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**I. THE TRIAL COURT ERRED IN NOT FINDING THAT SECTION 115.348 IMPAIRS RESPONDENTS' FUNDAMENTAL RIGHTS TO VOTE, AND TO ASSOCIATE WITH AND EXERCISE THEIR RIGHTS OF EXPRESSION IN SUPPORT OF POLITICAL CANDIDATES, AND IMPAIRS RIZZO'S RIGHT TO RUN FOR ELECTIVE OFFICE.**

At Footnote 2 of their answering Brief, Appellants suggest that Runnels and Castles have waived any point alleging that the statute violates their constitutional rights. However, as set out in Respondents' opening Brief, Respondents included in their first section all arguments relating to individual constitutional challenges to § 115.348. These included the equal protection arguments upon which the trial court correctly found the statute to be unconstitutional, in addition to those additional individual constitutional arguments that the trial court either failed to reach or expressly rejected. *See* Respondents' opening Brief at 19 and 20, n. 3. As this Court's review of constitutional challenges to a statute is *do novo*, (*Barker v. Barker*, 98 S.W.3d 532 (Mo. banc 2003)), it may also review Respondents' other constitutional challenges, in addition to the equal protection argument. *See also* Respondents' opening Brief at 35-37. Respondents will not further address the equal protection arguments, as those are not proper points for a reply brief. However, as Cross-Appellants asserting the other constitutional challenges, based on the right to vote and First Amendment rights to free expression and participation in the political process, Respondents will include them here.

Appellants do not dispute that First Amendment freedoms and the right to vote are fundamental rights. Thus, any restriction purporting to interfere with those rights cannot be upheld unless supported by sufficiently important interests and closely tailored to effectuate only those interests. *Komosa v. Komosa*, 939 S.W.2d 479 (Mo. App. E.D. 1997). Section 115.348 impairs the rights of Runnels and Castles to actively participate in the political process because of the restrictions it places upon Rizzo's candidacy. Their rights include the right to associate with candidates of their choice and to publicly express their support for them, in addition to other aspects of participation in the political process. Participation in the political process is a fundamental right, and any statute infringing thereon must withstand rigorous scrutiny. *Reeder v. Kansas City Bd. of Police Com'rs*, 796 F.2d 1050 (8<sup>th</sup> Cir, 1986); *McCarthy v. Kirkpatrick*, 420 F.Supp. 366, 372 (W.D.Mo. 1976). As is set out in detail in Respondents' Brief, § 115.348 impairs the rights of Runnels and Castles to participate in the political process by eliminating Rizzo as a candidate, in the absence of a state interest meeting either a strict-scrutiny or rational-basis test. Moreover, the statute impairs their constitutional rights to vote for a candidate of their choice without sufficient state interest justifying that deprivation. This argument also applies to Rizzo insofar as the statute impairs his right to vote for himself in the absence of a state interest meeting a strict-scrutiny or rational-basis test.

**II. SECTION 115.348 AND HB 58 VIOLATE ARTICLE III, SECTIONS 21 AND 23 OF THE MISSOURI CONSTITUTION IN THAT THE AMENDMENTS TO**

**HB 58 CHANGED ITS ORIGINAL PURPOSE AND, AS FINALLY PASSED,  
HB 58 INCLUDES MULTIPLE SUB-PARTS.**

**A. Amendments to HB 58 Changed Its Original Purpose.**

Respondents' opening Brief sets out in substantial detail (pages 12, 43-48), and this Court can research from the legal file and legislative record, how HB 58 eventually morphed into a substantially larger and different bill than that which was originally introduced into the Legislature. In their answering Brief, Appellants do not address or persuasively refute, Respondents' points in regard to the changes HB 58 experienced on the legislative path to passage.

As introduced, HB 58 was a nine-page bill addressing seven sections relating to county finances, budget and retirement systems, and sewage systems and waterworks at the county level. Through a process of multiple amendments, including a frenzied series of actions taken in the waning days of the 2005 General Assembly, the bill was expanded to nearly 200 pages in length and addressing 165 sections. At pages 44-48 of their opening Brief, Respondents have set out a summary of the myriad of multiple sub-parts and sections of the Revised Statutes of Missouri covered and addressed by the final version of the bill, many of which have absolutely nothing to do with its original purpose or political subdivisions at all. This Court may take judicial notice of the journals of the Legislature which clearly set out this remarkable level of legislative activity and changes to the bill. Nowhere in their answering Brief do Appellants purport to address or examine the many different statutory provisions added or refute Respondents' arguments that these changed the

original purpose of the bill. Instead, Appellants rely upon cases where this Court examined far fewer changes to the original purpose in a bill. For example, in *Stroh Brewery Co. v. State*, 954 S.W.2d 323 (Mo. banc 1997), the original bill stated it would amend state liquor laws by including one section, whereas the final version included eight sections. As this Court correctly concluded, all the sections reasonably related to the original purpose of liquor control and did not violate Section 21. 954 S.W.2d at 327. Appellants do not cite to any case where this Court has approved of so broad an expansion of the original purpose of a bill as is at issue here (7 to 165 sections). Appellants' arguments are unpersuasive and should be disregarded.

The 165 separate subjects covered in the passed version of HB 58 touch upon a multitude of differing topics, many of which are not germane to that original purpose. In their Brief, Appellants do not even begin to explain how these multiple subjects are germane to a bill relating to "political subdivisions." The reason they cannot is because that term, as used in the context of these multiple sections, is too amorphous to incorporate so many multiple sub-parts without violating constitutional limitations. Matters relating to political subdivisions can touch upon virtually everything that local government does. Just as a bill relating to "government" would be unconstitutionally violative of Section 21 if applied to a multitude of subject matters involving state government, a bill purportedly limited to political

subdivisions, but which addressed virtually all aspects of how local government operates, must violate Section 21 as well.<sup>1</sup>

The amendments to HB 58 so changed its original purpose as to render it a general legislative statement covering virtually all aspects of local government and changed the original purpose of the bill, as stated in the title and its version as first introduced and read. The amendments changed HB 58's original purpose and violate Article III, Section 21, of the Missouri Constitution.

**B. HB 58 Contains Multiple Sub-Parts, in Violation of Art. III, § 23, of the Missouri Constitution.**

As stated by this Court in *Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. banc 1994), Art. III, § 23 of the Missouri Constitution contains two separate procedural limitations on the Legislature – prohibitions against bills containing more than one subject and the requirement that the title to a bill clearly express that single subject. At Footnote 5 of their answering Brief, Appellants suggest that Respondents’ trial court petition did not include a “clear title” objection under Section 23 to HB 58. However, that issue is substantially briefed and considered by the Court. *See* Tr. at 65-66 and Order and Judgment, L.F. 454. Respondents raised separate constitutional challenges under both prongs of Section

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<sup>1</sup> This incongruity becomes even more manifest in light of the fact that § 115.348 sets limitations on candidate’s eligibility for elected office at all levels state-wide, and not just for local government. *See also* Tr. 56-57 (trial court questions).

23 at the trial level, including in their opening Brief, and this Court may consider them in its *de novo* review.

Any reasonable examination of the multiple subjects and matters covered by HB 58, as finally passed, shows that the bill violates the prohibitions against logrolling imposed by Section 23 and recognized by this Court in a multitude of cases, as cited in Respondents' Brief. In contrast, the cases cited by Appellants are distinguishable from this case and have little bearing upon the obvious conclusion that HB 58 violates Section 23. For example, Appellants rely on *City of St. Charles v. State of Missouri*, 165 S.W.3d 149 (Mo. banc 2005) and *Missouri State Med. Ass'n. v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).

In *City of St. Charles*, this Court found that the purposes of a bill related to emergency services was advanced by inclusion of parts relating to TIF provisions in a flood plain as they did fairly relate to a bill covering emergency services. 165 S.W.3d at 152. The 165 separate sections of HB 58 do not even remotely approach the type of logical connection to original purpose that this Court considered reasonable in *City of St. Charles*.

In *State Med. Ass'n.*, the court found that a number of health-care-related provisions were reasonably related to the single subject of "health services." *State Med. Ass'n.*, 39 S.W.3d at 841. Again, the number of topics at issue in that case pale in comparison to those logrolled into the final version of HB 58.

When looking at all provisions of the final version of HB 58, this Court cannot conclude that they fairly relate to the same subject, have natural connection with, or are

incidents or means to accomplish the original purposes of HB 58. *See Stroh Brewery, supra; Westin Crown Center Plaza Hotel Co. v. King*, 664 S.W.2d 2 (Mo. banc 1984); *Missouri Health Care Association v. Attorney General of the State of Missouri*, 953 S.W.2d 617 (Mo. 1997); *see also Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997).

HB 58 also violates the clear-title provisions of Section 23. As set forth above, the term “political subdivisions,” as applied to the multiple sections encoded in HB 58, is unconstitutionally broad. As passed, HB 58 is a virtual guide to all facets of government at the non-state level. *See pages 6-7, supra*. The title of a bill cannot be so general that it tends to obscure the contents of the act or be so broad as to render the single-subject mandate meaningless. *St. Louis Health Care Network v. State*, 968 S.W.2d 145 (Mo. 1998). Just as this Court concluded in that case that a bill relating to “certain incorporated and unincorporated entities” was too broad and amorphous to identify a single subject, it must conclude that “political subdivisions,” as used in HB 58, is not a sufficiently single, readily identifiable, and reasonably narrow purpose to withstand the limitations of Section 23.

As amended, HB 58 violates the multiple sub-part and clear-title provisions of Art. III, § 23, and must be declared unconstitutional.

### **III. SECTION 115.348 IMPERMISSIBLY AMENDED SECTION 561.021.2 RSMo. REGARDING FELONY CONVICTIONS.**

In their answering Brief, Appellants do not refute the conclusion that, by prohibiting persons with federal felony convictions from running for statewide office, § 115.348 is in

conflict with § 561.021.2 RSMo. That latter section reflected the statement of the Legislature prior to 2005 that Missouri would only prohibit persons convicted of felonies from holding office during the period of imprisonment or while under their sentence or on probation. *See also* § 561.026 RSMo (disenfranchisement).

As this Court is well aware, the issue of disenfranchisement or prohibiting the right to run for office based on conviction of a crime has been subject to extensive examination and consideration by the courts. *See Richardson v. Ramirez*, 418 U.S. 24 (1974), *McLaughlin v City of Canton*, 947 F. Supp. 954 (S. D. Miss. 1995), *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d. 274 (1972). While many of those cases involved the equal protection argument, they also address the level of scrutiny courts and legislatures pay to laws restricting the rights to vote or hold office based on conviction of a crime.

In this case, HB 58 was amended to include the sweeping prohibitions contains in § 115.348 with little debate or discussion. This is evidenced by the fact that § 115.348 on its face amends the earlier limitations § 561.021.2 placed on candidacy for office based on a federal felony conviction. Given the obvious manifest changes in Missouri law relating to the collateral consequences of a federal felony conviction imposed by § 115.348, it cannot be fairly stated that this legal change meets the standards considered by the Court in *State ex rel. McNary v. Stussie*, 518 S.W.2d 630, 632 (Mo. banc 1974).

#### **IV. SECTION 115.348 IMPERMISSIBLY AMENDS CONSTITUTIONAL PROVISIONS RELATING TO THE RIGHT TO VOTE.**

As stated in Respondents' opening Brief at 53-54, Art. XII of the Missouri Constitution sets out the requirements for amendments to the Constitution. In this case, as set forth therein and above, § 115.348 sets standards candidacy for public office and imperils a constitutional right that is analogous to the right to vote. Thus, it violates Art. I, § 2, Art. VIII, § 2, and Art. XII of the Missouri Constitution. Appellants' arguments are unpersuasive and should be disregarded.

**V. HB 58 VIOLATES THE RIGHTS OF THE CITIZENS OF JACKSON COUNTY TO FORM THEIR OWN CHARTER GOVERNMENT SETTING QUALIFICATIONS FOR ELECTIVE OFFICE.**

Nowhere in their answering Brief do Appellants address the fundamental question raised by Respondents – that the provisions of the Jackson Court Home Rule Charter, which clearly set out standards for qualifications for elective office, are violated by the sweeping limitations on eligibility for office imposed by § 115.348.

Jackson County has the right to adopt a charter which stands on a par with acts of the Legislature. *Tremayne v. City of St. Louis*, 6 S.W.2d 935, 939 (Mo. banc 1928). In that Charter, the County may include all the powers the people delegate to it therein. *State ex rel. Kansas City v. North Kansas City*, 228 S.W.2d 762, 771 (Mo. banc 1950). It is of no legal consequence whether the issue examined is a county or city government. In this case, the citizens of Jackson County have exercised their constitutional rights to adopt a charter government which provides qualifications for its elected members of the County Legislature. See Respondents' opening Brief at 13 (Statement of Facts). Section 115.348

unconstitutionally interferes with these rights in that it unjustifiably and impermissibly places more restrictive limitations on candidacy than those chosen by the people of Jackson County for their own form of government.

**VI. SECTION 115.348 WAS A SPECIAL LAW THAT VIOLATES ARTICLE III, SECTIONS 40(30) AND 42 OF THE MISSOURI CONSTITUTION.**

At trial, Respondents presented evidence, in the form of legislative record and the testimony of Respondent Rizzo, to show that § 115.348 was introduced for an improper and punitive motive to get at Rizzo personally, rather than to further any clearly articulated state interest or purpose. The trial court considered Rizzo's testimony as an offer of proof, but rejected it as not relevant. Tr. 14, 36-37. However, this Court's review is *de novo*, and it may consider evidence rejected by the trial court in support of an argument challenging the statute on constitutional grounds. Taken together, the evidence clearly shows that § 115.348 was passed with little discussion or debate as part of a much larger bill and that its sponsor, Senator Victor Callahan, expressly linked the purpose of that section to Rizzo in a subsequent conversation between them. Tr. 11-12, 15-16. Thus, one may conclude that § 115.348 was directed to a particular individual and was a special bill, which implicates particularized constitutional standards for consideration and passage. As a special bill, § 115.348 failed to meet the standards under Art. III, §§ 40(30) and 42. *State ex rel. Lionberger v. Polle*, 7 Mo. 645, 650 (1880); *Fire District of Lemai v. Schmidt*, 184 S.W.2d 593 (Mo. banc 1945).

**VII. SECTION 115.348 VIOLATES THE RESTRICTIONS IN ARTICLE III, SECTION 13 OF THE MISSOURI CONSTITUTION AGAINST RETROSPECTIVE LAWS.**

As stated in Respondents' opening Brief, when applied to all three Respondents, § 115.348 deprives each of them of substantial, rather than procedural, constitutional rights and is retrospective in its application. The statute violates Art. I, § 13 of the Missouri Constitution. Appellants' arguments in response thereto are unconvincing and must be disregarded.

**CONCLUSION**

The judgment of the trial court that § 115.348 violates equal protection should be affirmed. Alternatively, this Court should reverse the judgment of the trial court and find that § 115.348 and HB 58 are unconstitutional for the reasons set forth above and as presented to the trial court.

Respectfully submitted,

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**Certificate of Service**

The undersigned certifies that this 4<sup>th</sup> day of April, 2006, two (2) copies of the above and foregoing were hand delivered, to:

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this Reply Brief of Respondents Henry Rizzo, Lindsay Runnels, and Angela Castles, in the above-captioned matter complies with Rule 55.03 of the Missouri Rules of Civil Procedure. More specifically, this brief was prepared using WordPerfect 9, printed in 13-point Times New Roman proportionally-spaced type font. I further certify that, in conformity with the requirements of Rule 84.06(b), the above reply brief contains 3,294 words. I further certify that the computer diskette submitted herewith was new out of the box and that after the brief was copied thereon, the diskette was scanned for viruses using Trend OfficeScan WinNT 5.58, and no viruses were detected.

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