**WD83962**

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**IN THE MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

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**BARBARA PIPPENS, *et al.*,**

*Respondents*,

v.

**JOHN R. ASHCROFT, MISSOURI SECRETARY OF STATE, *et al.***

*Appellants*.

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Appeal from the Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Circuit Judge

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# REPLY BRIEF

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# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Cases

Statutes



Other Authorities

## INTRODUCTION

Respondents argue that the "central feature" of SJR 38 is that it will replace some of the redistricting provisions adopted in 2018 through Amendment 1. On the contrary, the "central features" of a proposal are *the objective policies that the proposal itself will enact*—not the details or enactment history of previously adopted policies that it will affect. "Missouri's courts have never held that a summary statement … must explain the initiative's potential effect on existing or future statutes to be fair and sufficient." *Hill v. Ashcroft*, 526 S.W.3d 299, 315 (Mo. App. W.D. 2017). Instead, the summary must merely "accurately reflect the legal and probable effects of the proposed initiative." *Boeving v. Kander*, 493 S.W.3d 865, 873-74 (Mo. App. W.D. 2016) (quoting *Brown v. Carnahan*, 370 S.W.3d 637, 654 (Mo. banc 2012)).

Each bullet point of the summary fairly and accurately summarizes the proposal's chief provisions, and places voters on notice of the purpose and central features of the proposal. The Court should reverse the trial court's judgment and certify the original summary statement as drafted by the Legislature.

## ARGUMENT

### I. The "Central Features" of SJR 38 Are the Policies That It Will Enact, Not the Prior Electoral Outcomes It Will Affect (Supports Point I).

A "central feature" of a proposal is one that will "make the subject evident with sufficient clearness to give notice of the purpose to those interested or affected

by the proposal." *Sedey v. Ashcroft*, 594 S.W.3d 256, 269 (Mo. App. W.D. 2020). Identifying "central features" involves examining the proposal and its title to determine what objective policies it will enact, *i.e.*, "what the proposed amendment would accomplish … if adopted." *Id.* at 270. In every relevant case, this Court has followed this approach of identifying "central features" by considering the objective policies adopted by the measure, not the details or enactment history of prior policies affected by the proposal.

First, *Hill* rejected the same argument Respondents make here. *Id.*; App. Br. 34-36. In *Hill*, the main impact of the proposal was to abrogate a "Right-to-Work" bill that the Legislature had just enacted. *Id.* at 314. As this Court held, the fact that the proposal would repeal a major piece of legislation that had just passed was not a "central feature" of the proposal. *Id.* The summary was not required to refer to recent enactments that would be affected; instead, the summary was fair because it accurately described *the objective policy to be adopted by the proposal itself*. *Id.* at 314-15. "The Summary Statements clearly state that the Missouri Constitution will be amended to affect collective bargaining rights," and that sufficed. *Id.* at 315.

Similarly, in *Sedey*, this Court concluded that "no-fault absentee voting" was a "central feature," 594 S.W.3d at 271, by examining the proposal itself and identifying the policies it would adopt: "It would eliminate the need to provide a reason for voting by absentee ballot, it would allow any voter to cast a ballot by mail

or in person … , and it would create an option for *all* qualified voters to request permanent receipt of mail-in absentee ballots for future elections." *Id.* at 270. The Court did not hold that the details or enactment date of the prior, more restrictive voting regime were "central features" of the proposal. *Id.*

Likewise, in *Boeving v. Kander*, the proposed initiative would have created exceptions to preexisting constitutional provisions that prohibited state funds from going to religious schools and authorized state funding for "human embryonic stem-cell research," the latter of which had been recently enacted by the voters. 493 S.W.3d at 881. But this Court rejected the argument that these changes to previously existing constitutional law constituted "central features" of the proposal. *Id.* Instead, it held that the "central features" were the objective policies that it would enact, not its impact on those prior policies approved by the voters. *Id.* To be sure, *Boeving* reaffirmed that sometimes a "context reference" is necessary in the summary statement, but the purpose of the "context reference" is to explain the objective policies that the proposal will enact, not to make a political statement about prior electoral outcomes. *Id.* at 874 (holding that a "context reference … *will enable the voters to understand the effect of the proposed change*") (emphasis added).

Respondents cite no cases to contradict this consistent line of authority. They rely on *Earth Island Institute v. Union Electric Company*, 456 S.W.3d 27 (Mo. banc 2015), and *Cures Without Cloning v. Pund*, 259 S.W.3d 76 (Mo. App. W.D. 2008),

but neither case supports their position. *Earth Island Institute* held that the Legislature may not "repeal an initiative … in advance of its passage." 456 S.W.3d at 34. Because Amendment 1 was adopted in 2018 and SJR 38 proposed in 2020, this principle has no application here. *Pund* addressed a summary statement that referred to the proposal's impact on a previously adopted initiative, but *Pund* never held that the reference was *required* to render the summary fair and sufficient. 259 S.W.3d at 81. On the contrary, *Pund* held that the summary was insufficient and unfair because it misstated the proposal's impact on the recently enacted provision—as the trial court's first bullet point would do here. *Id.* at 83.

Respondents' proposed alternative approach is not reasonable or feasible. In fact, Respondents' brief vividly illustrates the hazards of their own approach. Instead of the 50 words allocated to the Legislature, it provides over 2,000 words of "historical context," Resp. Br. 3, to explain the impact of SJR 38 on 2018's Amendment 1 and prior law. Resp. Br. 3-11. Providing such "historical context" in a 50-word summary is neither necessary nor feasible. In fact, Amendment 1 in 2018 significantly changed the campaign-finance restrictions that had just been adopted by the voters in Amendment 2 in 2016, yet the ballot summary for Amendment 1 made no mention of Amendment 2, nor was it required to do so. *Ritter v. Ashcroft*, 561 S.W.3d 74, 81 (Mo. App. W.D. 2018).

Moreover, even if replacing portions of Amendment 1 could be fairly described a "central feature" of SJR 38—which it cannot—no "express reference" to it would be required in the summary statement. In *Sedey*, this Court held that no-fault absentee voting was a "central feature" of the proposal, but "the absence of an *express reference* to the no-fault provision does not necessarily render the summary statements insufficient." 594 S.W.3d at 271 (emphasis added). The summary stated that the proposal would "allow voters to sign up to permanently vote by mail," which sufficed to place voters on notice to investigate further about this "central feature." *Id.* In so holding, the Court emphasized that "the use of broad, over-inclusive language is acceptable and does not run contrary to the requirements" of sufficiency and fairness. *Id.* (quoting *Hill*, 526 S.W.3d at 308).

So also here, no "express reference" to Amendment 1 is required in the summary. *Id.* The summary's third bullet point fairly advises voters that the proposal will make significant changes to the State's redistricting process by "creat[ing] 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." D12, at 14-15. This statement alerts any voter who may be concerned about preexisting redistricting policies that SJR 38 will impact those policies, and allows that "voter to make an informed decision about whether to investigate further." *Hill*, 526 S.W.3d at 314. No more is required.

## II. Legislature-Drafted Summary Statements Are Subject to the Same Standards as Secretary-Drafted Statements (Supports Point VI).

Respondents argue that this Court should adopt a novel, more exacting standard of review for Legislature-drafted summaries than for those drafted by the Secretary of State. This argument contradicts binding circuit precedent and the plain language of Sections 116.155 and 116.190, RSMo.

In *State ex rel. Kander v. Green*, 462 S.W.3d 844, 847 (Mo. App. W.D. 2015), this Court considered a challenge to the ballot summary prepared by the Secretary of State for a proposal that would directly impact every elected official in Missouri—a comprehensive campaign-finance-reform initiative that voters adopted in 2016 as Amendment 2. *Id.* The Secretary of State "was an outspoken proponent of campaign finance reform," and the initiative's opponents sought discovery to show that he was "biased and prejudiced" in preparing the summary. *Id.* This Court rejected this request, holding that the Secretary's alleged political bias was irrelevant because the question of fairness and sufficiency is an *objective* test. *Id.* at 849-50. In so holding, the Court acknowledged that "Secretaries of State are officials elected in a partisan statewide election, who are likely to have positions on many of the important issues of the day… But we are aware of no presumption that an elected official cannot act in his lawful capacity merely because he has a subjective opinion on an issue." *Id.*

This Court then extended the same reasoning to the Legislature. *Id.* at 851. The Court noted that "Chapter 116 appears to presume actual proponents of initiative petitions can … prepare a fair and sufficient ballot summary. For example, the legislature 'may include the official summary statement ... in any statewide ballot measure that it refers to the voters.'" *Id.* at 851 (quoting § 116.155.1, RSMo). The Court noted that, under the statute, the requirements for the Legislature's summary are "identical to the requirements for ballot summaries created by the Secretary." *Id.* (citing § 116.155.2, RSMo). "And, as with the Secretary's ballot summary, the legislature's language is subject to judicial challenge on the grounds that it is 'insufficient or unfair,' under precisely the same statute." *Id.* (citing § 116.190.1, .3, RSMo).

The Court acknowledged that "[t]he legislative ballot summary will normally be prepared by or for the bill's sponsor—someone who plainly has an interest in seeing the measure become law." *Id.* (citing § 116.190.2, RSMo). "Yet Chapter 116 contains *no indication that this interest creates any presumption that the legislature's summary is insufficient or unfair*." *Id.* at 852 (emphasis added). Thus, the Legislature's ballot summary is subject to the same standard of review as that which applies to those drafted by the Secretary of State. *Id.*

For this reason, this Court's cases "analyz[e] whether [a] legislatively drafted summary statement was "insufficient or unfair" under section 116.190.2," by

"employing the same standard as that used for a summary prepared by the Secretary of State." *Id.* (citing *Coburn v. Mayer*, 368 S.W.3d 320, 324 (Mo. App. W.D. 2012), and *Seay v. Jones*, 439 S.W.3d 881, 888 (Mo. App. W.D. 2014)).

As *State ex rel. Kander* recognized, Section 116.190.1 provides for "identical" judicial review standards for a suit by "[a]ny citizen who wishes to challenge the official ballot title or the fiscal note prepared for a proposed constitutional amendment submitted by the general assembly, by initiative petition, or by constitutional convention…." § 116.190.1, RSMo. All such petitions are subject to the same substantive review standard: "The petition shall state the reason or reasons why the summary statement portion of the official ballot title is insufficient or unfair…." § 116.190.3, RSMo. Section 116.155.2 reiterates: "The title shall 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." § 116.155.2, RSMo.

Respondents argue that *Dotson v. Kander* abrogated *State ex rel. Kander* on this point, Resp. Br. 16, but that is incorrect. *Dotson* merely stated that "judicial review of a ballot title is *especially important* in a legislature-proposed initiative," because the Legislature proposes its own summary without review from an executive official. 464 S.W.3d 190, 193 (Mo. banc 2015) (emphasis added). *Dotson* did not hold that any different *standard of judicial review* applies to Legislature-prepared

summaries. *See id.* On the contrary, *Dotson* explicitly reaffirmed the judicial standards that this Court routinely applies to summary statements drafted by the Legislature and the Secretary alike, and held that those same standards apply to Legislature-drafted summaries. *Id.* at 195-196.

## III. The Summary's First Bullet Point Accurately States That SJR 38 Will Ban All "Lobbyist Gifts" (Supports Point II).

The sole definition of "lobbyist" in the leading dictionary of the English language provides that a "lobbyist" is "a person who is employed and compensated for lobbying." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1326 (2002). Under this definition, being "employed and compensated" for lobbying is the *defining feature* of what makes one a "lobbyist," as opposed to a concerned citizen seeking to influence the legislature. *Id.* The so-called "exception" for gifts from "unpaid lobbyists," therefore, does not undermine the truthfulness of stating, in ordinary English, that SJR 38 will ban "*all* lobbyist gifts." D12, at 14.

Respondents never dispute this, and they do not cite any dictionary definition of "lobbyist." Instead, they emphasize that Amendment 1 used the phrase "paid lobbyist" when it amended the Constitution to include the current version of the gift restriction. Resp. Br. 23. But even if "paid lobbyist" has a specialized meaning in Missouri law, the Legislature was not required to employ terms involving specialized legal usage in the summary statement. On the contrary, "everyday,

colloquial language" is permissible, and in many cases, it is preferable to avoid misleading or confusing voters. *Stickler v. Ashcroft*, 539 S.W.3d 702, 715 (Mo. App. W.D. 2017).

Respondents also argue that the authorization of gifts for family members undermines the accuracy of the first bullet point. Resp. Br. 24 (citing Glen Justice, *When Lawmaking and Lobbying Are All in the Family*, NEW YORK TIMES (Oct. 9, 2005), *at* https://www.nytimes.com/2005/10/09/weekinreview/when-lawmaking-and-lobbying-are-all-in-the-family.html). But Respondents' article discusses situations when professional lobbyists were closely related to elected officials, such as spouses and children, and it notes that those family members followed conflict-of-interest rules. *Id.* As noted in the State's opening brief, no ordinary voter would consider a birthday or holiday present from one's wife or child to be a "lobbyist gift"—especially if those family members are following conflict-of-interest rules and not lobbying the family member who is an elected official. *Id.* Such a gift would be called a "family gift." Accordingly, the first bullet point's statement that SJR 38 bans "all" lobbyist gifts is fair and sufficient, because it accords with ordinary English as used by the average voter.

Elsewhere, Respondents rely heavily on the Senate Research Summary, but here they fail to note that it too states: "This amendment prohibits ***all*** such gifts from lobbyists or lobbyist principals." D11, at 1 (emphasis added).

Finally, even if there were any inaccuracy in stating that the measure bans "all" lobbyist gifts, the trial court should have addressed that concern through a narrower remedy, such as deleting "all" or replacing it with "most." Respondents explicitly concede this point. Resp. Br. 53.

## IV. The Second Bullet Point Accurately States That SJR 38 Will "Reduce Legislative Campaign Contribution Limits" (Supports Point III).

Respondents argue that the State's trial brief "conceded that SJR 38 does not reduce contribution limits for all legislators." Resp. Br. 27 (citing D18, at 18). This is incorrect. When the State's trial brief stated that "SJR 38 will reduce the contribution limit for candidates for the Senate but not for the House of Representatives," D18, at 18, the brief was referring to the absolute dollar limitations of $2,500 and $2,000, respectively, not to the inflation adjustment. *See id.* The trial brief's immediately preceding paragraph referred to the fact that SJR 38 will "reduce the campaign contribution limit to state senators running for office to $2,400," *id.*, and the same paragraph referred to the fact that "SJR 38 will reduce those limits to get closer to the lower amount already in place for House members ($2,000)," *id.* The immediate context thus demonstrates that the trial brief was referring to the absolute dollar limits, not the inflation adjustment. The State did not and could not have conceded that SJR 38 will not eliminate the inflation adjustment that applies to

both House and Senate candidates, because that provision is set forth plainly in the text of SJR 38. D12, at 2.

Respondents also argue that the State "waived" reliance on the inflation adjustment by focusing its argument in the trial court on the change to the absolute dollar limits. On the contrary, the State vigorously defended the accuracy of the second bullet point in the trial court, both in briefing and oral argument, *see* D18, at 18-19, thus fully preserving the issue for appeal. *See, e.g.*, *Costello Family Trust Dated July 20, 2006 v. Dean Family Lotawana Trust Dated July 20, 2006*, 551 S.W.3d 561, 572 n.12 (Mo. App. W.D. 2018) (holding that a single sentence in a summary-judgment opposition asserting a duress defense, without citation of case law, preserved that issue for appeal). Nothing prevents this Court from considering the fairness and sufficiency of the summary in light of the plain text of SJR 38.

Respondents also contend that it was improper for the State's opening brief to cite materials posted on the Missouri Ethics Commission's website, complaining that this is "material outside the record." Resp. Br. 27.[1] On the contrary, this Court may take judicial notice of facts that "have independent reliability and trustworthiness," such as the new contribution limits for House and Senate races

[1] Respondents' own brief repeatedly cites materials "outside the record," such as a news article from 2005, a posting on a university website discussing "puppy mill cruelty," and unverified third-party research. Resp. Br. 17, 18, 24.

posted on the MEC's website. *St. Louis County v. Skaer*, 321 S.W.3d 350, 352 (Mo. App. E.D. 2010). If it were necessary, the Court may also take judicial notice of the widely known fact that inflation trends upward over time, because it is "within the common knowledge of people of ordinary intelligence." *Id.*

Moreover, the plain text of SJR 38 itself—which is not "outside the record"—demonstrates that (1) the House and Senate limits were adjusted upward for inflation by operation of law on January 1, 2020; (2) SJR 38 will undo this upward adjustment; and (3) SJR 38 will prevent any such adjustments from recurring in the future. *See* D12, at 2 (striking the language from Article III, § 2 stating that "[c]ontribution limits set forth herein shall be adjusted on *the first day of January in each even-numbered year* hereafter by multiplying the base year amount by the cumulative Consumer Price Index and rounded to the nearest dollar, *for all years after 2018*") (emphases added). The text of SJR 38 demonstrates that the proposal will both undo the inflation adjustment that occurred on January 1, 2020, and abrogate all future inflation adjustments. *Id.* The MEC's website merely identifies the precise dollar amount of the 2020 adjustment.

In light of these facts, the second bullet point is plainly fair and accurate. "Reduce" means to "diminish in size," or "make smaller." WEBSTER'S THIRD, at 1905. Based on its plain terms, the "legal and probable effect" of SJR 38 will be to: (1) reduce the Senate limit to $2,400; (2) undo the upward adjustment for inflation

that applied by operation of law to both House and Senate limits on January 1, 2020; and (3) abrogate all future biannual upward adjustments. D12, at 2. On each point, legislative contribution limits will be "smaller" under SJR 38 than they will be if current law remains in effect. The elimination of "mandatory, [bi]annual, inflation-based increases" will "reduce" contribution limits over time. *Boeving*, 493 S.W.3d at 875. Thus, the proposal will unquestionably "reduce legislative campaign contribution limits," for both House and Senate races. D12, at 14.

In any event, even if SJR 38 affected only Senate contribution limits, it would still be accurate to say that the proposal reduces "legislative campaign contribution limits." D12, at 14. Respondents do not dispute that the Senate limits are "legislative" limits, and they concede that SJR 38 reduces those limits for an entire house of the Legislature—namely, the Senate. Resp. Br. 26.

Finally, even if there were any insufficiency, the trial court could have corrected it with a narrower remedy, such as replacing "legislative" with "senate," as Respondents concede. Resp. Br. 53.

## V. The Third Bullet Point Accurately Summarizes SJR 38's Effects on Redistricting (Supports Points IV and V).

Respondents advance a series of challenges to the summary's third bullet point, but none of their arguments has merit.

### A. SJR 38 will "create" new redistricting commissions.

Respondents concede that (1) the new commissions will have significantly different numbers of members than preexisting commissions, including one which will be *double* the size of its predecessor, Resp. Br 32; (2) their members will be selected by a different methodology that significantly diversifies the geographic composition of the commissions, *id.*; and (3) the new commissions' authority and responsibility over redistricting will change from "secondary authority" to review the demographer's maps, to "initial map-drawing responsibility," Resp. Br. 33. Respondents argue that this shift in map-drawing responsibility "is not a revolutionary change," *id.* at 32, but this contention is both incorrect and self-contradictory. On the very next page of their brief, they insist that the transfer of "initial map-drawing responsibility" from the demographer to the new commissions is a *very* significant change. *Id.* at 33-34; *see also id.* at 45.

Respondents concede that "create" means "to invest with new form." Resp. Br. 31; *see also* WEBSTER'S THIRD, at 532 ("to invest with a new form, office, or rank: constitute by an act of law or sovereignty"). Plainly, SJR 38 will "invest" these

new commissions "with new form," since it will change their size, their composition, their manner of selection, their authority, and their responsibilities. By comparison, proposal that would double the number of judges on the Missouri Supreme Court, change the Court's name, change the manner in which its judges are selected, and change its responsibility from appellate cases to trial cases, would "create" a new court. *Id.*

Respondents rely heavily on the Senate Research Summary's statement that SJR 38 will "rename[]" "currently-existing commissions." Resp. Br. 31-32 (quoting D11, at 2). Respondents' reliance on this summary is selective because they ignore that it also states that SJR 38 "prohibits *all* … gifts from lobbyists and lobbyists principals." D11, at 1, 2 (emphasis added). In any event, the Senate Research Summary constitutes extraneous material that does not displace this Court's judgment on what constitutes "fair and sufficient" language. On this point, the Legislature's official summary is plainly more accurate than the informal summary prepared by research staffers, because SJR 38 clearly "invests" the commissions "with new form." Furthermore, even if both characterizations were arguable, "ten different writers would produce ten different versions." *Asher v. Carnahan*, 268 S.W.3d 427, 431 (Mo. App. W.D. 2008).

Finally, even if "create" were insufficient, the trial court could have addressed its concern by simply replacing "create" with "employ."

**B. The new commissions will be "citizen-led."**

Without citing a dictionary, Respondents contend that a "citizen" is "a permanent inhabitant of a particular place (a citizen of Missouri or a citizen of Jackson County)." Resp. Br. 35. Even under this definition, the commissions are "citizen-led" because they are led by inhabitants of Missouri, including inhabitants of each of the eight congressional districts on both commissions. D12, at 8, 11 (providing that the house and senate commission members must be "members of their party" and "*residents in that district*, in the case of a congressional district committee") (emphasis added).

Moreover, in this context, the more natural connotation of "citizen-led" is that the commissions are led by citizens *as opposed to elected officials*, such as members of the Legislature. *See* WEBSTER'S THIRD, at 411 (defining a "citizen" as one who is not a "specialized servant or functionary of the state"). In the context of *redistricting*, the relevant "specialized servant or functionary of the state" is not a police officer or solider—it is an elected official affected by the process. *Id.* Respondents argue that "sitting members of the General Assembly are eligible to be nominated under the process in SJR 38," Resp. Br. 35, but then Respondents concede that "SJR 38 would … prohibit commission members 'from holding office as members of the General Assembly for four years following the date of the filing by the commission of its final plan.'" Resp. Br. 36 (quoting D12, at 8, 11). In other

words, any member of the General Assembly who served on a redistricting commission would have to promptly resign from office and not seek office in the legislature again for four years. D12, at 8, 11. Thus, the commissions are "citizen-led" under either the more general or the more precise definition of "citizen."

**C. The new commissions will be "independent."**

Again, Respondents cite no dictionary definition of "independent" in their criticism of the summary's use of this word. Resp. Br. 36-38. "Independent" means "not subject to control by others: not subordinate: self-governing." WEBSTER'S THIRD, at 1148. Respondents do not dispute that the commissions are "independent" in this ordinary meaning of the word, as they elect their own leaders, conduct their own business, draw their own maps, and prepare their final report without anyone outside them "control[ing]" or "governing" that process. D12, at 9-10, 11-12.

Instead, Respondents argue that members of the General Assembly and other interested parties might seek to "influence" the commissions' decision-making. Resp. Br. 36. In fact, the commissions are *required* to seek input from interested parties by holding public hearings on their proposed maps. D12, at 10, 13. But the mere fact that interested parties might try to "influence" their decisions does not stop the commissions from being "independent." "Independent" does not mean "sealed off from society or any possible influence of others." Rather, it means "not subject to *control* by others." WEBSTER'S THIRD, at 1148 (emphasis added). The

commissions meet this definition. At least twelve other States have similar commissions that they describe as "independent." App. Br. 56.

**D. Redistricting will be "based on … minority voter protections."**

Respondents contend that SJR 38 will "water[] down" minority voter protections from previous law. Resp. Br. 38. This is both irrelevant and incorrect. It is irrelevant because the ballot summary does not indicate whether SJR 38 will either strengthen or weaken minority voter protections, and it was not required to do so. The summary merely states that the newly created commissions will "draw state legislative districts *based on* … minority voter protection," among several other criteria. D12, at 15 (emphasis added). This statement is unquestionably correct, because the new commissions' decisions will be "based on" minority voter protections, which "shall take precedence over any other part of this constitution." *Id.* at 5; *see also id.* (providing that "no district shall be drawn in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color….").

Respondents are also incorrect. They argue that "SJR 38 would … eliminate any protections for 'language minorities,'" but again, Respondents fail to identify any "language minorities" who would not also be protected by the broader protection for "race or color." Resp. Br. 39. They contend that "it is not difficult to imagine hypotheticals in which those protections diverge," *id.*, but they fail to provide any

such hypotheticals—let alone any real-world applications that actually exist in Missouri. *See id.* Moreover, even if such non-racial "language minorities" exist in Missouri, they would still be protected under SJR 38. SJR 38 preserves the requirement that "[d]istricts shall be established in a manner so as to comply with all requirements of … applicable federal laws." D12, at 4. Federal law explicitly protects the voting rights of any "member of a language minority group." 52 U.S.C. § 10303(f)(2). Thus, any ballot language that implied that SJR 38 would weaken voter protections for language minorities would be incorrect and misleading.

Respondents also contend that SJR 38's protection based on "race or color" is not a "minority voter protection," because it may protect non-minorities as well. But they immediately concede that SJR 38 will provide "protection for people of *any* race or color, *minority or not*." Resp. Br. 39 (second emphasis added). Because SJR protects people of "*any* race or color," *id.*, it necessarily protects *minorities* of any race or color, as Respondents concede. *Id.*

**E. The summary accurately summarizes new redistricting criteria.**

Respondents argue that the summary statement is misleading because it implies that the redistricting criteria listed are entirely new. Resp. Br. 40-41. This is incorrect. The summary statement does not state or imply whether the criteria are new or already in use. It merely identifies the criteria the newly created commissions will use. The third bullet point states that SJR 38 will "[c]reate citizen-led

independent bipartisan commissions to draw legislative districts based on one person, one vote, minority voter protection, compactness, competitiveness, fairness, and other criteria." D12, at 15. This language simply does not say whether the listed criteria are new or previously used.

And in fact, there is a mixture. There are some entirely new criteria (such as one person, one vote), some criteria elevated in priority (such as preserving political communities and compactness), some criteria lowered in priority (such as fairness and competitiveness), and some criteria clarified or redefined (such as preserving political communities and competitiveness). *See* D12, at 4-7. No 50-word summary could spell out all this detail.

Respondents also argue that the summary statement should have disclosed that SJR 38 will lower the priority of fairness and competitiveness from third and fourth place to fifth and sixth place. Resp. Br. 45-46. But though this detail may be of interest to political insiders, it is not necessary to include in the ballot summary. *Sedey*, 594 S.W.3d at 272. Notably, though introducing competitiveness, fairness, and the non-partisan state demographer have been aptly described as the "main innovations" of Amendment 1, the ballot title for Amendment 1 did not identify any of them. *Ritter*, 561 S.W.3d at 94. Instead, on the question of redistricting, it stated only that Amendment 1 would "change the process and criteria for redrawing legislative districts during reapportionment"—nothing more. *Id.* at 81. Even within

the constraints of 50 words, SJR 38's summary provides voters with more information about its changes to redistricting than Amendment 1's summary did. *Id.*

## CONCLUSION

The Court should reverse the trial court's judgment and certify the original summary statement for Senate Joint Resolution No. 38.

Dated: August 27, 2020

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that a copy of the above was filed and served electronically through Missouri CaseNet on August 27, 2020, on all counsel of record.

The undersigned also certifies that the foregoing brief complies with the limitations in Missouri Supreme Court Rule 84.06(b) and 84.06(c)(1)-(4), and that the brief contains 5,054 words, excluding the portions exempted from the word count under Supreme Court Rule 84.06(b) and Western District Local Rule 41(D).

*/s/ D. John Sauer*