



**TABLE OF CONTENTS**

Introduction ..... 1

I. A Motion To Dismiss Does Not Presume Petitions Are True  
“In All Regards,” And It Tests Legal Assertions That Are  
Not Well-Pled Facts. .... 2

    A. Under Rule 55.27, Courts Decide if Statutes  
    Mean What They Say. .... 2

    B. Plaintiffs Must Be Held To The Factual  
    Averments In Their Petition ..... 5

II. Plaintiffs Lack Standing To Seek A Declaratory Judgment ..... 8

III. The Petition Fails To State A Claim For Relief In Mandamus. .... 15

    A. The Trial Court Could Not Accept at Face  
    Value Plaintiffs’ Legal Arguments. .... 15

    B. No Law Requires Assessor Pope To Accept KCP&L’s  
    Report As The “True Value In Money” ..... 15

IV. Plaintiffs’ Counts III and IV Fail. .... 24

V. Plaintiffs’ Claims Are Moot. .... 27

Conclusion. .... 29

## TABLE OF AUTHORITIES

### Cases

<i>Alexian Brothers Sherbrooke Village v. St. Louis County,</i> 884 S.W.2d 727 (Mo.App. 1994) .....	9
<i>Boever v. Special School Dist. of St. Louis County,</i> 296 S.W.3d 487 (Mo.App. 2009) .....	3
<i>City of Richmond Heights and</i> <i>Clayton Sch. Dist. v. Board of Equalization of St. Louis County,</i> 586 S.W.2d 338 (Mo. banc 1979) .....	9, 12
<i>Cupples-Hesse Corp. v. Bannister,</i> 322 S.W.2d 817 (Mo. 1959) .....	29
<i>Hermel, Inc. v. State Tax Commission,</i> 564 S.W.2d 888 (Mo. banc 1978) .....	16
<i>J.C.W. v. Wyciskalla,</i> 275 S.W.3d 249 (Mo. banc 2009) .....	4
<i>Snider v. Casino Aztar/Aztar Missouri Gaming Corp.,</i> 156 S.W.3d 341 (Mo. 2005) .....	20, 28
<i>State ex inf. Riederer ex rel. Pershing Sq. Redevelopment Corp. v. Collins,</i> 799 S.W.2d 644(Mo.App. 1990) .....	5
<i>State ex rel. Brentwood Sch. Dist. v. State Tax Commission,</i> 589 S.W.2d 613 (Mo. banc 1979) .....	9
<i>State ex rel. City of Cabool v. Texas Co. Board of Equalization,</i> 850 S.W.2d 102 (Mo. banc 1993) .....	9, 10, 13

<i>State ex rel. Dobbins v. Reed</i> , 60 S.W.2d 70 (Mo. 1900) .....	16, 17
<i>State ex rel. Henley v. Bickel</i> , 285 S.W.3d 327 (Mo. banc 2009) .....	2
<i>State ex rel. Johnson v. Sevier</i> , 98 S.W.2d 677 (Mo. banc 1936) .....	4
<i>State ex rel. Lee v. City of Grain Valley</i> ,	
293 S.W.3d 104 (Mo.App. 2009) .....	2, 3, 27
<i>State ex rel. Mason v. County Legislature</i> ,	
75 S.W.3d 884 (Mo.App. 2002) .....	10
<i>State ex rel. Reed v. Reardon</i> , 41 S.W.3d 470 (Mo. banc 2001) .....	29
<i>State ex rel. Sprint Missouri, Inc. v. Public Service Com'n of State</i> ,	
165 S.W.3d 160 (Mo. 2005) .....	21
<i>State ex rel. St. Francois County School Dist. R-III v. Lalumondier</i> ,	
518 S.W.2d 638 (Mo. 1975) .....	9, 16, 22
<i>State ex rel. Thompson v. Jones</i> , 41 S.W.2d 393 (Mo. 1931) .....	28
<i>State ex rel. Twiehaus v. Adolf</i> , 706 S.W.2d 443 (Mo. banc 1986) .....	3, 4
<i>State ex. rel. Pehle v. Stamm</i> , 65 S.W. 242 (Mo. 1901) .....	16
<i>Ste. Genevieve School Dist. v. Bd. of Aldermen</i> ,	
66 S.W.3d 6 (Mo. banc 2002) .....	8, 9
<i>Wymore v. Markway</i> , 89 S.W.2d 9 (Mo. 1935) .....	16

**Statutes and Regulations**

§12 CSR 30-2.011 .....	19, 21, 22
§53.030, RSMo. ....	18, 19
§137.155, RSMo. ....	17

§137.275, RSMo. ....	12
§138.430, RSMo. ....	12
§151.020, RSMo. ....	19
§151.100, RSMo. ....	17
§151.110, RSMo. ....	15, 18, 19, 20, 21, 22
§153.030 RSMo. ....	20
§153.034 RSMo. ....	19, 25, 26

## Introduction

“Respectfully, the proper focus of the Court’s consideration is the Underlying Petition.” These words appear on page 15 of Plaintiffs’ brief. Yet atop this initial truism, Plaintiffs build a superstructure of needlessly complex and almost imperceptibly skewed arguments. Brick by brick, Plaintiffs erect a version of Missouri law that would be unrecognizable to assessors, taxpayers, and the State Tax Commission—the entity which oversees the entire system but which Plaintiffs refused to bring into this case.

With their latest brief, Plaintiffs’ argument—fixed by their Petition on a collision course with Missouri law—finally implodes on itself. Attempting to harmonize statutes which Plaintiffs had apparently not considered when crafting their pleadings, Plaintiffs *now claim that only “land,” not “personal property” is self-valued by utilities*. Plaintiffs are fighting a losing battle to stay within the “mandamus exception” left open by *Cabool*.

This Court need not follow Plaintiffs into their labyrinth. The dispositive issues are few. Two legal assumptions undergird Plaintiffs’ case: (1) construction costs must always equal the true value in money, or market value, of the unfinished work; and (2) railroads and utilities may now create binding estimates of “true value in money” that are only reviewable using a prosecution for perjury. If either assumption fails, Plaintiffs fail. To make its writ final, this Court need only consider the second issue.

Ultimately, Plaintiffs themselves provide the key to deconstructing their elaborate argument: holding them to the well-plead *facts* of the Underlying Petition and answering the question, “Do the statutes mean what they say?” Resp. Br. 15. The answer is “yes.” Plaintiffs’ claims fail and the preliminary writ should be made final.

**I. A Motion to Dismiss Does Not Presume Petitions Are True “In All Regards,” and it Tests Legal Assertions that Are Not Well-Pled Facts**

**A. Under Rule 55.27, Courts Decide if Statutes Mean What They Say**

The parties agree that under *State ex rel. Henley v. Bickel*, 285 S.W.3d 327 (Mo. banc 2009), a writ of prohibition may be appropriate “at the motion to dismiss stage” where the facts plead do not establish a right to relief. Resp. Br. 22-23, citing *Henley*. However, Plaintiffs continue to argue that on a motion to dismiss a petition for mandamus, the court cannot consider “legal” issues. *Id.* For Plaintiffs, this rule prohibits examining statutes to determine whether, under the facts pled and as a matter of law, they actually confer a duty that is ministerial. *Id.* This is incorrect. Indeed, it inverts the analysis required under Rule 55.27: as Plaintiffs admit elsewhere, a motion to dismiss refrains from weighing well-pled facts, reviewing the law “in an almost academic manner” against the facts to determine whether the case should proceed. Resp. Br. 21-22.

This analysis applies equally where the motion challenges the sufficiency of a petition in mandamus. Because the existence of a presently existing duty is an essential element of mandamus, *petitioners’ assertions about statutory interpretation are not presumed true*. They are not punted down the road for later consideration. “Whether a petitioner’s right to mandamus is clearly established and presently existing is determined by examining the statute or ordinance under which petitioner claims the right.” *State ex rel. Lee v. City of Grain Valley*, 293 S.W.3d 104, 107 (Mo. App. 2009) (citing *State ex inf. Riederer ex rel. Pershing Sq. Redevelopment Corp. v. Collins*, 799 S.W.2d 644, 649 (Mo. App. 1990)) (emphasis added).

Simply citing a statute and incanting the word “ministerial” cannot pass muster where the court’s examination of the statute shows that it actually *does not* confer a “clearly established and presently existing right.” *Lee*, 293 S.W.3d at 107. Duties enforced in mandamus are “already defined by the law.” *Id.* Where as here the court need only review statutes to see *how the law is defined*, it is unnecessary to take discovery and entertain summary judgment motions or bench trials. The trial briefs and summary judgment motions will be identical to the motion to dismiss.

Respondent cites only one case to support its theory that on motions to dismiss in mandamus, courts must avoid considering whether statutes confer a clear, ministerial duty: *Boever v. Special School Dist. of St. Louis County*, 296 S.W.3d 487, 492 (Mo. App. 2009).<sup>1</sup> The *Boever* plaintiffs failed to name *any* statute or regulation which conferred a duty. The court’s rejection of their claim on those grounds hardly means that the converse is true: that merely *mentioning* a statute and using the word “ministerial” would have sufficiently pled the existence of a ministerial duty imposed by statute, overcome official immunity, and allowed discovery, summary judgment or trial.

Indeed, *Boever* cites another official immunity case which exposes the fallacy of Plaintiffs’ argument: *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 445 (Mo. banc 1986). As in *Boever*, the *Twiehaus* plaintiffs failed to cite a statute. This Court nonetheless examined and construed a relevant statute as if it had been cited. *Id.* Ultimately, it held that the statute did not establish a duty running to the benefit of the

---

<sup>1</sup> Plaintiffs fail to mention that *Boever* deals with official immunity, not mandamus.

plaintiffs, and that therefore official immunity applied and there was “no cause of action.” *Id.* *Twiehaus* confirms that the relevant analysis on a motion to dismiss is not whether statutes are cited or magic words such as “ministerial” are uttered, it is whether the well-pled facts actually invoke these legal principles. Our courts reward meritorious causes, not artful pleading.

Respondent next claims that KCP&L relies on cases inconsistent with *J.C.W. v. Wyciskalla*, 275 S.W.3d 249, 252 (Mo. banc 2009). As discussed above, however, KCP&L relies squarely on *Henley*, *Henley* followed *Wyckiskalla*, and the parties agree that under *Henley*, writs may issue where pleading failures go unchecked. Resp. Br. 22. Further, as set forth in its prior briefing, KCP&L sought prohibition not just for a pleading failure, but also, *inter alia*, to prevent unnecessary and inconvenient litigation and because problems of standing and mootness also implicate justiciability.

Finally, Plaintiffs’ rhetorical appeal to the inherent power of courts to “declare the law” and make public officials “do their jobs” misses the point. “The fact that [the] court [is] a court of general equity jurisdiction, and has the power to issue or direct writs of injunction to issue, will not of itself answer the contention made *in this case*.” *State ex rel. Johnson v. Sevier*, 98 S.W.2d 677, 681 (Mo. banc 1936) (emphasis added). The lesson of recent case law is *not* that so long as talismanic phrases are invoked by learned counsel, it is an injustice to dismiss a case before summary judgment or trial. A remedial writ is a necessary reminder that while our courts remain open even to novel attempts to overturn time-tested constitutional, statutory, and administrative regimes, the underlying theories deserve to be fully considered and *legally* tested on the well-pled facts.

## **B. Plaintiffs Must Be Held to the Factual Averments in Their Petition**

Plaintiffs beat the drum of relying on their Petition. Straining to live to fight another day, however, they cannot resist the temptation to obscure key allegations or add outside-the-record claims as if they are facts.<sup>2</sup>

Most glaring is the fact that the words “cost” and “construction” hardly appear at all in Plaintiffs’ latest brief. This is deliberate. Plaintiffs want this Court to believe that it must accept as “fact” that KCP&L reported the value of its construction work in progress, and that Assessor Pope applied a “50% discount to the true value in money” reported by

---

<sup>2</sup> Plaintiffs claim they “informed the trial court” that “the local assessor placed herself in a position to retaliate against the School District if it refused to endorse her work prior to her last election.” Resp. Br. 16. In fact, Plaintiffs put on no such evidence before the trial court, nor did Plaintiffs plead it in their Petition. Their current counsel made only a brief and vague allusion to this topic in a lower court brief. Its unexpected reemergence as fact in an appellate brief could be dismissed as gratuitous “spice,” but Plaintiffs go further at page 20, making a constitutional argument. At page 44, Plaintiffs even call the encounter a “quid pro quo,” and for the first time, claim it might give them standing under a line of cases they previously argued did not apply. These allegations have not been pled, which would test them under Rule 55.03(c). Plaintiffs know the prior utterances of their counsel cannot be considered here because, being outside the Petition, they were “improper grounds for a motion to dismiss under Rule 55.27(a).” *State ex inf. Riederer*, 799 S.W.2d at 649.

KCP&L. *See, e.g.*, Resp. Br. 12 (misleadingly citing Petition ¶¶ 31, 32). But the cited paragraphs say nothing about a 50% discount. Instead, the real gravamen of Plaintiffs' claim is at ¶¶ 33-34, not cited once in their brief:

33. In lieu of the statutorily required assessment of the real property at its true value in money, [Pope] has arbitrarily...breached her ministerial duty mandated by statute and assessed the improvements to real property at the Iatan I and Iatan II projects **at 50% of the cost** of the improvements to the real estate resulting in a deprivation to the School District of statutorily-mandated tax funds.

34. In addition, [Pope] has assessed tangible personal property reported to be in use at the Iatan I and Iatan II projects **at 50% of its costs, that is at 50% of its true value in money** which is a breach of her ministerial duty mandated by statute..."

Resp. Appx. A8-9 (emphasis added).

Thus, essential to Plaintiffs' claim is that the *cost* of construction work *is* the "true value in money" of the incomplete improvement. Accordingly, when Plaintiffs posit the "fact" that KCP&L reported the "true value in money" of its incomplete construction and personal property, only to have the Assessor reduce the "true value in money" by 50%, this Court should recognize this claim as a legal conclusion which relies on at least two subordinate legal arguments:

(1) that the "cost" reported by KCP&L, as a matter of law, is always and everywhere the same thing as the "true value in money" (market value) of the incomplete construction; and

(2) that the value reported by KCP&L was the one and only legitimate and binding value, and that it was simply “reduced” by the Assessor to some lesser and inappropriate value.

Each assumption must be tested as a matter of law. Plaintiffs “get” their well-pled facts, not their legal arguments.

Finally, Plaintiffs include many appendix materials that exist nowhere in the record. At A79-A80, Plaintiffs attach what are clearly only the first pages of what they represent are forms submitted by KCP&L. Plaintiffs also attach truncated discovery responses from the Missouri Tax Commission in a proceeding in which KCP&L is not a party. These incomplete and non-record materials further support KCP&L’s position, but need not and cannot be considered in deciding whether Plaintiffs state a claim.

## II. Plaintiffs Lack Standing to Seek a Declaratory Judgment

From day one, Plaintiffs have struggled to craft a theory that might confer standing for declaratory relief regarding the assessment of KCP&L's property. Plaintiffs pled that their lawsuit seeks to recover lost tax revenue, hoping to rely on *Ste. Genevieve School Dist. R-II v. Bd. of Aldermen of the City of Ste. Genevieve*, 66 S.W.3d 6 (Mo. banc 2002), a case which had nothing to do with a challenge to property valuations or assessments. Yet to avoid the long line of controlling cases which prohibit school districts from challenging valuations or assessments based on claims of lost tax revenues, Plaintiffs *also* claim that they do not (1) challenge Assessor Pope's "discretionary" valuation and assessment or (2) seek to "increase" the valuation or assessment of KCP&L's property. While Plaintiffs continually charge that KCP&L, in seeking to expose these fallacies, "mischaracterizes" (or worse, "deliberately misrepresents") their Petition or the law, the real problem is Plaintiffs' inability to distinguish declaratory judgment from mandamus.

By invoking the ministerial/discretionary distinction, Plaintiffs' first counterargument simply dodges the issue of whether declaratory judgment is proper *under Count I* and shifts the debate to Count II, mandamus. There should be no need to find a definite and ministerial duty in mandamus if the Court can simply grant standing to seek declaratory judgment based on the general statements about "pecuniary loss" in *Ste. Genevieve*,<sup>3</sup> rather than the cases which actually address school districts' challenges to

---

<sup>3</sup> It is not disputed that *Ste. Genevieve* held "a school district that is threatened with the imminent unlawful deprivation of part of its funds has standing to seek a declaratory

valuation and assessments: *State ex rel. St. Francois County School Dist. R-III v. Lalumondier*, 518 S.W.2d 638 (Mo. 1975), *City of Richmond Heights and Clayton Sch. Dist. v. Board of Equalization of St. Louis County*, 586 S.W.2d 338 (Mo. banc 1979), *State ex rel. Brentwood Sch. Dist. v. State Tax Commission*, 589 S.W.2d 613 (Mo. banc 1979), and *State ex rel. City of Cabool v. Texas Co. Board of Equalization*, 850 S.W.2d 102 (Mo. banc 1993).

Put another way, if declaratory judgment is proper, it is *not* because one precondition for mandamus has been met; it is *only* because Missouri law independently confers upon Plaintiffs a legally protectable interest in the valuation and assessment of KCP&L's property.<sup>4</sup> *Alexian Bros. Sherbrooke Village v. St. Louis Co.*, 884 S.W.2d 727,

---

judgment challenging the statutory interpretation that led to the deprivation.” 66 S.W.3d at 10. However, *Ste. Genevieve* did not hold that a school district has standing to challenge the valuation or assessment of another's property. Instead, it considered a city's failure to reconvene a TIF commission *on which the school district had a statutory right of representation*, which meant that the city was able to bypass the school district and amend a redevelopment plan whose cost would be financed by abatements in the taxes used to fund the district. *Id.* at 10.

<sup>4</sup> That is because declaratory judgment does nothing more than allow the declaration of rights between parties with a legally protectable interest “at a stage prior to that justifying an action for other traditional relief.” *Alexian Bros.*, 884 S.W.2d at 729. Unlike mandamus, declaratory judgment allows for claims to be brought under a range of

728-729 (Mo. App. 1994) (holding that the rationale in *St. Francois*, *Richmond Heights*, and *Cabool* compelled the conclusion that a school district did not have an interest in, and did not have standing to intervene in, a declaratory judgment action challenging an exemption from taxation issued to a property-owner). Whether school districts have such an interest is the precise issue that this Court decided in the negative in *St. Francois* and its progeny, including *Cabool*.

Indeed, it is revealing that Plaintiffs' attack on *St. Francois* and its progeny relies on *Cabool*. Resp. Br. 38-42. *Cabool* does not hold that these cases are bad law; rather, it explicitly affirms them by holding that school districts *do not* have standing to challenge property tax assessments, *except* through the "narrow window" [] by which even a member of the general public may seek mandamus against a public official" when the public official is "required to perform ministerial duties...." *Id.* at 105 (citation omitted). The *Cabool* dissenters, including Judge Price, agreed that the *only* permitted third party challenge to an assessment—the valuation of property, categorization of property, and application of proper tax rate by an assessor—is a mandamus action. Third parties lack standing to seek declaratory judgment regarding the assessment of another's

---

underlying causes of action. *See State ex rel. Mason v. County Legislature*, 75 S.W.3d 884, 888 (Mo. App. 2002). However, for the very reason that traditional causes of action must be pled in a declaratory judgment claim, standing is much stricter for declaratory judgment than for mandamus, which is open to the "general public," but only where a pre-existing ministerial duty has not been performed. *Cabool*, 850 S.W.2d at 105.

property. By carving out a standing exception for mandamus, *Cabool* did not eviscerate the general rule and open the floodgates to declaratory judgment actions.

Plaintiffs' second "declaratory judgment" counterargument pretends that Plaintiffs are simply acting as custodians of the truth, seeking to increase neither valuations nor assessments. But this is at war with Plaintiffs' claim to have standing because of a pecuniary loss; if KCP&L's valuation and assessment are not supposed to be increased by this lawsuit, Plaintiffs stand to recover nothing and would not even have standing under their broad interpretation of *Ste. Genevieve*. Plaintiffs cannot have it both ways.

Moving beyond this purely rhetorical thrust, Plaintiffs also seek to distinguish *St. Francois* and its progeny by arguing that they were based upon some "variant" of the claim that "the assessor assessed property at \$100 when the plaintiffs believe[d] the property should have been assessed at \$200." Resp. Br. 36. In contrast, Plaintiffs assert, their lawsuit seeks a declaration as to the statutory duties of Assessor Pope to assess KCP&L's property. Plaintiffs' distinction is illusory.

First, the principles that control *St. Francois* and its progeny (which again, apply fully in the declaratory judgment context, but only apply in mandamus as set forth in *Cabool*) do not depend on the specific type of challenge a school district brings against a valuation or assessment. Political subdivisions are prohibited from bringing third-party challenges to an assessment because (1) their interests are already represented in the process, (2) permitting third party challenges would "seriously hinder the smooth functioning of an otherwise streamlined procedure for tax assessments," and (3) it would subject taxpayers "to an extended period of uncertainty as to the amount of [] tax liability

while any entity that might benefit from a higher assessment squabbles with the board over the valuation of the taxpayer's property.” *City of Richmond Heights*, 586 S.W.2d at 343. The General Assembly has legislated that the property tax assessment process is between the taxpayer and the assessor, the county board of equalization, and the State Tax Commission. §§ 137.275, 138.430, RSMo. As a result, even if Plaintiffs’ challenge were somehow different in kind than previous cases which reached this Court, they still lack standing for the very same reasons.

Second, despite being couched in different terminology, Plaintiffs’ lawsuit *is* a challenge to the assessor’s valuation. Plaintiffs believe Assessor Pope undervalued KCP&L’s property because, although KCP&L reported the “true value in money” of real and personal property, Pope (1) “assessed [construction work in progress] at 50% of the cost of the improvements...” (¶ 33 of the Underlying Petition), and (2) “assessed tangible personal property... at 50% of its costs, that is, at 50% of its true value in money which is a breach of her ministerial duty...” (¶ 34 of the Underlying Petition).

Again, Plaintiffs’ *actual pleading* is the key to deconstructing their argument. It reveals that their argument is based on two assumptions: that (1) the costs of incomplete construction *must legally equal* its “true value in money,” and that someone who believes the market value of an incomplete project is something different than current cash outlays has “breached” a “statute,” and (2) the values that KCP&L reports on its forms must automatically be accepted by the Assessor. Plaintiffs *have to bury these assumptions* (¶¶ 33-34 are not cited in Plaintiffs’ brief) to make it less obvious that this lawsuit simply seeks to increase the valuation of KCP&L’s construction work in progress until it equals

KCP&L's actual cash outlays. Future Plaintiffs should have no less difficulty in converting their attempts to increase valuations and assessments into claims that the assessor failed to assess a property at its "true value in money" or "left out" some property, thereby violating a statute and supposedly bringing the case outside of *St. Francois* and its progeny. Artful verbiage cannot change the basis of Plaintiffs' lawsuit.

Finally, *Cabool* itself obliterates Plaintiffs' purported distinction. *Cabool* was not a challenge to the "discretionary valuation" of an assessor. Rather, the *Cabool* plaintiffs asserted that the law compelled the county assessor to require proof from the owner that a commercial truck had acquired tax situs in another state before apportioning the assessment of that truck. *State ex rel. City of Cabool*, 850 S.W.2d at 105. Despite the fact that the challenge was directed toward an alleged "duty" of the assessor, this Court stated that political subdivisions do not have standing to challenge property tax assessments, *except* through mandamus, proceeding with its analysis solely under that rubric.

In conclusion, it appears that all of Plaintiffs' standing arguments (including several straw-men) are infected with a fundamental confusion between declaratory judgment and mandamus. For example, at page 35, Plaintiffs state: "KCPL asserts that on the specific question of a school district or a taxpayer's ability to challenge the failure of the assessor to perform ministerial duties, no [] standing exists, even when those failures may result in a loss of tax revenue if the assessor had followed the law." As a matter of standing to obtain *declaratory relief*, this correctly states KCP&L's position. However, KCP&L readily concedes that *mandamus* provides a "narrow window" through which districts may compel assessors (or other officials) to perform a ministerial duty.

Likewise, Plaintiffs ask: “But what happens, for example, if an assessor refused to assess property that should be assessed by law? ... In that circumstance, KCPL’s argument is that the assessor’s failure to value the property at all is unassailable unless KCPL itself challenges the assessor’s decision not to tax its property.” Resp. Br. 16. Again, Plaintiffs need not worry. KCP&L makes no such argument. Mandamus remains available to ensure that an assessor includes property that needs to be included.

KCP&L’s position is precisely the position taken by this Court in *Cabool*: Plaintiffs have no standing to seek declaratory judgment, but may proceed in mandamus if Assessor Pope has failed to perform a clearly-defined and presently existing ministerial duty. *Cabool* confirms that mandamus is the only available theory. However, as discussed next, Plaintiffs’ mandamus claims fail because, as a matter of law, Assessor Pope had no duty to value and assess KCP&L’s property in the manner Plaintiffs allege.

### **III. The Petition Fails to State a Claim for Relief in Mandamus**

#### **A. The Trial Court Could Not Accept at Face Value Plaintiffs' Legal Arguments**

As discussed in Section I, Plaintiffs get their well-pled facts, not their “pled” law. Courts should pass upon Plaintiffs’ legal claims about statutory meaning. As discussed below, Plaintiffs’ legal arguments defy reason and should be rejected.

#### **B. No Law Requires Assessors to Accept KCP&L’s Reporting as the “True Value in Money”**

KCP&L’s opening brief demonstrates that under the statutes, regulations, and forms governing the assessment of utility property, Assessor Pope was to make her *own* assessment of KCP&L’s property, including estimating the “true value in money” of that property. While KCP&L’s analysis confirms that mandamus will not lie, it was Plaintiffs who bore the responsibility of finding some law that clearly required Assessor Pope to accept the value reported by KCP&L and *not* make her own valuation. In the absence of this “clearly defined duty,” mandamus cannot issue.

Plaintiffs’ statutory argument *begins* with a legal conclusion—that the valuations required by Section 151.110 are under oath and therefore binding on the assessor—and works backwards from there. But Plaintiffs’ starting point is the ultimate question; Plaintiffs must prove the statutes *require*, not merely *tolerate*, their conclusion. Section 151.110 requires utilities like KCP&L to provide county assessors a list of local “lands” “and the true value of money thereof.” It *nowhere* provides that a utility’s valuation is the final, conclusive, and binding valuation. It would have been easy to so state. As

discussed below, however, any such requirement would conflict with numerous other statutes and regulations.

It is a truism that “true value in money” has one meaning. Resp. Br. 50. “‘True value’ is an estimate of the fair market value on the valuation date. This definition has not changed from case to case. What does change are the methods used and the factors considered in determining ‘true value.’” *Hermel, Inc. v. State Tax Commission*, 564 S.W.2d 888, 897 (Mo. banc 1978). Plaintiffs fail to grasp that “true value” is “never subject to exact ascertainment, and [is], at best, [a] matter[] of opinion and estimate on the part of the taxing officials.” *St. Francois*, 518 S.W.2d at 641 (citation omitted). As a result, there is no one objectively verifiable “true value” of any given property.

Any two persons valuing the same property may (and likely will) reach different estimates of true value. Neither commits perjury; neither “reduces” the other’s value; neither “changes the meaning” of “true value in money.” That is why the General Assembly provides that assessors—public officials—have the final say in valuation, and why this Court has never held that a taxpayer’s valuation is binding on the assessor. *State ex rel. Dobbins v. Reed*, 60 S.W.2d 70, 71 (Mo. 1900); *State ex. Rel. Pehle v. Stamm*, 65 S.W. 242, 244 (Mo. 1901); *Wymore v. Markway*, 89 S.W.2d 9, 13 (Mo. 1935).<sup>5</sup>

---

<sup>5</sup> Plaintiffs do not meaningfully distinguish these cases. Resp. Br. 58-59. Every case is distinguishable somehow; it is the legal principles extrapolated from a case that are important. Each cited case stands for the proposition that when taxpayers are required to provide sworn valuations of property to assessors, assessors are not bound “to accept the

As described below, despite a yeoman's effort to wrench the governing statutes and regulations into alignment with their desired outcome, Plaintiffs are unable to resolve the statutory conflicts created by their self-valuation theory.

**“Assessment” includes making a valuation.**

Plaintiffs claim the zeitgeist of their creative statutory construction is the three-step nature of an assessment. KCP&L “reads the word ‘assessment’ too narrowly,” they claim, failing to appreciate that “assessment” refers to the process of (1) the valuation of property, (2) the categorization of property, and (3) the application of the relevant tax rate, together. Resp. Br. 19-20. However, it is Plaintiffs’ creative statutory construction that muddles the three-step nature of an assessment.

For example, Section 151.100 states: “All local property owned or controlled by any railroad company or corporation in this state, shall be *assessed by the proper assessors* in the several counties, cities, incorporated towns and villages wherein such property is located....” *Id.* (emphasis added). According to Plaintiffs, however, “assessed” *here* does *not* mean the three-part assessment process they stress elsewhere. Instead, “assessed” encompasses only the second and third steps of the assessment process, Resp. Br. 31 (Section 151.110 can be read as “merely authorizing the local

---

valuation fixed by the taxpayer....” *State ex rel. Dobbins*, 60 S.W.2d at 71. While individuals must no longer swear to (or affirm) values of tangible personal property, they must still swear to the list itself. §137.155, RSMo. No one claims that this sworn or affirmed list is somehow binding on assessors.

assessor to complete the final two steps of the assessment process....”), and perhaps only the third step. Resp. Br. 52-53 (suggesting that utilities conclusively value *and* categorize “land”).

Likewise, Section 151.110.2 (emphasis added below), provides: “Each county assessor in this state shall certify a copy of the report required by subsection 1 of this section *and a copy of assessments thereon* to the county clerk, the company and the state tax commission no later than April twentieth in each year.” Again, according to Plaintiffs, “assessment” *here* includes only the latter two steps of the process, because the assessor is prohibited from taking the first step, the valuation. Resp. Br. 52. Moreover, Plaintiffs never explain how assessors performing the partial assessment suggested—in contravention of the plain meaning of the term “assessment”—can comply with their oaths of office. *See* § 53.030, RSMo. (assessor is charged with “assess[ing] *all* of the real and tangible personal property in the county... *at what [s]he believes to be* the actual cash value”) (emphasis added).

Plaintiffs’ wrenched effort to conform the applicable statutes to their self-valuation theory results in a malleable and unpredictable meaning of “assessment.” Depending upon the statute, sometimes “assessment” encompasses a one-step process, sometimes two-step, and sometimes three. It is apparently up to Plaintiffs to decide which definition applies to a given statute. This cannot be right. The statutes mean what they say: county assessors are charged with assessing the local property of utilities, a process that Plaintiffs concede includes valuing such property.

## **Plaintiffs' New Interpretation of §151.110.1 to Cover Only "Land" Devours Their Entire Theory**

Plaintiffs recognize that provisions such as §§151.110.3 and 53.030, RSMo., and 12 CSR 30-2.011, suggest that county assessors *do* value local utility property, throwing a wrench into their "self-valuation" theory. Stretching to avoid one disharmony, Plaintiffs craft a brand new argument. Unfortunately for Plaintiffs, it creates a far worse disharmony and ultimately devours their entire theory.

Specifically, Plaintiffs now argue that the above-cited provisions can be harmonized with utility self-valuation because, despite their lack of limiting language, they *really* only relate to the valuation of local "tangible personal property." To achieve this result, Plaintiffs return to the language of §151.110.1. The statement required under §151.110.1, they say, is only for "lands," and not personal property. Any other numbers reported on the §151.110.1 are informational only, Plaintiffs claim, preserving a role for the assessor in valuing *some* local utility property.

As an initial matter, this logic battles the Petition itself, which pleads that 151.110.1 "self-valuation" reports *do* bind the Assessor on personal property. ¶¶ 32, 34.

Worse, Plaintiffs assume that "lands" includes "fixtures," which they believe also include the primary target of their lawsuit: construction work in progress. However, this runs headlong into §§151.020 and 153.034.2, RSMo., which define the specific "local property" that should be listed on the 151.110.1 report. These statutes expressly define several types of "land" (including, in §153.034.2, generating plant lands) as a type of property *different from* "construction work in progress." Additionally, construction work

in progress is not necessarily real property. *See* A79-A80 (listing “construction work in progress” as distinct from “real estate,” and dividing construction work in progress between real and personal property).

Further, Plaintiffs would now treat the valuation of “lands” differently from the valuation of other types of utility real property even though “lands” is not a recognized sub-category of property in Missouri for subclass 3 (utility property) of class 1 (real property). Art. X, §4 of the constitution prohibits the creation of a valuation subclass of utility property. *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W.3d 341, 349 (Mo. 2005).

Finally, Plaintiffs’ effort to limit their self-valuation argument to “lands,” while unwittingly eviscerating their theory, is *still* unfaithful to the law. If local personal property is not to be reported under §151.110.1, but must still be “derived by” the assessor under 151.110.3, how is the assessor ever to obtain utilities’ local property data? Section 153.030.3, which applies specifically to utilities, provides the answer: “tangible personal property” *is* supposed to be reported via the Chapter 151 (railroad) forms. Ultimately, Plaintiffs’ labyrinth leads nowhere.

### **Section 151.110.3, RSMo.**

Plaintiffs’ effort to harmonize Section 151.110.3 with “self-valuation” becomes even more convoluted. After the report required by Section 151.110.1 has been submitted to the county assessor, completed, and returned to the railroad or utility, Section 151.110.3 requires that utilities furnish a list to the State Tax Commission containing the “*true value in money of all local property as derived by the county assessor....*” *Id.*

(emphasis added). Thus, the statute plainly contemplates the county assessor making her own estimate as to the true value in money of “all local property” of a utility. *Id.*

Nonetheless, Plaintiffs suggest the Webster’s definition of “derive” means that the assessor simply *copies* the value of “land” from an indisputable value reported by the utility under Section 151.110.1. The statute implies no such thing. Property is *always* assessed by “deriving” the value from the property or from data in taxpayer statements. Plaintiffs recognize as much by conceding, in the case of *personal* property, that the assessor “derives” value from the property itself. Resp. Br. 61. There is simply nothing in §151.110.3 suggesting, let alone requiring, that assessors derive the value of “land” from utilities reports, while deriving the value of all other property from the property itself.

#### **The State Tax Commission’s Interpretation**

Plaintiffs’ creative statutory construction also contradicts the State Tax Commission, which is entitled to great deference. *State ex rel. Sprint Missouri, Inc. v. Public Service Com’n of State*, 165 S.W.3d 160, 164 (Mo. 2005). The Commission’s regulations plainly require assessors to make their own valuation of the local utility property. 12 CSR 30-2.011. (“each assessor in the state **shall estimate on Form 30, Schedule 14 the market value of property** owned by each railroad...and other similar public utility corporations...doing business within his/her jurisdiction.”).

Inexplicably, Plaintiffs argue that this regulation does not apply to “locally assessed property.” Resp. Br. 55. The regulation, however, explicitly applies to “each assessor in the state,” and specifically references Form 30, Schedule 14, the form used by utilities to report and value local property. Even more perplexing, Plaintiffs admit

elsewhere in their brief that Form 30, Schedule 14, *is the form required by Section 151.110.1 for the reporting of local property*. Resp. Br. 13-14. By Plaintiffs' own admission, 12 CSR 30-2.011 governs the very report they allege is binding on assessors, and specifically *requires* assessors to make independent valuations of *all* property (not just tangible personal property) listed therein.

**Taxpayers do not conclusively self-value their own property.**

Finally, as discussed in KCP&L's opening brief, if Plaintiffs' self-valuation theory prevailed, the valuation of a railroad or utility company would be unreviewable. Neither the assessor, the board of equalization, the State Tax Commission, nor anyone else, could appeal to increase or decrease the company's numbers. Plaintiffs surmise that requiring self-valuations be made under oath "ameliorat[es] to some extent the potential for abuse by a utility...." Resp. Br. 61. But Plaintiffs again fail to appreciate that "true value" is "at best" an opinion and an estimate. *Lalumondier*, 518 S.W.2d at 641. Would the "sword of perjury" involve criminal charges against a utility officer alleging that his *discretionary estimate* is not the correct *estimate*? Courts would then be forced into the thicket of determining whether an "estimate" was a knowing misstatement.

Thankfully, these hypothetical concerns can remain just that. The notion of a taxpayer conclusively self-valuing property is foreign to Missouri law. This Court should decline Plaintiffs' invitation to engage in convoluted and conflicting statutory construction in order to support a self-valuation theory crafted solely to maximize Plaintiffs' one-time tax recovery. The statutes in question, read according to their plain meaning, and in agreement with the interpretation of the State Tax Commission, are

consistent and harmonious. Public utilities provide county assessors with a list of property and an estimated market valuation thereof, and the assessor can then exercise her discretion in making her own valuation of the property. Plaintiffs' mandamus claim fails as a matter of law.

#### IV. Plaintiffs' Counts III and IV Fail

The key to deconstructing Plaintiffs' arguments on Counts III and IV is a simple comparison of Plaintiffs' "well-pleaded material facts" (Resp. Br. 9) to the statutes, which in the end, "mean what they say" (*Id.* at 9). Counts III and IV assert that the entire value of Iatan I switched from distributable (Tax Commission-assessed) property to local (County Assessor-assessed) property "[o]nce Iatan I ceased generating and/or distributing electricity and [was] not capable of generating electricity..." Petition ¶ 56. The Assessor had a ministerial duty to determine the distributable value of Iatan I, they say, and add it to her local assessment. Petition ¶¶ 56-57, 60-61. Plaintiffs plead that this ministerial duty existed precisely "**because that plant was not operational, that is, not generating or distributing electricity, on January 1, 2009.**" Petition, ¶ 61 (emphasis added).

Plaintiffs do not stop there; at page 66, their brief admits the centrality of January 1 to their claim:

If, for example, Iatan II goes on line on December 31, 2010, it will become distributable property on that date. If, however, it goes on line on January 2, 2011, it will remain local property for tax purposes. **The difference is the status of the property on January 1.**<sup>6</sup>

---

<sup>6</sup> On the "January 1" issue, there is no daylight between Plaintiffs' pleading and briefing and KCP&L's discussion in its initial brief. *See* Relator's Brief 33, noting that Plaintiffs' theory depends on whether equipment is capable of generating electricity "sometime

Under Plaintiffs' version of §153.034, then, whether an item of property is "local" or "distributable" depends not on the *type* of property—the "purpose" for which it is "held"—but on its *operational status on a given date*. But the statute actually provides:

1. The term "**distributable property**" of an electric company shall include all the real or tangible personal property which is used directly in the generation and distribution of electric power, but not property used as a collateral facility nor property held for purposes other than generation and distribution of electricity.

Such distributable property includes, but is not limited to:

(1) Boiler plant equipment, turbogenerator units and generators;

---

during the twenty-four hours of January 1 in the relevant year." KCP&L makes no "breathhtaking" misstatement, and Plaintiffs now admit that under their pleading, the inability of a particular item of property to generate electricity on January 1 will indeed shift hundreds of millions or billions of dollars of value back and forth from local to state assessment each year. Resp. Br. 66. With some indignation, Plaintiffs emphasize their allegation that Iatan I was worked on for six months (Resp. Br. 63), but under their own theory, why should that matter? Should it make a finding of ministerial duty seem fairer in this particular case? If that is so, how long is long enough for the allegedly "ministerial" duty to arise? Two weeks? Three months? Plaintiffs' confusion arises from their errant focus on the operational ability of a piece of equipment *during a certain period of time*, rather than on the kind and purpose of equipment—the bright-line distinction that § 153.034 actually makes.

- (2) Station equipment;
- (3) Towers, fixtures, poles, conductors, conduit transformers, services and meters;
- (4) Substation equipment and fences;
- (5) Rights-of-way;
- (6) Reactor, reactor plant equipment, and cooling towers;
- (7) Communication equipment used for control of generation and distribution of power;
- (8) Land associated with such distributable property.

§ 153.034.1, RSMo. The definition of local property also lists items (including “motor vehicles” and “office furniture”); they are of a type *not* used “directly in the generation and distribution of power.” § 153.034.2, RSMo. Assessing property based on its current operational status as of January 1 of a given year, and not based on the “use” or “purpose” for which it is “held,” is contrary to the clear language and plan of the statute.

There is a second problem with Plaintiffs’ argument—a problem which KCP&L has continually raised and which Plaintiffs have never addressed. If KCP&L files a report of its “local property,” and this report is absolutely binding on the Assessor (*See* Counts I and II, *and, e.g.*, Petition ¶¶ 31-32, 40), then KCP&L’s previously-filed local property reports which purportedly set out “under oath the true value in money of the real property at the Iatan I and Iatan II projects” (Petition ¶ 31) and *do not include the distributable value of Iatan I* should similarly bind the Assessor. Either KCP&L sets the value of its own locally-assessed real property or it does not. Once again, Plaintiffs’ theory is at war with itself; they cannot have it both ways. Plaintiffs’ alleged duties simply do not exist.

## V. Plaintiffs' Claims Are Moot

KCP&L has previously noted that, even if Assessor Pope had a ministerial duty to assess KCP&L's property in the manner Plaintiffs allege, Plaintiffs' lawsuit is moot because they cannot now obtain the requested relief. In response, Plaintiffs argue that irrespective of time, "[r]elief by mandamus is available to the Underlying Plaintiffs," Resp. Br. 72, because "statutes limiting the authority of the assessor do not also limit the authority of the courts to provide a remedy." Resp. Br. 70. Plaintiffs fail to grasp that the sole remedy they have standing to seek—the writ of mandamus—is incapable of providing the requested relief. As discussed above, mandamus is a limited remedy that compels "performance of a duty already defined by law." *State ex rel. Lee v. City of Grain Valley*, 293 S.W.3d 104, 107 (Mo. App. W.D. 2009). "Thus, mandamus enforces existing rights, but may not be used to establish new rights." *Id.* (citation omitted).

Plaintiffs' requested relief—revaluation of KCP&L's local property for 2009 and preceding years and the assessment of Iatan I as local property for the 2009 tax year—is not the performance of a "presently existing" legal right. Plaintiffs' contemplated writ would require Assessor Pope to disregard the plain language of Section 151.100 prohibiting her from increasing any valuation after August 15 of the relevant year, disgorge tax revenue received by political subdivisions pursuant to the assessment of Iatan I as "distributable property," and nullify the Tax Commission's assessment of Iatan I in order to undertake her own valuation of that property. Such relief does not sound in mandamus. Thus, while Plaintiffs argue that "limits to the Assessor's authority to act under the statute do not extend to a court's authority to provide a remedy," Resp. Br. 69,

the *mandamus remedy* they seek is limited to the execution of an existing statutory right, which does not exist here<sup>7</sup>

*State ex rel. Thompson v. Jones*, 41 S.W.2d 393 (Mo. 1931), offers no support to Plaintiffs. There, the county clerk was required by statute to extend and compute taxes and provide a supplemental tax book to the collector. *Id.* at 399. The clerk failed to complete this statutory duty, so a writ of mandamus was issued to enforce it. The writ approved in *State ex rel. Thompson* bears no resemblance to the writ sought by Plaintiffs, which would require the Assessor to perform duties she is either powerless to perform, or statutorily forbidden from performing.<sup>8</sup>

For each tax year at issue, KCP&L's property has already been assessed, the taxes have been levied, and the taxes owed have been paid. If Plaintiffs wished to have

---

<sup>7</sup> Notably, Plaintiffs' failure to request obtainable relief has been made more acute by their failure to join the State Tax Commission as a party. As noted above, only by order of the Tax Commission can Assessor Pope increase a valuation, and the State Tax Commission has already assessed the portions of Iatan I that Plaintiffs allege should have been assessed by Pope. KCP&L filed a motion in the circuit court to join the State Tax Commission as a necessary party, but Plaintiffs opposed the motion and the Respondent overruled it.

<sup>8</sup> Plaintiffs citation to *Casino Aztar*, 156 S.W.3d at 348, is inapposite. That case involved a landowner's appeal to the valuation of its property, a process specifically permitted and governed by statute.

compelled Assessor Pope to raise KCP&L's valuation and assessment in any given year, they should have sought mandamus promptly, prosecuting their claim (seeking emergency relief, if necessary) within the timelines set by the statutory appeal process. *See, e.g., Cupples-Hesse Corp. v. Bannister*, 322 S.W.2d 817 (Mo. 1959) (each yearly assessment is an independent proceeding and judgment, each year's tax is a separate transaction, each action relating to each year's tax is a new cause of action, and separate challenges had to be timely brought on each year's tax assessment). As it is, the time to obtain relief has passed. *See State ex rel. Reed v. Reardon*, 41 S.W.3d 470 (Mo. banc 2001). Assessor Pope has no "presently existing" legal duty to change assessments from previous years. A writ of mandamus cannot provide Plaintiffs with the relief they seek. As a result, Plaintiffs' lawsuit is moot.

### **Conclusion**

For the foregoing reasons, this Court's preliminary writ should be made final.

Respectfully submitted,

 EG

Todd P. Graves (Mo. 41319)

Edward D. Greim (Mo. 54034)

**GRAVES BARTLE MARCUS  
& GARRETT, LLC**

1100 Main Street, Suite 2700

Kansas City, MO 64105

Tel.: 816-256-4144

Fax: 816-817-0863

 EG

James W. Farley (Mo. 15383)

**LAW OFFICE OF JAMES W. FARLEY**

258 Main Street

Platte City, MO 64079

Tel.: 816-858-5080

Fax: 816-858-3005

William G. Riggins (Mo. 42501)

Heather Humphrey (Mo. 44379)

Kansas City Power & Light Co.

1200 Main Street

Kansas City, MO 64105

*Counsel for Relator KCP&L*