

IN THE SUPREME COURT OF MISSOURI

RAYMOND MCCARTY,
DANIEL SHAUL, RUSSELL LAHL,
MISSOURI GROCERS ASSOCIATION,
MISSOURI RESTAURANT ASSOCIATION,
ASSOCIATED INDUSTRIES OF MISSOURI,
NATIONAL FEDERATION OF
INDEPENDENT BUSINESS, INC.,
MISSOURI FOREST PRODUCT
ASSOCIATION, and MISSOURI CHAMBER
OF COMMERCE AND INDUSTRY,

Plaintiffs,

v.

Case No. _____

MISSOURI SECRETARY OF STATE

John R. Ashcroft

Serve at:

Capitol Building, Room 208

Jefferson City, MO 65101,

and

MISSOURI STATE AUDITOR

Scott Fitzpatrick

Serve at:

301 West High Street, Room 880

Jefferson City, MO 65102.

VERIFIED PETITION FOR ELECTION CONTEST

Plaintiffs allege for their petition:

1. Proposition A was submitted to Missouri voters for approval or rejection on the November 5, 2024 election ballot. It was a statewide measure and therefore was included on ballots in all counties in the State of Missouri and the City of St. Louis, including Cole, Jackson, and Jefferson Counties.

2. Proposition A will impose two new and separate requirements on Missouri employers: a minimum wage increase and an entirely new paid sick leave requirement with extensive governmental oversight and enforcement.

3. The sick leave requirement itself is unrelated to wages in Chapter 290, RSMo.

4. While Proposition A is bad policy and will have extreme and detrimental effects on Missouri's businesses, that is not the basis of this action; instead the election irregularities and the constitutional violations are so significant that the election results must be overturned and Proposition A must be declared invalid.

PARTIES

5. Plaintiff Raymond McCarty is a registered voter of the state of Missouri, in Cole County. He has standing to bring this suit pursuant to Section 115.553, RSMo.

6. Plaintiff Daniel Shaul is a registered voter of the state of Missouri, in Jefferson County. He has standing to bring this suit pursuant to Section 115.553, RSMo.

7. Plaintiff Russell Lahl is a registered voter of the state of Missouri, in Jackson County. He has standing to bring this suit pursuant to Section 115.553, RSMo.

8. Plaintiff Missouri Grocers Association ("MGA") is a Missouri non-profit corporation. MGA has employees and would be affected by Proposition A. MGA also represents its members who are employers which would be affected by Proposition A.

9. Plaintiff Missouri Restaurant Association ("MRA") is a Missouri non-profit corporation. MRA has employees and would be affected by Proposition A. MRA also represents its members who are employers which would be affected by Proposition A.

10. Plaintiff Associated Industries of Missouri ("AIM") is a Missouri non-profit corporation. AIM has employees and would be affected by Proposition A. AIM also represents its members who are employers which would be affected by Proposition A.

11. Plaintiff National Federation of Independent Business, Inc., ("NFIB") is a non-profit corporation. NFIB has Missouri employees and would be affected by

Proposition A. NFIB also represents its over 7,000 members who are also employers in Missouri that would be affected by Proposition A.

12. Plaintiff Missouri Forest Products Association (“MFPA”) is a Missouri non-profit corporation. MCCI has employees and would be affected by Proposition A. MCCI also represents its members who are employers which would be affected by Proposition A.

13. Plaintiff Missouri Chamber of Commerce and Industry (“MCCI”) is a Missouri non-profit corporation. MCCI has employees and would be affected by Proposition A. MCCI also represents its members who are employers which would be affected by Proposition A.

14. Defendant John R. Ashcroft is the duly elected and acting Secretary of State of Missouri and is named as a Defendant in his official capacity pursuant to Section 115.553, RSMo.

15. Defendant Scott Fitzpatrick (the “Auditor”) is the duly elected and acting Auditor of the State of Missouri. He is named as a defendant in his official capacity pursuant to Section 116.190, RSMo.

JURISDICTION AND VENUE

16. Plaintiffs bring this action pursuant to Chapters 115, 526, and 527, RSMo, and Missouri Rules of Civil Procedure 87 and 92.

17. Section 115.555, RSMo, states that all contests to the results of elections on state statutes submitted or referred to the voters shall be heard and determined by the Supreme Court.

18. Section 115.557, RSMo, states the Supreme Court “shall have exclusive jurisdiction over all matters relating to the contests and may issue appropriate orders to all election authorities in the area in which the contested election was held.”

19. Defendant Secretary of State certified the results of the November 5, 2024 election on December 5, 2024. This suit is timely filed within 30 days of said certification. Section 115.557, RSMo.

20. Venue is proper in this Court pursuant to Section 115.555, RSMo.

INITIATIVE PETITION 2024-038 - PROPOSITION A

21. On or about January 9, 2023, a sample sheet for a proposed Initiative Petition 2024-038 (“Initiative Petition” hereinafter) was received by the Secretary of State. A copy of that Initiative Petition is attached to this Petition as Exhibit 1 and incorporated herein by reference.

22. On or about January 9, 2023, a version of a proposed Initiative Petition was sent to the Attorney General.

23. The Initiative Petition contains the text of a proposed set of state statutes to revise and add a number of new sections to Chapter 290, RSMo.

24. On or about January 9, 2024, the Secretary of State transmitted a copy of the Initiative Petition to the Auditor for the purpose of preparing a fiscal note and fiscal note summary pursuant to Section 116.175, RSMo.

25. The State Auditor’s duty is to prepare a fiscal note and fiscal note summary for the proposed measure. “The fiscal note and fiscal note summary shall state the measure’s estimated costs or savings, if any, to state or local governmental entities.” Section 116.175.3, RSMo.

26. The fiscal note summary “shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.” Section 116.175.3, RSMo. The fiscal note summary shall not exceed fifty words, excluding articles. *Id.*

27. On or about February 7, 2023, Auditor Fitzpatrick submitted his Fiscal Note and Fiscal Note Summary for the Initiative Petition to the Secretary of State. A copy of the Fiscal Note, which includes the Fiscal Note Summary, is attached hereto as Exhibit 2 and incorporated herein by reference.

28. The Secretary of State’s duty is to prepare a summary statement for the measure. The summary statement must be concise and must not exceed one hundred words. The statement must be in the form of a question “using language neither intentionally

argumentative nor likely to create prejudice either for or against the proposed measure.”
Section 116.334, RSMo.

29. On or about February 10, 2023, the Secretary of State issued the Summary Statement of the Initiative Petition.

30. Within three days after receiving the summary statement, the approved fiscal note summary, and the fiscal note, the Secretary of State certifies the official ballot title for the proposed measure. Section 116.180, RSMo.

31. On February 23, 2023, the Secretary of State certified the official ballot title for the Initiative Petition. A copy of the official ballot title certification is attached as Exhibit 3.

32. The official ballot title consists of two portions, the summary statement written by the Secretary of State and the fiscal note summary written by the State Auditor.

33. The Official Ballot Title of the Initiative Petition states as follows:

Do you want to amend Missouri law to:

- increase minimum wage January 1, 2025 to \$13.75 per hour, increasing \$1.25 per hour each year until 2026, when the minimum wage would be \$15.00 per hour;
- adjust minimum wage based on changes in the Consumer Price Index each January beginning in 2027;
- require all employers to provide one hour of paid sick leave for every thirty hours worked;
- allow the Department of Labor and Industrial Relations to provide oversight and enforcement; and
- exempt governmental entities, political subdivisions, school districts and education institutions?

State governmental entities estimate one-time costs ranging from \$0 to \$53,000, and ongoing costs ranging from \$0 to at least \$256,000 per year by 2027. State and local

government tax revenue could change by an unknown annual amount depending on business decisions.

34. The Official Ballot Title was all that appeared on the Missouri ballot for the November 5, 2024, election.

35. After the election, the Board of Canvassers certified the election results on, December 5, 2024, finding that Proposition A passed.

36. Pursuant to the language contained in Proposition A, the increase in the minimum wage takes effect on January 1, 2025, and the unrelated new sick leave requirements take effect on May 1, 2025.

COUNT I
THE ELECTION RESULTS FOR PROPOSITION A
MUST BE SET ASIDE BECAUSE THE FISCAL NOTE SUMMARY FOR
PROPOSITION A IS INSUFFICIENT AND UNFAIR

37. Plaintiffs incorporate the preceding paragraphs of this Petition as if fully set forth herein.

38. Chapter 115 of the Revised Statutes of Missouri authorizes registered voters to contest “[t]he result of any election on any question” after an election has been held, including on the basis of an “irregularity.” Sections 115.553.2 and 115.593, RSMo.

39. A challenge to the fiscal note summary of a proposed statute may be brought in a post-election action under chapter 115.

40. Under Section 116.175, RSMo, the Auditor was required to “assess the fiscal impact” of Proposition A, and to “prepare a fiscal note and fiscal note summary” which would “state the measure’s estimated costs or savings, if any, to state or local governmental entities.”

41. Fiscal note summaries must be “neither argumentative nor likely to create prejudice either for or against the proposed measure.” Section 116.175.3, RSMo.

42. Voters can challenge a fiscal note summary on the grounds that it is “insufficient or unfair.” Section 116.190.1, and .3, RSMo.

43. The fiscal note summary for Proposition A states as follows:

State governmental entities estimate one-time costs ranging from \$0 to \$53,000, and ongoing costs ranging from \$0 to at least \$256,000 per year by 2027. State and local government tax revenue could change by an unknown annual amount depending on business decisions.

44. The fiscal note summary for Proposition A was insufficient and unfair.

45. The insufficient, unfair, and prejudicial fiscal note summary for the Proposition A deceived voters in numerous ways, including but not limited to the following:

a. The fiscal note summary failed to address costs to local governments as expressly required by Section 116.175, RSMo;

b. Local governments did submit costs to the State Auditor that would be incurred if Proposition A passed; however, those costs were not included in the fiscal note summary;

c. The fiscal note summary inaccurately represents Proposition A's actual fiscal impact. Under Section 116.175.3, RSMo., the Auditor was required to "assess the fiscal impact" of Proposition A and to prepare a fiscal note and fiscal note summary. The law requires that a fiscal note summary describe "the measure's estimated cost or savings, if any, to state or local government," but it in no way limits the concept of "fiscal impact" or "cost"; and several state and local government agencies noted the additional impact on hiring if the wages go up in the private sector;

d. The Missouri Budget Project, a proponent of Proposition A, submitted a fiscal impact statement, which is contained in the full fiscal note; that impact statement indicates that the estimated costs to private employers and state administrative costs would be \$679.77 million; however, the fiscal note summary fails to identify these direct costs; and

e. Missouri Jobs for Justice, another proponent, in its fiscal impact statement, included in the fiscal note, expressly noted that state and local tax

revenues would increase as a result of the mandatory increase in minimum wage by a range from \$33 million to \$77 million; however, the fiscal note summary fails to note this impact on tax revenues.

46. Proposition A's fiscal note summary statement was only 42 words out of an allowable 50. Section 116.175.3, RSMo. There was substantial room within the statutory limit to address its unfairness and insufficiency.

47. The fiscal note summary for Proposition A failed to promote an informed understanding by the voters of the probable effects of the measure.

48. The fiscal note summary for Proposition A prejudiced voters to vote for the measure by depriving them of the facts necessary to understand its probable impact.

49. The unfair and insufficient fiscal note summary is an election irregularity sufficient to cast doubt on the true results of a vote on Proposition A but for that irregularity.

50. This issue has not been previously litigated and determined.

COUNT II
THE ELECTION RESULTS FOR PROPOSITION A
MUST BE SET ASIDE BECAUSE THE SUMMARY STATEMENT FOR
PROPOSITION A IS INSUFFICIENT AND UNFAIR

51. Plaintiffs incorporate the preceding paragraphs of this Petition as if fully set forth herein.

52. The summary statement of the official ballot title of Proposition A was insufficient, misleading, prejudicial and unfair so as to constitute election irregularities of a sufficient magnitude to set aside the election results on Proposition A.

53. The summary statement for Proposition A, which appeared on the November 5, 2024 election ballots throughout the State, was:

Do you want to amend Missouri law to:

- increase minimum wage January 1, 2025 to \$13.75 per hour, increasing \$1.25 per hour each year until 2026, when the minimum wage would be \$15.00 per hour;

- adjust minimum wage based on changes in the Consumer Price Index each January beginning in 2027;
- require all employers to provide one hour of paid sick leave for every thirty hours worked;
- allow the Department of Labor and Industrial Relations to provide oversight and enforcement; and
- exempt governmental entities, political subdivisions, school districts and education institutions?

54. The summary statement was insufficient and unfair, deceived and misled voters, and failed to accurately reflect the legal and probable effects of the amendment, in numerous ways, including, but not limited to, the following:

- a. The Summary Statement improperly suggests that employees are entitled to all earned sick leave when the measure caps the use of paid sick time annually;
- b. The Summary Statement fails to notify voters of the use cap on paid sick time and that the cap differs depending on total number of employees;
- c. The Summary Statement improperly suggests that “all employers” would be required to provide one hour of paid sick leave for every thirty hours worked when the actual measure exempts certain employers;
- d. The Summary Statement improperly suggests that oversight and enforcement of Proposition A would be in the purview of the Department of Labor and Industrial relations when the measure also allows local government entities enforcement and oversight authority;
- e. The Summary Statement improperly suggests Missouri law would be amended to require an annual adjustment based on the consumer price index when such requirement is already required by Missouri law;
- f. The Summary Statement fails to properly identify which employees are excluded from the minimum wage increase, most notably any individual in a

retail or service business whose annual gross volume sales or business is less than \$500,000;

g. The Summary Statement improperly suggests that all “education institutions” are exempt from Proposition A’s requirements, but the exemption only applies to “**public** higher education institutions”;

h. The Summary Statement fails to notify voters of the creation of a new crime for failure to comply and criminalization of employer conduct; and

i. The Summary Statement fails to notify voters that the new sick leave applies to non-health related reasons.

55. The summary statement was only 88 words, out of an allowable 100 maximum allowed (exclusive of articles). There was substantial room within the statutory limit to have addressed the prejudicial, insufficient, and misleading aspects of the summary statement.

56. The summary statement for Proposition A unfairly and insufficiently explained the underlying statutory measure.

57. The summary statement for Proposition A failed to promote an informed understanding by the voters of the probable effects of the measure.

58. The summary statement for Proposition A prejudiced voters to vote for the measure without an understanding of the probable effects of the measure.

59. The unfair and insufficient summary statement is an election irregularity sufficient to cast doubt on the true results of a vote on Proposition A but for that irregularity.

60. This issue has not been previously litigated and determined.

COUNT III

PROPOSITION A IS INVALID BECAUSE IT CONTAINS MULTIPLE SUBJECTS IN VIOLATION OF THE SINGLE SUBJECT CLAUSE OF THE MISSOURI CONSTITUTION

61. Plaintiffs incorporate the preceding paragraphs of this Petition as if fully set forth herein.

62. Chapter 115 of the Revised Statutes of Missouri authorizes registered voters to contest “[t]he result of any election on any question” after an election has been held, including on the basis of an “irregularity.” Sections 115.553.2 and 115.593, RSMo.

63. Article III, Section 50 of the Missouri Constitution provides, in relevant part, that “**Petitions for laws shall contain not more than one subject** which shall be expressed clearly in the title[.]”(emphasis added).

64. The subject of Proposition A is described by the Secretary’s office as “Minimum Wage and Earned Sick Time,” evidencing two separate subjects.

65. The subject of Proposition A is described by the Auditor’s office as “Minimum Wage and Employee Sick Time,” also evidencing two separate subjects.

66. Proposition A, as noted in the Defendants’ descriptions, purports to make substantive changes to Missouri law that will impact Missouri employers in relation to both subjects: minimum wage and sick time.

Among other things, the Petition, if adopted and enacted would: (1) increase the state minimum wage beginning January 1, 2025 to \$13.75 per hour and increase the hourly rate \$1.25, to \$15.00 per hour beginning January 2026 (2) Annually adjust the minimum wage based on the Consumer Price Index (3) require employers with fifteen or more employees to provide one hour of paid sick leave for every thirty hours worked (4) exempt governmental entities, political subdivisions, school districts and education institutions from the minimum wage increase; and (5) allow the Department of Labor and Industrial Relations to provide oversight and enforcement.

67. Chapter 290, RSMo, governs “Wages, Hours and Dismissal Rights” according to the Revisor of Statutes.

68. The sick time provisions are not germane to Chapter 290, RSMo, which solely deals with “wages, hours, and dismissal rights.”

69. Chapter 290, RSMo, contains no provisions that provide for leave or sick leave policies; in fact, leave policies for private employers are only in Chapter 285.

70. Chapter 290, RSMo, contains no provisions that relate to local government enforcement rights.

71. Chapter 290, RSMo, is not a criminal statutory scheme; however, Proposition A creates a new crime related to sick leave that has heretofore not existed.

72. The purpose of the single-subject rule is to prevent “logrolling . . . whereby unrelated subjects that individually might not muster enough support to pass are combined to generate necessary support.” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 830 (Mo. banc 1990).

73. “The single subject matter rule is the constitutional assurance that within the range of a subject and related matters a measure must pass or fail on its own merits.” *Id.*

74. Proposition A violates the single-subject rule in that it contains multiple subjects and unrelated matters.

75. As currently written, the breadth of Proposition A, with its multiple subjects, does not comport with the Missouri Constitution nor binding case law in that there will be no certainty any individual issue in the multi-faceted petition may pass or fall on its own merits.

76. The minimum wage increase alone accounts for less than one page of the nine (9) pages of Proposition A; the remaining eight (8) pages relate to the new requirement of paid sick leave along with enforcement provisions which is at least two different subjects than the increase in the minimum wage.

77. This issue has not been previously litigated and determined.

COUNT IV

PROPOSITION A IS INVALID BECAUSE IT VIOLATES THE MISSOURI CONSTITUTION’S CLEAR TITLE REQUIREMENT

78. Plaintiffs incorporate the preceding paragraphs of this Petition as if fully set forth herein.

79. Article III, Section 50 of the Missouri Constitution provides, in relevant part, that “Petitions for laws shall contain not more than one subject **which shall be expressed clearly in the title[.]**”(emphasis added).

80. Proposition A's title has more than one subject,

81. Proposition A's title is unclear.

82. The title refers to multiple subjects and does not have one subject expressed in the title:

a. Minimum wage increase; and

b. Mandatory paid sick leave.

83. Proposition A does not refer to one subject in its title.

84. This issue has not been previously litigated and determined.

COUNT V

PROPOSITION A MUST BE SET ASIDE BECAUSE PROPOSITION A VIOLATES EQUAL PROTECTION

85. Plaintiffs incorporate the preceding paragraphs of this Petition as if fully set forth herein.

86. Proposition A of the Proposed Measure treats similarly situated entities differently in violation of the Fourteenth Amendment to the United States Constitution and Article I, section 2 of the Missouri Constitution.

87. The exemption of government from the requirement and exemption of businesses with existing collective bargaining agreements results in similarly situated parties being treated differently.

88. The exemption of golf caddies and workers in private residences from the requirement results in similarly situated parties being treated differently.

89. There is no rational basis for Proposition A's disparate treatment of similarly situated entities.

90. This issue has not been previously litigated and determined.

REQUEST FOR RELIEF

For the foregoing reasons, Plaintiffs respectfully request this court:

(A) Declare that Defendants' fiscal note summary for Proposition A:

i. Was misleading, insufficient, and unfair;

- ii. Included language that was likely to create prejudice for the Amendment;
 - iii. Constitutes an election irregularity of sufficient magnitude to cast doubt on the validity of the election on Proposition A;
- (B) Declare that Defendants' summary statement for Proposition A:
- i. Was misleading, insufficient, and unfair;
 - ii. Included language that was likely to create prejudice for the Amendment;
 - iii. Constitutes an election irregularity of sufficient magnitude to cast doubt on the validity of the election on Proposition A;
- (C) Give leave for Plaintiffs to produce proof of an election irregularity in the November 5, 2024 vote on Proposition A;
- (D) Declare that Proposition A is invalid as containing multiple subjects in violation of Article III, Section 50 of the Missouri Constitution;
- (E) Declare that Proposition A is invalid as violating the clear title requirement of Article III, Section 50 of the Missouri Constitution; and
- (F) Declare that Proposition A is invalid as violating the equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article I, section 2 of the Missouri Constitution;
- (G) Set aside the election results of November 5, 2024 on Proposition A; and
- (H) Order such other relief as necessary and proper.

Respectfully submitted,
ELLINGER BELL LLC

By: /s/ Marc H. Ellinger
Marc H. Ellinger, #40828
Stephanie S. Bell, #61855
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Jefferson City, MO 65101
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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE OF PETITION UPON THE ATTORNEY
GENERAL PURSUANT TO SEC. 527.110, RSMO**

I hereby certify that, on this 6th day of December 2024, a true and accurate copy of the foregoing was served by U.S. Mail, first class postage prepaid, upon:

Andrew Bailey
Missouri Attorney General
P.O. Box 899
Jefferson City, MO 65102

/s/ Marc H. Ellinger

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VERIFICATION

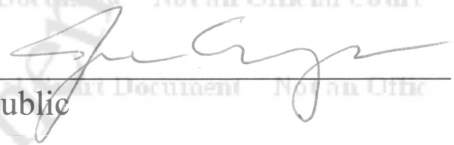
STATE OF Missouri)
) ss
COUNTY OF Cole)

I, Raymond McCarty, first being duly sworn, hereby state that I have personal knowledge of the statements and facts in the above Verified Petition for Election Contest and such statements and facts are true and accurate to the best of my knowledge and belief.



Name: Raymond McCarty

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 6th day of December 2024.



Notary Public

My Commission Expires:

09-22-2028

JENNA SNYDER
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
My Commission Expires: September 22, 2028
Commission #24287250

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VERIFICATION

STATE OF Missouri)

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COUNTY OF Jefferson)

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I, Daniel Shaul, first being duly sworn, hereby state that I have personal knowledge of the statements and facts in the above Verified Petition for Election Contest and such statements and facts are true and accurate to the best of my knowledge and belief.

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Daniel Shaul
Name: Daniel Shaul

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 6th day of December 2024.

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Angela Peth
Notary Public

My Commission Expires:

July 15, 2028

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VERIFICATION

STATE OF Missouri)
) SS
COUNTY OF Jackson)

I, Russell Lahl, first being duly sworn, hereby state that I have personal knowledge of the statements and facts in the above Verified Petition for Election Contest and such statements and facts are true and accurate to the best of my knowledge and belief.

Russell Lahl
Name: Russell Lahl

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 6th day of December 2024.

Haley Dawn Fowler
Notary Public

My Commission Expires:
October 20, 2028

HALEY DAWN FOWLER
Notary Public-Notary Seal
STATE OF MISSOURI
Commissioned for Cass County
My Commission Expires: October 20, 2028
ID. #24177302