

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19th JUDICIAL CIRCUIT**

PAUL RITTER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 18AC-CC00302
)	
MISSOURI SECRETARY OF STATE)	
JOHN ASHCROFT,)	
)	
Defendant)	
)	
and)	
)	
SEAN SOENDKER NICHOLSON &)	
CLEAN MISSOURI)	
)	
Intervenors-Defendants)	

DANIEL P. MEHAN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 18AC-CC00318
)	
MISSOURI SECRETARY OF STATE)	
JOHN ASHCROFT,)	
)	
Defendant)	
)	
and)	
)	
SEAN SOENDKER NICHOLSON &)	
CLEAN MISSOURI)	
)	
Intervenors-Defendants)	

FINAL JUDGMENT AND ORDER

These cases both relate to the Initiative Petition 2018-048. On August 31, 2018, a common trial was held before this Court. In Case No. 18AC-CC00302, Plaintiff Ritter was represented by Edward D. Greim. In Case No. 18AC-CC00318, Plaintiff Mehan was represented by Lowell Pearson and Marc Ellinger. In both cases, Defendant Missouri Secretary of State John (Jay) Ashcroft was represented by Assistant Attorney General Jason Lewis. In both cases, Intervenor-Defendants Sean Soendker Nicholson and Clean Missouri were represented by Charles Hatfield. Based on the joint stipulations of facts and exhibits, the parties' pretrial briefs, the argument presented, and the applicable law, the Court makes the following findings of fact and conclusions of law and enters its Final Judgment and Order.¹

A. Findings of Fact

Plaintiffs Ritter and Mehan are Missouri citizens and have standing in this case pursuant to § 116.200, RSMo. Defendant Ashcroft is the duly elected and acting Secretary of State of the state of Missouri (the "Secretary"). Intervenor Nicholson is a Missouri resident who submitted Initiative Petition 2018-048 ("IP 2018-048" or the "Petition"), the initiative petition at issue in this lawsuit. Intervenor Clean Missouri² is registered as a campaign committee pursuant to

¹ As the Court pointed out at the hearing, nothing in this decision should be construed as an endorsement or repudiation of the underlying issues presented by the initiative petition. This Court is simply called upon to determine whether the Secretary was correct in certifying the measure for a vote. This Judgment is not to be interpreted as either support for, or opposition to, this initiative. It is not for this court to say whether the measure is wisdom or folly.

² At the outset, [T]he Court must make an independent examination of the proposed amendment to determine if there is a discernable single subject to which all provisions of the proposal are connected." *Missourians to Protect the Initiative Process*, 799 S.W.2d at 832. However, the Court notes that Intervenor's chosen campaign name, "Clean Missouri," references "Missouri" generally and belies any purpose limited to the legislative branch of government. *Cf. id.* at 831 (noting the "Yes for Ethics Committee's" suggestion that the proposal's single subject was "legislative matters"). This nonspecific message as to the Petition's purpose may be "a strong indicator of the proposal's multiplicity." *Id.* Standing alone, this fact would not overcome the "restraint, trepidation and healthy suspicion" guiding this Court but the proposed amendment's text confirms that this nomenclature was indeed, a harbinger of the heterogeneous nature of the amendment.

Chapter 130, RSMo, and one of Clean Missouri's purposes is to support IP 2018-048.

On November 23, 2016, Intervenor Sean Soendker Nicholson submitted to the Secretary an initiative petition sample sheet, denominated by the Secretary as IP 2018-048, proposing to revise Article III of the Missouri Constitution, "by amending Sections 2, 5, 7, 19, and adopting three new sections to be known as Article III Sections 3, 20(c), and 20(d)" See Joint Exhibit A, a true and correct copy of the Petition.

On December 6, 2016, former Missouri Secretary of State Jason Kander approved IP 2018-048 as to form. On January 5, 2017, former Secretary Kander certified the Official Ballot Title for the Petition. On May 3, 2018, Sean Soendker Nicholson and Clean Missouri submitted the Petition to the Secretary. About three months later, on August 2, 2018, the Secretary issued a certificate of sufficiency of petition and certified the Petition to be placed on the ballot at the November 6, 2018 general election.

B. Constitutional and Statutory Provisions

Article III, § 50 of the Missouri Constitution provides, in part:

Every such petition shall be filed with the secretary of state not less than six months before the election and shall contain an enacting clause and the full text of the measure. 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, and the enacting clause thereof shall be "Be it resolved by the people of the state of Missouri that the Constitution be amended."

Article XII, § 2(b) of the Missouri Constitution provides, in part:

All amendments proposed by the general assembly or by the initiative shall be submitted to the electors for their approval or rejection by official ballot title as may be provided by law, on a separate ballot without party designation, at the next general election, or at a special election called by the governor prior thereto, at which he may submit any of the amendments. **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.** (emphasis added).

Section 116.050, RSMo, provides:

1. Initiative and referendum petitions filed under the provisions of this chapter shall consist of pages of a uniform size. Each page, excluding the text of the measure, shall be no larger than eight and one-half by fourteen inches. Each page of an initiative petition shall be attached to or shall contain a full and correct text of the proposed measure. Each page of a referendum petition shall be attached to or shall contain a full and correct text of the measure on which the referendum is sought.

2. The full and correct text of all initiative and referendum petition measures shall:

(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.

Article III, § 28 of the Missouri Constitution provides:

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 at or section amended, shall be set forth in full as amended.

C. Conclusions of Law

Section 116.200, RSMo, provides that “[a]fter the secretary of state certifies a petition as sufficient or insufficient, any citizen may apply to the circuit court of Cole County to compel him to reverse his decision.” This Court concludes that this action (except for Count V, *See infra* p.12) meets all procedural requirements as to standing, timeliness, jurisdiction, venue, and pleading. § 116.200, RSMo. Plaintiffs’ claims in Counts I through IV are ripe. “Pre-election judicial review of a constitutional challenge pertaining to the required ‘form’ of an initiative petition is thus appropriate because ‘regardless of the meritorious substance of a proposition, if the prerequisites

of [the Missouri Constitution pertaining to the procedure and form of an initiative petition] are not met, the proposal is not to be on the ballot.’ ” *Missouri Elec. Cooperatives v. Kander*, 497 S.W.3d 905, 913 (Mo. App. W.D. 2016) (quoting *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 828 (Mo. banc 1990)).

The Court now turns to Plaintiffs’ Counts I through V. In summary:

- Count I alleges that the Petition contains multiple subjects in violation of article III, § 50 and article XII, § 2(b) of the Missouri Constitution.
- Count II alleges that the Petition amends more than one article and that the amendments do not effectuate a single purpose, again in violation article III, § 50 and article XII, § 2(b) of the Missouri Constitution.
- Count III alleges that the Petition does not contain the full text of the measure in that it does not accurately state what would be deleted from article III, in violation of article III, § 50 of the Missouri Constitution and § 116.050, RSMo.
- Count IV alleges that the Petition fails to include all sections of the Constitution which would be repealed or amended by the measure in violation of article III, § 50 and § 116.050, RSMo.
- Count V alleges that the Petition violates article III, § 51 because it is for a purpose not permitted under the Missouri Constitution, in that it would facially violate the First Amendment of the United States Constitution.

For the reasons that follow, the Court decides in Plaintiffs’ favor on Counts I and II, Defendant and Defendant-Intervenors’ favor on Counts III and IV and dismisses without prejudice Count V, and therefore determines that Initiative Petition 2018-048 is insufficient.

I. Count I

All matters included in the Proponents' Petition do not relate to—and are not properly connected with—any readily identifiable and reasonably narrow central purpose. Instead, as explained below, the twenty or so substantive changes outlined in the Petition relate to at least two different and extremely broad purposes: (1) the organization of the General Assembly; and (2) ethics or campaign finance regulation aimed at avoiding misconduct by public officials in multiple branches and levels of government. It is hauntingly similar to a petition the Missouri Supreme Court found to violate the single subject rule in *Missourians to Protect the Initiative Process*, 799 S.W.2d at 830. For this reason, the Petition violates the “single subject” requirement of article III, § 50 and article XII, § 2(b).

It is especially relevant, and perhaps dispositive, that the guiding authority in this area of the law specifically addresses the concept of “logrolling.”³ “The purpose of the prohibition on multiple subjects in a single ballot proposal is to prevent “logrolling,” a practice familiar to legislative bodies whereby unrelated subjects that individually might not muster enough support to pass are combined to generate the necessary support.” *Missourians to Protect the Initiative Process*, 799 S.W.2d at 830. “In reviewing multiple subject claims, this Court ‘must scrutinize the proposal to see if **all** matters included relate to a readily identifiable and reasonably narrow central purpose.’ ” *Committee For A Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503, 511 (Mo. banc 2006) (emphasis added).

In *Missourians to Protect the Initiative Process*, the Supreme Court upheld a trial court’s

³ In dicta, this Court will concede that “logrolling” is a rather ephemeral concept to identify but an evil to be avoided nonetheless. The Court’s review of this Bunyanesque initiative leaves this Court with an abiding conviction that it is the quintessential logroll. “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description, and perhaps I could never succeed in intelligibly doing so, **but I know it when I see it.**” *Jacobellis v. Ohio*, 378 U.S. 184, (1964) at 197. (Stewart J., concurring). (emphasis added).

determination that an initiated constitutional amendment violated the single subject requirement and could not be submitted to voters. 799 S.W.2d at 829–33. The proposed amendment sought to “substantially reorganize the legislature and, at the same time, impose constitutional ethical restrictions on officers, officials, and employees of the legislative and executive departments.” The Court held that no “readily identifiable and reasonably narrow single purpose” could unify “1) a general reorganization of the legislative department including the number of members and session length of the General Assembly, article III matters, and 2) the general regulation of the conduct of public officials, an article VII matter” *Id.* at 832. The Court also noted that alleged purposes of “legislative matters” or “the regulation of public officials’ conduct” were “extremely broad.” *Id.* at 831–32. “If multiple matters may be lumped together under excessively general headings, the single subject restriction of article III, § 50 would be rendered meaningless.” *Id.* at 832.

Here, the Petition contains numerous different proposals that arguably lack any readily identifiable and reasonably narrow central purpose. In that respect this Petition is arguably analogous to the petition in *Missourians to Protect the Initiative Process*. There, the petition combined changes to the size and organization of the General Assembly (a first “extremely broad” subject), with general regulation of the conduct of public officials in different branches of state government (a second “extremely broad” subject). Here, the Petition combines a redesign of the process and standards for drawing General Assembly districts (one “extremely broad” subject) with a series of provisions meant to avoid misconduct by public officials in all three branches of state government, as well as county and local governments (a second “extremely broad” subject).

Defendant suggests that the Petition’s subject is “to regulate limited aspects of the Missouri General Assembly and its members.” Secretary Br. at 3. Intervenors-Defendants suggest that the topic is “regulation of the state legislature.” But a closer examination of the specific changes reveal

an impermissible over reach to branches of state government besides the state legislature.

- Proposed § 2 imposes a two-year waiting period before any member of the General Assembly or person employed by the General Assembly may act as a paid lobbyist. This certainly applies to lobbying of the legislative branch. But Intervenor-Defendants conceded at oral argument that it applies to any lobbying, including lobbying of the executive branch. The Petition purports to block private employees, then, from lobbying the executive branch. That is not a legislative matter.
- Proposed § 2(c) prohibits any law “circumventing” the contribution limits anywhere “in this Constitution,” which would include the limits Missouri voters just passed in article VIII, § 23 and which are not repealed by the new, legislative-only contribution limits in the Petition. Again, Defendants do not deny that this provision applies to contributions to candidates for executive branch offices, candidates for judicial offices, political parties, and political party committees.
- Proposed § 2(f) prohibits any candidate from accepting contributions from any federal political action committee unless the committee files the same financial disclosure reports required of a Missouri committee. Intervenor-Defendants argued that this should be read to include only legislative candidates. But in the other subsections of Proposed § 2, it is clear when provisions only apply to legislative candidates, using the phrase “candidate for legislative office,” or using “candidate for public office” in a sentence incorporating “the limitations on contributions imposed in this section.” In contrast, provisions such as § 2(f) that are not so limited are clearly intended to reach to “candidates,” not merely legislative candidates.

- Proposed §§ 3(a)–(c) create a new executive office called the state demographer, and assign a new duty to another executive branch official, the State Auditor, to select all candidates for the office of state demographer; and
- Proposed § 20(c) prohibits any member of or candidate for the general assembly from soliciting contributions for executive office, judicial office, local government office, or even ballot measures, on state property. In most applications, this will be primarily a regulation of those other campaigns and the use of state property—not of the legislature.

Confronted with these examples, the Defendant and Intervenor-Defendants claimed that covering public officials in the executive or judicial branch, or public officials in county and local governments, is “properly connected” with the single subject of the General Assembly. They encourage the Court to make this ruling because these defects are not so egregious as to be “off-the-rails.”⁴ This Court decides that the inclusion of changes to multiple branches of government violates the guidelines and precedence articulated in the *Missourians to Protect the Initiative Process* decision.

For the foregoing reasons, the Initiative Petition’s multiple subjects violate article III, § 50; article XII, § 2(b); and § 116.050. Accordingly, the Initiative Petition 2018-048 is insufficient.

II. Count II

The Petition amends and repeals provisions in more than one article in violation of article III, § 50; article XII, § 2(b); and § 116.050, RSMo. The Petition contains more than one amended and revised article in that, at the very least, the Petition’s provisions limit the state auditor’s duties in article IV, §13. As detailed above, this Court decides that the inclusion of changes to more than

⁴ Oral Argument of Intervenor-Defendants, *See generally*, OZZY OSBOURNE, *Crazy Train*, BLIZZARD OF OZZ (Jet 1980).

one branch of government raises a presumption that the guidelines and precedence articulated in the *Missourians to Protect the Initiative Process* decision have been violated.

The constitution is divided into separate articles. The legislative department is provided for in article III. The executive department, its officers, and their responsibilities are provided for under article IV of the constitution. Public officials, in general, regulation of their conduct, and sanctions against their misconduct have heretofore been the subject of article VII. The organization of the constitution creates a presumption that matters pertaining to separate subjects therein described should be set forth in the article applicable to that subject and not commingled under unrelated headings. The organizational headings of the constitution are strong evidence of what those who drafted and adopted the constitution meant by "one subject."

Id.

The presumption raised cannot be rebutted in that the creation of a new state "post" denominated "non-partisan state demographer" and its addition of duties to the State Auditor clearly are not related to legislative matters. Although as detailed in Section I above, this is not the only section of the initiative that affects multiple branches of government, but it is the most preeminent. Amending more than one article of the Missouri Constitution is "strong evidence" that the single subject requirement is violated. *Id.* Thus, a separate initiative petition is required. For this additional reason, Initiative Petition 2018-048 is insufficient.

III. Count III

In Count III Plaintiffs claim the Proposed Measure violates Article III, Sections 28 and 50 and § 116.050, RSMo because it fails to bracket all deleted matter, underline all new matter, and set forth the full and correct text of the measure. Article III, Section 28 does not apply to initiatives on its own terms, rather it applies to bills enacted by the legislature. The requirement to bracket all deleted matter and underline all new matter in an initiative is not found in Missouri's Constitution. Rather, this is a statutory requirement which merely requires substantial

compliance. § 116.050, RSMo; *Knight v. Carnahan*, 282 S.W.3d 9, 15 (Mo. App. 2009). The Court finds the errors identified by Plaintiffs are tantamount to scrivener's errors. Even if the errors are considered more flagrant than mere scrivener's errors, they do not alter the meaning or purpose of the constitutional text and thus do not rise to a level of misleading voters. While Plaintiffs' arguments are perhaps technically correct, the Court will not prevent voters from considering an initiative petition based on "punctuation and grammar if the purpose of the provision may otherwise be determined." *Blunt*, 799 S.W.2d at 830.

IV. Count IV

Plaintiffs' arguments in Count IV alleges the Initiative Petition violates Article III, Sections 28 and 50 and § 116.050 because it fails to include all sections of the Constitution which would be repealed by the measure. In this Count, Plaintiffs identify several constitutional provisions they allege the Initiative Petition amends by implication. The Supreme Court has expressly rejected the "amendment by implication argument" *Boeving v. Kander*, 496 S.W.3d 498, 509 (Mo. banc 2016). *Boeving* concludes that the law governing initiative petitions does not "impose any requirement that a measure's proponents identify every provision of the existing constitution that the proposed amendment might conceivably alter or affect if and when the proposed amendment is approved by the voters and put into operation." *Id.*; *see also Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 15 (Mo. banc 1981) (explaining initiative proponents are not required to "'ferret out' and to list all the provisions which could possibly or by implication be modified by the proposed amendment"). Moreover, "section 116.050 does not require initiative proponents" to show as amended "all those provisions 'affected,' 'impacted,' or 'modified' by a proposed measure." *Knight v. Carnahan*, 282 S.W.3d 9, 19 (Mo. App. 2009). Although similar to

the well-taken allegations raised in Count II, this Court sets an impossible standard for the proponents to meet to and is therefore denied.

V. Count V.

In Count V, Plaintiffs allege the Initiative Petition, if enacted, would violate the First Amendment of the United States Constitution, and the Court should therefore enjoin it from being placed on the ballot. The Court cannot consider Plaintiffs' substantive constitutional challenges to the Initiative Petition prior to the election. Missouri law is clear: pre-election constitutional challenges to an initiative petition are premature when they do not pertain to the procedure or form of the initiative petition. *Boeving*, 496 S.W.3d at 511. In *Boeving*, the Court "adopted a bright-line test prohibiting preelection challenges to what a ballot proposal would do, if approved by the voters." *City of Kansas City v. Kansas City Bd. of Election Comm'rs*, 505 S.W.3d 795, 798 (Mo. banc 2017). "[P]reelection challenges are limited to claims that the procedures for submitting a proposal to the voters were not followed." *Id.* Here, Plaintiffs' claims in their respective Count V do not pertain to the procedure and form of the Initiative Petition. Instead, Plaintiff's claims raise substantive issues of constitutionality. These claims may, or may not, be warranted but they are simply not ripe and the Court cannot consider the merits of these claims.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

(1) In Case No. 18AC-CC00302, the Court finds that Plaintiff Ritter is entitled to judgment on Counts I and II of Plaintiff's Petition against Defendant and Defendants-Intervenors; in Case No. 18AC-CC00318, the Court finds that Plaintiff Mehan is entitled to judgment on Counts I and II of Plaintiff's Petition against Defendant and Defendants-Intervenors; Defendant Ashcroft and Defendant Intervenors Nicholson and Clean Missouri are entitled to Judgment on Counts III

and IV of Plaintiff's respective Petitions and Count V of Plaintiffs' respective Petitions is unripe and therefore dismissed without prejudice.

(2) Initiative Petition 2018-048 is insufficient, and pursuant to § 116.200, RSMo, the Court enjoins (a) the Secretary of State to rescind and withdraw his certification of sufficiency of the Petition and issue a certificate of insufficiency for the Petition; and (b) all other officers from printing the measure on the ballot.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Green', written in a cursive style.

The Honorable Daniel R. Green
Circuit Judge

Dated: 9/14/2018