

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

**FILED**

JUL 26 2007

BRENDA A. UMSTATT  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

TIMOTHY P. ASHER  
P. O. Box 545  
Grain Valley, MO 64029

Plaintiff

v.

Case No. 074C-CO0248

ROBIN CARNAHAN, as Secretary  
of State of Missouri  
James C. Kirkpatrick State Information Center  
600 West Main Street  
Jefferson City, MO 65101

Defendant

**PETITION CHALLENGING BALLOT TITLE  
AND SEEKING PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

COMES NOW by counsel Timothy P. Asher, an individual, and for his cause of action under section 116.190, RSMo. Supp. 2004,<sup>1</sup> respectfully states:

1. Timothy P. Asher is a resident and citizen of Missouri.
2. Defendant, Robin Carnahan, is named in her official capacity as Secretary of State of Missouri.
3. This action challenges Defendant's ballot title of an initiative petition proposing an amendment to the Missouri Constitution. Venue lies in this Court pursuant to section 116.190.

**COUNT I - CLAIM PURSUANT TO RSMO §§116.025 and 116.190**

4. On or about June 15, 2007, pursuant to §116.025, Plaintiff submitted a proposed initiative petition proposing an amendment to the Missouri Constitution for Defendant's preparation of a ballot title.

<sup>1</sup> All statutory citations herein are to RSMo. Supp. 2004.

5. A true and correct copy of the proposed amendment is attached as Exhibit 1 and is incorporated herein by reference.

6. On July 19, 2007, Defendant certified the official ballot title pursuant to section 116.025, RSMo.

7. A true and correct copy of Defendant's official ballot title is attached as Exhibit 2 and is incorporated herein by reference.

8. The ballot title contains a summary statement portion and a fiscal note portion. Plaintiff challenges the summary statement portion in this action.

9. Defendant's summary statement is insufficient and unfair under section 116.190 in the particulars described below.

10. Defendant's summary statement is not a true and impartial statement of the effects of a vote on the proposed amendment as required by section 116.025.

11. Defendant's summary statement uses argumentative language that is likely to create prejudice against the proposed amendment in violation of section 116.025.

12. Defendant's summary statement fails to comply with the laws described above in at least the following particulars:

a. Defendant's summary statement misrepresents the proposed amendment as a ban on programs that eliminate discrimination, and thus is argumentative, prejudicial, and untrue, because in fact the proposed amendment itself bans discrimination, not programs that eliminate discrimination.

b. Defendant's summary statement injects the term "affirmative action programs" to describe the alleged target of the amendment, and thus is argumentative,

prejudicial, conclusory, and untrue, because the term "affirmative action programs" is ambiguous, overinclusive, and value-laden.

c. Defendant's summary statement proposes that the amendment will ban programs that "improve opportunities for women and minorities." Such statement is argumentative, conclusory, prejudicial and untrue, in that the amendment itself states clearly and concisely that it will ban discrimination on the basis of sex and race, together with color, ethnicity, and national origin.

d. Defendant's summary statement misrepresents the amendment as a ban on "programs," and is thus argumentative and untrue, in that the amendment does not ban "programs," but bans discrimination against individuals and groups.

e. Defendant's summary statement asks whether the Constitution should be amended to "allow preferential treatment based on race, sex, color, ethnicity, or national origin to meet federal program funds eligibility standards as well as preferential treatment for bona fide qualifications based on sex?" This language so convoluted, ambiguous, and muddled that it fails to constitute a fair and accurate summary of the relevant provisions of the amendment.

f. Defendant's summary statement misrepresents that the amendment will "allow preferential treatment," and thus is argumentative, overinclusive, prejudicial and untrue, because the amendment plainly has no provision that grants permission or otherwise "allows" such treatment.

g. Defendant's summary statement misrepresents the amendment as "allowing" preferential treatment "to meet federal program funds eligibility standards," and is thus argumentative, overinclusive, prejudicial and untrue, because the amendment

states only that it shall not be interpreted as standing in the way of any federal requirements when the consequence would be the loss of federal funds to the state.

h. Defendant's summary statement misrepresents the amendment as "allowing" preferential treatment "for bona fide qualifications based on sex," and is thus argumentative, overinclusive, prejudicial and untrue, because the amendment states only that it shall not be interpreted as standing in the way of such qualifications that are reasonably necessary to normal operations.

i. Defendant's summary statement runs together the exception for bona fide qualifications based on sex that are reasonably necessary for normal public operations with the exception for maintaining federal funding, rendering that portion of the summary statement so confusing, ambiguous, and muddled that it fails to constitute a fair and accurate summary of the relevant provisions of the amendment.

13. Pursuant to section 116.190, Plaintiffs suggest to the Court that one of the following alternatives of the summary statement portion of the ballot title be certified to the Secretary of State:

Alternative 1:

Shall the Missouri Constitution be amended to prohibit any form of discrimination as an act of the state by declaring:

- The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting?

Alternative 2

Shall the Missouri constitution be amended to prohibit discrimination against or preferential treatment to any individual or group on the basis of race, sex, color,

ethnicity, or national origin in the operation of public employment, public education, or public contracting? Nothing in the amendment shall be interpreted to prohibit action that must be taken to prevent the loss of federal funds to the state or to prohibit bona fide qualifications based on sex that are reasonably necessary to normal operations.

WHEREFORE, pursuant to section 116.190, RSMo., Plaintiffs pray that the Court find that the summary statement portion of the ballot title promulgated by the Secretary of State is insufficient and unfair; that the Court certify to the Secretary of State a summary statement portion of the ballot title that is sufficient and fair, including one of the alternatives suggested above; his costs and attorneys' fees incurred herein, and that the Court enter such further relief as is just and proper.

#### **COUNT II - INJUNCTIVE RELIEF**

14. Plaintiff incorporates by reference paragraphs 1 to 13 of its Petition.
15. By statute, the initiative petition requires several procedural steps in order to be placed on the ballot. These include obtaining thousands of signatures on petitions by a deadline.
16. The Secretary of State operates an Internet web site that includes references to pending ballot issues, including the text of the ballot title and a link to the full ballot language.
17. In addition to the text of the ballot title, the Secretary of State publishes on the Internet web site a descriptive heading to identify each ballot initiative.
18. The Secretary of State's descriptive heading to identify the proposed initiative at issue herein is "Constitutional Amendment to Add Article I, Section 34, Relating to Banning Affirmative Action Programs, 2008-009."
19. A copy of a print-out of such descriptive heading is found on page 4 of the attached Exhibit 3, which is incorporated by reference herein.

20. Said descriptive heading is argumentative, prejudicial, conclusory, and untrue for the reasons stated above.


21. Without a sufficient and fair ballot title and a sufficient and fair descriptive heading on the Secretary of State's web site, Plaintiff and other citizens of Missouri will suffer immediate and irreparable injury, loss or damage in the absence of injunctive relief from this court.

22. Plaintiff has no adequate recovery at law.

23. Injustice and irreparable harm can only be avoided if Defendant is enjoined from certifying the ballot title and continuing to publish the ballot title and the descriptive heading thereof as it is now contained on her web site.

WHEREFORE, Plaintiff Timothy P. Asher respectfully requests a preliminary and permanent injunction be entered against Defendant Robin Carnahan, as Secretary of State of Missouri, enjoining her from certifying and utilizing the summary statement that Defendant has proposed and mandating Defendant certify and utilize one of the alternative summary statements proposed in Count I of this Petition, that Defendant be enjoined from publishing the ballot title and the descriptive heading thereof as it is now contained on her web site, for his costs and attorneys' fees, and for such other relief that this Court deems fair and reasonable.

Respectfully submitted,

  
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Attorneys for Timothy P. Asher

**Missouri Secretary of State, Robin Carnahan**

SOS Home :: Elections :: 2008 Approved Initiative Petitions :: Constitutional Amendment to Add Article I, Section 34

**2008 Initiative Petitions  
Approved for Circulation in Missouri****Submitting to the qualified voters of Missouri,  
Constitutional Amendment to Add Article I, Section 34, 2008-009****THE PROPOSED AMENDMENT**

*Be it resolved by the people of the State of Missouri that the Constitution be amended:*

One new section is adopted to be known as section 34 of Article I, to read as follows:

Section 34. 1. The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

2. This section shall apply only to action taken after the section's effective date.

3. Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

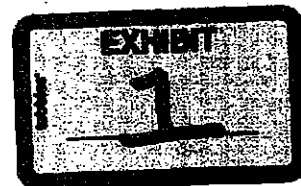
4. Nothing in this section shall be interpreted as invalidating any court order or consent decree that is in force as of the effective date of this section.

5. Nothing in this section shall be interpreted as prohibiting action that must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.

6. For the purposes of this section, "state" shall include, but not be necessarily limited to, the state itself and any of its departments, agencies, commissions, boards, and other units; any political subdivision and any department, agency, commission, board, or other unit of a political subdivision; any public institution of higher education, junior college district, and school district; any municipal corporation; and any public corporation, public entity, or other instrumentality of the state or a political subdivision, irrespective of the capacity in which the state or any such instrumentality or entity of the state shall be acting.

7. The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing Missouri antidiscrimination law.

8. This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United State Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.



<http://www.sos.mo.gov/elections/2008petitions/2008-009.asp>

**Constitutional Amendment to Add Article I, Section 34, 2008-009**

[full text]

Submitted by: Mr. Tim Asher

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Missouri Civil Rights Initiative  
P.O. Box 545  
Grain Valley, MO 64029  
(816)812-4929

Petition sample form approved for circulation on June 21, 2007. Official ballot title certified by Secretary of State on July 19, 2007.

**OFFICIAL BALLOT TITLE AS CERTIFIED BY  
SECRETARY OF STATE**

Shall the Missouri Constitution be amended to:

- ban affirmative action programs designed to eliminate discrimination against, and improve opportunities for, women and minorities in public contracting, employment and education; and
- allow preferential treatment based on race, sex, color, ethnicity, or national origin to meet federal program funds eligibility standards as well as preferential treatment for bona fide qualifications based on sex?

The total cost or savings to state and local governmental entities is unknown. Most state governmental entities estimate no costs or savings, however, costs or savings related to future contracts are unknown. Some local governments estimate no costs or savings, but prohibition of certain municipal policies may result in unknown costs.

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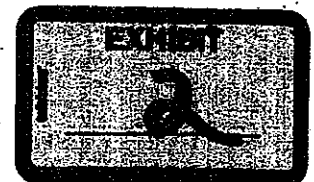
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[http://www.sos.mo.gov/elections/2008petitions/08init\\_pet.asp](http://www.sos.mo.gov/elections/2008petitions/08init_pet.asp)

7/20/2007