

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

MISSOURI MUNICIPAL LEAGUE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 09AC-CC00026
)	09AC-CC00051
ROBIN CARNAHAN, et al.,)	
)	
Defendants,)	
)	
RON CALZONE,)	
)	
Defendant-Intervenor.)	

FINAL JUDGMENT

Now on this 30th day of June, 2009, the Court again takes up this matter for the purpose of entering its final judgment. As hereinafter explained, the Court sustains the challenge in part to the Article I ballot summary but rejects all remaining claims.

This case concerns challenges to the official ballot titles and fiscal notes of four initiative petitions pursuant to § 116.190, RSMo. The parties proposed and the Court ordered an expedited discovery schedule. Thereafter, on Wednesday, May 27, 2009, the Court held a hearing where Plaintiffs and Defendants appeared by counsel and Defendant-Intervenor appeared *pro se*. Evidence was taken, arguments heard and the cases were taken under advisement, pending the receipt of final briefs. Having considered the pleadings, the Joint Stipulation of Facts, Joint Exhibits, testimony,

exhibits, the parties' briefs, and the parties' oral arguments, the Court hereby enters its final judgment in this case.

Procedural History

Defendant-Intervenor Ronald J. Calzone submitted three sample sheets for initiative petitions to Defendant Robin Carnahan ("Secretary of State") proposing constitutional amendments to Article I, Sections 26, 27 and 28 of the Missouri Constitution. The three petitions (the "Article I petitions") were referred to by the Secretary of State as Proponent's versions 3a, 3b and 3d, respectively. The proposed changes to the text of the constitution are identical in all three versions of the Article I petitions. The Secretary of State prepared identical summary statements and Defendant Susan Montee ("Auditor") prepared identical fiscal notes and fiscal note summaries for versions 3a, 3b, and 3d of the Article I petitions.

Defendant-Intervenor also submitted a sample sheet for an initiative petition to the Secretary of State proposing a constitutional amendment to Article VI, § 21 of the Missouri Constitution (the "Article VI petition"). The Secretary of State prepared a summary statement, and the Auditor prepared a fiscal note and fiscal note summary for the Article VI petition.

Plaintiffs Missouri Municipal League, Eric D. Schneider, Michael E. Palmer, and Howard C. Wright are citizens of the State and have standing to challenge the official ballot titles and fiscal notes for the Article I and Article VI petitions. Plaintiffs originally filed separate challenges to the official ballot titles and fiscal notes of the Article I petitions and Article VI petition. Those cases were consolidated by order of the Court.

I. BALLOT SUMMARY STATEMENTS

Section 116.334 of the Revised Statutes of Missouri directs the Secretary of State to prepare the summary statement for an initiative petition, using “language neither intentionally argumentative nor likely to create prejudice either for or against a proposed measure”. Missouri courts have previously identified “insufficient or 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.

Missourians Against Human Cloning v. Carnahan, 190 S.W.3d 451, 456 (Mo. App. W.D. 2006).

When a summary statement does not fairly and impartially summarize a measure, the circuit court has authority to prepare and certify a fair and sufficient summary statement.

Id. at 83.

A. Article I Ballot Summary Statement

The summary statements for the Article I petitions state:

Shall the Missouri Constitution be amended to restrict the use of eminent domain by:

- Allowing only government entities to use eminent domain;
- Prohibiting its use for private purposes, with certain exceptions for utilities;
- Requiring that any taking of property be necessary for a public use and that landowners receive just compensation;
- Requiring that the intended public use be declared at the time of the taking; and
- Permitting the original owners to repurchase the property if it is not so used within five years or if the property is offered to a private entity within 20 years?

The Summary Statement for the Article I Petitions is insufficient and unfair, because the third bullet point suggests that restrictions on takings without just compensation or without a public use would be added to the constitution. Those provisions are already part of the constitution. Mo. Const. art. I § 26 (“That private property shall not be taken or damaged for public use without just compensation”). They have been incorporated in Missouri’s current constitution for more than 60 years. The public use and just compensation requirements were included in Missouri’s first constitution in 1820. Mo. Const. art XIII, § 7 (1820); U.S. Const. amend. V (adopted in 1791). Public use and just compensation are not changes that will be effected by passage of the petition.

The other bullet points of the Secretary of State’s Summary Statements correctly explain how the Article I petitions would change the Missouri constitution by restricting the power of eminent domain to state entities, expanding the prohibition on private use takings, and adopting other procedural changes to the condemnation process. To be fair and impartial, the Summary Statements should describe those changes and should not inform voters and petition signers that the Article I petitions would adopt public use and just compensation requirements when those requirements exist and have been in the Missouri constitution since 1820. Accordingly, the Summary Statement is unfair and insufficient on this point and will tend to unfairly influence voters.

This Court is authorized to revise a summary statement when it is insufficient or unfair. The misleading nature of the Summary Statement can be corrected by simply deleting the third bullet point and allowing the remainder of the Secretary’s ballot summary to stand as drafted, *Cures Without Cloning*, 259 S.W.3d at 82 (rejecting the portion of the summary statement that characterized an expansion of the existing ban on human cloning as a “repeal” of that ban). The remainder of Plaintiffs’ arguments is rejected

B. Article VI Summary Statement

The summary statement for the Article VI petition states:

Shall the Missouri Constitution be amended to change the power of the General Assembly and constitutionally chartered cities or counties to:

- Prohibit the use of eminent domain to acquire and resell property found to be blighted, substandard or unsanitary for the purpose of clearance, redevelopment or rehabilitation; and
- Allow them to require owners of property found to be a public nuisance to abate or clean up the nuisance and, if the property owner fails to do so in a reasonable time, allow the local government to pay for the abatement and impose a lien to recover the cost?

Plaintiffs argue that the summary statement for the Article VI petition is misleading because it indicates that only the Missouri General Assembly and constitutionally chartered cities and counties will be affected by the proposed amendment. Plaintiffs also argue, just as they do with regard to the summary statement for the Article I petitions, that the summary statement for the Article VI petition fails to inform voters of the full impact of the proposed amendment. Specifically, Plaintiffs allege that the proposed amendment adds a "significant limitation" on the authority of cities and counties to abate nuisances and deprive the General Assembly and constitutionally chartered cities and counties to adopt solutions that do not involve eminent domain. Plaintiffs' argument is contrary to the plain language of the first sentence of the initiative petition, which imposes a "significant limitation" on the authority of constitutionally chartered cities and counties, and authority of the General Assembly to enact laws granting political subdivisions the power, to address nuisances.

The remainder of the initiative petition must be read in harmony with the first initial restriction. The first subsection of the proposed amendment states a prohibition of

the use of eminent domain to acquire and resell blighted, substandard, or unsanitary property for purposes of clearance, redevelopment, or rehabilitation. The other significant provision of the proposed amendment allows the General Assembly and constitutionally chartered cities and counties to require owners of property found to be a public nuisance to abate or clean up the nuisance or otherwise allow the local government to pay for the abatement and impose a lien to recover any costs. Each of these elements is reflected in the language of the summary statement. Furthermore, it is important to note that the General Assembly is the only entity in the State of Missouri with the constitutional authority to enact laws. A “political subdivision of the state” only has authority as delegated by the General Assembly. Consequently, the language used by the Secretary of State accurately reflects the legal and probable effects of the ballot initiative. It would be confusing to voters to include the General Assembly for one bullet point and then change to “political subdivision of the state” in the second bullet point.

Within the confines of the 100-word parameter set by the Missouri legislature, the summary statement need not set out every detail of the proposal. *United Gamefowl Breeders Ass’n of Mo. v. Nixon*, 19 S.W.3d 137, 141 (Mo. banc 2000). Plaintiffs’ argument pushes this Court toward a review of the merits of the initiative itself, a task that is beyond the scope of review as mandated in § 116.190. *Missourians Against Human Cloning*, 190 S.W.3d at 457. Accordingly, the Court finds that the ballot summary statement for Article VI is fair and sufficient.

II. Fiscal Notes and Fiscal Note Summaries

1. Fiscal notes

Plaintiffs contend that the State Auditor's fiscal notes for the Article I and Article VI petitions are insufficient and unfair, but offered no evidence that a better estimate for the costs or savings of the petitions exists. Despite an explicit mandate under § 116.175 allowing Plaintiffs, as opponents of the petitions, to submit proposed estimates of fiscal impact, Plaintiffs did not submit anything to the State Auditor, nor did they provide any such evidence at trial. Instead, Plaintiffs ask this Court to rely on their interpretation of § 116.175 and require the Auditor, by virtue of the term "assess," to perform a different independent analysis of all comments received in preparing a fiscal note and to provide guidance to state and local governments to enable them to determine the fiscal impact to them of a proposed measure.

The State Auditor sent inquiries to the state and local governmental entities listed in each fiscal note, asking for each entity's assessment of the proposed amendments' estimated costs or savings, if any, to that entity. The State Auditor reviewed the responses to her inquiries for completeness and reasonableness and then incorporated the information into the fiscal note. Section 116.175 permits the State Auditor to discharge her duties in this manner. The statute specifically allows the State Auditor to obtain information from other state and local governmental entities when preparing a fiscal note. The plain language of the statute does not mandate that the State Auditor adopt a different means of independently assessing the costs or savings of a proposal.

Furthermore, the statute is devoid of any language requiring the State Auditor to guide state departments, local government entities, the general assembly, and others in making an assessment for their governmental entity.

The purpose of a fiscal note is to inform the public of the fiscal consequences of a proposed measure. So long as the fiscal note conveys the fiscal consequences to the public adequately and without bias, prejudice, deceptions, and/or favouritism, the State Auditor has met her responsibilities under the statute. There is no evidence before this Court that indicates the fiscal notes will inform the public of the fiscal impact of the Article I and Article VI petitions in a manner that is inadequate and with bias, prejudice, deception, and/or favouritism. Without any evidence to suggest otherwise, Plaintiffs have failed to demonstrate that the State Auditor's fiscal notes are insufficient or unfair.

2. Fiscal note summaries

Plaintiffs argue that the first sentence of each fiscal note summary¹ suggests that the Article I and Article VI Petitions may result in savings to state and local government agencies. Plaintiffs argue such a suggestion is contrary to the contents of each fiscal note, which they believe indicate no savings. Plaintiffs also argue that the fiscal note summaries fail to accurately and fairly quantify the costs that state and local agencies reported to them. Specifically, Plaintiffs contend that certain amounts and comments received from reporting entities were unfairly and inaccurately characterized as “significant.”

¹ The first statement contained in each fiscal note summary states “The total cost or savings to state or local governmental entities is unknown.”

Plaintiffs' argument is contrary to the evidence. The State Auditor's Chief of Staff, Joseph L. Martin, testified of numerous examples supporting the possibility that the fiscal impact of the petitions could result in savings to some entities and that, in total, cost or savings of each petition are unknown. Plaintiffs' argument is also an embellishment of the plain language of the fiscal note summaries, which only indicates that costs or savings are unknown. This language fairly and impartially summarizes the fiscal notes that do not indicate, when each is considered as a whole, definitive savings or costs for state and local governmental entities. The State Auditor's use of the language "cost or savings" is taken directly from § 116.175. Plaintiffs have failed to show how use of the language chosen by the legislature inadequately summarizes the fiscal notes with bias, prejudice, deception, or favoritism. Finally, Plaintiffs' argument ignores the plain language of the fiscal note summaries and their use of the conjunction "or." The use of "or" does not necessarily convey that any savings are estimated.

In sum, section 116.175 requires the Auditor to assess the fiscal impact of initiative petition measures, and state the cost or savings, if any, to state and local government. Section 116.175.1 permits the Auditor to request comments from other state and local governments. This Court finds that the Auditor's process of requesting and summarizing comments received from other state and local government agencies is sufficient to comply with the procedural requirements imposed on her office by § 116.175. As the *Bergman* Court declared, all the details of a fiscal note need not be set out in a fiscal note summary consisting of a mere 50 words. *Bergman*, 988 S.W.2d at 92.

Moreover, Plaintiffs' argument asks this Court to select the best language for the fiscal note summaries. As the *Hancock* decision illustrates, the fiscal note summaries are not judged on best language. *Hancock*, 885 S.W.2d at 49. The State Auditor's fiscal note summaries fairly and impartially summarize the fiscal notes within the 50-word parameter, which is all that is required under § 116.175. Consequently, Plaintiffs fail to show that the fiscal note summaries are insufficient or unfair.

Final Judgment and Order

WHEREFORE, IT IS IT IS ORDERED, ADJUDGED and DECREED that the Summary Statement for the Article I petitions is insufficient and unfair and the following Summary Statement portion of the Ballot Title is certified to the Secretary of State:

Shall the Missouri Constitution be amended to restrict the use of eminent domain by:

- Allowing only government entities to use eminent domain;
- Prohibiting its use for private purposes, with certain exceptions for utilities;
- Requiring that the intended public use be declared at the time of the taking; and
- Permitting the original owners to repurchase the property if it is not so used within five years or if the property is offered to a private entity within 20 years?

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Summary Statement for the Article VI petition is sufficient and fair and all claims with respect to same are denied; and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that all claims with respect to the Fiscal Notes and the Fiscal Note Summaries are denied.

Richard G. Callahan
Circuit Court Judge, Division II