

STATE REPRESENTATIVE JAY BARNES
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December 16, 2011

The Honorable Robin Carnahan
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

The House Interim Committee on Government Oversight and Accountability is charged with investigating incidents of waste, fraud, and abuse in Missouri government. As the chairman of the committee and a fellow public servant, I believe it is vitally important that the people of Missouri have confidence that their elected officials make decisions based on the merits rather than their own financial interests or the financial interests of close family members.

There is currently pending before your office an application by ‘Renew Missouri’ to enact, via initiative petition, a new renewable energy mandate in Missouri. This mandate would transfer at least \$360 million from Missouri’s electric ratepayers over the next ten years to renewable energy suppliers in the state of Missouri. As you are well aware, one of the largest renewable energy suppliers in Missouri is the *Wind Capital Group*, a firm holding significant investments from members of your family – including your brother, Tom Carnahan, Wind Capital’s Chairman of the Board. If it is true, as has been reported, that Wind Capital received \$107 million in federal stimulus funds, it would also be fair to suggest that your family literally has hundreds of millions of dollars of investment with a huge interest in the outcome of this new initiative petition.

Missouri statutes and constitutional provisions recognize the importance of public confidence in fair government. For example, §105.452.1(4), RSMo, prohibits public officials, including the Secretary of State, from making any favorable act “on any matter that is so specifically designed so as to provide a special monetary benefit to such official or his (or her) spouse or dependent children.” Further, Article VII, Section 6 of the Missouri Constitution prohibits nepotism in public employment – with the penalty for violation consisting of forfeiture of office.

There is little doubt that you would not be prohibited by either §105.452, RSMo or Article VII, Section 6 of the Missouri Constitution from exercising your authority as Secretary of State to write the ballot language for this initiative. However, criminal and civil prohibitions on official conduct only set the floor for ‘ethical’ conduct. What is legal is not necessarily ethical.

The Secretary of State has a quasi-judicial role in Missouri initiative petition process. As such, I believe your office should adopt Canon 2 of the Judicial Code of Conduct which states that a judge “shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Further, it is noted in official commentary to Canon 2 that judges must not only avoid impropriety, they must avoid even the mere “appearance of impropriety.” The test for appearance of impropriety is

“whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.”

A reasonable person would perceive a problem with your impartiality in writing the ballot language for an initiative that has a direct impact on hundreds of millions of dollars in investments held by your close family members. As such, if you believe as I do, that Missourians should have confidence in fair and impartial government, I believe you have an ethical duty to recuse your office from the process of writing ballot language for Renew Missouri’s latest petition.

The Attorney General already has a role in the ballot language process, is competent to write the ballot language for this petition, and does not have the flagrant conflict of interest presented by your office writing this language. In the absence of suggested ballot language from your office, the Attorney General could write ballot language in an ethical manner.

It is my sincere hope that you do the right thing – recuse your office from this process and allow the Attorney General to write the ballot language for this particular initiative. Regardless of your decision, however, my committee will look into this issue in January. We would appreciate your input and testimony at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Barnes". The signature is fluid and cursive, with the first name "Jay" and the last name "Barnes" clearly distinguishable.

Representative Jay Barnes

cc Missouri Attorney General Chris Koster