

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

ROGER B. STICKLER, et al.,)
)
Plaintiffs,)
)
v.) Case No. 17AC-CC00196
)
JOHN R. ASHCROFT,)
)
Defendant,)
)
and)
)
MIKE LOUIS,)
)
Intervenor-Defendant.)

JOHN PAUL EVANS, JR,)
)
Plaintiff,)
)
v.) Case No. 17AC-CC00197
)
MISSOURI SECRETARY OF STATE)
JOHN ASHCROFT,)
)
Defendant,)
)
and)
)
MIKE LOUIS,)
)
Intervenor-Defendant.)

JUDGMENT AND ORDER

These cases, which relate to the Official Ballot Title for Referendum Petition
2018-R002, came before the Court on a common hearing on the parties' Cross-Motions

for Judgment on the Pleadings.

On June 12, 2017, a hearing was held before this Court. In Case No. 17AC-CC00196, Plaintiffs-Petitioners Roger Bruce Stickler, Mary Hill, and Michael J. Briggs were represented by Ryan Harding and W. James Young (*pro hac vice*). In Case No. 17AC-CC00197, Plaintiff Evans was represented by Alan Simpson. In both cases, Defendant Missouri Secretary of State John R. Ashcroft was represented by Assistant Attorney General Jason K. Lewis. In both cases, Defendant-Intervenor Mike Louis was represented by attorney Jeremy A. Root. Based on the undisputed facts, the motions and supporting materials, the argument presented, and the applicable law, the Court makes the following findings of fact and conclusions of law and enters its Final Judgment and Order.

I. Findings of Fact

On February 6, 2017, the Governor signed SB 19, codified at § 290.590 *et seq.*, R.S.Mo., pursuant to the authority granted to states under Section 14(b) of the National Labor Relations Act, 29 U.S.C. § 164(b). Such laws are commonly known as “Right to Work” laws. By its terms, Missouri’s Right to Work law bars entry into and enforcement of any agreement which requires any person, “as a condition or continuation of employment,” to become or remain a union member, or to “Pay any dues, fees, assessments, or other similar charges however denominated or any kind or amount to a labor organization.” *See SB 19 at Stickler Petition, ¶16, Exhibit A; Secretary and Louis Answers to Stickler Petition at ¶16 (admitting that Exhibit A is a true and accurate copy of SB 19). See also Evans Petition at ¶15; Secretary and Louis Answers to Evans*

Petition at ¶15.

On or about February 21, 2017, a Petition for Referendum sample sheet proposing to veto Missouri’s Right to Work law, § 290.590 *et seq.*, R.S.Mo., was submitted to the Secretary by Defendant-Intervenor Mike Louis, Proponent of the measure and President of the Missouri AFL-CIO. The proposed Referendum was designated number 2018-R002 by the Secretary, and proposed to “refer[] to the voters of the State of Missouri, for their approval or rejection,” “Senate Substitute Number 2 for Senate Bill No. 19,” the Right to Work law. *See Stickler Petition at ¶¶17-18; Secretary and Louis Answers to Stickler Petition at ¶¶17-18 (admitting).* *See also Evans Petition at ¶¶17-18; Secretary and Louis Answers to Evans Petition at ¶¶17-18 (admitting).*

Prior to his submission of this proposed Referendum, Defendant-Intervenor Louis had also submitted a total of ten initiative petitions to the Secretary of State’s Office, each seeking to amend Article I, Section 29 of the Missouri Constitution to prohibit the General Assembly from passing a law pursuant to Section 14(b) of the National Labor Relations Act, 29 U.S.C. § 164(b), commonly known as “Right to Work” laws. Adoption of any or all such proposed amendments requires a “Yes” vote. The then-Secretary of State certified the official ballot title and Summary Statement for each of these Initiative Petitions, though his language was modified by earlier order of this Court. *See Decision and Order in Hill et al. v. Ashcroft, Case Nos. 17AC-CC0030 et al., March 27, 2017 (Beetem, J.).*

The Secretary prepared a Summary Statement for the Petition for Referendum, which was approved by the Attorney General. *See Stickler Petition at ¶19; Secretary and*

Louis Answers to Stickler Petition at ¶19 (admitting). See also Evans Petition at ¶20; Secretary and Louis Answers to Evans Petition at ¶20 (admitting). On March 28, 2017, the Secretary issued a certification of official ballot title for Referendum 2018-R002. The Secretary's Summary Statement reads as follows:

Do the people of the state of Missouri want to adopt Senate Bill 19 (“Right-to-Work”) as passed by the general assembly in 2017, which prohibits as a condition of employment the forced membership in a labor organization (union) or forced payments of dues in full or prorated (fair-share); make any activity which violates employees’ rights illegal and ineffective; allow legal remedies for anyone injured as a result of another person violating or threatening to violate employees’ rights; and which shall not apply to union agreements entered into before the effective date of Senate Bill 19?

See Stickler Petition at ¶20; Secretary and Louis Answers to Stickler Petition at ¶20 (admitting). See also Evans Petition at ¶¶23-24; Secretary and Louis Answers to Evans Petition at ¶¶23-24 (admitting). Thus, preserving the Right to Work law --- already passed by and signed by the Governor --- requires an affirmative, “Yes” vote. *Id.*

Plaintiffs in the *Stickler* and *Evans* cases are adult citizens and taxpayers of the State of Missouri. Their action to challenge the Summary Statement and official ballot title of Referendum 2018-R002 was timely filed within ten days of the Secretary's issuance of the Summary Statement and official ballot title, pursuant to § 116.190(1), *RSMo.*, on April 7, 2017. *See Stickler Petition at ¶¶1, 10; Secretary and Louis Answers to Stickler Petition at ¶¶1, 10 (admitting). See also Evans Petition at ¶¶1, 5; Secretary and Louis Answers to Evans Petition at ¶¶1, 5 (admitting).*

Defendant John (Jay) Ashcroft is the duly elected and acting Secretary of State of the State of Missouri. *See Stickler Petition at ¶6; Secretary and Louis Answers to Stickler Petition at ¶6 (admitting). See also Evans Petition at ¶2; Secretary and Louis Answers to Evans Petition at ¶2 (admitting).*

II. Legal Analysis and Conclusion

A. Procedural Prerequisites

R.S.Mo. § 116.190 establishes that “any citizen” may challenge the official ballot title by bringing a challenge within ten days in the Cole County Circuit Court naming the Secretary of State as defendant. This Court concludes that this action meets all procedural requirements as to standing, timeliness, jurisdiction, venue, and pleading. *§ 116.190, R.S.Mo.*

B. The Summary Statement is Unfair and Insufficient

Citizens may challenge a proposed summary statement if it is insufficient or unfair. *§ 116.190.3, R.S.Mo.; United Gamefowl Breeders Assn. v. Nixon*, 19 S.W.3d 137, 140 (Mo. banc 2000). Insufficient means “inadequate; especially lacking adequate power, capacity, or competence.” The word “unfair” means to be “marked by injustice, partiality, or deception.” Thus, the words “insufficient [or] unfair” ... mean to inadequately or with bias, prejudice, deception and/or favoritism state the consequences of the initiative. *Cures Without Cloning v. Pund*, 259 S.W.3d 76, 81 (Mo.App. W.D. 2008) (quoting *Hancock v. Sec’y of State*, 885 S.W.2d 42, 49 (Mo.App. 1994) (internal citations omitted)). “The critical test is ‘whether the language fairly and impartially summarizes the purposes of the measure so that voters will not be deceived or misled.’”

Id. (quoting *Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo.App. W.D. 1999)). “Sometimes it is necessary for the secretary of state’s summary statement to provide a context reference that will enable voters to understand the effect of the proposed change.” *Missouri Mun. League v. Carnahan*, 364 S.W.3d 548, 553 (Mo.App. W.D. 2011).

Requiring fairness and sufficiency of an initiative’s summary statement reflects that there are “procedural safeguards [in the initiative process that] are designed either, (1) to promote an informed understanding by the people of the probable effects of the proposed amendment, or (2) to prevent a self-serving faction from imposing its will upon the people without their full realization of the effects of the amendment.” *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 11–12 (Mo. banc 1981). The initiative process “safeguards ... assure that the desirability of the proposed amendment may be best judged by the people in the voting booth.” *Id.* at 12. Certainly, the same can be said of the referendum process for putting before the People laws enacted by the General Assembly.

The Secretary of State’s summary statement is unfair and insufficient, and this Court will not certify it. It reads:

Do the people of the state of Missouri want to adopt Senate Bill 19 (“Right-to-Work”) as passed by the general assembly in 2017, which prohibits as a condition of employment the forced membership in a labor organization (union) or forced payments of dues in full or prorate (fair-share); make any activity which violates employees’ rights illegal and ineffective; allow legal remedies for anyone injured as a result of another person violating or threatening to violate employees’ rights; and which shall not apply to union agreements entered into before the effective date of Senate Bill 19?

Stickler Complaint, Exhibit C.

This language contains multiple omissions and errors, as follows:

1. It is improperly, unfairly, and insufficiently constructed, insofar as it contains subject-verb disagreement in identifying SB 19's effect, noting what it "prohibits," but also stating that it "make" activity illegal and "allow" legal remedies. The People are entitled to consider a question which is phrased in a grammatically-competent manner.

2. It is improperly, unfairly, and insufficiently constructed, insofar as it requires an affirmative vote (asking the People to "adopt") to preserve the Right to Work law, SB 19, even though it has already been enacted into law by the General Assembly and the Governor. The Court finds that it is of paramount importance that the summary statement reflect that the ballot measure is a referendum.

3. It is improperly, unfairly, and insufficiently constructed, insofar as --
- when coupled with the constitutional amendments also submitted by Defendant-
Intervenor/Proponent --- its phrasing has the potential for creating voter confusion
insofar as preservation of the Right to Work law would require an affirmative vote
for Referendum 2018-R002, and a negative vote(s) on one or more of the
initiatives for constitutional amendments submitted by the same Proponent of
both. Missouri's Constitution specifically reserves to the People the "power to
propose and enact or reject laws." Mo. Const., Art. III, § 49. By stating that the
power is to "propose and enact," the structure of this language suggests that voter-
initiated proposals should require an affirmative vote to "enact," while efforts such

as Referendum 2018-R002 --- to repeal or “reject” the already-enacted Right to Work law, SB 19 --- should be framed in the negative. Furthermore, even if this weren’t the case, the Secretary’s role as gatekeeper of summary statement language of all such proposals implies a duty to avoid voter confusion where possible, and the language here presents a quintessential example of a situation --- whether inadvertent or otherwise --- where voter confusion is likely, and easily avoidable by framing the Referendum in a manner which more closely reflects the People’s veto of a duly-enacted statute which the Proponent seeks, and consistent with the Proponent’s other efforts.

4. It is improperly, unfairly, and insufficiently constructed insofar as it asks “Do the people of the state of Missouri want...” rather than the more formal (and more succinct) “Shall the people of the state of Missouri....”

5. It is improperly, unfairly, and insufficiently constructed insofar as it incompletely represents that SB 19 was “passed by the general assembly in 2017,” rather than accurately stating that SB 19 was “enacted into law in 2017.”

6. It is improperly, unfairly, and insufficiently constructed insofar as it refers parenthetically to the requirement for the payment of union dues, or a portion thereof, as a condition of employment with the value-laden term “fair share.” While the same might be said of the two instances of use of the word “forced,” that language has not been challenged here, but is sufficiently addressed by use of the term “as a condition of employment,” rendering the use of the word “forced” redundant.

7. It is improperly, unfairly, and insufficiently constructed insofar as it refers generally to “employee rights,” rather than narrowly, succinctly, and with adequate specificity focusing upon those limited “rights” which are protected by the Right to Work law, and for which legal remedies are created.

8. It is improperly, unfairly, and insufficiently constructed insofar as it refers inaccurately and unnecessarily to “union agreements” to which the Right to Work law, SB 19, would not apply.

With this Court’s conclusion that the Secretary’s Summary Statement is unfair and insufficient and cannot be certified, it falls to this Court to craft its own. The Secretary’s Summary Statement can be made sufficient as follows:

Shall the people of the state of Missouri reject Senate Bill 19 (“Right to Work”), enacted in 2017, which: (1) prohibits as a condition of employment membership in, or payments of dues or fees in full or in part to, a labor organization (union); (2) makes any agreement or activity violating its provisions illegal and ineffective; and (3) allows legal remedies for anyone injured as a result of violations or threats of violations of its provisions?

This Summary Statement meets the requirements of § 116.900, R.S.Mo, and the controlling cases in that it is fair, sufficient, informative to the voters, and provides the necessary context in light of the Proponents’ other electoral efforts.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

(1) In Case No. 17AC-CC00196, the Court grants the Stickler Plaintiffs’ Motion for Judgment on the Pleadings in full; in Case No. 17AC-CC00197, the Court grants Evans’ Motion for Judgment on the Pleadings in part and denies it in part; and in

both cases the Court denies the Defendant's and Defendant-Intervenor's Motions for Judgment on the Pleadings;

(2) The Secretary of State's Summary Statement for Referendum 2018-R002 is unfair and insufficient and this Court does not certify it;

(3) This Court hereby certifies that the following summary statement set forth in this Judgment and Order is fair, sufficient, and informative to voters, and provides the necessary context, consistent with this Opinion and Order:

Shall the people of the state of Missouri reject Senate Bill 19 ("Right to Work"), enacted in 2017, which: (1) prohibits as a condition of employment membership in, or payments of dues or fees in full or in part to, a labor organization (union); (2) makes any agreement or activity violating its provisions illegal and ineffective; and (3) allows legal remedies for anyone injured as a result of violations or threats of violations of its provisions?

(4) Pursuant to Sections 116.190.4 and 116.180, the Secretary of State shall immediately certify the corrected summary statement as part of the official ballot title.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Dan Green', with a stylized flourish at the end.

The Honorable Daniel R. Green
Circuit Judge

Dated: 6/22/2017