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Mark Maassen, Executive Director
Missouri Press Association
802 Locust Street
Columbia, MO 65201

Dear Mark:

I am responding to the suggestions within your October 3, 2018, letter and attachment, and also providing you additional information about the quote process that made it difficult for this office to come to a resolution in regard to newspaper publication.

The Secretary of State believes the decision to *fairly select* which newspapers in each county would publish ballot measures, under a budget constraint of \$6,000,001, substantially complies with the Constitution. The Constitution states, "If possible, each proposed amendment shall be published once a week for two consecutive weeks in two newspapers of different political faith in each county **If there be but one newspaper in any county**, publication for four consecutive weeks shall be made." (Emphasis added.)

In *State ex rel. Board of Fund Commissioners v. Holman*, Judge Hyde's concurring opinion took notice that the Constitutional Convention transcript shows the phrase "if possible" gave the authority to the Secretary of State to determine what was and was not possible. Furthermore, as Judge Hyde indicated, the general rule of law is that substantial compliance with the Constitution is sufficient. In *Holman*, the Supreme Court declined to invalidate a constitutional amendment passed by the voters simply because there were errors in the way the amendment was published in newspapers.

In October of 2017, the Office of the Secretary of State submitted its Fiscal Year 2019 budget request. In anticipation of several ballot measures appearing on the November 2018 ballot, this office requested an appropriation of \$6,000,001 from Missouri taxpayers for publication costs as described in the Constitution. At that time, this office had received 288 initiative petitions and received 371 by the end of the election cycle.

This office developed a formula for the August referendum publication, based on the requirements of the Constitution, to advertise in every county in at least one newspaper and fulfill our duty. For the August 2018 referendum, this office encumbered \$126,934.19 in publication costs through the Missouri Press Association. After that, a total of \$5,873,066.81 remained to publish the text of any ballot measures that would appear on the November ballot.

Although our office requested the MPA use the same August publication list for the November ballot measures, your office instead requested quotes from all newspapers, inexplicably leaving four off the list that were used in August. The total estimate for all newspapers (which we did not request) was \$6,975,990.53 – approximately \$1.1 million more than our available amount. This estimate also did not include the 3% contract fee charged by the MPA, approximately \$209,000, increasing the overage to \$1.3 million.

Based on the funds appropriated for this purpose, our office had already made a good faith decision to advertise these initiatives in every county but not in every newspaper. Therefore, we again requested a quote based on the August list.

The MPA provided a third and final quote to our office on October 8, 2018. After eliminating more than 80 of 214 newspapers from consideration based on our formula, MPA’s quote decreased to \$5,681,812.86. However, some of the newspapers that remained in consideration *increased their quotes significantly*, a total increase of \$704,008.55.

Following are a number of examples from newspapers that increased their quote by more than 20%. The print job did not change from the first to the final quote.

	Quote 1 (9/27/18)	Final Quote (10/8/18)	Dollar Increase	% Increase
Sikeston Standard Democrat	11,220.00	90,255.88	79,035.88	704.42%
Doniphan Prospect-News	16,597.00	53,836.64	37,239.64	224.38%
Cape Girardeau Southeast Missourian	22,974.30	67,852.84	44,878.54	195.34%
Park Hills Daily Journal	30,389.52	75,533.04	45,143.52	148.55%
Linn Unterrified Democrat	22,042.44	47,124.00	25,081.56	113.79%
Pemiscot Press	18,092.36	36,184.72	18,092.36	100.00%
Rock Port Atchison Co. Mail	23,562.00	47,124.00	23,562.00	100.00%
Fredericktown Democrat News	25,907.64	50,404.64	24,497.00	94.56%
St. Joseph News Press	145,456.08	256,668.72	111,212.64	76.46%
Bolivar Herald-Free Press	25,312.32	37,699.20	12,386.88	48.94%
Marshfield Mail	25,312.32	37,699.20	12,386.88	48.94%
Buffalo Reflex	50,624.64	75,398.40	24,773.76	48.94%
Ozark Christian County Headliner- News	50,624.64	75,398.40	24,773.76	48.94%
Columbia Tribune	42,823.00	58,905.00	16,082.00	37.55%
Kansas City Daily Record	33,719.84	45,981.60	12,261.76	36.36%
Gallatin North Missourian	7,947.50	10,200.00	2,252.50	28.34%
Cameron Citizen Observer	22,202.18	27,604.20	5,402.02	24.33%
Ava Douglas Co. Herald	26,989.20	32,986.80	5,997.60	22.22%
St. Louis Post Dispatch	442,624.16	537,472.18	94,848.02	21.43%
Kansas City Star	221,100.00	268,478.56	47,378.56	21.43%

After examining these numbers, it became very apparent that some of your members do not have the public service mindset that we might expect of our local newspapers. A newspaper increasing its quote by 704.4%, from \$11,220 to \$90,255, is despicable.

Our office is bound to the appropriation provided by the legislature and Missouri's taxpayers, and has no authority to exceed the appropriation. If all the estimates made by newspapers had remained similar to the first estimate, this office *could have* adjusted the formula and possibly selected additional newspapers. However, due to the increases by a small number of newspapers, we did not have that opportunity.

This office commends the seven newspapers that decreased their estimate and the 91 whose estimate remained unchanged. The papers that decreased their estimate include the St. Louis Community News (17.6% less), Festus Jefferson Leader (29.3% less), Richmond News (26.7% less), Willow Springs Howell County News (21.4% less), Albany Ledger (13.4% less), Grant City Times-Tribune (13.4% less) and Princeton Post-Telegraph (1.7% less).

We have received complaints from your member newspapers that were not selected for publication. We have also received complaints from organizations concerned that a ballot measure, if passed, will be "thrown out" because your letter states our outlined publication schedule "could create risk" that could have "the election process overturned." I strongly disagree.

We are confident we have substantially complied with the Constitution in light of the budget constraints. We would reiterate, however, that the significant price increases entered by some of your newspapers have had a very positive effect on their bottom lines, and a similarly negative effect on newspapers that were eliminated from the publication contract due to those price increases.

Sincerely,



Frank A. Jung
General Counsel

cc: Governor Michael L. Parson, Members of the Missouri General Assembly, Dan Kleinsorge (SaferMO.com), Tom Murphy (Association of Charitable Gaming of Missouri)