

**IN THE MISSOURI SUPREME COURT**

---

**No. SC 88487**

---

**CENTENE PLAZA REDEVELOPMENT CORPORATION**

**Respondent**

**vs.**

**MINT PROPERTIES, INC., et al.**

**Appellants**

---

**APPEAL FROM THE ST. LOUIS COUNTY CIRCUIT COURT**

**The Honorable James R. Hartenbach, Circuit Judge**

---

**BRIEF OF AMICI CURIAE  
MISSOURI MUNICIPAL LEAGUE  
CITY OF ST. LOUIS, MISSOURI  
JACKSON COUNTY, MISSOURI  
ST. LOUIS COUNTY, MISSOURI**

---

**Patricia A. Hageman [43508]  
City Counselor  
City of St. Louis  
1200 Market Street, Room 314  
St. Louis, Missouri 63103  
Telephone: (314) 622-3361**

**Albert A. Riederer [23619]  
Special Counsel for Jackson County  
1100 Main Street, Suite 2800  
Kansas City, Missouri 64105  
Telephone: (816) 842-1130**

**Patricia Redington [33143]  
St. Louis County Counselor  
41 South Central Avenue, 9th Floor  
St. Louis, Missouri 63105  
Telephone: (314) 615-7042**

**Michael A. Gross [23600]  
Counsel for Missouri Municipal  
League  
34 North Brentwood Boulevard  
St. Louis, Missouri 63105  
Telephone: (314) 727-4910**

## TABLE OF CONTENTS

	<b>Page</b>
Table of Contents	1
Table of Authorities	2
Statement of Interest	4
Point Relied On	6
Argument	7
Conclusion	14
Certificate of Rule 84.06 Compliance and Service	15

## TABLE OF AUTHORITIES

	<b>Page</b>
<b><u>Cases</u></b>	
<i>Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp.</i> , 538 S.W.2d 320, 324 (Mo. 1976)	8-9, 11, 13
<i>Centene Plaza Redevelopment Corporation v.</i> <i>Mint Properties, Inc.</i> , 2007 WL 1188315 (Mo.App.E.D. April 24, 2007)	8, 10-11
<i>Crestwood Commons Redevelopment Corp. v. 66 Drive-In, Inc.</i> , 812 S.W.2d 903 (Mo.App.E.D. 1991)	11-13
<i>State ex rel. Dalton v. Land Clearance for Redevelopment</i> , 270 S.W.2d 44, 51-52 (Mo. 1954)	9, 13
<i>Hawaii Housing Authority v. Midkiff</i> , 467 U.S. 229 (1984)	10
<i>JG St. Louis West LLC v. City of Des Peres</i> , 41 S.W.3d 513 (Mo.App.E.D. 2001)	9, 11
<i>Kaskel v. Impellitteri</i> , 115 N.E.2d 659, 662 (N.Y. 1953)	13
<i>State ex rel. Lashly v. Becker</i> , 235 S.W. 1017 (Mo. 1921)	13
<i>State ex rel. Missouri Cities Water Co. v. Hodge</i> , 878 S.W.2d 819 (Mo. 1994)	9
<i>Parking Systems, Inc. v. Kansas City Downtown Redevelopment</i> <i>Corp.</i> , 518 S.W.2d 11, 15 (Mo. 1974)	8-9
<i>Schweiker v. Wilson</i> , 450 U.S. 221 (1981)	9-10, 13

## TABLE OF AUTHORITIES (Cont'd)

	<b>Page</b>
<b><u>Statutes</u></b>	
Mo. Rev. Stat. § 353.020	7
Mo. Rev. Stat. § 523.261	7, 10-13
<b><u>Other Authorities</u></b>	
Dale A. Whitman, <i>Eminent Domain Reform in Missouri: A Legislative Memoir</i> , 71 Mo. L. Rev. 721, 738 (2006)	11-12

## STATEMENT OF INTEREST

Three of the amici curiae—the City of St. Louis and the Counties of Jackson and St. Louis—exercise the authority to declare areas within their jurisdiction blighted and to approve redevelopment plans for those blighted zones. The fourth amicus—the Missouri Municipal League—is an organization of municipal entities throughout the state, each of which is empowered to exercise the power of eminent domain, find areas within their jurisdiction to be blighted, and approve redevelopment plans.

The interest of the amici curiae in this appeal is limited to preserving the Missouri judiciary's exercise of restraint in the review of local legislative decision-making with respect to eminent domain authority generally and in the identification and remediation of blight specifically. The amici curiae believe that the advisory opinion filed by the Court of Appeals when this case was transferred posits a new and far less deferential standard of review for those local legislative decisions. The adoption of that standard of review inevitably would impair the ability of local legislative bodies to determine and effectuate policies in an area of government that always has been shielded from broad judicial encroachment.

The Missouri Municipal League is a statewide not-for-profit association organized in 1934 to promote the interests and welfare of Missouri cities, towns, and villages. The League seeks to improve municipal government and administration throughout the state through the pursuit of those goals and by fostering closer relations among municipalities.

The Missouri State Legislature authorized the formation of Jackson County in 1826. The voters of Jackson County adopted a constitutional home rule charter in 1970. More than 660,000 people reside in the county and approximately 50,000 business firms are located there.

St. Louis County adopted its present constitutional charter in 1979. The county encompasses more than 90 individual municipalities in addition to substantial unincorporated areas. More than 1,000,000 people live in St. Louis County and more than 80,000 firms are located there.

Voters in the City of St. Louis adopted a constitutional home rule charter and established the present city boundaries in 1876. St. Louis thus became the nation's first home rule city. The city's legislative body is the Board of Aldermen, which consists of 28 aldermen elected by the people in 28 wards. Each ward has a population of approximately 12,000, and ward boundaries are reset after each decennial federal census. Approximately 400,000 people live in the City of St. Louis.

**POINT RELIED ON**

**The opinion of the Court of Appeals is erroneous and should not be followed, because it suggests a new and less deferential standard for judicial review of local legislative decisions to declare property blighted under Mo. Rev. Stat. § 353.020, in that the standard of review is not required by either § 353.020 or Mo. Rev. Stat. § 523.261 and is in conflict with prior opinions of this Court recognizing the importance of judicial deference in the review of eminent domain decision-making by local legislative bodies.**

*Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp.,*

538 S.W.2d 320 (Mo. 1976)

*JG St. Louis West LLC v. City of Des Peres,*

41 S.W.3d 513, 517-18 (Mo.App.E.D. 2001)

*Crestwood Commons Redevelopment Corp. v. 66 Drive-In, Inc.,*

812 S.W.2d 903 (Mo.App.E.D. 1991)

## ARGUMENT

**The opinion of the Court of Appeals is erroneous and should not be followed, because it suggests a new and less deferential standard for judicial review of local legislative decisions to declare property blighted under Mo. Rev. Stat. § 353.020, in that the standard of review is not required by either § 353.020 or Mo. Rev. Stat. § 523.261 and is in conflict with prior opinions of this Court recognizing the importance of judicial deference in the review of eminent domain decision-making by local legislative bodies.**

### A. Introduction

The aldermen of the City of Clayton passed an ordinance declaring a portion of the city's business district blighted. The ordinance also approved a redevelopment plan that had been agreed upon by the city and Centene Plaza Redevelopment Corporation. Centene eventually filed three condemnation actions alleging that it had failed in its efforts to purchase portions of the condemned area from their current owners. The St. Louis County Circuit Court consolidated the cases and granted a judgment of condemnation to Centene. The property owners then commenced this appeal.

The Court of Appeals transferred the appeal to this Court. That court wrote an opinion indicating that it would reverse the judgment of the Circuit Court because the Clayton Board of Alderman had no basis for finding that the property at issue was a social liability. The court reached that conclusion by reweighing the evidence considered by the city's legislative body and supplanting the aldermen's

evaluation of that evidence with its own. The standard of review for local legislative fact evaluations and policy-making decisions that readily could be distilled from the Court of Appeals' opinion would undermine the independence and effectiveness of county and municipal governments throughout the state. This Court should avoid that danger by deciding the appeal and reiterating the decades-old policy of judicial deference to the legislative decision-making of local governments.<sup>1</sup>

**B. The Standard of Review Suggested by  
the Court of Appeals is Erroneous**

The Clayton Board of Aldermen acted in its legislative capacity when it determined that a portion of the Clayton business district was blighted and approved a redevelopment plan for that property. *Allright Missouri, Inc. v. Civic Plaza Redevelopment Corp.*, 538 S.W.2d 320, 324 (Mo. 1976). The role of Missouri courts called upon to judge such local decision-making has been clear for

---

<sup>1</sup> The amici curiae anticipate that the Court of Appeals will adopt its prior opinion if this Court elects to re-transfer the appeal rather than decide the case on its merits. That opinion already is available through online databases, where it inevitably will serve as guidance for future proceedings. *Centene Plaza Redevelopment Corporation v. Mint Properties, Inc.*, 2007 WL 1188315 (Mo.App.E.D. April 24, 2007).

many years: “Judicial review is limited to whether the legislative determination was arbitrary or was induced by fraud, collusion or bad faith, or whether the City exceeded its powers.” *Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp.*, 518 S.W.2d 11, 15 (Mo. 1974) (citing *State ex rel. Dalton v. Land Clearance for Redevelopment*, 270 S.W.2d 44, 51-52 (Mo. 1954)); *see also JG St. Louis West LLC v. City of Des Peres*, 41 S.W.3d 513, 517-18 (Mo.App.E.D. 2001).<sup>2</sup> The extent of judicial deference that Missouri courts have found necessary in the review of local legislative blight determinations is particularly noteworthy: “If the Board’s decision is reasonably doubtful or fairly debatable, we will not substitute our opinion for that of the Board.” *JG St. Louis West*, 41 S.W.3d at 517; *see also Allright Missouri*, 812 S.W.2d at 324 (recognizing that “it must be kept in mind that courts cannot interfere with a discretionary exercise of judgment in determining a condition of blight in a given area”).

The rationale of deferential review for legislative actions that affect conflicting interests rests in large measure “upon the principle that the political process of our majoritarian democracy responds to the wishes of the people.”

---

<sup>2</sup> Although the power of eminent domain does not accrue inherently to local governments, the state may delegate this authority to cities or other public and private entities. *State ex rel. Missouri Cities Water Co. v. Hodge*, 878 S.W.2d 819, 820-21 (Mo. 1994).

*Schweiker v. Wilson*, 450 U.S. 221, 243 (1981); *see also Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 239-40 (1984) (recognizing with respect to the exercise of eminent domain authority and other lawmaking powers that “the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation,” and that “when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive”). The opinion of the Court of Appeals in this case portends a new augmented standard of review for each legislative finding of blight and each approval of a redevelopment plan. The judicial analyses invited by that opinion would amount to an incursion by judges into the prerogative of legislators and would undermine the authority and independence of local legislative bodies.

In dictum the Court of Appeals has suggested that the enactment of § 523.261 changed the analysis that Missouri courts are to apply when reviewing ordinances finding blight and approving redevelopment plans for blighted areas. The court wrote:

The statute states that with regard to condemnation actions, “any legislative determination that an area is blighted, substandard, or unsanitary shall not be arbitrary or capricious or induced by fraud, collusion, or bad faith and shall be supported by substantial evidence.” Prior to section 523.261, the standard of review of the legislative determination was that it must not be arbitrary or induced by fraud, collusion or bad faith . . . If the action of the legislative

body was “reasonably doubtful or even fairly debatable,” the court could not substitute its judgment for that of the legislative body.

*Centene Plaza*, 2007 WL 1188315 at \*2.

The requirement of evidentiary support for a legislative finding of blight was not invented with the enactment of § 523.261. The new statute codified the analysis that this Court and other courts began articulating and applying long ago. *Allright Missouri* recognized the need for judicial review of evidence supporting the blight determinations of local legislative bodies: “The issue of whether a legislative determination of blight is arbitrary turns upon the facts of each case.” 538 S.W.2d at 324; *see also Crestwood Commons Redevelopment Corp. v. 66 Drive-In, Inc.*, 812 S.W.2d 903, 910 (Mo.App.E.D. 1991).<sup>3</sup>

Professor Dale A. Whitman, a law professor who helped to draft the bill that became § 523.261, has written that the statutory enumeration of prerequisites for a legislative blight determination was to make “no discernable change” in the standard of review employed by Missouri courts “for more than fifty years.” Dale A. Whitman, *Eminent Domain Reform in Missouri: A Legislative Memoir*, 71 Mo. L. Rev. 721, 738 (2006). Professor Whitman explained:

---

<sup>3</sup> In *JG St. Louis West* the Court of Appeals noted explicitly its determination that an aldermanic board’s finding of blight was not arbitrary, was fairly debatable, and was supported by substantial evidence. 41 S.W.3d at 516.

The courts have generally treated the phrases ‘not arbitrary and capricious’ and ‘supported by substantial evidence’ as two ways of saying the same thing. It is difficult to see how this language would have any effect at all on judicial review of blight determinations.

*Id.*

Nothing in § 523.261 supports—much less mandates—closer scrutiny of the blight determinations made by local legislative bodies than Missouri courts historically have exercised. Judges always have reviewed the evidence that might have supported a legislative finding of blight—“[t]he issue of whether a legislative determination is arbitrary rests on the facts of each case,” *Crestwood Commons*, 812 S.W.2d at 910—and the new statute codifying the requirements for a valid blight determination recognizes that evidentiary component. But the review that always has been appropriate and remains so must be circumspect:

In determining whether the burden is met, it must be kept in mind that courts cannot interfere with a discretionary exercise of judgment in determining a condition of blight in a given area . . . Unless it appears that the conclusion of the Board of Aldermen in the respect in issue is clearly arbitrary, we cannot substitute our opinion for that of the Board . . . If the Board’s action is reasonably doubtful or even fairly debatable we cannot substitute our opinion for that of the Board.

*Id.* (citing *Allright Missouri*, 538 S.W.2d at 324); *see also Schweiker*, 450 U.S. at 243-44 (recognizing that “[o]ur democratic system requires that legislation intended to serve a discernible purpose receive the most respectful deference”).

The reason for that deference is a part of our democratic bedrock: if judges were to substitute their judgments, based upon their own perceptions and values, for those of popularly elected representatives who have performed a singularly legislative function, “there would be effected a transfer of power from the appropriate public officials to the courts.” *Dalton*, 270 S.W.2d at 51-52 (quoting *Kaskel v. Impellitteri*, 115 N.E.2d 659, 662 (N.Y. 1953)). The avoidance of that vice is especially important when the legislation at issue is that of a local government regarding peculiarly local matters such as land use regulation. This Court long ago recognized the “cardinal principle of our system of government that local affairs shall be managed by local authorities.” *State ex rel. Lashly v. Becker*, 235 S.W. 1017, 1026 (Mo. 1921). There is no basis in § 523.261 or in sense for expanding the role of the judiciary in reviewing local legislative determinations regarding blight. This Court should make that clear and avoid the risk of profound and inappropriate institutional change that would inhere in the new standard of review postulated by the Court of Appeals.

## CONCLUSION

For the reasons set forth in this brief, the amici curiae pray that this Court hear and determine this appeal and that the Court reiterate the historic deferential standard of judicial review for local legislative enactments regarding land use generally and findings of blight and the approval of redevelopment plans particularly.

Respectfully submitted:

Albert A. Riederer [23619]  
Special Counsel to Jackson County  
1100 Main Street, Suite 2800  
Kansas City, Missouri 64105  
Telephone: (816) 842-1130  
*Counsel for Jackson County*

Patricia A. Hageman, City Counselor [43508]  
City Counselor, City of St. Louis  
1200 Market Street, Room 314  
St. Louis, Missouri 63103  
Telephone: (314) 622-3361  
*Counsel for the City of St. Louis*

Patricia Redington [33143]  
St. Louis County Counselor  
41 South Central Avenue, 9th Floor  
St. Louis, Missouri 63105  
Telephone: (314) 615-7042  
*Counsel for St. Louis County*

---

Michael A. Gross [23600]  
34 North Brentwood Boulevard, Suite 207  
St. Louis, Missouri 63105  
Telephone: (314) 727-4910  
*Counsel for the Missouri Municipal League*

## **CERTIFICATE OF COMPLIANCE AND SERVICE**

This brief complies with the requirements of Mo.R.Civ.P. 84.06. The brief contains 2,651 words as determined by the software application Microsoft Word for Macintosh version 2004. The font is 13-point Times New Roman. The diskette filed with this brief bears a copy of the brief and has been scanned for viruses and is virus-free.

Two copies of this brief and one compact disc bearing a copy of the brief were sent by first class mail on May 14, 2007, to:

Gerard T. Carmody  
Carmody MacDonald PC  
120 South Central Avenue, Suite 1800  
St. Louis, Missouri 63105

Thomas B. Weaver  
Armstrong Teasdale  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102

---

Michael A. Gross