Summary of SC100132, *State of Missouri ex rel. Dr. Anna Fitz-James v. Andrew Bailey, in His Official Capacity, and Scott Fitzpatrick, et al.*
Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted July 18, 2023; opinion issued July 20, 2023

Attorneys: The attorney general was represented by Jason K. Lewis and Samuel C. Freedlund of the attorney general's office in St. Louis, (314) 340-7832. Fitz-James was represented by Anthony E. Rothert, Tori Schafer and Jonathan Schmid of the American Civil Liberties Union of Missouri in St. Louis, (618) 531-4184. The state auditor was represented by LeslieAnn Korte and Robert C. Tillman of the auditor's office in Jefferson City, (573) 751-4213.

Certain individuals and entities filed briefs as friends of the Court. The Thomas More Society was represented by Timothy Belz of Clayton Plaza Law Group, (314) 726-2800, and Mary Catherine Hodes of the society. Kansas City Mayor Quinton Lucas and Public Rights Project were represented by Tara M. Kelly of the city attorney's office in Kansas City, (816) 513-3117; Gavriel Schreiber of the mayor's office in Kansas City; and Aadika Singh and Joshua A. Rosenthal of the Public Rights Project in Oakland, California.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The attorney general appeals from the circuit court's judgment making permanent its writ ordering the attorney general to approve the fiscal notes and fiscal note summaries the state auditor submitted for review regarding 11 initiative petitions. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the judgment. Because there was no defect in the legal form and content of the fiscal summaries the auditor prepared for the proposed initiative petitions, the attorney general's refusal to perform his plain, unequivocal and ministerial duty of approving those summaries, and informing the auditor he has done so, cannot be justified.

Facts: In March 2023, Dr. Anna Fitz-James submitted 11 proposed initiative petitions to the secretary of state, who assigned the petitions numbers and sent them to the state auditor. The auditor solicited input from state and local governmental entities regarding estimated costs or savings, if any, of the proposed initiatives. The auditor also accepted and recorded unsolicited responses received from any other governmental entity, proponents, opponents and members of the public. The auditor then created a fiscal note and fiscal note summary for each of the proposed petitions and, on March 29, sent these documents to the attorney general as required by section 116.175.2, RSMo. The attorney general then had 10 days to approve the "legal content and form" of the fiscal note summaries and notify the auditor of his approval. On April 10, the attorney general notified the auditor he believed the legal content of the fiscal notes and summaries were deficient and returned them to the auditor for revision. The auditor disagreed and, on April 21, resubmitted the original fiscal notes and fiscal note summaries to the attorney general. The auditor informed the attorney general that the fiscal notes and summaries complied with the requirements set forth in chapter 116, RSMo, and that the attorney general exceeded his review authority under section 116.175.4. On May 1, the attorney general notified the auditor he

disagreed and refused to approve the fiscal notes and summaries. Without the fiscal note summaries, the secretary of state cannot certify official ballot titles for the initiative petitions, and Fitz-James cannot begin collecting signatures. As a result, Fitz-James sought a writ of mandamus to compel the attorney general to perform his duty under section 116.175.4 or a declaratory judgment that the ballot title provisions in chapter 116 are unconstitutional on their face or as applied. Ultimately, the circuit court entered judgment making permanent its writ of mandamus against the attorney general ordering him to approve the auditor's fiscal note summaries and notify the auditor of that approval. The attorney general appeals.

AFFIRMED.

Court en banc holds: (1) The circuit court did not err in holding the attorney general had only a ministerial duty to approve the legal content and form of the fiscal note summaries and convey that approval to the auditor. Section 116.175 plainly and unequivocally assigns to the auditor – not the attorney general – the task of assessing the fiscal impact of a proposed initiative petition. Under section 116.175.2, the auditor presents his assessment in the form of a fiscal note and a summary, which the attorney general then reviews as to "legal content and form." Section 116.175.3 sets out the only legal content and form requirements for fiscal notes and fiscal note summaries: that (1) both shall state the measure's estimated cost or savings, if any, to state or local governmental entities, (2) the summary shall contain no more than 50 words, excluding articles, and (3) the summary shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure. The attorney general's refusal of the fiscal notes and summaries did not pertain to these requirements and, therefore, was unjustified.

(2) A writ of mandamus was an appropriate remedy. Even though Fitz-James asked the circuit court to issue a declaratory judgment as an alternative to a writ of mandamus, a declaratory judgment would not have afforded her full, prompt and adequate relief. The additional delay in establishing, and then likely having to enforce, a declaratory judgment would be burdensome and result in further harm to Fitz-James. Until the official ballot title is certified‒a critical step being held up solely by the attorney general's unjustified refusal to act‒Fitz-James cannot challenge that title in circuit court or circulate her petitions. Mandamus, therefore, prevents further harm to Fitz-James.