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 REPLY BRIEF

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This case is not about abortion. It is about whether the Constitution's prohibition on multiple subjects means something in the context of ballot measures. The legislature asks for a popular vote on HJR 73 – a measure about reproductive health care, gender transition for minors, and venue and notice litigation rules. Appellant does not oppose a fair vote, but these are three different subjects that may not be presented to voters in one amendment. *See* Mo. Const. art. XII, §2(b).

The Secretary asks this Court to ignore the single subject rule and endorse a forced vote on the three subjects of HJR 73. He posits an analysis that stretches the outer boundaries of the single-subject test until it breaks in order to argue that gender transition for minors and venue and notice litigation rules fall under the subject of reproductive health care. The Court should reject that argument.

But, if the Court decides that all of HJR 73's provisions are properly connected to the subject of reproductive health care, the summary statement and fair ballot language must be corrected. The Secretary's arguments are contrary to long-standing jurisprudence around summary statements and fair ballot language. "The idea is to advise the citizen what the proposal is about." *Fitz-James v. Ashcroft (Fitz-James I)*, 678 S.W.3d 194, 203 (Mo. App. 2023) (cleaned up). That is not the case here.

I. The State's Background Section Does Not Comply with Rule 84

The Secretary's Respondent's Brief opens with a background section that does not comply with the requirements of Rule 84.04. If the Secretary "is dissatisfied with the accuracy or completeness" of Fitz-James's statement of facts, the Secretary is entitled to include his own. *See* Rule 84.04(f). That Statement of Facts, like Appellant's, must be a "fair and concise statement of facts relevant to the questions presented for determination without argument." Rule 84.04(c). Each statement of fact must "have specific page references to the relevant portion of the record on appeal[.]" *Id.*

Assuming the Background section is the Secretary's statement of facts, it is improper. It introduces a lengthy recitation of litigation occurring in Jackson County which is entirely unrelated to this litigation or the issues before this Court. Nor is the discussion supported by record cites. *See* Resp. Br. at 11-15. That's because there are no record cites to be had.[1] Although the trial court, or this court, *might* have the ability to take judicial notice of some of the statements, no such request was made or granted. This Court should strike Respondent's Background section or at a minimum, disregard the argumentative, unsupported, and irrelevant information.

[1] The Secretary also includes as "facts" statements offered by the State in *other* litigation, none of which are factual findings of any court. *See e.g.* Resp. Br. at 14 ("For example, the State cited testimony from many Missourians harmed by unsafe abortions in Kansas City, Columbia, and St. Louis…").

II. HJR 73 Violates the Constitutional Prohibition on Multiple Subjects, the Secretary's Arguments Notwithstanding

The first question here is whether HJR 73 complies with the Constitution's single subject requirement. The Secretary contends that *Coleman* and *Ritter* control, while Appellant urged the Court to follow cases like *Byrd*. In the end, there is no substantive difference, and HJR 73 contains multiple subjects under any formulation of the single-subject test. Compare *Byrd v. State*, 679 S.W.3d 492, 495 (Mo. banc 2023)("[W]hether the [challenged] provisions are germane to the general subject of the bill[.]") with *Coleman v. Ashcroft*, 696 S.W.3d 347, 369 (Mo. banc 2024)(cleaned up)("To determine if a proposed constitutional amendment satisfies the single subject requirement, this Court will review the provisions of the proposal to see if all matters included relate to a readily identifiable and reasonable narrow purpose.").

In fact, the Supreme Court in *Coleman* recognized as much— "Article XIII, section 2(b) contains an almost identical prohibition [as Article III, Section 50] against a proposed constitutional amendment having more than a single subject." *Coleman*, 696 S.W.3d at 369. The Secretary seizes on certain phrases in cases about citizen initiatives. They urge a liberal construction of a measure to avoid a constitutional violation. Those cases certainly say so. But the Secretary casual analysis essentially urges the Court to ignore the single subject requirement. A liberal construction of HJR 73 does not require this Court to ignore that there is a subject of the measure at all. Yes, the measure must be construed liberally, but

the Supreme Court has instructed that the single subject requirement means something and cannot be ignored. *Missourians to Protect Initiative Process v. Blunt*, 799 S.W.2d 824, 830 (Mo. banc 1990). It is "the constitutional assurance" that a proposal must "pass or fail on its own merits." *Id.* at 831.

HJR 73 looks much more like the measure the Supreme Court invalidated in *Byrd,* than the cohesive proposed amendment in *Coleman*. The Secretary points out the unremarkable proposition that a proposal may contain provisions connected with or incident to effectuating a central purpose. That does not mean this Court may stretch the single subject of a measure so far that the requirement is meaningless. The parties agree on the central purpose (the subject) here—reproductive health care—but disagree on what properly fits under the umbrella of that subject.

The Secretary argues that the Court should liberally construe a measure to meet the single-subject requirement but offers no test as to where the boundary of liberal construction ends and a violation of the single subject requirement begins. *See* Resp. Br. at 29. That's because there is only one single-subject test. *Byrd* provides the most recent articulation and acknowledges that the single subject rule is violated even if a slight portion of a provision is under a liberally construed umbrella subject, while much of the provision remains outside the single subject. *Byrd v. State,* 679 S.W.3d 492, 496 (Mo. banc 2023).

In Section I.A.1 of his brief, the Secretary asks the Court to ignore the material differences between the General Assembly placing a measure before

voters and citizens using their reserved powers to change the law. Even if he's right, it doesn't matter because he agrees that "Article III, Section 23 also imposes a similar standard to Article XII, Section 2(b)." Resp. Br. at 27. The Secretary is correct to agree. Even the many cases that discuss local elections and the "vice of doubleness in submissions at elections" use the same basic analytical framework. *State ex rel. Taylor v. Reorganized School Dist.*, 257 S.W.2d 262, 267 (Mo. App. 1953) (discussing various cases on the topic at that time).

Appellant's opening brief covered modern cases[2] beginning with *Hammerschmidt* and ending with *Byrd*. They describe single subject boundaries clearly. App. Br. at 39-45. Those cases are consistent with *Missourians to Protect the Initiative Petition v. Blunt (MPIP),* 799 S.W.2d. 824, 826 (Mo. banc 1990). In *MPIP*, the Supreme Court invalidated a ballot measure proposed by the people because it contained more than one subject, thus holding it was not allowed to go to a vote. *See id*. The Secretary does not even acknowledge *MPIP* and its precedential value. Considering *Byrd* and *MPIP*, this Court has little choice but to invalidate HJR 73.

[2] The basic test "has remained virtually the same since 1869." *Byrd,* 679 S.W.3d at 495 (quoting *Calzone v. Commissioner of DESE,* 584 S.W.3d 310, 321 (Mo. banc 2019). But there is no need for the Court to go that far back.

A. Subsection 9 of HJR 73 is an Entirely Different Subject Than Reproductive Health Care

Rather than defining the test, the Secretary skips straight to a defense of the various subjects. But there is no defense (even one that defines the boundaries of the subject liberally) of subdivision 9 that puts it all under the umbrella of reproductive health care. The Secretary argues that because "gender transition surgeries, cross-sex hormones, and puberty blockers often" can render children sterile (there is no evidence in the record this is the case), subsection 9 must fall within the subject of reproductive health care. Resp. Br. at 27. There are several problems with this argument.

First, the Secretary never addresses the actual language of HJR 73, which limits the reach of subsection 9. The Secretary makes policy arguments about a purported relationship between gender transition for minors and reproductive health care, but none of those are grounded in the plain language of HJR 73. The HJR itself focuses on the purposes of the care, not the potential outcome.

The intent of the legislature, as reflected in the plain language, is that the procedures and drugs are only banned when for the purpose of gender transition, not for anything else, including reproductive health care. If enacted, subsection 9 would "not apply to the use of such surgeries, drugs, or hormones to treat children born with a medically verifiable disorder of sex development or to treat any infection, injury, disease, or disorder unrelated to the purpose of a gender

transition." D10:P3; A4. The legislature also included limiting language in the definitions. D10:P4; A5.

The definitions of gender transition surgery, cross-sex hormones, and puberty blockers include a purpose statement to allow these procedures and drugs for us for any reason *other than* the prohibition in subsection 9. D10:P4; A5. ("gender transition surgery, a surgical procedure performed for the purpose of assisting an individual with identifying with and living as a gender different from his or her biological sex"; "puberty-blocking drugs" a gonadotropin-releasing hormone analogues or other synthetic drugs…for the purpose of assisting an individual with a gender transition.").

The only reading of these limitations is that gender transition is separate and apart from *other* medical treatments and areas. The legislature had do that so to ensure that, in the event HJR 73 becomes law, certain surgeries, hormones, and puberty blockers can be prescribed for reasons *other than* gender transition. Say, for example, reproductive health care. The Secretary's after the fact explanation cannot save subsection 9 because the words of HJR 73 make clear it is a different subject.

Second, the Secretary never addresses the most obvious point —the plain language bans procedures that no reasonable person would say are related to reproduction (like cosmetic procedures). The Secretary assumes that "gender transition surgeries" are the same as surgeries on reproductive organs. Resp. Br. at 28-29. This is not what the plain language of HJR 73 says and it is not what

common sense dictates. Gender transition surgery is defined as *any* "surgical procedure" performed for the purpose of *assisting* an individual with *identifying with and living* as a gender different from his biological sex." D10:P4; A4 (emphasis added).

A wide variety of surgeries accomplish that purpose—from breast augmentation to hair reconstruction—that never implicate a reproductive organ. The Secretary completely fails to deal with the Venn diagram problem identified in *Byrd*. App. Br. at 44. Even if some gender transition surgeries fall under the umbrella of reproductive health care (they don't), the actual definition puts this additional subject out in the rain.

The Secretary misses the point of single subject analysis. He argues that "no court has ever held that a proposed amendment does not relate to a single subject just because it could have proposed more regulation of the same subject." Resp. Br. at 31. But many cases have held that a provision that regulates subjects *outside of the subject* of the measure violates the single subject clause. *See Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. banc 1994); *Rizzo v. State*, 189 S.W.3d 576 (Mo. banc 2006); *Byrd v. State*, 679 S.W.3d 492 (Mo. banc 2023). HJR 73 is just another in this long line.

B. Subsection 10 is Yet Another Subject in HJR 73

The Secretary also defends subsection 10 because venue and notice provisions are commonly included in statutes and implementation provisions are often properly connected with the single subject of the law at issue. Resp. Br. at 33-34. That doesn't respond to the argument Appellant makes, which is based on the plain language of the subsection. Subsection 10 applies to all types of statutes, not just reproductive health care. D10:P4. To say otherwise is to ignore the plain language. The Secretary asks this Court to either ignore the plain language or add words to the second sentence. *See id.* The Court may do neither. *Macon Cnty. Emergency Servs. Bd. v. Macon Cnty. Comm'n,* 485 S.W.3d 353, 355 (Mo. banc 2016).

Nor does *Coleman v. Ashcroft,* 696 S.W.3d 347 (Mo. banc 2024) help here. The only similarity between this case and *Coleman* is that both are about proposed constitutional amendments related to abortion. In *Coleman,* the Court found the single-subject argument to be meritless because the strict scrutiny provision in Amendment 3 expressly limited itself only to statutes relating to reproductive freedom. *Coleman,* 696 S.W.3d at 369 ("Sections 3 and 4 serve to protect the right by establishing the standard for judicial review.").

Coleman actually makes the point that HJR 73 is doing something completely different. HJR 73, by its plain terms, imposes a new burden on *any* litigant challenging the constitutionality of *any* law. D10:P4; A4. That's different than C*oleman* where a new standard of judicial review for *certain laws* was

expressly imposed to protect the Right to Reproductive Freedom. *See id*. While the judicial provisions in *Coleman* stayed under the umbrella of reproductive care, they extend far beyond the edges here. Had the General Assembly limited subsection 10 to laws related to reproductive health, the issue would be different.

The Secretary ends this section by saying "the Court should adopt a reading of all of subsection 10 that applies just to challenges to state laws relating to reproductive health care." Resp. Br. at 35. The Court should instead avoid a reading that is contrary to the plain language.

C. Severance Doesn't Apply Here

The Secretary argues the Court can simply sever out the offending sections, citing *Buchanan v. Carnahan,* 370 S.W.3d 637 (Mo. banc 2012). He is a simply misreads that case. Resp. Br. at 35-37. In *Buchanan,* the ballot measure was *already passed* when the Court considered severance.

That's different than reviewing whether the voters may be asked to pass on two subjects. As far as Appellant is aware, there is no case where a court has ever severed a measure before it was put to voters. The appropriate remedy here is to keep HJR 73 off the ballot and allow the legislature to exercise its own severance, if it so chooses, and put two (or three) measures before voters, each with its own subject.

III. The Secretary's Summary Statement and Fair Ballot Language is Unfair and Insufficient[3]

Regarding the language explaining the measure, the Secretary again misreads the underlying measure. Resp. Br. at 37. HJR 73 does not have an "explicit guarantee of many protections" as the Secretary argues. *Id.* Much hinges on that misreading and explains why the Secretary drafted unfair and insufficient language.

A. HJR 73 Eliminates the Right to Reproductive Freedom and the Summary Statement Should Tell Voters That

The Secretary argues that Bullet Point Four is fair and sufficient because "HJR 73 does not 'eliminate' 'reproductive freedom.'" Resp. Br. at 39. But even a cursory review shows that HJR 73 certainly eliminates the Right to Reproductive Freedom because it repeals the entirety of Article I, Section 36 including the words "reproductive freedom."

~~[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.~~

~~3. The right to reproductive freedom shall not be denied, interfered with, delayed, or otherwise restricted unless the Government demonstrates that~~

[3] The arguments in this Section apply equally to the summary statement and fair ballot language.

D10:P5-6; A6-7. HJR 73 eliminates the rights voters just approved in 2024. It is inaccurate to tell voters anything other than that HJR 73 eliminates the right to reproductive freedom. *Fitz-James I,* 678 S.W.3d at 202.

The Secretary also accuses Fitz-James of changing positions because two years ago, this Court found that phrases like "right to life" were politically charged. Resp. Br. at 40; *See also id.* at 209. The Secretary argues that "eliminate reproductive freedom" is also a partisan phrase. Resp. Br. at 40.

But again, this is exactly what the plain language of HJR 73 does. In *Fitz-James I,* the Secretary used the phrases "right to life" and "partial-birth abortion" which were *not* in the text of the measure. 678 S.W.3d at 208. That difference matters. When the summary statement "accurately describes what the [measure] says it will do" it is fair and sufficient. *Missourians Against Human Cloning v. Carnahan,* 190 S.W.3d 451, 457 (Mo. App. 2006) (summary statement which said the measure would "ban human cloning" was fair and sufficient).

The Secretary also criticizes Appellant for saying that informing of repeal by esoteric section number has never been acceptable in ballot summaries. He says Appellant "fails to cite a single case for this proposition." Resp. Br. at 40. Both *Pippens v. Ashcroft,* 606 S.W.3d 689 (Mo. App. 2020) and *Cures without Cloning v. Pund,* 259 S.W.3d 76 (Mo. App. 2008) dealt with repeals of measures and no one involved with them (in either the judiciary or the executive branch) found it appropriate to simply cite section numbers.

The Secretary next argues he doesn't have to explain things that are "already evident to the voters." Resp. Br. at 43. But that pure speculation about what voters understand is inconsistent with the entire theory of ballot summary law. "[I]t is incumbent upon the Secretary. . . to promote an informed decision of the probable effect of the proposed amendment." *Buchanan v. Kirkpatrick,* 615 S.W.2d 6, 11 (Mo. banc 1981); see also *Hill v. Ashcroft,* 526 S.W.3d 299, 314 (Mo. App. 2017). In this section, Respondent appears to argue that the section numbers are preferable to referencing, "the Right to Reproductive Freedom Initiative" which was the title of the measure. Whether it is or not, the section numbers are insufficient and must be addressed in some way.

The Secretary also discusses the irrationally placed semicolon in the Fourth Bullet Point and seems to acknowledge that it promotes confusion. Resp. Br. at 45. Appellants will not repeat their analysis here except to say that the Court will likely agree that the semicolon makes the bullet confusing. App. Br. at 59.

Finally, Respondent addresses the request to re-order the bullet points and refers the Court to *Pippens*. Resp. Br. at 45-46. The difference, of course, is that here there was *no* bullet point about the repeal of the Reproductive Freedom Initiative in the original summary statement. D:P. It was omitted even though that repeal is *in the title* of the HJR (the first substantive thing the legislature said) and the Secretary acknowledges repeal is the purpose of the bill. D10:P1.

In *Pippens*, the issue was a relatively narrow change to the Constitution, rather than a wholesale replacement of a section, and the original summary

statement put it in the third bullet (which was roughly equivalent to where it appeared in the joint resolution). 606 S.W.3d at 712. *Pippens* does not preclude placing an omitted point first, particularly when it is the *raison d'etre* of the measure. Appellant does not dispute cases the Secretary cites to the effect that when only one word is incorrect, the court must limit itself to changing that word. But, as *Fitz-James I* demonstrated, some deficiencies are broader and require a broader remedy. So it is here.

B. HJR 73 Does Not Guarantee a Right to Access Abortion or Allow Access to Abortion Despite the Phrasing of the Summary Statement

Respondent also addresses the "allow" and "guarantee" phrasing in Bullet Point Four. Resp. Br. at 46. But he never explains why the words "allow" and "guarantee" are fair when those words are not in the actual measure, appearing for the first time in the summary statement. Instead, the Secretary argues that taking away a right and then replacing it with a lesser right is "allowing" and "guaranteeing" a subset of that original right. *Id.* That is simply not how voters (or any person) use those words.

The Secretary argues that Appellant's "argument depends on the presumption that voters will have no understanding of Bullet 4's reference to Article I, Section 36." Resp. Br. at 47. That's not totally wrong. But the reference to Roman numerals and Arabic numbers without any additional description compounds the issue even further and makes the Secretary's argument—that

voters will get the reference to allowing because they were just told the measure repeals section 36—even more wrong.

Appellant leaves it to the Court's common sense as to whether voters know what amending "the Missouri Constitution" to "Repeal Article I, Section 36" means. Some voters might. Many (perhaps most) voters will have no clue. Even if the Court does not agree exactly with Appellant's formulation of this bullet point, it is evident that it must be rewritten. The Court should use its discretion to draft a bullet point that fairly, accurately, and unbiasedly explains what HJR 73 does.

C. Limiting Access to Abortion in Cases of Rape or Incest is not a Mere Detail

The Secretary's part II may be summed up as: whether the measure limits the ability of women to obtain an abortion in cases of rape and incest is but a mere detail. Resp. Br. at 48. The Secretary again cites to information outside of the record to discuss when "the majority of abortions" occur. Resp. Br. at 47-49. Even if this information were before the Court, it adds nothing about when the majority of abortions in cases of rape and incest occur, or whether voters would consider this a "central feature" of the measure.

The Secretary then invents from thin air a trial court factual finding that "most abortions *after rape or incest* occur in the first trimester" and faults Appellant for not challenging this non-existent finding. Resp. Br. at 50. This non-"finding" is supported only by Respondent's citation to his own pre-trial brief. Resp. Br. at 49. Respondent had the chance to submit evidence and ask the Court

to take notice of documents. He did not. The Court should disregard this part of the argument.

Regardless, the Secretary's discussion of "detail" v. "central feature" misses the point. The General Assembly *already* considers the regulation of abortions in cases of rape and incest to be a central feature—they included a bullet about it in the summary statement. D10:P6; A7. Appellant's point is that the bullet is a misrepresentation by omission. *See Boeving v. Kander*, 493 S.W.3d 865, 883 (Mo. App. 2016) (ballot summary was unfair because it omitted that a fee would increase annually).

Reducing access to abortion in cases of rape or incest is a material change. Under HJR 73 this care would now be limited to twelve weeks gestational age. Even if a survivor of rape or incest managed to navigate the red tape to access abortion care immediately after the assault, HJR 73 would still deny her that care at 12 weeks and one day. It is the definition of unfair and insufficient to omit that limitation from the summary statement.

D. HJR 73 Neither Guarantees Nor Ensures Care and Safety for Women

Despite the Secretary's protestations to the contrary, HJR 73 does not guarantee medical care for emergencies, ectopic pregnancies, and miscarriages nor ensures women's safety. Of course, the word "guarantee" never appears in the resolution. The actual effect is a loss of rights, not a guarantee of new ones.

This is only highlighted by the elimination of the provision of Article I, Section 36 which protects doctors and patients from criminalization. Mo. Const.

art. I, § 36 ("No person shall be penalized, prosecuted, or otherwise subjected to adverse action based on their actual, potential, perceived, or alleged pregnancy outcomes, including but not limited to miscarriage, stillbirth, or abortion.").

The Secretary also defends his (and the General Assembly's) use of words like "guarantee and ensure" by assuming that the passage of HJR 73 would act as some talisman-like reinvigoration of unconstitutional law. The Secretary argues, for example, that "once the right is repealed, HJR 73's guarantee for 'health care in cases of miscarriages ectopic pregnancies, and other medical emergencies' will operate of its own force, guaranteeing rights that would not otherwise exist in the Constitution." Resp. Br. at 51. In context, the argument is that some statutes which are now almost certainly unconstitutional will be revived by the passage of HJR 73 like Lazarus rising from the tomb. That that is not the likely effect. *Fitz-James I,* 678 S.W.3d at 204.

Most of the statutes the Secretary tries to revive have been enjoined and are likely to be found unconstitutional before there is a vote in November of 2026. *Comprehensive Health of Planned Parenthood Great Plains v. State*, 2025 WL 2907584 (Mo. App. 2025).[4] An unconstitutional statute is a nullity and never existed. *City of Normandy v. Kehoe,* 709 S.W.3d 327, 334 (Mo. banc 2025). So, if those statutes are unconstitutional, the passage of HJR 73 does not reinstate

[4] The State, of course, takes the position that most of the challenged statutes are *not* unconstitutional. If they are not, then the Secretary's argument fails for that reason as well—they will not need to be revived by HJR 73.

them. The legislature would have to pass new ones. HJR 73 guarantees nothing except the ability of the legislature to do something in the future.

This section is also where the Secretary argues that certain current statutes, which are almost certainly unconstitutional, will "operate of [their] own force" if HJR 73 is approved. Resp. Br. at 51. As discussed above, that is pure speculation by the Secretary, it is not a probable effect, and it is likely not correct at all as those statutes are likely to be struck down before any vote on HJR 73.

E. Bullet Point 2 is Unfair and Insufficient

The Secretary's arguments on Bullet Point 2 fair no better. The Secretary argues that HJR 73 will "ensure" rights (another word that never appears in the text of HJR 73) because it will revive statutes that are now unconstitutional. As explained above, those statutes never existed and will indeed have to be re-enacted should HJR 73 pass. 709 S.W.3d at 334 (Mo. banc 2025)

F. Sex-Change is Not a Fair or Sufficient Description of Subsection 9

The Secretary also defends his decision to gratuitously re-write Bullet Point 5 but never explains why he chose words that never appear in the actual text of HJR 73. The closest the measure comes is the phrase "gender transition surgery," but the actual definition speaks volumes. Gender transition surgery, which would be prohibited for minors, broadly covers a surgical procedure "performed for the purpose of assisting an individual with identifying with and living as a gender different from his or her biological sex." D10:P4; A5. It is not limited to procedures that would change one's sex (whatever that means).

The Secretary then argues against the dictionary and simply declares that "sex-change procedure" is not a politically charged phrase. Resp. Br. at 55. Merriam Websters disagrees. The fact that some courts may use the phrase—some of them more than 20 years ago—to describe an apparently narrower set of procedures than addressed in HJR 73 does not change the common understanding of the term. And the Secretary's citation to Black's Law makes the point—"sex change" is a medical treatment "intended to effect a sex change…" Resp. Br. 56. But that is not a definition that is used at all in HJR 73. The words the Secretary chose "sex change" are discussing something other than what the legislature specified in HJR 73.

G. The Remedy is not to Remand for the Secretary to Write Another Unfair and Insufficient Summary Statement

The Secretary argues that this Court should give him a third opportunity to rewrite the summary statement and fair ballot language. Resp. Br. at 58. But the amendments to Section 116.190 changed the way the *trial court* should handle summary statements and fair ballot language. They did not change what this Court may do. The Secretary says Section 116.190.4 requires that the case remain open, including for any remand from this Court. *Id.* But that is a misreading of the statute.

Section 116.190.4(e) requires only that "[d]uring all revisions as provided in this subdivision, the case shall remain open." §116.190.4(e), RSMo. That's to allow the Secretary to rewrite the summary statement if the trial court so orders.

That is not to require this Court to remand to the Secretary. The Secretary got his opportunity to try to fix the summary statement and fair ballot language. He failed. This Court is not required to review the Secretary's decision. This Court reviews the decision of the trial court and should remedy any errors in that decision.

CONCLUSION

This Court should follow Missouri Supreme Court precedent, find that HJR 73 contains more than one subject and enjoin the Secretary of State from placing it on the ballot. The measure is set to appear on the 2026 ballot, so the legislature has plenty of time to propose a vote on a single subject. If this Court does not enjoin the measure, 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 was served on counsel of record through the Court's electronic notice system on November 18, 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 4,709 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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