

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

BARBARA PIPPENS, JOHN BOHNEY, CHERYL
HIBBELER, REBECCA SHAW, BOB MINOR, JAMES
HARMON, GENE DAVISON, PAT MCBRIDE,

Plaintiffs,

v.

JOHN R. ASHCROFT, in his official capacity as Missouri
Secretary of State, DAVE SCHATZ, in his official
capacity as State Senator and President Pro Tem of the
Senate; ELIJAH HAAHR, in his official capacity as State
Representative and Speaker of the House, and DANIEL
HEGEMAN, in his official capacity as State Senator and
sponsor of Senate Joint Resolution 38,

Defendants.

Case No. _____

**PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF UNDER
SECTION 116.190, RSMO**

The General Assembly recently approved Senate Joint Resolution 38 (“SJR 38”), which proposes a constitutional amendment for placement on the statewide ballot. SJR 38 would eliminate the nonpartisan and fair redistricting process that had been approved by voters only two years ago. Plaintiffs bring this suit because the true impact of SJR 38 would not be apparent to a voter who relies on the summary statement that was drafted, and approved, by the General Assembly to accompany the measure. To the contrary, the General Assembly’s proposed summary statement is insufficient and unfair.

The General Assembly’s proposed summary statement fails to disclose that SJR 38 would eliminate the Nonpartisan State Demographer authorized to draw redistricting maps—the key mechanism voters approved to remedy partisan gerrymandering—in addition to falsely representing that SJR 38 would “create . . . independent” commissions. The unfair and insufficient

summary statement drafted by the General Assembly should be vacated and replaced with a summary statement that fully and accurately informs voters about the effects that SJR 38 will have or sent back to the General Assembly for their revisions.

THE PARTIES

1. Plaintiffs Barbara Pippens, John Bohney, Cheryl Hibbeler, Rebecca Shaw, Bob Minor, James Harmon, Gene Davison, and Pat McBride are each citizens of Missouri.

2. Defendant John R. Ashcroft is the duly elected and acting Secretary of State of Missouri. He is named in his official capacity pursuant to § 116.190.2 RSMo.

3. Defendant Dave Schatz is State Senator for Missouri's 26th Senate District and serves as the current President Pro Tem of the Senate. He is named in his official capacity pursuant to § 116.190.2, RSMo.

4. Defendant Elijah Haahr is State Representative for Missouri's 134th House of Representatives District and serves as the current Speaker of the House. He is named in his official capacity pursuant to § 116.190.2, RSMo.

5. Defendant Daniel Hegeman is State Senator for Missouri's 12th Senate District and sponsored SJR 38. He is named in his official capacity pursuant to § 116.190.2, RSMo.

JURISDICTION AND VENUE

6. Plaintiffs bring this action pursuant to § 116.190.1, RSMo, which vests exclusive venue in the Circuit Court of Cole County.

FACTUAL ALLEGATIONS

Missouri Voters Overwhelmingly Enacted Amendment 1 to Increase Integrity, Transparency, and Accountability in Missouri Government.

7. On May 3, 2018, supporters of an initiative submitted more than 330,000 signatures to the Missouri Secretary of State to put a redistricting reform and government ethics amendment to the Missouri Constitution on the November 6, 2018 ballot. That initiative is attached as Exhibit 1.

8. The Secretary of State prepared and certified a ballot title for that initiative which read as follows:

“Shall the Missouri Constitution be amended to:

- change process and criteria for redrawing state legislative districts during reapportionment;
- change limits on campaign contributions that candidates for state legislature can accept from individuals or entities;
- establish a limit on gifts that state legislators, and their employees, can accept from paid lobbyists;
- prohibit state legislators, and their employees, from serving as paid lobbyists for a period of time;
- prohibit political fundraising by candidates for or members of the state legislature on State property; and
- require legislative records and proceedings to be open to the public?

State governmental entities estimate annual operating costs may increase by \$189,000. Local governmental entities expect no fiscal impact.”

9. The Secretary of State designated the initiative as “Amendment 1.”
10. On November 6, 2018, Amendment 1 was adopted by the voters.

SJR 38 Would Dismantle Amendment 1 to Dramatically Change Redistricting in Missouri and Preserve Partisan Gerrymandering.

11. Within weeks of the passage of Amendment 1, Republican lawmakers began working towards placing on the statewide ballot new constitutional amendments that would dismantle the redistricting reforms that had so recently become the law. That effort culminated in the enactment of SJR 38, which was voted out of the Senate on February 10, 2020, and passed the House on May 13, 2020. The texts of SJR 38, as introduced and as truly agreed to and finally passed, are attached as **Exhibit 2** and **Exhibit 3**, respectively.

12. The Committee on Legislative Research, Oversight Division, prepared a fiscal note for SJR 38 on February 4, 2020, which is attached as **Exhibit 4** to this Petition.

The Summary Statement in SJR 38 Is Insufficient and Unfair.

13. The summary statement prepared and approved by the General Assembly as part of SJR 38 is:

“Shall the Missouri Constitution be amended to:

- Ban all lobbyists gifts to legislators and their employees;
- Reduce legislative campaign contribution limits; and
- Create citizen-led independent bipartisan commissions to draw state legislative districts based on one person, one vote, minority voter protection, compactness, competitiveness, fairness and other criteria.”

**COUNT 1: CLAUSE THREE OF THE SUMMARY STATEMENT VIOLATES
§§ 116.155.2 and 116.190, RSMO, BECAUSE IT IS FALSE AND MISLEADING IN
CLAIMING THAT SJR 38 WOULD CREATE CITIZEN-LED INDEPENDENT
BIPARTISAN COMMISSIONS**

14. Clause 3 claims that SJR 38 would “[c]reate citizen-led independent bipartisan commissions.” This claim is insufficient and unfair for three primary reasons.

15. *First*, Clause Three is false because SJR 38 does not actually create any commissions. In fact, the “House Apportionment Commission” and the “Senatorial Apportionment Commission” already exist under the Missouri Constitution. Mo. Const. art. 3 § 3(a). SJR 38 simply *renames* these existing Commissions as the “House Independent Bipartisan Citizens Commission” and the “Senate Independent Bipartisan Citizens Commission,” respectively.

16. *Second*, Clause Three is misleading because it fails to inform voters that SJR 38 eliminates the office of the Nonpartisan State Demographer, which provides Missouri’s primary defense against partisan gerrymandering.

17. Under current law, the Nonpartisan State Demographer is responsible for drawing district maps, which can only be amended by 70% of the votes in the House and Senatorial Apportionment Commissions. By eliminating the Nonpartisan State Demographer, SJR 38 would instead have maps drawn directly by the renamed Commissions.

18. Indeed, the official bill summary issued by the Senate Research Office acknowledges that SJR 38 would “repeal the post of nonpartisan state demographer and give all redistricting responsibility to the currently *existing* commissions.” See **Exhibit 5** (emphasis added).

19. *Third*, Clause Three falsely asserts that the Commissions would be “independent.” In reality, under SJR 38, every redistricting commissioner would be vetted and nominated by a political party committee at the congressional district or state levels, and would ultimately be appointed by the Missouri Governor to serve on the Commissions. The resulting Commissions would not be “independent,” but would in fact comprise individuals with partisan interests who were hand-selected by the State’s political parties and elected officials.

20. Clause Three therefore asserts that SJR 38 would institute new, “independent” Commissions, when it does nothing of the sort, while altogether failing to mention that SJR 38 eliminates the office of the Nonpartisan State Demographer.

COUNT 2: CLAUSE THREE VIOLATES §§ 116.155 and 116.190, RSMO, BECAUSE IT MISLEADS VOTERS REGARDING EXISTING REDISTRICTING CRITERIA

21. Clause Three states that legislative districts must be drawn based on criteria including “minority voter protection, compactness, competitiveness, fairness.” This language is insufficient and unfair because the Missouri Constitution *already* provides that districts are to be drawn on the basis of these factors. If anything, SJR 38 actually undermines and weakens many of these criteria.

22. *First*, with respect to “minority voter protection,” Article III, Section 3(c)(1)(b) of the Missouri Constitution currently provides as a matter of Missouri law that districts not be drawn “with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or diminishing their ability to elect representatives of their choice, whether by themselves or by voting in concert with other persons.” SJR 38 would strike this language, and replace it with new language that narrows the scope of protected groups and fails to contain the same broad minority voter protections. In any case, SJR

38 does not in any way strengthen protections for minority voters, and it is misleading to suggest otherwise. SJR 38 does not even contain the words “minority,” “minority voter,” or “minority voter protection.” By including the words “minority voter protection” in the summary statement, the General Assembly is unfairly characterizing the effect of the Constitutional amendment.

23. *Second*, with respect to “competitiveness” and “fairness,” Article III, Section 3(c)(1)(b) of the Missouri Constitution *already requires* that districts be “designed in a manner that achieves both partisan fairness and, secondarily, competitiveness.” In fact, SJR 38 actually *weakens* these provisions because it provides that all other factors “shall take precedence over partisan fairness and competitiveness.” Clause Three is therefore especially deceptive in that it suggests that SJR 38 will implement these criteria for drawing legislative districts. To the contrary, not only are these criteria already enshrined in the Constitution, but SJR 38 will actually undermine their application in redistricting.

24. *Third*, with respect to “compactness,” Article III, Section 3(c)(1)(e) of the Missouri Constitution already requires that, when possible, districts be “compact in form.” Clause Three misleadingly suggests that SJR 38 will add compactness as a consideration when drawing districts, when in reality SJR 38 does not add compactness because it is already a required factor in redistricting.

COUNT 3: CLAUSE ONE VIOLATES §§ 116.155 and 116.190, RSMO, BECAUSE IT MISLEADINGLY IGNORES THAT VIRTUALLY ALL GIFTS ARE ALREADY BANNED AND DOES NOT MODIFY THE TWO EXTANT EXCEPTIONS TO CURRENT LIMITS ON LOBBYIST GIFTS

25. Clause One of the summary statement is insufficient and unfair by claiming that SJR 38 would “[b]an all lobbyist gifts to legislators and their employees.”

26. In fact, the Missouri Constitution already limits the vast majority of lobbyist gifts in the state because it only permits gifts that are not “in excess of five dollars per occurrence.” Mo. Const. art. 3 § 2(b). This prohibition on lobbyist gifts is subject to two exceptions: (i) the five-dollar limit does not apply to gifts from lobbyists to legislators or legislative employees who are their family members; and (ii) the five-dollar limit does not apply to gifts from unpaid lobbyists. Mo. Const. art. 3 § 2(b).

27. Far from “[b]an[ning] all lobbyist gifts,” as Clause One falsely suggests, SJR 38 only purports to reduce the five-dollar limit on *de minimis* gifts to zero, while leaving intact the two existing exceptions.

28. *First*, contrary to the language of Clause One, SJR 38 does not amend the provisions of Article 3, Section 2(b) of the Missouri Constitution that permit legislators and their employees to receive “gifts, family support, or anything of value from those related to them within the fourth degree by blood or marriage.”

29. *Second*, contrary to the language of Clause One, *unpaid* lobbyists will still be able to make gifts of any value to anyone. SJR 38 leaves intact the Missouri Constitution’s current language, which only restricts gifts from a “*paid* lobbyist or lobbyist principal.” Mo. Const. art. 3 § 2(b) (emphasis added). Lobbyists who are not paid would still be able to extend gifts to legislators even if SJR 38 becomes law.

30. Accordingly, as written, Clause One is objectively false, because it claims that all lobbyist gifts would be banned, when in fact they would not be. Moreover, in light of the dramatic and significant changes that SJR 38 will make to redistricting, it is misleading and manipulative for the fifty-word summary statement to devote any precious space—let alone the

entire first clause—to the unremarkable fact that SJR 38 would amend the Constitution to preclude legislators and their employees from receiving gifts from paid lobbyists worth five dollars or less.

COUNT 4: CLAUSE TWO VIOLATES §§ 116.155 and 116.190, RSMO, BECAUSE IT IS MISLEADING AND OVERBROAD

31. Clause Two states that the Missouri Constitution would be amended to “[r]educe legislative campaign contribution limits.” Clause Two is insufficient and unfair because SJR 38 changes *only* the contribution limit for candidates for the State Senate.

32. In lieu of a substantive reduction in campaign contribution limits, SJR 38 would make a negligible 4% reduction in the contribution limit for candidates running for the State Senate, to \$2,400 from \$2,500, and would not make any change to the contribution limit for candidates running for the House of Representatives, which would remain fixed at \$2,000.

33. As with Clause One, the language of Clause Two overstates the impact that SJR 38 will have. The changes SJR 38 would make to a single campaign contribution limit would have virtually no effect on political fundraising in Missouri. Clause Two is likely to mislead and deceive voters into believing that SJR 38 would make meaningful reductions in contribution limits for all legislative campaigns, which is untrue. Moreover, by placing such great emphasis on such a minor change, Clause Two unfairly colors the views of the voters.

PRAYER FOR RELIEF

Plaintiffs respectfully request an Order from this Court:

- a. Vacating the summary statement approved by the General Assembly as part of SJR 38; and
- b. Ordering the General Assembly to enact a new summary statement that complies with §§ 116.155.2 and 116.190.3, RSMo; or,
- c. In the alternative, certifying the following statutorily compliant summary statement that redresses the foregoing violations of §§ 116.155.2 and 116.190.3 RSMo:

“Shall the Missouri Constitution be amended to:

Eliminate the office of Nonpartisan State Demographer, currently responsible for drawing draft legislative district maps, and give map drawing responsibility to Commissions comprised of partisan representatives; and Make partisan fairness and competitiveness the least important factors when drawing district maps.”

and,

- d. Granting such other and further relief as the Court deems just and proper.

Dated: May 18, 2020

Respectfully Submitted,

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