omission of proposed changes from the summary statement will not render the ballot summary insufficient if they are not central features of the proposed amendment." Sedey, 594 S.W.3d at 269 (citation omitted).

"The applicable question is not whether the summary drafted is the best summary, but whether [it] gives the voter a sufficient idea of what the proposed amendment would accomplish, without language that is intentionally unfair or misleading. The idea is to advise the citizen what the proposal is about." Id. at 263 (citation omitted). The question for the court "is whether the summary statement contains an impartial, intelligible, and accurate summary of the [ballot measure]'s central purpose and effects." Stickler, 539 S.W.3d at 710."

47. Berry contends any Missouri constitutional amendment initiative petition, which includes Edwards Initiative Petitions, that if passed by Missouri voters would substantially curtail or eliminates the enjoyment of any right afforded to Missourians guaranteed by the United States Constitution is required to clearly disclose to Missouri voters by Edwards Initiative Petitions Ballot Summaries that Missourians are voting to surrender their personal enjoyment and protection provided by any substantial Federal constitutional right.

48. Further, Edwards Initiative Petitions Ballot Summaries are required to inform Missouri voters that the permissless constitutional carry rights currently provided by article 1, section of the Missouri constitution, in its current form and application, will vanquish in the event Edwards Initiative Petitions were ratified to the Missouri Constitution.

49. Berry contends that the duty of the Missouri Secretary of State to inform Missouri voters of "central features of the initiative or referendum proposal" is heightened when any Missouri

initiative proposal dramatically changes an active constitutional right provided by the Missouri Constitution or when any right currently enjoyed by Missourians due to the Fourteenth Amendment's application of fundamental constitution rights guaranteed by the United States Constitution, which includes the Second Amendment of the United States Constitution.

50. Berry preserves his Federal claim that Edwards Initiative Petitions violates both the Second and Fourteenth Amendment of the United States Constitution because the underlying Petition filed pursuant to the provision of 116.190 RSMo is statutory limited to the Court's determination of Edwards Initiative Petitions are "insufficient or unfair" to the voters of the state of Missouri, which the Missouri Supreme Court declares the terms "insufficient or unfair" do not constitute in plain language questions of constitutionality.

51. Berry's question before the Court does not argue whether the text of Edwards Initiative Petitions violates the United States Constitution at this juncture of litigation, Berry charges because Edwards Initiative Petitions waive substantial constitutional rights actively afforded by the United States Constitution to Missourians, Edwards Initiative Petitions Ballot Summaries are required to disclose to Missouri voters in the most clear and direct manner that voting for Edwards Initiative Petitions will place Missouri constitutional restrictions upon the enjoyment of any Federal right guaranteed by the United States Constitution.

52. While Berry relishes the opportunity before the Federal court system to collaterally attack Edwards Initiative Petitions for violating the Second and Fourteenth Amendments of the United States Constitution, Berry, as well as Attorney General Bailey and Secretary Ashcroft, are all

barred by Missouri case law from challenging the constitutionality of Edwards Initiative Petitions before the Missouri court system for violating the Second and Fourteenth Amendments of the United States Constitution in the confines of an action filed before the Court pursuant to 116.190 RSMo.

53. Nevertheless, Berry contends the Missouri Secretary of State is required to inform Missouri voters by Edwards Initiative Petitions Ballot Summaries that an affirmative vote for any of Edwards Initiative Petitions may substantially alter or eliminate current firearms ownership, possession and carrying rights currently guaranteed by the Missouri constitution and the United States Constitution.

54. Berry does not otherwise object to Secretary Ashcroft's remaining ballot language provided by Edwards Initiative Petitions Ballot Summaries, except as to the use of such remaining ballot language provided by Edwards Initiative Petitions Ballot Summaries (when considered in conjunction with the 100 word ballot summary requirement pursuant to 116.334 RSMo) must be subordinate to the duty of Secretary Ashcroft to notify Missourians that Federal constitutional rights guaranteed by the text and historical context at the time such Federal constitutional rights were enacted may be substantially restricted or eliminated by a "yes" vote for Edwards Initiative Petitions.

55. Pursuant to 116.175 RSMo, Berry seeks the Court to amend Edward Initiative Petitions Ballot Summaries to state as follows:

- a. Ballot summary language for Missouri Initiative Petition 2024-114 be amended to

state:

“Do you want to amend the Missouri Constitution to:

- authorize regulations by local ordinance regarding possession or carrying of firearms, applying to any individual within any county and cities of Kansas City and St. Louis with exemptions, which could supersede or outlaw any laws passed by the majority of the Missouri General Assembly, and supersede open carry and concealed carry constitutional rights currently provided by the Missouri constitution and Second Amendment of the United States constitution;
- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances; and
- charge a fee to cover the cost for the issuance of permits or certificates?”

b. Ballot summary language for Missouri Initiative Petition 2024-115 be amended to

state:

“Do you want to amend the Missouri Constitution to:

- authorize regulations by local ordinance regarding possession, carrying or transfer of firearms, applying to any individual within any county and cities of Kansas City and St. Louis with exemptions, which could supersede or outlaw any laws passed by the majority of the Missouri General Assembly, and supersede open carry and concealed carry constitutional rights currently provided by the Missouri constitution and Second Amendment of the United States constitution;
- require a referendum vote of any ordinance except in Jackson and St. Louis counties and cities; and
- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances?”

c. Ballot summary language for Missouri Initiative Petition 2024-117 be amended to

state:

“Do you want to amend the Missouri Constitution to:

- authorize regulations by local ordinance regarding possession or carrying of firearms, applying to any individual within any county and cities of Kansas City and St. Louis with exemptions, which could supersede or outlaw any laws passed by the majority of the Missouri General Assembly, and supersede open carry and concealed carry constitutional rights currently provided by the Missouri constitution and Second Amendment of the United States constitution;
- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances; and
- charge a fee to cover the cost for the issuance of permits or certificates?”

D. IN THE ALTERNATIVE, EDWARDS INITIATIVE PETITION FISCAL NOTES ARE INSUFFICIENT OR UNFAIR PURSUANT TO 116.190 RSMO BECAUSE EDWARDS INITIATIVE PETITION BALLOT SUMMARIES DO NOT WARN MISSOURI VOTERS OF THE MEASURE’S COST OR SAVINGS TO LOCAL GOVERNMENT, IN VIOLATION OF SECTION 116.175 RSMO

56. Berry seeks the Court to require Missouri Auditor Scott Fitzpatrick (“Missouri Auditor Fitzpatrick”) to amend the fiscal notes for Edwards Initiative Petitions created pursuant to section 116.175 RSMo.

57. STATE EX REL. FITZ-JAMES v. Bailey, Mo: Supreme Court 2023 provides an analysis of 116.175 RSMo, which states:

“At issue in this case is section 116.175 and the division of responsibility it establishes between the Auditor and the Attorney General. It states, in its entirety:

1. Except as provided in section 116.155, upon receipt from the secretary of state's office of any petition sample sheet, joint resolution or bill, *the auditor shall assess the fiscal impact of the proposed measure*. The state auditor may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal. Proponents or opponents of any proposed measure may submit to the state auditor a proposed statement of fiscal impact estimating the cost of the proposal in a manner consistent with the standards of the governmental accounting standards board and section 23.140, provided that all such proposals are received by the state auditor within ten days of his or her receipt of the proposed measure from the secretary of state.

2. Within twenty days of receipt of a petition sample sheet, joint resolution or bill from the secretary of state, *the state auditor shall prepare a fiscal note and a fiscal note summary for the proposed measure and forward both to the attorney general.*

3. The fiscal note and fiscal note summary *shall state the measure's estimated cost or savings*, if any, to state or local governmental entities. The fiscal note summary *shall contain no more than fifty words*, excluding articles, which shall *summarize the fiscal note in language neither argumentative nor likely to create prejudice* either for or against the proposed measure.

4. The *attorney general shall, within ten days of receipt of the fiscal note and the fiscal note summary, approve the legal content and form of the fiscal note summary prepared by the state auditor* and shall forward notice of such approval to the state auditor.

5. If the attorney general or the circuit court of Cole County determines that the fiscal note or the fiscal note summary does not satisfy the requirements of this section, the fiscal note and the fiscal note summary shall be returned to the auditor for revision. A fiscal note or fiscal note summary that does not satisfy the requirements of this section also shall not satisfy the requirements of section 116.180.

§ 116.175 (emphasis added)."

The first subsection of this statute plainly and unequivocally assigns to the Auditor — not the Attorney General — the task of assessing the fiscal impact of the proposed measure. The remainder of subsection 1 identifies the sources the Auditor may draw upon and permits proponents and opponents of the measure to submit their views regarding the measure's fiscal impact. Subsection 2 requires the Auditor to present his assessment in the form of a fiscal note and a summary of that fiscal note and send both documents to the Attorney General so he can review their "legal content and form."

Subsection 3 sets out the only "legal content and form requirements" for fiscal notes and fiscal note summaries, i.e., (1) that both "shall state the measure's estimated cost or savings, if any, to state or local governmental entities," (2) that the summary shall contain no more than 50 words, excluding articles, and (3) that the summary "shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure." § 116.175.3.

Subsection 4 lies at the heart of this case. It provides that the Attorney General "shall, within ten days of receipt of the fiscal note and the fiscal note summary, approve the legal content and form of the fiscal note summary prepared by the state auditor[.]" This subsection does not require, or even authorize, the Attorney General to approve the "legal content and form" of the fiscal *note*, only the fiscal note *summary*. And, as noted above, subsection 3 sets out the only "legal content and form" requirements with which the

Attorney General is to concern himself. Here, the Attorney General fails to show the Auditor's fiscal note summaries do not comply with any of the "legal content and form" requirements in subsection 3, and the circuit court correctly found those requirements were met."

58. Berry challenges Missouri case law that outlines Missouri Auditor Fitzpatrick's duties pursuant subsection 3 of 116.175 RSMo in *Brown v. Carnahan*, 370 SW 3d 637 - Mo: Supreme Court 2012, which states:

"The Plaintiffs also argue that the Fiscal Note Summary is inadequate because it fails to account for impact on the State's tax revenue. The Plaintiffs impose on the Auditor a duty it does not have. Our Supreme Court has recently described the function of the Auditor as it relates to fiscal notes and summaries of proposed initiatives as follows:

In preparing the fiscal note, the auditor sends copies of the proposed ballot initiative to various state and local governmental entities requesting the entities review the same and provide information regarding the estimated costs or savings, if any, for the proposed ballot initiative. *See* sec. 116.175.1 (stating that the auditor "may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal"). The auditor chooses local governmental entities based on geography, population, and form of government to ensure a good cross-section of local governments that might be affected by the proposal are represented. Proponents, opponents, and members of the public may submit fiscal impact submissions also; however, the auditor has no duty to notify members of the public when he receives an initiative petition from the secretary of state.

The auditor does not analyze or evaluate the correctness of the returned fiscal impact submissions. Rather, he or she examines the submissions to determine whether they appear complete, are relevant, have an identifiable source, and are reasonable. The auditor studies each submission regarding completeness, determining whether the entity's response conveys a complete representation of what the entity intended to send and if it reasonably is related to the proposal. He also reviews the submission to ensure there are no missing pages or breaks in the continuity of information. With respect to reasonableness, the auditor examines the submission to establish whether it addresses or diverges from the particular issue. The auditor's determination of reasonableness is based on the auditor's experience in state government and overall knowledge and understanding of business and economic issues. If the auditor concludes a submission is unreasonable, he or she determines what weight the submission will be given when preparing the fiscal note summary. If the auditor has any questions regarding the submission of an entity or needs to clarify an incomplete submission, he or she may conduct a follow-up inquiry.

The auditor then drafts the fiscal note and fiscal note summary based solely on the responses he or she receives. The responses submitted are listed verbatim in the fiscal

note with only minor editing. The fiscal note summary is a compilation of the various proposals and is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative.

Brown, 370 S.W.3d at 649-50. (footnotes omitted). In addition,

[t]he auditor is not required to compel and second-guess reasonable submissions from entities but is able to rely on the responses submitted. Nor should the auditor wade into the policy debates surrounding initiative petitions, which an independent investigation would entail [. . .] It is not the auditor's role to choose a winner among these opposing viewpoints by independently researching the issue himself, double-checking economic theories and assumptions, and adopting one side's view over another's in the resulting fiscal note.

Id. at 650.”

59. Humbly stated, the Missouri Supreme Court in *Brown* ignored the actual text of subsection 3 of 116.175 RSMo in the Supreme Court’s entire ruling, specifically, “(t)he state auditor may consult with the state departments, local government entities, the general assembly and others with knowledge pertinent to the cost of the proposal.” (underlined added).

60. The aforementioned term “may” clearly provides the Missouri Auditor pursuant to subsection 3 of 116.175 RSMo may, although is not required, to utilize the ballot initiative fiscal note calculation process mandated by the Missouri Supreme Court in *Brown*.

61. The Missouri Supreme Court has not addressed how the aforementioned term “may” has somehow transformed into the term “shall” in *Bailey* or *Brown*, or otherwise invalidate by Missouri Supreme Court ruling the aforementioned term “may” from section 116.175 RSMo as being unconstitutional or otherwise void, thus denying the Missouri Auditor the statutory authority to establish the financial variables utilized to generate fiscal note calculations for initiative petition submissions filed before the Missouri Secretary of State at the Missouri Auditor’s sole discretion, absent any directive or approval of the Missouri Attorney General and

the Missouri Secretary of State in the manner professed by the Missouri Supreme Court in the *Bailey* and *Brown* rulings.

62. Nevertheless and for reasons further stated, Edwards Fiscal Notes and Edwards Fiscal Notes Summaries are still insufficient or unfair pursuant to 116.190 RSMo.

63. Missouri Auditor Fitzpatrick has a ministerial duty pursuant to subsection 3 of 116.175 RSMo to establish Edwards Fiscal Note with “the measure's estimated cost or savings, if any, to state or local governmental entities”, which Edwards Fiscal Note failed to perform.

64. Missouri Auditor Fitzpatrick has been granted wide latitude by current Missouri case law regarding the information considered and the analytical process chosen by Missouri Auditor Fitzpatrick to create local and state fiscal impact determinations when generating initiative petition fiscal notes and their fiscal note summaries, which is supported by 116.190 RSMo not granting even this Court the same or any authority granted to Missouri Auditor to rectify any failure by Missouri Auditor Fitzpatrick to comply with 116.175 RSMo when producing Edwards Initiative Petitions Fiscal Notes.

65. Regardless, Berry contends that it is arbitrary, capricious and otherwise unreasonable for Missouri Auditor Fitzpatrick to authorize Edwards Fiscal Notes under the specific facts and circumstances currently before the Court.

66. When a ministerial duty is to be performed by statutory requirement, various degrees of discretion to accomplish such a ministerial duty may be provided by Missouri law, which vary from step-by-step requirements to simply stating the ministerial duty that must be accomplished

by such Missouri officials.

67. Subsection 3 of 116.175 RSMo clearly states Missouri Auditor Fitzpatrick is required to establish Edwards Fiscal Notes with “the measure's estimated cost or savings, if any, to state or local governmental entities”, with no discretion to refuse to perform such any statutory duty.

68. It appears from a simplistic review of Edwards Fiscal Note that Missouri Auditor Fitzpatrick simply “rubber stamped” whatever local fiscal cost estimates were returned to Missouri Auditor Fitzpatrick without a pulse of analysis regarding Missouri Attorney General Andrew Bailey’s opinion letter or basic common sense related to the enactment of any criminal ordinance by a local jurisdiction, especially local ordinances that seek to restrict or regulate firearms rights against Missourians.

69. Berry contends that there is a different between requiring the Missouri Auditor with limited staff and budgetary resources to engage in an endless analysis of local government financial impact related to Missouri constitutional initiative petitions and when the actual conclusions accepted by Missouri Auditor Fitzpatrick are fiscally impossible based upon an understanding of basic fiscal operations that apply to any Missouri local government entity, irrespective of the actual text of Edwards Initiative Petitions.

70. First, Missouri Auditor Fitzpatrick accepting the fiscal impact statement from the Missouri Attorney General Office that passage of Edwards Initiative Petitions will cost Missouri 7.5 million dollars of litigations costs and not acknowledging the correlation that when the Missouri Attorney General Office expends such 7.5 million dollars of litigations costs the

Missouri local jurisdictions who actually enacted any ordinance created from passage of Edwards Initiative Petitions will also incur the same or more legal costs than the Missouri Attorney General Office in each instant because such Missouri local jurisdictions are in all instances are also independently sued in conjunction with the State of Missouri, which is fatal to Edwards Initiative Petitions Fiscal Notes.

71. Second, any enactment of a new local criminal ordinance scheme regulating firearms, in all instances, causes a substantial increase in law enforcement, criminal prosecution, court, fugitive warrant enforcement, corrections, community service program, public relations and local solicitor service costs to any local government entities.

72. Edwards Fiscal Note appears to stipulate that because Kansas City stated there were no increased costs, St. Louis County said they are unable to calculate any costs and the City of St. Louis simply failing to respond to Missouri Auditor Fitzpatrick's local fiscal impact survey, Missouri local government will not have any increase or decrease in costs to Missouri local jurisdictions represents a clearly incorrect and absurd local fiscal impact conclusion by Missouri Auditor Fitzpatrick.

73. Such an erroneous acceptance by Missouri Auditor Fitzpatrick's Edwards Fiscal Note of Kansas City's declaration that Edwards Fiscal Note will not increase the cost of enacting and enforcing firearms regulation ordinances that can not be impaled by the authority of the Missouri General Assembly or any Missouri statute, coupled with refusing to calculate any finding that local costs of enacting and enforcing firearms regulation ordinances will increase in

the City of St. Louis, St. Louis County and other Missouri local jurisdictions, causes Edwards Fiscal Note to clearly violate subsection 3 of 116.175 RSMo, and as such, Edwards Fiscal Note is inanis and does not qualify as a fiscal note required by the Missouri Secretary of State to authorize the circulation of Edwards Initiative Petitions to Missouri voters in the manner that has occurred in the instant.

E. IN THE ALTERNATIVE, EDWARDS INITIATIVE PETITION FISCAL NOTES SUMMARIES ARE INSUFFICIENT OR UNFAIR PURSUANT TO 116.190 RSMO BECAUSE EDWARDS INITIATIVE PETITION BALLOT SUMMARIES DO NOT WARN MISSOURI VOTERS OF THE MEASURE'S COST OR SAVINGS TO LOCAL GOVERNMENT, IN VIOLATION OF SECTION 116.175 RSMO

74. Because Edwards Fiscal Notes erroneously concludes Edwards Initiative Petitions will have zero fiscal impact on Missouri local governments, Edwards Fiscal Note Summaries also erroneously summarizing that Edwards Initiative Petitions will have zero fiscal impact on Missouri local governments constitutes Edwards Fiscal Note Summaries are insufficient, unfair and in violation of 116.175 RSMo and 116.175 RSMo.

75. Berry seeks an order from the Court pursuant to 116.175 RSMo mandating Missouri Auditor Fitpatrick redraft Edwards Fiscal Note Summaries by the requirements of 116.175 RSMo, specifically, to include a competent assessment of the local fiscal impact of Edwards Initiative Petitions on Missouri local governments.

PRAYER FOR RELIEF

Plaintiff Paul Berry III seeks this Honorable Court to order the following relief against the Defendants:

1. Declare the following relief against Missouri Secretary of State John R. Ashcroft:

a. Declare each Missouri Initiative Petition in violation of subsection 1 of section 116.332 RSMo and order Missouri Secretary of State to reject each Missouri Initiative Petition for failing to comply with subsection 1 of section 116.332 RSMo.

b. Declare each Missouri Initiative Petition in violation of subsection 1 of section 116.332 RSMo and order Missouri Secretary of State to reject each Missouri Initiative Petition for failing to comply with subsection 1 of section 116.332 RSMo.

c. Declare each Missouri Initiative Petition in violation of subsection 2 of 116.050 RSMo and order Missouri Secretary of State to reject each Missouri Initiative Petition for failing to comply with subsection 1 of section 116.332 RSMo.

d. In the alternative, declare ballot summary language for Missouri Initiative Petitions 2024-114 violates the “insufficient or unfair” provision of 116.190 RSMo and approve the following ballot summary language for Missouri Initiative Petitions 2024-114, as follows:

“Do you want to amend the Missouri Constitution to:

- authorize for the regulation by ordinance of the possession or carrying of firearms, to apply to any individual within any county and cities of Kansas City and St. Louis with exemptions, which could supersede or outlaw the Second Amendment Preservation Act and current firearms possession, open carry and concealed carry constitutional rights currently provided by the Missouri constitution and Second Amendment of the United States constitution;
- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances; and
- allow for a fee to cover the cost for the issuance of permits or certificates?”

e. In the alternative, declare the ballot summary language for Missouri Initiative Petitions 2024-116 violates the “insufficient or unfair” provision of 116.190 RSMo and approve the following ballot summary language for Missouri Initiative Petitions 2024-116, as follows:

“Do you want to amend the Missouri Constitution to:

- authorize for the regulation by ordinance of the possession, carrying or transfer of firearms, to apply to any individual within any county and cities of Kansas City and St. Louis with exemptions, which could supersede or outlaw the Second Amendment Preservation Act and current firearms possession, open carry and concealed carry constitutional rights currently provided by the Missouri constitution and Second Amendment of the United States constitution;
- require a referendum vote of any ordinance except in Jackson and St. Louis counties and cities; and
- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances?”

f. In the alternative, declare the ballot summary language for Missouri Initiative Petitions 2024-117 violates the “insufficient or unfair” provision of 116.190 RSMo and approve the following ballot summary language for Missouri Initiative Petitions 2024-117, as follows:

“Do you want to amend the Missouri Constitution to:

- authorize for the regulation by ordinance of the possession or carrying of firearms, to apply to any individual within any county and cities of Kansas City and St. Louis with exemptions, which could supersede or outlaw the Second Amendment Preservation Act and current firearms possession, open carry and concealed carry constitutional rights currently provided by the Missouri constitution and Second Amendment of the United States constitution;
- authorize ordinances which allow for the seizure of firearms by law enforcement under certain circumstances; and
- allow for a fee to cover the cost for the issuance of permits or certificates?”

2. Declare the following relief against Missouri Auditor Scott Fitzpatrick:

a. Declare the fiscal notes for Missouri Initiative Petitions 2024-114, 2024-115 and 2024-117 violate the “insufficient or unfair” provision of 116.190 RSMo and order the remand of the fiscal notes for Missouri Initiative Petitions 2024-114, 2024-115 and 2024-117 to Missouri Auditor Scott Fitzpatrick for preparation of new fiscal notes pursuant to the procedures set forth in section 116.175 RSMo.

b. Declare the fiscal note summaries for Missouri Initiative Petitions 2024-114, 2024-115 and 2024-117 violates the “insufficient or unfair” provision of 116.190 RSMo and order the remand of the fiscal notes for Missouri Initiative Petitions 2024-114, 2024-115 and 2024-117 to Missouri Auditor Scott Fitzpatrick for preparation of new fiscal notes summaries pursuant to the procedures set forth in section 116.175 RSMo.

3. Any other fees, expenses and/or relief to Plaintiff Paul Berry III that is deemed appropriate or just by this Honorable Court.

Respectfully Submitted,



Paul Berry III
Plaintiff