

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

STATE OF MISSOURI, EX REL.
DR. ANNA FITZ-JAMES,

Relator,

v.

ANDREW BAILEY, ATTORNEY
GENERAL OF THE STATE OF
MISSOURI,

Respondent.

Case No. 23AC-CC02800

Motion for Special Order to Enforce Judgment

Relator requests this Court enter a special order directing immediate compliance with its judgment. In support, she states:

Attorney General Bailey received the fiscal note summaries on March 29, 2023. The statute provided him ten days to approve them as to legal content and form. He failed to carry out his statutory duty.

Yesterday, just prior to 9 a.m., the Attorney General was ordered to – within twenty-four hours – approve the fiscal note summaries as to legal form and content. He has failed to comply with that order.

The Attorney General did not avail himself of the procedure for requesting a stay. *See In re Marriage of Crow & Gilmore*, 103 S.W.3d 778, 782 (Mo. banc 2003) (noting that it is the procedure of Rule 81.09 that “stays enforcement of a judgment

while an appeal is pending”).¹ Rule 81.09 specifies that a judgment is automatically stayed pending appeal when the appellant is an “executor, administrator, personal representative, conservator, guardian, curator, or when the appellant is a county, city, township, town, school district or other municipality.” This case is not of the type in which a stay pending appeal is automatic. *State ex rel. GTE N., Inc. v. Mo. Pub. Serv. Comm’n*, 835 S.W.2d 356, 366 (Mo. App. W.D. 1992) (holding that when a case “is not mentioned in the class of cases in which an appeal operates as a supersedeas in and of itself . . . the contention that [the kind of case] belongs in that class is impliedly negated.”).

The Attorney General cannot evade this Court’s order simply by filing a notice of appeal. Even after a court loses jurisdiction “to correct, amend, vacate, reopen or modify a judgment,” a court is not prevented “from enforcing its judgment as originally entered.” *Demars v. Buntebach*, 477 S.W.3d 690, 694 (Mo. App. E.D. 2015) (citing Rule 75.01 and quoting *Multidata Sys. Int’l Corp. v. Zhu*, 107 S.W.3d 334, 339 (Mo. App. E.D. 2003)).

Every day the time for signature collection is delayed, the cost of gathering enough signatures to get a measure before voters increases and the feasibility decreases. *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 491 (Mo. banc 2022).

¹ Rule 81.09 stays a judgment “when the appellant, at or prior to the time of filing notice of appeal, presents to the court for its approval a supersedeas bond which shall have such surety or sureties as the court requires.” Because the Attorney General filed his notice of appeal yesterday, the time in which he may seek a stay has passed.

WHEREFORE Relator requests this Court enter a special order directing the Attorney General to comply with the Judgment entered on June 20, 2023 absent an issuance of a stay by the Missouri Supreme Court.

Respectfully submitted,

/s/ Jonathan D. Schmid
Anthony E. Rothert, #44827
Tori Schafer, #74359
Jonathan Schmid, #74360
American Civil Liberties Union
of Missouri
906 Olive Street
Suite 1130
St. Louis, Missouri 63101
(618) 531-4184
arothert@aclu-mo.org
tschafer@aclu-mo.org
jschmid@aclu-mo.org

Certificate of Service

I hereby certify that on June 21, 2023, the foregoing was filed electronically through the Court's electronic filing system to be served electronically on all counsel of record.

/s/ Jonathan D. Schmid

Jonathan D. Schmid #74360