

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

HARRY (CHIP) COOPER)
)
 Plaintiff,)
)
 v.)
)
JOHN (JAY) ASHCROFT, in his official)
capacity as Missouri Secretary of State,)
)
 Defendant.)

Case No.

VERIFIED PETITION FOR
DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Harry (Chip) Cooper, for his verified petition for declaratory and injunctive relief against John (Jay) Ashcroft, in his official capacity as Missouri Secretary of State, states:

1. Cooper is a citizen of the State of Missouri and resides in Columbia, Missouri.
2. He brings this lawsuit under Chapters 526, 527, and 529 of the Missouri Revised Statutes to seek redress for Secretary Ashcroft’s unlawful interference with Cooper’s right to propose amendments to the Missouri Constitution by initiative petition as guaranteed by Article III, Section 49 of the Missouri Constitution.
3. The Secretary of State is Missouri’s chief election official.
4. Venue is proper in this Court under Section 508.010.2(2) because the Secretary of State’s office is located in Cole County, Missouri.
5. Cooper submitted two initiative petitions to the Secretary of State on February 16, 2023.

6. The Secretary of State notified Cooper on February 28, 2023 that both petitions “received final approval as to form.” *See Exhibits 1 and 2, Approval Letters.*

7. However, on March 9, 2023 the Secretary of State notified Cooper that even though the petitions had “received final approval as to form,” the sample sheets submitted by Cooper on February 16, 2023 were instead “being rejected as to form.” *Exhibits 3 and 4, Rejection Letters.*

8. The rejection letters did not explain what, if anything, about the forms of the sample sheets justified the Secretary of State’s reversal.

9. Upon information and belief, the Secretary of State has rejected a number of other initiative petitions this year after they had “received final approval as to form.”

10. Sections 116.332 and 116.334, RSMo., outline in simple terms the Secretary of State’s role in the pre-signature collection initiative petition review process.

11. The first step taken to begin the initiative process is a proponent’s submission of an initiative petition sample sheet.

12. Before an initiative petition can be circulated for signatures, “a sample sheet must be submitted to the secretary of state in the form in which it will be circulated.” Section 116.332.1, RSMo.

13. The Secretary of State is then obligated to “refer a copy of the petition sheet to the attorney general for his approval and to the state auditor for purposes of preparing a fiscal note and fiscal note summary.” *Id.* “The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any.” *Id.*

14. The attorney general must forward his rejection of the petition as to form with comments, or his approval of the petition as to form, to the secretary of state within

ten days. Section 116.332.3. However, “[t]he secretary of state shall . . . make [the] final decision as to the approval or rejection of the form of the petition.” Section 116.332.4.

15. Within fifteen days of submission of the petition sample sheet, the Secretary of State shall send written notice to the person who submitted the petition sample sheet either that the sample sheet has been approved as to form, or rejected as to form. *Id.* If the Secretary of State rejects the petition sample sheet as to form, the written notice of same shall include “**the reasons for rejection.**” *Id.* (emphasis added).

16. If an initiative petition sample sheet is approved, the Secretary of State must make the sample petition available on the Secretary of State’s website to provide a fifteen day public comment period. Section 116.334.1. Within twenty-three days of approval of the sample sheet, the Secretary of State is required to “prepare and transmit to the attorney general a summary statement of the measure,” which the attorney general must thereafter approve as to “legal content and form” within ten days. *Id.*

17. Section 116.040 addresses the required form of an initiative petition sample sheet and includes an exemplar form. Critically, Section 116.040 provides that if the exemplar form “is followed substantially and the requirements of section 116.050 and section 116.080 are met, it shall be sufficient, disregarding clerical and merely technical errors.”

18. Based on the plain and unambiguous language of Section 116.332, the Secretary of State’s authority to review an initiative petition sample sheet for sufficiency as to form is limited to determining whether the sample sheet is substantially in the form required by Section 116.040, and if it is, the Secretary of State shall deem the sample sheet sufficient.

19. Here, the Secretary of State had fifteen days from receipt of Cooper's initiative petitions to either accept them as to form or reject them.

20. The Secretary of State exercised this authority twelve days after receiving Cooper's initiative petitions, giving them, "final approval as to form."

21. This "final approval as to form" was required because the sample sheets attached to Cooper's initiative petitions were identical in content to the exemplar form described in Section 116.040. The sample sheets submitted by Cooper are also identical to the sample sheets of a number of initiative petitions that the Secretary of State approved and which are currently on the Secretary of State's website.

22. Rather than continue following the simple and mandatory processes outlined above which reflect the general assembly's "calculated intent ... to balance procedural oversight of the [initiative] process with the people's ability to meaningfully exercise the power of [initiative]," *ACLU of Mo. v. Ashcroft*, 577 S.W.3d 881, 893 (Mo. App. 2019), the Secretary of State simply disregarded them.

23. If the Secretary of State wanted to reject Cooper's initiative petitions, he had to do so within fifteen days of receiving them. He did not.

24. After the Secretary of State gave "final approval" to Cooper's initiative petitions, he had to make them available on the Secretary of State's website for a period of fifteen days after approval to receive public comments. He did not.

25. Because of the Secretary of State's purported rescission of his final approval of Cooper's initiative petitions, Cooper cannot circulate the initiative petitions for signatures. *Section 116.332.1*.

26. Moreover, in purporting to reject the initiative petitions after they received "final approval" and after the fifteen day approval/rejection period expired, the

Secretary of State did not state “the reasons for rejection” as required by Section 116.332. Instead, the Secretary of State rejected the form of the petition sample sheets because they were “rejected as to form.” *Exhibits 3 and 4*. This is like saying, “you lost because you did not win.”

27. Without knowing how the form of the petition sample sheets failed to comply with Section 116.040 — they fully complied — Cooper does not know what to fix, thereby depriving him of his rights guaranteed by the Missouri Constitution.

28. Further, if the Secretary of State is authorized to reject citizen petitions after the fifteen day statutory period, and without giving any actual reasons other than saying they are rejected, “form” can be used as a pretext to deprive a citizen of her constitutional rights anytime the Secretary of State dislikes the content of an initiative or referendum petition.

29. For the Secretary of State to read Sections 116.332 and 116.334 as providing a basis for him to reject initiative petition sample sheets after they have been approved, reject them after the 15 day approval/rejection period has passed, and reject them without providing any actual reasons flies in the face of well-established legal precedent in Missouri that, “[c]onstitutional and statutory provisions relative to initiative are liberally construed to make effective the people’s reservation of that power.” *Boeving v. Kander*, 496 S.W.3d 498, 506 (Mo. 2016) quoting *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. 1990).

30. No legal remedy exists under Missouri law for Cooper to enforce his ability to exercise his constitutional right to propose amendments to the Missouri Constitution.

31. Cooper will suffer irreparable harm unless the Secretary of State is enjoined from rejecting Cooper's previously approved initiative petition sample sheets or rejecting them without reason.

WHEREFORE, Cooper requests that the Court:

- A. Declare that Cooper's initiative petition sample sheets are valid as to form;
- B. Declare that the Secretary of State was not authorized to rescind his final approval of Cooper's initiative petition sample sheets;
- C. Declare that the Secretary of State was not authorized to reject the form of the initiative petition sample sheets submitted by Cooper more than fifteen days after they were submitted;
- D. Declare that the Secretary of State was not authorized to reject the form of the initiative petition sample sheets submitted by Cooper without providing reasons explaining how the forms failed to comply with Chapter 116.
- E. Issue a temporary restraining order, preliminary injunction, and permanent injunction requiring the Secretary of State to approve the initiative petition forms, prepare summary statements, and certify the official ballot titles;
- F. Alternatively, declare that if the Secretary of State was authorized to reject Cooper's initiative petition sample sheets on the basis of form after the fifteen day approval/rejection period had expired and after they had received "final approval," the Secretary of State must provide reasons why the form of Cooper's initiative petition sample sheets did not comply with Section 116.040, and issue a temporary restraining order, preliminary injunction, and permanent injunction requiring the Secretary of State to provide those reasons to Cooper.

Respectfully submitted,

JACOBSON PRESS P.C.

/s/ Matt Vianello
Matthew B. Vianello, #63303
222 S. Central Ave., Ste. 550
Clayton, Missouri 63105
Tel: (314) 899-9789
Fax: (314) 899-0282
Vianello@ArchCityLawyers.com

Attorney for Plaintiff

VERIFICATION

I, Harry (Chip) Cooper, verify the foregoing allegations are true and correct to the best of my information and belief.

Harry Cooper (Chip)

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