MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SCOTT FITZPATRICK, IN HIS OFFICIAL CAPACITY AS MISSOURI STATE TREASURER

APPELLANT,

v.

JOHN R. ASHCROFT, IN HIS OFFICIAL CAPACITY AS MISSOURI SECRETARY OF STATE

RESPONDENT.

DOCKET NUMBER WD85060

DATE: January 13, 2022

Appeal From:

Cole County Circuit Court
The Honorable Daniel Richard Green, Judge

Appellate Judges:

Special Division: Cynthia L. Martin, Chief Judge, Presiding, Lisa White Hardwick, Judge and Thomas N. Chapman , Judge

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Attorneys:

Charles William Hatfield, Jefferson City, MO, for appellant.

Marc Henry Ellinger, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SCOTT FITZPATRICK, IN HIS OFFICIAL CAPACITY AS MISSOURI STATE TREASURER, APPELLANT,

v.

JOHN R. ASHCROFT, IN HIS OFFICIAL CAPACITY AS MISSOURI SECRETARY OF STATE, RESPONDENT.

WD85060 Cole County

Before Special Division Judges: Cynthia L. Martin, Chief Judge, Presiding, Lisa White Hardwick, Judge and Thomas N. Chapman , Judge

Scott Fitzpatrick, in his official capacity as Missouri State Treasurer, appeals a circuit court judgment finding that the official ballot title for HJR 35 and the fair ballot language for HJR 35, both of which were prepared by John R. Ashcroft, in his official capacity as Missouri Secretary of State, were not unfair or insufficient. After the appeal was filed, the Secretary of State filed a motion to dismiss the appeal, which was taken with the case.

MOTION TO DISMISS DENIED; JUDGMENT AFFIRMED.

Special Division holds:

1. Section 116.090.4, RSMo, provides a permissive right of appeal a circuit court's judgment in a section 116.090 civil cause while the judgment remains interlocutory, but that right is not to the exclusion of the right to appeal final judgments provided by section 512.020(5), RSMo, in the time and manner provided by a collective reading of Rules 81.04, 81.05, and 75.01.

2. The Treasurer's appeal was not timely filed as authorized within ten days of the circuit court's judgment, but that does not prevent the Treasurer from seeking review of the judgment once it becomes final for purposes of appeal pursuant to Rules 81.04, 81.05, and 75.01.

3. The Treasurer's notice of appeal was prematurely filed for purposes of Rules 81.04, 81.05 and 75.01, but will be treated as timely filed on January 13, 2022.

4. The summary statement in the official ballot title for HJR 35 is not unfair or insufficient based on use of the word "override," as the measure will give the General Assembly the power to extend investment authority to the Treasurer that is not set forth in Article IV, section 15 of the Missouri Constitution, without a vote of the people.

5. The fair ballot language is not unfair or insufficient because read as a whole, the ballot language will not confuse voters into believing that the General Assembly will be able to make investments or will have the exclusive power to determine the investments that can be made by the Treasurer.

Opinion by: Cynthia L. Martin, Judge January 13, 2022

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