No. WD83962

IN THE
MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BARBARA PIPPENS, *et al.*,

Plaintiffs-Respondents,

v.

JOHN R. ASHCROFT, *et al.*,

Defendants-Appellants.

AMICUS BRIEF OF FORMER MISSOURI LAWMAKERS IN SUPPORT OF PLAINTIFFS-RESPONDENTS AND AFFIRMANCE

On Appeal from the Circuit Court of Cole County, Missouri, Case No. 20AC-CC

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INTEREST OF *AMICI CURIAE*[1]

Amici are a bipartisan group of former state and federal officeholders—Republicans and Democrats, Senators and Representatives—who have dedicated many years to representing Missouri citizens. They have intimate knowledge of the constitutional amendment process and the importance of redistricting rules and electoral district boundaries to voters and legislators alike. As longtime public servants and participants in Missouri's system of representative democracy, *amici* have a strong interest in ensuring that Missouri citizens receive accurate information about the redistricting rules that the current legislature has asked them to approve in proposed Amendment 3. They write to assist the Court by providing their unique perspective on the dramatic changes that the current legislature has proposed and the nature of legislators' personal interest in redistricting. *Amici* urge the Court to scrutinize the summary statement at issue in this case closely and to affirm the judgment of the circuit court.

Amici curiae former Missouri lawmakers are:

Former United States Senator John Danforth of Missouri
Former United States Senator Claire McCaskill of Missouri
Former Missouri Senator Joan Bray
Former Missouri Senator Bob Johnson
Former Missouri Senator Marvin Singleton
Former Missouri Representative Jay Barnes
Former Missouri Representative Tishaura Jones
Former Missouri Representative Rebecca McClanahan

[1] *Amici* affirm that no party or counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief. Counsel for the parties have consented to the filing of this brief.

ARGUMENT

In 2018, Missouri citizens came together to do something remarkable. Through a citizen-led ballot initiative process, they demanded a new system for drawing electoral districts. The new redistricting rules, now part of the Missouri Constitution, are different from and better than the redistricting rules of any other State. In relevant part, they require our state government to draw districts to produce competitive elections and political representation in the General Assembly that correlates to the percentage of the vote that a political party received statewide, across electoral districts. In other words, they require partisan fairness and competitiveness in elections.

These rules are good for citizens but uncomfortable for legislators. They are good for citizens because competitive districts require candidates to appeal to a broader range of voters to win. In such districts, candidates are less likely to be pulled to partisan extremes by the most ardent and active members of their political party. And aiming for proportional representation in the General Assembly means that Missourians want political-party representation that corresponds with popular support for that party, thus honoring the basic equality of each citizen's vote.

The 2018 redistricting rules are uncomfortable for legislators, however, because legislators want to win, and competitive districts are harder to win than uncompetitive ones. Moreover, a political party that can exert control over the redistricting process may wish to exercise that control to manipulate electoral outcomes by shuffling its opponent's voters into a small number of districts so that it can collect the rest. This partisan gerrymandering enables one political party to exercise power that is disproportionate to its popular support, which is incompatible with democratic principles.

Earlier this year, a majority faction of General Assembly legislators proposed an amendment to the Missouri Constitution that would wipe out the voter-initiated 2018 reforms and return Missouri to the system it had before voters acted. Understanding that voters do not want to go backwards, the General Assembly drafted a summary statement for the November ballot that would describe the proposed amendment—Amendment 3—in false, misleading, and insufficient terms. Under any standard, its summary statement was unacceptable and the circuit court properly rejected it.

Amici write here to urge this Court to give particularly close scrutiny to the proffered summary statement in a case like this one, in which the General Assembly has acted to undo the will of the People with a proposed amendment in which its members are personally interested. Drawing on their experience with multiple redistricting cycles and with lawmaking in increasingly polarized legislative chambers, *amici* argue that legislators have a personal interest in Amendment 3 because, if enacted, it would necessarily reduce the competitiveness of elections and increase opportunities for partisan gerrymandering. That personal interest renders their summary statement subject to close scrutiny, which it cannot withstand. Accordingly, this Court should affirm the judgment of the circuit court.

I. Proposed Amendment 3 Would Repeal the Core Provisions of a Voter-Initiated Constitutional Amendment Enacted Just Two Years Ago

Under the circuit court's order, the following question must appear on the November 3 ballot: "Shall the Missouri Constitution be amended to … Repeal rules for drawing state legislative districts approved by voters in November 2018 and replace them with rules proposed by the legislature …?" This language correctly informs voters that the legislature is endeavoring to gut redistricting reforms that voters only just approved.

A. Amendment 1 (2018), introduced by Missouri voters, requires a nonpartisan state demographer to draw district lines in a manner that maximizes partisan fairness and competitiveness of elections

Between 1966 and 2018, two legislative commissions drew electoral maps for seats in the General Assembly. After each decennial census, one commission drew the lines for House districts; the other drew the lines for Senate districts. In 2018, however, Missouri voters proposed Amendment 1 to address partisan gerrymandering, along with other legislative ethics reforms, and the amendment passed with 62% support. One of Amendment 1's principal reforms was to reassign the task of drawing new legislative maps from the legislative commissions to a new nonpartisan state demographer. *See Ritter v. Ashcroft*, 561 S.W.3d 74, 80–81, 94 (Mo. App. W.D. 2018) (explaining demographer provisions would "substantially modify the procedure for apportioning House and Senate Districts" and characterizing them as one of "[t]he main innovations" in Amendment 1). In passing Amendment 1, Missourians expressed their desire to remove partisan and incumbent advantage from the redistricting process and make races more competitive.

Missouri citizens had good reasons for reforming the redistricting process: the General Assembly districts were uncompetitive and tended to favor either one political party or the other and rarely the voters. The number of Missouri House races lacking Democratic or Republican candidates has risen significantly since legislative districts were last redrawn after the 2010 Census. In 2016, Missouri ranked in the top tier of

uncompetitive states, with almost 60 percent of its state House winners lacking a major-party opponent.[2]

In 2018—an election using districts that the General Assembly commissions drew before the voters enacted Amendment 1—Republican candidates received an average of 57 percent of the vote across all of Missouri's 163 House districts, but won 71 percent of the seats.[3] This means many Democratic candidates won districts overwhelmingly, facing no real competition at the general election phase, while Republican candidates won other districts narrowly, enabling them to win more districts per voter. This allocation of voters to seats is more efficient for one party than the other, such that an "efficiency gap" exists. When quantified, the efficiency gap is the difference between each political party's respective number of votes "wasted" (those votes not necessary to win a district), divided by the total number of votes.[4]

According to the Associated Press, the efficiency gap for the 2018 elections was 8%.[5] Similarly, PlanScore, a non-partisan organization of legal, political science, and mapping technology experts, found that Missouri's current redistricting plan resulted in a 9% efficiency gap in favor of Republicans in State House elections for the years 2012-

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[2] David A. Lieb, *AP Analysis Shows More Unopposed Missouri Races, GOP Edge*, AP News (June 25, 2017), https://bit.ly/34uMIob.

[3] David A. Lieb, *Missouri First to Adopt Test against Partisan Gerrymandering*, AP News (Dec. 2, 2018), https://bit.ly/2FVTl8N.

[4] Nicholas O. Stephanopoulos and Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 850-52 (2015).

[5] *See supra* n.3, Lieb, *Missouri First to Adopt Test*.

2014. PlanScore found that Missouri's redistricting plan was more skewed than 88% of the enacted plans that it analyzed nationwide.[6]

To address concerns about lack of competitive elections and districts that disproportionately favored one party over the other, Clean Missouri, a bipartisan organization, collected 346,000 signatures in support of Amendment 1—well over the 180,000 required to get the initiative on the ballot. Supporters argued that partisan line-drawing led to uncompetitive races that protected incumbents at the expense of political accountability.[7] Supporters also argued that Amendment 1 would help ensure that citizens would have equal access to the political process.[8] On the other side of the issue, Missourians First, led by former Republican Senator Jim Talent and other top Republican lawmakers, campaigned against Amendment 1.[9]

Missourians passed Amendment 1 with strong bipartisan and majority support. Amendment 1 reduced campaign contribution limits, imposed restrictions on lobbyist gift-giving, and assigned responsibility for drawing state district lines to a nonpartisan state demographer. In addition, Amendment 1 required the nonpartisan state demographer to draw district boundaries in a manner that achieves both "partisan fairness" and

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[6] PlanScore, Missouri, 2012-2014 Redistricting Plan (State Houses), planscore.org/missouri.

[7] Tyler Wornell, *Amendment 1 would change the way Missouri legislative districts are drawn*, The Joplin Globe (Oct. 13, 2018), https://bit.ly/3j4RCMG.

[8] Evelyn Maddox, *Letter: Respect the voters' will, quit attacking Clean Missouri*, St. Louis Post Dispatch (Dec. 15, 2019), https://bit.ly/3hnzAES.

[9] *Republicans band together against ballot initiative*, The Associated Press (July 26, 2018), https://bit.ly/2CVxZak.

"competitiveness." Mo. Const. Art. III § 3(c)(1)(b). "Partisan fairness means that parties shall be able to translate their popular support into legislative representation with approximately equal efficiency." *Id.* "Competitiveness means that parties' legislative representation shall be substantially and similarly responsive to shifts in the electorate's preferences." *Id.* To promote partisan fairness and competitiveness, the nonpartisan state demographer must ensure that in any plan of apportionment, the efficiency gap is as close to zero as possible. *See id.*

The "partisan fairness" and "competitiveness" criteria that voters enacted into constitutional law are among the most important that the nonpartisan state demographer must consider. For example, the boundaries of electoral districts shall coincide with the boundaries of political subdivisions, but only "to the extent consistent" with partisan fairness and competitiveness requirements. Mo. Const. Art. III § 3(c)(1)(d). Similarly, Amendment 1 provides that the demographer shall prefer districts that are compact, but the partisan fairness and competitiveness requirements "take precedence" over that criterion also. *Id.* at § 3(c)(1)(e). Thus, Missourians required the demographer to design districts to create elections where if one party has a good year and earns more votes, that party will earn more seats in the legislature.

B. Proposed Amendment 3 (2020), introduced by the General Assembly, would repeal Amendment 1's key provisions

Proposed Amendment 3 repeals the key provisions described above. For one, it eliminates the position of the nonpartisan state demographer and reassigns the responsibility for drawing electoral districts back to legislative commissions. Proposed Amendment 3 would rename the legislative commissions as the "senate independent bipartisan citizens commission" and "house independent bipartisan citizens commission."

These commissioners, nominated by legislators from each of the two major political parties and selected by the governor, would draw the electoral boundaries for Missouri's state Senate and House districts. Thus, proposed Amendment 3 weakens a check on the legislative tendency toward protecting incumbents: the nonpartisan state demographer.

Proposed Amendment 3 also eliminates, for all intents and purposes, the "partisan fairness and competitiveness" criteria that were central to Amendment 1. Under the current Constitution, the partisan fairness and competitiveness criteria take precedence over preferences for geographical compactness and drawing lines to following existing political subdivision boundaries. Proposed Amendment 3 would invert that priority. In the event of a conflict between compactness or following existing political boundaries, on the one hand, and achieving fair and competitive elections, on the other, the latter set of concerns would lose out under proposed Amendment 3.

Proposed Amendment 3 not only de-prioritizes partisan fairness and competitiveness but also redefines what those terms mean. Whereas under Amendment 1, the efficiency gap must be as close to zero as possible, under Proposed Amendment 3, "the difference between the two parties' total wasted votes, divided by the total votes cast for the two parties [*i.e.*, the efficiency gap], *shall not exceed fifteen percent*." What the proposed amendment does not explain, to say nothing of the summary statement, is that an efficiency gap of 15% reflects a severe partisan gerrymander in light of the fact that "[a] 7 percent efficiency gap is at the edges of the overall distribution of all state house plans in the modern era, making it indicative of uncommonly severe gerrymandering." *Whitford v. Nichol*, 151 F. Supp. 3d 918, 922 (W.D. Wis. 2015). In other words, an efficiency gap of 15% imposes virtually no limit on lawmakers' impulses and ability to engage in partisan gerrymandering—it is as if the Surgeon General warned Americans

not to consume more than 15 beers per day. The difference is that most people already know that, whereas most people probably do *not* know that a "15% efficiency gap" is bad for the health of our democracy.

People want fair and competitive elections, but because they may not always know how redistricting will or will not help them to achieve that goal, they need a fair and sufficient summary statement to describe changes in the redistricting process. As described below, however, legislators are not well-situated to draft such a summary statement because they have a personal interest in the outcome.

II. Legislators have a strong personal interest in proposed Amendment 3

Legislators have a strong personal interest in the election process in general and the boundaries of their voting districts in particular. Legislators want to be reelected; they cannot achieve the goals they set out to achieve in office as a legislator if they are not *elected to serve*. Redrawing electoral districts can shift a legislator from the winner's column to the loser's column, and vice-versa. *See, e.g.*, *Rucho v. Common Cause*, 139 S. Ct. 2484, 2493 (2019) (describing redistricting plan that changed partisan result of election in Maryland congressional district). And redrawing electoral districts can ensure that the result stays the same: "When district maps are drawn to benefit a political party—whether Democrat or Republican—the incumbents in these districts don't need to worry about the general election; it's already in the bag."[10]

[10] John C. Danforth, *Let's stick with 'Clean Missouri'*, St. Louis Post-Dispatch (May 4, 2020), https://bit.ly/34wMJbe.

The temptation for legislators to use redistricting as a political tool to insulate incumbents and lock in partisan majorities is even stronger today than it was in the past. Today's legislators have access to sophisticated software and vast databases of voter information.[11] Armed with these tools, political actors can draw electoral boundaries with confidence that they will protect the election prospects of incumbents and give them durable and disproportionate advantage in general elections. Thus, legislators have the motive and the means to change the redistricting process to be more favorable to themselves and their colleagues, at the expense of competitive elections, voters, and democratic values.[12]

This Court's determination that legislators have a strong personal interest in the election process and the boundaries of their voting districts does not require a formal, case-specific evidentiary showing or even judicial notice. This is because a legislator's personal interest in winning an election is a "non-adjudicative" fact which is "necessary to the reasoning process." *State v. Todd*, 183 S.W.3d 273, 277 (Mo. App. W.D. 2005) (quoting Fed. R. Evid. 201, Advisory Committee Note). No foray into the "political thoughts and beliefs" [*State ex rel. Kander v. Green*, 462 S.W.3d 844, 852 (Mo. App.

[11] *See* Bernard Grofman & Jonathan R. Cervas, *Can State Courts Cure Partisan Gerrymandering: Lessons from* League of Women Voters v. Commonwealth of Pennsylvania *(2018)*, 17 Election L.J. 278 (2018), http://bit.ly/2BTrnpj; David W. Nickerson & Todd Rogers, *Political Campaigns and Big Data*, 28 J. Econ. Persp. 51 (2014).

[12] The Missouri Supreme Court has recognized that gerrymandering is a "legislative evil." *Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. 2012). And the United States Supreme Court has recognized that partisan gerrymandering is "incompatible with democratic principles." *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 791 (2015).

W.D. 2015)] of individual legislators is needed for a court to determine that legislators have a strong incentive to draw district lines for their personal advantage and for the advantage of their political party. Thus, this Court may and should determine that legislators have a strong personal interest in the proposed amendment in this case because they would be the direct beneficiaries of the amendment.

As described above, legislators are direct beneficiaries of the proposed amendment because it gives them and political party officials more control over the redistricting process and alters the State's redistricting criteria to redefine and minimize the importance of partisan fairness and competitiveness. These changes enable partisan gerrymandering for the benefit of partisan interests, as they did before the voters enacted Amendment 1 to remedy the practice of gerrymandering in Missouri. And because they are interested beneficiaries in the transaction that they have proposed to the voters, this Court should scrutinize their description of that transaction, just as it would scrutinize interested-party transactions in other legal contexts, as discussed below.

III. Because legislators have a strong personal interest in proposed Amendment 3, the Court should closely scrutinize the summary statement

The General Assembly must submit any proposed constitutional amendment to the voters for approval. Mo. Const. Art. XII, Section 2(b). To satisfy this requirement, the General Assembly may present a "summary statement" in a statewide ballot measure. Section 116.155.1, RSMo. The summary statement must be "a true and impartial statement of the purposes of the proposed measure in language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure." Section 116.155.2, RSMo.

Any citizen may present a court challenge to the summary statement on the ground that it is "insufficient or unfair." Section 116.190.3, RSMo. This combined citizen and judicial check on the General Assembly is "designed to assure that the desirability of the proposed amendment may be best judged by the people in the voting booth." *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. Banc 1981). In particular, the courts are in a position "to prevent a self-serving faction from imposing its will upon the people without their full realization of the effects." *Id.* at 11–12; *Hill v. Ashcroft*, 526 S.W.3d 299, 316 (Mo. App. W.D. 2017) (same).

The "ballot title" refers to the official summary statement approved by the General Assembly along with the approved fiscal note summary. *See* Section 116.155, RSMo. The "ballot title" is what the voters see on the ballot form near the place on the ballot where the voters mark "yes" or "no" and therefore is very likely to influence the voters' decision to vote for or against the proposed amendment. In fact, many or most voters likely base their voting decision on the language of the ballot title alone, *i.e.*, without reading the longer text of the proposed amendment itself. Thus, judicial review of the ballot title is available in all cases to ensure that the ballot title is sufficient and fair, including by certifying alternative language if necessary. *See* Section 116.190, RSMo; *Boeving v. Kander*, 493 S.W.3d 865, 882 (Mo. Ct. App. 2016).

"Judicial review of a ballot title is especially important in a legislature-proposed ballot initiative." *Dotson v. Kander*, 464 S.W.3d 190, 193–94 (Mo. 2015). "This is true because the proponent of the initiative—the General Assembly—writes the ballot title as well as the proposed amendment without any review of the ballot title by the executive department." *Id.* at 194 (comparing Section 116.025 with Section 116.155). "In contrast, the ballot summary of a citizen-proposed initiative petition is written by the secretary of

state and reviewed by the attorney general." *Id.* at 194 n.4 (citing Section 116.025, RSMo). Judicial review is the only check on a legislature-proposed initiative and ballot title.

In *Dotson v. Kander*, *supra*, the Missouri Supreme Court considered a legislature-proposed amendment to the Constitution concerning "the right of *every citizen* to keep and bear arms." 464 S.W.3d at 196 (emphasis added). Thus, the legislators that proposed the amendment had no personal interest in the amendment that was different from that of "every citizen" in the State of Missouri. Nevertheless, the Court noted the importance of review when the same entity drafts both a proposed amendment and the summary statement. Among other things, the proponent of a constitutional amendment necessarily believes it should pass and therefore may resort to advocacy intended to maximize support for the measure, as opposed to framing a choice for voters to make in a fair and sufficient manner.

This Court has never considered a case in which legislators themselves proposed an amendment to the Constitution that would transfer power and control over redistricting to political party-appointed officials by undoing a constitutional amendment that the People themselves placed on the ballot and enacted just two years ago. In this situation, the danger that "a self-serving faction" may impose "its will upon the people without their full realization of the effects of the amendment" [*Boeving*, 493 S.W.3d at 874] is at its highest. Compounding the danger is the fact that partisan gerrymandering, once carried out, is an irreparable harm for those whose votes are rendered meaningless and for political parties whose representation in the General Assembly is far less than their support among voters. In this context, close scrutiny of the summary statement is warranted.

Close scrutiny is commonplace under Missouri law where, as here, a person in a position of trust uses that position to engage in a transaction for their personal benefit—even when that transaction might otherwise be reviewed deferentially.[13] For example, the actions of corporate directors are typically assessed in accordance with the "business judgment rule," which is "a deferential standard that presumes directors exercise their business judgment with due care and good faith in the best interest of the corporation." *AHI Metnall, L.P. by AHI Kansas, Inc. v. J.C. Nichols Co.*, 891 F. Supp. 1352, 1356 (W.D. Mo. 1995). But the business judgment rule does not apply when the directors have a personal interest in a transaction with the corporation. Thus, when directors "sell the corporate property to a new company, of which they are directors and stockholders," the transaction is subject to "the closest scrutiny." *Barrie v. United Rys. Co. of St. Louis*, 119 S.W. 1020, 1061 (Mo. 1909); *see also Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 180 (Del. 1986) (explaining that the business judgment rule does not apply where there is a danger that a board of directors "may be acting primarily in its own interests, rather than those of the corporation and its shareholders").

[13] "Close scrutiny" generally describes a standard of review in which the Court reviews an issue critically and without deference to the proponent of a position. *See Goodman v. Crader*, 227 S.W.2d 457, 459 (Mo. 1950) ("Dealings between parent and child are subject to close scrutiny where the rights of creditors are involved."); *Barrett v. Foote*, 187 S.W. 67, 70 (Mo. 1916) (same); *State v. Joiner*, 823 S.W.2d 50, 55 (Mo. App. E.D. 1991) ("Where a case stands or falls on the jury's belief or disbelief of essentially one witness, that witness' credibility or motive must be subject to close scrutiny.") (citation omitted); *cf. Evans v. FirstFleet, Inc.*, 345 S.W.3d 297, 303 (Mo. App. S.D. 2011) ("Missouri appellate courts no longer engage in close scrutiny of the amounts awarded by juries for personal injuries …. (citation omitted)).

The same is true in the context of trusts. Generally, "'[w]here discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court[.]'" *O'Riley v. U.S. Bank, N.A.*, 412 S.W.3d 400, 406 (Mo. App. W.D. 2013) (quoting Restatement (Second) of Trusts § 187 (1959)). Judicial control may be necessary, however, if the trustee has an interest "conflicting with that of the beneficiaries." *Id.* at 407 (quoting Restatement (Second) of Trusts § 187 cmt. d (1959)). The Eighth Circuit summed it up well: "Under the common law of trusts … where the plan trustee labors under a conflict of interest … the resulting decision may be accorded *stricter scrutiny*." *Buttram v. Cent. States, Se. & Sw. Areas Health & Welfare Fund*, 76 F.3d 896, 899–900 (8th Cir. 1996) (emphasis added); *see also Oksner v. Jaco*, 646 S.W.2d 385, 387 (Mo. App. E.D. 1983) ("In this case the trustee was also a beneficiary under the trust; therefore, the facts and circumstances surrounding his refusal to pay the funeral expenses merit unusually close scrutiny.").

The rule is the same again with respect to lawyer-client transactions. Generally, "[a] contract for attorneys' fees is construed under the same rules of construction as apply to any other contract." *Smith v. Mann, Poger & Wittner, P.C.*, 882 S.W.2d 164, 167 (Mo. App. E.D. 1994). But some lawyer-client transactions involve conflicts of interest, and with that conflict comes close scrutiny. In particular, "'a fee paid in property instead of money may be subject to *special scrutiny* because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.'" *In re Snyder*, 35 S.W.3d 380, 383 (Mo. Banc 2000) (citing Mo. Rule 4-1.5, cmt.) (emphasis added); *see also Flanagan v. DeLapp*, 533 S.W.2d 592, 595 (Mo. 1976) (acknowledging that "any purchase or acquisition by an attorney of his client's property"

is "subject to *close scrutiny*") (citing 7 C.J.S. Attorney and Client § 128 (1937) (emphasis added)).

Thus, when the General Assembly proposes an amendment for the benefit of the legislators in the General Assembly, and the General Assembly also drafts the summary statement that will inform the voters of the amendment, the courts need not (and should not) act with "restraint" or "trepidation" or be "reluctant to become involved." *See Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. Banc 1990). To the contrary, the self-dealing presented by the proposed amendment calls for close judicial scrutiny, as in any other case in which a trusted fiduciary proposes to use money or power held in trust to benefit himself or herself. Close scrutiny is warranted not simply because the General Assembly had an "intent" to craft language to garner more votes, *see Sedey v. Ashcroft*, 594 S.W.3d 256, 265 n.6 (Mo. App. W.D. 2020); instead, as in numerous other cases in which courts scrutinize self-interested transactions, close scrutiny is warranted here because the summary statement's drafters had a strong personal interest in the content of proposed Amendment 3.

Legislators exercise the power of government, including the power to propose constitutional amendments directly, as trustees for the People. Because they have proposed to use that power to increase their own control over the redistricting process and to repeal Amendment 1 for their own benefit, this Court should ensure that the summary statement fairly and accurately describes what the General Assembly has proposed.

IV. The circuit court properly certified alternative language to describe proposed Amendment 3 because the General Assembly's summary statement was misleading and insufficient

The circuit court aptly described why the General Assembly's summary statement was neither fair nor sufficient. All of the bullet points in the summary statement were misleading, and none more so than the proposed question asking whether the Missouri Constitution should be amended to "[c]reate 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?" Senate Joint Resolution 38. Among the numerous problems with this statement noted by the circuit court, nothing in the statement discloses to the reader that Amendment 3 would eliminate one of the core reforms that Amendment 1 enacted into constitutional law—elevating partisan fairness and competitiveness above other traditional redistricting principles.

Voters need to know if they are being asked to change a decision they just made in the last election. They need to know if they are being asked to approve a redistricting process that would render elections less fair and less competitive. The legislators who prepared the summary statement in this case have a personal interest in that decision and failed to provide needed information to the voters. Their summary statement is, instead, the epitome of "a self-serving faction" trying to impose its will upon the people "without their full realization of the effects." *Buchanan*, 615 S.W.2d at 11–12. Accordingly, the circuit court was right to reject it and certify alternative language for the November 3 ballot.

CONCLUSION

Amici respectfully ask this Court to affirm the judgment of the circuit court.

Dated: August 25, 2020

Respectfully submitted,

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CERTIFICATION

Pursuant to Mo. R. Civ. Proc. 84.06(c), I hereby certify that this brief complies with Mo. R. Civ. Proc. 55.03 and with the requirements and limitations set forth in Rule 84.06(b) and the Local Rules of the Court. This brief contains 4,782 words according to the Microsoft Word system used to prepare the brief.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing brief was filed in PDF format with the Missouri Court Electronic Filing System and served on counsel for all parties on August 25, 2020.

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