

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

NORMAN SEAY,)	
)	
Plaintiff,)	
)	
v.)	NO.: _____
)	
SPEAKER OF THE MISSOURI HOUSE)	DIVISION: _____
OF REPRESENTATIVES,)	
TIM JONES)	
Serve at:)	
201 West Capitol Avenue, Room 308)	
Jefferson City, MO 65101)	
)	
MISSOURI SECRETARY OF STATE,)	
JASON KANDER,)	
Serve at:)	
600 West Main Street)	
Jefferson City, MO 65101)	
)	
PRESIDENT PRO TEM OF THE)	
MISSOURI SENATE,)	
TOM DEMPSEY)	
Serve at:)	
201 West Capitol Avenue, Room 326)	
Jefferson City, MO 65101)	
)	
TONY DUGGER, in his official capacity)	
as sponsor of House Joint)	
Resolution No.)	
90, 97th General Assembly (2014))	
Serve at:)	
201 West Capitol Avenue, Room 300)	
Jefferson City, MO 65101;)	
)	
Defendants.)	

PETITION TO CHALLENGE OFFICIAL BALLOT TITLE

Plaintiff, by and through his attorneys, pursuant to section 116.190.1,¹ states for his Petition as follows:

1. Plaintiff brings this action for the purpose of challenging the official ballot title, including the official summary statement for House Joint Resolution 90, prepared by the General Assembly and certified by the Secretary of State, of the proposed constitutional amendment to Article VII of the Constitution of the State of Missouri (“Proposed Constitutional Amendment”) sought to be enacted by the statewide ballot measure referred to the voters.

PARTIES

2. Plaintiff, Norman Seay, is a citizen of the State of Missouri. He has long been a leader of the civil rights movement in Missouri. He served ninety days in jail for his role in the demonstrations at Jefferson Bank and Trust Company in 1963. That demonstration is widely regarded as the most important event of the modern civil rights movement in Missouri.
3. Defendant Tim Jones is the Speaker of the Missouri House of Representatives and is named as a defendant in his official capacity pursuant to section 116.190.2.
4. Defendant Jason Kander is the Secretary of State of the State of Missouri and is named as a defendant in his official capacity pursuant to section 116.190.2.
5. Defendant Tom Dempsey is the President Pro Tem of the Missouri Senate and is named as a defendant in his official capacity pursuant to section 116.190.2.

¹ All statutory references are to the Missouri Revised Statutes 2000, as updated. All Rule references are to the Missouri Supreme Court Rules (2014), unless otherwise noted.

6. Defendant Tony Dugger is the Representative for the 141st District and was the sponsor of House Joint Resolution 90. He is named as a defendant in his official capacity pursuant to section 116.190.2.

JURISDICTION AND VENUE

7. Plaintiff brings this action pursuant to Chapters 116 526, and 527 of the Revised Statutes of Missouri and Rules 87 and 92 of the Missouri Rules of Civil Procedure.
8. Venue is proper in this Court pursuant to section 116.190.1.
9. This action is brought within the prescribed time limit pursuant to sections 1.040, 506.060.1, and 116.190.1.

Factual Allegations

10. Defendant Tony Dugger, in his capacity as a Representative, sponsored House Joint Resolution 90 in the 97th General Assembly (HJR 90).
11. HJR 90 refers to the voters a state-wide ballot initiative that would adopt the Proposed Constitutional Amendment.
12. Pursuant to section 116.155.1, the General Assembly elected to include the official summary statement for HJR 90.
13. The official summary statement included by the General Assembly states: Shall the Missouri Constitution be amended to permit voting in person or by mail for a period of six business days prior to and including Wednesday before the election day in all general elections?
14. On or about May 14, 2014, HJR 90 was truly agreed to and finally passed. A copy of HJR 90 is attached hereto as Exhibit A and incorporated herein by reference.
15. On or about May 30, 2014, HJR 90 was delivered to the Secretary of State.

16. On June 30, 2014, the Secretary of State certified the official ballot title submitted by the General Assembly. A copy of the Secretary of State's certification is attached as Exhibit B and incorporated herein by reference.

COUNT I – THE SUMMARY STATEMENT IS INSUFFICIENT AND UNFAIR

17. Plaintiff incorporates the allegations in the foregoing paragraphs as if they were set forth verbatim here.

18. The Proposed Constitutional Amendment would add one new section to Article VIII of the Missouri Constitution.

19. Section 116.155.2 provides:

The official summary statement approved by the general assembly shall, taken together with the approved fiscal note summary, be the official ballot title and such 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.

20. The summary statement here is insufficient and unfair in that it deceives and misleads voters about what the Proposed Constitutional Amendment would and would not do, and, thus, is neither true nor impartial, but instead, is likely to create prejudice in favor of the proposed measure.

21. The Proposed Constitutional Amendment does not, as the summary statement asserts, "permit voting" for the period of six days prior to the election. This untrue statement is misleading because the Proposed Constitutional Amendment allows for advance voting only after "a state appropriation is made and disbursed."

22. As indicated by the fiscal note summary, the appropriation that would be required before any early voting would be permitted under the Proposed Constitutional Amendment is not de

minimis, but rather has startup costs estimated at \$2,000,000.00, and a cost of at least \$100,000.00 per election. *See* Ex. B.

23. The summary statement is especially misleading because the Proposed Constitutional Amendment will appear on the ballot with a separate citizen initiative that would, in fact, permit early voting without any appropriation contingency; the operative language of the summary statement for these two separate and different measures, however, is not distinguishable.
24. Although the legislature's 31-word statement has capacity for considerably more words under the fifty-word limit, the summary statement does not note that voting by mail or in person before the election may occur only during "regular business hours."
25. In order to correct the foregoing deficiencies in the summary statement, while keeping within the fifty-word limit and ensuring that the summary statement is sufficient and fair so that voters will not be deceived or misled, Plaintiff states, pursuant to section 116.190.3, that the summary statement should be amended to state the following: "Shall the Missouri Constitution be amended to permit voting in person or by mail during regular business hours for the period of the six business days prior to, and including, the Wednesday before the election day in all general elections, upon appropriation of funds by the General Assembly?"
26. Because only the summary statement approved by the General Assembly may be the official ballot title, the appropriate remedy is to vacate the Secretary of State's certification of the ballot title, or direct him to vacate the certification, and prohibit him from taking any further action to place the Proposed Constitutional Amendment on the ballot. *See* § 116.155.2 (stating that "the official summary statement approved by the General Assembly shall . . . be

the official ballot title”). In the alternate, the ballot title should be amended as set forth in paragraph 25.

27. Plaintiff has no adequate remedy at law and, absent relief from this Court, Plaintiff will suffer irreparable harm.

WHEREFORE Plaintiff prays this Court enter judgment in their favor and against Defendants, and:

- a. find that the summary statement of the official ballot title fails to comply with the requirements of section 116.155.2;
- b. vacate the Secretary of State’s certification of the ballot title, or, in the alternate, order him to vacate the certification;
- c. prohibit the Secretary of State from taking any further action to place the Proposed Constitutional Amendment on the ballot, or, in the alternate, certify the summary statement provided in paragraph 25, above, that complies with section 116.155.2; and
- d. grant to Plaintiff such other relief as the Court deems appropriate.

Respectfully submitted,

/s/ Anthony E. Rothert
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