

Summary of SC100742, *Mary Elizabeth Ann Coleman, et al. v. John R. Ashcroft and Missourians for Constitutional Freedom and Anna Fitz-James*

Appeal from the Cole County circuit court, Judge Christopher K. Limbaugh
Argued and submitted September 10, 2024; opinion issued September 20, 2024

Attorneys: The proponents were represented by Loretta K. Haggard, Christopher K. Grant and Sally Barker of Schuchat, Cook & Werner in St. Louis, (314) 621-2626; Charles W. Hatfield, Alixandra S. Cossette, Alexander C. Barrett and Carleigh M. Cavender of Stinson LLP in Jefferson City, (573) 636-6263; and Tori Schafer and Jonathan D. Schmid of the American Civil Liberties Union of Missouri Foundation in St. Louis, (314) 652-3114. The opponents were represented by Mary Catherine Martin of the Thomas More Society in Clayton, and Timothy Belz of Clayton Plaza Law Group in Clayton, (314) 726-2800. The secretary of state was represented by Solicitor General Joshua Divine and Andrew J. Crane of the attorney general's office in Jefferson City, (573) 751-3321.

Two groups filed briefs as friends of the Court. The mayors of Columbia, Kansas City and St. Louis and the St. Louis County executive were represented by Arin Smith of Dowd Bennett LLP in St. Louis; Joshua A. Rosenthal of the Public Rights Project in Oakland, California; and Naomi R. Tsu of Hood River, Oregon; additionally, Gavriel Schreiber of the Kansas City mayor's office represented that mayor. Residents and taxpayers Sarah Lochman and Barbara Schnarr were represented by Kimberly J. Mathis of the Law Office of Kimberly J. Mathis, Esq., LLC in St. Louis.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The proponents of an initiative petition to amend the state constitution appeal from the circuit court's judgment finding the measure should not appear on the November 2024 general election ballot because it failed to identify all statutory provisions the amendment would affect should it be approved and, therefore, was constitutionally insufficient. In a 4-3 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri reverses the judgment. The state constitution does not require the full text of a proposed constitutional amendment to include all statutes that later may be declared invalid, in whole or in part, should the voters approve the measure. Likewise, section 116.050.2(2), RSMo, does not require proposed constitutional amendments to identify all statutory provisions it potentially may affect. The proposed constitutional amendment does not violate the constitutional single subject requirement in that all of its provisions relate to the single issue of the right to reproductive freedom. Finally, given that the circuit court and this Court were able to reach the merits of the opponents' claims despite the tight statutory window, any claim is moot that the statutory timeline for certifying amendments for the ballot is an unconstitutional burden on the people's power to initiative petition.

Judge W. Brent Powell concurs. He writes separately to emphasize section 116.050 instructs an initiative petition proponent to identify only the constitutional or statutory text the petition

explicitly seeks to repeal or modify, and not the constitutional or statutory provisions that may be invalidated or modified by implication as a result of the initiative petition.

Judge Kelly C. Broniec dissents. She would hold the proposed constitutional amendment failed to comply with chapter 116, RSMo, by not including all statutory and constitutional provisions it would repeal if approved by the voters.

Facts: In March 2023, Dr. Anna Fitz-James submitted to the secretary of state a proposed constitutional amendment now known as proposed Amendment 3 regarding the right to reproductive freedom. Pursuant to statute, the secretary of state posted the proposed amendment on his website and reviewed the petition as to form. The secretary approved the form and notified Fitz-James of his decision. The secretary prepared a summary of the measure and the auditor prepared a fiscal note and fiscal note summary. Together, these constituted the official ballot title. Two rounds of litigation subsequently ensued. The first involved the attorney general's initial refusal to approve the form of the fiscal note summary; the second involved the secretary of state's summary of the initiative. Ultimately, courts found the attorney general had no legal grounds not to approve the form of the fiscal note summary and certified a revised summary statement courts had rewritten to be sufficient and fair.

Once the ballot title was certified, Amendment 3's proponents began circulating the initiative for signatures. The secretary reviewed the signatures and validated that a sufficient number had been obtained to place Amendment 3 on the ballot. Therefore, on August 13, 2024, the secretary issued a certificate that the petition was sufficient. A group of opponents to Amendment 3 then sued the secretary in circuit court, asserting the petition failed to include every constitutional provision and statute Amendment 3 would alter, invalidate or otherwise limit or affect if it was approved by the voters. The opponents further asserted Amendment 3 violated the constitutional single subject requirement and claimed section 116.220 is constitutionally invalid because it did not give them adequate time to challenge the secretary's certification placing Amendment 3 on the November 2024 ballot. Fitz-James and another Amendment 3 proponent intervened in the case. On September 6, the case was tried, and the circuit court entered its judgment finding Amendment 3 failed to identify all statutory and constitutional provisions the amendment might affect and removing it from the ballot. The proponents appealed. On September 10, this Court issued its order reversing the circuit court's judgment and ordering Amendment 3 be placed on the November 2024 ballot. These opinions follow.

REVERSED.

Court en banc holds: (1) Article III, section 50 of the state constitution does not require the full text of a proposed constitutional amendment to include all statutes that may be impacted should the proposed measure be approved. This Court has never held that the full text requirement requires such a list and declines the opponents' invitation to create such a requirement now. All article III, section 50 requires is that the proposed constitutional amendment identify those existing cognate constitutional provisions that are in direct conflict without or are irreconcilably repugnant to the proposed constitutional amendment. Amendment 3 satisfies this requirement.

(2) Section 116.050.2(2), RSMo, does not require proposed constitutional amendments to identify all existing statutes and constitutional provisions the measure would repeal. A plain reading of the statute reveals that it requires, at most, what article III, section 50 of the state constitution requires. Nothing in the statute's plain language suggests a proposed constitutional amendment can implicitly repeal all statutes, in whole or in part, that conflict with or are repugnant to the constitutional amendment if passed. Rather, declaring a statute unconstitutional is a judicial function.

(3) Amendment 3 does not contain more than a single subject. Article III, section 50 and article XIII, section 2(b) of the state constitution include a prohibition against petitions for constitutional amendment containing more than one subject. In reviewing proposed constitutional measures, the proposal must be liberally and non-restrictively construed so that provisions connected with or incident to effectuating the proposal's central purpose will not be treated as separate subjects. The provisions of Amendment 3 clearly relate to one subject – the right to reproductive freedom.

(4) The opponents' claim that the timeline in section 116.200.1 violates the constitution is moot. Because the courts completed their review before the deadline, the opponents were not injured by the defects they perceive in this statute, they cannot be heard to complain about them, and this Court denies their claim as moot.

Concurring opinion by Judge Powell: The author concurs in the principal opinion. He writes separately to emphasize section 116.050 instructs an initiative petition proponent to identify only the constitutional or statutory text the petition explicitly seeks to repeal or modify, and not the constitutional or statutory provisions that may be invalidated or modified by implication as a result of the initiative petition. He further explains that this Court should not interpret a statute to create constitutional problems and that reading section 116.050 to require initiative petition proponents to do more than the legislature must do to enact laws may also be unconstitutional as an undue burden on the right to pursue an initiative petition.

Dissenting opinion by Judge Broniec: The author disagrees with the principal opinion's construction of section 116.050.2(2) and would hold proposed Amendment 3 had to comply with the statute by including all sections of existing law or of the constitution that would be repealed by the measure. She believes that statute's plain language requires – and thereby the intent of the legislature was to require – constitutional amendment measures to identify all statutory and constitutional provisions the measure would repeal if approved. She would find any contrary interpretation leads to the absurd result that an initiative petition proposing a constitutional amendment can directly conflict with multiple statutes without ever indicating to the signers that existing law is being changed. She further disagrees with the principal opinion's holding that a constitutional provision cannot repeal a statute and believes such an interpretation conflicts with other constitutional provisions regarding the people's right to initiative petition.