MISSOURI COURT OF APPEALS
WESTERN DISTRICT

HANNAH SUE KELLY, KATHLEEN ANNE FORCK, and MARY ELIZABETH ANNE COLEMAN, Appellants,

v.

SCOTT FITZPATRICK, MISSOURI STATE AUDITOR, in his official capacity, JOHN R. ASHCROFT, MISSOURI SECRETARY OF STATE, in his official capacity, and ANNA FITZ-JAMES, Respondents.

DOCKET NUMBER WD86594

DATE: October 31, 2023

Appeal From:

Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Special Division: Alok Ahuja, Presiding Judge, Mark D. Pfeiffer, Judge, and Karen King Mitchell, Judge

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Attorneys:

Timothy Belz; Mary Catherine Martin, Clayton, for Appellants,

LeslieAnn Korte, Robert C. Tillman, Joshua M. Divine, Samuel C. Freedlund, Jefferson City; Anthony E. Rothert, Tori Schafer, Jonathan Schmid, St. Louis, for Respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WD86594 Cole County

Before Special Division: Alok Ahuja, Presiding Judge, Mark D. Pfeiffer, Judge, and Karen King Mitchell, Judge

Dr. Anna Fitz-James submitted six proposed initiative petitions to the Missouri Secretary of State, each of which would amend the Missouri Constitution to prohibit the government from denying or infringing "a person's fundamental right to reproductive freedom." Missouri State Auditor Scott Fitzpatrick prepared fiscal notes and fiscal note summaries to estimate the costs or savings to state and local government entities if the initiatives were adopted. Hannah Sue Kelly, Kathleen Anne Forck, and Mary Elizabeth Anne Coleman (collectively, "Kelly") filed suit in the Circuit Court of Cole County, challenging the sufficiency and fairness of the Auditor's fiscal notes and fiscal note summaries. Following a bench trial on stipulated facts, the circuit court found the Auditor's fiscal notes and fiscal note summaries to be fair and sufficient. Kelly appeals.

AFFIRMED.

Special Division holds:

The first sentence of the fiscal note summary, which states that "State governmental entities estimate no costs or savings, but unknown impact," was not insufficient or unfair. No timely submissions to the Auditor from State agencies predicted any specific financial effect from the initiatives; in particular, no timely submission forecast a reduction in the Medicaid funding the State receives from the federal government. The Auditor did not abuse his discretion in discounting the belated statements received from the Governor and Attorney General suggesting threats to the State's Medicaid funding, when the agencies responsible for implementing the State's Medicaid program predicted no such risks. The statement that no state agency "estimate[d]" any specific costs or savings, despite potential "unknown" impacts, is not internally inconsistent. Reference to "unknown" impacts was appropriate given that the

Department of Health and Senior Services stated that it was unable to determine how the petitions might impact the Department's regulation of abortion facilities and providers, because the effect of the petitions on the Department's regulatory program would depend on future judicial interpretations, and future legislative action.

The second sentence of the fiscal note summary, stating that "[l]ocal governmental entities estimate costs of at least $51,000 annually in reduced tax revenues," was likewise fair and sufficient. Five county and municipal government entities responded to the Auditor's request for comments; four predicted no fiscal impact, while Green County estimated annual reduction in tax revenues of $51,000. The Auditor's fiscal note summary reflects the aggregate fiscal impact forecast by the five responses. The Auditor was not required to extrapolate the Green County estimate to the entire State, particularly when doing so would be inconsistent with the responses received from other localities.

The fiscal note summary's final sentence states that "[o]pponents estimate a potentially significant loss to state revenue" if any of the proposed initiatives is adopted. This fairly and accurately describes their submissions. Providing greater detail concerning the nature of the adverse economic consequences the opponents predicted would have been impossible in a fifty-word summary, given the variety of different potential economic consequences they identified. It was not necessary to attempt to more specifically quantify their predictions. Referring to the commenters as "opponents" of the initiatives was accurate and fair. Reference to their predictions as "estimate[s]" of "potential[ ]" costs was also appropriate, given that the economic consequences of liberalized access to abortion is subject to spirited debate.

Opinion by: Alok Ahuja, Judge October 31, 2023

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