

IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General,)
)
Relator,)
)
vs.)
)
HONORABLE MATT BLUNT,)
Secretary of State for the State of Missouri)
)
Respondent.)

No. 086013

DUPLICATE
OF FILING ON
MAY 23 2004
IN OFFICE OF
CLERK SUPREME COURT

SUPPLEMENTAL PETITION FOR WRIT OF MANDAMUS

Relator, the Attorney General, pursuant to Rule 55.33(d) and this Court's Order of May 25, 2004, respectfully submits this Supplemental Petition for Writ of Mandamus.

¹ To the extent that this Court determines that this Supplemental Petition and his Suggestions in Support of the Supplemental Petition, or either of them, pursuant to Rule 55.33(d) and this Court's May 25 Order, exceed the proper bounds of a supplemental pleadings under either that Rule or this Court's Order, and thus should have been incorporated into an Amended Petition for Writ of Mandamus under Rule 55.33(a), the Attorney General respectfully requests: (1) that this pleading be treated an amendment by interlineation of his earlier Petition, such that his Petition dated May 24, 2004, and this Supplement, combined, comprise his Amended Petition; and (2) that the Supplemental Suggestions filed herewith be treated as an amendment by interlineation of his earlier

Supplemental Statement of Facts

On Tuesday, May 25, 2004, the tenth Tuesday prior to the August 3rd special election called by the Governor in his May 19 Proclamation (see Exhibit E, p.114), the Respondent Secretary of State distributed to Missouri's election authorities notice that a special election had been called. A true and correct copy of this notice is attached hereto as Exhibit I (p.122-25). Attached to this notice was a copy the Governor's May 24th Proclamation (p.123) submitting to the voters at the August 3rd special election a proposed constitutional amendment, proposed by initiative, authorizing floating gambling facilities on or adjacent to the White River in Rockaway Beach, Missouri. Also attached to the Secretary's May 25 notice were the Notice of Special Election (p.124), and a sample ballot regarding the White River issue (p.125). These materials were sent by the Secretary to Missouri's election authorities by facsimile and overnight mail, as provided for in §115.125.1 RSMo (Cumm. Supp. 2003).²

The Secretary also faxed (and included in the packet being sent by overnight mail), a separate statement, pursuant to this Court's May 25 Order, that "all election authorities should be prepared to add [Senate Joint Resolution 29] to the August 3, 2004 ballot if the

Suggestions, such that his Suggestions dated May 24, 2004, and the Supplemental Suggestions, combined, comprise his Amended Suggestions.

² All statutory references herein are to RSMo 2000, unless otherwise noted.

Supreme Court so orders at a later date.” A true and correct copy of this statement is attached hereto as Exhibit K (p.126).

On Thursday, May 27, 2004, the Attorney General delivered to the Secretary a letter addressing the possible logistics of the Attorney General’s review of any proposed ballot summary prepared by the Respondent Secretary’s office. The Secretary had indicated that he would take no action on Senate Joint Resolution 29 (hereinafter, “SJR 29”) until the same was signed by the presiding officers of the House and Senate and delivered to him by the General Assembly. See Exhibit F (p.115-16). Further, it had been reported that the General Assembly would not sign SJR 29 until the afternoon of Friday, May 29, 2004. Accordingly, in order to facilitate the Secretary’s representation to the Circuit Court that a ballot summary could be prepared “in a matter of hours,”³ the Attorney General advised the Secretary that his office was prepared to receive the

³ The Secretary’s assertion was not mere boasting. Instead, it was based on the Secretary’s experience in 2002 in which the Secretary had performed his duties relating to a referendum within minutes to ensure that a \$500 million tax increase could be voted upon at the August election. By drafting his ballot summary in advance, well before the measure was signed by the presiding officers of the House and Senate, and pre-clearing it with the Attorney General, the Secretary was able to effect the special August election with no difficulty. See “Teamwork and timing get road plan on ballot,” Page A1, Kansas City Star, May 29, 2002 (attached hereto as Exhibit I. (p.127-28)).

proposed ballot summary at any time, and review the same in an expedited fashion. This May 27 letter provided cellular telephone numbers so that the Secretary's ballot summary could be received and reviewed outside normal business hours and throughout the holiday weekend. A true and correct copy of this letter is attached hereto as Exhibit M (p.129).

On Friday, May 28, 2004, the General Assembly met in its second technical session (the first technical session was held on May 20, 2004), and SJR 29 was signed by the presiding officers of the Senate and the House of Representatives between 2:00 and 2:30 p.m. See Affidavit of John Clubb, attached hereto as Exhibit N (pp.130-32). The signed version of SJR 29 was then delivered to the Respondent Secretary at approximately 2:30 p.m. See Exhibit N at ¶4 (p.131). A true and correct copy of SJR 29, as signed by the presiding officers and delivered to the Secretary, is attached to Exhibit N at p.132.

The version of SJR 29 that was signed and delivered to the Secretary on May 28 is identical to the copy of SJR 29 previously delivered to the Secretary on May 20 (attached to the Attorney General's Circuit Court pleadings) and the copy of SJR 29, certified and authenticated by the Secretary of the Senate, delivered to the Secretary on May 21 (attached to the Attorney General's Court of Appeals pleadings). Compare Exhibit N (p.132) with Exhibit D (p.113).

The proposed constitutional amendment contained in the signed version of SJR 29 delivered to the Secretary on May 28 is substantially the same as the recitation of the

proposed constitutional amendment contained in the Governor's May 19 Proclamation. The only variance is that the recitation contained in the Governor's May 19 Proclamation omitted the concluding period. *Compare* Exhibit N (p.132) *with* Exhibit E (p.114).

Following receipt of the signed version of SJR 29, the Secretary delivered a letter and copy of SJR 29 to the State Auditor on Friday May 28, 2004, "for the purposes of preparing a fiscal note and fiscal note summary in accordance with § 116.175, RSMo 2000." A true and correct copy of the Secretary's letter and attachment are attached hereto as Exhibit O (p.133-34).

Promptly upon receipt of the Secretary's letter, the State Auditor delivered to the Attorney General her fiscal note and a proposed fiscal note summary. A true and correct copy of these items is attached (pp.139-41) to the Affidavit of John Clubb, a true and correct copy of which is attached hereto as Exhibit P (pp.135-43).

Upon expedited review of the fiscal note summary, the Attorney General approved its legal content and form and informed the Auditor of that approval. *See* Exhibit P, at p.138-39.

Immediately thereafter, at approximately 4:05 p.m. on May 28, the State Auditor delivered to the Secretary notice of the Attorney General's approval of the Auditor's fiscal note summary, and attaching the summary itself. Exhibit P, at ¶ 2 (p.135 and pp.137-43).

Despite the Attorney General's expressed willingness to make arrangements for the receipt of the Secretary's proposed ballot summary, the Secretary has transmitted neither the proposed ballot summary (Section 116.160) nor his proposed "fair ballot language" (Section 116.025 (Cum. Supp. 2003)), to the Attorney General for his statutory review.

The Secretary has a clear and present duty, which arose on May 19 when he received the Governor's Proclamation that the constitutional amendment proposed by the General Assembly in SJR 29 should be put to the voters at a special election on August 3, 2004, to take every action within the power of his office to effect that Proclamation and the August 3 special election called for therein. The Governor's authority to issue this Proclamation and call this special election is explicitly granted in Article XII, Section 2(b) of the Missouri Constitution.

In his oath of office, sworn by the Secretary of State pursuant to Article VII, Section 11, and Section 28.020, the Secretary pledged to "support" the Missouri Constitution, including the provision by which the Governor issued his May 19 Proclamation setting a special election on SJR 29 for August 3, 2004. In this regard, the Respondent Secretary has several specific duties that must be performed to effect that Proclamation and special election. By failing in these duties, and thereby failing in his duty to effect the Governor's Proclamation and accomplish the special election for

SJR 29, the Secretary has subjected himself to the authority of this Court and the writ of mandamus that the Attorney General seeks.

Specifically, but without limitation, these duties are:

- » Pursuant to §116.160, the Secretary must prepare the ballot summary for SJR 29 and deliver it to the Attorney General. Despite his receipt of SJR 29, the Secretary has not done so.
- » Pursuant to §116.180, the Secretary must certify the official ballot title for SJR 29. He has not done so.
- » Pursuant to §116.025, RSMo Supp. 2003, the Secretary must draft “fair ballot language” statements which, after the Attorney General’s approval, must be posted in each polling place next to the sample ballot. The Secretary has not delivered proposed “fair ballot language” statements to the Attorney General.
- » Pursuant to §116.210, the Secretary is required to number all the proposed constitutional amendments. He has designated the proposed constitutional amendment relating to gaming on White River as “No. 1,” but has not assigned a number to the constitutional amendment proposed in SJR 29.
- » Pursuant to §116.230, the Secretary must prepare a sample ballot containing the official ballot titles for all the ballot measures to be

submitted to the voters. Although the Secretary prepared a sample ballot and included thereon the White River gaming issue set for special election by the Governor's May 24 Proclamation, the Secretary failed to include on the sample ballot the proposed constitutional amendment set forth in SJR 29 set for special election by the Governor's May 19 Proclamation.

- » Pursuant to §116.240, the Secretary was required to send local election authorities a certified copy of the legal notice for the special election and a copy of the aforementioned sample ballot on or before May 25. Although the Secretary distributed a Notice of Special Election and a sample ballot to the local election authorities on May 25, neither of these documents references the August special election on the constitutional amendment proposed by SJR 29 called for by the Governor's May 19 Proclamation, and thus both of these documents are incomplete and in error.

In performing all these duties, the Secretary had -- and continues to have - a duty to effectuate the Governor's Proclamation and put SJR 29 on the August 3, 2004, ballot. The Secretary is not excused from this duty by any single or combination of statutory provisions, or the construction he would assign to them. The Secretary's failure to comply with this duty, including his failures to perform the aforementioned statutory tasks

in such a way as to ensure that the Governor's May 19 Proclamation is carried out, renders the Secretary subject to the power of this Court and its issuance of a writ of mandamus the Attorney General seeks.

Reason Why the Writ Should Issue

As set forth more fully in the Attorney General's Suggestions filed on May 24, and in the Supplemental Suggestions filed herewith, a writ of mandamus should and must issue to preserve and protect the Governor's constitutional power to call a special election concerning the constitutional amendment proposed in SJR 29, which power is presently being frustrated by the Secretary's failure to fulfill his duty to effect the Governor's May 19 Proclamation and the special election called for therein.

Amendment Request for Relief

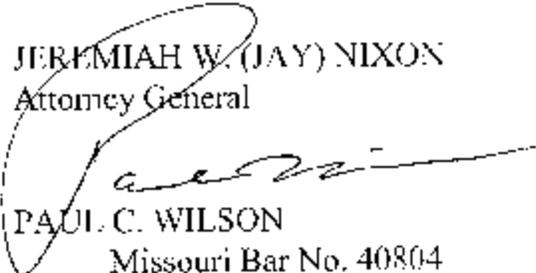
In his Petition filed May 24, 2004, the Attorney General sought Peremptory and Permanent Writs of Mandamus to compel the Secretary to complete all tasks assigned to him by law necessary to effect the August special election on the constitutional amendment proposed by SJR 29 called by the Governor's May 19 Proclamation, and to do so in time to meet the 10-week certification and distribution deadline in Section 116.240. The Secretary failed to meet that deadline, and the Attorney General hereby respectfully amends his prayer for relief.

The Attorney General requests immediate Peremptory and Permanent Writs of Mandamus compelling the Secretary of State to take all actions within the power of his

office to ensure that the constitutional amendment proposed by SJR 29 is put before the voters on August 3, 2004, as ordered by the Governor's May 19 Proclamation, and compelling the Secretary to complete all of his duties in this regard, and issue the supplemental and amending certification and distribution to the local election authorities to effect this Writ and the Governor's May 19 Proclamation, as soon as possible but in no event later than the sixth week prior to the August 3, 2004, election.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General



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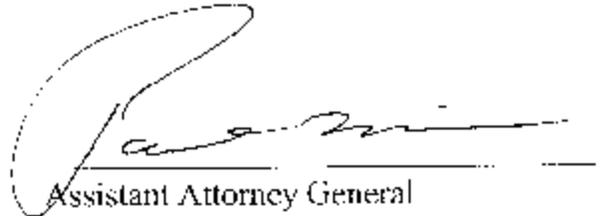
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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was served by hand delivery or U.S. Mail, postage prepaid, on this 31st day of May, 2004, and that a courtesy copy was sent electronically to:

Terry Jarrett
Office of the Secretary of State
State Information Center
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Jefferson City, Missouri 65101
Voice: (573) 526-1272
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Assistant Attorney General