IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MARY ELIZABETH ANNE COLEMAN, KATHLEEN ANNE FORCK, HANNAH SUE KELLY, and MARGUERITE ANN "PEGGY" FORREST, Missouri citizens and registered voters in the state of Missouri,	)	
Plaintiffs,	)	
v.	)	Case No. 24AC-CC07285
JOHN R. ASHCROFT, Missouri Secretary of State, in his official capacity,	)	
Defendant,	)	
and	)	
MISSOURIANS FOR CONSTITIONAL FREEDOM and ANNA FITZ-JAMES,	)	
Intervenor-Defendants.	)	

JUDGEMENT

This matter was taken up before the court for trial on September 6, 2024. As a pretrial matter, intervenors Missourians for Constitutional Freedom and Dr. Anna Fitz-James were given leave to intervene in the case. The parties submitted stipulated exhibits 1-10 on the record which were admitted into evidence. Having reviewed the evidence, pleadings, and arguments on the record, this court makes the following findings of facts and conclusions of law:

PROCEDUREAL POSTURE

On August 13, 2024, Missouri Secretary of State Ashcroft certified Initiative Petition 2024-086 ("Initiative Petition" or "IP 2024-086") as compliant with the Missouri Constitution

and Chapter 116 of the Missouri Revised Statutes, and therefore sufficient to be included as proposed Amendment 3 on the ballot in Missouri's November 5, 2024, General Election.

This action for pre-election judicial review of Ashcroft's certification seeking declaratory and injunctive relief was timely filed on August 22, 2024. The petition asks this court to reverse Ashcroft's certification of IP 2024-086 and order that it be removed from the ballot November, General Election.

DISCUSSION

As a threshold matter, this court weighs heavily the profound effect of pre-election review of an initiative petitions, and the necessary and strict limitations allowing Missouri courts to conduct such a review.

> Nothing in our constitution so closely models participatory democracy in its pure form [as the citizen initiative petition process]. Through the initiative process, those who have no access to or influence with elected representatives may take their cause directly to the people. The people, from whom all constitutional authority is derived, have reserved the power to propose and enact or reject laws and amendments to the Constitution.

Cady v. Ashcroft, 606 S.W.3d 659, 666 (Mo. App. 2020) (quoting *Brown v. Carnahan*, 370 S.W.3d 637 (Mo. banc 2012) (quoting MO. CONST., art. III § 49).

In *Cady* the court continued its emphasis on pre-election review of initiative petitions stating:

> To avoid encroachment on the people's constitutional authority, courts will not sit in judgment on the wisdom or folly of the initiative proposal presented, nor will this Court issue an advisory opinion as to whether a particular proposal, if adopted, would violate a superseding law of this state or the United States Constitution. [W]hen courts are called upon to intervene in the initiative process, they must act with restraint, trepidation and a healthy suspicion of the partisan who would use the judiciary to prevent the initiative process from taking its course.
>
> Even where a challenge purports to involve a constitutional provision pertaining to the required procedure or form of an initiative petition, the challenge will not be heard pre-election unless two criteria are satisfied: [A] pre-election challenge

> must ... involve a threshold issue[ ] that affect[s] the integrity of the election itself, and [be] so clear as to constitute a matter of form. We may [only] look beyond the face of [an initiative] petition to the extent necessary to determine whether constitutional and statutory requirements pertaining to the form of the petition have been satisfied. Such challenges pertain primarily to the *current* constitutional status of an initiative petition, as they address compliance with express conditions precedent to placing a proposal on the ballot. Pre-election judicial review of a constitutional challenge pertaining to the required 'form' of an initiative petition is thus appropriate because regardless of the meritorious substance of a proposition, if the prerequisites of [the Missouri Constitution pertaining to the procedure and form of an initiative petition] are not met, the proposal is not to be on the ballot.

Id. (internal citations and quotations omitted).

As to Count I of plaintiff's petition, the pre-election criteria in order for this case to be heard are satisfied.

To illustrate, Article III, Section 50 of the Missouri Constitution requires that each initiative petition include "an enacting clause and the full text of the measure." Mo. Const. art. III, § 50. The "full text of the measure" under Article III, Section 50, must include identification of every constitutional provision a proposed constitutional amendment "undertakes to amend." *Halliburton v. Roach*, 139 S.W. 689, 695, 699 (Mo. 1910). "[A] proposed amendment by the initiative must disclose what integrally related provisions of the Constitution it is changing, and … the initiative petition will be legally insufficient if that showing is not made." *Moore v. Brown*, 165 S.W.2d 657, 663 (Mo. banc 1942) (interpreting *Halliburton*).

Missouri statutes also require that each petition offered for signatures contain or attach a "full and correct text" of the proposed measure that includes "all sections of existing law or of the constitution which would be repealed by the measure." 116.050 RSMo. Another statutory

provision makes clear that satisfaction of this requirement is an element of "sufficiency."

116.040 RSMo.[1] In full, Section 116.050 RSMo[2] provides:

> 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.
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> 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.

It is significant that section 116.050 provides separately for the "full and correct text" to include the laying out of the precise textual changes a measure will affect (subsection 2(1)) and the identification of the existing laws it will repeal (subsection 2(2)). 116.050 RSMo. "[A]ll provisions of a statute must be harmonized and every word, clause, sentence, and section thereof must be given some meaning. Courts may not interpret statutes to render any provision a nullity because doing so would not give effect to the plain language of the statute." *State v. Knox*, 604 S.W.3d 316, 322 (Mo. banc 2020). Since subsection 2(2) cannot be interpreted to be a nullity, its identification of repealed provisions must refer to something that cannot be satisfied by the mere recitation of textual changes required in subsection 2(1).

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[1] Missouri Revised Statute Section 116.040 provides a format for each page of an initiative petition, to which the "full and correct text" must be attached as provided by Section 116.050. Section 116.040 specifies that petitions may be found "sufficient" only after compliance with that section and Sections 116.050 (specifying the attachment of the "full and correct text") and 116.080 (specifying the inclusion of the official ballot title).

[2] All statutory references are to RSMo. as currently updated.

Typically, the disclosure requirements of section 116.050.2(2) RSMo and Article III, section 50, are satisfied by the inclusion of a "disclaimer" included on the same page on which is listed the new text and deletions effected by the proposed measure. For example, IP 2018-048 ("Clean Missouri") (enacted in 2018 as Amendment 1) began its "full and correct text" with the disclaimer:

> 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, the following Articles and Sections of the Constitution of Missouri: Article I, Section 8 and the following Sections of the Missouri Revised Statutes: Sections 105.450 through 105.496 and Sections 130.011 through 130.160. The proposed amendment revises Article III of the Constitution by amending Sections 2, 5, 7, and 19 and adopting three new sections to be known as Article III Sections 3, 20(c), and 20(d).

available at https://www.sos.mo.gov/CMSImages/Elections/ Petitions/2018-048.pdf.

The drafters of prior amendments had no reason other than compliance with Section 116.050 RSMo and Article III, Section 50, to inform potential signers of the enormously broad impacts, both direct and implied,[3] of their proposed measures. Their inclusion of long lists of affected laws was *mandatory* in order to protect potential signatories and comply with Section 116.050.2(2) RSMo and Article III, Section 50. *See State ex rel. Scott v. Kirkpatrick*, 484 S.W.2d 161, 164 (Mo. banc 1972) (interpreting the requirements of Article III, Section 50 as "mandatory and not directory").

Here, the putative "full and correct text" of IP 2024-086—which was stipulated to and admitted into evidence as Exhibit 2—and attached to each page of the Initiative Petition during

[3] The phrase "repeal by implication" or "implied repeal" refers to the impact on an earlier law of a measure that "is so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force." *Ritter v. Ashcroft*, 561 S.W.3d 74, 95-96 (Mo. App. 2018) (citing *Knight v. Carnahan*, 282 S.W.3d 9, 19 (Mo. App. 2009) (citing Black's Law Dictionary definition of "repeal" to interpret Section 116.050 RSMo)).

the gathering of signatures, included no disclaimer or any equivalent to a disclaimer. In fact, the full and correct text failed to identify any "sections of existing law or of the constitution which would be repealed by the measure." 116.050 RSMo. It read, in its entirety:

> NOTICE: The proposed amendment revises Article I of the Constitution by adopting one new Section to be known as Article I, Section 36.
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> *Be it resolved by the people of the state of Missouri that the Constitution be amended:*
>
> Section A. Article I of the Constitution is revised by adopting one new Section to be known as Article I, Section 36 to read as follows:
>
> Section 36. 1. This Section shall be known as "The Right to Reproductive Freedom Initiative."
>
> 2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.
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> 3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that such action is justified by a compelling governmental interest achieved by the least restrictive means. Any denial, interference, delay, or restriction of the right to reproductive freedom shall be presumed invalid. For purposes of this Section, a governmental interest is compelling only if it is for the limited purpose and has the limited effect of improving or maintaining the health of a person seeking care, is consistent with widely accepted clinical standards of practice and evidence-based medicine, and does not infringe on that person's autonomous decision-making.
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> 4. Notwithstanding subsection 3 of this Section, the general assembly may enact laws that regulate the provision of abortion after Fetal Viability provided that under no circumstance shall the Government deny, interfere with, delay, or otherwise restrict an action that in the good faith judgment of a treating health care professional is needed to protect the life or physical or mental health of the pregnant person.
>
> 5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor

shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.

6. The Government shall not discriminate against persons providing or obtaining reproductive health care or assisting another person in doing so.

7. If any provision of this Section or the application thereof to anyone or to any circumstance is held invalid, the remainder of those provisions and the application of such provisions to others or other circumstances shall not be affected thereby.

8. For purposes of this Section, the following terms mean:

(1) "Fetal Viability", the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Government",

a. the state of Missouri; or

b. any municipality, city, town, village, township, district, authority, public subdivision or public corporation having the power to tax or regulate, or any portion of two or more such entities within the state of Missouri.

This "full and correct text" of proposed Amendment 3 advises voters of no changes it makes to existing Missouri law.

Defendants argued on the record that such omission was made because it would confuse voters in that Amendment 3 would eventually have some type of effect on all sorts of laws. That theory, of course, is not an exception to the requirements of 116.050 RSMo.

Defendants further argue that while Amendment 3 could affect any number of statutes and constitutional provisions, the true identity of what those statutes and provisions are can and will only be fully determined by future litigation of those laws. But here, according to the defendant-intervenors arguments on the record, they purposefully decided not to include even the

most basic of statutes that would be repealed, at least in part, by Amendment 3. (See Missouri Statutes, chapter 180 generally, and 180.017 RSMo).

The defendant-intervenors essentially argue that, with their initiative petition, the only possible way to figure out what statutes this would effect and/or repeal can only be truly determined by future litigation challenging a particular statutes constitutionality should there amendment pass. That argument holds water with regard to some attenuated and not directly related statutes and provisions, but certainly not all of them. Just a cursory glance at Missouri statutes in chapter 180 compared to the ballot language defeats defendant-intervenors arguments that passage of Amendment 3 would not result in a repeal of Missouri statutes or that it's too confusing to determine which statutes would be repealed. Here are several examples:

> Amendment 3 states in pertinent part:
>
> 5. No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion. Nor shall any person assisting a person in exercising their right to reproductive freedom with that person's consent be penalized, prosecuted, or otherwise subjected to adverse action for doing so.
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> Missouri statute 180.017.2 RSMo states in pertinent part:
>
> Any person who knowingly performs or induces an abortion of an unborn child in violation of this subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board.
>
> ***
>
> Amendment 3 states in pertinent part:
>
> 2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.
>
> Missouri statute 180.017.2 RSMo states in pertinent part:

> Notwithstanding any other provision of law to the contrary, no abortion shall be performed or induced upon a woman, except in cases of medical emergency.

There are many more of these examples to be found in chapter 180 that show the contradictions between Amendment 3 and Missouri's current statutes. To be clear, this opinion does not suggest that every initiative petition should speculate as to every single constitutional provision or statute that it could affect. What this opinion does point out is that the defendant-intervenor Fitz-James' failure to include any statute or provision that will be repealed, especially when many of these statutes are apparent, is in blatant violation of the sufficiency requirements under 116.050.2(2) RSMo.

Finally, it is also worth pointing out that the Missouri Court of Appeals for the Western District has already ruled that that ballot summary language for Amendment 3 accurately contains a provision that Amendment 3 "removes Missouri's ban on abortion." This all the more adds persuasion to the argument that Amendment 3 will repeal Missouri's laws that ban abortion, and that such repeal should have been included in the full text of the initiative petition itself.

Having found that defendant-intervenors failed to comply with 116.050.2(2) RSMo, the court must conclude that the defendant-intervenors initiative petition was insufficient. The court now looks to the relief it has to provide under these unique circumstances.

Missouri statute 116.200 provides what this court believes is the exclusive remedy under these circumstances. That statute provides in pertinent part that, "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."

That said, this court also recognizes the gravity of the unique issues involved in this case, and the lack of direct precedent on point. The court therefore will stay execution of issuing an injunction up until September 10, 2024, the statutory deadline for the case to be heard, so that further guidance or rulings can be provided by a reviewing court.

Because of this finding as to Count I of plaintiff's petition, the court need not look further into the other claims raised by plaintiffs.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

1) The court finds that defendant-intervenor Fitz-James did not comply with the necessary requirements of § 116.050.2(2) which therefore makes her initiative petition insufficient; and
2) The court also stays the execution of the injunctive relief provided under § 116.200 which would enjoin Secretary Ashcroft from certifying IP 2024-086, and would prohibit all other officers from printing the measure on the ballot, pending this decision's appeal up until September 10, 2024, and
3) All other pending motions and claims for relief are hereby denied as moot.

It is SO ORDERED, ADJUDGED and DECREED this _6th_ day of September, 2024.

/s/Christopher K. Limbaugh

Hon. Christopher Kirby Limbaugh
Circuit Court Judge, Division IV
19th Judicial Circuit, State of Missouri

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