

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

**DR. ROBERT BLAKE,
LAURA ROSENBURY,
and EMILY HOFFMAN,**

Plaintiffs,

v.

**ROBIN CARNAHAN,
Missouri Secretary of State
ATTN: Room 322 – Commissions
600 W. Main Street
Jefferson City, MO 65101**

and

**SUSAN MONTEE,
Missouri State Auditor
Truman State Office Building
301 West High Street, Office 880
Jefferson City, MO 65101**

Defendants.

Case No. _____

**PETITION TO CHALLENGE OFFICIAL BALLOT TITLE
AND FISCAL NOTE OF INITIATIVE PETITION**

Plaintiffs, by and through their attorneys, and for their Petition state as follows:

1. Plaintiffs bring this action for the purpose of challenging the legal sufficiency of the official ballot title (including both the summary statement and the fiscal note summary) and the fiscal note of the proposed constitutional amendment to Article I of the Missouri Constitution (“Proposed Constitutional Amendment”) sought to be enacted by the proposed initiative petition submitted by Gregory Thompson of Personhood Missouri on September 17, 2009 (“Initiative Petition”). Plaintiffs also challenge the Initiative Petition’s adequacy as to form and constitutionality under Sections 50 and 28 of Article III of the Missouri Constitution, Section

2(b) of Article XII of the Missouri Constitution, and Section 116.050 of the Revised Statutes of Missouri, and seek an injunction preventing the Secretary of State from taking any further action in connection with the Initiative Petition.

PARTIES

2. Plaintiff Robert L. Blake, M.D. is a citizen of the State of Missouri and a Professor Emeritus at the University of Missouri-Columbia School of Medicine, and is licensed to practice medicine in Missouri.

3. Plaintiff Professor Laura Rosenbury is a citizen of the State of Missouri and a Professor of Law at Washington University.

4. Plaintiff Emily Hoffman is a citizen of the State of Missouri and is a student at the University of Missouri-Columbia School of Medicine.

5. Defendant Robin Carnahan is the Secretary of State for the State of Missouri and is named as a party Defendant in her official capacity pursuant to Section 116.190.2 of the Revised Statutes of Missouri.

6. Defendant Susan Montee is the State Auditor for the State of Missouri and is named as a party Defendant in her official capacity pursuant to Section 116.190.2 of the Revised Statutes of Missouri.

JURISDICTION AND VENUE

7. Plaintiffs bring this action pursuant to Chapters 116 and 527 of the Revised Statutes of Missouri and Rules 87 and 92 of the Missouri Rules of Civil Procedure.

8. Venue is proper in this Court pursuant to Section 116.190.1 of the Revised Statutes of Missouri.

9. This action is brought within the prescribed time limit pursuant to Sections 1.040, 506.060, and 116.190.1 of the Revised Statutes of Missouri.

ALLEGATIONS COMMON TO ALL COUNTS

10. On or about September 17, 2009, Gregory Thompson of Personhood Missouri submitted the Initiative Petition to Defendant Carnahan for a constitutional amendment redefining the term “person” for purposes of certain Missouri constitutional provisions as “every human being from the beginning of the biological development of that human being.” The September 17, 2009 Initiative Petition is attached as Exhibit A, and contains the text of the Proposed Constitutional Amendment.

11. On or about September 18, 2009, Defendant Carnahan sent a sample sheet for the Initiative Petition to Defendant Montee for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332 of the Revised Statutes of Missouri. The September 18, 2009 letter is attached as Exhibit B.

12. On or about October 8, 2009, Defendant Montee sent a proposed fiscal note summary for the Initiative Petition (“Fiscal Note Summary”) to Attorney General Koster for his review and approval as to legal content and form pursuant to Section 116.175 of the Revised Statutes of Missouri. Defendant Montee also attached a copy of the fiscal note for the Initiative Petition (“Fiscal Note”). The October 8, 2009 letter and Fiscal Note are attached as Exhibit D.

13. On or about October 9, 2009, Defendant Carnahan sent a proposed summary statement for the Initiative Petition (“Summary Statement”) to Missouri Attorney General Christopher Koster for review and approval pursuant to Section 116.334 of the Revised Statutes of Missouri. The October 9, 2009 letter is attached as Exhibit C.

14. On or about October 14, 2009, Attorney General Koster sent Opinion Letter No. 221-2009 to Defendant Montee approving the legal content and form of the Fiscal Note Summary. Opinion Letter No. 221-2009 is attached as Exhibit E.

15. On or about October 15, 2009, Defendant Montee sent Defendant Carnahan a copy of the Fiscal Note Summary approved as to legal content and form by the Attorney General's office, as well as a copy of the Fiscal Note. The October 15, 2009 letter is attached as Exhibit F.

16. On or about October 19, 2009, Attorney General Koster sent Opinion Letter No. 223-2009 to Defendant Carnahan, approving the legal content and form of the Summary Statement. Opinion Letter No. 223-2009 is attached as Exhibit G.

17. On or about October 20, 2009, Defendant Carnahan certified the official ballot title of the Initiative Petition ("Official Ballot Title") pursuant to Section 116.180 of the Revised Statutes of Missouri. The language of the Official Ballot Title is set forth in Exhibit H, attached.

18. On or about October 20, 2009, Waylene Hiles, Deputy Secretary for Elections, advised Mr. Thompson that Defendant Carnahan had certified the Official Ballot Title for the Initiative Petition he submitted on September 17, 2009. A copy of the October 20, 2009 letter is attached as Exhibit I.

COUNT I – THE SUMMARY STATEMENT IS INSUFFICIENT AND UNFAIR

19. Plaintiffs incorporate Paragraphs 1 through 18 as if fully set forth herein.

20. The Proposed Constitutional Amendment provides:

Person defined. As used in sections 2, 10, and 14 of Article I of the state constitution, the term "person" shall apply to every human being from the beginning of the biological development of that human being.

Exhibit A.

21. The Summary Statement of the Official Ballot Title of the Initiative Petition is:
Shall the Missouri Constitution be amended to define the term “person” to be from the beginning of biological development and grant such person constitutional rights and access to courts under the equal protection, due process, and open courts provisions of the Missouri Constitution?

Exhibit C.

22. Section 116.334.1 of the Revised Statutes of Missouri requires that the Summary Statement be “a concise statement not exceeding one hundred words” and “in the form of a question using language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.”

23. The Summary Statement here is insufficient and unfair because it fails to advise voters of the far-reaching legal changes and consequences that would result from enactment of the Proposed Constitutional Amendment, and thus is likely to deceive and mislead voters. This is true in numerous respects, including but not limited to the below.

24. First, the Summary Statement does not adequately advise voters of the new definition of “person” under the Proposed Constitutional Amendment. In particular, it does not apprise voters that the proposed definition of “person” appears to encompass a fertilized human egg, as well as every subsequent stage of biological development. See PersonhoodMissouri.com, Frequently Asked Questions, http://personhoodmissouri.com/files/Chuck%20Pearsall/Personhood%20FAQs_2.pdf (last visited October 28, 2009) (“Q: What is the Beginning of Biological Development? A: The beginning of biological development of a human being . . . is the instant the sperm and the ovum touch to form a unique human being.”).

25. Second, the Summary Statement fails to advise voters that applying this definition of “person” to multiple provisions of the Missouri Constitution could expand the reach of a vast number of Missouri laws – including, potentially, any Missouri statute that uses the word “person.” For example, because the Proposed Constitutional Amendment expressly extends to newly-recognized “persons” the right to Open Courts access, as well as to Equal Protection, Due Process, Life, and other rights afforded by Article I, Sections 2, 10, and 14 of the Missouri Constitution, litigation could be filed challenging the exclusion of fertilized eggs, embryos, and fetuses from any law that references “persons,” claiming that the exclusion violates Equal Protection, Due Process, or other rights of these newly-recognized “persons.” Similarly, prosecutors and/or law enforcement officials could determine that existing criminal laws require full protection of the fertilized eggs, embryos, and fetuses newly recognized as “persons” under the Proposed Constitutional Amendment. The scenarios in which this could play out are many and varied, and the outcomes for such areas of law as criminal law, family law, property law, tax law, inheritance law, immigration law, eligibility for government benefits, and many others are impossible to foresee. The Summary Statement is insufficient and unfair because it fails to advise voters that the Proposed Constitutional Amendment could have any effect whatsoever on Missouri’s statutory and regulatory codes – much less effects this potentially far-reaching and unpredictable.

26. Third, the Summary Statement does not give voters notice that the Proposed Constitutional Amendment’s redefinition of “person” appears calculated to ban a wide range of healthcare services that are currently legal, including but not limited to the following:

- a. Abortion. Banning abortion is the stated goal of the Proposed Constitutional Amendment. See PersonhoodMissouri.com, Frequently Asked Questions,

http://personhoodmissouri.com/files/Chuck%20Pearsall/Personhood%20FAQs_2.pdf

(last visited October 28, 2009) (“Q: What is the goal of the Personhood Amendment? A: The goal is; **‘end abortion now’** by protecting all innocent human life from the beginning of biological development.”) (emphasis in original). The Proposed Constitutional Amendment is intended to act as an abortion ban insofar as if “person” is redefined to include the embryo or fetus, and indeed, all stages of biological development from the human fertilized egg onward, it could become illegal for medical providers to perform or induce an abortion that causes the demise of that “person” and women and medical providers could be exposed to criminal prosecution and penalties, civil liability, licensing consequences, and/or other legal consequences.

b. Common forms of birth control. Insofar as hormonal birth control (such as the pill, the patch, the vaginal ring, emergency contraception, and others) may sometimes work by preventing a fertilized egg from implanting into the uterine lining, the Proposed Constitutional Amendment is intended to ban these widely-used and effective forms of birth control. If “person” is redefined to include the human fertilized egg and all subsequent stages of biological development, it appears that these common forms of birth control could become illegal. It also appears that medical providers, pharmacists, and women could be exposed to criminal prosecution and penalties, civil suits on behalf of fertilized eggs that did not implant for having provided or used birth control, and/or, in the case of medical providers and pharmacists, to licensing consequences and/or other legal consequences. See also PersonhoodUSA.com, Scare Tactic Alert, <http://www.personhoodusa.com/content/scare-tactic-alert> (last visited October 28, 2009) (explaining

that barrier methods of contraception – such as condoms – will not be affected, but methods that may prevent implantation of a fertilized egg will be prohibited).

c. Treatment for ectopic pregnancy. When a woman has an ectopic pregnancy (that is, an abnormal pregnancy in which the blastocyst implants and begins to develop outside the uterus, usually in the fallopian tube; such pregnancies are not viable but can cause life-threatening complications for the woman), it is standard treatment to use medication or surgery to end the pregnancy. If “person” is redefined to include all stages of biological development from the human fertilized egg onward, it is not clear that this life-saving treatment will remain legal. Moreover, it appears that medical providers and women could be exposed to criminal prosecution and penalties, civil suits on behalf of the embryo or fetus for having provided or undergone treatment for an ectopic pregnancy, and/or, in the case of medical providers, to licensing consequences and/or other legal consequences.

d. Common methods of fertility treatment. Current common methods of treating infertility can result in the creation of fertilized eggs and/or embryos that never implant into the uterine lining. If “person” is redefined to include the human fertilized egg and all subsequent stages of biological development, it is not clear that these common treatments will remain legal because they sometimes result in the creation of fertilized eggs, which would be considered “persons,” that are never implanted in utero. Moreover, it appears that medical providers and women could be exposed to criminal prosecution and penalties, civil suits on behalf of un-implanted human fertilized eggs or embryos, and/or, in the case of medical providers, to licensing consequences and/or other legal consequences. See also PersonhoodUSA.com, Scare Tactic Alert, <http://www.>

personhoodusa.com/content/scare-tactic-alert (last visited October 28, 2009) (explaining that current methods of fertility treatment would be banned by a personhood amendment).

The Summary Statement utterly fails to give voters notice that the Proposed Constitutional Amendment could change the law in these drastic and far-reaching ways, and is therefore insufficient and unfair.

27. Fourth, the Summary Statement is insufficient and unfair because it misleadingly describes the provisions of the Missouri Constitution to which the Proposed Constitutional Amendment's expanded definition of "person" would apply as the "equal protection, due process, and open courts provisions of the Missouri Constitution." In truth, though, the first constitutional provisions identified in the Proposed Constitutional Amendment – Section 2 of Article 1 – which the Summary Statement describes as "equal protection," encompasses far more than "equal protection." Article I, Section 2 of the Missouri Constitution provides:

That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

28. Finally, the Summary Statement is insufficient and unfair because it describes the Proposed Constitutional Amendment only as "grant[ing] constitutional rights" to those that the Proposed Constitutional Amendment would newly recognize as "persons," and fails to give voters notice that the Proposed Constitutional Amendment purports to *take away* rights currently

recognized under the Missouri Constitution to make health care decisions regarding whether and/or when to have children. See ¶ 26, supra.

29. In order to correct the foregoing deficiencies in the Summary Statement while keeping within the 100-word limit, and to ensure that the Summary Statement is sufficient and fair and that voters will not be deceived or misled, Plaintiffs request that the Summary Statement be amended to state:

Shall the Missouri Constitution be amended to:

- Redefine “person” to include human fertilized eggs for purposes of the Missouri Constitution, which could affect many laws (including tax, criminal and inheritance) in potentially unforeseen ways;
- Prohibit certain medical care, including:
 - Common forms of contraception
 - Treatments for ectopic pregnancies and infertility
 - All abortions?

30. Accordingly, this Court should find the Summary Statement insufficient and unfair and rewrite the Summary Statement of the Official Ballot Title pursuant to the language suggested in ¶ 29, supra.

COUNT II – THE FISCAL NOTE IS INSUFFICIENT AND UNFAIR

31. Plaintiffs incorporate Paragraphs 1 through 30 as if fully set forth herein.

32. Section 116.175.1 of the Revised Statutes of Missouri states that “upon receipt from the secretary of state’s office of any petition sample sheet . . . the auditor shall assess the fiscal impact of the proposed measure.”

33. Section 116.175.3 of the Revised Statutes of Missouri provides that “[t]he fiscal note and fiscal note summary shall state the measure’s estimated cost or savings, if any, to state or local governmental entities.”

34. In preparing the Fiscal Note, Defendant Montee requested input from the State Legislature as well as various state agencies and entities, local governments, political subdivisions, and school districts (“Fiscal Note Sources”). Some, but not all, Fiscal Note Sources responded to Defendant Montee.

35. The Fiscal Note is insufficient and unfair for a number of reasons, including but not limited to the following:

a. Because the Fiscal Note itself contains no conclusion, it fails to meet the statutory requirement that it “state the measure’s estimated cost or savings.” Mo. Rev. Stat. § 116.175.3.

b. It appears that Defendant Montee relied solely on information provided to her by those Fiscal Note Sources that chose to respond to her request, although neither the Fiscal Note Sources nor the subset of sources that chose to respond represent a full survey of entities likely to be affected by the Proposed Constitutional Amendment. Moreover, even as to the responses she did receive, Defendant Montee did not utilize all of the information the responding sources supplied her.

c. It appears that Defendant Montee neither undertook an independent investigation to assess the fiscal impact of the Proposed Constitutional Amendment, nor attempted to verify the information provided to her by the responding Fiscal Note Sources. Defendant Montee had a duty to undertake an independent investigation regarding the fiscal impact of the Proposed Constitutional Amendment, and especially so

because the information she received from some of her Fiscal Note Sources was facially implausible, as discussed below in ¶ 35(d).

d. The Fiscal Note fails to adequately include significant fiscal costs of the Initiative Petition. For example:

i. Because the Proposed Constitutional Amendment has the potential to expand the reach of vast numbers of Missouri laws in unclear and unpredictable ways that will be resolved only through extensive litigation (see ¶¶ 25-26, supra), its enactment would inevitably lead to significant costs to the state both from the burden imposed on the court system and from the state's involvement in these litigations (including, potentially, the award of attorneys' fees awarded against the state). These impacts were described in the comments from Senator Joan Bray, as set forth in the Fiscal Note. Exhibit D. In contrast, the Office of State Courts Administrator indicated that the Proposed Constitutional Amendment would have no anticipated costs to the judiciary, and the comment submitted by the Attorney General's Office alludes to litigation costs, but in a cursory manner that does not adequately reflect the significance and inevitability of these costs. Id. (Attorney General's Office "assume[s] that because this proposal has the potential to be the subject of state litigation, potential costs are unknown"). The Fiscal Note is insufficient and unfair to the extent it did not attempt to resolve the plain inconsistencies among these comments, as voters are clearly entitled to an understanding of whether the Proposed Constitutional Amendment would impose extensive court and litigation costs on the State.

ii. Similarly, because the Proposed Constitutional Amendment is intended to ban many common forms of birth control (see ¶ 26(b), supra) and abortion (see ¶ 26(a), supra), including pre-viability abortions, despite the fact that these medical services are protected by the U.S. Constitution, its enactment would lead to protracted litigation for these independent reasons. Again, the failure to indicate the inevitability of significant litigation expenses is a serious defect in the Fiscal Note.

iii. Because the Proposed Constitutional Amendment is intended to ban hormonal contraception and abortion in Missouri, if it became effective it would have a number of significant adverse fiscal impacts related to the loss of safe and legal services to help women control their reproductive lives. These include increased costs of pre-natal care, childbirth, and infant care, as well as increased costs for medical treatment to women suffering complications from unsafe abortions, for the uninsured and women on Medicaid and/or other government programs. These impacts are described in the comments from Senator Bray set forth in the Fiscal Note. Exhibit D. However, one of the agencies most affected – the Department of Health and Senior Services (DHSS) – failed to respond to the Auditor’s request for input. Id. The Department of Social Services indicated that the cost is “unknown,” and that [d]epending on the interpretation of the proposed language, the department could incur program benefit costs for the unborn.” Id. The Fiscal Note is insufficient and unfair to the extent it does not attempt to resolve these inconsistencies and omissions, and

ensure that voters have sufficient information to evaluate the true fiscal costs of the Proposed Constitutional Amendment.

iv. Because the Proposed Constitutional Amendment is intended to ban common forms of contraception in Missouri, if it became effective it would have a tremendous fiscal impact. For example, a ban on contraception would result in enormous costs from women's reduced participation in the workforce as a consequence of their decreased ability to plan family size; an accompanying decreased tax base; and a range of significant costs accompanying increased birth rates. It would also jeopardize Missouri's eligibility for a range of federal funding streams, including Medicaid and Title X, which is the federal program dedicated to providing access to contraceptive services to low-income women and men. These impacts are described in the comments from Senator Bray set forth in the Fiscal Note. Exhibit D. In contrast, the Department of Revenue indicated that the Proposed Constitutional Amendment would have no fiscal impact on the department. The Department of Social Services indicated that the cost is "unknown," and that "[d]epending on the interpretation of the proposed language, the department could incur program benefit costs for the unborn." Id. Again, the Fiscal Note is insufficient and unfair to the extent it does not attempt to resolve these inconsistencies and omissions and ensure that voters have sufficient information to evaluate the true fiscal costs of the Proposed Constitutional Amendment.

36. Accordingly, this Court should find the Fiscal Note insufficient and unfair and set aside the certification of the Official Ballot Title of the Initiative Petition by Defendant Carnahan

and remand the Fiscal Note to Defendant Montee for a proper calculation of fiscal impact as required by Section 116.175 of the Revised Statutes of Missouri.

COUNT III – THE FISCAL NOTE SUMMARY IS INSUFFICIENT AND UNFAIR

37. Plaintiffs incorporate Paragraphs 1 through 36 as if fully set forth herein.

38. Section 116.175.3 of the Revised Statutes of Missouri states:

The fiscal note and fiscal note summary shall state the measure’s estimated cost or savings, if any, to state or local governmental entities. The fiscal note summary shall contain no more than fifty words, excluding articles, which shall summarize the fiscal note in language neither argumentative nor likely to create prejudice either for or against the proposed measure.

39. The Fiscal Note Summary states:

Most state and local governmental entities estimate no costs or savings. However, depending on the legal interpretation of the proposal, some state and local governmental entities may incur unknown costs relating to court actions, program benefits for the unborn, health services to pregnant women, and the possible prohibition of certain research activities.

40. The Fiscal Note Summary is insufficient and unfair for a number of reasons, including but not limited to the following:

a. The Fiscal Note Summary fails “to state the measure’s estimated cost or savings.” Rather it concludes only that “[m]ost state and local governmental entities estimate no costs or savings,” but that “some state and local governmental entities may incur unknown costs.” The failure to provide an actual estimate of the costs of the

Proposed Constitutional Amendment violates the requirements of Section 116.175.3 of the Revised Statutes of Missouri.

b. The omission of an actual estimate of costs is especially problematic given the magnitude of the projected fiscal costs reflected in the Fiscal Note, as to certain aspects of the Proposed Constitutional Amendment. The City of St. Louis conservatively estimated a minimum loss of \$14.3 million per year in direct general revenue. Exhibit D. Other Fiscal Note Sources, including Senator Joan Bray, detailed additional significant fiscal losses, including significant costs from women's decreased participation in the work-place if common forms of contraception are banned; decreased tax base; increased State costs from increased birth rate, and increased healthcare costs from illegal abortions. The magnitude of potential fiscal loss to the State is in no way made clear to voters by the Fiscal Note Summary's statements that "some state and local governmental entities may incur unknown costs."

c. The Fiscal Note Summary's conclusion that "some state and local governmental entities *may* incur unknown costs" (emphasis added) is misleading and likely to deceive voters, because the Fiscal Note clearly reflects that some state and local governmental entities report that they *will* incur costs.

d. The Fiscal Note Summary's reference to "program benefits for the *unborn*" (emphasis added) used biased, ideological language that has no place in a summary that is meant to provide voters with fiscal analysis. This language is argumentative and likely to create prejudice in favor of the Proposed Constitutional Amendment, in violation of Section 116.175.3.

41. Section 116.180 of the Revised Statutes of Missouri requires that the Official Ballot Title – which includes the Fiscal Note Summary – be affixed to each page of the petition prior to circulation. It is therefore reasonable to assume that the large majority of voters to whom the Initiative Petition will be presented for their signature will consider the Fiscal Note Summary when deciding whether to sign the Initiative Petition. Because the Fiscal Note Summary does not reflect the magnitude of the costs the State will incur if the Proposed Constitutional Amendment goes into effect, it is likely to deceive and mislead voters.

42. In order to correct the foregoing deficiencies in the Fiscal Note Summary while keeping within the limitation of 50 words (excluding articles), and to ensure that the Fiscal Note Summary is sufficient and fair and that voters will not be deceived or misled, Plaintiffs request that the Fiscal Note Summary be amended to state:

The proposal will have significant litigation costs for the state. If it bans abortion and contraception, governmental entities will incur extraordinary costs, including medical costs, lost tax revenue as women leave the workforce, and increased costs of government benefit programs. The costs to governmental entities are estimated to exceed \$_____.

43. Accordingly, this Court should find the Fiscal Note Summary is insufficient and unfair and rewrite the Fiscal Note Summary pursuant to the language suggested in ¶ 42, supra, or, in the alternative, set aside the certification of the Official Ballot Title of the Initiative Petition by Defendant Carnahan and remand the Fiscal Note Summary to Defendant Montee for a proper summary of fiscal impact as required by Section 116.175 of the Revised Statutes of Missouri.

COUNT IV – THE INITIATIVE PETITION VIOLATES FORM REQUIREMENTS

44. Plaintiffs incorporate Paragraphs 1 through 43 as if fully set forth herein.

45. Any initiative petition proposing a constitutional amendment must comply with the requirements set forth in Section 50 of Article III of the Missouri Constitution, Section 28 of Article III of the Missouri Constitution, Section 2(b) of Article XII of the Missouri Constitution, and Section 116.050 of the Revised Statutes of Missouri. Section 116.332 of the Revised Statutes of Missouri sets forth the procedures to be followed by the Secretary of State and the Attorney General in reviewing the form of a proposed initiative petition, with the Secretary of State making the final decision as to whether the form of the petition is approved or rejected.

46. The Secretary of State wrongfully and unlawfully approved the form of the Initiative Petition, which did not comply with the requirements of these provisions. More specifically, *inter alia*:

a. The Initiative Petition, if adopted, would amend the Missouri Constitution in ways that would amend and/or repeal by implication sections of existing law and of the Missouri Constitution. The constitutional and statutory provisions cited above require that the Initiative Petition identify the provisions of existing law and of the Missouri Constitution which would or might be amended or repealed by implication by adoption of the Initiative Petition, and further require that the words repealed be set forth in the text of the Ballot Initiative, set off by brackets, and all new matter shown underlined.

However, the Initiative Petition fails to provide this information.

b. The Initiative Petition, if adopted, would amend multiple provisions of the Missouri Constitution. Section 50 of Article III of the Missouri Constitution requires that

“[p]etitions for constitutional amendments shall not contain more than one amended and revised article of this constitution.”

47. Given the resources required to circulate a proposed petition to obtain signatures necessary for an initiative petition to be placed on a ballot for voter approval and the taxpayer resources that will be expended to verify signatures gathered and certify the petition to be placed on the ballot, it is essential to ensure that before such a protracted process is undertaken, the Initiative Petition complies with the Missouri Constitution.

COUNT V – THE INITIATIVE PETITION VIOLATES THE SINGLE SUBJECT AND CLEAR TITLE REQUIREMENTS OF ARTICLE III, SECTION 50 OF THE MISSOURI CONSTITUTION

48. Plaintiffs incorporate Paragraphs 1 through 47 as if fully set forth herein.

49. Article III, Section 50 of the Missouri Constitution states that “[p]etitions for constitutional amendments shall not contain more than . . . one new article which shall not contain more than one subject and matters properly connected therewith.”

50. The purpose of the single subject rule for initiative petitions is to:

a. Prevent logrolling, which requires voters to decide whether to sign an initiative petition that contains two or more separate propositions. See Moore v. Brown, 165 S.W.2d 657, 662 (Mo. 1940) (en banc).

b. Avoid a legal fraud on the voters, which occurs when two or more questions are combined together in a single proposed amendment. See State ex rel. Callaghan v. Maitland, 246 S.W. 267, 272 (Mo. 1922) (en banc).

51. Because the Proposed Constitutional Amendment redefines “person” for purposes of certain provisions of the Missouri Constitution in a way that appears to encompass the human fertilized egg, as well as embryos and fetuses, and because the legal consequences of this

redefinition for Missouri's constitution and statutory code are far-reaching, unpredictable, and will be fully determined only after years of litigation, the Proposed Constitutional Amendment contains a vast – and indeed, unknowable – number of subjects that are not properly connected to a central purpose. As discussed in ¶ 26, supra, these subjects include but are not limited to:

- Abortion;
- Common forms of contraception, including the birth control pill;
- Common treatments for infertility; and
- Treatment for life-threatening ectopic pregnancies.

52. They also include an even broader array of statutory subjects: indeed, potentially, *any* statute (civil or criminal) that contains the word “person” or “people” is among the subjects of the Proposed Constitutional Amendment because it could be the subject of a litigation to determine whether the constitutional rights of a fertilized egg, fetus, or embryo are violated if that newly-recognized “person” is treated differently from the “persons” to whom the statute had previously been applied. Thus, the subjects of the Proposed Constitutional Amendment must also be understood to encompass, to name a few examples:

- Criminal law;
- Tax law;
- Inheritance and estate law;
- Property law;
- Family law;
- Immigration law;
- Government benefits law;

as well as multiple subjects within each of these broad categories.

53. Clearly, a person considering voting on or signing the Initiative Petition could support the Proposed Constitutional Amendment as it would apply on some of these subjects, and not as it would apply on others. This violates the core protections of Article III, Section 50.

54. The Proposed Constitutional Amendment also violates the single subject rule because it would change the meaning of three separate and distinct sections of the Missouri Constitution's Bill of Rights. If approved, this single measure would alter the sweep of three separate and distinct categories of individual rights. Because the voters cannot do this without simultaneously addressing the three separate and distinct subjects defined by those rights, the Proposed Constitutional Amendment violates the single subject rule.

55. Given the resources required to circulate a proposed petition to obtain signatures necessary for an initiative petition to be placed on a ballot for voter approval and the taxpayer resources that will be expended to verify signatures gathered and certify the petition to be placed on the ballot, it is essential to ensure that before such a protracted process is undertaken, the Initiative Petition complies with the Missouri Constitution.

56. Plaintiffs have no adequate remedy at law and, absent relief from this Court, Plaintiffs will suffer irreparable harm.

WHEREFORE, Plaintiffs pray that this Court

a. find that the Summary Statement of the Official Ballot Title is insufficient and unfair and rewrite the Summary Statement of the Official Ballot Title pursuant to the suggested language in ¶ 29, supra;

b. find that the Fiscal Note is insufficient and unfair and set aside the certification of the Official Ballot Title of the Initiative Petition by Defendant Carnahan and remand the Fiscal

Note to Defendant Montee for a proper calculation of fiscal impact as required by Section 116.175 of the Revised Statutes of Missouri;

c. find that the Fiscal Note Summary is insufficient and unfair and set aside the certification of the Official Ballot Title of the Initiative Petition by Defendant Carnahan and remand the Fiscal Note Summary to Defendant Montee for a proper summary of fiscal impact as required by Section 116.175 of the Revised Statutes of Missouri, or, in the alternative, rewrite the Fiscal Note Summary pursuant to the suggested language in ¶ 42, supra;

d. find that the Initiative Petition was not and is not in proper form as required by Sections 50 and 28 of Article III of the Missouri Constitution, Section 2(b) of Article XII of the Missouri Constitution, and Section 116.050 of the Revised Statutes of Missouri, and that the Secretary of State's approval of the form of the Initiative Petition was improper and unlawful; find that the submission of a proper Initiative Petition is and was a condition precedent to the formulation of an official ballot title; and vacate and quash the approval of the form of the Initiative Petition, the Official Ballot Title, the Summary Statement, the Fiscal Note Summary, and the Fiscal Note;

e. declare that the Initiative Petition is unconstitutional under Article III, Section 50 of the Missouri Constitution, and enjoin Defendant Carnahan from taking any further action in connection with the petition;

f. award Plaintiffs their reasonable costs and attorneys' fees; and

g. grant such other relief as the Court deems appropriate.

Date: October 28, 2009

Respectfully submitted,

ACLU OF EASTERN MISSOURI



Anthony E. Rothert, Mo. Bar No. 44827
454 Whittier Street
St. Louis, Missouri 63108
(314) 652-3114
(314) 652-3112 (facsimile)
tony@aclu-em.org

**PLANNED PARENTHOOD
FEDERATION OF AMERICA, INC.**

Eve C. Gartner*
Jennifer Sandman*
434 West 33rd Street
New York, New York 10001
(212) 541-7800
(212) 247-6811 (facsimile)
eve.gartner@ppfa.org
jennifer.sandman@ppfa.org

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
REPRODUCTIVE FREEDOM PROJECT

Jennifer Dalven*
125 Broad Street, 18th Floor
New York, New York 10004-2400
(212) 549-2633
(212) 549-2652 (facsimile)
jdalven@aclu.org

Attorneys for Plaintiffs

**Motion for Pro Hac Vice will be submitted*