

express provision in the Conservation Commission amendment, a “repeal” is a legislative act that removes the repealed section immediately, altogether, and for all purposes. *State v. Pliemling*, 645 S.W.3d 86, 90 (Mo. App. 2022) (“Repeal of a statute and replacement is a legislative act that terminates the existence of the prior statute.”) (citing *Humane Soc’y of United States v. State*, 405 S.W.3d 532, 536, 538 (Mo. banc 2013)).

[11] In this case, able counsel for Opponents conceded at oral argument – as indeed she had to do – that Amendment 3 (if approved) would have no such effect on any statute unless and until a party timely and properly asserted the statute was unconstitutional under Amendment 3 in a case in which the validity of that statute was germane, and a court of competent jurisdiction declared the statute invalid in whole or in part. Accordingly, whatever effect Amendment 3 (if approved by the voters) might have on various and sundry statutes, this Court holds it will have no effect on them unless and until such an effect is declared by the courts.

Finally, it is worth noting the absurd effects that would ensue if Opponents’ reading of section 116.050.2(2) were to prevail. Section 116.050 does not require initiative petitions to “identify” all sections of existing law or of the constitution the measure would repeal. Instead, it requires the initiative petition to “include” all such sections. Opponents claim that more than a dozen such sections exist, all of which would – if Opponents’ reading of section 116.050.2(2) were to prevail – have to have been set forth in full, in brackets, and attached to every signature page of the petition. In an effort to avoid this absurd result, Opponents argue that a simple “disclaimer” would suffice. But such a “disclaimer” is described nowhere in section

116.050, much less is it implicitly required by article III, section 50.

The circuit court quoted such a “disclaimer” from the “Clean Missouri” initiative petition, enacted in 2018 as Amendment 1, which read:

NOTICE: You are advised that the proposed constitutional amendment **may change, repeal, or modify** by implication or **may be construed by some persons to change, repeal or modify** by implication, the following Articles and Sections of the Constitution of Missouri: Article I, Section 8 and the following Sections of the Missouri Revised Statutes: Sections 105.450 through 105.496 and Sections 130.011 through 130.160. The proposed amendment revises Article III of the Constitution by amending Sections 2, 5, 7, and 19 and adopting three new sections to be known as Article III Sections 3, 20(c), and 20(d).

(Emphasis added).

[12] Nothing in article III, section 50 requires such speculative statements be included in initiative petitions. See *Buchanan*, 615 S.W.2d at 15 (“The Missouri Constitution does not require, as did the Michigan Constitution referred to in the *Moore* case, that along with the full text of the amendment there should be published ‘any existing provisions of the constitution which would be altered or abrogated thereby.’” (quoting *Moore*, 165 S.W.2d at 664)). Nothing in section 116.050 comes close to permitting such a statement, and with good reason. The foregoing “disclaimer” does not say what the measure **will** do, but only what it **may** do or, worse, what “some persons” may **think** it does. Moreover, it commingles the provisions it says “may” be repealed with those that “may” be changed or modified, which *Buchanan* clearly states need not be included. *Id.* (stating it is unnecessary to “list all the [constitutional] provisions which could pos-

COLEMAN v. ASHCROFT

Mo. 367

Cite as 696 S.W.3d 347 (Mo. 2024)

sibly or by implication be **modified** by the proposed amendment” but, instead, only those that “would be in direct conflict” (emphasis added)). Finally, Opponents fail to explain why either article III, section 50 or section 116.050 would require a “disclaimer” that simply regurgitates a list of statute numbers that mean nothing unless one has ready access to the text of those statutes, which Missourians considering a petition on some street corner somewhere do not. That Opponents would resort to such unauthorized, unspecific, and potentially misleading devices, and that the circuit court should focus its analysis on one, indicates the weakness of Opponents’ argument that section 116.050.2(2) requires more than article III, section 50 requires. This Court holds it does not.

2. If Section 116.050.2(2) Required More Than *Buchanan* States Is Required by Article III, Section 50, Section 116.050.2(2) Would Be Unconstitutional

This Court has held above that section 116.050.2(2) does not – by its plain language – require any more than what *Buchanan* and *Knight* state article III, section 50 requires, i.e., that (1) proposed constitutional amendments identify all existing constitutional provisions that are in direct conflict with or are irreconcilably repugnant to the amendment if approved by the voters, and (2) proposed statutes identify all existing statutes that are in direct conflict with or are irreconcilably

repugnant to the amendment if approved by the voters.¹³ Even if section 116.050.2(2) plainly and unambiguously provided that initiative petitions for constitutional amendments must include all statutes that would later be declared invalid in whole or in part by the amendment (if approved), which it does not, such a statute would be unconstitutional under this Court’s precedents.

[13, 14] All properly enacted statutes enjoy, in the first instance, a presumption of constitutional validity. *Rekart*, 639 S.W.2d at 608. “However, when such statutes interfere with or impede a right conferred by the constitution, the statute must be held unconstitutional.” *Id.* To avoid having to reach the question of constitutional validity, statutes bearing on the people’s reserved power of initiative must be “liberally construed so as not to interfere with the initiative process.” *Id.* If this is not possible, and the statute “interferes with and impedes the initiative power,” this Court will not hesitate to declare that statute unconstitutional. *Id.* (holding section 116.110 unconstitutional to the extent it allowed signatures to be withdrawn from a petition already submitted); see also *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 517 (Mo. banc 1991) (declaring section 116.332.1 invalid because it restricted the time in which sample initiative petitions could be submitted even though article III, section 50 and article XIII, section 2(b) implicitly permit new petitions any time

¹³. Section 116.050 may not even require that much. The concurring opinion offers a construction of this statute that is reasonable in scope, consistent with the plain language of the statute, and properly modest as befitting the suspect and subordinate role statutory procedures play regarding the people’s reserved power of initiative petition. See art. III, sec. 49 (“The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative,

independent of the general assembly”) (emphasis added). The Court may very well have adopted this construction if it were necessary to do so, but it is not. For the present, it is necessary only to reject the construction Opponents offer; hold the most section 116.050.2(2) can do is require what *Buchanan* states article III, section 50 requires; and, further, hold Amendment 3 does not violate that requirement.

after the general election and four months prior to the next). *Cf. No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 491-92 (Mo. banc 2022) (holding sections 116.180 and 116.334.2 invalid because they “interfere with and impede” the right of referendum as a practical matter by imposing “procedural formalities” limiting the already short time citizens have to gather signatures) (citing *Rekart*, 639 S.W.2d at 608).

Here, if section 116.050.2(2) requires – as Opponents argue – that the “full and complete” text of the proposed constitutional amendment must include every constitutional provision and every statute the proponents must perfectly predict would later be declared invalid if the measure is adopted, that statute would be unconstitutional because it would “impair and impede” the people’s reserved power of initiative. In fact, it is hard to imagine how a statute could impair and impede the initiative process more. If Opponents’ construction were to prevail, section 116.050.2(2) would require proponents to comb through the Missouri Constitution and 16 (current) volumes of the Revised Statutes of Missouri in an effort to predict perfectly every section that – at some uncertain point in the future and under every factual circumstance one can imagine – courts would declare invalid in whole or in part, as applied or on its face, and then “include” every one of those sections (within brackets, of course) on or as an attachment to

14. The judicial breeze has blown both ways on the question of whether the single subject requirement in article III, section 50, and article XIII, section 2(b), is a matter of form or substance. *See MPIP*, 799 S.W.2d at 827-28 (reviewing cases and deciding, ultimately, that the form/substance dichotomy is not found in the language of the constitution and allowing for pre-election review of single subject claims as well as post-election review). Setting aside for the moment that such a challenge can be brought after an election – a settled question, *see United Gamefowl Breeders*

every page of the petition. And, as if that were not bad enough, the proponent would have to compile these sections before circulating the petition for signatures under the ominous threat that – if a reviewing court’s list of such affected sections (compiled in an entirely hypothetical, advisory and, quite often expedited manner mere weeks from the election) contains one more section than proponents included – or one fewer – Opponents argue such a proposed amendment would have to be stripped from the ballot with no possibility for the proponent to correct this “error.” It seems reasonable to expect that few – if any – initiative petitions could survive under such a statute.

This Court does not have to hold section 116.050.2(2) unconstitutional for imposing such an unreasonable interference and impediment to the initiative process, however, because – by its plain and unambiguous language – it does not require any of these things. Accordingly, Opponents’ proposed construction importing such requirements into section 116.050.2(2) is rejected, and this Court holds only that this statute requires – at most – no more than *Buchanan* and *Knight* state is required by article III, section 50.

II. Amendment 3 Does Not Contain More Than a Single Subject¹⁴

[15, 16] Having rejected Opponents’ first claim, this Court finds even less merit

Ass’n of Mo. v. Nixon, 19 S.W.3d 137, 143 (Mo. banc 2000) (holding “[t]hese [single subject] requirements apply to initiative propositions [and may be reviewed] both before and after approval by the voters”) – it seems the better reasoned view is that the single subject requirement is a matter of form. When a proposed constitutional amendment violates this requirement, there are one or more provisions related to Subject A and one or more related to Subject B, but no subject to which all the provisions relate. There is no constitutional defect in the substance of any of these

COLEMAN v. ASHCROFT

Mo. 369

Cite as 696 S.W.3d 347 (Mo. 2024)

in their second. Opponents assert Amendment 3 violates the “single subject” requirement for proposed constitutional amendments found in article III, section 50, and article XIII, section 2(b). This claim must fail, however, because the provisions of Amendment 3 clearly relate to one subject, which is stated in amendment itself, i.e., the right to reproductive freedom.

Article III, section 50 states in part: “Petitions for constitutional amendments shall not contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith[.]”¹⁵ Article XIII, section 2(b) contains an almost identical prohibition against a proposed constitutional amendment having more than a single subject.¹⁶

[17,18] To determine if a proposed constitutional amendment satisfies the single subject requirement, this Court will review the provisions of the proposal to see if “all matters included relate to a readily identifiable and reasonably narrow central purpose.” *Comm. for A Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503, 511 (Mo. banc 2006); *United Gamefowl Breeders*, 19 S.W.3d at 140 (stating a proposed constitutional amendment has “one subject if all of its provisions are properly connected with a central purpose”). In con-

ducting this inquiry, the proposal must be “liberally and nonrestrictively construed so that provisions connected with or incident to effectuating the central purpose of the proposal will not be treated as separate subjects.” *MPIP*, 799 S.W.2d at 830.

The purpose of Amendment 3 is clear: to protect the right to reproductive freedom. Section 1 of the amendment explicitly states that purpose and, in this case, that purpose is also the constitutional “single subject” to which all the other proposed provisions relate or are properly connected. Section 2 of the amendment establishes and defines the right, and the remaining six sections merely explain how the right is to be implemented and protected. Sections 3 and 4 serve to protect the right by establishing the standard for judicial review. Sections 5 and 6 also work to protect the right by prohibiting the prosecution or discrimination of a person for obtaining, providing, or assisting in reproductive healthcare. Finally, section 7 is a severability clause, and section 8 provides definitions for terms used in the amendment.

[19] To support their argument that Amendment 3 embraces more than one subject, Opponents argue – with metronomic insistence – that Amendment 3 could affect the validity of a large (but nowhere exhaustively identified) number of statutes.¹⁷ This Court, however, has

provisions, and no constitutional bar to either group of provisions being proposed and enacted on their own. Instead, the defect is that both groups of provisions are proposed in the same amendment, which makes this a matter of form.

15. One might reasonably assume, reading this provision’s plain language and applying ordinary rules of grammar and punctuation, that the “single subject” requirement applies only when a proposed amendment adds a new article to the constitution and not when it merely amends or revises an existing article.

This argument was rejected, however, in *MPIP*, 799 S.W.2d at 829-30.

16. Article XIII, section 2(b) states in part: “No such proposed amendment shall contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith.”

17. Opponents also point to Amendment 3’s language as being so broad it encompasses more than one subject. According to Opponents, the use of the terms “including but not

made it clear that “[a] measure may encompass one subject, and yet effect several changes and incidents, if all are germane to its one controlling purpose.” *United Gamefowl Breeders*, 19 S.W.3d at 140.

[20] It may be conceded for purposes of Opponents’ argument that, if the voters approve Amendment 3, it likely will affect, to some degree or other, some uncertain number of statutes if – but only if and only when – such statutes are challenged in proceedings in which the validity of those statutes is unavoidable and a court of competent jurisdiction declares them invalid. But this is not at all relevant to, far less dispositive of, whether Amendment 3 contains more than one subject and matters properly connected thereto in violation of article III, section 50 and article XIII, section 2(b). This is particularly so when the proposed amendment is “liberally and nonrestrictively construed” so that provisions related to (or incident to effectuating) the purpose of the proposal are not misidentified as separate subjects. *MPIP*, 799 S.W.2d at 830; *see also Comm. for A Healthy Future*, 201 S.W.3d at 511 (“When reviewing a single subject challenge to an initiative petition, this Court must liberally and non-restrictively construe the petition in such a way that the provisions connected with or incident to the central purpose of the proposal are harmonized and not treated as separate subjects.”). Here, there is no doubt that all of Amendment 3’s provisions relate to or

are properly connected with the single subject stated in its purpose.

[21] The remainder of Opponents’ arguments are of the same ilk and fail for the same reasons. Over and again, Opponents claim Amendment 3 will have profound effects and, therefore, must have more than one subject. But the latter in no way follows from the former. On this, as with Count I, *Buchanan* is instructive if not binding and dispositive. There, the Court was considering a single-subject challenge to the initiative petition proposing what has since become known as the Hancock Amendment. *Buchanan*, 615 S.W.2d at 15. It may be stated without fear of exaggeration that no constitutional amendment has had a more profound impact on every part of government at every level. Yet, this Court had no difficulty finding that all its varied provisions – many of which had little or nothing to do with each other – all related to the single subject of limiting taxes and expenditures. *Id.* The constitutional touchstone is not whether all the provisions in the proposal relate to each other, but instead whether they each relate to a reasonably specific purpose. *Byrd v. State*, 679 S.W.3d 492, 494 (Mo. banc 2023). Here, all of Amendment 3’s provisions relate to its purpose of protecting the right of reproductive freedom; therefore, this Court holds Amendment 3 complies with the single-subject requirement of article III, section 50, and article XIII, section 2(b). *Cf. Nevadans for Reproductive Freedom v. Washington*, 546 P.3d

limited to” and “all matters relating to” anticipate applications that have not been considered and reach more than one subject. In support of this argument, Opponents cite *Sermchief v. Gonzales*, 660 S.W.2d 683 (Mo. banc 1983). This case, however, dealt with the definition of “unauthorized practice of medicine” found in a statute and had nothing to do with the number of subjects in a ballot initiative. The fact that Amendment 3 does not list every single type of reproductive care that the

right would protect does not necessitate a finding the amendment embraces more than one subject. In fact, such language indicates the amendment is attempting to embrace that single subject as fully as possible. The language of the amendment makes it clear it protects only the right to reproductive freedom, and every practice protected under the amendment must, by definition, be related to that single subject.

COLEMAN v. ASHCROFT

Mo. 371

Cite as 696 S.W.3d 347 (Mo. 2024)

801, 807 (Nev. 2024) (rejecting substantially similar “single subject” challenge, holding the proposal “has the single subject of establishing a fundamental right to reproductive freedom” and all provisions fairly relate to that subject).

III. Opponents’ Count III Rests on an Untested Premise and, In Any Event, Is Moot Because Their Claims Have Been Fully Examined and Rejected On Their Merits

[22] Opponents argue that – if this Court lacks time to complete this lawsuit and, as a result, Amendment 3 remains on the ballot – this Court should declare section 116.200.1 unconstitutional because it unfairly limited their time to challenge the Secretary’s decision to certify Amendment 3 as sufficient to be on the ballot at the general election. This Court need not reach or decide this claim because the circuit court and this Court were able to complete the review of Opponents’ claims in Count I and Count II within the time permitted. Because Opponents were not injured by the defects they perceive in this statute, they cannot be heard to complain about them, and this Court denies Opponents’ third and last claim as moot.

As noted above, the last day for the Secretary to certify initiatives as sufficient or insufficient under section 116.150 is the thirteenth Tuesday before the election. Section 116.200.1 then gives any citizen 10 days to file an action contesting that decision. But, section 115.125.3, RSMo Supp. 2018, prohibits changes to the ballot after the eighth Tuesday before the election. The result is that, if the Secretary waits until the last day to certify a particular petition as sufficient (as he did with Amendment 3), a citizen seeking to challenge that decision will have only 28 days to bring the challenge, get it tried and a final judgment entered, and prosecute an

appeal if necessary. Though this very tight timetable has been sufficient to fully resolve the merits of prior claims in prior election cycles, and it was sufficient for the circuit court and this Court to fully resolve Opponents’ claims on their merits here, Opponents were not exaggerating to suggest that this time frame may not be enough some day and that a meritorious challenge under 116.200.1 may not be completed in time to remove an invalid initiative proposal from the ballot or to add a proper and sufficient initiative proposal to it. In either case, it would be section 115.125.3, RSMo Supp. 2018, that would be preventing a remedy, but plainly the late start under section 116.200.1 would be a contributing factor. To create a squeeze, a vise needs two jaws.

But therein lies the problem in, or at least the implied but wholly untested premise of, Opponents’ argument. They claim they could not have brought their challenge to the form of the Amendment 3 petition any earlier than the day the Secretary certified Amendment 3 for the ballot, which was the thirteenth Tuesday before the election. But, under section 116.332.4, the Secretary made a “final decision” that the form of the petition for Amendment 3 was proper 17 months ago, in March 2023. The form of the petition has not changed, and Opponents had (or easily could have had) access to that form as soon as the Secretary approved it, if not before.

Opponents claim they had no way to challenge the Secretary’s decision regarding the form of the Amendment 3 petition until his final certification of that proposed amendment on August 13, 2024. That may be true or not, but no one knows because Opponents did not try.

If the Secretary makes a “final decision” under section 116.332.4 that the form of a petition is deficient, a proponent can make

the necessary changes or, if unable or unwilling, it seems likely that proponent could seek judicial review of the Secretary's determination by seeking an injunction, a declaratory judgment, a writ of mandamus, or an action for judicial review of a final administrative decision under section 536.150. An opponent could try the same if the opponent believe the Secretary improperly found the form was proper, and, if the opponent is successful, the proponent would have time to correct the petition.

On the other hand, if the courts rebuff an opponent's attempt to seek early review of the Secretary's decision that a petition's form was proper, then that opponent will be safe alleging that the vise between sections 115.125.3, RSMo Supp. 2018, and 116.200.1 is real and that a constitutional challenge to those statutes will at least be ripe should the courts be unable to complete their review of that opponent's claim under section 116.200.1 before the eighth Tuesday prior to the election. Unless an opponent attempts early review, however, as Opponents failed to do in this case, any complaint about the short time frame attending an action under 116.200.1 will face claims of laches (founded or not) and labor under the suspicion of what might have happened had the claim been asserted earlier.

Opponents paid no price in this case for failing to seek review of their claims earlier. This Court had time to fully consider and reject all of Opponents' claims on their merits. Even with the best of efforts in the circuit and appellate courts, however, that may not always be possible.

CONCLUSION

For the reasons set forth above, this Court's September 10, 2024 order reversed

the circuit court's judgment, and ordered the Secretary to take such steps as were needed to ensure Amendment 3 is put before the voters at the 2024 general election for their approval or disapproval.

Russell, C.J., and Ransom, J., concur; Powell, J., concurs in separate opinion filed; Broniec, J., dissents in separate opinion filed; and Fischer and Gooch, JJ., concur in separate opinion of Broniec, J.

W. Brent Powell, Judge, concurring.

I fully concur in the well-reasoned and thoughtful principal opinion. I write separately to focus on the interpretation of section 116.050 – an issue of first impression for this Court.¹ The principal opinion is correct that, when an initiative petition seeks to amend the constitution, section 116.050.2(2) applies only to constitutional provisions the proposed amendment would repeal and not statutes. The proposed constitutional amendment does not seek to repeal nor directly conflict with any constitutional provisions, so section 116.050 does not require removing the initiative petition from the ballot as the circuit court found. The principal opinion, therefore, properly reversed the circuit court's judgment. But it is also worth noting the circuit court erred in interpreting section 116.050 for another reason. The plain language of 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.

The procedural requirements for initiative petitions are rooted in Missouri's constitution. In the hundred-plus years since the Missouri Constitution reserved to the people of this state the power to propose

1. All statutory references are to RSMo 2016

unless otherwise indicated.

COLEMAN v. ASHCROFT

Mo. 373

Cite as 696 S.W.3d 347 (Mo. 2024)

constitutional amendments by initiative petition, several different statutes have been enacted to provide guidance on how the constitutional procedural requirements should be applied. The statutory and constitutional requirements were once nearly identical, but the statutory requirements have evolved over time. As the principal opinion correctly notes, however, these statutory provisions cannot impose procedural requirements repugnant to or exceeding the requirements set forth in the constitution lest they be deemed unconstitutional.

Article III, section 50, the current source of the constitutional requirements, requires an initiative petition to contain “the full text of the measure.” Similar to the constitution, section 126.041, RSMo 1978, the now-repealed precursor to section 116.050, required an initiative petition to “contain a full and correct copy of the title and text of the measure so proposed by the initiative petition.” In 1980, the legislature repealed chapter 126 and enacted chapter 116 in its place. Like its precursor, section 116.050, RSMo Supp. 1980, stated an initiative petition “shall contain a full and correct text of the proposed measure.”

In 1997, the legislature repealed and replaced section 116.050, providing the statutory requirements for the initiative petition process in effect today. The legislature added section 116.050.2 to specify what the “full and correct text” of an initiative petition include. The text must:

- (1) Contain all matter which is to be deleted included in its proper place enclosed in brackets and all new matter shown underlined;
- (2) Include all sections of existing law or of the constitution which would be repealed by the measure; and
- (3) Otherwise conform to the provisions of **Article III, Section 28** and Article

III, Section 50 of the Constitution and those of this chapter.

(Emphasis added).

Article III, section 28 of the Missouri Constitution governs the legislative process for enacting bills. It states:

No act shall be revived or reenacted unless it shall be set forth at length as if it were an original act. No act shall be amended by providing that words be stricken out or inserted, but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended.

When the legislature amended section 116.050 in 1997 to include 116.050.2, the legislature instituted an initiative petition process that conforms with the legislative process for enacting bills found in article III, section 28. The legislature, therefore, clearly intended “the full text of the measure” incorporate the procedural requirements governing the enactment of a law by the legislature into the initiative petition process. As noted, the interpretation of section 116.050 as enacted in 1997 is an issue of first impression for this Court. Fortunately, this Court has provided significant guidance on compliance with article III, section 28, which is instructive as to how the reference to article III, section 28 impacts the interpretation and application of section 116.050 to the initiative petition process.

In *State ex rel. McNary v. Stussie*, 518 S.W.2d 630 (Mo. banc 1974), this Court applied and explained the mandates of article III, section 28. In *McNary*, the issue presented was whether a statute newly adopted by the legislature (“Act 70”) had the effect of amending an already existing statute. *Id.* at 631. Act 70 sought to make a blanket change to the age of majority in