

SHARP LAW

Rex A. Sharp*
Manager, Sharp Law, LLP
4820 W. 75th Street
Prairie Village, KS 66208
(913) 901-0500
rsharp@midwest-law.com

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VIA EMAIL:

Mr. Fred Sherman
Johnson County Election Officer
2101 E. Kansas City Road
Olathe, KS 66061
Fred.Sherman@jocogov.org

Dear Mr. Sherman,

Your office received two voter initiative petitions on August 1. You are required by statute to make a timely determination of the sufficiency of the petitions. Sufficiency determinations, on average, are made within a week. Your office has held the petitions without a sufficiency determination for over two weeks. Per your office, September 1 is the deadline for placing the petitions on the November 1 ballot. Time is of the essence.

I am concerned the delay is the result of improper influence from the City of Prairie Village which, through its city council, has taken a public stance against the petitions. On August 2, the day after your office received the petitions, Prairie Village's city attorney, David Waters, sent you a six-page, single-spaced letter detailing technical arguments as to why he believed the petitions should fail. Mr. Waters had obviously been researching ways to attack the petitions for some time before they were even submitted to your office. Given the timing of the letter and your previous employment with Mr. Waters, some may conclude that your office has been coordinating efforts with the City of Prairie Village on these issues. I urge you to maintain the integrity of your office and abstain for participating in the City's tactics to frustrate the initiative process.

Further, while Mr. Waters' technical arguments were good fodder for the city council's PR fight against the petitions, they have been repeatedly rejected by Kansas courts. *See City of Wichita v.*

Peterjohn, 62 Kan. App. 2d 750, 522 P.3d 385 (Kan. App. Dec. 30, 2022) (rejecting strict compliance in favor of substantial compliance). Prairie Village knows from its own past lawsuits that mere technicalities are not sufficient to prevent an initiative: “As a starting point, we have previously observed that courts should exercise “ ‘extreme caution’ ” when rejecting citizens' initiative or referendum petitions on mere technicalities. [City of Prairie Village v. Morrison, No. 104,918, 2011 WL 6310196, at *7 \(Kan. App. 2011\)](#) (unpublished opinion) (quoting 5 McQuillin, Municipal Corporations § 16.67, p. 481 [3d ed. rev. 2004]), *rev. denied* 296 Kan. 1129 (2013). *Id.* at 756. The cases illustrate a marked difference between the function of the county counselor in responding to the form of the question in a petition at the outset, versus keeping a duly signed petition off the ballot due to alleged technical deficiencies. For the same reasons, the sufficiency determination should not be gamed, either by delay or hyper-technicality, to defeat a voter initiative.

Please make the determination of the sufficiency of the Abandon and Adopt Petitions a priority. I am confident the Petitions have more signatures than required to place these two petitions on the November 7 ballot. I look forward to your sufficiency determination soon on these two Petitions.

Sincerely,



Rex A. Sharp