

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

BRENDA L. JONES, and )  
RABBI RANDY FLEISHER, )  
Plaintiffs, )  
vs. )  
ROBIN CARNAHAN, as )  
Secretary of State of )  
Missouri )  
James C. Kirkpatrick State )  
Information Center )  
600 West Main Street )  
Jefferson City, MO 65101, )  
Defendant. )

Cause No. \_\_\_\_\_

PETITION FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

Come now BRENDA L. JONES and RABBI RANDY FLEISHER, and for their Petition state:

1. Plaintiffs bring this action to seek a declaratory judgment that an Initiative Petition to amend the Missouri Constitution by adding Article I, Section 34, is unconstitutional, or, in the alternative, that the ballot summary for said Initiative Petition that was certified by Defendant ROBIN CARNAHAN is unfair or insufficient. Plaintiffs also seek to enjoin and restrain Defendant CARNAHAN from taking any additional action in connection with such ballot measure, and for further relief that this Court may deem appropriate.

COUNT I

The Initiative Petition Violates the Missouri Constitution

2. BRENDA L. JONES is a citizen of Missouri and resides in

St. Louis County, Missouri.

3. RABBI RANDY FLEISHER is a citizen of Missouri and resides in St. Louis County, Missouri.

4. Defendant ROBIN CARNAHAN is Secretary of State of the state of Missouri, and is named as defendant in her official capacity as Secretary of State of Missouri pursuant to Sec. 116.190.2 RSMo.

5. Plaintiffs bring this action pursuant to Sec. 116.190 RSMo.

6. Venue lies in this Court pursuant to Sec. 116.190.1 RSMo.

7. On or about November 5, 2008, Tim Asher submitted a proposed Initiative Petition to Defendant CARNAHAN to amend Article I of the Missouri Constitution (hereafter referred to as "Asher's Initiative Petition"). Attached hereto as Exhibit 1 and incorporated by reference is a copy of the proposed amendment submitted by Tim Asher.

8. On December 10, 2008, Defendant CARNAHAN certified the official ballot title for the proposed amendment. Attached hereto as Exhibit 2 and incorporated by reference is a copy of the Certification of Official Ballot Title issued by Defendant CARNAHAN.

9. Article III, Sec. 50 of the Missouri Constitution states, in part:

"Petitions for constitutional amendments shall not contain more than ... one new article which shall not

contain more than one subject and matters properly connected therewith..."

10. 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. banc 1940).

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, 296 Mo. 338 (Mo. 1922).

11. Asher's Initiative Petition targets five (5) different groups in three (3) different public areas, thereby combining at least fifteen (15) subjects that are not properly connected to a central purpose, including, but not limited to:

a. Banning affirmative action programs based on race in:

- i. Public employment;
- ii. Public education; and
- iii. Public contracting;

b. Banning affirmative action programs based on sex in:

- i. Public employment;
- ii. Public education; and
- iii. Public contracting;

c. Banning affirmative action programs based on color in:

- i. Public employment;
- ii. Public education; and
- iii. Public contracting;

d. Banning affirmative action programs based on ethnicity in:

- i. Public employment;
- ii. Public education; and
- iii. Public contracting; and

e. Banning affirmative action programs based on national origin in:

- i. Public employment;
- ii. Public education; and
- iii. Public contracting.

12. Asher's Initiative Petition combines at least fifteen (15) different questions together in a single proposed amendment, in that:

a. A voter may oppose banning affirmative action for one or more of the five groups that are targeted by Asher's Initiative Petition, but support banning affirmative action for one or more groups that are targeted by Asher's Initiative Petition, and a voter may oppose banning affirmative action in one or more of the three targeted areas (public employment, education, or contracting), but support banning affirmative action in one or more of said

three areas.

b. Asher's Initiative Petition will logroll and perpetrate a fraud on the voters who are solicited to sign his Initiative Petition.

13. Plaintiffs have no adequate remedy at law, and without relief from this Court, Plaintiffs will suffer irreparable injury.

WHEREFORE, Plaintiffs pray that this Court:

a. Find and declare that Asher's Initiative Petition violates Article III, Section 50 of the Missouri Constitution because it contains more than one subject and matters properly connected therewith; and

b. Enjoin and restrain Defendant CARNAHAN from taking any further action in connection with Asher's Initiative Petition; and

c. Order such other relief as this Court may deem appropriate.

#### COUNT II

The Summary Statement certified by Defendant CARNAHAN is Unfair or Insufficient

In the alternative, for Count II of their Petition, Plaintiffs state:

14. Plaintiffs allege and incorporate by reference the allegations contained in the preceding paragraphs 1 through 13 of this Petition.

15. The official ballot title certified by Defendant

CARNAHAN contains a summary statement and a fiscal note. Plaintiffs challenge the summary statement portion of the official ballot title, which reads:

"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?"

16. While Plaintiffs agree that the first clause of the summary statement fairly and sufficiently describes the Initiative Petition as proposing to "ban affirmative action programs designed to eliminate discrimination against, and improve opportunities for", the portion of the first clause that refers to women and "minorities" is unfair and insufficient because:

- a. The word "minorities" is vague and overbroad; and
- b. The proposed amendment does not target all minorities, but
  - i. Targets only women and certain specific minorities, namely minorities of certain racial,

color, ethnic, or national origins, and

ii. Does not target minorities based on religion, disability, veteran's status, age, or sexual orientation, among other minorities not targeted by the proposed amendment.

17. The second clause of the summary statement is unfair and insufficient in using the phrase "preferential treatment" because:

a. Affirmative action is about providing equal opportunities to women and minorities of certain racial, color, ethnic, or national origins; and

b. Use of the phrase "preferential treatment" falsely implies that affirmative action involves giving an unfair advantage to certain classes of people.

18. Plaintiffs have no adequate remedy at law, and without relief from this Court, Plaintiffs will suffer irreparable injury.

19. Pursuant to Sec. 116.190.3 RSMo, Plaintiffs request that the following summary statement portion of the official ballot title be certified by this Court to Defendant CARNAHAN, pursuant to Sec. 116.190.4 RSMo:

"Shall the Missouri Constitution be amended to:

- ban affirmative action programs designed to eliminate discrimination against and to improve opportunities for women and certain minorities in public

contracting, employment, and education and that are based on race, sex, color, ethnicity, or national origin; but

- allow such programs to the extent necessary to establish or maintain eligibility for federal funding or to comply with an existing court order; and
- allow bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, education, or contracting?"

WHEREFORE, Plaintiffs pray that this Court:

a. Find and declare Defendant CARNAHAN's summary statement to be unfair and/or insufficient;

b. Enjoin and restrain Defendant CARNAHAN from verifying any signatures on any petitions submitted by Tim Asher that contain the current summary statement certified by Defendant CARNAHAN on December 10, 2008;

c. Certify the summary statement portion of the official ballot title proposed by Plaintiffs in paragraph 19 of this Petition to Defendant CARNAHAN as Secretary of State; and

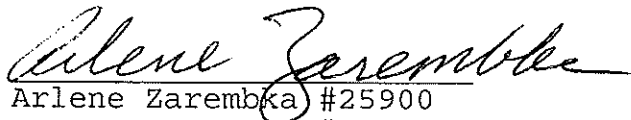
d. Order such other relief as this Court may deem appropriate.



Respectfully submitted,



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## THE MISSOURI CIVIL RIGHTS INITIATIVE

*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.

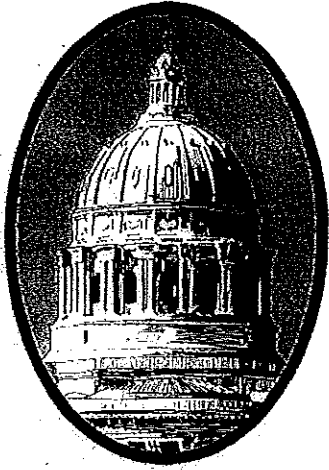
4. Nothing in this section shall be interpreted as invalidating any court order or consent decree that is in force as of the effective date of this section.

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.



# STATE OF MISSOURI

## Office of Secretary of State

### CERTIFICATION OF OFFICIAL BALLOT TITLE

I, Robin Carnahan, Secretary of State, in compliance with Section 116.180, RSMo, do hereby certify the following language as the official ballot title for the initiative petition for a proposed constitutional amendment to Section 34 of Article I submitted by Tim Asher on November 5, 2008. The official ballot title shall read as follows:

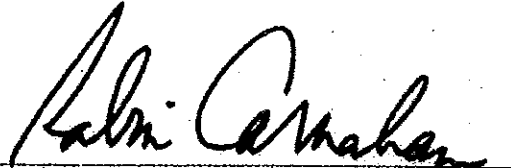
Shall the Missouri Constitution be amended to:

- 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 government 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.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of my office in the City of Jefferson, State of Missouri, on this 10<sup>th</sup> day of December, 2008.



  
Secretary of State