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IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

No. WD88392

ANNA FITZ-JAMES,
APPELLANT,

VS.

DENNY HOSKINS, CINDY O'LAUGHLIN, JONATHAN PATTERSON, AND ED LEWIS,
RESPONDENTS.

On Appeal from the Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

APPELLANT'S BRIEF

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INTRODUCTION

This appeal involves the following issues:

(1) Does the General Assembly's HJR 73 ask voters to vote on two different amendments to the Constitution at the same time, which would violate the Constitution's single-subject requirement? (Point I);

(2) If HJR 73 is a constitutional submission for the voters, does the ballot summary fairly and sufficiently summarize the likely and probable effects of the measure? (Points II-VIII); and

(3) If the measure is to be submitted, is the Secretary of State's fair ballot language fair and sufficient? (Points IX-XI).

There's an underlying reality that explains why we are here. In 2024, a majority of Missourians approved Amendment 3, which enshrined the right to reproductive freedom in the Missouri Constitution's Bill of Rights. Mo. Const. art. I, § 36. Now, a majority of the General Assembly disagrees with that decision and wants another vote in 2026, hoping the voters will eliminate what they just enacted.

But the General Assembly was likely concerned that voters will not eliminate the right to reproductive freedom if they are simply asked that question. So, the legislature set out to add "sweeteners" to the measure. Rather than just submit a repeal of The Right to Reproductive Freedom Initiative (Article I, §36), the General Assembly ask voters if they want to strike out that

section *and* add a ban on gender transition care for minors. Then, the legislature drafted a summary statement that implies voters will be enacting new rights and "ensuring" certain protections rather than eliminating the rights they have.

But any fair reading is that a vote in favor of HJR 73 would significantly reduce the rights currently guaranteed in the Constitution while the Second Revised Summary Statement (as well as the legislature's original) leads voters to believe they are actually *adopting* new rights they did not previously have.

The whole thing is misleading, but the Court need not address all of these problems. The first issue is dispositive. By including a provision banning gender transition care for minors, the measure asks voters if they want to (i) repeal the right to reproductive freedom and (ii) ban gender transition care for minors. That is "a kind of legal fraud because it may compel the voter in order to get what he earnestly wants to vote for something which he does not want, or vice versa." *State ex rel. Phelps Cnty. v. Holman,* 461 S.W.2d 689, 690 (Mo. banc 1971).

In addition, the General Assembly included a less controversial but nonetheless unrelated provision concerning the conduct of judicial proceedings. That is another reason the measure does not submit a single subject. Because of the single subject violation, HJR 73 may not appear on the ballot. *Missourians to Protect the Initiative Process v. Blunt (MPIP),* 799 S.W.2d 824, 826 (Mo. banc 1990). Acknowledging this reality does no great violence to legislative authority. The General Assembly certainly has the right to submit these questions to the voters—one at a time. If they want to do so, they can try again.

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If this Court disagrees and allows the measure to go to the voters, it must be presented in a fair and impartial way. But the Second Revised Summary Statement and Second Revised Fair Ballot Language violates principles that are well known to this Court generally and with respect to this particular provision of the Constitution. The Court should apply these principles and rewrite this unfair and insufficient summary statement and fair ballot language. *See Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. App. 2023).

Either way, this Court should reverse the decision of the circuit court and enter the judgment that should have been issued. Rule 84.14.

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment of the Circuit Court of Cole County. General appellate jurisdiction lies here because Cole County is within this Court's territorial jurisdiction. § 477.070, RSMo. Although Appellant alleges that HJR 73 violates the Missouri Constitution (Point I), the resolution is not a law, so the matter is not within the exclusive jurisdiction of the Missouri Supreme Court. Mo. Const. art. V, § 3.

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STATEMENT OF FACTS

In 2022, the United States Supreme Court overturned abortion protections previously found in *Roe v. Wade*. *See Dobbs v. Jackson Women's Health Organization,* 597 U.S. 833 (2022). In response, Dr. Anna Fitz-James championed several initiative petitions to enshrine a fundamental "right to reproductive freedom" in the Missouri Constitution. *State ex rel. Fitz-James v. Bailey*, 670 S.W.3d 1, 4 (Mo. banc 2023). Voters approved one of those initiatives in November of 2024. *Comprehensive Health of Planned Parenthood Great Plains v. State,* No. WD 88244, __ S.W.3d __, 2025 WL 2907584 (Mo. App. Oct. 14, 2025). The Right to Reproductive Freedom Initiative is now found in Article I, § 36. *See* Mo. Const. art. I, § 36.

Within a few months of that election, State Representative Ed Lewis introduced House Joint Resolution 73 ("HJR 73") to fully eliminate The Right to Reproductive Freedom Initiative and replace it with a new provision—Article I, Section 36(a). D7 ¶ 11; *see also* D10;A3. On May 14, 2025, the General Assembly truly agreed and finally passed HJR 73, referring the matter to the voters at the next general election.

The General Assembly chose a title for HJR 73: "Submitting to the qualified voters of Missouri an amendment repealing Section 36 of Article I of the Constitution of Missouri, and adopting one new section in lieu thereof relating to reproductive health care." *Id.* The overwhelming majority of the provisions in

HJR 73 are about abortion and pregnancy-related medical care. *See* D10;A3 (subsections 2-8).

But HJR 73 contains a single subsection prohibiting "gender transition care" for minors. *Id.* (subsection 9). It also contains a provision addressing the proper forum for certain lawsuits and requires notice to the Attorney General when a plaintiff makes certain challenges to Missouri law. *Id.* (subsection 10). As is its right, the General Assembly chose to include an "official summary statement" of the measure as part of the resolution. *Id.* (Section B); *see also* § 116.155, RSMo.

On June 27, 2025, Secretary Hoskins certified the official ballot title for HJR 73. D7 ¶ 16; *see also* D11. That official ballot title is made up of the ballot summary the legislature drafted and the fiscal note summary prepared by the state auditor. *See* § 116.101(4), RSMo. Secretary Hoskins also prepared and certified fair ballot language statements for HJR 73. D7 ¶ 18; *see also* D12 and § 116.025 RSMo.[1]

A few days after that certification, Plaintiff Fitz-James filed suit raising three claims challenging HJR 73 and the associated statements about it. D2. Count I alleged HJR 73 violates Article XII, Section 2(b) of the Missouri Constitution because it contains more than one subject and matters properly connected therewith. *Id.* Fitz-James asked for a declaration that the measure may

[1] Taxpayer dollars will be used to publish and print election ballots for upcoming statewide elections. D7 ¶ 20.

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not be submitted to the voters at all. *Id.; see also MPIP*, 799 S.W.2d at 826 (affirming trial court's decision to keep an initiative petition from being submitted to voters due to violation of single subject requirement).

Count II alleged that, if the matter is to be submitted for a vote, the summary statement the General Assembly drafted (and the Secretary certified) is not a true and impartial statement of HJR73's purpose, in violation of Section 116.155, RSMo, and therefore should not be on the ballot. D2. Count III alleged that the Secretary violated Section 116.025 by failing to fairly and accurately explain in the fair ballot language statements "what a vote for and what a vote against HJR 73 represent." *Id.*

On August 27, 2025, the circuit court held a bench trial. D17. The parties submitted a stipulation of facts and exhibits. D7-D12. Plaintiff submitted one additional exhibit, which was admitted into evidence. D33-36; Tr. 6:2-12. In briefing and oral argument, the parties agreed the subject of HJR 73 is "reproductive health care." D13:P8; D14:P3; Tr. 40:9-10 ("My friend on the other side and I agree the subject of HJR 73 is reproductive health care.").

On September 19, 2025, the circuit court issued a partial judgment, finding in favor of Defendants on Count I. D17:P2. But as to Counts II and III, the Court found the summary statement and fair ballot language to be insufficient and unfair. D17:P2-3. The circuit court pointed out that the General Assembly's summary "fail[ed] to adequately alert voters that the proposed constitutional

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amendment would eliminate Article I, section 36 of the Missouri Constitution, which voters recently approved." D17:P3.

Rather than rewriting the summary statement and fair ballot language itself, the Court followed recent amendments to Section 116.190 (which took effect after the case was filed, but before the court issued its ruling) and sent the summary statement and the fair ballot language to the Secretary of State to revise. D17:P3; *see* § 116.190.4(2), RSMo. The Secretary did just that. D19 (First Revised Summary Statement); D20 (First Revised Fair Ballot Language Statement).

In addition to revising the summary statement in response to the deficiency pointed out by the circuit court's order and adding new language about the repeal, the Secretary gratuitously changed the language about gender transition care for minors in the last bullet point from the General Assembly's language ("protect children from gender transition") to his own language ("prohibit sex change procedures for children"). D19.

The parties submitted briefing on the revised summary statement and fair ballot language. D21; D22. The circuit court found the revised summary statement and fair ballot language were still unfair because they failed to alert voters that HJR 73 would "abrogate" Article I, § 36. D19; D20; D23. The court found the revised summary statement and fair ballot language to be fair in all other respects. D23. The circuit court directed the Secretary to submit a Second

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Revised Summary Statement and Second Revised Fair Ballot language, which he did. D23; D25;A8; D24;A9.

The parties submitted additional briefing on the sufficiency and fairness of the Second Revised Summary Statement and Fair Ballot Language. D26; D27. On October 7, 2025, the circuit court entered judgment, finding the Secretary's Second Revised Summary Statement and Second Revised Fair Ballot Language fair and sufficient. D29. That judgment also incorporated the circuit court's prior ruling on the single-subject challenge. *Id*. Petitioner filed an authorized after-trial motion alerting the Court to issues with the language of its original judgment. D28; A1. The Court entered an Amended Judgment. D38. This appeal followed. D29.

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POINTS RELIED ON[2]

Point Related to Single Subject Violation

I. The circuit court erred in holding that HJR 73 does not violate the Missouri Constitution's ban on a proposed amendment containing more than one subject because HJR 73 does contain more than one subject and matters properly connected therewith, in that HJR 73 combines provisions addressing reproductive health care (the bill's subject) with unrelated provisions restricting gender transition procedures for minors and unrelated provisions altering venue and intervention rules for constitutional litigation, which are neither germane to nor properly connected with the single subject of reproductive health care.

- *Byrd v. State*, 679 S.W.3d 492 (Mo. banc 2023)
- *Rizzo v. State*, 189 S.W.3d 576 (Mo. banc 2006)
- *Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98 (Mo. banc 1994)
- Mo. Const. art. XII, § 2(b)

[2] Unless otherwise noted in this brief, when Appellant refers to the Summary Statement, she means the Second Revised Summary Statement and when she refers to the Fair Ballot Language she means the Second Revised Fair Ballot Language as those are the statements from which she has the right to appeal.

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Points Related to Summary Statement

II. The circuit court erred in finding the Fourth Bullet Point of the Summary Statement fair and sufficient because a summary statement must inform voters that they are repealing an amendment that they just approved, in that the Fourth Bullet Point fails to meaningfully inform voters that HJR 73 asks them to reconsider and eliminate the recently approved Right to Reproductive Freedom Initiative.

- *Pippens v. Ashcroft,* 606 S.W.3d 689 (Mo. App. 2020)
- *Fitz-James v. Ashcroft,* 678 S.W.3d 194 (Mo. App. 2023)
- *Brown v. Carnahan*, 370 S.W.3d 637 (Mo. banc 2012).

III. The circuit court erred in finding the Fourth Bullet Point of the Summary Statement fair and sufficient because a summary statement is misleading if it implies a change to existing law where none occurs, in that the Fourth Bullet Point falsely implies that, for the first time, the Constitution will allow abortions for medical emergencies, fetal anomalies, rape, and incest when The Right to Reproductive Freedom Initiative already guarantees such care.

- *McCarty v. Mo. Sec'y of State*, 710 S.W.3d 507 (Mo. banc 2025)
- *Fitz-James v. Ashcroft,* 678 S.W.3d 194 (Mo. App. 2023)
- *Pippens v. Ashcroft,* 606 S.W.3d 689 (Mo. App. 2020)

IV. The circuit court erred in finding the Fourth Bullet Point of the Summary Statement fair and sufficient because a summary statement must accurately reflect the legal and probable effects of the measure, in that the Fourth Bullet Point omits that HJR 73 restricts abortions for rape and incest to no later than twelve weeks' gestational age, a material limitation absent under current law.

- *Fitz-James v. Ashcroft,* 678 S.W.3d 194 (Mo. App. 2023)
- *Boeving v. Kander*, 493 S.W.3d 865 (Mo. App. 2016)
- *Brown v. Carnahan*, 370 S.W.3d 637 (Mo. banc 2012)

V. The circuit court erred in finding the First Bullet Point of the Summary Statement fair and sufficient because a summary statement is misleading if it suggests the measure changes the law when it does not in that the First Bullet Point falsely implies that HJR 73 would newly "guarantee" access to care for medical emergencies, ectopic pregnancies, and miscarriages when The Right to Reproductive Freedom Initiative currently guarantees such care.

- *Fitz-James v. Ashcroft,* 678 S.W.3d 194 (Mo. App. 2023)
- *Pippens v. Ashcroft,* 606 S.W.3d 689 (Mo. App. 2020)
- *Brown v. Carnahan*, 370 S.W.3d 637 (Mo. banc 2012)

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VI. The circuit court erred in finding the Second Bullet Point of the Summary Statement fair and sufficient because a summary statement must accurately reflect the legal and probable effects of the measure, in that Second Bullet Point inaccurately suggests that HJR 73 would "ensure" women's safety.

- *Copenhaver v. Ashcroft*, 697 S.W.3d 601 (Mo. App. 2024)
- *Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. App. 2023)
- *Boeving v. Kander*, 493 S.W.3d 865 (Mo. App. 2016)

VII. The circuit court erred in finding the Fifth Bullet Point of the Summary Statement fair and sufficient because a summary statement may not use partisan, biased, or argumentative language, in that the phrase "sex-change procedures" is a politically charged term that does not neutrally describe the probable effects of HJR 73.

- *Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. App. 2023)
- *Boeving v. Kander*, 493 S.W.3d 865 (Mo. App. 2016)
- *Cures Without Cloning v. Pund*, 259 S.W.3d 76 (Mo. App. 2008)

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Points Related to the Fair Ballot Language

VIII. The circuit court erred in finding the Fair Ballot Language fair and sufficient because fair ballot language must inform voters that they are repealing an amendment that they just approved, in that the Fair Ballot Language fails to meaningfully inform voters that HJR 73 asks them to reconsider and eliminate the recently approved Right to Reproductive Freedom Initiative.

- *Fitzpatrick v. Ashcroft*, 640 S.W.3d 110 (Mo. App. 2022)
- *Pippens v. Ashcroft*, 606 S.W.3d 689 (Mo. App. 2020)
- § 116.025, RSMo
- § 116.190, RSMo

IX. The circuit court erred in finding the Fair Ballot Language fair and sufficient because fair ballot language is misleading if it implies a change to existing law where none occurs, in that the Fair Ballot Language falsely implies that, for the first time, the Constitution will allow abortions for medical emergencies, fetal anomalies, rape, and incest when The Right to Reproductive Freedom Initiative already guarantees such care.

- *McCarty v. Mo. Sec'y of State*, 710 S.W.3d 507 (Mo. banc 2025)
- *Fitzpatrick v. Ashcroft*, 640 S.W.3d 110 (Mo. App. 2022)
- *Pippens v. Ashcroft*, 606 S.W.3d 689 (Mo. App. 2020)

- § 116.025, RSMo
- § 116.190, RSMo

X. The circuit court erred in finding the Fair Ballot Language fair and sufficient because fair ballot language is misleading if it suggests the measure changes the law when it does not in that the Fair Ballot Language falsely implies that HJR 73 would newly "guarantee" access to care for medical emergencies, ectopic pregnancies, and miscarriages when The Right to Reproductive Freedom Initiative currently guarantees such care.

- *McCarty v. Mo. Sec'y of State*, 710 S.W.3d 507 (Mo. banc 2025)
- *Fitzpatrick v. Ashcroft*, 640 S.W.3d 110 (Mo. App. 2022)
- *Pippens v. Ashcroft*, 606 S.W.3d 689 (Mo. App. 2020)
- § 116.025, RSMo
- § 116.190, RSMo

XI. The circuit court erred in finding the Fair Ballot Language fair and sufficient because it may not use partisan, biased, or argumentative language, in that the phrase "protect children from sex-change" in both the "yes" and "no" statements is a politically charged term that does not neutrally describe the effects of HJR 73.

- *Fitz-James v. Ashcroft*, 678 S.W.3d 194 (Mo. App. 2023)
- *Fitzpatrick v. Ashcroft*, 640 S.W.3d 110 (Mo. App. 2022)

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- *Cures Without Cloning v. Pund*, 259 S.W.3d 76 (Mo. App. 2008)
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ARGUMENT

I. The circuit court erred in holding that HJR 73 does not violate the Missouri Constitution's ban on a proposed amendment containing more than one subject because HJR 73 does contain more than one subject and matters properly connected therewith, in that HJR 73 combines provisions addressing reproductive health care (the bill's subject) with unrelated provisions restricting gender transition procedures for minors and unrelated provisions altering venue and intervention rules for constitutional litigation, which are neither germane to nor properly connected with the single subject of reproductive health care.

Standard of Review. Here, there is no factual dispute, and the issue simply turns on an interpretation of the law; this Court reviews the trial court's judgment *de novo*. *Brown v. Carnahan*, 370 S.W.3d 637, 653 (Mo. banc 2012).

Preservation. Appellant properly raised this matter before the circuit court in her petition (D2:P6), trial brief (D15: P4–18), and at trial (Tr.8–26). Although not required, Appellant also preserved this matter in her authorized after-trial motion. D38:P5.

The circuit court erred in failing to find HJR 73 contains more than one subject. D17; D28; A1. A cursory look at the provisions of the measure (most of which relate to abortion), makes clear that subsection 9 (relating to gender

transition care for minors) and subsection 10 (relating to civil procedure) do not fall within the subject of the resolution, reproductive health care. *See* D10;A3. This Court should reverse the trial court's decision, declare HJR 73 unconstitutional, and prohibit the Secretary from placing it on any election ballot.

A. It is constitutionally repugnant to submit to voters a constitutional amendment embracing more than one subject.

When voters adopted the Constitution of 1945, they declared that "all political power is vested in and derived from the people." Mo. Const. art. I, § 1. They "reserved the power to propose and enact or reject . . . amendments to the constitution by the initiative independent of the general assembly . . ." Mo. Const. art. III, § 49. The Constitution may be amended "only as provided therein." Mo. Const. art. XII, § 1. There are two ways to do it. Amendments may be "proposed by the general assembly or by the initiative petition." Mo. Const. art. XII, § 2(b).

But "the general assembly can only propose amendments under the power delegated to it by the people." *Edwards v. Lesueur*, 33 S.W. 1130, 1133 (Mo. 1896). "In the exercise of such power, every substantial requirement must be observed and followed, or there can be no valid amendment . . . The courts should not hesitate to see that the constitution is obeyed in these particulars." *Id.*

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1. Article 12, Section 2(b) prescribes the General Assembly's authority to propose constitutional amendments.

Those requirements are in Article 12, Section 2(b). "[P]roposed amendments . . . shall not contain more than one subject and matters properly connected therewith." Mo. Const. art. XII, § 2(b). Relatedly, "[m]ore than one amendment shall be submitted so as to enable the electors to vote on each amendment separately." *Id.* The single-subject requirement for proposed laws is common in the Missouri Constitution.[3] Mo. Const. art. III, § 23; Mo. Const. art. III § 50. But the Article XII language is arguably a more robust restriction because of the "more than one amendment" clause. This requirement that the voters not be asked to vote on more than one proposed amendment in the same measure is a well-known "good government" protection and is a bulwark against voter deception.

2. Logrolling is a fraud on voters.

One way to deceive the voters is "logrolling." Logrolling means combining "unrelated subjects that individually might not muster enough support to pass . . . to generate the necessary support." *MPIP*, 799 S.W.2d at 830. The single-subject requirement also prohibits "riding" (arguably a subset of logrolling), which means "joining relatively unpopular measures with more popular ones" in the

[3] Many states have similar provisions. *See, e.g.*, Okla. Const. art. XXIV, § 1; Or. Const. art. IV, § 1(1d) and art. XVII, § 1

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hope that the unpopular measure can "ride" along to passage. *Thom v. Barnett*, 967 N.W.2d 261, 283 (S.D. 2021) (Salter, J., concurring).

Preventing these practices is critically important. The single-subject requirement "is intended to discourage placing voters in the position of having to vote for some matter which they do not support in order to enact that which they earnestly support." *MPIP*, 799 S.W.2d at 830. "[A] measure must pass or fail on its own merits." *Id.* That is particularly true when—as here—it is not the voters' fellow citizens asking them to consider a matter, but the General Assembly.

The Supreme Court has warned against sleight of hand in submitting matters to the voters countless times. It once called the practice "doubleness in submission" and "a kind of legal fraud because it may compel the voter in order to get what he earnestly wants to vote for something which he does not want, or vice versa." *State ex rel. Phelps County,* 461 S.W.2d at 690. Said another way "two propositions cannot be united in the submission so as to have one expression of the vote answer both propositions, as voters may be thereby induced to vote on both propositions who would not have done so if the questions had been submitted singly." *State ex rel. Board of Fund Comm'rs v. Holman,* 296 S.W. 2d 482, 488 (Mo. banc 1956) (cleaned up).

This is axiomatic to how the Constitution has required submission of constitutional amendments to voters. In addition to the requirement of a single subject, the final sentence of Article XII, Section 2(b) commands that voters be allowed to vote on every amendment separately. This "separate vote" concept is

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found in both Article III and Article XII. As the Supreme Court explained in *Gabbert v. Chicago, R.I. & P. Ry. Co.*:

> The same common purpose actuated the convention in placing these two provisions in the constitution. It was intended to kill logrolling, and prevent unscrupulous, designing men, and interested parties, from . . . comprising subjects diverse and antagonistic in their nature, in order to combine in its support members who were in favor of a particular measure.

70 S.W. 891, 897 (Mo. banc 1902).

B. The General Assembly is due no deference when analyzing a measure for a violation of Article XII, Section 2(b).

This Court has often commented on the importance of the initiative and the need to defer to the people's right to put a measure on the ballot. But this case does not involve an initiative petition proposed by citizens. It, therefore, does not implicate the people's reservation of power to themselves, or the justifications for liberally construing constitutional restraints on the people's exercise of that power. Since this case involves a legislatively referred proposal, the reasons to be liberal with the single-subject test are not present. *See Ritter v. Ashcroft,* 561 S.W.3d 74, 86 (Mo. App. 2021). Instead, the power of the General Assembly to propose a constitutional amendment is an exception to the general reservation of power by the people and the General Assembly must strictly comply with the limitations the people placed on its power.

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Practicalities support the need for strict compliance. It is comparatively easy for the General Assembly to comply with the single-subject requirement and to fix a proposal when it has failed. For the people, getting a measure to the ballot is quite a process. It involves gathering a lot of signatures[4] and, historically, a tough slog through the legal process. If the courts deny the people the right to submit a matter because it contains more than a single subject, the effort to fix that problem would be considerable—they would have to start that lengthy process again.

Not so for the legislature. If the legislature is found to have submitted more than one subject to the people, all it needs to do is go back and submit the subjects separately. If the votes are there in the General Assembly to submit each one to the voters, then it has successfully put the measure on the ballot. If the votes are not there to submit them separately, it makes the point of doubleness quite clear. All the legislature needs to do is pass resolutions that submit one question at a time.

C. The single-subject standard articulated in *Byrd v. State* controls here.

So, the Court must review when a proposed amendment contains more than one subject. No case has specifically addressed these provisions of Article XII as applied to a legislatively referred measure, but the general requirement that separate votes be taken on different subjects is well-established and well-

[4] Signatures of "eight percent of the legal voters in each of two-thirds of the congressional districts." Mo. Const. Art. III, § 50.

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explained. A similar provision applies to citizen initiative petitions. Mo. Const. art. III, § 50. The Supreme Court instructs that the purpose of that section is the same as the language in Article XII. "The single subject matter rule is the constitutional assurance that within the range of a subject and related matters a measure must pass on its own merits . . . [and] that purpose is restated in article XII, § 2(b)." *MPIP*, 799 S.W.2d at 830.

In *MPIP*, the only case where a Missouri court has found an initiative petition in violation of the single-subject requirement, the court pointed out that "[i]n determining whether the proposed constitutional amendment violates the 'one subject' rule, there are certain general principles that have been established." *Id.* at 831. Ultimately, "each proposal to amend the constitution must turn on the particular language and the subject matter involved." *Id.*

The single-subject requirement in Article XII for submission to the voters is also substantively identical to the single subject requirement for passage of bills by the General Assembly. *Compare* Mo. Const. art. III, § 23 ("No bill shall contain more than one subject which shall be clearly expressed in its title . . . ."), *with* Mo. Const. art. XII, § 2(b) ("No such proposed amendment . . . shall contain more than one subject and matters properly connected therewith.").

Indeed, the Supreme Court has expressed the test under Article III's "single subject" requirement as "whether the [challenged] provisions are germane to the general subject of the bill." *Byrd*, 679 S.W.3d at 495.

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In *Byrd,* plaintiffs challenged House Bill 1606 as violating the single-subject requirement because a provision of the bill (section 67.2300) did not "fairly relate to HB 1606's subject of political subdivisions." *Id.* at 494. Section 67.2300 purported to "regulate the expenditure of state funds for housing or homelessness." *Id.* at 496.

1. The first step in the single subject analysis is to ascertain the subject.

The first step in this analysis is, of course, to figure out what the single subject of the measure is. The analysis could and should end with the fact that Appellants and Respondents agree that the subject is reproductive health care (as did the trial court). D:17; D14:P5-7; D13:P9; *see MPIP,* 799 S.W.2d at 831 ("The Court looks first to the explanation of the [proponents] to determine what single subject they assert is contained in the proposal."). The proponents of the measure also agreed on that subject. Reproductive health care is the title the General Assembly chose for the resolution.

The analysis in *Byrd* began and ended there. *Byrd*, 679 S.W.3d at 495 (cleaned up); *see also Rizzo v. State*, 189 S.W.3d 576, 579 (Mo. banc 2006). "So long as the bill's title is not too broad or amorphous to identify the single subject of the bill, then the bill's title serves as the touchstone for the constitutional analysis." *Byrd*, 679 S.W.3d at 495 (cleaned up).

To be sure, HJR 73 is not a bill. It is a proposal to amend the Constitution that the General Assembly has referred to voters. Like all such proposals,

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however, it was done by joint resolution. The House and Senate treat joint resolutions the same way they treat bills. House Rule 61;[5] Senate Rule 46.[6] As part of the process for passing HJR 73, the legislature chose a title. D10:P1;A3. Therefore, this Court should refer to the title the legislature gave HJR 73 (and the subject agreed to by the parties) to ascertain its subject.

Just in case the Court disagrees, there are times when the subject may be ascertained in some other way. When titles are not clear, courts will sometimes look at the contents of the bill to determine its subject. *Calzone v. Interim Comm'r of Dep't of Elementary and Secondary Educ.*, 584 S.W.3d 310, 322 (Mo. banc 2019); *MPIP,* 799 S.W. 2d at 831-32. Review of the contents reinforces the subject/title agreed upon by the parties and assigned to HJR73 by the legislature. This is because every provision of HJR 73 is about reproductive health care, except for subsections 9 and 10.

2. After determining the subject, this Court must review each provision of HJR 73 considering that subject.

Once the subject is ascertained, the next question is whether the provisions of the measure "fairly relate to, have a natural connection with, or are a means to accomplish the subject . . . as expressed in the title." *Byrd*, 679 S.W.3d at 495

[5] *See* https://documents.house.mo.gov/billtracking/bills251/rules/rules.pdf. Missouri courts may take judicial notice of the proceedings by which laws are enacted. *Schweich v. Nixon,* 408 S.W.3d 769, 778 (Mo. banc 2013).

[6] *See* https://www.senate.mo.gov/19info/rules/rules.htm

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(cleaned up). The circuit court failed to engage in this analysis, instead it summarily concluded that subsections 9 and 10 are closely related to the subject of reproductive health care and cited cases which have no bearing on that analysis. *See* D17:P2.

To satisfy the single-subject requirement, a measure's contents must be "germane, connected, and congruous." *Calzone*, 584 S.W.3d at 321 (cleaned up). That formulation of the test is functionally synonymous with Article XII, Section 2(b)'s mandate that there be only a single subject "and matters properly connected therewith." The issue is "whether all provisions of the bill fairly relate to the same subject, have *a natural connection therewith* or are incidents or means to accomplish its purpose." *Byrd*, 679 S.W.3d at 495 (cleaned up and emphasis added). A measure that contains provisions whose connection to the subject is "remote at best, and in some instances, completely missing" violates the single-subject rule. Such matters are neither "properly connected" or "naturally connected." HJR 73 fails this test. *Id.* at 494.

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D. Subsections 9 and 10 of HJR 73 are not properly connected to reproductive health care, do not have a natural connection with that subject, and are not incidents or means to accomplish the purpose of HJR 73.

1. Reproductive health care is medical care associated with pregnancy.

The subject of HJR 73 is "reproductive health care." But the measure does not define what "reproductive health care" is. Its contents, however, make the meaning quite clear. *See Planned Parenthood of St. Louis Region v. Mo. Dep't of Soc. Servs.*, 639 S.W.3d 449, 456 (Mo. App. 2021). Subsection 2 addresses abortion. D10;A3. Subsection 3 addresses "abortions, abortion facilities, and abortion providers," ostensibly to "ensure the health and safety of the pregnant mother." *Id.* Subsections 4, 5, 6, and 7 concern abortions. *Id.* Subsection 8 addresses "miscarriages, ectopic pregnancies, and *other* medical emergencies." *Id.* (emphasis added). "Medical emergencies" are events that "necessitate the immediate termination of [a] pregnancy." *Id.* In short, reproductive health care refers to abortions and medical emergencies associated with pregnancy.

The fact that HJR 73 proposes to repeal a section of the Missouri Constitution also sheds light on the subject. The language voters previously approved defines the bounds of reproductive health care. *See* Mo. Const. art. I, § 36.2.

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This Court certified summary statements for The Right to Reproductive Freedom Initiative accordingly. In part, those summaries said that The Right to Reproductive Freedom Initiative would "establish a right to make decisions about reproductive health care, including abortion and contraceptives . . ." *Fitz-James,* 678 S.W.3d at 217-18. Said another way, reproductive health care is about pregnancy care and abortion care; the section of law HJR 73 seeks to repeal reflects that focus and voters approved it accordingly.

The fact that HJR 73 seeks to repeal a positive grant of personal, fundamental rights related to pregnancy and abortion care strongly informs the subject and sheds light on the meaning of "reproductive health care" reflected in HJR 73's title. Missing from Article I, Section 36 is any mention of "gender transition" for minors. Similarly, although the summaries of The Right to Reproductive Freedom Initiative identify the central features, there is no mention of gender transition or anything like it in those summaries. *See Fitz-James,* 678 S.W.3d at 204.

2. The General Assembly's Attempt to Repeal Article I, § 36 Necessarily Limits HJR 73's Subject to Reproductive Health Care

Of course, the title of HJR 73 is not just "relating to reproductive health care." Rather, it is "Submitting to the qualified voters of Missouri *an amendment repealing Section 36 of Article I of the Constitution of Missouri, and adopting one new section in lieu thereof* relating to reproductive health care." D10;A3.

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(emphasis added). The full title reveals what the subject is—the people are being asked if they want to eliminate the provision they put in the Constitution two years earlier and replace it with something else. The portion of the title describing what the General Assembly is asking voters to repeal and enact is important when considering the subject and permissible scope of a proposal.

Here, the General Assembly stated HJR 73 would repeal Article I, Section 36 (an amendment about reproductive health care, which says nothing about gender transition care for minors) and enact *in lieu thereof* a new section of law to replace it. "In lieu" means "instead," not "in addition to." By titling HJR 73 as it did, the General Assembly acknowledged Article I, Section 36 concerns reproductive health care, which is the only permissible subject of any proposal to repeal it. Thus, the only logical reading of the title is that HJR 73 will replace one section about reproductive health care with another section on reproductive health care (not including new provisions unrelated to reproductive health care). Said another way, the title signals that the amendment is limited to the subject of the section of law it is repealing and replacing.

3. Applying the *Byrd* test, Subsection 9 of HJR 73 Does Not Fairly Relate to Reproductive Health Care

But the General Assembly did not limit HJR 73 to a single subject of reproductive health care, nor did it enact new provisions "in lieu of" the old ones. Subsection 9 of HJR 73 has nothing to do with abortions, contraception, or emergency treatment related to pregnancy. Rather, it would prohibit performing

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"gender transition surgeries" on and providing "cross-sex hormones or puberty-blocking drugs" to anyone under eighteen. D10;A3. Critical to the analysis, subsection 9 explicitly exempts treatments "unrelated to the purpose of a gender transition," illustrating that this proposed prohibition is, itself, about "gender transition" for minors and expressly does not apply to any health care treatment for abortions, contraception, emergency medical care, or the production of offspring if those procedures are "unrelated to the purpose of gender transition."

And it's not a passing phrase—HJR 73 goes to some length to exempt procedures from any ban on gender transition unless specifically performed for the purpose of gender transition. D10:P4;A6. Subsection 12(4) defines "gender transition surgery" as surgical procedures performed "for the purpose of assisting an individual with identifying with and living as a gender different from his or her biological sex." *Id.* Similarly, subsection 12(6) defines "puberty-blocking drugs" administered "for the purpose of assisting an individual with a gender transition." *Id.*

By their very terms, these definitions exclude surgical procedures, drugs, and other treatments undertaken for some reason other than gender transition, such as for purposes of reproductive health care. A person could certainly "identify with" or "live as" a gender different from their biological sex without having any procedures or treatments affecting their reproductive health/ability to produce offspring. These provisions and definitions make plain what is otherwise

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obvious: subsection 9 is *not* about "reproductive health care"; it is about "gender transition care" for minors.

Indeed, the legislature has conceded that "gender transition care" is a separate and different subject. It was the subject of various Senate Bills which resulted in the enactment of § 191.1720, RSMo. D33-36. There, three bills were combined into one. *Id.* The provisions in many cases mirror the language of HJR subsection 9. But the subject of that bill as declared by the General Assembly in the title is "relating to gender transition procedures."

The General Assembly aware that gender transition care and reproductive health care are different things, as illustrated by the divergent titles it selected. *Compare* D1 ("Submitting to the qualified voters of Missouri an amendment repealing Section 36 of Article I of the Constitution of Missouri, and adopting one new section in lieu thereof relating to reproductive health care.") *with* D33-36 ("To repeal sections 208.152, 217.230, and 221.120, and to enact in lieu thereof four new sections relating to gender transition procedures."). None of the bills about gender transition care refer in any way to reproductive health care.

Moreover, procedures performed, and drugs administered, "for the purpose of assisting an individual with identifying with and living as a gender different from his or her biological sex" is unrelated to abortions and medical emergencies experienced during pregnancy. D10:P2;A4. That's because to determine if an enacted HJR 73 would ban a procedure, one must look at the purpose of the procedure. If it is performed for the purpose of allowing a person

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to live as or identify with another sex, it is banned. If it is performed for reproductive health care (*e.g.*, abortion or miscarriage management) it is not. This is similar to the analysis in *United States v. Skrmetti,* 145 S. Ct. 1816, 1830 (2025). ("Different drugs can be used to treat the same thing . . . and the same drug can treat different things. . .. For the term 'medical treatment' to make sense of these various combinations, it must necessarily encompass both a given drug and the specific indication for which it is being administered."). The General Assembly chose the words of subsection 9. It does not prohibit any surgery, drug or procedure that is for the purpose of reproductive health care and not gender transition.

Relying on the plain language the legislature chose; there can be no overlap between a treatment for "gender transition" and treatment for any other purpose:

At trial, the State argued there was overlap because, it claimed, some treatments for gender transition can lead to sterility. Tr. 40:4-13. The State offered no evidence for this proposition, instead pointing to a concurrence in *Skrmetti* which mentions this possibility. D13:P10. Of course, even if that is true, it ignores the General Assembly's directive. If the treatment is done for the

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purpose of gender transition, it is banned regardless of its effect on reproduction. But if it is done for some reason other than gender transition, it is not banned.

But even if subsection 9 can be construed to have a tangential connection to reproductive health care (as it appears Respondents and the trial court believe), that is not enough. There can be no doubt that many of the treatments banned by subsection 9 would have no overlap with reproductive health care at all.[7] In that respect, the connection is completely missing. Where a connection between the subject of a bill and its various provisions is "remote at best, and, in some instances, completely missing . . . [t]hose provisions do not fairly relate to or have a natural connection with that subject and, instead, *fairly* relate to and have a *natural* connection with [a] wholly different subject." *Byrd*, 679 S.W.3d at 496. A tangential connection is not enough to make two disparate issues fall within the same subject. *Id.*

Even under the State's improper reading of the language of HJR 73, the subjects would have only the smallest overlap. The overwhelming majority of the measure is about abortion. Subsection 9 is about gender transition care for minors and, the State would argue, that might have an overlap if that care affects

[7] *See Kadel v. Folwell*, ___ F.th ___ 2024 WL 1846802 (4th Cir. 2024) ("Just as cisgender people would not seek any treatment for gender dysphoria, they would not seek certain surgeries for gender-affirming purposes."); *Lange v. Houston Cnty., Ga.*, 152 F.4th 1245, 1248 (11th Cir. 2025) ("[Gender affirming care] include[s] chest reconstruction surgery. . . and other surgeries such as facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation . . . , and hair reconstruction, among others." (cleaned up)).

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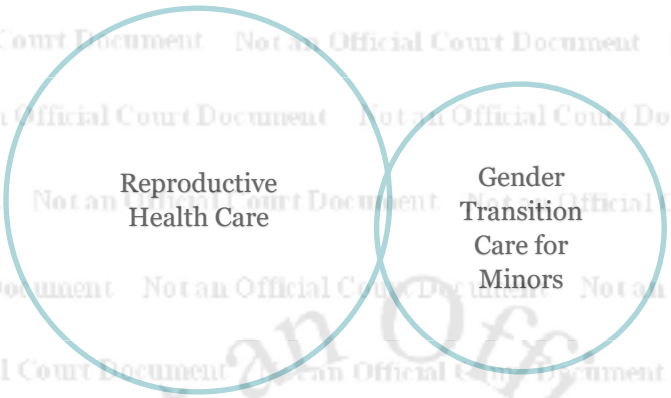
the ability of individuals to reproduce. *See* D13:P10. The subjects, then, look something like this:



That won't fly. Just because a good lawyer can come up with a tangential connection between the subjects does not mean the measure complies with the single-subject requirement. For example, in *Hammerschmidt v. Boone County*, 877 S.W. 2d 98 (Mo. banc 1994), the Court concluded a bill whose subject was "to amend laws relating to elections" but included a provision allowing counties of the state to establish a county constitution by way of an election violated the single-subject requirement. *Id.* at 103. While "it [was] true that the amendment added to the bill . . . contained provisions requiring voter approval through elections . . . its *raison d'être*—was to authorize a new form of county governance previously unknown in Missouri." *Id.* (cleaned up).

The Supreme Court has further explained that even if a provision could fall within the general umbrella of the measure's subject, that is not sufficient for the single-subject requirement. In *Rizzo*, the challenger alleged a single-subject violation for a bill "relating to political subdivisions, with penalty provisions" which included a section prohibiting federal criminals from running for any

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elective office in Missouri. 189 S.W.3d at 579. The Supreme Court observed the bill clearly contained a separate subject because it "affect[ed] candidates in all elections" not just local elections. *Rizzo,* 189 S.W.3d at 581; *Byrd,* 679 S.W. 3d at 495. Ultimately, the Court found the challenged bill "does more than stretch the umbrella—it breaks it. While the provision may incidentally relate to political subdivisions, its scope is far more expansive." *Rizzo,* 189 S.W.3d at 580. So, if a provision could apply to the broader subject, but in reality, its scope goes well beyond the subject, it violates single subject. That is the case here. Even if gender transition care for minors could affect reproduction (there is no record showing it would), because it affects so much outside of the subject of reproductive health care, it violates the single-subject requirement.

Byrd recently affirmed this principle. There, a bill with the subject "political subdivisions" also regulated homelessness in various ways. 679 S.W.3d at 493. The Court held that "[e]ven though such provisions would apply to political subdivisions . . . the new statute's provisions apply to every entity . . . including not-for-profit organizations and private developers." *Id.* at 496. That, the Supreme Court says, violates single subject.

Subsection 9 fails for the same reasons the Court identified in *Hammerschmidt*, *Rizzo,* and *Byrd*. The General Assembly chose "reproductive health care" as HJR 73's subject.

The *raison d'être* of subsection 9, on the other hand, is to ban certain forms of gender-affirming care for minors. It bans procedures that have nothing to do

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with reproductive health care. And even if some portions of subsection 9 could be said to incidentally relate to reproductive care, "its scope is far more expansive." *Rizzo* 189 S.W.3d at 580. The inclusion of subsection 9 in HJR 73 violates the single-subject requirement. *Byrd*, 679 S.W.3d at 496.

4. Under the *Byrd* test, Subsection 10 comprises a subject other than reproductive health care.

Although certainly less controversial, subsection 10 has nothing to do with reproductive health care. To be sure, subsection 10 uses the words "reproductive health care" but that is insufficient. D10:P3;A5; *See Byrd*, 679 S.W.3d at 495. That provision does not fairly relate to and is not a means to implement HJR 73's core purpose of restricting access to reproductive health care (abortions and pregnancy care). *See Byrd*, 679 S.W.3d at 496. Rather, it is simply a mechanism for consolidating contentious litigation into a forum the General Assembly views as more convenient or favorable.

Worse, though, this subsection also provides that: "If a pleading, written motion, or other paper drawing into question the constitutionality" of a state law the challenging party must "file a notice of constitutional question" on the attorney general who will have the right to intervene." D10:P3;A5. This is even further afield of reproductive health care because it applies to all actions about the constitutionality of a statute.

This sentence's applicability is not expressly limited to challenges to statutes "relating to reproductive health care." Indeed, it is not limited to lawsuits

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challenging statutes at all; it applies any time a pleading motion or "paper" might be deemed to *raise a question* about the constitutionality of a statute. It then gives the Attorney General the right to intervene in such suit. *Id.* This provision would impact a wide variety of legal challenges and issues. Inserting a legal practice issue into a ballot measure about "reproductive health care" is the very definition of logrolling.

There's no way to read the sentence as applying only to actions related to reproductive health care. "Every word contained in [the] constitutional provision has effect, meaning, and is not mere surplusage." *Pestka v. State,* 493 S.W.3d 405, 409 (Mo. banc 2016) (cleaned up).

This Court may not read words into this subsection that are simply not there. *Macon Cnty. Emergency Servs. Bd. v. Macon Cnty. Comm'n,* 485 S.W.3d 353, 355 (Mo. banc 2016). The second sentence of subsection 10 does not include the descriptor "relating to reproductive health care" after the phrase "state statute." Failure to include that requires reading the second sentence as it plainly states—to apply any time a question of constitutionality is raised regarding *any* statute.

Regardless, none of this is about reproductive health care. The subject of subsection 10 is more accurately described as "litigation" or "civil procedure." *See, e.g.*, Rule 52.12(b)(3) (addressing notice and intervention when validity of statutes, regulations, or constitutional provisions is questioned). It addresses the judiciary, not the bill of rights. This sort of "incidental connection" does not

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satisfy the single-subject requirement. *Byrd*, 679 S.W.3d at 496; *Rizzo*, 189 S.W.3d at 580.

The trial court's cursory analysis—that subsection 10 falls within the subject of reproductive health care—relies on *Coleman v. Ashcroft,* 696 S.W.3d 347 (Mo. banc 2024). There, opponents of The Right to Reproductive Freedom Initiative raised a late-filed single subject challenge, arguing there was more than one subject because "Amendment 3 could affect the validity of a large . . . number of statutes." *Id.* at 369. The Supreme Court rejected that argument, finding the single-subject challenge meritless. *Id.* at 358.

Coleman is certainly nothing like the situation here, where there are two provisions that on their face fall well outside the scope of the subject of the proposed constitutional amendment. Respondents induced the trial court to erroneously rely on *Coleman* because The Right to Reproductive Freedom Initiative also includes a provision describing the standard of review for laws relating to protecting the right to reproductive freedom. That is a difference in kind from subsection 10. Strict scrutiny effectuates the purpose of The Right to Reproductive Freedom Initiative. It cannot be said that subsection 10 is integral to or has anything to do with carrying out HJR 73's purpose.

Instead, the inclusion of subsection 10 in HJR 73 is much closer to *Hammerschmidt*, where provisions authorizing counties to adopt a constitution did not relate to the subject of "elections." 877 S.W. 2d 98 at 103. Here, case-filing and notice-of-pleading requirements similarly do not relate to reproductive

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health care just because a lawsuit might involve statutes that regulate such health care. Such subject matter is likewise "far more expansive" and violates the single subject mandate of article XII, § 2(b), *Rizzo* 189 S.W.3d at 580.

E. HJR 73 is unconstitutional and should not appear on the November 2026 ballot.

As it stands, HJR 73 violates the procedural requirements of Article XII, § 2(b) so it cannot be on the ballot. This Court should enter the judgment the trial court should have entered and issue "an injunction prohibiting [the] Secretary of State from placing [the] proposed constitutional amendment" on the ballot. *MPIP*, 799 S.W.2d at 826; Rule 84.14.

Should the Court agree, it need not read on. The remaining Points Relied On deal with the unfair and insufficient Summary Statement and Fair Ballot Language drafted by the Secretary of State and approved by the circuit court. Those only matter if the Court allows HJR 73 to proceed to a vote.

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II. The circuit court erred in finding the Fourth Bullet Point of the Summary Statement fair and sufficient because a summary statement must inform voters that they are repealing an amendment that they just approved, in that the Fourth Bullet Point fails to meaningfully inform voters that HJR 73 asks them to reconsider and eliminate the recently approved Right to Reproductive Freedom Initiative.

Standard of Review. "Where, as here, the parties argue the fairness and sufficiency of the summary statement based on stipulated facts, joint exhibits, and undisputed facts, the only question on appeal is whether the circuit court drew proper legal conclusions, which the appellate court reviews de novo." *Fitz-James*, 678 S.W.3d at 202 (quoting *Fitzpatrick v. Ashcroft*, 640 S.W.3d 110, 124-125 (Mo. App. 2022)).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

The Summary Statement for HJR 73 is a mess. It fails to tell voters that a right is being eliminated and replaced with fewer rights. More concerning for its fairness and sufficiency, though, the Summary Statement makes it appear as if a vote for the measure proposed in HJR 73 would actually *establish rights* not currently in the Constitution and *expand* existing rights that are already there. It is an affirmative misrepresentation of the results of HJR 73's changes to the

Constitution, intended to confuse voters and induce supporters of The Right to Reproductive Freedom Initiative into voting "yes" to repeal that which they actually support. The verbs used in the Summary Statement tell the story.

According to the Summary Statement approved by the circuit court, a vote for HJR 73 would "Guarantee," "Ensure," "Ensure," and "Allow" various things. The reality is the opposite. The measure guarantees nothing. It does nothing to ensure rights; it narrows them. Nor does it impart new rights that did not otherwise exist; the skimpy rights that are included were already in the Constitution as part of The Right to Reproductive Freedom Initiative. The entire Summary Statement is unfair and insufficient.

This point, and those that follow, discuss the reasons that each bullet point violates the law. But it is not just one word or phrase that is wrong. It's that the entire message—that HJR 73 is giving rights rather than removing them—is deceitful. This Court should scrap the whole thing and "rewrite the entire summary statement." *Fitz-James,* 678 S.W.3d at 214.

The circuit court agreed that the original Summary Statement was unfair and insufficient because it failed to inform voters that a vote in favor of HJR 73 would remove The Right to Reproductive Freedom Initiative from the Constitution, which voters had just passed at the ballot box. The Secretary's wholly insufficient attempt to address that clear error appears in the Fourth Bullet Point of the summary statement.

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That revised bullet point states HJR 73 will "[r]epeal Article I, section 36, approved in 2024; allow abortion for medical emergencies, fetal anomalies, rape, and incest." D25;A8. This bullet point is unfair and insufficient. In *Pippens v. Ashcroft*, this Court correctly held that to be fair and sufficient the ballot summary must explicitly refer to the changes a measure makes to the constitution, particularly when removing an important provision (for example—the nonpartisan state demographer). *Pippens,* 606 S.W.3d at 709.

Here, the summary statement must "explicitly refer" to something even bigger—the elimination of a "fundamental right" from the Missouri Constitution. HJR 73 removes the entirety of The Right to Reproductive Freedom Initiative. The text of the bill shows that it is striking the right from the Constitution altogether:

> ~~[Section 36. – 1. – This Section shall be known as "The Right to Reproductive Freedom Initiative".~~
>
> ~~2. The Government shall not deny or infringe upon a person's fundamental right to reproductive freedom, which is the right to make and carry out decisions about all matters relating to reproductive health care, including but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.~~

D11.

The clear purpose of the measure (as reflected in the title and contents) is primarily to repeal the rights the people only recently put into the Constitution. That should be the *first* thing the voters are told about this measure. Nothing in the new language could possibly be construed as *adding* rights to the Constitution. But the voters would not know that if they read the "summary." The

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General Assembly completely failed to include *any* reference to the full removal of rights—making clear that the intention was to obfuscate the purpose. Following the legislature's lead, the Secretary continued that obfuscation by burying the point in the Fourth Bullet Point of the Summary Statement with language that does nothing to truly inform the voters their rights would be taken away and then adding a semicolon and discussing a positive grant of rights, which injects further ambiguity.

It is also important that voters be reminded that it was just last year that they approved The Right to Reproductive Freedom Initiative. *See* Mo. Const. art. I, § 36. Voters must be apprised, in a meaningful way, that they are being asked to eliminate what they just recently approved. In the only two other instances (a 2008 measure on cloning and a 2020 measure on redistricting) where the General Assembly placed a measure on the ballot to undo a vote from an immediately preceding election, this Court has required the summary statement to advise voters of this all-important context. *See Pippens*, 606 S.W.3d at 701 ("As in *Cures Without Cloning*, we believe that voters need to be informed that they are being asked to reconsider, and substantially modify, a measure which they only recently approved.").

Voters cannot be expected to know or adequately assess whether to approve HJR 73 without sufficient and meaningful context about The Right to Reproductive Freedom Initiative in language the average voter will actually understand. The Secretary's revised Summary Statement does not come close to

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meeting that bar. As a matter of law, the Summary Statement is unfair and insufficient without this context.

A. Rather than "explicitly refer[ring]" to a major change, the language used in the Fourth Bullet Point obscures the choice placed before voters.

Rather than explaining that a vote for HJR 73 would eliminate The Right to Reproductive Freedom Initiative, the summary refers to "Article I, Section 36." But the phrase "Article I, Section 36" means nothing to average voters and does not "inform the voters of the central feature" by giving "the voters a sufficient idea of what the proposed amendment would accomplish." *Fitz-James,* 678 S.W.3d at 202-03. Appellant can find no case where the court has certified a summary statement that simply refers to changes by the number of the section being altered.

1. The use of obscure numbers does not inform the voters.

Article I, Section 36 is not, and has never been the common way the public has referred to that constitutional provision. Even lawyers, if they are not familiar with this particular measure, would be hard-pressed to know what "Article I, Section 36" covers. This reference to article and section number has never been acceptable in ballot summaries. The history of this measure shows that. When faced with the measure to enshrine The Right to Reproductive Freedom Initiative, this Court did not refer to it by number, instead explaining what the

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measure actually would do. *Fitz-James,* 678 S.W.3d at 216 ("establish a right to make decisions about reproductive health care, including abortion and contraceptives, with any government interference presumed invalid."). It would be absurd to ask the voters if they wanted to amend the Constitution by adding a new Section 36 to Article I. The corollary is true. If the people are being asked to eliminate the right, it cannot be referred to with numbers. The summary statement should describe in words, not numbers, what is being done and should emphasize that a now-guaranteed right is being eliminated.

After all, summary statements tell voters when they are enacting a new right, so it would be unfair and insufficient to fail to inform them when they are *eliminating* one. *See Dotson,* 464 S.W.3d at 196 (ballot summary for a constitutional amendment advised voters amendment would "include a declaration that the right to keep and bear arms is a unalienable right"); *Fitz-James*, 678 S.W.3d at 217 ("establish a right to make decisions"); *Shoemyer v. Kander,* 464 S.W.3d 171, 174 (Mo. banc 2015) ("be amended to ensure that the right of Missouri citizens to engage in agricultural production and ranching practices not be infringed")

The Secretary obfuscates the effect of HJR 73 by using the legal citation "Article I, Section 36" rather than the provision's actual title, which contains common parlance. Article 1, Section 36 was known as Constitutional Amendment

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3, or The Right to Reproductive Freedom Initiative.[8] Neither the text of the final summary statement nor the fair ballot language mentioned "Article I, Section 36" in connection with that initiative.[9] The words "Article I, Section 36" do not indicate the content of that provision, they are not in the common parlance, and voters do not know what they mean.

2. The words "approved in 2024" are unfair and insufficient.

The words "approved in 2024" are similarly devoid of context or meaning. Approved by whom? Some random bureaucrat? The legislature? Good Housekeeping?[10] The voter is left to wonder. That's why this Court has made clear that the Summary Statement must make voters aware this is the same provision *they* just approved. *See Pippens*, 606 S.W.3d at 712. Here too, "voters need to be informed that they are being asked to reconsider, and substantially modify, a measure which *they* only recently approved." *Id.* (emphasis added). Even if voters somehow had an inkling this referred to a ballot measure, there were eight ballot measures up for vote in 2024.[11] The misleading effect is compounded by the use of the verbs in each bullet point implying that some new

[8] https://www.sos.mo.gov/elections/petitions/2024BallotMeasures

[9] *Id.*

[10] See *Hanberry v. Hearst Corp.*, 276 Cal. App. 680 (Ca. Ct. App. 1969) (discussing Good Housekeeping Magazine's seal of approval).

[11] https://www.sos.mo.gov/elections/petitions/2024BallotMeasures

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rights are being "guaranteed" or "assured." Voters need to be reminded that they are being asked to eliminate a right they just heard a lot about during the last election cycle.

3. The word "repeal" fares no better.

The word "repeal" only adds to the confusion sowed by the fourth bullet point. "Repeal" is used almost exclusively in the legislative and legal context, leaving the average voter with little to no understanding of what would happen if HJR 73 were approved. Like in *Fitz-James* where this Court used the word "establish" to explain what would happen if Amendment 3 were approved, the summary statement for HJR 73 should use a word like "eliminate" to ensure voters are aware of the effect of a vote for the measure.

4. *Pippens* is the guide to a fair and sufficient summary statement.

In *Pippens*, this Court rewrote a summary statement concerning redistricting to explain to voters the effect of the proposed amendment. *See* 606 S.W.3d at 712. Rather than use section and subsection numbers, the Court used words designed to give voters a meaningful opportunity to assess the potential impact of the initiative and to make clear that the changes involved *voter-approved* provisions of the law:

> Change the redistricting process voters approved in 2018 by (i) transferring responsibility for drawing state legislative districts from the Nonpartisan State Demographer to Governor-

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> appointed bipartisan commissions; (ii) modifying and reordering the redistricting criteria.

Id. For some summary statements, voters must have context to have a meaningful opportunity to assess whether to vote for or against a measure. *Brown*, 370 S.W.3d at 654.

To *meaningfully* explain to voters the effect of HJR 73, the summary statement should at a minimum use the name of the constitutional amendment HJR 73 seeks to eliminate(as it is titled in the Constitution): "The Right to Reproductive Freedom Initiative." It must explain that this is the same measure the voters approved, and it must explain how this vote would eliminate the measure they voted on.

B. The Fourth Bullet Point is grammatically incorrect, making it impossible for voters to ascertain what it means.

A summary statement must also be "intelligible." *Pippens,* 660 S.W.3d at 702. But the Fourth Bullet Point of the Summary Statement is grammatical nonsense. It contains one clause, then an additional clause following a semicolon that makes it impossible to tell whether the proposed amendment will newly allow abortions for medical emergencies, etc., or whether current law already permits that. As one example, voters are left to wonder whether the "repeal of Article I, Section 36" would allow abortions for medical emergencies or whether they are being asked to eliminate a provision that currently allows abortions for medical emergencies. Of course, the removal of a section couldn't allow anything, it's a repeal. And if the Secretary means to advise that the measure eliminates a

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provision that currently allows abortions for medical emergencies, the language should just say that.

Part of the problem is the random semi-colon in the middle of the bullet point. A semicolon "separate(s) independent clauses."[12] But the Secretary's use of a semicolon does not seem to separate independent phrases. *See Millien v. State*, 336 So. 3d 354, 357 (Fla App. 2022) (discussing the significance of a semi-colon in finding that each category is independent). The use of the semicolon here is odd, confusing, and further obfuscates the meaning of Bullet Point Four and of HJR 73's impact on the fundamental rights guaranteed by The Right to Reproductive Freedom Initiative.

The elimination of a fundamental right is the main point of HJR 73. It must be explicitly disclosed in language the voters are likely to understand, using appropriate grammar. The legislature did not include any reference at all, while the Secretary obscured it by placing it late in the summary. If this Court allows the measure on the ballot and certifies a new summary statement, the first bullet point should advise voters of this important change. The reference to removing the right cannot be obscured in a confusing, low-level, bullet point.

[12] https://www.merriam-webster.com/grammar/a-guide-to-using-semicolons

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III. The circuit court erred in finding the Fourth Bullet Point of the Summary Statement fair and sufficient because a summary statement is misleading if it implies a change to existing law where none occurs, in that the Fourth Bullet Point falsely implies that, for the first time, the Constitution will allow abortions for medical emergencies, fetal anomalies, rape, and incest when The Right to Reproductive Freedom Initiative already guarantees such care.

Standard of Review. This issue is reviewed *de novo*. *Fitz-James,* 678 S.W.3d at 202 (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

There is another error in the Fourth Bullet Point. In addition to the insufficiencies already identified, the bullet point implies that a vote in favor of the amendment proposed by HJR 73 will change the law when it does not. It is well trodden ground that a summary statement is misleading if it "leads voters to erroneously believe a measure would change existing law when it [does] not." *McCarty v. Mo. Sec'y of State*, 710 S.W.3d 507, 516 (Mo. banc 2025). That's exactly what the revised summary statement does.

As discussed above, the Fourth Bullet Point is unintelligible, but it contains the words "allow abortions for medical emergencies, fetal anomalies, rape, and

incest." When read in context, the Point asks voters "shall the Missouri Constitution be amended to . . . allow abortions for medical emergencies," etc. But that is simply not what would happen if the proposal were adopted. *See Fitz-James,* 678 S.W.3d at 202 (cleaned up) ("The summary statement should accurately reflect both the legal and probable effects of the proposal.").

HJR 73 repeals The Right to Reproductive Freedom Initiative. The Right to Reproductive Freedom (current law) guarantees and protects medical care for emergencies, ectopic pregnancies, and miscarriages. *See* Mo. Const. art. I, § 36. So, a "yes" vote on HJR 73 is not what would allow the abortions described. Instead, it would ban certain abortions that are already allowed. Rather than acknowledge the hard-fought protections that currently exist in The Right to Reproductive Freedom Initiative, the Summary Statement implies that, for the first time, the Constitution will allow access to certain care if HJR 73 is approved.

This Court faced a similar issue in *Pippens*. The summary statement there was insufficient and unfair because, among other things, it "falsely claim[ed] credit for introducing redistricting criteria into the Missouri Constitution" despite *such criteria already existing*. 606 S.W.3d at 711. This Court rewrote that summary statement to resolve that deficiency and *Pippens* compels the same conclusion here.

The Summary Statement unfairly implies that HJR 73 creates a new right and allows certain care for the first time. Voters should not be made to believe that. The opposite is true. That's what happened in *Fitz-James v. Ashcroft*. The

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circuit court rewrote the Secretary's summary statements for Dr. Fitz-James's 2024 initiative petitions. The Secretary appealed and argued that his original summary statement was fair and sufficient. This Court disagreed, finding that the Secretary's description of the measures as "allow[ing] for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subjected to medical malpractice" did not "accurately reflect the probable effect of the proposals." *Fitz-James,* 678 S.W.3d at 204.

As discussed, next, a vote for the amendment proposed in HJR 73 would disallow many of the abortions that are protected under current Missouri law. To the extent a bullet point on this topic survives review at all, it should be revised to make clear that the law will *narrow* the rights currently guaranteed in the constitution.

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IV. The circuit court erred in finding the Fourth Bullet Point of the Summary Statement fair and sufficient because a summary statement must accurately reflect the legal and probable effects of the measure, in that the Fourth Bullet Point omits that HJR 73 restricts abortions for rape and incest to no later than twelve weeks' gestational age, a material limitation absent under current law.

Standard of Review. This issue is reviewed *de novo*. *Fitz-James,* 678 S.W.3d at 202 (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

The Fourth Bullet Point affirmatively misrepresents that it will allow certain abortions, but it also omits that it will ban abortions in circumstances which current law allows. This is unfair and insufficient. *Fitz-James,* 678 S.W.3d at 211 (cleaned up) (summary statement should "give voters a sufficient idea of what a proposed amendment [] would accomplish").

Currently, under The Right to Reproductive Freedom Initiative, access to abortion (in all instances) is guaranteed through fetal viability. Mo. Const. art. I, § 36 ("Fetal Viability, the point in pregnancy when, in the good faith judgment of a treating health care professional and based on the particular facts of the case, there is a significant likelihood of the fetus's sustained survival outside the uterus

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without the application of extraordinary medical measures."). HJR 73 not only limits the circumstances under which abortion is available, but it takes away the "good faith judgment of a treating health care professional" as to when a fetus is viable and replaces it with a strict time limit. D10:P1;A3 (abortions may be performed or induced "in cases of medical emergency, fetal anomaly, rape, or incest . . . in cases of rape or incest, the abortion may be performed or induced no later than twelve weeks gestational age of the unborn child").

If HJR 73 were approved, abortions would be limited to only cases of medical emergency, fetal anomaly, rape, or incest and in the instances of rape or incest, abortions would only be available up to only 12 weeks gestational age. D10:P1;A3. This is a dramatic difference in access to abortion care as compared to current law.

And this is not some academic argument. The changes HJR 73 will make, if approved, have real world consequences. Unlike under The Right to Reproductive Freedom Initiative, survivors of rape or incest will not be able to receive care at 12 weeks and one day gestational age if HJR 73 is approved. In fact, the probable outcome of HJR 73 is that survivors of rape or incest will not be able to receive abortion care unless they disclosed their abuse *and* their provider believed them. The Right to Reproductive Freedom Initiative provides legal protection for physicians who perform abortion care. HJR 73 strips these protections away, with the likely outcome that many physicians will (rightfully) be concerned about

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criminal liability if they were to perform an abortion. *See* § 188.030.3, RSMo (imposing criminal penalties on abortion providers in certain instances).

"Sometimes it is necessary for the secretary of state's summary statement to provide a context reference that will enable voters to understand the effect of the proposed change." *Brown,* 370 S.W.3d at 654 (cleaned up). It is crucial information that in the circumstances of rape or incest an abortion would only be available until 12 weeks gestational age for voters to be able to understand the effect of the repeal of The Right to Reproductive Freedom Initiative.

Without the context that abortions in the case of rape or incest are only available up to 12 weeks gestational age, voters are not accurately apprised of what HJR 73 does. HJR 73 eliminates access to abortions for survivors of rape or incest in most circumstances. It is unfair and insufficient to describe the effect of HJR 73 otherwise. *See Boeving v. Kander*, 493 S.W.3d 865, 878 (Mo. App. 2016). Nothing in the summary statement "signal[s] that the voter should investigate" this issue further before voting. *See id.* Voters are not told that adoption of HJR 73 would result in limitations that do not currently exist being imposed on abortions in cases of rape or incest. Voters must be made aware of these draconian limits.

To the extent a bullet point on this topic is included in the summary statement this court writes, it should make clear that HJR 73 removes protections for good-faith medical judgments and that abortions in the cases of rape and incest will be limited as compared to current law. The real effect of the

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amendment is to *reduce or eliminate* the right to an abortion in cases of rape and incest.

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V. The circuit court erred in finding the First Bullet Point of the Summary Statement fair and sufficient because a summary statement is misleading if it suggests the measure changes the law when it does not in that the First Bullet Point falsely implies that HJR 73 would newly "guarantee" access to care for medical emergencies, ectopic pregnancies, and miscarriages when The Right to Reproductive Freedom Initiative currently guarantees such care.

Standard of Review. This issue is reviewed de *novo*. *Fitz-James,* 678 S.W.3d at 202 (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

The First Bullet Point of the Summary Statement remains unchanged from the summary statement initially proposed by the General Assembly in HJR 73. It asks voters if they want to amend the Constitution to "Guarantee women's medical care for emergencies, ectopic pregnancies and miscarriages." D19. It was error for the trial court to certify the Summary Statement as sufficient and fair with this bullet point remaining as is.

It is well established that implying a ballot measure will change the law when it will not renders the summary statement unfair and insufficient. *McCarty,* 710 S.W.3d at 516 (summary statement is misleading if it "leads voters

to erroneously believe a measure would change existing law when it did not"). That's what the First Bullet Point of the Summary Statement does. It claims HJR 73 will "guarantee access to care for medical emergencies, ectopic pregnancies, and miscarriages," as if it is not guaranteed now. But this is already the law. Mo. Const. art. I, § 36.2. ("The Government shall not deny or infringe upon a person's fundamental right to make and carry out decisions about all matters relating to reproductive health care, including, but not limited to prenatal care, childbirth, postpartum care, birth control, abortion care, miscarriage care, and respectful birthing conditions.").

So, if voters choose to eliminate The Right to Reproductive Freedom Initiative and adopt HJR 73, they will actually be *eliminating* the guaranteed access to care and replacing it with a proposal that does nothing of the sort. In this respect, the language of the Summary Statement implies creation of a *new* guarantee, when nothing about it is new. As the Summary Statement is currently constructed, voters are misled to believe they will be voting to establish rights for the first time, rather than eliminating rights they currently have.

Compounding the unfairness and insufficiency is the word "guarantee" implies there will be some sort of active effort to protect the rights being enacted (assuming there are any rights enacted in the first place). As currently written, the Summary Statement assumes there is some positive requirement that patients be given access to certain reproductive health care services. There is *nothing* in HJR 73 that directs or requires that care be provided. A plain reading

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of HJR 73 allows a patient presenting with a miscarriage to be turned away from care if the physician is concerned, he or she will be held liable for performing an unauthorized abortion.

To the extent this topic should be included in the summary statement at all, it should inform voters that they will be repealing the guarantees of access to reproductive care and replacing it with authorization for the General Assembly to limit that care.

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VI. The circuit court erred in finding the Second Bullet Point of the Summary Statement fair and sufficient because a summary statement must accurately reflect the legal and probable effects of the measure, in that Second Bullet Point inaccurately suggests that HJR 73 would "ensure" women's safety.

Standard of Review. This issue is reviewed *de novo*. *Fitz-James*, 678 S.W.3d at 202 (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

Bullet Point Two, in context, asks voters if they want to amend the Missouri Constitution to "ensure women's safety during abortions." That statement does not "accurately reflect both the legal and probable effects of the proposal." *Copenhaver v. Ashcroft*, 697 S.W.3d 601, 606 (Mo. App. 2024); *Fitz-James,* 678 S.W.3d at 202. HJR 73 simply does not do what the summary claims. This is unfair and insufficient, and the circuit court erred in holding otherwise.

HJR 73 does not include a *single* provision that would "ensure" women's safety. HJR 73, does not for example, establish any standards of care, licensing requirements, rights to second opinions, or ban individuals from harassing women as they enter a facility to receive abortion care. *See* D10;A3. It would simply permit the General Assembly to enact some unspecified measures in the future, should it choose to do so. *See* D10:P2;A4 (subsection 3).

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Certainly, "the general assembly may enact laws . . . to ensure the health and safety of the pregnant mother" as a result of the amendment. D10;A3. But "ensure" means "to make certain, sure, or safe."[13] HJR 73's *authorization* for the legislature to act, in no way could reasonably be read to mean the amendment will ensure safety (to the extent one's safety may ever be "made certain"). It's more of a campaign slogan than a neutral attempt at summarizing. As much as the proponents would like to encourage a yes vote, the amendment itself is not some self-executing protection for women. Bullet Point Two inaccurately describes the probable effect of HJR 73.

Bullet Point Two also falsely and misleadingly implies that abortions, currently performed as Article I, Section 36 permits, are *not* safe. This language is intentionally argumentative and designed to generate bias in favor of adopting the measure. A summary statement must "fairly and impartially summarize the purposes of the proposed measure to prevent voters from being deceived or misled." *McCarty*, at 710 S.W. 3d at 515. The language of the summary statement is purposefully drafted to deceive and mislead voters. The Constitution currently ensures access to safe abortion care. It is unfair and insufficient to imply otherwise.

This Bullet Point simply does not belong in an official summary statement. The proponents are free to campaign on the measure as they see fit, but the ballot

[13] https://www.merriam-webster.com/dictionary/ensure

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title must be a fair and sufficient, impartial summary of the probable effects of the measure.

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VII. The circuit court erred in finding the Fifth Bullet Point of the Summary Statement fair and sufficient because a summary statement may not use partisan, biased, or argumentative language, in that the phrase "sex-change procedures" is a politically charged term that does not neutrally describe the probable effects of HJR 73.

Standard of Review. This issue is reviewed *de novo*. *Fitz-James,* 678 S.W.3d at 202 (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

The Secretary changed the last bullet point from the General Assembly's original language in order to use the phrase "sex-change." In approving that change, the circuit court ignored the admonitions of this Court from barely two years ago. In *Fitz-James,* this Court made clear that partisan political phrases render summary statements unfair and insufficient. This Court said that the phrase "right to life" is a partisan political phrase. *Fitz-James,* 678 S.W.3d at 208. "The use of the term 'right to life' is simply not an impartial term." *Id.* This Court also found the phrase "partial birth abortion" to be a "politically-charged phrase that partisan political groups have used to label certain types of medical procedures." *Id.* at 209.

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The phrase "sex-change procedures" is similar. It is also a politically charged phrase that partisan political groups use to describe certain medical procedures. Courts regularly start with dictionary definitions of terms to determine their meaning. *See, e.g.*, *Dickemann v. Costco Wholesale Corp.*, 550 S.W.3d 65, 70 (Mo. banc 2018); *ACLU of Missouri v. Ashcroft,* 577 S.W.3d 881, 891 (Mo. App. 2019). Merriam Webster's has a definition of "sex change," which it says means "gender confirmation surgery" or "gender-affirming surgery." Critically, Webster's also contains a "NOTE" that "this term is usually considered to be offensive."[14] There is nothing in the record that "sex change procedure" is medically accurate or appropriate in describing what HJR 73 does. Instead, it is purely a partisan political phrase meant to signal to certain voters how to approach their choice on HJR 73.

And nothing in the text of HJR 73 uses the phrase "sex-change procedure." Nor is there any fixed definition of that phrase in the measure. "It is not a neutral description of the purpose or probable effect of the [measure]." *Fitz-James,* 678 S.W.3d at 208. The Secretary did not even defend this change in his briefing to the circuit court. D22. He slipped this change in, hoping no one would notice, in order to further signal his support of the measure and infuse bias in the summary statement.

[14] https://www.merriam-webster.com/dictionary/sex%20change%20surgery

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If we assume there was some neutral motive to changing the description to "sex-change procedure," it is impossible to pinpoint where the Secretary actually got that language from. The phrase "sex-change procedure" appears nowhere in any Missouri statute and HJR 73 refers to "gender transition surgeries" and "cross-sex hormones or puberty-blocking drugs" and prohibiting these for the purpose of gender transition for individuals under eighteen years of age. To the extent the Secretary is saying that "sex change procedures" are the same as "gender transition surgeries," it is simply an inaccurate summary of the measure and incorrect statement of the probable effect of a vote for HJR 73.

Summary statements should use language that "fairly and impartially summarize[s] the purposes of the measure so that voters will not be deceived or misled." Under no standard is the phrase "sex-change procedure" fair and impartial. In fact, the Secretary of State took the opportunity to revise the legislature's summary statement to include this phrase rather than the slightly less partisan (although still unfair and insufficient) phrase "gender transition." D10;A3. The Secretary took the opportunity to play partisan games with the summary of HJR 73. This Court should refuse to allow that.

This bullet point addresses a separate point than the remainder of HJR 73 and does not belong in the summary statement. To the extent it is included, it should reflect that the measure takes away the right of parents to make decisions about gender-affirming care.

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VIII. The circuit court erred in finding the Fair Ballot Language fair and sufficient because fair ballot language must inform voters that they are repealing an amendment that they just approved, in that the Fair Ballot Language fails to meaningfully inform voters that HJR 73 asks them to reconsider and eliminate the recently approved Right to Reproductive Freedom Initiative.

Standard of Review. "Where, as here, the parties argue the fairness and sufficiency of the [fair ballot language] based on stipulated facts, joint exhibits, and undisputed facts, the only question on appeal is whether the circuit court drew proper legal conclusions, which the appellate court reviews de novo." *Fitz-James,* 678 S.W.3d at 202, (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

The circuit court also erred in finding the fair ballot language fair and sufficient. "The same sufficiency and fairness standard applies, as section 116.025 directs that challenges to fair ballot language shall be conducted in accordance with section 116.190." *Fitzpatrick*, 640 S.W.3d at 125.

The Fair Ballot Language states that HJR 73 will "[r]epeal Article I, section 36, approved in 2024; allow abortion for medical emergencies, fetal anomalies, rape, and incest." D25;A8. This is unfair and insufficient for the same reasons the Fourth Bullet Point in Summary Statement for HJR 73 is unfair and insufficient.

See Pippens, 606 S.W.3d at 701 (cleaned up). To *meaningfully* explain to voters the effect of HJR 73, the fair ballot language, should at a minimum, use the name of the constitutional amendment HJR 73 seeks to eliminate (as it is titled in the Constitution): "The Right to Reproductive Freedom Initiative."

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IX. The circuit court erred in finding the Fair Ballot Language fair and sufficient because fair ballot language is misleading if it implies a change to existing law where none occurs, in that the Fair Ballot Language falsely implies that, for the first time, the Constitution will allow abortions for medical emergencies, fetal anomalies, rape, and incest when The Right to Reproductive Freedom Initiative already guarantees such care.

Standard of Review. This issue is reviewed *de novo*. *Fitz-James*, 678 S.W.3d at 202 (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

The fair ballot language also unfairly implies that HJR 73 will change the law when it does not. *See McCarty*, 710 S.W.3d at 516. The fair ballot language states that a "yes" vote will "allow abortions in cases of medical emergency, fetal anomaly, rape, or incest." D24;A9. This is unfair and insufficient for the same reasons this identical language in the Summary Statement is unfair and insufficient. *See supra* Section III. To the extent this language survives review at all, it should be revised to make clear that the law will *narrow* the rights currently guaranteed in the Constitution.

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X. The circuit court erred in finding the Fair Ballot Language fair and sufficient because fair ballot language is misleading if it suggests the measure changes the law when it does not in that the Fair Ballot Language falsely implies that HJR 73 would newly "guarantee" access to care for medical emergencies, ectopic pregnancies, and miscarriages when The Right to Reproductive Freedom Initiative currently guarantees such care.

Standard of Review. This issue is reviewed *de novo*. *Fitz-James,* 678 S.W.3d at 202 (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38. D38:P5.

The Fair Ballot Language tells voters that a "yes" vote would "guarantee women's medical care for emergencies, ectopic pregnancies and miscarriages" and that a "no" vote would not. This language is unfair and insufficient for the same reason the Summary Statement's First Bullet Point is deficient. *See supra* Section V. The Court should rewrite this language to make clear that HJR 73 is eliminating rights and not guaranteeing anything. *McCarty,* 710 S.W.3d at 516

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XI. The circuit court erred in finding the Fair Ballot Language fair and sufficient because fair ballot language is misleading if it suggests the measure changes the law when it does not in that the Fair Ballot Language falsely implies that HJR 73 would newly "guarantee" access to care for medical emergencies, ectopic pregnancies, and miscarriages when The Right to Reproductive Freedom Initiative currently guarantees such care.

Standard of Review. This issue is reviewed de *novo*. *Fitz-James,* 678 S.W.3d at 202 (quoting *Fitzpatrick,* 640 S.W.3d at 124-125).

Preservation. Fitz-James preserved this issue in her petition (D2), her briefing (D21; D27; D14) and although it was not required, an after trial motion. D38.

The "yes" and "no" fair ballot language describes subsection 9 of HJR 73 in a biased, argumentative, and politically charged way. It tells voters that a "yes" vote will amend the Constitution to "protect children from sex-change by prohibiting certain medical procedures and medications for minors, with exceptions for specific medical conditions" and that a "no" vote will not amend the Missouri Constitution to "protect children from sex-change." D24;A9:P1-2. This is unfair and insufficient.

Describing HJR 73 as "protecting" children from sex-change is not "a neutral description of the purpose or probable effect" of the measure. *See Fitz-James,* 678 S.W.3d at 208. Like the phrase "right to life" or "partial birth

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abortion," this is simply not impartial. *See id.* It is meant to signal a certain political position about HJR 73. That is unfair and insufficient.

The phrase "protect children from sex-change" is similar. It is also a politically charged phrase that partisan political groups use. There is nothing in the measure that refers to "sex-change" nor is there any fixed definition of that phrase. "It is not a neutral description of the purpose or probable effect of the [measure]." *Id.* Instead, it is intended to signal to voters the Secretary's position on subsection 9 of HJR 73. This is not countenanced by statute or this Court's jurisprudence on fair ballot language.

Under no standard is the phrase "protect children from sex-change" fair and impartial. In fact, like with the Summary Statement, the Secretary of State took the opportunity to revise the Fair Ballot Language to include this phrase rather than the phrase "gender transition." The Secretary played partisan games with the Fair Ballot Language. This Court shouldn't allow that. For these and the reasons the language in the Summary Statement's Fifth Bullet Point is unfair and insufficient, the Fair Ballot language cannot stand. *See supra* Section VII.

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CONCLUSION

Given that this appeal involves *de novo* review of an issue that needs to be resolved soon, this Court should reverse but not remand for additional proceedings. Instead, the Court should enter the judgment that should have been entered. Rule 84.14.

That judgment should follow prior precedent of the Supreme Court, find that HJR 73 contains more than one subject, and enjoin the Secretary of State from placing it on the ballot. If the Court does not, it should follow its own precedents regarding ballot summaries and fair ballot language and certify a new summary statement and fair ballot language to the Secretary.

Respectfully submitted

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CERTIFICATE OF SERVICE AND COMPLIANCE

A copy of this document and the appendix were served on counsel of record through the Court's electronic notice system on November 3, 2025.

This brief complies with the limitations contained in Supreme Court Rule 84.06 and Local Rule 41. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 14,779 excluding the cover, table of contents, table of authorities, signature block, appendix, and this certificate. The font is Georgia 13-point type. The electronic copies of this brief were scanned for viruses and found to be virus free. Pursuant to Rule 55.03, the undersigned further certifies the original of this brief has been signed by the undersigned.

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