

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

BRENDA L. JONES, )  
 )  
DANIEL P. WINTER, )  
 )  
CHRISTINE J. BIERMAN, and )  
 )  
SAYRA GORDILLO, )  
 )  
Plaintiffs, )  
 )  
vs. ) Cause No.  
 )  
ROBIN CARNAHAN, as )  
Secretary of State of )  
Missouri, )  
James C. Kirkpatrick State )  
Information Center )  
600 West Main Street )  
Jefferson City, MO 65101, )  
 )  
and )  
 )  
SUSAN MONTEE, as )  
Auditor of Missouri )  
301 West High Street )  
Office 880 )  
Jefferson City, MO 65102 )  
 )  
Defendants. )

PETITION FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

Come now BRENDA L. JONES, DANIEL P. WINTER, CHRISTINE J. BIERMAN, and SAYRA GORDILLO 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 36, is unconstitutional, or, in the alternative, that the ballot title for said Initiative Petition that was certified by Defendant ROBIN CARNAHAN is insufficient or unfair. Plaintiffs also seek to enjoin and restrain Defendant CARNAHAN from taking any

additional action in connection with such ballot measure, and any further relief that this Court may deem appropriate.

2. BRENDA L. JONES is a citizen of Missouri and resides in St. Louis County, Missouri.

3. DANIEL P. WINTER is a citizen of Missouri and resides in Jackson County, Missouri.

4. CHRISTINE BIERMAN is a citizen of Missouri and resides in St. Louis County, Missouri.

5. SAYRA GORDILLO is a citizen of Missouri and resides in Jackson County, Missouri.

6. 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.

7. Defendant SUSAN MONTEE is the Missouri State Auditor and is named as Defendant in her official capacity as Missouri State Auditor pursuant to Sec. 116.190.2 RSMo.

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

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

10. On or about July 8, 2009, Timothy 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 Timothy Asher.

11. On August 6, 2009, 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.

COUNT I

The Initiative Petition Violates the Missouri Constitution

12. Plaintiffs allege and incorporate by reference the allegations in paragraphs 1 through 11 above.

13. 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. . . .

14. 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).

15. 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.

16. 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 (based on race, sex, color, ethnicity, or national origin) that are targeted by Asher's Initiative Petition, but support banning affirmative action for one or more of said five groups, 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.

17. 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  
Insufficient or unfair

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

18. Plaintiffs allege and incorporate by reference the allegations contained in the preceding paragraphs 1 through 17 of this Petition.

19. The official ballot title certified by Defendant CARNAHAN contains a summary statement and a fiscal note. The summary statement portion of the official ballot title 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 while continuing to allow preferential programs necessary to establish or maintain eligibility for federal funding, to comply with an existing court order, or consisting of bona fide qualifications based on sex?

20. While Plaintiffs agree that, with the exception of the use of the word "minorities", the first clause of the summary statement ("ban affirmative action programs designed to eliminate discrimination against, and improve opportunities for, women and minorities in public contracting, employment and education") sufficiently and fairly describes Asher's Initiative Petition as proposing to ban certain types of affirmative action programs in public

contracting, employment and education, including affirmative action programs for women, Plaintiffs object to the use of the word "minorities" in that clause as insufficient and unfair because:

- a. The word "minorities" is vague and overbroad;  
and
- b. The proposed amendment does not target all minorities, but
  - i. Targets only certain specific minorities, namely minorities based on race, color, ethnicity, or national origin, 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.

21. The second clause of the summary statement ("while continuing to allow preferential programs necessary to establish or maintain eligibility for federal funding, to comply with an existing court order, or consisting of bona fide qualifications based on sex") is insufficient and unfair, because:

- a. The phrase "preferential programs" is insufficient and unfair because:
  - i. Affirmative action aims to provide equal opportunities to women and minorities of certain racial, color, ethnic, or national origins; and

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

b. The phrase "consisting of bona fide qualifications based on sex" is insufficient and unfair because it fails to clarify that such qualifications must be reasonably necessary to the normal operation of public employment, education, or contracting.

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

23. 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 while allowing such programs to the extent necessary for eligibility for federal funding or to comply with existing court orders, and while allowing 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 insufficient and/or unfair;

b) Enjoin and restrain Defendant CARNAHAN from verifying any signatures on any petitions submitted by Timothy Asher that



contain the current summary statement certified by Defendant CARNAHAN on August 6, 2009; and

c) Certify the summary statement portion of the official ballot title proposed by Plaintiffs in paragraph 23 of this Petition to Defendant CARNAHAN as Secretary of State; and

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

### COUNT III

#### The Fiscal Note is Insufficient and Unfair.

In addition or in the alternative, for Count III of their Petition, Plaintiffs state:

24. Plaintiffs allege and incorporate by reference the allegations contained in the preceding paragraphs 1 through 23 of this Petition.

25. Section 116.175.1, RSMo., states in part: "[U]pon receipt from the secretary of state's office of any petition sample sheet . . . the auditor shall assess the fiscal impact of the proposed measure."

26. Section 116.175.3, RSMo., states:

The fiscal note and fiscal note summary shall state the measure's estimated cost or savings, if any, to state or local government 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.

27. In preparing the Fiscal Note, Defendant Montee sent correspondence to various state agencies, local governments and political subdivisions ("Fiscal Note Sources") requesting such

Fiscal Note Sources to provide her with their estimations of the fiscal impact of the proposed amendment.

28. Some Fiscal Note Sources provided Defendant Montee with the requested information.

29. On or about August 5, 2009, Defendant Montee, by and through Joe Martin, her Chief of Staff, transmitted the Fiscal Note and Fiscal Note Summary regarding the Initiative Petition submitted by Timothy Asher.

30. A true and accurate copy of the Fiscal Note and Fiscal Note Summary are attached as Exhibit 3.

31. The Fiscal Note is insufficient and unfair for at least the following reasons:

a. Defendant Montee failed to request information from some Fiscal Note Sources likely to be affected by the proposed amendment;

b. It fails to meet the statutory requirement that it provide an estimation of the measure's costs and savings;

c. Defendant Montee failed to assess the fiscal impact of the proposed amendment.

WHEREFORE, Plaintiffs pray that this Court find the Fiscal Note insufficient and unfair and set aside the certification of the Initiative Petition Official Ballot Title by Defendant Carnahan; remand the Fiscal Note to Defendant Montee to solicit information from Fiscal Note Sources likely to be affected by the proposed amendment; for a proper calculation of fiscal impact as

required in Section 116.175; and for such other relief as this Court deems appropriate.

Count IV

The Fiscal Note Summary is Insufficient and Unfair.

In addition or in the alternative, for Count IV of their Petition, Plaintiffs state:

32. Plaintiffs allege and incorporate by reference the allegations contained in the preceding paragraphs 1 through 31 of this Petition.

33. The Fiscal Note Summary states:

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.

34. The Fiscal Note Summary is insufficient and unfair for the following reasons:

a. It fails to state the measure's estimated cost or savings.

b. It fails to summarize an adequately prepared Fiscal Note as outlined in Count III above.

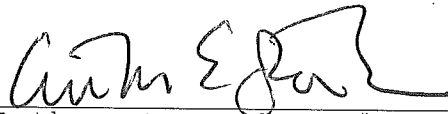
c. It fails to summarize an accurate Fiscal Note as outlined in Count III above.

d. It fails to account adequately for all the information provided to Defendant Montee by Fiscal Note Sources.

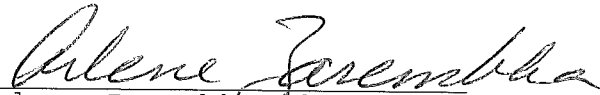
e. The language of the Fiscal Note Summary is both argumentative and likely to cause prejudice in that voters and petition signatories will likely interpret an unknown fiscal impact as having no fiscal impact.

WHEREFORE, Plaintiffs pray that this Court find the Fiscal Note Summary insufficient and unfair and set aside the certification of the Initiative Petition Official Ballot Title by Defendant Carnahan; remand the Fiscal Note Summary to Defendant Montee for a proper Fiscal Note Summary as to the fiscal impact of the proposed amendment as required in Section 116.175; and for such other relief as this Court deems appropriate.

Respectfully submitted,



Anthony E. Rothert #44827  
AMERICAN CIVIL LIBERTIES UNION  
OF EASTERN MISSOURI  
454 Whittier Street  
St. Louis, MO 63108  
(314) 652-3114  
(314) 652-3112 facsimile  
tony@aclu-em.org



Arlene Zarembka #25900  
225 So. Meramec #210  
St. Louis, MO 63105  
(314) 726-6355  
(314) 726-6355 facsimile  
(call first)  
zarembkalaw@sbcglobal.net

Stephen Douglas Bonney, #36164  
AMERICAN CIVIL LIBERTIES UNION  
OF KANSAS & WESTERN MISSOURI  
3601 Main Street  
Kansas City, MO 64111  
Tel. (816) 756-3113, Ext. 228  
Fax (816) 756-0136  
[dbonney@aclukswmo.org](mailto:dbonney@aclukswmo.org)

ATTORNEYS FOR PLAINTIFFS

Of Counsel:

Reginald T. Shuford  
Racial Justice Program  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
125 Broad Street, 18th Floor  
New York, NY 10004  
Phone: 212.549.2613  
Fax: 212.549.2651  
E-mail: [rshuford@aclu.org](mailto:rshuford@aclu.org)

Araceli Martínez-Olguín  
Lenora M. Lapidus  
Women's Rights Project  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
125 Broad Street, 18th Floor  
New York, NY 10004  
Phone: 212.519.7819  
Fax: 212.549.2580  
E-mail: [amartinez-olguin@aclu.org](mailto:amartinez-olguin@aclu.org)

## 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 36 of Article I, (or if section 36 of Article I already exists, then this proposal shall add a new section to article I in the next available numeric order), to read as follows:

Section 36. 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.

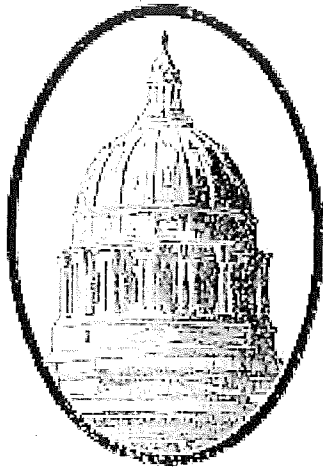
4. Nothing in this section shall be interpreted as invalidating any court order or consent decree that is in force as of the effective date of this section.

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 July 8, 2009. 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 while continuing to allow preferential programs necessary to establish or maintain eligibility for federal funding, to comply with an existing court order, or consisting of 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.

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 6<sup>th</sup> day of August, 2009.



*Secretary of State*

**MISSOURI STATE AUDITOR'S OFFICE  
FISCAL NOTE (09-41)**

**Subject**

Initiative petition from Tim Asher and the Missouri Civil Rights Initiative regarding a proposed constitutional amendment to Article I, Section 36. (Received July 9, 2009)

**Date**

July 29, 2009

**Description**

This proposal would amend Article I of the Missouri Constitution by adding Section 36.

The amendment is to be voted on in November, 2010.

**Public comments and other input**

The State Auditor's Office requested input from the Attorney General's Office, the Department of Agriculture, the Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education, the Department of Health and Senior Services, the Department of Insurance, Financial Institutions and Professional Registration, the Department of Mental Health, the Department of Natural Resources, the Department of Corrections, the Department of Labor and Industrial Relations, the Department of Revenue, the Department of Public Safety, the Department of Social Services, the Governor's Office, the Office of Administration, the Missouri House of Representatives, the Missouri Lottery, the Department of Conservation, the Office of State Courts Administrator, the Department of Transportation, the Missouri Public Service Commission, the Office of the State Public Defender, the Missouri Senate, the Secretary of State's Office, the State Tax Commission, the State Treasurer's Office, Boone County, St. Louis County, Greene County, the City of Cape Girardeau, the City of Jefferson, the City of Kansas City, the City of St. Louis, Cape Girardeau 63 School District, Hannibal School District #60, Rockwood R-VI School District, Linn State Technical College, Metropolitan Community Colleges, the University of Missouri, and St. Louis Community College.



## Assumptions

Officials from the **Attorney General's Office** indicated that any costs associated with the implementation of this proposal can be absorbed with existing resources.

The **Department of Agriculture** indicated no fiscal impact for their department.

Officials from the **Department of Economic Development** indicated this proposal would have no fiscal or administrative impact on their agency. They also indicated it is anticipated that the indirect impact will be significant and negative. Diversity is important in the global marketplace. A law that hampers the state's ability to grow minority businesses and all businesses that are committed to diversity will have a deleterious impact on business growth and, therefore, tax revenues.

Officials from the **Department of Higher Education** indicated this initiative would have no direct, foreseeable fiscal impact on their agency.

The **Department of Health and Senior Services** indicated no fiscal impact for their department.

Officials from the **Department of Mental Health** deferred to the Office of Administration for review and comments on this initiative petition.

The **Department of Natural Resources** indicated that they do not anticipate a direct fiscal impact from this proposal. They assume the department would comply with any nondiscrimination laws/policies as required. Further, they assume the department would be a good actor and, therefore, would not be directly fiscally impacted.

Officials from the **Department of Corrections** indicated no impact.

The **Department of Labor and Industrial Relations** indicated this petition has no direct fiscal impact on their department. Potentially there will be increased work for the Missouri Commission on Human Rights because there may be more claims of reverse discrimination.

The **Department of Revenue** indicated this petition will not have a fiscal impact on their department.

The **Department of Public Safety** assumes no fiscal impact for their department.

Officials from the **Department of Social Services** indicated no fiscal impact on their agency as a result of this initiative petition. The department Human Resource Center indicated that no fiscal impact is expected as a result of the employment provisions in this proposal. The department further indicated that it abides by all state and federal laws relating to discrimination in employment and has a policy in place that prohibits discrimination in the workplace. Therefore, no cost is anticipated.

Also, the department expects no fiscal impact from the public education provision.

With respect to public contracting, there could be a fiscal impact to the department if this proposal were interpreted to negate Executive Order 05-30, which is related to Minority Business Enterprise/Women Business Enterprise (MBE/WBE) participation. Current requests for proposals allow potential vendors to receive up to 10 bonus points if 51% or more of the vendor's employees are certified as minority and/or women. The department indicated that it would look to the Office of Administration for direction on how to manage existing contracts with MBE/WBE participation if the initiative petition passed.

Officials from the **Office of Administration** submitted a joint response in conjunction with the Office of the Governor, Department of Agriculture, Department of Conservation, Department of Corrections, Department of Economic Development, Department of Health and Senior Services, Department of Labor and Industrial Relations, Department of Mental Health, Department of Public Safety, Department of Revenue, Department of Natural Resources, and Department of Insurance, Financial Institutions and Professional Registration.

This petition submits to the voters an amendment prohibiting the state from discriminating against or granting 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.

If the amendment passes, there would not be a known fiscal impact on the related departments. However, the Office of Administration would eliminate its Minority and Women Owned Business Program established as part of the criteria in awarding state contracts. Some departments rely upon this program to comply with federal grant program requirements. Also, the Department of Labor and Industrial Relations may potentially experience increased work for the Missouri Commission on Human Rights due to an increased filing of claims alleging reverse discrimination.

It is unknown if this proposed initiative would reduce or increase future contract costs. The proposed initiative may, depending upon interpretation, have other related effects on the procurement process such as the preference for products manufactured or produced in the United States. The Office of Administration notes that the below amounts were paid to Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) for goods and services in the previous five fiscal years, and this proposed initiative may result in a loss of tax revenue from these businesses and have an economic impact on them.

This measure will place Missouri at a competitive disadvantage in the global marketplace, and it will hinder the Department of Economic Development's ability to attract and grow both minority and non-minority owned businesses. Diversity is important in the global market and a law that hampers the state's ability to grow minority businesses and all businesses that are committed to diversity will have a deleterious

impact on business growth, and, therefore, tax revenue.

| <u>Fiscal Year</u> | <u>MBE Payments</u> | <u>WBE Payments</u> |
|--------------------|---------------------|---------------------|
| 2005               | \$ 35.9 million     | \$15.2 million      |
| 2006               | \$ 37.3 million     | \$17.2 million      |
| 2007               | \$ 33.1 million     | \$10.4 million      |
| 2008               | \$ 55.7 million     | \$19.1 million      |
| 2009               | \$105.5 million     | \$41.9 million      |

Officials from the **Missouri House of Representatives** indicated that the initiative petition has no fiscal impact to the budget of their organization.

The **Department of Conservation** indicated that no adverse fiscal impact to the department would be expected as a result of this initiative petition.

The **Office of State Courts Administrator** indicated that this initiative petition should not have a fiscal impact on the judiciary.

The **Public Service Commission** indicated there is no fiscal impact on their agency from this initiative.

Officials from the **Office of the State Public Defender** indicated this petition will not have any impact on their agency.

Officials from the **Missouri Senate** indicated this initiative appears to have no fiscal impact as it relates to their agency.

Officials from the **Secretary of State's Office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article I, Section 26, 27, 28 of the Missouri Constitution and Section 116.230-116.290, RSMo. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.6 million historically appropriated in even numbered fiscal years and \$100,000 appropriated in odd numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2009, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$1.35 million to publish (an average of \$270,000 per issue). Therefore, the Secretary of State's office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements.

The **State Tax Commission** indicated this petition will not impact their agency.

The **State Treasurer's Office** indicated they see no impact to their office.

The City of Jefferson indicated that it does not anticipate any fiscal impact should this petition become law.

The City of St. Louis indicated this initiative petition would result in a significant negative fiscal impact to the City for the following reasons.

The language the petition proposes to insert into the Missouri Constitution would prohibit the "granting of 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" by the state and "any political subdivision and any department, agency, commission, board, or other unit of a political subdivision..." Remedies for violation of this section shall be the same as or otherwise available for violations of then-existing Missouri antidiscrimination law.

As you may or may not be aware, a variety of contracting processes in the City of St. Louis operate pursuant to Mayor's Executive Order #28, as extended. This Executive Order sets forth goals for minority and women's business participation in work related to City contracts for services, supplies and development incentives, and processes that ensure maximum utilization of minority and women's businesses in performance pursuant to these contracts.

The purpose of this Executive Order is to provide a narrowly tailored remedy for historic discrimination against minority and women business owners.

In addition, the City is contemplating the adoption of legislation that would require minimum percentages of employment of minorities and women on City public works projects.

The purpose of the contemplated legislation is to provide a narrowly tailored remedy for historic discrimination against minority and women individuals.

Our interpretation of the proposed amendment is that it would (a) prohibit the City from operating pursuant to the Executive Order—e.g., it would prohibit us from setting goals for minority and women's business participation and from using processes designed to ensure maximum utilization of such businesses, and (b) prohibit us from adopting and implementing any ordinance that required contractors to include percentages of minorities in City public works engagements.

The prohibitions set forth in the proposed amendment would significantly and negatively impact the City's economy and fiscal health in the following ways.

As you may or may not be aware, more than 50% of the City's population is comprised of members of minority groups. It is widely if not universally believed that these minority group members—in particular African-Americans—have been victims of discrimination. This belief is supported by fact: objective evidence demonstrates that

minority group members have lower incomes and net worth than non-minority group members, that minority group owners are under-represented in the regional business community, that businesses owned by minority group members have lower earnings than businesses owned by non-minority group members, and that, unless prompted to do so by some sort of government encouragement, non-minorities in a position to offer opportunities to businesses do not typically offer these opportunities to minority businesses. Thus, minority group members in the St. Louis region do not have the same opportunities for either quality jobs or for successful business ownership as do non-minority group members, and this lack of opportunities translates into lower incomes for minority group members.

Since a majority of the City's population is comprised of minority group members, the lack of such opportunities impacts the City's economy and revenues in a significant way. Lower earning potential for individuals means lower disposable incomes, which in turn means lower payroll-based tax revenues and purchase-based sales tax revenues for the City.

At the time of the 2000 Census, the average income of a Caucasian household in the City of St. Louis was approximately \$33,500; the average income of an African-American household in the City was approximately \$21,000. Thus, an average African-American household in the City had an income of approximately \$12,500—or 37%—less than an average Caucasian household. Had this disparity not existed and if these incomes were equalized, the 66,300 African-American households in the City would have had an additional \$835 million in income. This additional \$835 million in income would be subject to the 1% City earnings tax, generating an additional \$8.35 million each year in City revenue. Further, if we conservatively assume that 10% of this additional income would have been spent on goods purchased in the City and subject to the City's 3.1% total sales tax, this additional income would have generated an additional \$2.6 million in City sales tax revenue. If the constitutional amendment passes, it will no longer be possible for the City to use narrowly tailored race-based preferences to address this disparity. Failure to eradicate this disparity will result in a loss of future City revenue. Thus, we estimate the long-term fiscal impact of the proposed constitutional amendment at approximately \$11 million per year, based on incomes at the time of the 2000 census.

For the past decade, the City has implemented narrowly tailored policies that are intended to remedy this discrimination. But this discrimination is firmly rooted and systemic and has existed for centuries rather than decades and cannot be remedied in a few short years. Further, the City is continually fine-tuning these narrowly tailored policies in an effort to achieve more success. We still have a long way to go in equalizing the earning power and opportunities available to our minority citizens. If the proposed initiative petition is successful, the City and other political subdivisions throughout the state would no longer be able to use the power of their governments to address issues of fairness and discrimination in our societies. Discrimination and its economic consequences would continue, jeopardizing the economic and fiscal future of the City and its citizens.

Officials from Rockwood R-VI School District indicated no known costs or savings at this time.

Officials from Linn State Technical College indicated there appears to be no fiscal impact on their organization.

Metropolitan Community Colleges indicated this petition would have no direct fiscal impact on their organization.

The State Auditor's Office did not receive a response from the Department of Elementary and Secondary Education, the Missouri Lottery, the Department of Transportation, Boone County, St. Louis County, Greene County, the City of Cape Girardeau, the City of Kansas City, Cape Girardeau 63 School District, Hannibal School District #60, the University of Missouri, and St. Louis Community College.

#### **Fiscal Note Summary**

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.