

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
DIVISION IV**

EMMANUELL AZIZ, et al,)
)
 Plaintiffs,)
)
 vs.)
)
)
 ROBERT N. MAYER, et al.,)
)
 Defendants.)

Case No. 11AC-CC00439
consolidated with
No. 11AC-CC00449

FILED
MAR 27 2012
BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT

Now on this 27th day of March, 2012, the Court calls this case for hearing. Before the Court is (1) Motion for Summary Judgment of Plaintiffs'Emmanuel Aziz, Maxine Mcarn, Thomas Bloom, Maria Barabtarlo Sapp, Joy Lieberman, Patrick Hitchins, Mary Shapiro, and Tina Hutchinson; (2) Plaintiff Jack Hembree's Motion for Summary Judgment; and (3) Defendant's Mayer, Tilley and Stouffer's Opposition and Cross-Motion to Plaintiffs' and Defendant Carnahan's Summary Judgment and Response.

Having considered the suggestions in support of the motions, the responses and the replies, and having considered the arguments of counsel and being fully advised in the premises, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

This matter comes before the Court on stipulated facts. The parties submitted a Joint Stipulation (hereinafter "JS") of facts that was filed with the Court on December 23, 2011.

Plaintiffs are citizens of the State of Missouri. JS ¶¶ 1-9. Defendants are proper party defendants under MO. REV. STAT. § 116.190.2. *Id.* ¶¶ 10-14. Under Missouri statutory law, this action is timely and venue is proper in this Court. *Id.* ¶¶ 15-16.

Defendant Bill Stouffer, in his official capacity as a state senator, sponsored Senate Joint Resolution 2 in the First Regular Session of the Ninety-Sixth General Assembly (SJR 2). JS ¶ 17. SJR 2 refers to the voters a state-wide ballot measure that, if passed, would adopt a Proposed Constitutional Amendment. *Id.* ¶ 18. The Proposed Constitutional Amendment would add four new sections to Article VIII to be known as sections 8, 9, 10, and 11. *See* Senate Joint Resolution 2, a true and correct copy of which is attached to the JS as Exhibit A.

Section 8 of the Proposed Constitutional Amendment concerns advance voting and would restrict advance voting to “the third Saturday before the election until the first Tuesday before the election excluding Sundays.” Ex. A. Section 8 would confine advance voting to “such locations as are determined by general law to be necessary or desirable to balance reasonable access to advance voting, accountability, integrity, and security of the election, efficiency in the administration of the election, and appropriate and responsible uses of public funds and other resources.” *Id.*

Section 9 of the Proposed Constitutional Amendment would restrict Missouri citizens’ fundamental right to vote to those individuals with “valid government-issued photo identification.” Ex. A. Section 10 of the Proposed Constitutional Amendment concerns absentee voting and would place restrictions on it by providing that “[d]ifferent requirements for absentee voting when the voter does not appear before the election authority may be established by general law. . . .” *Id.* Section 11 of the Proposed Constitutional Amendment states that if any part of sections 8, 9, and 10 are found invalid or unconstitutional, then the remaining portions “shall be invalid and of no further force or effect.” *Id.* There is no “Voter Protection Act” in any of the sections of the Proposed Constitutional Amendment and the neither the words “voter protection act,” “protection,” or “act” appear anywhere therein. *Id.*

The General Assembly elected to include the official summary statement for the Proposed Constitutional Amendment. JS ¶ 19. The official summary statement, referred to herein as the Summary Statement, included by the General Assembly reads as follows:

Shall the Missouri Constitution be amended to adopt the Voter Protection Act and allow the General Assembly to provide by general law for advance voting prior to election day, voter photo identification requirements, and voter requirements based on whether one appears to vote in person or by absentee ballot?

JS ¶ 20.

SJR 2 was truly agreed to and finally passed on or about May 9, 2011. JS ¶ 21. SJR 2 was delivered to the Secretary of State on or about May 26, 2011. *Id.* ¶ 22. The Secretary of State certified the official ballot title for the Proposed Constitutional Amendment as written by the General Assembly on or about June 27, 2011. *Id.* ¶ 23.

Conclusions of Law

Section 116.155.2, RSMo allows the General Assembly to formulate a summary statement for measures it refers to the people for a vote. Section 116.155.2 further provides that

...such 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.

MO. REV. STAT. § 116.155.2.

Section 116.190, RSMo allows citizens who wish to challenge a summary statement formulated by the General Assembly to bring an action in this Court. MO. REV. STAT. §

116.190.1. The petition must state the reasons why the summary statement is insufficient or unfair and request a different summary statement. *Id.* § 116.190.3.

Missouri courts have defined the terms “insufficient” and “unfair” as follows:

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 initiative.

Cures Without Cloning v. Pund, 259 S.W.3d 76, 81 (Mo. App. W.D. 2008) (quoting *Hancock v. Sec'y of State*, 885 S.W.2d 42, 49 (Mo.App. W.D. 1994)) (brackets omitted).

“The critical test is ‘whether the language fairly and impartially summarizes the purposes of the measure so that voters will not be deceived or misled.’” *Cures Without Cloning*, 259 S.W.3d at 81 (quoting *Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo.App. W.D. 1999)). A proper summary statement does not employ misleading statements or terms to create deception concerning what the proposed constitutional amendment does. *Union Elec. Co. v. Kirkpatrick*, 606 S.W.2d 658, 660 (Mo. banc 1980). A sufficient and fair summary statement “promote[s] an informed understanding by the people of the probable effects of the proposed amendment” and “prevent[s] a self-serving faction from imposing its will upon the people without their full realization of the effects of the amendment.” *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 11-12 (Mo. banc 1981).

The Summary Statement drafted by the General Assembly states that the Proposed Constitutional Amendment will (1) adopt a “Voter Protection Act,” (2) “allow” the General Assembly to provide for advance voting; (3) “allow” the General Assembly to set “voter photo

identification requirements,” and (4) “allow” the General Assembly to set “voter requirements based on whether one appears to vote in person or by absentee ballot.” The Summary Statement is insufficient and unfair as a matter of law because the Proposed Constitutional Amendment would do none of these things.

The Summary Statement is insufficient and unfair because the Proposed Constitutional Amendment will not adopt a “Voter Protection Act.” The Proposed Constitutional Amendment (1) does not contain a “Voter Protection Act” in any of its sections; (2) the words “voter protection act,” “protection,” or “act” do not appear anywhere therein; and (3) no indication is given to where this “Voter Protection Act” can be found. Counsel for Defendants Tilley, Mayer, and Stouffer stated at oral argument that an earlier version of the Senate Joint Resolution contained a Voter Protection Act, but that provision was not in the final version. The Summary Statement is insufficient and unfair because it refers to a non-existent provision and will be confusing to voters.

In addition, the Summary Statement is insufficient and unfair because it states it will “allow” the General Assembly to do something the General Assembly can already do. The General Assembly already has the authority to allow for advance voting and to set requirements for voter photo identification and absentee voting. The Summary Statement is insufficient and unfair because the phrase “allow” suggests that the Proposed Constitutional Amendment would bestow new authority on the General Assembly. Moreover, the Summary Statement is insufficient and unfair because the Proposed Constitutional Amendment would actually restrict the General Assembly’s authority rather than “allow” it because it will restrict the time period during which advance voting may occur. The Court also notes that while the summary statement refers to “voter photo identification requirements,” the Proposed Constitutional Amendment

requires *government issued* photo identification, a narrower class of photo identification than what the summary statement implies.

At oral argument, counsel for Defendants Mayer, Tilley, and Stouffer stated that if the Court finds the summary statement insufficient or unfair, the Court could either revise the summary statement or vacate the summary statement and allow the General Assembly to revise it. Here, the summary statement fails in several respects to accurately inform citizens as to the subject matter on which they are asked to vote, and significant revisions would be required to correct the statement.¹ In addition, it appears that if the reference to the non-existent Voter Protection Act is stricken, there will be extra words available for other uses in the summary statement, and those extra words could be used to further accurately describe portions of the measure that do in fact exist. Because significant changes are required here and policy choices may need to be made as to how to reallocate the words in a revised summary statement, the Court chooses to vacate the summary statement and to provide the General Assembly an opportunity to revise it.

Judgment

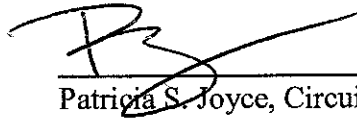
IN VIEW OF THE FOREGOING, IT IS ORDERED, ADJUDGED AND DECREED that the Summary Statement is insufficient and unfair as a matter of law and is hereby vacated, that the Summary Judgment motion by Plaintiffs is sustained and that Defendant's Mayer, Tilley and Stouffer's Cross-Motion is denied, that judgment is entered in favor of Plaintiffs.

IT IS SO ORDERED.

¹ The Western District Court of Appeals has stated that the circuit court may modify a summary statement, but is not authorized "to re-write the entire summary statement" where only a portion of the summary statement is insufficient and unfair. *Cures Without Cloning v. Pund*, 259 S.W.3d 76, 83 (Mo. App., 2008).

3-27-12

Date



Patricia S. Joyce, Circuit Judge