

**IN THE CIRCUIT COURT OF
COLE COUNTY STATE OF MISSOURI**

SCOTT FITZPATRICK, in his official)
capacity as Missouri State Treasurer,)
)
Plaintiff,)

vs.)

Case No: 21AC-CC00263)

JOHN R. ASHCROFT, in his official)
capacity as Missouri Secretary of State)
)
Defendant.)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT
ON ALL COUNTS**

The above-captioned case was tried before this Court on December 2, 2021, on a Stipulated Record. Having reviewed the record and listened to arguments by all parties, this Court hereby enters the following Findings of Fact, Conclusions of Law and Final Judgment in this matter.

Findings of Fact

1. Plaintiff Scott Fitzpatrick is the duly elected and acting Missouri State Treasurer.
2. Defendant John R. Ashcroft is the duly elected and acting Secretary of State of Missouri. §116.190.2, RSMo.
3. On May 4, 2021, the General Assembly Truly Agreed and Finally Passed House Joint Resolution (“HJR”) 35, HJR 35 did not include any ballot language drafted by the General Assembly.
4. On May 25, 2021, the Speaker of the Missouri House of Representatives and the President Pro Tem of the Missouri Senate signed HJR 35 and delivered it to the Secretary of State.

5. The Secretary of State prepared and certified the following summary statement for HJR 25:

“Do you want to amend the Missouri Constitution to:

- allow the General Assembly to override the current constitutional restrictions of state investments by the state treasurer; and
- allow state investments in municipal securities possessing one of the top five highest long term ratings or the highest short term rating?”

6. The Secretary of State prepared the following fair ballot language for HJR 35:

A “yes” vote will amend the Missouri Constitution to grant the General Assembly statutory authority to invest state funds and also expand the state treasurer’s investment options. Currently the Constitution grants the General Assembly no statutory investment authority and limits the treasurer’s investment options. This amendment will allow the General Assembly by statute to determine investment avenues for the state treasurer to invest state funds, as well as allow the state treasurer to invest in municipal securities.

A “no” vote will not amend the Missouri Constitution and limit the treasurer to investing state funds only in those currently approved by the Constitution.

7. The Secretary of State designated HJR 35 as “Amendment 1.”

8. The Official Ballot Title, including the summary statement, was certified by the Secretary of State on July 9, 2021.

9. This suit was brought by Plaintiff on July 19, 2021, challenging both the summary statement and the fair ballot language.

Conclusions of Law

10. Section 116.190, RSMo, authorizes challenges to the Official Ballot Title, including the summary statement, and the fair ballot language.

11. The Circuit Court of Cole County is the exclusive venue for this action. §116.190.1, RSMo.

12. The challenge in this matter was brought within ten (10) days of the Certification of Official Ballot Title and is therefore timely under §116.190.1, RSMo.

13. This Court has jurisdiction of all claims in this matter.

Count I: Summary Statement

14. Section 116.160, RSMo, provides as follows:

1. If the general assembly adopts a joint resolution proposing a constitutional amendment or a bill without a fiscal note summary, which is to be referred to a vote of the people, after receipt of such resolution or bill the secretary of state shall promptly forward the resolution or bill to the state auditor. If the general assembly adopts a joint resolution proposing a constitutional amendment or a bill without an official summary statement, which is to be referred to a vote of the people, within twenty days after receipt of the resolution or bill, the secretary of state shall prepare and transmit to the attorney general a summary statement of the measure as the proposed summary statement. The secretary of state may seek the advice of the legislator who introduced the constitutional amendment or bill and the speaker of the house or the president pro tem of the legislative chamber that originated the measure. The summary statement may be distinct from the legislative title of the proposed constitutional amendment or bill. The attorney general shall within ten days approve the legal content and form of the proposed statement.

2. The official summary statement shall contain no more than fifty words, excluding articles. The title shall be a true and impartial statement of the purposes of the proposed measure in language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.

15. When a challenge to the Summary Statement portion of the Official Ballot Title is brought, this Court is charged with determining if the Summary Statement portion of the Official Ballot Title is “unfair or insufficient,” Section 116.190.2, RSMo.:

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).

Pippens v. Ashcroft, 606 S.W.3d 689, 701 (Mo. App. W.D. 2020)

16. In this matter, the challenge to the Summary Statement focuses solely on one word in the first bullet point: “override.”

17. Plaintiff objects to the word “override” in the first bullet point of the Summary Statement portion of the Official Ballot Title and makes no other objection to the Summary Statement portion of the Official Ballot Title.

18. Plaintiff argues that the first bullet point is “inaccurate and biased” because the word “override” is “biased and inflammatory.” Petition, ¶¶ 19 and 26.

19. To determine whether Plaintiff’s claim has merit, this Court must undertake a two-part analysis: what would Amendment 1 accomplish if enacted, and whether the word “override” an unfair or insufficient summary of the first analysis.

20. Amendment 1 would amend the existing Article IV, Section 15 of the Missouri Constitution.

21. Article IV, Section 15 provides authorization for the State Treasurer to invest state funds in a narrowly restricted set of investment options:

- a. time deposit[s], bearing interest, in banking institutions in this state selected by the state treasurer and approved by the governor and state auditor, or
- b. in obligations of the United States government or any agency or instrumentality thereof maturing and becoming payable not more than five years from the date of purchase, or

c. into repurchase agreements maturing and becoming payable within ninety days secured by United States Treasury obligations or obligations of United States government agencies or instrumentalities of any maturity, as provided by law, or

d. in banker's acceptances issued by domestic commercial banks possessing the highest rating issued by a nationally recognized rating agency and in commercial paper issued by domestic corporations which has received the highest rating issued by a nationally recognized rating agency.

Investments in banker's acceptances and commercial paper shall mature and become payable not more than one hundred eighty days from the date of purchase, maintain the highest rating throughout the duration of the investment and meet any other requirements provided by law.

See Mo. Const. Art. IV, §15.

22. Each of these options is narrowly tailored and restricted and as such to be expanded any of these options a constitutional amendment would be required.

21. Amendment 1 would amend Article IV, Section 15 of the Missouri Constitution, as relevant to Count I, by adding the following sentence:

The treasurer may also invest in other reasonable and prudent financial instruments and securities as otherwise provided by law.

Amendment 1).

22. This new language would allow the General Assembly to change the existing restrictions contained in Article IV, Section 15 without a vote of the citizens to amend those restrictions.

23. The General Assembly would, if Amendment 1 were adopted, be able to allow investments in low or unrated corporate securities, banks that were in jeopardy, or repurchase agreements of unlimited duration or by any issuer, not just

the federal government.

24. The Treasurer objects to the word “override” used by Secretary in the Summary Statement portion of the Official Ballot Title.

25. In determining the meaning of words used, this Court turns to the dictionary. *Zahner v. City of Perryville*, 813 S.W.2d 855, 858 (Mo. banc 1991). “Override” means “[t]o dominate or prevail over; to set aside.” Webster’s Third New International Dictionary 1609 (2022). Similarly, Black’s Law Dictionary defines “override” as “[t]o prevail over; to nullify or set aside.” Black’s Law Dictionary 1136 (8th ed., 2004).

26. In reviewing the effect of the new language proposed in Amendment 1, this language allows the General Assembly, by law, to set aside the existing constitutional limitations on where the Treasurer may invest state funds.

27. The Treasurer prefers other words such as “expand” and has proposed alternate ballot language which he argues is better; however, that is not the test. See *Asher v. Carnahan*, 268 S.W.3d 427, 431 (Mo. App. W.D.2008) (“[i]f charged with the task of preparing the summary statement for a ballot initiative, ten different writers would produce ten different versions”).

28. This Court is not to decide if other words are better, it is just to determine if the words used by the Secretary are “unfair or insufficient” and if they are not, to sustain the existing Official Ballot Title as drafted and certified.

29. This Court finds that the word “override” is neither unfair nor insufficient because the term “override” gives voters notice of the effect of Amendment 1 -- to set aside the current constitutional restrictions on where the Treasurer can invest. In fact, the new language is so open ended that the word “override,” is, in fact, somewhat generous.

30. This Court finds that the Official Ballot Title certified by the Secretary

is not unfair or insufficient.

Count II: Fair Ballot Language

31. Section 116.025, RSMo., provides as follows:

The secretary of state within twenty days of receiving a statewide ballot measure shall prepare and transmit to the attorney general fair ballot language statements that fairly and accurately explain what a vote for and what a vote against the measure represent. Each statement shall be posted in each polling place next to the sample ballot. Such fair ballot language statements shall be true and impartial statements of the effect of a vote for and against the measure in language neither intentionally argumentative nor likely to create prejudice for or against the proposed measure. In addition, such fair ballot language shall include a statement as to whether the measure will increase, decrease, or have no impact on taxes, including the specific category of tax. Such fair ballot language statements may be challenged in accordance with section 116.190. The attorney general shall within ten days approve the legal content and form of the proposed statements.

32. There is no case law regarding how this Court should review and interpret the challenges brought by the Treasurer to the Fair Ballot Language.

33. This Court finds that the standard established for the Official Ballot Title is the proper standard in the absence of a statutory standard or any precedent.

34. The standard for reviewing the Fair Ballot Language is therefore to determine if it is “unfair or insufficient” as discussed under Count I of these Findings of Fact, Conclusions of Law and Final Judgment.

35. The treasurer raises three arguments in challenging the Fair Ballot Language: (1) that the first sentence of the “yes” section is false in that Amendment 1 does not allow the General Assembly to invest any funds; (2) that the last sentence of the “yes” section unfairly implies that the General Assembly would have the exclusive power to determine what investment options are available to the Treasurer; and (3) that the “no” section is incomplete and missing terms.

36. The Secretary and the Treasurer both agree on the last point, that the “no” section is incomplete and missing terms, and jointly propose that the words “investment options” should be added so that the “no” section reads as follows:

A “no” vote will not amend the Missouri Constitution and limit the treasurer to investing state funds only in those investment options currently approved by the Constitution.

37. This Court agrees with the proposed language from the Treasurer and the Secretary as to the “no” section and hereby certifies that new language as stated in the preceding paragraph.

38. With respect to the first sentence of the “yes” section, the Treasurer’s argument again focuses on one term, in this case the term “invest”:

“A “yes” vote will amend the Missouri Constitution to grant the General Assembly statutory authority to invest state funds and also expand the state treasurer’s investment options.”

a term is in question, this Court turns to the dictionary definition of that term to determine what an ordinary person would think the term means.

39. The term “invest” is defined as “to commit (money) for a long period in order to earn a financial return.” Webster’s Third New International Dictionary 1189 (2022). Black Law Dictionary defines “invest” as “[t]o supply with authority or power; to apply (money) for profit; to make an outlay of money for profit.” Black’s Law Dictionary 844 (8th ed., 2004)

40. In looking at the effect of the changes proposed in Amendment 1, this Court finds that from the plain language vesting a new power in the General Assembly, an average voter would understand that the General Assembly would have the power to invest funds as that term is defined.

41. Candidly, the Court might have chosen other language if it was writing

the Fair Ballot Language itself, much as the Treasurer suggests; but the test is not whether the Secretary used the “best” language. That other terms might be better does not make the language used by the Secretary “unfair or insufficient.”

42. This Court finds that the first sentence of the “yes” section of the Fair Ballot Language is neither unfair nor insufficient.

43. Finally, the Treasurer objects to the last sentence of the “yes” section, alleging that it “implies that the General Assembly would have the exclusive power to determine what investment options are available to the State Treasurer” (Petition, ¶44). That sentence currently reads:

This amendment will allow the General Assembly by statute to determine investment avenues for the state treasurer to invest state funds, as well as allow the state treasurer to invest in municipal securities.

44. This Court does not find an “implied” statement in this sentence nor any reference to an “exclusive power.”

45. Amendment 1, if adopted, would allow the General Assembly to determine investment avenues for the Treasurer to invest state funds; nothing in this sentence nor in the Amendment 1 makes that power exclusive.

46. This Court finds that the last sentence of the “yes” section of the Fair Ballot language is entirely fair and sufficient.

47. As a result, this Court finds that there should be no changes to the “yes” statement of the Fair Ballot Language and only the agreed upon change to the “no” language. Thus, the Fair Ballot Language should read as follows:

“A “yes” vote will amend the Missouri Constitution to grant the General Assembly statutory authority to invest state funds and also expand the state treasurer’s investment options. Currently the Constitution grants the General Assembly no statutory investment authority and limits the treasurer’s investment options. This amendment will allow the General Assembly by statute to determine investment avenues for the state treasurer to invest state

funds, as well as allow the state treasurer to invest in municipal securities.

A “no” vote will not amend the Missouri Constitution and limit the treasurer to investing state funds only in those investment options currently approved by the Constitution.”

Final Judgment

This Court hereby enters final judgment as follows:

1. The Summary Statement portion of the Official Ballot Title of Amendment 1 fairly and sufficiently summarizes Amendment 1.
2. The Summary Statement prepared by the Secretary of State is hereby certified with no changes as follows:

Do you want to amend the Missouri Constitution to:

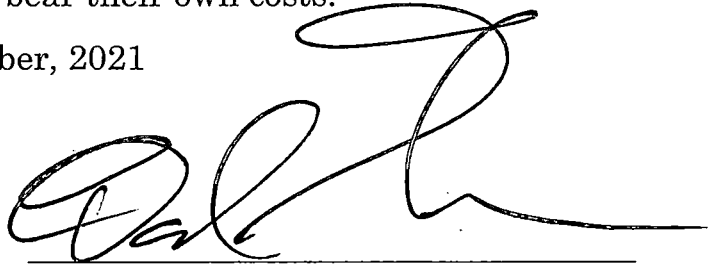
- allow the General Assembly to override the current constitutional restrictions of state investments by the state treasurer; and
 - allow state investments in municipal securities possessing one of the top five highest long term ratings or the highest short term rating?
3. Count I of Plaintiff’s Petition is hereby denied.
 4. The Fair Ballot Language of Amendment 1 is vacated solely as to the “no” section and this Court certifies the following Fair Ballot Language for use at all polling places:

A “yes” vote will amend the Missouri Constitution to grant the General Assembly statutory authority to invest state funds and also expand the state treasurer’s investment options. Currently the Constitution grants the General Assembly no statutory investment authority and limits the treasurer’s investment options. This amendment will allow the General Assembly by statute to determine investment avenues for the state treasurer to invest state funds, as well as allow the state treasurer to invest in municipal securities.

A “no” vote will not amend the Missouri Constitution and limit the treasurer to investing state funds only in those investment options currently approved by the Constitution.”

5. All other relief requested in the Petition is hereby denied.
6. Each Party shall each bear their own costs.

So ordered this 13 day of December, 2021

A handwritten signature in black ink, appearing to read 'Daniel Green', written over a horizontal line.

Honorable Daniel Green, Judge
19th Judicial Circuit, Division I