



**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JILL OWENS,** )  
 )  
 **Appellant,** )  
 )  
 **and** )  
 ) **WD88981**  
 **MISSOURI PROMISE PAC, et al.,** ) **(Consolidated with WD88982)**  
 )  
 **Appellants-Respondents,** ) **OPINION FILED:**  
 **v.** ) **June 5, 2026**  
 )  
 **SECRETARY OF STATE** )  
 **DENNY HOSKINS, et al.,** )  
 )  
 **Respondents.** )

**Appeal from the Circuit Court of Cole County, Missouri  
The Honorable Christopher K. Limbaugh, Judge**

**Before Special Division: Janet Sutton, Presiding Judge,  
Karen King Mitchell, Judge, and Thomas N. Chapman, Judge**

Jill Owens (“Owens”) appeals a judgment of the Circuit Court of Cole County that denied the claims in her four-count petition, which sought to enjoin H.J.R. 173 & 174<sup>1</sup> from being placed on any ballot upon a declaration that H.J.R. 173 & 174 violated Article

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<sup>1</sup> Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Joint Resolution Nos. 173 & 174, 103rd General Assembly, Second Regular Session (2026).

XII, Section 2(b) of the Missouri Constitution, and which also challenged the language of the summary statement of the ballot title and the fair ballot language for H.J.R. 173 & 174. Intervenors Missouri Promise PAC (the “PAC”) and Dennis Ganahl (“Ganahl,” and, together with the PAC, “Intervenors”) also appeal, asserting that the trial court erred in denying relief on their petition challenging the summary statement and fair ballot language. The judgment is affirmed in part and reversed in part. We certify to the Secretary of State a revised summary statement and a revised fair ballot language statement.

### **Background**

This appeal addresses pre-election challenges to a potential amendment to the Missouri Constitution proposed by the General Assembly. The General Assembly has authority to propose amendments to the Missouri Constitution, which are then submitted to voters for approval or rejection by official ballot title at a general or special election. *See* Mo. Const. Art. XII, § 2(a)-(b). The General Assembly voted to truly agree to and pass such a proposed amendment: H.J.R. 173 & 174 (the “Resolution”). The General Assembly included a summary statement for the ballot title. The Secretary of State certified the official ballot title for the Resolution, which included the General Assembly’s summary statement and the auditor’s fiscal note summary. The Governor placed the Resolution on the August election ballot. The Secretary of State drafted a fair ballot language statement.

The legislative title for the Resolution indicates that the Resolution seeks to repeal Sections 4(d) and 26 of Article X of the Missouri Constitution and adopt two new sections in their place relating to taxation.

If approved, the newly adopted version of Article X, Section 4(d) would provide:

1. In enacting any law imposing a tax on or measured by income, the general assembly may define income by reference to provisions of the laws of the United States as they may be or become effective at any time or from time to time, whether retrospective or prospective in their operation. The general assembly shall in any such law set the rate or rates of such tax. The general assembly may in so defining income make exceptions, additions, or modifications to any provisions of the laws of the United States so referred to and for retrospective exceptions or modifications to those provisions which are retrospective.

2. Notwithstanding any provision of this constitution to the contrary, the general assembly shall enact legislation to reduce and eliminate the state individual income tax by requiring reductions to the top rate of the individual income tax based on revenue growth until such tax is eliminated. Upon the elimination of the individual income tax, the general assembly shall be prohibited from enacting or imposing any state individual income tax.

If approved, the newly adopted Article X, Section 26 would provide:

1. In order to prohibit an increase in the tax burden on the citizens of Missouri, state and local sales and use taxes (or any similar transaction-based tax) shall not be expanded to impose taxes on any service or transaction that was not subject to sales, use or similar transaction-based tax on January 1, 2015.

2. (1) Notwithstanding any provision of this constitution to the contrary, including subsection 1 of this section, for the purpose of reducing and eliminating the state individual income tax and reducing local tax rates, state and local sales and use taxes (or any similar transaction-based tax) may be expanded by legislation to impose taxes on transactions involving any goods and services. For the purposes of this section, the phrase “for the purpose of reducing and eliminating the state individual income tax and

reducing local tax rates”, with respect to legislation enacted by the general assembly, means that the legislation expressly states the general assembly’s finding that such legislation will directly lead to the reduction and elimination of the state individual income tax as provided in subdivision (2) of this subsection, and will directly or indirectly lead to the reduction of local tax rates as provided in subsection 3 of this section.

(2) Any expansion of the sales and use tax base or increase in the state sales and use tax rate enacted for the purpose of reducing and eliminating the state individual income tax and reducing local tax rates shall be offset in the same legislation by a reduction in the top rate of individual income tax that reduces such tax revenues, less refunds, by an amount that is at least substantially equal to revenues generated by such expansion of the sales and use tax base or increase in the state sales and use tax rate, and if such legislation is enacted within five years of the effective date of this amendment, shall not be considered new annual revenue for purposes of Section 18(e) of this Article and shall be exempt from the provisions of Article IV, Sections 30(b), 30(c), and 30(d) of this Constitution.

3. (1) Notwithstanding any provision of this constitution to the contrary, beginning twelve months from the effective date for legislation in which the general assembly expands the sales and use tax base pursuant to subsection 2 of this section any political subdivision that imposes a sales or use tax shall, in the manner provided by law enacted by the general assembly, make a one-time adjustment to one or more of the following rates of tax imposed by the political subdivision to reduce the amount of revenue generated thereby in an amount that is substantially equal to ninety-seven percent of the additional revenue produced by any expansion of the sales and use tax base authorized by this section:

- (a) The sales and use tax rate;
- (b) The levy imposed on property in class 2;
- (c) The levy imposed on property in subclass (1) of class 1;
- (d) The levy imposed on all class 1 property if such political subdivision imposes a single rate of levy on all such property; or
- (e) The rate of any tax imposed on earnings.

(2) Notwithstanding the provisions of subdivision (1) of this subsection to the contrary, no political subdivision shall adjust its local tax rates in a manner that results in any reduction in funding to any public schools within, or serving, such political subdivision.

4. Notwithstanding any provision of this constitution to the contrary, beginning twelve months from the effective date for legislation in which the general assembly expands the sales and use tax base pursuant to subsection 2 of this section, each sales and use tax rate imposed directly by this constitution, with the exception of the rate imposed under Article XIV of this Constitution, shall, in the manner provided by law enacted by the general assembly, be adjusted in order to reduce the amount of tax in an amount substantially equal to the amount of tax produced by any sales and use tax base expansion authorized by this section. The state auditor shall be responsible for calculating the reduced rates that will go into effect as provided in this subsection.

The summary statement provided by the General Assembly stated:

Shall the Missouri Constitution be amended to:

- Phase-out the individual income tax based on revenue growth;
- Reduce personal property and other local taxes when local revenues increase;
- Modify the sales and use tax to eliminate income tax and reduce local taxes; and
- Protect local funding for public schools and other purposes?

The fair ballot language provided:

A **“yes”** vote will amend the Missouri Constitution to reduce and eliminate the individual income tax based on revenue growth; reduce personal property taxes and other local taxes when local revenues increase; require any increase in sales tax rates or expansion of the sales tax base be offset by a reduction in the income tax rate; and preserve local funding for public schools.

A **“no”** vote will not amend the Missouri Constitution to phase out and eliminate the individual income tax and would leave the existing sales and use tax rates unchanged.

At this time the impact on taxes is unknown.

Regarding the litigation in the trial court underlying these appellate proceedings,

Owens is a Missouri citizen, resident, registered voter, and taxpayer. Owens filed a four-

count petition seeking to enjoin placement of the Resolution on the ballot upon a declaration that the Resolution violated Article XII, Section 2(b) of the Missouri Constitution, and which alternatively asserted that the language of the summary statement was not fair and sufficient and that the fair ballot language was not fair and sufficient.

The PAC and Ganahl sought to intervene as plaintiffs. According to the PAC's petition, the PAC engages in obtaining and spending money to support the Resolution and to sway voters to support the Resolution. Ganahl is a Missouri citizen, registered voter, and taxpayer. The trial court granted Intervenor's motion to intervene. Intervenor asserted claims that the language of the summary statement was not fair and sufficient and that the fair ballot language was not fair and sufficient.

The case was tried on joint stipulations and exhibits.

The trial court denied relief on all claims. The trial court declared the judgment final under Rule 81.045 to allow an expedited appeal.

Owens and Intervenor now appeal to this Court.<sup>2</sup>

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<sup>2</sup> The State asserts that Owens lacked standing to raise her constitutional claims. We conclude that standing was not an impediment to the constitutional claims underlying this appeal. “[A] taxpayer has a direct interest in ‘the proper use and allocation of tax receipts’ that gives the taxpayer a ‘sufficient stake in the outcome of the suit to allow him to challenge improper uses of tax funds.’” *LeBeau v. Commissioners of Franklin Cnty., Missouri*, 422 S.W.3d 284, 288 (Mo. banc 2014) (quoting *E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 46 (Mo. banc 1989)). In *LeBeau*, a taxpayer and citizen challenged a legislative enactment as unconstitutional because it violated the single subject provision and the original purpose provision of the Missouri constitution. *Id.* at 289. Our Supreme Court held that “[g]iving taxpayers a mechanism for enforcing the procedural provisions of Missouri’s Constitution is of particular importance because these provisions are designed to assist the citizens of Missouri by providing legislative accountability and transparency.” *Id.* The same analysis is applicable here, particularly as the constitutional amendment in question inherently involves the generation of

## Standard of Review

In court-tried cases, appellate courts will affirm a circuit court’s judgment “unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.” *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976); *Brown v. Carnahan*, 370 S.W.3d 637, 646 (Mo. banc 2012) (citing *Murphy*, 536 S.W.2d at 32). When a case is tried on stipulated facts such that the only questions before the appellate court are whether the trial court drew the proper legal conclusions from the stipulated facts, appellate review is *de novo*. *Coleman v. Ashcroft*, 696 S.W.3d 347, 357 (Mo. banc 2024) (citation omitted).

## Analysis

In sixteen points on appeal, Owens argues that the trial court erred in rejecting her claims that the Resolution violated Article XII, Section 2(b) of the Missouri Constitution by amending multiple articles (Points I-III), in finding the summary statement language to be fair and sufficient (Points IV-VIII), in finding the fair ballot language to be fair and sufficient (Points IX-XIV), and in granting intervention to the PAC (Point XV) and Ganahl (Point XVI).

Intervenors raise two points on appeal, challenging the language of the summary statement and the fair ballot language.

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revenue through taxation for use and expenditure by our state government. *See also Nicholson v. State*, 731 S.W.3d 871, 877 (Mo. banc 2026) (citing *LeBeau* favorably).

## Multiple Articles

Owens argues that the trial court erred in concluding that the Resolution does not violate the requirement of Article XII, Section 2(b) of the Missouri Constitution regarding the amendment of multiple articles because the Resolution is so excessive in scope that (1) it impermissibly affects Article III, Section 39(10), which currently prohibits the legislature from imposing sales and use taxes on purchases by political subdivisions; (2) it impermissibly affects Article IV, Sections 30(b)-(d) by exempting taxes from being sent to the State Road Fund; and (3) it impermissibly affects Article IV, Sections 43(a) and 47(a) by requiring the auditor to adjust the voter-adopted rates of conservation taxes and parks and soils taxes without a vote of the people.

Article XII, Section 2(b) provides that constitutional amendments proposed by the general assembly or by the initiative are submitted to voters for their approval or rejection. Article XII, Section 2(b) further contains requirements for this process, including the requirements that voters be enabled to vote on each amendment to the Missouri Constitution separately. In furtherance of this objective, Article XII, Section 2(b) provides, as relevant: “No such proposed amendment shall contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith.”

Although Owens raised single subject challenges in the trial court, Owens makes clear in her appellate briefing that she does not on appeal challenge the trial court’s denial of her single subject argument.

The Missouri Supreme Court has held that a proposed constitutional amendment “to any article may have the effect of changing several articles or sections of the constitution, if all are germane to a single controlling purpose.” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 830-31 (Mo. banc 1990) (emphasis in original) (citation omitted). Although cautioning that such amendments are “suspect” and subject to scrutiny by courts, the Missouri Supreme Court has indicated that an amendment to one article may affect multiple articles so long as “all matters included relate to a readily identifiable and reasonably narrow central purpose.” *Id.* at 831.

More recently, in addressing a pre-election challenge on the asserted grounds that a constitutional amendment violated the multiple articles requirement of Article III, Section 50 governing initiative petitions, which we understand to contain a multiple articles requirement that is effectively the same as the multiple articles requirement imposed by Article XII, Section 2(b), the Missouri Supreme Court has indicated that it will not construe the multiple articles requirement “to prohibit voters from approving or rejecting a constitutional amendment proposed by initiative petition simply because the proposed amendment may (if and when it goes into operation) be construed to alter or affect the application of a preexisting constitutional provision.” *Boeving v. Kander*, 496 S.W.3d 498, 509 (Mo. banc 2016). In particular, the Missouri Supreme Court noted that, “[b]y its terms, article III, section 50 is concerned only with what a proposed constitutional amendment ‘contains,’ not with what a proposed constitutional amendment will or might do if the voters approve it.” *Boeving*, 496 S.W.3d at 509.

In this matter, the Resolution is broadly drafted to effectuate an overhaul of how taxation operates in the state of Missouri, yet each of its provisions are contained within Article X of the Missouri Constitution. The purpose of the amendment, as reflected in the legislative title, as well as its provisions, is to amend the Missouri Constitution related to taxation. In particular, the restructuring of how taxation generates revenue. Even more specifically, the expansion of legislative authority regarding sales and use taxes for the purpose of generating the revenue to allow the elimination of the state individual income tax and the reduction of local tax rates. Although we recognize that the Resolution seeks to effectuate a number of significant changes relating to taxation, Owens does not assert error on appeal in the breadth of the Resolution's purpose, but takes issue with how broadly the Resolution is drafted with respect to whether the Resolution impermissibly amends multiple articles by containing provisions that Owens asserts render provisions in other articles illusory.

We do recognize that many of the provisions are drafted broadly with “notwithstanding” clauses to render the provisions operative to the exclusion of anything else in the Missouri Constitution that conflicts with these provisions. Depending on how the Resolution, if adopted, is construed, this amendment will be likely to affect a number of articles of the Missouri Constitution. Yet, *Boeving* has indicated that how a measure may later be construed or the effects that it might have if adopted are not the focus of a pre-election multiple articles challenge. *Boeving*, 496 S.W.3d at 509.

We also recognize that the Resolution expressly identifies a number of provisions in other articles of the Constitution as being affected by the Resolution. However, these affected provisions from other articles all relate to taxation. As Owens's points relied on reveal, the provisions she asserts are made illusory are provisions regarding sales and use taxes on political subdivisions, taxes as they relate to the State Road Fund, and taxes as they relate to conservation and parks and soils.

We conclude that Owens has failed to establish trial court error regarding whether she is entitled to pre-election injunctive relief based on a violation of the multiple articles requirement of Article XII, Section 2(b) of the Missouri Constitution.

### **Summary Statement**

Owens and the Intervenor argue that the summary statement for the resolution is not fair and sufficient in a number of respects and that the trial court erred in finding it to be fair and sufficient.

Owens argues (1) that the summary statement fails to inform voters that the notwithstanding clauses of the Resolution negate constitutional restrictions on sales and use taxes; (2) that the summary statement presents the reduction in income tax as self-executing, when it will only happen if the legislature first expands sales and use taxes and that expansion results in revenue growth; (3) that the summary statement suggests that the Resolution will reduce personal property and other local taxes when such taxes may never actually be reduced; (4) that the summary statement fails to inform voters that approving the proposal would result in eliminating existing constitutional limits, such as

authorizing the legislature to expand the sales and use tax to impose taxes on transactions involving any goods and services; and (5) that the summary statement inaccurately indicates that it will protect funding for “other purposes.”

The Intervenor argues (1) that the summary statement fails to inform voters that the individual income tax is required to be phased out and eliminated, (2) that the summary statement fails to inform voters that local property and sales tax would be required to be reduced based on local sales and tax revenue growth, (3) that the summary statement fails to inform voters that the Resolution creates an exception to the limitation on taxes on services; and (4) that the summary statement fails to inform voters that local tax rate cuts cannot reduce school funding.<sup>3</sup>

When the general assembly refers a statewide ballot measure to the people, the General Assembly may include the official summary statement for the ballot title, which may contain no more than fifty words, excluding articles. § 116.155.1-2.<sup>4</sup> Regarding the content of the summary statement, section 116.155.2 states: “The title shall be a true and impartial statement of the purposes of the proposed measure in language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.” Thus, a summary statement must reflect the purposes of the proposed measure, must be true, must be impartial, must not use intentionally

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<sup>3</sup> In this extremely expedited appeal, we do our best to address each of the appellants’ arguments that require explanation in an understandable order that does not match the order in which these arguments were presented by the parties.

<sup>4</sup> Unless otherwise indicated, statutory references are to RSMo, 2016.

argumentative language, and must not be likely to create prejudice for or against the proposed measure. § 116.155.2.

Section 116.190.1 authorizes citizens to challenge the official ballot title prepared for a proposed constitutional amendment submitted by the General Assembly, by filing an action in the circuit court of Cole County, in accordance with the provisions of section 116.190. Regarding actions challenging the summary statement portion of the ballot title, the challenger must state why the summary statement is “insufficient or unfair” and must request an alternative summary statement. § 116.190.3.

Consistent with this framework, Missouri courts have recognized that a challenger to a ballot measure bears the burden of establishing that the summary statement is insufficient or unfair. *See Fitzpatrick v. Ashcroft*, 640 S.W.3d 110, 125 (Mo. App. W.D. 2022). It is axiomatic that language in a summary statement is not sufficient and fair if it fails to comply with the legal requirements imposed on summary statements. *See* § 116.155.2. Thus, summary statement language is insufficient if it fails to reflect the purposes of the proposed measure, if it fails to be true, if it fails to be impartial, if it uses intentionally argumentative language, and if it is likely to create prejudice for or against the proposed measure. § 116.155.2 (“The title shall be a true and impartial statement of the purposes of the proposed measure in language neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure.”); *see also* § 116.160.3 (“The title shall be a true and impartial statement of the purposes of the proposed measure in language neither intentionally argumentative nor likely to create

prejudice either for or against the proposed measure.”). Thus, a summary statement must reflect the purposes of the proposed measure, must be true, must be impartial, must not use intentionally argumentative language, and must not be likely to create prejudice for or against the proposed measure. § 116.155.2.

In accordance with the statutory requirements, “[w]hen evaluating the summary statement, we will consider whether it ‘contains an impartial, intelligible, and accurate summary of the ballot measure’s central purpose and effects.’” *Fitz-James v. Hoskins*, 726 S.W.3d 133, 147 (Mo. App. W.D. 2025) (brackets omitted) (quoting *Pippens v. Ashcroft*, 606 S.W.3d 689, 702 (Mo. App. W.D. 2020)). A summary statement need not set out all the details of a proposal to be fair and sufficient if they are not central features of the proposed amendment. *Pippens*, 606 S.W.3d at 702. “[T]he critical test is whether the language fairly and impartially summarizes the purposes of the measure so that voters will not be deceived or misled.” *Omohundro v. Hoskins*, 729 S.W.3d 772, 777 (Mo. App. W.D. 2026) (citation omitted). Missouri courts have cautioned restraint in modifying summary statements and, if possible, will attempt to make any modifications in as limited a fashion possible consistent with the requirement that the summary statement be fair and sufficient. *See id.* (citation omitted).

The summary statement provided by the General Assembly stated:

Shall the Missouri Constitution be amended to:

- Phase-out the individual income tax based on revenue growth;
- Reduce personal property and other local taxes when local revenues increase;

- Modify the sales and use tax to eliminate income tax and reduce local taxes; and
- Protect local funding for public schools and other purposes?

As an initial matter, it must be noted that the Resolution effectuates a significant number of changes to the Missouri Constitution and Missouri law in general. Although there are requirements for the matters to be included in a summary statement, there are only fifty words with which to explain the purposes and effects of a proposed amendment. *See* § 116.155.2. When a proposed amendment enacts a significant number of changes to Missouri law, and includes broad “notwithstanding” clauses that make it difficult (if not impossible) to presently identify all the changes that may accompany its adoption, one natural consequence of such a proposed amendment is that the summary statement will not be able to provide notice to voters of every feature of the amendment, even though proponents or challengers may assert – sometimes with good argument – that such features are central to the proposal such that voters must be informed via the summary statement.

Owens argues that the summary statement fails in fairly and sufficiently informing voters about the Resolution’s expansion of sales and use taxing authority and that it fails to sufficiently inform voters of the Resolution’s elimination of current constitutional limitations upon this taxing authority. We agree that the Resolution does not sufficiently inform voters of the Resolution’s expansion of the General Assembly’s sales and use tax authority and the elimination and suspension of existing constitutional limits on taxation.

The only mention of the Resolution's purpose and effect regarding sales and use taxes comes from the third bullet point, which states that the Resolution will "[m]odify the sales and use tax to eliminate income tax and reduce local taxes[.]" Yet, it is obvious that the General Assembly's contemplated way to pursue its listed goals is through the expansion of sales and use tax revenue, which will almost certainly result in an expansion of the goods and services subject to sales and use taxes, in that, upon the adoption of the Resolution, the General Assembly would be required to effectuate the elimination of the state individual income tax based on revenue growth, *see* § 4(d)2 of the Resolution, and because the remainder of Section 26 of the Resolution clearly contemplates the occurrence of legislation to expand the sales and use tax base. *See* § 26.2(1) of the Resolution (granting legislative authority to impose taxes on transactions involving any goods and services); *see also* § 26.3(1) of the Resolution, which operates on the assumption that the General Assembly will expand the sales and use tax base pursuant to Section 26.2 of the Resolution. At oral argument, the State acknowledged that the expansion of sales tax revenue was "certainly the plan" for achieving the goal of eliminating the state individual income tax. The General Assembly itself signaled, albeit indirectly by necessary implication, that the expansion of the sales tax base would occur, in that the General Assembly indicated that local taxes would be reduced, which, under Section 26.3(1) of the Resolution, only occurs after the expansion of the sales tax base.

The operation of the Resolution, then, as contemplated by the General Assembly, is made possible by granting a legislative authority to "expand" state and local sales and

use taxes or any similar transaction-based tax by imposing taxes “on transactions involving any goods and services.” See § 26.2(1). This provision contains a notwithstanding clause that indicates that it operates to the exclusion of anything in the Missouri Constitution that conflicts with it. See § 26.2(1) of the Resolution. It is not fair and sufficient to repeatedly suggest to voters that various tax obligations will be reduced and eliminated without informing them, at any point or in any manner, of the expansive authority that will be granted regarding sales and use taxes, given that the expansion of the sales and use tax base and the increase in the state sales and use tax rate are the contemplated means by which the other purposes of the Resolution can occur. See § 26.2(2) of the Resolution. Voters should not be informed prominently of the purpose of eliminating the state individual income tax without being apprised of the grant of authority that is the contemplated and planned means that make such a purpose possible.

Owens argues further that the Resolution fails to sufficiently apprise voters of the elimination of constitutional restrictions on sales and use taxes. For the Missouri Constitution to remain a document reflecting the will of the people of Missouri – see Article I, Section 1 of the Missouri Constitution<sup>5</sup> – voters must be sufficiently informed of the purposes and central features of proposed changes to the Missouri Constitution so that they may exercise a voluntary choice regarding whether to amend it. One of the

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<sup>5</sup> “That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” Mo. Const. Art. I, § 1.

central-most features, and certainly an immediate feature, of the Resolution is the grant of authority to the General Assembly to impose sales and use taxes on any goods and services for the purposes of eliminating the state individual income tax and reducing local tax rates. *See* § 26.2(1) of the Resolution. This grant of authority is accompanied by a notwithstanding clause that operates to eliminate constitutional limits on the taxing authority granted in Section 26.2(1) of the Resolution to the extent that these limits from other provisions conflict with this grant of authority, rendering it difficult to identify the limits of taxing authority that may be rendered ineffectual. Yet, it is inarguable that the Resolution seeks to confer to the General Assembly authority that the General Assembly currently lacks.

One certain target of the notwithstanding clause in Article X, Section 26.2(1) of the Resolution is Article X, Section 26 of the Missouri Constitution, which prohibits state and local sales and use taxes from being imposed on any goods and services that were not subject to such taxes as of January 1, 2015. The transactions shielded by this limitation are varied and far too many to list, but include, for example, farm equipment, feed for livestock, manufacturing materials, haircuts, sales by religious or charitable organizations, sales by or to public schools, medical products and supplies, purchases by rural water districts, tickets for events admission to places such as zoos, museums, or athletic events owned or operated by municipality or political subdivisions for the benefit thereof. *See, e.g.*, §§ 144.053, 144.030, 144.527. Even though the Resolution carries forward Article X, Section 26 of the Missouri Constitution in Section 26.1 of the

Resolution, the notwithstanding clause and content of Section 26.2(1) of the Resolution makes clear that Article X, Section 26.2(1) of the Resolution is intended to operate to the exclusion of Section 26.1 of the Resolution (*i.e.*, Article X, Section 26 of the Missouri Constitution) to the contrary.

An additional constitutional limit on taxation that would be curtailed by enactment of the Resolution is Article X, Section 18(e) of the Missouri Constitution, which generally places a ceiling on the General Assembly's taxing authority as tied to annual revenue. Revenues derived under Section 26.2 of the Resolution are expressly exempted from the revenue calculation for five years, and, in any case, the restrictions of Article X, Section 18(e) of the Missouri Constitution might be rendered ineffectual by the notwithstanding clause of Section 26.2(1) of the Resolution.

The Resolution's curtailment of constitutional limits on the taxing authority in Missouri makes it necessary for a sufficient summary statement to inform voters so that they may assess the costs and benefits of the Resolution and make a voluntary decision regarding whether to grant new authority to their legislature. Due to the omission of such language – which goes to the core of the purpose and immediate effects of the Resolution and is central to making possible the achievement of the interconnected purposes stated in Section 26.2(1) – the summary statement is modified to inform voters of the Resolution's curtailment of constitutional limits.

We note, at this juncture, in light of the fifty-word limit, that the inclusion of materials that were necessary to produce a fair and sufficient summary statement will

often require the creation of space occupied by other material, such that existing material may require modification, truncation, or excision. Such adjustments may become necessary when an initial statement utilizes all available words, yet fails to apprise voters of central features of a proposed amendment.

Regarding Owens's argument that the Resolution is not self-executing with respect to the elimination of the state individual income tax, we agree that the summary statement is lacking in accuracy regarding how the Resolution operates. The Resolution grants legislative authority to enact legislation to achieve specified purposes rather than the Resolution itself imposing such an effect. A minor adjustment to the summary statement produces a summary statement that is accurate rather than one that would suggest to voters that the amendment operates differently than it does.

Regarding Owens's argument that the summary statement inaccurately suggests that personal property and other local taxes will be reduced when such reduction might not occur, we agree to some extent. At oral argument the parties took various positions regarding what would or would not or could or could not or might or might not occur as a result of the Resolution. While the legislature is required, if the Resolution is approved, to eliminate the state individual income tax based on revenue growth, *see* Section 4(d)2<sup>1</sup> of the Resolution, and the contemplated legislation designed to increase sales and use tax revenue is the contemplated and planned means by which this revenue growth is to be achieved, *see* Section 26 of the Resolution, and the expansion of the sales tax base is one of the primary contemplated means of generating increased sales tax revenue, *see* Section

26.2(2), and the expansion of the sales tax base pursuant to Section 26.2(1) would require a reduction of one or more of the local tax rates in Section 26.3(1), the number of variables at play here may raise a question regarding the certainty with which a local tax rate may be cut. And, because the list of the local tax rates that may be the subject of the rate-cut pursuant to Section 26.3(1) include some property tax rates and some non-property tax rates, even if a local tax rate reduction were to occur, there would be no assurance that it would relate to property taxes. That said, it is fair and sufficient to say that local tax rate cuts would be mandatory upon the increase of local sales tax revenue, such that modified language to this effect is appropriate to accurately convey the operation of the Resolution.

While on the subject, Intervenors also take issue with the bullet point regarding local taxes, arguing that it fails to indicate that Section 26.3(1) is concerned with local tax **rate** reductions rather than reductions in taxes. We agree, and modify the language so that it is accurate.

Regarding Owens's arguments that the fourth bullet point inaccurately suggests that the Resolution will protect local funding "for other purposes," there appears to be an unintentional syntax issue, which could be read as indicating that the Resolution will "protect local funding for . . . other purposes" when it would appear that the intent of this language was to indicate that the Resolution itself has other purposes. This language appears to be unintentionally misleading, and both Owens and the intervening proponents of the Resolution take issue with it. Given the limited availability of words within the

fifty-word limit, and given its potential to mislead voters as to the meaning of the phrase, it is appropriate that such language be jettisoned to make use for language more reflective of the central features of the Resolution.

Intervenors argue further that the summary statement is not fair and sufficient because it fails to indicate that the Resolution requires rather than allows the elimination of the state individual income tax and because the Resolution will not merely phase out but eliminate the state individual income tax. We agree that the summary statement fails to accurately reflect the mandatory nature of the duty placed on the General Assembly to reduce and eliminate the income tax based on revenue growth. Accordingly, we include language in the summary statement to this effect. Regarding whether the Resolution will not merely phase-out but eliminate the state individual income tax, the Resolution both contemplates that the income tax will be phased out and that it will eventually be permanently eliminated. Yet, the General Assembly's chosen language of "phase-out" does already suggest the notion of gradual and eventual extinguishment. And, we reiterate that the fifty-word limit does not afford the luxury of conveying every aspect of proposals within the limited space allotted.

Regarding the Intervenors' arguments that the Resolution fails to inform voters that the Resolution works as an exception to the current constitutional limit on taxing services, we reiterate that the words available for a summary statement are limited, and that the modified summary statement will inform voters of the curtailment of constitutional limits on taxing goods and services.

Regarding Intervenors' arguments that the summary statement fails to inform voters that local tax rate cuts cannot reduce school funding, we have already indicated that a modification is warranted of the bullet point regarding local tax rate cuts. In order to produce a true and accurate statement, we include in that modification an accurate conveyance of the subject matter of the initial statement – namely, the concept that school funding will not be reduced upon the implementation of a mandatory local tax rate reduction if sales tax revenue increases.<sup>6</sup>

### **Revised Summary Statement**

Pursuant to our authority under Rule 84.14, we certify the following revised summary statement:

Shall the Missouri Constitution be amended to:

- Require legislative phase-out of the individual state income tax based on revenue growth, and authorize the expansion of sales and use taxes;
- Curtail constitutional limits on taxing goods and services; and
- Require local tax rate cuts without reducing school funding if local sales tax revenue increases?

### **Fair Ballot Language**

Owens and Intervenors argue that the trial court erred in finding the fair ballot language for the Resolution to be fair and sufficient. Because the fair ballot language statement substantially tracks the language of the summary statements, appellants raise similar arguments regarding the fairness and sufficiency of the ballot language that they

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<sup>6</sup> Any of Owens's and the Intervenors' arguments tangential to or connected to arguments previously addressed herein, but which are not addressed in this opinion, have been rejected.

raised regarding the summary statement. Additionally, Owens argues that the fair ballot language inaccurately suggests that voting “no” would not allow the legislature to reduce or eliminate the individual income tax when it already has authority to eliminate it.

The Secretary of State is tasked with preparing “fair ballot language statements that fairly and accurately explain what a vote for and what a vote against the measure represent.” § 116.025. These statements are then posted at polling places next to sample ballots. § 116.025. Fair ballot language statements “shall be true and impartial statements of the effect of a vote for and against the measure in language neither intentionally argumentative nor likely to create prejudice for or against the proposed measure.” § 116.025.

Citizens may challenge fair ballot language statements in the same manner as they may challenge summary statements. § 116.025 (“Such fair ballot language statements may be challenged in accordance with section 116.190.”). Thus, appellants have the burden of establishing that the fair ballot language is not fair and sufficient. *Fitzpatrick*, 640 S.W.3d at 125.

The fair ballot language for the Resolution provided by the Secretary of State provides:

A “**yes**” vote will amend the Missouri Constitution to reduce and eliminate the individual income tax based on revenue growth; reduce personal property taxes and other local taxes when local revenues increase; require any increase in sales tax rates or expansion of the sales tax base be offset by a reduction in the income tax rate; and preserve local funding for public schools.

A “no” vote will not amend the Missouri Constitution to phase out and eliminate the individual income tax and would leave the existing sales and use tax rates unchanged.

At this time, the impact on taxes is unknown.

Because challenges to fair ballot language statements are conducted in accordance with section 116.190, we utilize the same fairness and sufficiency standard as in our analysis of the summary statement. *Fitz-James*, 726 S.W.3d at 158. Therefore, for the reasons discussed above, Owens’s arguments regarding the fair ballot language are well-taken to the extent reflected in the foregoing analysis regarding the summary statement and the modified fair ballot language below. The same is the case with the proponent Intervenor’s arguments.

As noted, Owens raises an additional argument specific to the fair ballot language. Owens contends that the “no” statement falsely implies that a “no” vote would not allow for future changes to the individual income tax and would leave existing sales and use tax rates unchanged. We find some merit in Owens’s arguments as pertains to the fairness and sufficiency of the fair ballot language. We therefore modify the fair ballot language for accuracy as reflected below, in a manner that overlaps with and is consistent with the manner in which we addressed previously raised concerns regarding the summary statement and fair ballot language, while preserving, as accurate, the Secretary’s prior language.

### Revised Fair Ballot Language

Pursuant to our authority under Rule 84.14, we certify the following revised fair ballot language statement to the Secretary of State:

A “yes” vote will amend the Missouri Constitution to require legislative phase-out and elimination of the individual state income tax based on revenue growth, and authorize the expansion of sales and use taxes; curtail constitutional limits on taxing goods and services; and require local tax rate cuts without reducing school funding if local sales tax revenue increases.

A “no” vote will not amend the Missouri Constitution to require legislative phase-out and elimination of the individual state income tax based on revenue growth; and will not authorize the expansion of sales and use taxes.

At this time, the impact on taxes is unknown.

### **Intervention**

Owens argues that the trial court erred in granting intervention to the PAC because the PAC has no cognizable interest in the case. Owens also argues that the trial court erred in granting intervention to Ganahl for the purpose of defending the constitutionality of the Resolution.

Regarding Owens’s arguments regarding the trial court’s grant of intervention to the PAC, we find it unnecessary to address these arguments as we have no reason to believe that the asserted error affected the arguments presented in the case or the outcome of the case. Ganahl and the PAC were allowed to intervene jointly and made joint arguments throughout the proceedings. Thus, regardless of whether the PAC was allowed to intervene, the arguments presented in the case would have been the same. And, we

find no reason to believe the outcome of the case was affected by the grant of the PAC's motion to intervene.

Regarding the trial court's allowance of Ganahl to intervene for purposes other than challenging the summary statement and fair ballot language – particularly the allowance of Ganahl to defend the constitutionality of the Resolution – we find that Owens has failed to establish that the trial court's action in allowing Ganahl to make arguments on those issues was material to the outcome in the case. We therefore decline to address these arguments.

### Conclusion

The circuit court's judgment is affirmed in part and reversed in part. We certify the revised summary statement and revised fair ballot language statement to the Secretary of State, pursuant to our authority under Rule 84.14 to finally dispose of the case.



Thomas N. Chapman, Judge

All concur.