

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MARY HILL,)
1354 Wildbriar Drive)
Liberty, MO 64068,)

and)

ROGER B. STICKLER,)
459 W. 104th Street, #C)
Kansas City, MO 64114,)

and)

Case No. _____

MICHAEL J. BRIGGS,)
1806 E. 125th Street)
Kansas City, MO 64146,)

Plaintiffs,)

v.)

JOHN R. ASHCROFT,)
Secretary of State of Missouri,)
State Capitol Room, Room 208)
Jefferson City, MO 65101,)

Defendant.)

PETITION TO CHALLENGE OFFICIAL BALLOT
TITLE TO INITIATIVE PETITION 2018-092

COME NOW Plaintiffs Mary Hill, Michael J. Briggs, and Roger Bruce Stickler,
and for their Petition to Challenge Official Ballot Title on Initiative Petition 2018-092
state as follows:

I. PARTIES

1. Plaintiffs Mary Hill, Michael J. Briggs, and Roger Bruce Stickler are adult

citizens, registered voters, and taxpayers of the State of Missouri. Plaintiffs reside in Clay County, Jackson County and Jackson County, Missouri, respectively.

2. Plaintiff Hill is also a Registered Nurse and has been employed by various private sector employers within the State of Missouri. As such, she is an employee within the meaning of the National Labor Relations Act, 29 U.S.C. § 152(3).

3. Plaintiffs Briggs and Stickler are also Police Officers employed by the Board of Police Commissioners of Kansas City, Missouri (“the Board”), in the Kansas City Police Department. As such, they are public employees, and each is a “BARGAINING UNIT MEMBER” within the meaning of Article I, § 1 of the Memorandum of Understanding between a labor union and the Board. Plaintiffs are in a bargaining unit of Board employees for which a labor union has been designated by the Board as the monopoly or “exclusive authorized representative.” Plaintiffs Briggs and Stickler are not, and have not been at any time material hereto, members of that labor union.

4. As employees who are or have been subject to monopoly or collective bargaining agreements, Plaintiffs Hill, Briggs, and Stickler would be directly affected by the passage of Initiative Petition 2018-092, since Initiative Petition 2018-092 would make constitutional changes affecting the rights of both public- and private-sector employees.

5. Plaintiffs Hill, Briggs, and Stickler are also proponents of passage of a Right to Work law, and hence, are opponents of Initiative Petition 2018-092, an effort to frustrate such employee protections. Hill, Briggs, and Stickler are directly impacted by Initiative Petition 2018-092, which is described herein, because the amendment would

prohibit or otherwise limit the ability of the Missouri General Assembly to prohibit forced-unionism agreements, to the detriment of employees who seek to exercise their Right to Work without being compelled to subsidize a labor organization. Plaintiffs Hill, Briggs, and Stickler also have an interest in the financial obligations created and/or permitted by the proposed amendment.

6. John P. Ashcroft is the duly elected and acting Secretary of State of the State of Missouri (the “Secretary of State”). Secretary of State Ashcroft is named as a Defendant herein pursuant to R.S.MO. § 116.190.2. He assumed office on January 9, 2017, and was preceded in office by the Hon. Jason Kander.

II. JURISDICTION AND VENUE

7. This action is brought pursuant to the provisions of R.S.MO. § 116.190, which provide:

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, 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.

R.S.MO. § 116.190.

8. Venue is proper in the Circuit Court of Cole County, Missouri, pursuant to

R.S.MO. § 116.190.1.

9. Plaintiffs bring this action pursuant to Chapter 116 of the Missouri Revised Statutes, including R.S.MO. § 116.190.

10. Plaintiffs have brought this action within 10 days of Secretary of State Kander's certification of the official ballot title, as required by R.S.MO. § 116.190.

III. STATUTORY BACKGROUND

11. The official ballot title for an initiative petition proposing a constitutional amendment consists of a “summary statement” and “fiscal note summary.” R.S.MO. § 116.010(4).

12. Before a constitutional amendment initiative 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. R.S.MO. § 116.332.1.

13. The Secretary of State prepares a summary statement for the proposed measure. The summary statement may not exceed one hundred words. The statement must be in the form of a question “using language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.” R.S.MO. § 116.334.1

14. The Attorney General approves the legal content and form of the proposed summary statement. *Id.*

15. Within three days after receiving the summary statement from the Secretary of State, and the approved fiscal note summary and the fiscal note from the State Auditor, the Secretary of State certifies the official ballot title for the proposed measure. R.S.MO. § 116.180.

IV. FACTUAL BACKGROUND

16. On information and belief, an initiative petition sample sheet proposing constitutional amendments relating to Article I, Section 29 of the Missouri Constitution was submitted to then-Secretary of State Jason Kander by Mike Louis on or about

December 9, 2016. Mr. Louis is the President of the Missouri AFL-CIO, the statewide affiliate of the majority of Missouri's public and private sector labor unions, a leading proponent of forced unionism agreements and a financial beneficiary of such agreements.

17. The proposed constitutional amendment was given number 2018-092 by then-Secretary of State Kander (the proposed amendments contained in Initiative Petition number 2018-092 are sometimes referred to herein as "the Initiative Petition"). A true and accurate copy of the initiative petition sample sheet submitted to then-Secretary of State Kander by Mike Louis is attached hereto as Exhibit A and is incorporated by reference herein.

18. Then-Secretary of State Kander prepared a summary statement for the Initiative Petition, which was approved by the then-Attorney General of Missouri Chris Koster.

19. On January 9, 2017, just hours before leaving office, then-Secretary of State Kander issued a "midnight" certification of official ballot title for Initiative Petition 2018-092. A true and accurate copy of the certification of official ballot title is attached hereto as Exhibit B and is incorporated by reference herein.

20. Plaintiffs bring this action within ten (10) days of then-Secretary of State Kander's June 9, 2017 "midnight" certification of official ballot title of Initiative Petition 2018-092. Plaintiffs bring this action to challenge the summary statement of the Initiative Petition.

**COUNT I – THE INITIATIVE PETITION’S SUMMARY STATEMENT
IS INSUFFICIENT AND UNFAIR**

21. Plaintiffs hereby restate and incorporate paragraphs 1 through 20 above as if set forth fully herein.

22. The summary statement of Initiative Petition 2018-092 is insufficient and/or unfair and consequently the official ballot title of the petition is insufficient and/or unfair.

23. “Insufficient means inadequate: especially lacking adequate power, capacity or competence[.]” *Brown v. Carnahan*, 370 S.W. 3d 637, 653 (Mo. banc 2012), citing *State ex rel. Humane Soc’y of Mo. v. Beetem*, 317 S.W. 3d 669, 673 (Mo. App. 2010).

24. “[U]nfair means to be marked by injustice, partiality, or deception.” *Brown v. Carnahan*, 370 S.W.3d 637, 653 (Mo. banc 2012) citing *State ex rel. Human Soc’y of Mo. v. Beetem*, 317 S.W. 3d 669, 673 (Mo. App. 2010).

25. “[T]he summary statement must be adequate and state the consequences of the initiative without bias, prejudice, deception or favoritism.” *Brown v. Carnahan*, 370 S.W.3d 637, 654 (Mo. banc 2012) citing *State ex rel. Humane Soc’y of Mo. v. Beetem*, 317 S.W.3d 669, 673, (Mo. App. 2010).

26. The summary statement should accurately reflect both the legal and probable effects of the proposed initiative and be fair and impartial so that the voters are not deceived or misled. *Brown v. Carnahan*, 370 S.W.3d 637, 654-656 (Mo. banc 2012).

27. Initiative Petition 2018-092 proposes the following amendment(s) to Article I, Section 29 of the Missouri Constitution:

Section 29. That employees shall have the right to organize and to bargain collectively through representatives of their own choosing. No existing or future law or ordinance of the state or its political subdivisions shall impair, restrict or limit the ability of employees to negotiate, enter into and enforce any collectively bargained agreement with an employer that provides financial support for the representational services their collective bargaining representative performs.

See Exhibit A.

28. The summary statement for Initiative Petition 2018-092 states:

Shall the Missouri Constitution be amended to prohibit impairing, restricting or limiting the ability of employees to negotiate, enter into and enforce certain collectively bargained agreements with an employer?

See Exhibit B.

29. The summary statement for Initiative Petition 2018-092 is insufficient, misleading and/or unfair for the following reasons:

a. It fails to identify or in any way describe the “collectively bargained agreements with an employer” that are sought to be perpetuated, impacted or affected by Initiative Petition 2018-092;

- b. The phrase “certain collectively bargained agreements” is so vague and non-descriptive as to have no meaning at all;
- c. It omits any reference to forced-unionism, “union security,” and/or agency shop provisions, which are plainly the subject of Initiative Petition 2018-092;
- d. It refers to “employees,” even though the proposed amendment plainly empowers only those employees choosing to organize themselves into labor unions *and* seeking to compel those employees exercising their right to refrain from union membership to support the monopoly or collective bargaining representative;
- e. It uses the word “certain” in purporting to describe “certain collectively bargained agreements” but gives no context as to the type of “collectively bargained agreements” at stake in the Proposed Amendment. In fact, the proposed amendment impacts a specific type of agreement; i.e. forced unionism agreements.
- f. It fraudulently presents itself as an “employees” rights proposition even though the Proposed Amendment seeks to empower only those “employees” organizing themselves into labor unions and seeking to externalize union costs upon those employees who choose to withhold their support;
- g. It fails to mention that the “financial support for the representational services their collective bargaining representative performs” that the Proposed Amendment would allow are to be extracted from employees who may neither

need, want nor use the “representational services their collective bargaining representative performs.”;

h. It fails to mention that the “representational services their collective bargaining representative performs” referred to in the Proposed Amendment are “perform[ed]” pursuant to the monopoly or collective bargaining privilege which labor unions voluntarily assume, jealously guard, and/or lobby for as a matter of law; and

i. It is misleading because it suggests that the Missouri Constitution will be *amended* to effectuate a change to “certain” agreements, when the Proposed Amendment will not change the vast majority of “collectively bargained agreements,” but will only perpetuate those agreements compelling nonunion employees to support their monopoly or collective-bargaining representative.

30. For the reasons set forth above, the summary statement and official ballot title for Initiative Petition 2018-092 is insufficient and unfair. Plaintiffs therefore request a different summary statement within the official ballot title. The summary statement should be rewritten by the Court to fairly and sufficiently summarize the amendments proposed by the Initiative Petition. Alternatively, the Court should issue an order directing the Secretary of State to rewrite the summary statement to fairly and sufficiently summarize the amendments proposed by Initiative Petition 2018-092.

31. To the extent that it is required by law, Plaintiffs propose the following as a fair and sufficient summary statement of Initiative Petition 2018-092:

Shall the Missouri Constitution be amended to prohibit the General

Assembly and localities from barring agreements between public and private-sector labor unions and employers requiring payment of union dues and/or agency fees as a condition of continued employment?

32. This proposed summary statement would constitute a fair and impartial summary statement for this Court to adopt.

WHEREFORE, Plaintiffs pray that the Court, pursuant to R.S.MO. § 116.190, hear this action; that the Court enter its judgment that the summary statement within the official ballot title for Initiative Petition 2018-092 is insufficient and/or unfair and that the summary statement proposed by Plaintiffs should be certified to the Secretary of State by the Court for use in the official ballot title or, in the alternative, a different summary statement within the official ballot title should be written by the Court and certified to the Secretary of State to fairly and sufficiently summarize Initiative Petition 2018-092, or in the alternative, that this Court remand this matter to Secretary of State Ashcroft for the purpose of certifying a fair and sufficient summary statement for the Initiative Petition; and that Plaintiffs be granted such other and further relief in their favor as is just and proper in the circumstances.

DATED: January 19, 2017

Respectfully submitted,

HUSCH BLACKWELL LLP

By: /s/ R. Ryan Harding
LOWELL D. PEARSON #46217
R. RYAN HARDING #52155
235 East High Street, Suite 200
P.O. Box 1251
Jefferson City, MO 65102
Telephone: (573) 635-9118
Facsimile: (573) 634-7854
Email: lowell.pearson@huschblackwell.com
ryan.harding@huschblackwell.com

By: /s/ W. James Young
W. JAMES YOUNG, ESQ.
c/o National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160
Telephone: (703) 321-8510
Facsimile: (703) 321-9319
Email: wjy@nrtw.org.
(Pro Hac Vice Application to be submitted)

ATTORNEYS FOR PLAINTIFFS

County _____

Page No. _____

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

INITIATIVE PETITION

To the Honorable _____, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or city of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 6th day of November, 2018, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or city of St. Louis); my registered voting address and name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

RECEIVED

DEC 09 2016

CIRCULATOR'S AFFIDAVIT

MO. SECRETARY OF STATE

STATE OF MISSOURI,

COUNTY OF _____

I, _____, being first duly sworn, say (print or type names of signers)
(Petition Circulator's Printed Name)

NAME (Signature)	DATE SIGNED	REGISTERED VOTING ADDRESS (Street) (City, Town or Village)	Zip Code	Congr. Dist.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County.

FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY.

I am at least 18 years of age. I do ___ do not ___ (check one) expect to be paid for circulating this petition. If paid, list the payer

Signature of Affiant (Person obtaining signatures)

Street address of Affiant

Printed Name of Affiant

City, State and Zip Code of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D. _____.

Signature of Notary

Notary Public (Seal)

Address of Notary

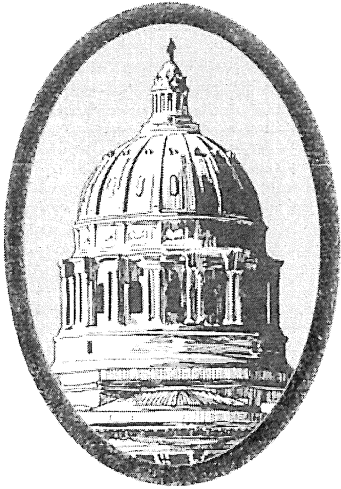
My commission expires:

NOTICE: You are advised that the proposed constitutional amendment may change, repeal, or modify by implication or may be construed by some persons to change, repeal or modify by implication Section 290 of the Missouri Revised Statutes.

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Article I of the Constitution is revised by amending Section 29 to read as follows:

Section 29. That employees shall have the right to organize and to bargain collectively through representatives of their own choosing. No existing or future law or ordinance of the state or its political subdivisions shall impair, restrict or limit the ability of employees to negotiate, enter into and enforce any collectively bargained agreement with an employer that provides financial support for the representational services their collective bargaining representative performs.



STATE OF MISSOURI

Office of
Secretary of State

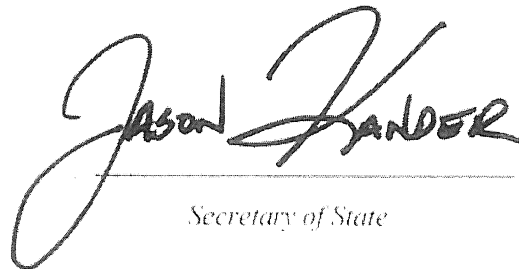
CERTIFICATION OF OFFICIAL BALLOT TITLE

I, Jason Kander, Secretary of State, in compliance with Section 116.180, RSMo, do hereby certify the following language as the official ballot title for the initiative petition for a proposed constitutional amendment relating to Article I, version I, submitted by Mike Louis on December 9, 2016. The official ballot title shall read as follows:

Shall the Missouri Constitution be amended to prohibit impairing, restricting or limiting the ability of employees to negotiate, enter into and enforce certain collectively bargained agreements with an employer?

State and local government entities expect no costs or savings. Any change in state and local revenue is unknown.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of my office in the City of Jefferson, State of Missouri, on this 9th day of January, 2017.


Secretary of State

