

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI**

MISSOURI ROUNDTABLE FOR LIFE, )  
TODD S. JONES, and )  
FREDERIC N. SAUER, )

Plaintiffs, )

vs. )

ROBIN CARNAHAN, in her official )  
capacity as Missouri Secretary of State, )

Serve at: )  
Office of the Secretary of State )  
State Capitol, Room 208 )  
Jefferson City, Missouri 65101 )

and )

SUSAN MONTEE, in her official capacity )  
as Missouri State Auditor, )

Serve at: )  
Office of the State Auditor )  
301 West High Street, Office 880 )  
Jefferson City, Missouri 65102 )

and )

JEREMIAH W. (JAY) NIXON, in his official )  
capacity as Missouri Attorney General, )

Serve at: )  
Supreme Court Building )  
207 W. High Street )  
Jefferson City, Missouri 65102 )

Defendants. )

Cause No. \_\_\_\_\_

Division \_\_\_\_\_

**PETITION CHALLENGING  
OFFICIAL BALLOT TITLE, FISCAL NOTE, AND FISCAL NOTE SUMMARY  
PURSUANT TO RSMO. §116.190 AND FOR OTHER RELIEF**

Plaintiffs Missouri Roundtable for Life, Todd S. Jones, and Frederic N. Sauer, for their Petition against Defendants Robin Carnahan, Susan Montee, and Jay Nixon state as follows:

**Introduction**

1. In this action, Plaintiffs seek to overturn the actions of Missouri Secretary of State Robin Carnahan and Missouri State Auditor Susan Montee in unlawfully and inaccurately manipulating initiative petition language so as to mislead and confuse Missouri voters and to create prejudice against a proposed constitutional amendment. That proposed constitutional amendment would direct that in any fiscal year, the first \$200 million disbursed from the Life Sciences Research Trust Fund shall be expended on primary healthcare for low-income Missourians but not on any abortion services, human cloning, or prohibited human research as such terms are defined in RS Mo. § 196.1127, L.2003, H.B. 688. The summary statement, fiscal note summary, and fiscal note prepared by the Defendants are misleading, insufficient and unfair. They violate Missouri law, the Missouri Constitution, and the United States Constitution.

2. Plaintiffs, who include Missouri registered voters and proponents of the initiative, ask this Court to certify a new, accurate summary statement, fiscal note summary, and fiscal note to the Secretary. By so doing, the Court will protect the fundamental rights of Missouri citizens to petition for changes to their constitution and communicate accurately and freely about their political proposals without being obstructed and impeded by the biased and prejudicial influence of state officials.

**The Parties**

3. Plaintiff Missouri Roundtable for Life (“MRFL”) is a non-profit corporation organized and existing under Missouri law and pays various taxes to the State of Missouri.

4. Plaintiff Todd S. Jones (“Jones”) is an individual, a Missouri registered voter, a taxpayer, and the Executive Director of MRFL. He resides in the City of St. Louis, Missouri.

5. Plaintiff Frederic N. Sauer (“Sauer”) is an individual, a Missouri registered voter, a taxpayer, and the President and a Director of MRFL. He resides in St. Louis County, Missouri.

6. Defendant Robin Carnahan (the “Secretary”) is, and at all relevant times has been, the duly elected, qualified, and acting Secretary of the State of Missouri. As such, she is charged by law with implementing the provisions of the Missouri Constitution and Chapter 116, RSMo., relating to initiative petitions. She is charged with upholding and complying with the Missouri Constitution in the discharge of her statutory duties.

7. Defendant Susan Montee (the “Auditor”) is, and at all relevant times has been, the duly elected, qualified, and acting Auditor of the State of Missouri. As such, she is charged by law with implementing the provisions of Chapter 116, RSMo., relating to fiscal notes and fiscal note summaries for initiative petitions. She is charged with upholding and complying with the Missouri Constitution in the discharge of her statutory duties.

8. Defendant Jay Nixon (the “Attorney General”) is, and at all relevant times has been, the duly elected, qualified, and acting Attorney General of the State of Missouri. As such, he is charged by law with implementing the provisions of Chapter 116, RSMo., relating to initiative petitions. He is charged with upholding and complying with the Missouri Constitution in the discharge of his statutory duties.

### **Jurisdiction and Venue**

9. This Court has jurisdiction over this matter, and venue is proper in Cole County, pursuant to RSMo. §116.190. This action is timely filed within the ten day period provided for in RSMo. § 116.190.1. This Court also has general jurisdiction over Plaintiffs’ additional claims.

## General Allegations

10. On March 19, 2008 on behalf of himself and MRFL, pursuant to RSMo. §116.332, Jones submitted to the Secretary a sample petition page for an amendment to the Missouri Constitution that would direct that in any fiscal year, the first \$200 million disbursed from the Life Sciences Research Trust Fund shall be expended on primary healthcare for low-income Missourians but not on any abortion services, human cloning, or prohibited human research as such terms are defined in RS Mo. § 196.1127, L.2003, H.B. 688 (the “Healthcare for Low-Income Missourians Amendment”). The sample petition page includes the proposed form of the petition as it would actually be circulated to Missouri voters to obtain their signatures. In addition to signature blanks and certain language required by statute, the petition page also includes the actual language sought to be added to the Missouri Constitution. A copy of the sample petition is attached hereto as **Exhibit A**.

11. The Healthcare for Low-Income Missourians Amendment seeks to add the following language to the Missouri constitution direct that in any fiscal year, the first \$200 million disbursed from the Life Sciences Research Trust Fund shall be expended on primary healthcare for low-income Missourians but not on any abortion services, human cloning, or prohibited human research:

One new section is adopted by adding one new section to be known as section 38(e) of Article III to read as follows:

Section 38(e). In any fiscal year, the first \$200 million disbursed from the Life Sciences Research Trust Fund shall be expended on primary healthcare for low-income Missourians, provided, however, that no such funds shall be expended on abortion services, human cloning, or prohibited human research, as such terms are defined in the Revised Statutes of Missouri Section 196.1127, L.2003, H.B.688.

See **Exhibit A**.

12. Along with the sample petition, MRFL and Jones submitted a proposed ballot title that substantially tracks the language of the Healthcare for Low-Income Missourians

Amendment as follows:

Shall the Missouri Constitution be amended so that in any fiscal year, the first \$200 million disbursed from the Life Sciences Research Trust Fund shall be expended on primary healthcare for low-income Missourians, provided, however, that no such funds shall be expended on abortion services, human cloning, or prohibited human research, as such terms are defined in the Revised Statutes of Missouri Section 196.1127 as passed by the general assembly in 2003?

See letter dated March 19, 2008 from MRFL and Todd S. Jones to Hon. Robin Carnahan, an accurate copy of which is attached hereto as **Exhibit B**.

13. After receiving the sample petition page, the Secretary transmitted it to Attorney General Jeremiah “Jay” Nixon for review as to form. The Attorney General did review it as to form, approved it, and gave notice of his approval to the Secretary by letter dated March 28, 2008, an accurate copy of which is attached hereto as **Exhibit C**.

14. By letter dated March 31, 2008, the Secretary gave final approval to the form of the petition for circulation. An accurate copy of the Secretary’s letter dated March 31, 2008 is attached hereto as **Exhibit D**.

15. The Healthcare for Low-Income Missourians Amendment itself consists of 58 words, including articles and citations.

16. The language of the ballot title proposed by MRFL and Jones is nearly identical to the language of the Healthcare for Low-Income Missourians Amendment and consists of 72 words, including articles and citations. See **Exhibits A and B**.

### *Secretary Provides a Summary Statement*

17. After certifying the form of the petition, the Secretary provided a summary statement consisting of 41 words, including articles and citations. Missouri law requires the Secretary to draft a “concise statement not exceeding one hundred words.” RSMo. § 116.334. The statement must use language “neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.” Id.

18. It is unknown what role the Secretary (and her staff) actually played in preparing the summary statement and discovery is necessary to determine who actually drafted, and who participated in the drafting of, the summary statement provided by the Secretary.

19. By letter dated April 10, 2008, the Secretary transmitted the proposed summary statement to the Attorney General for review.

20. By letter dated April 18, 2008, the Attorney General approved the legal content and form of the Secretary’s proposed summary statement. An accurate copy of that letter is attached hereto as **Exhibit E**.

21. On April 22, 2008, the Secretary certified the following 41 word summary statement:

Shall the Missouri Constitution be amended to reduce the amount of money available by 200 million dollars to improve the quality of life sciences research in Missouri and redirect this money solely to pay for certain primary healthcare for low-income Missourians?

See letter dated April 22, 2008 from Michael Bushman, Deputy Secretary for Elections, to Todd S. Jones, an accurate copy of which is attached hereto as **Exhibit F**.

### *Auditor Provides a Fiscal Note and Fiscal Note Summary*

22. The Secretary forwarded the sample petition page concerning the Healthcare for Low-Income Missourians Amendment to the Auditor and requested a fiscal note and fiscal note

summary. By letter dated April 9, 2008, the Auditor forwarded to the Attorney General a fiscal note and fiscal note summary. A copy of the Auditor's letter and enclosed fiscal note are attached hereto as **Exhibit G**.

23. It is unknown what role the Auditor (and her staff) actually played in preparing the fiscal note and fiscal note summary and discovery is necessary to determine who actually drafted, and who participated in the drafting of, the fiscal note and fiscal note summary provided by the Auditor.

24. The Auditor's 55 word fiscal note summary states as follows:

For fiscal year 2008, the state authorized \$13.5 million in spending from the Life Sciences Research Trust Fund to increase life science research capacity. This proposal requires the first \$200 million from the fund, annually, be spent on healthcare for low-income Missourians. The total costs or savings to state, and local governmental entities are unknown.

See **Exhibit G**.

25. In violation of her statutory duties under RSMo. § 116.175.1, the Auditor accepted and considered comments, which purported to be "statements of fiscal impact" estimating the costs of the Healthcare for Low-Income Missourians Amendment, but those comments did not comply with the statutory requirement that such proposed statements be "in a manner consistent with the standards of the government accounting standards board and section 23.140, RSMo., [.]" RSMo. § 116.175.1.

26. More specifically, the Auditor considered and included various purported "statements of fiscal impact" that contain no indicia of compliance with the "standards of the governmental accounting standards board" or with § 23.140, RSMo., and instead appear to be regurgitations of information submitted in opposition to various other proposed constitutional amendments, including without limitation other amendments proposed by MRFL and Jones as

well as other, unrelated, proposed amendments submitted by other, unrelated, groups and/or individuals. Those purported “statements of fiscal impact” that the Auditor included and considered include, without limitation, the following:

- (a) Comments from “Officials from the Department of Economic Development” that are identical to comments submitted by those Officials in connection with two other proposed amendments submitted by MRFL and Jones and submitted by those officials in connection with a proposed amendment submitted by an unrelated group;
- (b) Comments from the Department of Corrections relating to the potential fiscal impact from the “penalty provision component of the bill...for up to fifteen years imprisonment.” The Department states that it “is unable to determine the number of people who would be convicted under the provisions of this bill....” See **Exhibit G**. Contrary to the Department of Corrections’ assertion, the Healthcare for Low-Income Missourians Amendment is not a “bill” and does not contain a “penalty provision” of any nature, much less any potential penalties of imprisonment;
- (c) Comments from the City of St. Louis stating that the “new initiative petition...purports to ban ‘human cloning’” when the Healthcare for Low-Income Missourians Amendment contains no such purported ban whatsoever. See **Exhibit G**. The City of St. Louis’ voluminous comments are identical to the comments submitted by the City of St. Louis in opposition to other, unrelated initiative petitions; and

(d) The University of Missouri commented that the Healthcare for Low-Income Missourians Amendment would “have a significant, negative chilling effect on education, research, and economic development across the University (UM) System....” **See Exhibit G.** The University, however, provides no substantiation for its assertion that providing funding for primary healthcare for low-income Missourians would deprive the University of the ability to educate or research. The University further assumes, without any substantiation, that the Healthcare for Low-Income Missourians Amendment would “eliminate” certain agricultural research in the future, although the Healthcare for Low-Income Missourians Amendment does not at all mention agricultural research in any way.

27. By letter dated April 18, 2008, Attorney General Nixon approved the sufficiency of the form of Auditor’s fiscal note and fiscal note summary. An accurate copy of that letter is attached hereto as **Exhibit H.**

28. By Certification of Official Ballot Title dated April 22, 2008, the Secretary certified the summary statement and fiscal note summary, and delivered copies of the official ballot title and fiscal note and fiscal note summary to Jones. An accurate copy of the Secretary’s Certification of Official Ballot Title dated April 22, 2008 is attached hereto as **Exhibit I.**

### **COUNT I**

#### **Challenge Pursuant to RSMo. § 116.190 to Secretary’s Official Ballot Title and Summary Statement**

29. Plaintiffs restate paragraphs 1 through 28.

30. The Secretary’s official ballot title and summary statement as set forth in the Certification of Official Ballot Title dated April 22, 2008 (**Exhibit I**) (the “Rewritten Ballot

Title”) is both insufficient and unfair, is in direct violation of the requirements of Chapter 116, RSMo., and is unlawful.

31. The Rewritten Ballot Title is both insufficient as a matter of fact and law. It does not accurately, adequately, or competently summarize what the Healthcare for Low-Income Missourians Amendment says or does, and it would mislead and confuse Missouri voters as to the plain, simple, and clear meaning of the Healthcare for Low-Income Missourians Amendment, which is to restore control over taxpayer and state funds to the elected representatives of the Missouri voters.

32. The Rewritten Ballot Title also is insufficient and unfair in that its language objectively and patently reflects the Secretary’s bias and prejudice against the Healthcare for Low-Income Missourians Amendment, and her concomitant favoritism toward the proponents of human cloning and stem cell research on human embryos, who oppose any form of taxpayer control over the appropriation of taxpayers’ money or state money in the Life Sciences Research Trust Fund.

33. The Secretary’s actions constitute an unlawful interference by the Secretary with Missouri citizens’ constitutional rights to seek constitutional amendments by the initiative process and to communicate with their fellow citizens about the need to restore legislative control over taxpayers’ money and state money.

34. The Secretary’s summary statement is insufficient or unfair in at least the following respects:

- (a) It falsely, deceptively, and with evident bias and prejudice makes a qualitative judgment favoring stem cell research, therapies and cures over primary healthcare for low-income Missourians as follows: i) the language

falsely states or implies that stem cell researchers have an unfettered claim to the first \$200 million appropriated to the Life Sciences Research Trust Fund, implying that Amendment 2 provides such an unfettered claim. It is not true that Missourians currently enjoy “access” to embryonic cloning research or have an entitlement to research funds in the amount of \$200 million, or any other amount, because of Amendment 2; and ii) it is speculative and highly argumentative to claim that funds will improve the quality, as opposed to the quantity, of embryonic cloning research to be conducted in Missouri. Taken as a whole, this language is misleading, false, deceptive, and biased because rather than summarizing the effect of the language – how and why the Healthcare for Low-Income Missourians Amendment will direct funds to providing primary healthcare for low-income Missourians – it improperly focuses on past voter approval of other measures while ignoring past legislative approval of restrictions on such research and the use of taxpayer or state monies therefor;

- (b) It falsely and or deceptively implies that the Healthcare for Low-Income Missourians Amendment would divert funds already dedicated to “improv[ing] the quality of life sciences research in Missouri....” The Healthcare for Low-Income Missourians Amendment does not in any way alter, penalize, suppress, or interfere in any way with private funding of such research;
- (c) In stating that the proposed amendment would “redirect this money solely to pay for *certain* primary healthcare for low-income Missourians,”

(emphasis added), the summary both: i) implies that the healthcare available to low-income Missourians would somehow be compromised; and ii) fails to express the only restrictions on those healthcare dollars, i.e. restrictions that would prohibit the use of those funds for abortion services, human cloning, or prohibited human research, as defined by state statutes enacted before Amendment 2; the language therefore subverts a fundamental thrust of the Healthcare for Low-Income Missourians Amendment and evidences the Secretary's obvious pro-abortion political position and beliefs; and

- (d) Even leaving each of these specific inaccuracies, fallacies, deceptions, prejudices, and biases aside, and even if in isolation specific phrases are not deemed insufficient or unfair, the summary statement is prejudicial when the phrases are considered in combination and as a whole. The summary statement as a whole is insufficient and unfair and infused and with bias, prejudice, deception, and/or favoritism because it denigrates primary healthcare for low-income Missourians. A Missouri petition signer or voter reading this summary statement would never know the express fact that the Healthcare for Low-Income Missourians Amendment affirms the restrictions on the Life Sciences Research Trust Fund that were passed by the legislature – the peoples' elected representatives – before the passage of Amendment No. 2. As noted, it is unknown whether the summary statement was drafted by the Secretary (or her staff) or in whole or in part by proponents of human cloning and embryonic stem cell

research. In sum, the statement fails to summarize the meaning of the proposed amendment in “language neither argumentative nor likely to create prejudice either for or against the proposed measure.” RSMo. § 116.334.

35. The Secretary’s summary statement therefore is insufficient and unfair and is intentionally argumentative and likely to create prejudice against the Healthcare for Low-Income Missourians Amendment.

36. The Court accordingly should strike the Secretary’s summary statement and certify the following as the Summary Statement portion of the official ballot title:

Shall the Missouri Constitution be amended so that in any fiscal year, the first \$200 million disbursed from the Life Sciences Research Trust Fund shall be expended on primary healthcare for low-income Missourians, provided, however, that no such funds shall be expended on abortion services, human cloning, or prohibited human research, as such terms are defined in the Revised Statutes of Missouri Section 196.1127 as passed by the general assembly in 2003?

37. This 72 word summary statement is sufficient and fair and is not intentionally argumentative or likely to create prejudice either for or against the Healthcare for Low-Income Missourians Amendment and closely tracks the actual language of the proposed amendment. Further, this proposed language succinctly summarizes the legal effect of the proposed amendment without injecting policy arguments for or against it, without completely re-writing the proposed language of the amendment, and adopts the summary statement language proposed by the persons submitting the proposed initiative petition, as has been the consistent past practice of this Secretary and her predecessors with respect to initiative petitions, other than this Secretary’s multiple recent attempts to re-write in insufficient, unfair language proposed amendments that would affect Amendment No. 2 of 2006.

38. The Court has inherent power to permit discovery as provided by the Missouri Rules of Civil Procedure.

WHEREFORE, Plaintiffs respectfully pray for a judgment from this Court:

- (A) Finding and declaring that the Summary Statement certified by the Secretary with respect to the Healthcare for Low-Income Missourians Amendment is insufficient, unfair, intentionally argumentative and/or likely to create prejudice against the proposed amendment;
- (B) Permitting Plaintiffs to take discovery on the sources, drafters, drafting, origins, comments, proposed language, and the like of the summary statement certified by the Secretary, and all communications pertaining to the same;
- (C) Certifying the following summary statement to the Secretary with respect to the Healthcare for Low-Income Missourians Amendment:

Shall the Missouri Constitution be amended so that in any fiscal year, the first \$200 million disbursed from the Life Sciences Research Trust Fund shall be expended on primary healthcare for low-income Missourians, provided, however, that no such funds shall be expended on abortion services, human cloning, or prohibited human research, as such terms are defined in the Revised Statutes of Missouri Section 196.1127 as passed by the general assembly in 2003?;
- (D) Awarding Plaintiffs their attorneys' fees, expenses and costs;
- (E) Granting Plaintiffs such other and further relief as the Court deems just and proper.

## COUNT II

### Challenge Pursuant to RSMo. §116.190 of Auditor's Fiscal Note Summary

39. Plaintiffs restate paragraphs 1 through 38.

40. The Auditor's fiscal note summary provides as follows:

For fiscal year 2008, the state authorized \$13.5 million in spending from the Life Sciences Research Trust Fund to increase life science research capacity. This proposal requires the first \$200 million from the fund, annually, be spent on healthcare for low-income Missourians. The total costs or savings to state, and local governmental entities are unknown.

See **Exhibit G**.

41. The Auditor's fiscal note summary violates the provisions of Chapter 116, RSMo., and is insufficient and unfair and therefore unlawful.

42. The Auditor's fiscal note summary is written in language that is both argumentative and highly likely to create prejudice against the Healthcare for Low-Income Missourians Amendment.

43. The Auditor's fiscal note summary is insufficient and unfair because it improperly and with absolutely no evidence: a) implies that the Healthcare for Low-Income Missourians Amendment would increase taxes, when in fact it would not require any appropriations (or tax increases) whatsoever; and b) relies on comments, which purport to be "statements of fiscal impact" estimating the alleged costs of the Healthcare for Low-Income Missourians Amendment that the Auditor improperly accepted and considered when such purported comments failed to comply with the statutory requirement that the same be "in a manner consistent with the standards of the government accounting standards board and section 23.140 RSMo." RSMo. § 116.175.1.

44. The Auditor cannot claim with any degree of certainty whether the Healthcare for Low-Income Missourians Amendment will cause tax revenues to decrease or increase. She also cannot claim with any degree of certainty that if tax revenues do decrease, it will be due to the Healthcare for Low-Income Missourians Amendment instead of the expressed concerns and objections of both Missouri legislators and Missouri citizens toward human cloning and research

that creates and destroys human embryos in order to “harvest” human embryonic stem cells for uncertain medical experimentation and research. The Auditor likewise failed to assess the potential *positive* fiscal impacts of the Healthcare for Low-Income Missourians Amendment, contrary to RSMo. § 116.175.1, which expressly requires the Auditor to “assess *the* fiscal impact of the proposed measure.” RSMo § 116.175.1 (emphasis added). Instead, the Auditor focused solely on potential *negative* fiscal impacts without any apparent consideration of potential positive fiscal impacts. While § 116.175.1 grants the Auditor the authority to consult with various agencies and entities, it does not limit the Auditor to those agencies and entities and expressly requires the Auditor to assess both negative and positive fiscal impacts. RSMo § 116.175.1.

45. Further, the Auditor has not undertaken any study of what government outlays will be required to fund embryonic stem cell research under Section 38(d), and how much money will be saved by the proposed amendment. Without at least including in the fiscal note summary some assessment of state and local savings from the proposed amendment, the fiscal note summary’s argument regarding potentially “negative” net costs lacks any indicia of reliability, objectivity, sufficiency, or fairness.

46. For all of these reasons, the Auditor’s fiscal note summary is insufficient, unfair, infused and tainted with bias, prejudice, deception, and/or favoritism and should be stricken in its entirety. Given the facts, the only fair statement the Auditor can make is that the fiscal impact on state and local government is unknown.

47. As noted above, the Auditor failed to assess the fiscal impact of the proposed measure and improperly considered purported “statements of fiscal impact” that failed to comply with Governmental Accounting Standards Board standards and Section 23.140, RSMo. Further,

it is unknown what role the Auditor (and her staff) actually played in preparing the fiscal note and fiscal note summary and discovery is necessary to determine who actually drafted, and who participated in the drafting of, the fiscal note and fiscal note summary provided by the Auditor.

48. The Court has inherent power to order discovery pursuant to the Missouri Rules of Civil Procedure.

WHEREFORE, Plaintiffs respectfully pray for a judgment of this Court:

- (A) Declaring that the fiscal note summary certified by the Secretary and prepared by the Auditor with respect to the Healthcare for Low-Income Missourians Amendment is insufficient, unfair, argumentative, and likely to create prejudice against the proposed Amendment and therefore stricken;
- (B) Permitting Plaintiffs to take discovery on the role that the Auditor (and her staff) and any other person or entity actually played in drafting or preparing the fiscal note summary and related matters;
- (C) Remanding to the Auditor this matter for a proper assessment of the fiscal impact of the proposed measure, including all potential positive fiscal impacts, and retaining continuing jurisdiction over both the Auditor's performance of her statutory duties and the resulting language submitted by the Auditor and certified by the Secretary;
- (D) Granting Plaintiffs their attorneys' fees, expenses and costs;
- (E) Granting Plaintiffs such other and further relief as the Court deems just and proper.

### **COUNT III**

#### **Challenge Pursuant to RSMo. § 116.190 of Auditor's Fiscal Note**

49. Plaintiffs restate paragraphs 1 through 48.

50. The Auditor’s fiscal note violates the provisions of Chapter 116, RSMo., and is insufficient and unfair, and therefore unlawful.

51. The Auditor’s fiscal note is both argumentative and likely to create prejudice against the Healthcare for Low-Income Missourians Amendment.

52. Every agency or entity that predicted a “negative fiscal impact” submitted comments that were contrary to the standards of the Governmental Accounting Standards Board and Section 23.140, RSMo. Such statements, which the Auditor improperly considered in violation of RSMo. § 116.175.1, reflect the political biases and arguments of the reporting agencies and entities. The Auditor’s reliance on these statements, most of which are regurgitated statements submitted in opposition to other, unrelated, proposed Amendments submitted by other, unrelated, groups, was contrary to her statutory duties.

53. For all of the reasons stated above, the Auditor lacked any statutory basis for including such statements that failed to comply with the standards of the Governmental Accounting Standards Board and Section 23.140, RSMo. in her fiscal note.

54. The inclusion of such statements, which fail to comply with the “standards of the governmental accounting standards board and section 23.140, RSMo.,” (RSMo. § 116.175.1) directly violates the Auditor’s statutory duties under RSMo. § 116.175.1.

55. The Auditor prepared the fiscal note in direct contravention of RSMo. § 116.175.3, which requires that the fiscal note “shall state the measure’s estimated costs **or savings...**” (emphasis added).

56. Contrary to his statutory duties under RSMo. § 116.175.4, the Attorney General, upon information and belief, failed to determine whether the Auditor complied with RSMo. § 116.175.1 and RSMo. § 116.175.3.

57. The Court has inherent authority to permit discovery pursuant to the Missouri Rules of Civil Procedure.

WHEREFORE, Plaintiffs respectfully pray for judgment from this Court:

- (A) Declaring that the fiscal note summary certified by the Secretary and prepared by the Auditor with respect to the Healthcare for Low-Income Missourians Amendment is insufficient, unfair, argumentative, and likely to create prejudice against the proposed Amendment and therefore stricken;
- (B) Permitting Plaintiffs to take discovery on the role that the Auditor (and her staff) and any other person or entity actually played in drafting or preparing the fiscal note summary and related matters;
- (C) Remanding to the Auditor this matter for a proper assessment of the fiscal impact of the proposed measure, including all potential positive fiscal impacts, and retaining continuing jurisdiction over both the Auditor's performance of her statutory duties and the resulting language submitted by the Auditor and certified by the Secretary;
- (D) Granting Plaintiffs their attorneys' fees, expenses and costs; and
- (E) Granting Plaintiffs such other and further relief as the Court deems just and proper.

#### **COUNT IV**

#### **Conspiracy**

58. Plaintiffs restate Paragraphs 3 through 28, 33 through 34, 43 through 47, 52 through 53, and 56.

59. In violation of the Missouri Constitution, their statutory duties, and Missouri common law, the Secretary, the Auditor, and the Attorney General conspired with each other and

with others to deprive Plaintiffs of their Constitutional, statutory, and common law rights to avail themselves of an unbiased, unprejudiced, impartial, process for the preparation of the official ballot title and the fiscal note and fiscal note summary for the proposed Healthcare for Low-Income Missourians Amendment.

60. Upon information and belief, and subject to discovery, the Secretary, the Auditor, and the Attorney General conspired with others, whose identities will be revealed through discovery, to deprive Plaintiffs of their Constitutional, statutory, and common law rights to avail themselves of an unbiased, unprejudiced, impartial, process for the preparation of the official ballot title and the fiscal note and fiscal note summary for the proposed Healthcare for Low-Income Missourians Amendment.

61. Given the recent, repeated, violations of the Missouri Constitution, Missouri statutes, and Missouri common law committed by the Secretary, the Auditor, and the Attorney General with respect to initiative petitions submitted not only by MRFL and Jones, but also by others, Court intervention and continuing court supervision are necessary to ensure the access of Plaintiffs and other Missourians to an initiative petition process that is free from bias, prejudice, and partiality.

62. Further, as a direct and proximate result of the aforesaid conspiracy and/or conspiracies, Plaintiffs have been damaged.

63. Defendants' conduct was intentional, willful, wanton, and reckless.

64. Additionally, the aforesaid conspiracy and/or conspiracies violate the First and Fourteenth Amendments to the United States Constitution and constitutes State action under 42 U.S.C. §1983.

WHEREFORE, Plaintiffs respectfully pray for judgment from this Court:

- (A) Restraining and enjoining the Secretary, the Auditor, and the Attorney General and all those in active concert or participation with them, from violating the Missouri Constitution, Missouri statutes, and Missouri common law with respect to initiative petitions;
- (B) Restraining and enjoining the Secretary, the Auditor, and the Attorney General and all those in active concert or participation with them, from violating the United States Constitution, and United States statutes with respect to Plaintiffs' initiative petition rights;
- (C) Requiring the continuing supervision of this Court over all actions of the Secretary, Auditor, Attorney General, and all those in active concert or participation with them, with respect to initiative petitions, including without limitation the analysis, review, and preparation of ballot titles, summary statements, fiscal notes, and fiscal note summary statements;
- (D) Awarding Plaintiffs such actual damages as are proven at trial;
- (E) Awarding Plaintiffs such punitive damages as are fair and reasonable and sufficient to deter Defendants, and those in active concert or participation with them, from committing such violations in the future;
- (F) Awarding Plaintiffs their attorneys' fees pursuant to 42 U.S.C. § 1988;
- (G) Granting Plaintiffs their expenses and costs; and
- (H) Granting Plaintiffs such other and further relief as the Court deems just and proper.

## COUNT V

### **Claims for Violation of the Missouri Constitution Article I, § 2; Art. I, § 3; Art. I, § 8; Art. I, § 25; Art. 3, § 49**

65. Plaintiffs restate paragraphs 3 through 28, 33 through 34, 43 through 47, 52 through 53, and 56.

66. Defendants' conduct in drafting, reviewing, approving, certifying, transmitting, and publishing the summary statement, fiscal note summary, and fiscal note violates Plaintiffs' and Missouri voters' rights under the Missouri Constitution, Article I, § 2; Art. I, § 3; Art. I, § 8; Art. I, § 25; and Art. 3, § 49. Defendants have performed their duties under the Missouri Constitution and Chapter 116, RSMo. in an arbitrary, capricious, discriminatory, biased, partial, and unconstitutional manner.

67. Article 1, Section 3 of the Missouri Constitution grants to "the people of this state...the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary." Defendants' conduct in drafting, reviewing, approving, certifying, transmitting, and publishing the summary statement, fiscal note summary, and fiscal note, violates this provision because it obstructs and frustrates Plaintiffs' ability to seek to "alter... their Constitution."

68. For the reasons set forth above, Defendants' summary statement, fiscal note summary, and fiscal note present an inaccurate, incomplete, unfair, prejudicial, and biased argument regarding the Healthcare for Low-Income Missourians Amendment, but purport to carry their objective, fair, and unbiased imprimatur as state officials and purport to be free from the influence of special interests. The Defendants' conduct therefore improperly obstructs and delays Plaintiffs' efforts to amend the Missouri Constitution and further requires Plaintiffs to

undertake substantially more expensive and extensive efforts to communicate the true effects of the Healthcare for Low-Income Missourians Amendment.

69. Article 3, Section 49 of the Missouri Constitution reserves to “the people [the] power to propose and enact or reject laws and amendments to the Constitution by the Initiative, independent of the General Assembly....” Defendants’ conduct in drafting, reviewing, approving, certifying, transmitting, and publishing the summary statement, fiscal note summary, and fiscal note, violates Plaintiffs’ rights under this provision.

70. Article 1, Section 25 of the Missouri Constitution provides that “all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” The right of suffrage applies to ballot measure elections as well as to candidate elections. By improperly impairing and impeding Plaintiffs’ right to amend the Constitution by the initiative process, as set forth above, Defendants will deprive Plaintiffs and other Missouri citizens of their rights under Article I, Section 25.

71. Article 1, Section 8 of the Missouri Constitution provides that “no law shall be passed impairing the freedom of speech, no matter by what means communicated....” This includes the right to engage in political speech and association for purposes of gathering support for legislative and political change, which are core protected speech. By their conduct as set forth above, Defendants have unduly burdened Plaintiff’s free speech rights without any compelling governmental interest and instead have acted to further their own personal, political, and pecuniary interests.

72. Article 1, Section 2 of the Missouri Constitution provides that “all persons are created equal and are entitled to equal rights and opportunities under the law; that to give security to these things is the principal office of government, and that when government does not

confer this security, it fails in its chief design.” By their conduct as set forth above, Defendants acted with the intent to produce and publish to Missouri voters inaccurate, incomplete, unfair, prejudicial, and biased arguments in an effort to burden and frustrate Plaintiffs’ fundamental rights to engage in political speech, association, petition the government, and amend the Missouri Constitution, and instead have acted to further their personal, political, and pecuniary interests. Defendants’ unequal treatment of Plaintiffs is not based on any rational basis.

73. Defendants’ actions as set forth above have imposed tremendous unconstitutional and otherwise illegal burdens and costs upon Plaintiffs’ attempts to exercise their rights under the Missouri Constitution and have made it much more expensive and difficult for Plaintiffs to attempt to assert those rights.

74. Defendants’ conduct was intentional, willful, wanton, and reckless.

WHEREFORE, Plaintiffs respectfully pray for a judgment from this Court:

- (A) Restraining and enjoining the Secretary, the Auditor, and the Attorney General and all those in active concert or participation with them, from violating the Missouri Constitution, Missouri statutes, and Missouri common law with respect to initiative petitions;
- (B) Restraining and enjoining the Secretary, the Auditor, and the Attorney General and all those in active concert or participation with them, from violating the United States Constitution, and United States statutes with respect to Plaintiffs’ initiative petition rights;
- (C) Requiring the continuing supervision of this Court over all actions of the Secretary, Auditor, Attorney General, and all those in active concert or participation with them, with respect to initiative petitions, including without

limitation the analysis, review, and preparation of ballot titles, summary statements, fiscal notes, and fiscal note summary statements;

- (D) Awarding Plaintiffs such actual damages as are proven at trial;
- (E) Awarding Plaintiffs such punitive damages as are fair and reasonable and sufficient to deter Defendants, and those in active concert or participation with them, from committing such violations in the future;
- (F) Awarding Plaintiffs their attorneys' fees pursuant to 42 U.S.C. § 1988;
- (G) Granting Plaintiffs their expenses and costs; and
- (H) Granting Plaintiffs such other and further relief as the Court deems just and proper.

#### **COUNT VI**

#### **Claims for Violation of the First and Fourteenth Amendments of the United States Constitution 42 U.S.C. §1983**

75. Plaintiffs restate paragraphs 3 through 28, 33 through 34, 43 through 47, 52 through 53, and 56.

76. Defendants acted under color of state law and in their official capacities in drafting, reviewing, approving, certifying, transmitting, and publishing the summary statement, fiscal note summary, and fiscal note with respect to the Healthcare for Low-Income Missourians Amendment.

77. Plaintiffs have a First Amendment right to engage with their supporters and with Missouri voters in political speech and association regarding their proposal to amend the Missouri Constitution. Speaking to one's supporters and the public at large regarding an initiative petition is conduct that lies at the core of the freedom of speech. By using the summary statement, fiscal note summary, and fiscal note to present an inaccurate, incomplete, unfair,

prejudicial, and biased argument regarding the Healthcare for Low-Income Missourians Amendment, the Defendants have deprived Plaintiffs of their First Amendment rights.

78. The conduct of Defendants as set forth above violated and, without relief from this Court, will continue to violate and unduly burden Plaintiffs' exercise of their First Amendment rights.

79. The conduct of Defendants as set forth in above violated and, without relief from this Court, will continue to violate Plaintiffs' right of equal protection under the law, which is guaranteed against official action by the Fourteenth Amendment of the United States Constitution.

80. For the reasons set forth above, Defendants' summary statement, fiscal note summary, and fiscal note present an inaccurate, incomplete, unfair, prejudicial, and biased argument regarding Plaintiffs' proposal, but purport to be unbiased and fair and carry the imprimatur of the state. Defendants' unequal treatment of Plaintiffs is based on Defendants' political viewpoint and attempts to further their own personal, political, and pecuniary interests and is not based on any rational basis.

81. Defendants' unequal treatment of Plaintiffs has damaged and will damage them. Defendants' conduct violates Plaintiffs' Fourteenth Amendment right to equal protection under the law.

82. Defendants' conduct was intentional, willful, wanton, and reckless.

WHEREFORE, Plaintiffs respectfully pray for a judgment from this Court:

(A) Restraining and enjoining the Secretary, the Auditor, and the Attorney General and all those in active concert or participation with them, from violating the

Missouri Constitution, Missouri statutes, and Missouri common law with respect to initiative petitions;

- (B) Restraining and enjoining the Secretary, the Auditor, and the Attorney General and all those in active concert or participation with them, from violating the United States Constitution, and United States statutes with respect to Plaintiffs' initiative petition rights;
- (C) Requiring the continuing supervision of this Court over all actions of the Secretary, Auditor, Attorney General, and all those in active concert or participation with them, with respect to initiative petitions, including without limitation the analysis, review, and preparation of ballot titles, summary statements, fiscal notes, and fiscal note summary statements;
- (D) Awarding Plaintiffs such actual damages as are proven at trial;
- (E) Awarding Plaintiffs such punitive damages as are fair and reasonable and sufficient to deter Defendants, and those in active concert or participation with them, from committing such violations in the future;
- (F) Awarding Plaintiffs their attorneys' fees pursuant to 42 U.S.C. § 1988;
- (G) Granting Plaintiffs their expenses and costs; and
- (H) Granting Plaintiffs such other and further relief as the Court deems just and proper.

Dated: April \_\_\_\_, 2008

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