

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

Madeline Coburn, et al.,)	
)	
Plaintiffs,)	
)	No.: 11AC-CC00447
v.)	
)	Division: IV
Robert N. Mayer, et al.,)	
)	
Defendants.)	

JUDGMENT

Findings of Fact

1. On May 10, 2011, the General Assembly truly agreed to and finally passed House Joint Resolution 2 (HJR 2), which refers to voters a state-wide ballot initiative that, if passed, would adopt a Proposed Constitutional Amendment.

2. The Proposed Constitutional Amendment would repeal Article I, § 5 of the Missouri Constitution and adopt in its place a new § 5 that would restate the existing language and add the following:

[T]hat to secure a citizen's right to acknowledge Almighty God according to the dictates of his or her own conscience, neither the state nor any of its political subdivisions shall establish any official religion, nor shall a citizen's right to pray or express his or her religious beliefs be infringed; that the state shall not coerce any person to participate in any prayer or other religious activity, but shall ensure that any person shall have the right to pray individually or corporately in a private or public setting so long as such prayer does not result in disturbance of the peace or disruption of a public meeting or

assembly; that citizens as well as elected officials and employees of the state of Missouri and its political subdivisions have the right to pray on government premises and public property so long as such prayers abide within the same parameters placed upon any other free speech under similar circumstances; that the General Assembly and the governing bodies of political subdivisions may extend to ministers, clergypersons, and other individuals the privilege to offer invocations and other prayers at meetings or sessions of the General Assembly or governing bodies; that students may express their beliefs about religion in written and oral assignments free from discrimination based on the religious content of their work; that no student shall be compelled to perform or participate in academic assignments or educational presentations that violate his or her religious beliefs; that the state shall ensure public school students their right to free exercise of religious expression without interference as long as such prayer or other expression is private and voluntary, whether individually or corporately, and in a manner that is not disruptive and as long as such prayers or expressions abide within the same parameters placed upon any other free speech under similar circumstances; and, to emphasize the right to free exercise of religious expression, that all free public schools receiving state appropriations shall display, in a conspicuous and legible manner, the text of the Bill of Rights of the Constitution of the United States; but this section shall not be construed to expand the rights of prisoners in state or local custody beyond those afforded by the laws of the United States

3. Pursuant RSMo § 116.155, the General Assembly elected to include the official summary statement for HJR 2. The official summary statement included by the General Assembly reads as follows:

Shall the Missouri Constitution be amended to
ensure:

- That the right of Missouri citizens to express their religious beliefs shall not be infringed;
- That school children have the right to pray and acknowledge God voluntarily in their schools; and
- That all public schools shall display the Bill of Rights of the United States Constitution.

4. On June 27, 2011, the Secretary of State certified the official ballot title written by the General Assembly.

Conclusions of Law

5. Section 116.190.3, RSMo, provides that citizens challenging the summary statement of a ballot title as insufficient or unfair must set forth “the reason or reasons why the summary statement portion of the ballot title is insufficient or unfair and shall request a different summary statement portion of the official ballot title.”

6. “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 and unfair...mean to inadequately and with bias, prejudice, deception and/or favoritism state the consequences of the proposed proposition.” *State ex rel. Humane Society of Mo. v. Beetem*, 317 S.W.3d 669, 673 (Mo. App. W.D. 2010)

(citing *Hancock v. Secretary of State*, 885 S.W. 2d 42, 49 (Mo. App. W.D. 1994)).

7. A “ballot title is sufficient and fair if it makes the subject evident with sufficient clearness to give notice of the purpose to those interested or affected by the proposal. *Overfelt v. McCaskill*, 81 S.W.3d 732, 735 (Mo. App. W.D. 2002) (internal quotation marks omitted). “The important test is whether the language fairly and impartially summarizes the purposes of the measure, so that voters will not be deceived or misled.” *Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo. App. W.D. 1999) (citing *Union Elec. Co. v. Kirkpatrick*, 678 S.W.2d 402, 405 (Mo. banc 1984)).

8. “[E]ven if the language proposed by them [Plaintiffs] is more specific, and even if that level of specificity might be preferable, whether the summary statement prepared by the Secretary of State is the best language for describing the referendum is not the test. The burden is on the opponents of the language to show that the language was insufficient and unfair[.]” *Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo. App. W.D. 1999).

9. The General Assembly’s summary statements are limited to 50 words, excluding articles. § 116.155 RSMo (2011 Cum. Supp.). The Missouri Supreme Court has noted that summary statements prepared by the Secretary of State are limited to 100 words, and that “[w]ithin these confines,

the title need not set out the details of the proposal.” *United Gamefowl Breeders Ass’n of Mo. v. Nixon*, 19 S.W.3d 137, 141 (Mo. banc 2000).

10. Here, the summary statement is both sufficient and fair. It gives voters ample notice of the proposed amendment’s purpose. The fact that it does not include every detail of the Proposed Constitutional Amendment, or every detail the Plaintiffs would like included, does not render it unfair or insufficient. *Missouri Municipal League v. Carnahan*, 303 S.W.3d 573, 584 (Mo. App. W.D. 2010).

It is hereby ORDERED, ADJUDGED and DECREED that the General Assembly’s summary statement is fair and sufficient, that judgment be entered in favor of Defendants, and that the case be dismissed with prejudice.

IT IS SO ORDERED.

3-27-12
Date



Patricia S. Joyce, Circuit Judge