IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

BARBARA PIPPENS, *et al.*,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 20AC-CC00206
	)	
JOHN R. ASHCROFT, *et al.*,	)	
	)	
Respondents.	)	

FINAL JUDGMENT

This action, which challenges the sufficiency and fairness of the legislature-drafted ballot title for Senate Joint Resolution 38 ("SJR 38"), came before the Court for trial on August 7, 2020. Petitioners claim the General Assembly's ballot title is insufficient, unfair, and in violation of § 116.155.2, RSMo. This matter was tried on stipulated facts and exhibits. Having fully considered the parties' pleadings, evidence, and written and oral arguments, the Court concludes the General Assembly's ballot title for SJR 38 is misleading, unfair, and insufficient, and therefore violates § 116.155.2. Accordingly, the Court enters judgment in favor of Petitioners on all claims.

FINDINGS OF FACT

The Court draws its findings of fact from the parties' joint stipulation, the stipulated exhibits, and matters about which the Court may take judicial notice:

1. Petitioners Barbara Pippens, John Bohney, Cheryl Hibbeler, Rebecca Shaw, Bob Minor, James Harmon, Gene Davis, and Pat McBride are all citizens of Missouri.

2. Respondent John (Jay) R. Ashcroft is the duly elected and acting Secretary of State ("Secretary").

3. Respondent Dave Schatz is State Senator for Missouri's 26th Senate District and serves as the current President Pro Tem of the Missouri Senate.

4. Respondent Elijah Haahr is State Representative for Missouri's 134th House of Representatives District and serves as the current Speaker of the House.

5. Defendant Daniel Hegeman is State Senator for Missouri's 12th Senate District and sponsored SJR 38.

6. On November 6, 2018, 62% of Missouri voters adopted Amendment 1, which made a number of changes to the Missouri Constitution with respect to redistricting rules, lobbying, and campaign finance.

7. Amendment 1 substantially modified the procedure for redistricting by creating the position of "Non-partisan State Demographer" and giving it much of the authority for drawing new legislative districts – a task previously handled by two partisan legislative commissions.

8. In the 2020 session of the General Assembly, Respondent Hegeman sponsored SJR 38, proposing an amendment to the Missouri Constitution.

9. The Senate adopted SJR 38 on May 10, 2020.

10. The House of Representatives truly agreed to and finally passed SJR 38 on May 13, 2020.

11. The General Assembly opted to prepare its own ballot title for SJR 38 rather than having the Secretary draft one.

12. The ballot title in the truly agreed and finally passed version of SJR 38—which is what will appear on the ballot absent court intervention—reads:

Shall the Missouri Constitution be amended to:

- Ban all lobbyist gifts to legislators and their employees;
- Reduce legislative campaign contribution limits; and

- Create citizen-led independent bipartisan commissions to draw state legislative districts based on one person, one vote, minority voter protection, compactness, competitiveness, fairness and other criteria?

13. Senate Research Staff prepared a summary of SJR 38, which is posted to the Senate's website for consumption by Senators and the general public. Research Staff's summary stated:

- SJR 38 would eliminate the ability for lobbyists to give gifts of $5.00 or less to legislators, but does not state it will ban all lobbyist gifts;

- SJR 38 would modestly lower the campaign contribution limit for Senate campaigns;

- SJR 38 would "repeal[] the post of nonpartisan state demographer and give[] all redistricting responsibility to the currently-existing commissions, renamed as the House Independent Bipartisan Citizens Commission and the Senate Independent Bipartisan Citizens Commission, respectively";

- There would be an "order of priority for the criteria . . . to be used in preparing redistricting plans," with partisan fairness and competitiveness at the lowest priority

14. On June 29, 2020, the Secretary certified the official ballot title for SJR 38, which contains the General Assembly's summary statement.

15. Several days earlier, on June 26, the Secretary prepared "fair ballot language" for SJR 38 pursuant to § 116.025, RSMo. Such language must be approved by the Attorney General and must "fairly and accurately explain what a vote for and what a vote against the measure represent."

16. The Secretary's fair ballot language states a "yes" vote will:

- "[R]educe the limits on campaign contributions that candidates for state senator can accept from individuals or entities by $100 per election. There is no change for candidates for state representative."

- "[P]rohibit[] state legislators and their employees from accepting a gift of any value (which is currently $5) from paid lobbyists or the lobbyists' clients."

- "[M]odif[y] the criteria for redrawing legislative districts and change[] the process for redrawing state legislative district boundaries during redistricting by giving redistricting responsibility to a bipartisan commission, renames them, and increases membership to 20 by adding four commissioners appointed by the Governor from nominations by the two major political party's state committees."

CONCLUSIONS OF LAW

Section 116.155.2, RSMo allows the General Assembly to prepare a summary statement for measures it refers to the people for a vote. It provides:

> [S]uch 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.

When the General Assembly writes its own summary statement—rather than leaving that task to the Secretary—judicial oversight is particularly important. *Dotson v. Kander*, 464 S.W.3d 190, 193-94 (Mo. banc 2015) (explaining judicial review in such circumstances is "especially important . . . because the proponent of the initiative—the General Assembly—writes the ballot title as well as the proposed amendment without any review of the ballot title by the executive department").

Section 116.190, RSMo permits Missouri citizens to challenge a legislatively drafted summary statement on the grounds that the statement is insufficient or unfair. It further permits the challengers to request certification of a different summary statement. § 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. 2008) (quoting *Hancock v. Sec'y of State*, 885 S.W.2d 42, 49 (Mo. App. 1994)).

"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.'" *Id.* (quoting *Bergman v. Mills*, 988 S.W.2d 84, 92 (Mo. App. 1999)). In short, a summary statement may not falsely inform voters a ballot measure will do something it will not. *Boeving v. Kander*, 493 S.W.3d 865, 875 (Mo. App. 2016); *Cures Without Cloning v. Pund*, 259 S.W.3d 76, 82 (Mo. App. 2008); *see also Sedey v. Ashcroft*, 594 S.W.3d 256 (Mo. App. 2020). Nor may the summary suggest a measure will change the law when it will not. *Mo. Mun. League v. Carnahan*, 303 S.W.3d 573, 588 (Mo. App. 2010).

Further, a summary statement must inform voters of a measure's "central features," and is insufficient and unfair if it fails to do so. *Boeving*, 493 S.W.3d at 875; *Seay v. Jones*, 439 S.W.3d 881, 891 (Mo. App. 2014). "[W]hile a summary statement need not set out the details of the proposal or resolve every peripheral question related to it, it must make the subject evident with sufficient clearness to give notice of the purpose to those interested or affected by the proposal." *Sedey*, 594 S.W.3d at 269 (quotations and alterations omitted). Stated differently, the summary statement must inform voters of the measure's "central purpose" or "primary objective." *Id.* at 270.

Applying the foregoing standards here, the General Assembly's summary statement is insufficient and unfair for multiple reasons, discussed below. Stated succinctly, however, the legislature's summary fails to inform voters that adopting SJR 38 would eliminate the legislative redistricting rules Missourians overwhelmingly adopted just two years ago to combat political gerrymandering and replace them with a redistricting process similar in substance to the one they just voted to abandon. The legislature's summary instead seeks to entice voters to adopt the measure by misleadingly overstating a modest $5 reduction in allowable lobbyist gifts and a $100 reduction to Senate campaign contribution limits. Where, as here, the legislature seeks to override

the recent, clearly expressed will of Missouri voters on a matter as important as redistricting, the law requires that voters be plainly informed what they are being asked to consider.

First, the summary statement is insufficient and unfair because it fails to even allude to SJR 38's central feature: the wholesale repeal of voter-approved rules for redistricting and replacing them with prior redistricting rules designed to benefit incumbent legislators. As noted, Amendment 1 made significant changes to the way redistricting is handled in Missouri. There can be no question about the centrality of those changes to Amendment 1or the significance of their proposed elimination in SJR 38. In rejecting a challenge to Amendment 1, the Court of Appeals noted Amendment 1 would "substantially modify the procedure" for redistricting in Missouri and described them as one of "[t]he main innovations proposed by [Amendment 1] for the redistricting process are to alter the substantive standards which guide the drawing of new districts, and to provide for a non-partisan official to create a reapportionment plan which the House and Senate reapportionment commissions can only modify by super-majority votes." *Ritter v. Ashcroft*, 561 S.W.3d 74, 80-81, 94 (Mo. App. 2018).

While SJR 38 proposes several other changes to Article III of the Constitution (discussed below), all of them pale in comparison to the scope and magnitude of undoing a recent voter mandate to change Missouri's legislative redistricting rules. The "central purpose" or "primary objective" of SJR 38 is to effectively repeal Amendment 1. Accordingly, the summary statement must alert voters to that change in some fashion. Instead, the General Assembly's statement does not mention the change at all. It is insufficient, unfair, and must be rewritten.

Second, the first bullet of the legislature's summary is insufficient and unfair because it falsely and misleadingly tells voters the measure will "ban ***all*** lobbyist gifts" to legislators and their employees. The State struggled to defend this statement at hearing because it is objectively

untrue. The Constitution currently prohibits most gifts by lobbyists to legislators. *See* Mo. Const. art. III, § 2(b). There are three exceptions: (1) gifts from unpaid lobbyists; (2) gifts from lobbyists related to a legislator within the fourth degree by blood or marriage; and (3) *de minimis* gifts under $5.00. *Id.* The only change SJR 38 would make to this state of affairs is elimination of the *de minimis* exception, as accurately reflected in the Senate Research summary and the Secretary's fair ballot language.

Accordingly, it is literally false for the legislature to tell voters SJR 38 will ban "all" lobbyist gifts. SJR 38 will not ban all lobbyists gifts. In fact, of the three types of lobbyist gifts still permitted under the law, the *de minimis* exception is very likely the most economically irrelevant given that such gifts are capped at $5.00, whereas unpaid and related lobbyists can make gifts of unlimited value.

Third, the second bullet of the summary is insufficient and unfair because it misleadingly informs voters SJR 38 will "reduce ***legislative*** campaign contribution limits." The selected language naturally communicates that the measure will result in an across-the-board reduction in the amount that can be contributed to legislative campaigns in Missouri. But it will not. Instead, SJR 38 will make a meager 4% reduction to ***senatorial*** campaign contribution limits while leaving representative contribution limits untouched. Again, this fact is accurately reflected in the Senate Research summary and the Secretary's fair ballot language, but not the General Assembly's summary statement. Given that there are 163 representatives and only 34 senators in Missouri, SJR 38 will not reduce "legislative campaign contribution limits" for approximately 83% of Missouri legislators. No Missouri voter would believe that by adopting a measure that purportedly "reduce[s] legislative campaign contribution limits," they would actually be leaving contribution limits untouched for the overwhelming majority of legislators.

Fourth, the third bullet of the summary is insufficient and unfair because it falsely states SJR 38 will "create citizen-led independent bipartisan commissions to draw state legislative districts." Nearly every aspect of this statement is wrong or misleading. SJR 38 will not "create" anything – it simply renames two legislative commissions that already exist, as plainly stated in both the Senate Research summary and the Secretary's fair ballot language. Nor will these commissions be "citizen-led" as most voters are likely to understand that phrase. The words "citizen-led" imply use of a redistricting system like that in Michigan, where all citizens are qualified to apply for the commission and commission members are selected at random from among a pool of hundreds of citizens. *See* Mich. Const. Art. 4, § 6. But under SJR 38, membership on the commissions will consist of partisan appointees nominated by each political party and confirmed by the Governor – the exact system in place before 2018. Similarly, use of the word "independent" implies that the commissions' members will be independent of the political process. But—as just discussed—that will not be the case if SJR 38 is adopted.

Whether any of the foregoing proposals constitute good policy is for the voters, not this Court, to decide. But to do so, the voters must understand the choice they are being asked to make. As the summary statement is currently drafted, however, voters are likely to be misled. This sort of deception is the exact evil the summary statement is meant to combat, not promote.

Finally, the third bullet is also insufficient and unfair because it falsely suggests to voters the measure will introduce a number of new criteria to be considered in drawing legislative districts when consideration of most of those criteria is already mandated and SJR 38 will actually *reduce* the relevance of many of the criteria. Specifically, the summary statement advises the commissions will draw legislative districts "based on one person, one vote, minority voter protection,

compactness, competitiveness, fairness and other criteria." There are several problems with this assertion.

For one thing, the Constitution already contains robust protections for minority voters. It provides that "[n]otwithstanding any other provision of this Article, districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or diminishing their ability to elect representatives of their choice, whether by themselves or by voting in concert with others," in addition to incorporating federal protections. Mo. Const. art. III, § 3(1)(b). SJR 38 would significantly weaken these protections, including the elimination of any protection for "language minorities." It is thus misleading for the summary statement to suggest to voters the measure will suddenly require redistricting to be done in a way to protect minority voters.

The Constitution also already requires legislative districts to be drawn on the basis of fairness and competitiveness. Mo. Const. art. III, § 3(1)(b). Far from strengthening, or even perpetuating, this requirement, SJR 38 would actually render these criteria *less* important by providing that every other consideration "shall take precedence over partisan fairness and competitiveness," as accurately reflected in the Senate Research summary. Accordingly, it is also misleading for the summary statement to inform voters the measure will now require consideration of fairness and competitiveness in redistricting. It is similarly improper for the summary to tell voters the measure will require "compactness" to be considered in redistricting because—again—the Constitution already requires it to be considered. *See* Mo. Const. art. III, §§ 3(c)(1)(e).

For all of the foregoing reasons, the Court concludes the General Assembly's summary statement is insufficient and unfair and violates § 116.155.2, RSMo. As authorized by § 116.190, the Court concludes it must certify a new summary statement that accurately and fairly summarizes

SJR 38's central features. Accordingly, the Court will certify a new summary to the Secretary for inclusion on the November 3 ballot.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The General Assembly's summary statement is insufficient and unfair and is hereby vacated;

2. Judgment is entered in favor of Petitioners and against Respondents on all counts; and

3. The following summary statement is certified to Respondent Ashcroft and shall appear on the November 3 ballot:

"Shall the Missouri Constitution be amended to:

- Repeal rules for drawing state legislative districts approved by voters in November 2018 and replace them with rules proposed by the legislature;
- Lower the campaign contribution limit for senate candidates by $100; and
- Lower legislative gift limit from $5 to $0, with exemptions for some lobbyists?"

8.17.2020
Date

Patricia S. Joyce, Circuit Judge