

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MARY ANNE SEDEY,)	
)	
Plaintiff,)	
)	
MISSOURI SECRETARY OF STATE)	
JOHN R. ASHCROFT)	Case No. _____
Serve:)	
Capitol Building, Room 208)	
Jefferson City, MO 65101,)	
)	
Defendant.)	

PETITION FOR RELIEF UNDER SECTION 116.190, RSMO

Plaintiff Mary Anne Sedey brings this action to challenge the biased and inflammatory summary statements Defendant John Ashcroft assigned to 16 initiatives. § 116.190, RSMo. Ashcroft’s summary statements are “intentionally argumentative,” insufficient, and unfair. The Secretary cherry-picked certain parts of the initiatives and described them in antagonistic terms likely to prejudice voters against the measures, while leaving out many key features likely to be popular with voters. The law requires Missourians be presented with non-biased summaries of these petitions, which seek nothing more than to make it easier for citizens to exercise their fundamental right to vote. For her Petition, Plaintiff alleges as follows:

PARTIES

1. Plaintiff is a citizen of Missouri.
2. Plaintiff submitted the initiative petitions at issue to the Secretary of State.
3. Defendant is the duly elected and acting Secretary of State of Missouri.
4. Defendant is named in his official capacity pursuant to § 116.190.2, RSMo.

JURISDICTION & VENUE

5. Plaintiff brings this action pursuant to § 116.190.2, RSMo, which vests exclusive venue in the Circuit Court of Cole County.

PLAINTIFF'S INITIATIVE PETITIONS

6. In June 2019, Plaintiff submitted 16 initiative petition sample sheets to Defendant.¹

7. All 16 initiative petitions proposed similar amendments to Article VIII of the Missouri Constitution.

8. Defendant designated the 16 petitions as Initiative Petitions (IP) 2020-72 through 2020-83, 2020-88, 2020-89, 2020-97, and 2020-98.

9. A true and correct copy of each initiative petition sample sheet is attached as

Exhibits 1-16.

10. The initiative petitions all propose to make the following changes to Missouri's Constitution:

- a. Amend Article VIII, § 5 to create a system of automatic voter registration;
- b. Amend Article VIII, § 7 to create a system of no-fault absentee voting;
- c. Amend Article VIII, § 7 to allow voters to vote in-person or by mail up to six weeks before an election;
- d. Amend Article VIII, § 7 to allow individuals to register to permanently receive mail-in ballots;
- e. Add Article VIII, § 24, expanding the time in which military ballots may be received and counted;
- f. Add Article VIII, § 25, requiring local election authorities to audit election returns using an auditing method to be developed by the Secretary of State and State Auditor; and

¹ Plaintiff also submitted several other initiative petitions that she later withdrew. They are not at issue in this case.

- g. Add Article VIII, § 26, requiring election authorities to count votes cast on a provisional ballot for any measures or candidates the voter who completed the ballot is entitled to vote on if the voter votes at any precinct within the jurisdiction of the local election authority in which the voter's assigned precinct is located.

11. In addition, half the initiative petitions Plaintiff submitted propose to add Article VIII, § 27, creating a system for pre-registration for individuals age 16 and over.

12. The initiative petitions Plaintiff submitted differ based on the following factors: (1) how the signature sheets require a person to provide his or her name; (2) whether the Department of Corrections is expressly identified as an agency from which voter registration data is collected; (3) whether extended early voting hours are mandated; and (4) whether pre-registration for persons age 16 and up is included.

13. **Exhibit 17** categorizes the initiative petitions along these metrics and shows the summary statement Defendant prepared for each.

14. None of the initiative petitions Plaintiff submitted would change the qualifications to vote in Missouri.

15. None of the initiative petitions Plaintiff submitted would authorize or require election authorities to "transfer" votes between ballots.

16. None of the initiative petitions Plaintiff submitted would permit a person to vote at a precinct outside the local election authority where he or she is registered to vote and in whose jurisdiction he or she resides.

17. None of the initiative petitions Plaintiff submitted would permit a person's vote to be counted on issues or candidates that he or she is not eligible to vote on.

18. None of the initiative petitions Plaintiff submitted would make voter information public that is not already public.

DEFENDANT’S CERTIFICATION OF SUMMARY STATEMENTS

19. On July 31 and August 5, 2019, Defendant certified to the Attorney General summary statements for each of the 16 initiative petitions pursuant to § 119.334.1, RSMo.

20. The summary statement for IP 2020-72, which includes the proposed pre-registration provision, reads:

Do you want to amend the Missouri Constitution to:

- establish automatic voter registration of individuals at least 16 years old from state agency lists (including the departments of revenue, social services and conservation);
- allow voters on election day to appear at the wrong polling place, vote on a wrong ballot, and have election judges later transfer the votes to the right ballot;
- allow voters to sign up to permanently vote by mail, with voting by mail allowed during the six weeks before each election; and
- make voters’ method of voting a public record (mail, in person or military)?

21. The summary statements for IPs 2020-73, 2020-74, 2020-75, 2020-76, 2020-77, 2020-97, and 2020-98 (which also include the pre-registration provision) are materially identical to that for IP 2020-72.

22. The summary statement for IP 2020-78, which does not include the proposed pre-registration provision, reads:

Do you want to amend the Missouri Constitution to:

- establish automatic voter registration of adults from state agency lists (including the departments of revenue, social services, corrections and conservation);
- allow voters on election day to appear at the wrong polling place, vote on a wrong ballot, and have election judges later transfer the votes to the right ballot;

- allow voters to sign up to permanently vote by mail, with voting by mail allowed during the six weeks before each election; and
- make voters' method of voting a public record (mail, in person or military)?

23. The summary statements for IPs 2020-79, 2020-80, 2020-81, 2020-82, 2020-83, 2020-88, and 2020-89 (which also do not include the pre-registration provision) are materially identical to that for IP 2020-78.

24. Defendant's official summary statements for all 16 petitions can be found at <https://www.sos.mo.gov/petitions/2020IPcirculation>.

APPLICABLE LEGAL STANDARDS

25. Defendant is required to create a summary statement for an initiative petition "using language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure." § 116.334.1, RSMo.

26. Any citizen may challenge a summary statement that is "insufficient or unfair" and request the court to mandate use of a different summary statement. § 116.190.3, RSMo.

27. "[I]nsufficient' means inadequate; especially lacking adequate power, capacity, or competence and 'unfair' means marked by injustice, partiality, or deception." *Brown v. Carnahan*, 370 S.W.3d 637, 653 (Mo. banc 2012).

28. A summary statement that misstates the effect of a ballot measure does not satisfy this standard. *Cures Without Cloning v. Pund*, 259 S.W.3d 76, 82 (Mo. App. 2008).

29. "[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 at 654.

30. "The language used should fairly and impartially summarize the purposes of the measure so that voters will not be deceived or misled." *Id.* (quotations and alterations omitted).

31. While the summary statement “need not set out the details of the proposal to be fair and sufficient,” it “should inform voters of the central features of the initiative or referendum proposal.” *Stickler v. Ashcroft*, 539 S.W.3d 702, 709 (Mo. App. 2017) (quotations and alterations omitted).

32. Defendant’s summary statements for the 16 initiative petitions Plaintiff submitted fail to satisfy the standards of §§ 116.190 and 116.334.

DEFECTS IN BULLET ONE

33. With respect to IPs 2020-72, 2020-73, 2020-74, 2020-75, 2020-76, 2020-77, 2020-97, and 2020-98 (which all include the pre-registration provision), the first bullet of Defendant’s summary statements incorrectly and misleadingly states that their adoption would “establish automatic voter registration of individuals at least 16 years old.”

34. None of these initiative petitions would change the qualifications to vote or register persons under 18 years old to vote.

35. Rather, they propose to add Article VIII, § 27 to the Constitution, which would provide: “An individual who is at least 16 years old and *otherwise* meets all eligibility requirements to vote shall be *pre-registered* to vote as provided herein.” Ex. 1 (emphasis added). It goes on to state that “[s]uch individuals are prohibited from casting a ballot until they meet all voter eligibility requirements.” *Id.* Under the provision, individuals would not be registered to vote and would not be able to vote until they are 18 years of age and meet other eligibility requirements.

36. By stating that the above-referenced initiative petitions would “register” persons 16 and up to vote, the summary statement misleadingly suggests to readers that the voting age is being lowered to 16. It is therefore misleading, untrue, insufficient, and unfair.

DEFECTS IN BULLET TWO

37. The second bullet of Defendant’s summary statement for all 16 initiative petitions is insufficient and unfair for multiple reasons.

38. First, the second bullet falsely informs readers that the initiative petitions will “have election judges later transfer the votes to the right ballot.” Ex. 15.

39. The initiative petitions do not authorize or require election judges to transfer votes between ballots.

40. Rather, they propose to add Article VIII, § 26 to the Constitution, which requires election authorities to “count” certain votes cast on provisional ballots under certain circumstances – specifically to count only those votes the voter is eligible to cast.

41. Proposed Article VIII, § 26 does not say anything about transferring votes. Indeed, the word “transfer” is not even used.

42. As such, the second bullet is insufficient and unfair because it incorrectly describes the consequences of voting for the measure.

43. Moreover, the language regarding election judges “transferring votes” is prejudicial and likely to mislead and deceive voters by giving them the negative impression that election authorities will physically fill out new ballots—possibly introducing errors and/or fraud—which is not what the measure would require.

44. The remainder of the second bullet point is also insufficient and unfair because it uses language that is argumentative and likely to bias voters against the measure, especially after the final portion of the bullet regarding “transfer” of votes is deleted (as it plainly must be).

45. By describing the initiative petitions as “allow[ing] voters on election day to appear at the wrong polling place, vote on a wrong ballot” and still have their vote counted, the summary

statements leave readers with the impression that voters could vote wherever they want, for whomever and whatever they want, with no restrictions.

46. The second bullet fails to convey to readers that there are several important limitations on when votes on provisional ballots will be counted: (1) only when a voter votes at a precinct within the jurisdiction of his or her local election authority, and (2) only for candidates and issues the voter is otherwise entitled to vote on.

47. Instead, the second bullet is likely to mislead and deceive voters into thinking that voters can go anywhere in the state they want to vote for any issues they please, neither of which is true.

48. Defendant's use of the term "wrong ballot" is itself misleading and biased. The initiative petitions address how "provisional ballots" are to be handled. Provisional ballots are a specific type of ballot. Their use is allowed, not "wrong." *See* §§ 115.417, 115.427, and 115.430, RSMo. The Secretary intentionally used the biased and misleading term "wrong ballot" rather than simply referring to provisional ballots.

DEFECTS IN BULLET THREE

49. The third bullet point is also insufficient and unfair because it attempts to convey multiple effects of the initiative petitions simultaneously, but fails to do so correctly.

50. The third bullet states that the initiatives will "allow voters to sign up to permanently vote by mail." Ex. 15. This is generally accurate.

51. However, the third bullet also states that "voting by mail [is] allowed during the six weeks before each election." *Id.* While this is true, it is also incomplete and fails to convey one of the most important changes proposed by the initiative petitions.

52. The initiative petitions would all create an early voting period starting six weeks before an election during which a person can vote either by mail or in-person. *See* Ex. 1 at 3. By failing to communicate this change in the law, the summary statement is insufficient and unfair.

53. Defendant was well aware that the early in-person voting period was an important, central feature of the ballot measures because his office responded to the State Auditor's fiscal statement investigation with information about staffing costs to keep election places open prior to election day. *See* **Exhibit 18** at 10.

DEFECTS IN BULLET FOUR

54. The fourth bullet of Defendant's summary statement is also insufficient and unfair because it incorrectly describes the effect of each initiative's proposal.

55. The fourth bullet states that adopting the initiative petitions would "make voters' method of voting a public record (mail, in person or military)." Ex. 1.

56. None of the initiative petitions would make any information a public record.

57. Rather, they would add Article VIII, § 7(8), providing:

The secretary of state and all local election authorities shall make available a list of all voters who cast ballots under this section or Article VIII, section 24 of this Constitution. Such list shall include voter information that *is* a matter of public record. This list shall be provided in the same manner required by general election law. (emphasis added)

58. Thus, the fourth bullet is false in two ways: (1) the initiative petitions do not say anything about the method of a person's vote and, more fundamentally, (2) they do nothing more than instruct officials to make available information that is already public record.

59. A summary statement that suggests to voters a ballot measure will change the law when it will not actually change the law is insufficient and unfair. *Mo. Mun. League v. Carnahan*, 303 S.W.3d 573, 588 (Mo. App. 2010).

**THE SUMMARY STATEMENTS FAIL TO DESCRIBE
CENTRAL FEATURES OF THE INITIATIVE PETITIONS**

60. In addition to the false and misleading statements in the four bullets Defendant prepared, the summary statements also fail to “inform voters of the central features of the initiative[s]” based on what they exclude. *Stickler*, 539 S.W.3d at 709.

61. One of the central features of all the initiatives is that they create a no-fault absentee voting system in which a voter can vote by absentee ballot regardless of whether he or she will be in the jurisdiction on election day. The summary statements wholly fail to communicate this change, along with their failure to make clear that the six-week early voting period allows in-person voting.

62. Another central feature of the initiative petitions that the summary statements fail to mention is that they would expand the time during which military ballots can be counted, ensuring that the people defending our nation actually have a voice in elections.

63. Finally, the summary statements fail to mention that the initiative petitions would require election authorities to audit election returns for irregularities.

**THE SUMMARY STATEMENTS ARE INSUFFICIENT
AND UNFAIR AND THE COURT SHOULD REWRITE THEM**

64. For the foregoing reasons, Defendant impermissibly created a summary statement that is “intentionally argumentative.” Defendant intentionally cherry-picked portions of the initiative petitions and described them in as loaded and pejorative terms as possible, while leaving out aspects of the initiative petitions likely to be popular with voters.

65. Section 116.190 authorizes the Court to certify a statutorily compliant summary statement and instructs plaintiffs to offer new language.

66. While there are several different ways the summary statement could be made statutorily compliant, Plaintiff suggests something like the following, which is simple, concise, non-argumentative, and includes all central features of the initiative petitions:

Do you want to amend the Missouri Constitution to:

- create a system of automatic voter registration;
- allow permanent enrollment to receive absentee ballots by mail;
- allow early and no-fault absentee voting (in-person or by mail), starting 6 weeks before an election;
- require auditing of election returns for irregularities;
- extend the time period for accepting and counting military ballots;
- require the counting of provisional ballots cast in a voter's election jurisdiction, only for measures on which the voter is entitled to vote; and
- allow eligible citizens ages 16 and 17 to pre-register to vote, but not vote before turning 18?^[2]

WHEREFORE, Plaintiff Mary Anne Sedey prays the Court for its order and judgment invalidating Defendant's summary statements for the 16 initiative petitions at issue; certifying statutorily compliant summary statements as suggested above; and granting such other and further relief as the Court deems just and proper.

² This statement would appear only in the initiative petitions including a pre-registration provision.

Respectfully submitted,

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