

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

JEREMY CADY,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
MISSOURI SECRETARY OF STATE)	
JOHN ASHCROFT,)	
Serve:)	
Capitol Building, Room 208)	
Jefferson City, MO 65101,)	
)	
Defendant.)	

**VERIFIED PETITION FOR RELIEF UNDER SECTION 116.200,
RSMO, AND FOR OTHER DECLARATORY AND INJUNCTIVE
RELIEF**

COMES NOW Plaintiff, by and through counsel, and for his Verified Petition for Relief Under Section 116.200, RSMo, and for Other Declaratory and Injunctive Relief states as follows:

Parties

1. Plaintiff Jeremy Cady is a citizen, taxpayer, and registered voter of the state of Missouri.
2. Defendant John (Jay) Ashcroft is the duly elected and acting Secretary of State of the state of Missouri (the “Secretary”).
3. The Secretary is named as a Defendant in his official capacity pursuant to section 116.200, RSMo, and pursuant to law.

Jurisdiction and Venue

4. Plaintiff brings this action pursuant to the Revised Statutes of Missouri Chapters 116, 527, and 536; and Missouri Rules of Civil Procedure 87 and 92.

5. Venue is proper in this Court pursuant to Section 116.200.1, RSMo.

6. Venue is also proper in this Court pursuant to section 508.010, RSMo, because there is no count alleging a tort, and the office of the Missouri Secretary of State is a resident of Cole County, Missouri, where the Secretary principally performs his official duties.

7. On May 22, 2020, the Secretary certified Petition 2020-063 (the "Petition") as sufficient.

8. This action is timely pursuant to section 116.200.1, RSMo because it was brought within ten days after the Secretary made a certification for the Petition.

Pre-Election Review

9. Pre-election review can only be conducted when constitutional challenges to an initiative petition satisfy two criteria. "Before the people vote on an initiative, courts may consider only those threshold issues that affect the integrity of the election itself, and that are so clear as to constitute a matter of form." *Brown v. Carnahan*, 370 S.W.3d 637, 645 (Mo. banc 2012) (quoting *United Gamefowl Breeders Ass'n of Missouri v. Nixon*, 19 S.W.3d 137, 139 (Mo. banc 2000)).

10. Actions to enforce the prohibitions in Article III, Section 50, that a measure contain no more than one subject or amend no constitutional provisions beyond those it purports to amend and actions to enforce the

prohibition in Article III, Section 51 that no measure be used for the appropriation of money are among those that "are routinely deemed eligible for pre-election judicial review because they easily meet the criteria reiterated in *Brown*." *Mo. Elec. Cooperatives v. Kander*, 497 S.W.3d 905, 917 (Mo. App. W.D. 2016)

Petition 2020-063

11. On May 2, 2019, Heidi Miller submitted to the Secretary an initiative petition sample sheet, denominated by the Secretary as 2020-063 ("IP 2020-063"), proposing to add one new section (Section 36(c)) to Article IV of the Missouri Constitution. A true and correct copy of the initiative petition sample sheet for IP 2020-063 is attached as Exhibit A.

12. On May 23, 2020, the Missouri State Auditor issued the Fiscal Note and Fiscal Note Summary for IP 2020-063. A true and correct copy of the Fiscal Note (which includes the Fiscal Note Summary) for IP 2020-063 is attached as Exhibit B.

13. On May 2, 2019, the Secretary of State certified the Official Ballot Title for the Petition.

14. The summary statement portion of the Official Ballot Title reads:
Do you want to amend the Missouri Constitution to:

- adopt Medicaid Expansion for persons 19 to 64 years old with an income level at or below 133% of the federal poverty level, as set forth in the Affordable Care Act;
- prohibit placing greater or additional burdens on eligibility or enrollment standards, methodologies or practices on persons covered under Medicaid Expansion than on any other population eligible for Medicaid; and

- require state agencies to take all actions necessary to maximize federal financial participation in funding medical assistance under Medicaid Expansion?

15. On May 1, 2020, the Petition with signature pages was submitted to the Secretary.

16. On or about May 22, 2020, the Secretary determined that the Petition met all constitutional and statutory requirements, and that a sufficient number of valid signatures were submitted.

17. On May 22, 2020, the Secretary issued a Certificate of Sufficiency of Petition and certified the Petition to be placed on the ballot.

18. A true and correct copy of the Secretary's Certificate of Sufficiency of Petition is attached as Exhibit C.

19. On May 26, 2020, the Governor placed the measure on the August 4, 2020 ballot.

COUNT I

IP 2020-063 VIOLATES ARTICLE III, SECTION 51 OF THE MISSOURI CONSTITUTION BECAUSE THE INITIATIVE APPROPRIATES MONEY OTHER THAN NEW REVENUES CREATED AND PROVIDED FOR THEREBY

20. Article III, section 51 of the Missouri Constitution states, in relevant part, "The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby, or for any other purpose prohibited by this constitution."

21. In *City of Kansas City v. Chastain*, the Missouri Supreme Court explained that Article III, Section 51 prohibits "an initiative that, either expressly or through practical necessity, requires the appropriation of funds to cover the costs associated with the [proposal]." 420 S.W.3d 550, 555 (Mo. banc 2014).

22. “[W]hen the people of the State of Missouri write or amend their constitution, they may insert therein any provision they desire, subject only to the limitation that it must not violate restrictions which the people have imposed on themselves and on the states by provisions which they have written into the federal constitution.” *State ex rel. St. Louis Fire Fighters Ass’n Local No. 73, AFL-CIO v. Stemmler*, 479 S.W.2d 456, 458 (Mo. banc 1972).

23. When a measure violates article III, Section 51, those charged with certifying the question for the ballot should refuse. See *Kansas City v. McGee*, 269 S.W.2d 662 (Mo. 1954); *State ex rel. Sessions v. Bartle*, 359 S.W.2d 716 (Mo. 1962); *State ex rel. Card v. Kaufman*, 517 S.W.2d 78 (Mo. 1974).

24. A violation of the prohibition on appropriation by the initiative is fatal to an initiative petition. See *Kansas City v. McGee*, 269 S.W.2d 662 (Mo. 1954).

25. Section 36(c)1 of IP 2020-063 states: “[B]eginning July 1, 2021, [certain] individuals.... shall be eligible for medical assistance under MO HealthNet and shall receive coverage for the health benefits service package.”

26. IP 2020-063 mandates the State of Missouri expend funds to expand the scope of Medicaid coverage.

27. As explained by the Department of Social Services, “The expansion of eligibility for Medicaid ...could potentially include coverage for an estimated 250,000 additional Missourians.” See Exhibit B.

28. The Department of Social Services estimates the costs of such expansion would be in excess of \$2 billion per year. See Exhibit B.

29. The state match for the expanded eligibility would be at least 10%. See Exhibit B.

30. IP 2020-063 provides no discretion to state officials, or anyone else, regarding the expansion of Medicaid coverage. *See Exhibit A.*

31. IP 2020-063 does not create or provide for any new revenues. *See Exhibit A.*

32. IP 2020-063 does not create or impose any new tax. *See Exhibit A.*

33. IP 2020-063 does not create or impose any new fee. *See Exhibit A.*

34. Projected cost savings are not new revenues.

35. IP 2020-063 does not earmark any potential savings for Medicaid expansion. *See Exhibit A.*

36. The State Auditor estimated that IP 2020-063 will result in one-time costs of approximately \$6.4 million. *See Exhibit B, Fiscal Note, p. 22.*

37. The Department of Social Services formally responded that:

The expansion of eligibility for Medicaid benefits under the proposed federal program could potentially include coverage for an estimated 250,000 additional Missourians.

The costs for this expansion would be in excess of \$2 billion per year.

Exhibit B, Fiscal Note, p. 4.

38. IP 2020-063 requires Missouri pay its share of new health services to new Medicaid-eligible individuals.

39. The money to cover the cost of expanded Medicaid coverage required by IP 2020-063 stands appropriated by the measure itself.

40. As a result, IP 2020-063 is unconstitutional under Article III, Section 51 of the Missouri Constitution.

41. The Secretary of State has the duty to “examine the petition to determine whether it complies with the Constitution of Missouri and with [Chapter 116].” Section 116.120.1, RSMo.

42. If the Secretary of State is not enjoined, Plaintiff will suffer irreparable harm through the loss of Plaintiff's tax dollars used to publish and print ballots containing the Official Ballot Title and for publication costs associated with IP 2020-063.

43. This Court should make a determination on Plaintiff's claims now. IP 2020-063 is facially unconstitutional -- waiting until after the election to strike down the measure wastes state and judicial resources.

44. If the Secretary of State is not enjoined, Plaintiff will suffer irreparable harm pursuant to § 116.200, RSMo.

45. IP 2020-063's violations of the Missouri Constitution are so obvious as to constitute a matter of form.

46. Plaintiff lacks an adequate remedy at law to protect Plaintiff's interests.

47. Plaintiff is entitled to declaratory relief that the Petition is facially unconstitutional because it appropriates money without creating or providing for any new revenues in violation of Article III, Section 51 of the Missouri Constitution.

48. Plaintiff is entitled to injunctive relief compelling the secretary of state to (1) reverse any decision the Secretary has made that IP 2020-063 is sufficient, (2) rescind and withdraw his certification of sufficiency of IP 2020-063 (3) issue a certificate of insufficiency for IP 2020-063, and (4) prohibit the Secretary or any other officers from taking any other action to place IP 2020-063 on any ballot.

WHEREFORE, Plaintiff prays that this Court enter its order: (1) reversing any decision the Secretary has made that IP 2020-063 is sufficient, (2) rescinding and withdrawing his certification of sufficiency of IP 2020-063 (3) issuing a certificate of insufficiency for IP 2020-063, and (4) prohibiting

the Secretary or any other officers from taking any other action to place IP 2020-063 on any ballot, and for such further relief as is just and proper.

COUNT II
**IP 2020-063 FAILS TO INCLUDE THE FULL TEXT OF THE
MEASURE IN VIOLATION OF ARTICLE III, SECTION 50**

49. Plaintiff incorporates the preceding paragraphs of this Petition as if fully set forth herein.

50. Article III, Section 50 requires that an initiative petition “contain...the full text of the measure.”

51. "If [an amendment is] submitted through the initiative, manifestly that provision as contained in the initiative and referendum amendment that ‘the petition shall include the full text of the measure so proposed’ must be complied with. In other words, if it is truly an amendment to the Constitution, the full text of the amendment and what provision of the Constitution it undertakes to amend must be embraced in the petition." *State ex rel. Halliburton v. Roach*, 130 S.W. 689, 695 (Mo. banc 1910) (emphasis added).

52. IP 2020-063 fails to list those sections of the Constitution that are in direct conflict with provisions of IP 2020-063.

53. IP 2020-063 fails to reveal closely related provisions of the Constitution with which the proposed amendment is in conflict.

54. IP 2020-063 fails to set forth in full those sections that would be directly modified or repealed by its enactment.

55. IP 2020-063 fails to contain all matter which is to be deleted included in its proper place enclosed in brackets and all new matter shown underlined.

56. The provisions of IP 2020-063 are in direct conflict with existing provisions of the Constitution in at least the following ways: (a) IP 2020-063 amends Article III, Section 36, in that Section 36 requires appropriations only be made by law and IP 2020-063 mandates appropriation by initiated constitutional amendment (b) IP 2020-063 amends Article IV, Sections 24-28 in that IP 2020-063 appropriates money directly by initiated constitutional amendment.

57. As a result, IP 2020-063 is unconstitutional under Article III, Section 50 of the Missouri Constitution.

58. If the Secretary of State is not enjoined, Plaintiff will suffer irreparable harm through the loss of Plaintiff's tax dollars used to publish and print ballots containing the Official Ballot Title and for publication costs associated with IP 2020-063.

59. If the Secretary of State is not enjoined, Plaintiff will suffer irreparable harm pursuant to § 116.200, RSMo, and Plaintiff's constitutional rights under Article III and Article XII.

60. Plaintiff lacks an adequate remedy at law to protect Plaintiff's interests.

61. Plaintiff is entitled to declaratory relief that IP 2020-063 fails to set forth the full and correct text of the measure in violation of § 116.050, RSMo; Article III, § 50; and Article XII, § 2(b).

62. Plaintiff is entitled to injunctive relief compelling the secretary of state to (1) reverse any decision the Secretary has made that IP 2020-063 is sufficient, (2) rescind and withdraw his certification of sufficiency of IP 2020-063 (3) issue a certificate of insufficiency for IP 2020-063, and (4) prohibit the Secretary or any other officers from taking any other action to place IP 2020-063 on any ballot.

WHEREFORE, Plaintiff prays that this Court enter its order: (1) reversing any decision the Secretary has made that IP 2020-063 is sufficient, (2) rescinding and withdrawing his certification of sufficiency of IP 2020-063 (3) issuing a certificate of insufficiency for IP 2020-063, and (4) prohibiting the Secretary or any other officers from taking any other action to place IP 2020-063 on any ballot, and for such further relief as is just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court: (a) find that IP 2020-063 is insufficient, (b) pursuant to section 116.200, RSMo, and Missouri law, “enjoin the secretary of state from certifying the measure and all other officers from printing the measure on the ballot”; (c) grant declaratory relief consistent with this Petition; and (d) grant such further relief as is just and proper.

Respectfully submitted,

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