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OPINION LETTER NO. 168-98

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Section 116.332, RSMo Supp. 1997, for sufficiency as to form of an initiative petition proposing that the Missouri Constitution be amended by adding one new section to provide that persons elected to represent Missouri in the United States House of Representatives or Senate shall not support a governmental budget that spends in deficit. A copy of the initiative petition which you submitted to this office on November 9, 1998, is attached for reference.

We conclude the petition must be rejected as to form for the following reasons:

1. Section 116.040, RSMo Supp. 1997, provides that at the top of the petition there shall be a notice stating "It is a class A misdemeanor for anyone to sign any initiative petition with any name other than his own, or knowingly to sign his name more than once for the same measure for the same election, or to sign a petition when he knows he is not a registered voter." The petition does not contain this notice.

2. Section 116.040 provides that the petition shall have below the notice described in numbered subparagraph 1 above a heading "INITIATIVE PETITION." The petition does not contain this heading.

3. The paragraph commencing "Any person elected by the vote of the people of the state . . ." is underlined and appears after the enacting clause, but there are no words indicating that the proposed amendment is the addition of this paragraph to the Missouri Constitution. Words, such as "by adding one new section to read as follows," are needed after the enacting clause and

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preceding the underlined paragraph to indicate the petition proposes the Constitution be amended by adding the underlined paragraph.

In addition to the reasons for rejection specified above, other concerns are apparent from our review of the petition.

1. The line on the petition providing for the date of the signature of the affiant states "Subscribed and sworn to before me this ____ day of _____, A.D. 2000." It appears possible that signatures might be gathered during 1999 such that the affiant may be signing in 1999 rather than in 2000 as printed on the petition.

2. The proposed amendment appears both at the top of the first page of the petition and on a separate second page. The sentence commencing "We, the undersigned, registered voters of the state . . ." refers to the proposed amendment as "following proposed amendment," but one location where the proposed amendment appears precedes rather than follows this sentence.

3. The petition refers to the election "held on the 7 the day of November, 2000." It appears the intent is to refer to the "7th" day rather than the "7 the" day.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure