

May 22, 2020

via email: info@sos.mo.gov

The Honorable John R. Ashcroft
600 West Main Street
Jefferson City, Missouri 65102

Re: Medicaid Expansion Initiative Petition Signature Certification

Dear Secretary Ashcroft:

A few weeks ago, organizers submitted to your office a proposed initiative to expand Medicaid in Missouri. . The law now requires you to determine whether the measure has sufficient signatures to be placed on the ballot for consideration by the voters. The Constitution requires it be considered at the next general election or at a special election called by the Governor.¹ This morning, a political newsletter reported that the Governor may be considering placing the measure on the August ballot. But he could not do that until your office has certified the sufficiency of the petition.

The legal requirements would make it impossible for you to certify the sufficiency of the Medicaid Expansion petition in time for the Governor to place it on the August ballot unless your office were to use a process that has, to my knowledge, never been used before—random sampling.²

As you know, Secretaries of both parties have always used a verification process that sends initiatives to local election authorities for a validation of all signatures submitted.³ Although the statutes contain an expedited random sampling option,⁴ it shall only be used if signatures are "drawn in such a manner that every signature properly filed...shall be given an equal opportunity to be included in the sample." And the law requires the Secretary of State to establish a process for "establishing the random sample and determining the statistically valid result."⁵ To that end, the secretary must engage in the rule making process.⁶ A state agency may not

¹ Art. XII, Sec. 2(b)

² See § 1116.120, RSMo.

³ See § 1116.130, RSMo; see also *Bradshaw v. Ashcroft*, 559 S.W.3d 79 (Mo.App. 2018); *Boeving v. Kander*, 496 S.W.3d 498, 501 (Mo. banc 2016); *Committee for a Healthy Future, Inc., v. Carnahan* (201 S.W.3d 503, (Mo. banc 2006).

⁴ See § 1116.120, RSMo.

⁵ *Id.*

⁶ See § 116.130, RSMo (The secretary of state is authorized to adopt rules to ensure uniform, complete, and accurate checking of petition signatures either by actual count or random sampling. No rule or portion of a rule promulgated pursuant to this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536.).

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make decisions that affect the rights of its citizens based on "internal procedures," the law requires promulgated rules.⁷

But there are no rules or regulations governing the random sampling of initiative petition signatures. As a result, you have no authority to deviate from the normal practice and conduct a random sampling process in order to put Medicaid expansion on the August ballot.

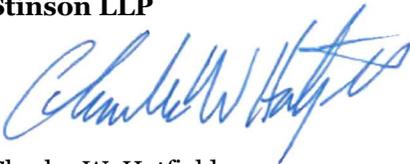
To understand more about the process, we make the following "Sunshine Law" requests:

- Any and all drafts of rules or regulations governing random sampling of initiative petition signatures;
- Any and all documents and communications relating to promulgating rules or regulations governing random sampling of initiative petition signatures;
- Any and all documents and communications relating to whether to utilize random sampling to count and verify the Medicaid Expansion Initiative Petition signatures;
- Any and all documents and communications relating to any consideration of placing the Medicaid Expansion Initiative Petition on any ballot other than the general election ballot. This request includes both communications within the Secretary of State's office and communications with those outside of the Secretary of State's office, such as the Governor's office or political parties;

We appreciate your attention to this important matter.

Sincerely,

Stinson LLP



Charles W. Hatfield

CWH:asc

cc: Frank Jung, General Counsel; frank.jung@sos.mo.gov

Khristine Heisinger, Deputy General Counsel/Elections Counsel; Khristine.heisinger@sos.mo.gov

⁷ See *Barnett v. Lottery*, 196 S.W.3d 72, 77 (Mo.App. 2006); *United Pharmacal v. Board of Pharmacy*, 159 S.W.3d 361, 365 (Mo. banc 2005); *Missouri Ass'n of Nurse Anesthetists, Inc., v. State Bd. of Registration for Healing Arts*, 343 S.W.3d 248 (Mo banc 2011).