

No. 84501

**IN THE
MISSOURI SUPREME COURT**

STEVE BURGESS, ET AL.,

Respondent,

v.

LYNNE GREENE-BELDNER, ET AL.,

Appellant.

**Appeal from the St. Louis County Circuit Court
The Honorable Bernhardt C. Drumm, Jr., Judge
Case No. 02CC-000920**

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

Attorney General Jeremiah W. (Jay) Nixon appeals from the Order and Judgment of the Circuit Court of St. Louis County finding §115.346, RSMo 2000,¹ unconstitutional. L.F. at 44-46. Because this appeal concerns the facial constitutionality of a statute, jurisdiction is proper before the Missouri Supreme Court. *See* Mo. CONST. art. V, §3; *Asher v. Lombardi*, 877 S.W.2d 628, 629 (Mo. banc 1994).

This appeal is not moot, even though the election for the City of Wildwood Council occurred on April 2, 2002, because this is a case “capable of repetition, yet evading review.” *Dunn v. Blumstein*, 405 U.S. 330, 331 (1972). Missouri’s cities and election officials will likely enforce this statute again, ensuring that the issue continues to be a justiciable controversy. *See Corrigan v. City of Newaygo*, 55 F.3d 1211, 1213-14 (6th Cir. 1995); *see also Whitton v. City of Gladstone*, 54 F.3d 1400, 1402 n.5 (8th Cir. 1995) (finding that the constitutionality of a city’s laws governing political signs was not moot because the candidate planned to run for political office in the future). Section 115.346 will apply in future elections to candidates who request certification as a candidate even though they are in arrears for unpaid city taxes or municipal user fees. *See Corrigan*, 55 F.3d at 1213-14. It likely still applies to Burgess, who has now run for office twice and who may run again, even though he still owes the disputed fee.

¹ All citations to §115.346 are to RSMo 2000.

STATEMENT OF FACTS

On March 8, 2002, Steve Burgess filed a Verified Petition for Peremptory Writ of Mandamus asking the Circuit Court of St. Louis County to compel the City of Wildwood City Clerk and the St. Louis County Board of Election Commissioners to place his name on the ballot as a candidate for Wildwood City Council, Ward Seven.² L.F. at 6-7. In this Petition, he alleged that he had met the requirements for candidacy by submitting the following: (1) the filing fee; (2) a Declaration of Candidacy for Election and (3) a Nominating Petition containing the requisite number of signatures. L.F. at 9. He asserted that although he was otherwise qualified, the City had refused to include his name on the ballot for the election to be held April 2, 2002 due to §115.346, RSMo 2000, which prohibits those individuals who are in arrears for unpaid city taxes or municipal user fees as of the last day of candidacy for office from being certified as candidates for municipal office. L.F. at 9-10. Burgess indicated that the City had previously certified him as a candidate and placed him on the ballot for the election, for the same office, that was held in April of 2000. L.F. at 8-9.

Burgess raised numerous claims that §115.346 was improperly applied to him, arguments that do not involve the state's interests, but he also challenged the statute's constitutionality. L.F. at 12-15. He asserted that §115.346 is unconstitutionally vague, violates his right to equal protection under the law and his rights protected by the First and Fourteenth Amendments, violates his right to procedural due process, and serves as an unconstitutional poll tax. L.F. at 12 -15. Joining Burgess in his Verified

² "L.F." refers to the Legal File in this case.

Petition were several registered voters who also asserted a violation of their First and Fourteenth Amendment-protected rights of freedom of political association and equal protection. L.F. at 14-15.

As evidence for his claim that §115.346 was unconstitutionally vague, Burgess pointed to a letter written by Daniel G. Vogel on behalf of the City that indicated some of the fees Burgess owed related to his business' zoning violations, such as the "payment of TGA fees, occupancy permits and BOCA code permits," "may or may not also fall within the scope of Section 115.346." L.F. at 15, 24. Vogel's letter indicated that Burgess' unpaid business license tax was within §115.346's parameters. L.F. at 24.

On March 19, 2002, the Circuit Court of St. Louis County heard Burgess' Verified Petition for Writ of Mandamus. L.F. at 44. The Court found that the "City Clerk did not certify Burgess to the Respondent Board of Election Commissioners due to the requirements of §115.346[,] RSMo." L.F. at 45. The Court's "Order and Judgment" declared §115.346 to be unconstitutional. L.F. at 45.

Because Attorney General Nixon was named among the parties to the suit and did not present an answer to Burgess' Petition, the Court declared the Attorney General to be in default. L.F. at 44. Attorney General Nixon filed a Motion to Reconsider and a Motion to Dismiss. L.F. at 47-54. The Court heard these motions on April 17, 2002. L.F. at 55. The Court granted the Motion to Reconsider, removing its earlier finding of default, but denied the Motion to Dismiss. L.F. at 55. This appeal followed.

PRELIMINARY STATEMENT

The trial court granted relief to Respondent, Steve Burgess, on the grounds that §115.346 is unconstitutional. L.F. at 45. The trial court did not explain or limit its holding, thus finding that §115.346 is unconstitutional on its face. *Id.* The state seeks reversal of the ruling that §115.346 is unconstitutional and asks that the case be remanded. On remand, the trial court can review Burgess' dispositive arguments not addressed below.

STANDARD OF REVIEW

The trial court declared §115.346 unconstitutional. This court's review of that decision is governed by the familiar rule of *Murphy v. Carron*: the reviewing court will affirm the trial court's decision unless "there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). Statutory interpretation is a question of law and thus receives *de novo* review. *Delta Air Lines, Inc. v. Dir. of Revenue*, 908 S.W.2d 353, 355 (Mo. banc 1995) .

POINTS RELIED ON

POINT I: The trial court erred in declaring §115.346, RSMo 2000, unconstitutional because the trial court should not have prematurely reached the constitutionality of the statute in that it failed to respond to Burgess' claims that the City of Wildwood improperly applied §115.346 to him as he did not owe "unpaid city taxes or municipal user fees" within the meaning of the statute.

Farm Bureau Town and Country Ins. Co. v. Angoff,

909 S.W.2d 348 (Mo. 1995)

State on inf. Bloebaum v. Broeker 11 S.W.2d 81 (Mo. Ct. App. 1928)

POINT II: The trial court erred in declaring §115.346, RSMo 2000, unconstitutional because §115.346, by prohibiting persons who owe city taxes or municipal user fees from becoming candidates for city office, does not violate the Equal Protection clause of the U.S. Constitution in that it does not discriminate on the basis of a suspect class and it is reasonably related to legitimate state purposes.

Clements v. Fashing, 457 U.S. 957 (1982)

Corrigan v. City of Newaygo, 55 F.3d 1211 (6th Cir. 1995)

Linton v. Missouri Veterinary Med. Bd., 988 S.W.2d 513 (Mo. banc 1999)

Stiles v. Blunt, 912 F.2d 260 (8th Cir. 1990)

POINT III: The trial court erred in declaring §115.346, RSMo 2000, unconstitutional in that it does not violate the voters' or Burgess' First Amendment-protected right to freedom of association in that the state's interests in enforcing local tax codes, promoting law-abiding local public officers, and decreasing public cynicism toward local government outweigh the minimal infringement on voters' and Burgess' associational rights.

Anderson v. Celebrezze, 460 U.S. 780 (1983)

Corrigan v. City of Newaygo, 55 F.3d 1211 (6th Cir. 1995)

Stiles v. Blunt, 912 F.2d 260 (8th Cir. 1990)

POINT IV: The trial court erred in declaring §115.346, RSMo 2000, unconstitutional because §115.346 is not unconstitutionally vague in that its plain language is reasonably understood by a person of ordinary intelligence.

Missourians for Tax Justice Educ. Project v. Holden, 959 S.W.2d 100 (Mo. 1997)

State ex rel. Nixon v. Telco Directory Publ'g, 863 S.W.2d 596 (Mo. 1993)

ARGUMENT

POINT I: The trial court erred in declaring §115.346, RSMo 2000, unconstitutional because the trial court should not have prematurely reached the constitutionality of the statute in that it failed to respond to Burgess’ claims that the City of Wildwood improperly applied §115.346 to him as he did not owe “unpaid city taxes or municipal user fees” within the meaning of the statute.

In his Verified Petition for Peremptory Writ of Mandamus, Burgess argued that the City of Wildwood improperly applied §115.346 to bar him from certification as a candidate for City Council. L.F. at 10-12. Burgess asserted that he was “not in arrears on any justly owed tax or fee” and that the business license at issue did not constitute an arrearage of an unpaid city tax or municipal user fee within the meaning of the statute. L.F. at 10-11. Furthermore, he claimed that §115.346's prohibitions on candidacy only apply to taxes owed by a person individually, not those owed by a business. L.F. at 11. The trial court did not determine §115.346's applicability to the particular fees Burgess’ purportedly owed. L.F. at 45. Instead, it jumped to Burgess’ constitutional challenge to §115.346 and, without further explanation, declared §115.346 to be unconstitutional. L.F. at 45.

Courts should not address constitutional questions when a case can be decided on other grounds. *Jackson County Bd. of Election Comm’rs v. Paluka*, 13 S.W.3d 684, 689 (Mo. Ct. App. W.D. 2000); *see also Farm Bureau Town and Country Ins. Co. v. Angoff*, 909 S.W.2d 348, 353 (Mo. 1995) (noting that “[t]he constitutionality of [a] statute will not be decided unless essential to the disposition of a case.”). In this case, the trial court erred in reaching the constitutionality of §115.346 when the case could have been decided on alternate grounds, for instance, that Burgess’ business

license fee was not governed by the language of the statute. *See State on inf. Bloebaum v. Broeker*, 11 S.W.2d 81 (Mo. Ct. App. 1928) (determining that a paper-hanging contractor's "license tax" was not a "city tax" within the meaning of §8230, Revised Statutes 1919, which prohibited a person from being elected to office in a third class city if he was in arrears on unpaid city taxes). Thus, the trial court's decision should be reversed and the trial court should be instructed on remand to address Burgess' factual allegations.

POINT II: The trial court erred in declaring §115.346, RSMo 2000, unconstitutional because §115.346, by prohibiting persons who owe city taxes or municipal user fees from becoming candidates for city office, does not violate the Equal Protection clause of the U.S. Constitution in that it does not discriminate on the basis of a suspect class and it is reasonably related to legitimate state purposes.

Section 115.346 is a constitutional way for the General Assembly to accomplish three legitimate goals: (1) to assist cities and municipalities in the enforcement of their local taxes and fees; (2) to ensure law-abiding people govern Missouri's cities and municipalities; and (3) to decrease public cynicism towards local government. Because those who have not paid their city taxes and municipal user fees are not a distinct group of people who warrant heightened scrutiny under the Equal Protection clause, §115.346 is subject to the reasonable basis test. It passes that test because the statute's restrictions on ballot access are reasonably related to achieving the state's legitimate goals for local public officials.

A. Because §115.346 does not implicate a suspect class of people, the reasonable basis test is the correct constitutional standard to apply.

This court should analyze Burgess' claim that §115.346 violates his constitutional right to equal protection under the reasonable basis standard because §115.346 does not involve a type of ballot access restriction that warrants heightened scrutiny.³ The court's interpretation of §115.346 should be

³ This brief separately analyzes Burgess' equal protection claim and the Ward Seven voters' claim, also shared by Burgess, that §115.346's restriction on Burgess' candidacy limits their First

guided by the principle that statutes are presumed constitutional, and that the Court will not invalidate a statute unless it ‘plainly and palpably affronts fundamental law embodied in the constitution.’” *Linton v. Missouri Veterinary Med. Bd.*, 988 S.W.2d 513, 515 (Mo. banc 1999) (quoting *Consol. Sch. Dist. v. Jackson County*, 936 S.W.2d 102, 103 (Mo. banc 1996)).

1. Statutes, even those affecting ballot access, are generally subject to reasonable basis review.

Amendment right to freedom of association. This distinction is drawn notwithstanding that the Supreme Court has noted that “the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.” *Bullock v. Carter*, 405 U.S. 134, 143 (1972). In addition, Respondents Roger and Kristine Buelter and Steven and Cynthia Dolniak (“City of Wildwood voters”) have alleged that §115.346 denies them their right to equal protection under the laws. L.F. at 15. Section 115.346, however, does not treat classes of voters unequally. *See Arnold v. City of Columbia*, 197 F.3d 1217, 1220 (8th Cir. 1999) (requiring that plaintiffs with an equal protection claim show “that they were treated differently from others similarly situated to them.”). Section 115.346 does not deny any City of Wildwood voters their right to participate in elections on an equal basis with other voters. *See Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *see also St. Louis County v. City of Town and Country*, 590 F. Supp. 731, 737 (E.D. Mo. 1984). Therefore, the City of Wildwood voters’ equal protection claim is properly subsumed within their claim that §115.346 denies them their right to freedom of association and will be responded to in Point III of this brief.

In response to Equal Protection challenges, Missouri courts have generally applied the reasonable basis test unless the classification at issue involves a fundamental right or a suspect classification. *Stewart v. Dir. of Revenue*, 702 S.W.2d 472, 474-75 (Mo. banc 1986). The United States Supreme Court and the Missouri Supreme Court have agreed that there is no fundamental right to hold public office. *Asher v. Lombardi*, 877 S.W.2d 628, 630 (Mo. banc 1994) citing *Clements v. Fashing*, 457 U.S. 957, 963 (1982).⁴ Thus the desire to run for office does not compel a heightened standard of review under the equal protection clause. The fact that §115.346 restricts access to the ballot does not mean it is necessarily subject to heightened scrutiny. *See Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Rather, laws governing ballot access are subject to heightened equal protection scrutiny only when they address certain problematic classifications.

In those cases that do not warrant heightened scrutiny, the Supreme Court has applied a lower standard of review. For example, in *Clements v. Fashing*, the Court found that the provision that limited a candidate's ability to become a candidate for another public office "discriminates neither on the basis of political affiliation nor on any factor not related to a candidate's qualifications to hold political office." 457 U.S. at 967. Considering it an insignificant interference with access to the ballot, the Court only required the restriction to pass the reasonable basis test. *Id*; *see also Stiles v. Blunt*, 912 F.2d 260, 264 (8th Cir. 1990) (determining that because neither a suspect class nor a fundamental

⁴ This court noted that in this context, the Court would interpret Missouri's equal protection clause as equivalent to the United State's Constitution's. *Asher*, 877 S.W.2d at 630 n. 1.

right was implicated, the court should apply the rational basis test to the Missouri Constitution's minimum age requirement for Missouri State Representative).

Missouri's reasonable basis standard indicates that a classification will survive reasonable basis scrutiny if "the state's purpose in creating the classification is legitimate and 'if any statement of facts reasonably may be conceived to justify the means chosen to accomplish that purpose.'" *Linton v. Missouri Veterinary Med. Bd.*, 988 S.W.2d 513, 515-16 (Mo. banc 1999) (quoting *Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 103-04 (Mo. banc 1998) quoting *McGowan v. Maryland*, 366 U.S. 420, 426 (1961)). Under the reasonable basis test, this court should not determine whether the Legislature should have chosen a different way to accomplish its goal. *Id.* at 516. If the Legislature's determination is debatable, the presumption is in favor of validity. *Id.* at 515-16.

2. *This statute does not fall into the two categories of ballot access restrictions that warrant heightened scrutiny.*

The Supreme Court has applied heightened equal protection scrutiny in two types of ballot access restriction cases: (1) those dealing with classifications based on wealth, and (2) those involving classifications that burden "new or small political parties or independent candidates." *Clements v. Fashing*, 457 U.S. 957, 964-65 (1982) (plurality opinion). Other courts have followed this approach. *See Golden v. Clark*, 564 N.E.2d 611 (N.Y.1990); *see also O'Connor v. Nevada*, 27 F.3d 357 (9th Cir. 1994) (indicating that heightened scrutiny is appropriate for ballot restrictions that involve wealth or economic status or that are based on a candidate's association with a political party).

Lubin v. Panish is an example of a case where the Supreme Court applied heightened scrutiny because of a ballot access restriction based on wealth. 415 U.S. 709 (1974). In *Lubin*, an indigent candidate alleged that the \$701.60 filing fee necessary to be placed on the ballot in the primary for county supervisor violated his right to equal protection. *Id.* at 710. Although the state had an important and legitimate interest in the integrity of its ballot, “[s]election of candidates solely on the basis of ability to pay a fixed fee without providing any alternative means [was] not reasonably necessary to the accomplishment of the State’s legitimate election interests.” *Id.* at 718.

Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), is an example of the second type of case where the Supreme Court applied heightened scrutiny. There, the scrutiny was applied because the classification burdened new or small political parties or candidates. The Court invalidated an Illinois law that required a new political party or independent party’s candidate for local office to obtain more signatures for access to the ballot than a candidate for statewide office. *Id.* at 187. The Court has reviewed these types of laws with heightened scrutiny because restrictions on minor or independent candidates may implicate freedom of association for the reason that they classify based on the candidate’s association with a particular political party. *See Clements v. Fashing*, 457 U.S. 957, 965 (1982) (plurality opinion).

Unlike the wealth-based restriction found in *Lubin v. Panish*, §115.346 does not restrict access to the ballot on the basis of wealth. People may fail to pay their city taxes and municipal user fees for a variety of reasons unrelated to wealth, including inadvertence, intentional avoidance, or protest. Thus, §115.346 does not, on its face, classify people on the basis of wealth, nor is there evidence in the record showing that the statute is a wealth-based classification. Indeed, Burgess does

not suggest that he lacks the resources to pay the business fees at issue in his case. Accordingly, he may not attack §115.346 on grounds of wealth-based discrimination.

Moreover, the requirement that people pay city taxes and municipal user fees is a result of their decision to live in a city that requires these taxes; the obligation to pay taxes is not intended as a means to limit those who may run for city office. *See Corrigan v. City of Newaygo*, 55 F.3d 1211, 1215 (6th Cir. 1995) (“The tax-paying requirement is a means of collecting taxes, not a means of restricting political speech or the right to vote.”). Instead, people pay city taxes and municipal user fees to pay for their share of city services they receive. Burgess’ choice to own a business located in the City of Wildwood subjects him to the City’s business licensing fees. *Cf., id.* at 1216 (observing that “[p]roperty owners who are unable to meet the civic obligations they have voluntarily assumed are not a suspect class.”).

Regarding the second type of classification that warrants heightened scrutiny, Missouri courts, like the Supreme Court in *Illinois State Board of Elections v. Socialist Workers Party*, have recognized that laws that inhibit new or independent political parties’ access to the ballot require greater scrutiny. For example, in *State ex rel. Coker-Garcia v. Blunt*, the Western District Court of Appeals struck down a Missouri statute that required local candidates of a new statewide political party to show that they had sufficient local support through signed petitions. 849 S.W.2d 81 (Mo. Ct. App. W.D. 1993). The *Coker-Garcia* court indicated that it must apply strict scrutiny to see whether the state used the “least restrictive means” possible to achieve its goals. 849 S.W.2d at 85. But the court also indicated that “[b]ecause state ballot access restrictions endanger vital individual constitutional rights, ‘a State must establish that its classification is necessary to serve a compelling interest.’” 849 S.W.2d at

85 (quoting *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)); see also *Jackson County v. Board of Election Comm'rs*, 13 S.W.3d 684, 689 (Mo. Ct. App. W.D. 2000).

Although the *Coker-Garcia* court was correct in its narrow holding that heightened scrutiny applied to the ballot access restriction at issue in that particular case because it affected minor or new political parties, it was incorrect to imply that all ballot access restrictions require strict scrutiny. To the contrary, the U.S. Supreme Court has stated that not all ballot access restrictions warrant strict scrutiny. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

Specifically, to determine the appropriate standard of scrutiny, the critical question to ask is whether a ballot access restriction “[denies] a cognizable group a meaningful right to representation.” *Plante v. Gonzalez*, 575 F.2d 1119, 1126 (5th Cir. 1978) quoting Tribe, *AMERICAN CONSTITUTIONAL LAW* §13-19 (1978). When the answer to this question is “no,” then a court should apply the reasonable basis test to the ballot access restriction because the restriction does not warrant heightened scrutiny.

And the answer is “no” here. Section 115.346 does not deprive any cognizable group from access to the ballot and it does not limit any new or independent political party from organizing and placing their candidate’s name the ballot. Section 115.346 provides, in full:

Notwithstanding any other provisions of law to the contrary, no person shall be certified as a candidate for a municipal office, nor shall such person’s name appear on the ballot as a candidate for such office, who shall be in arrears for any unpaid city taxes or municipal user fees on the last day to file a declaration of candidacy for the office.

Political parties may form in opposition to the city's tax code and they may select an eligible candidate to run for office. *Cf.*, *Corrigan v. City of Newaygo*, 55 F.3d 1211, 1215 (6th Cir. 1995) (“The ordinance [similar to §115.346] does not have the effect of preventing the expression of political views or the forming of groups for this purpose.”) and *Antonio v. Kirkpatrick*, 579 F.3d 1147, 1149 (8th Cir. 1978) (observing that a residency requirement for Missouri State Auditor “does not unfairly burden a discrete minority group of voters because the requirement is totally unrelated to the status of voters.”).

Absent evidence that voters have organized in political protest against the tax code, voters who want to vote for a candidate who is in arrears on city taxes or municipal user fees do not constitute an association or movement. *See Corrigan*, 55 F.3d at 1215; *cf. Lorenz v. Colorado*, 928 P.2d 1274, 1281 n.11 (Colo. 1996) (observing that the voters who want to vote for a candidate who has refused to run for office because the candidate could not then hold a gaming license “do not constitute an independently identifiable group.”). Similar to the minimum age requirement for state representative at stake in *Stiles v. Blunt*, §115.346 “does not deprive voters of their rights to vote for, associate with, or speak out on behalf of candidates representing minor parties or unusual view points.” *Stiles v. Blunt*, 912 F.2d 260, 266 (8th Cir. 1990). As a result, §115.346 does not limit any ideologically-based group's access to the ballot, and thus it does not require heightened equal protection scrutiny.

Thus, §115.346 does not implicate either type of ballot access restriction that warrants heightened scrutiny. Although this court has held, in the context of a campaign finance and disclosure law, that “a law denying the right to run for public office based on the particular office sought . . . requires strict scrutiny[.]” this conclusion followed from the court's analysis that “[u]nfortunately, the

right of a person to seek public office is one of the nebulous areas where strict scrutiny is sometimes applied and sometimes not.” *Labor’s Educ. and Political Club v. Danforth*, 561 S.W.2d 339, 347, 349 (Mo. 1977). Since the *Labor’s Educational and Political Club* decision, this court has recognized that the right to run for public office is not a fundamental right. See *Asher v. Lombardi*, 877 S.W.2d 628, 630 (Mo. banc 1994), citing *Clements v. Fashing*, 457 U.S. 957, 963 (1982). Thus, this court should not apply heightened scrutiny to §115.346’s restriction on candidacy, but should apply the reasonable basis test. This reasonable basis test provides that a law does not violate equal protection if there is a “plausible policy reason for the classification.” *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992)

B. Section 115.346 passes the reasonable basis test because it is a reasonable way for the state to achieve at least three legitimate goals.

1. *The state’s interest in enforcing local tax codes*

The Missouri Constitution gives local political subdivisions, such as cities, the authority to tax, “under power granted to them by the general assembly for county, municipal, and other corporate purposes.” MO. CONST. art. X, §1. It is in the interest of the state that its cities and municipalities are sustained by the taxes and fees of their citizens. *Cf.*, *Ploch v. City of St. Louis*, 138 S.W.2d 1020, 1024 (Mo. 1940) (“[A]ll cities, towns and villages have for many years been authorized to license, tax and regulate the occupation of merchants.”). The restriction in §115.346 serves that interest. It does

so in the same way as a statute applied in *Corrigan v. City of Newaygo*. 55 F.3d 1211 (6th Cir. 1995). There, the Sixth Circuit upheld a city ordinance that prohibited city residents who were delinquent on their local taxes or water and sewer fees from having their names placed on the ballot for local office. *Id.* The plaintiffs in *Corrigan* included voters and two candidates whose names were not placed on the ballot due to the local taxes they owed. *Id.* at 1212.

In *Corrigan*, the Sixth Circuit applied the reasonable basis test to the ordinance and concluded the city had shown the ordinance was rationally related to its legitimate interests. The court found that the ordinance served the city's goal of enforcing its economic tax regime. *Id.* at 1216. Not only did it punish those individuals who did not fulfill their financial obligations to the city, but it also provided people who want to run for office an incentive to pay their taxes. *Id.*

The court in *Corrigan* noted that the Supreme Court has recognized government entities' interest in administering the tax system as so significant as to outweigh a person's religious objection to paying taxes. *Id.* at 1217 (citing *United States v. Lee*, 455 U.S. 252 (1982)). The court observed that in contrast to *Lee*, where the governmental interest in the payment of taxes was found sufficiently compelling to outweigh the "'fundamental right' analysis that the Free Exercise Clause require[d,]" the ballot access ordinance here only had to pass the significantly lower standard of reasonable basis review. *Id.* The Sixth Circuit concluded that the ordinance was "rationally related to the administration of the tax system" and thus did not violate plaintiffs' equal protection rights. *Id.*

2. *The state's interest in having its cities and municipalities governed by law-abiding people*

Missouri has a longstanding policy that requires its local lawmakers to be current on their tax obligations. For over 100 years, Missouri has required, for certain cities, that “no person shall be elected or appointed to any [city] office who shall at that time be in arrears for unpaid city taxes.” *State ex rel. Johnston v. Donworth*, 127 Mo. App. 377, 379 (Mo. Ct. App. 1907) (quoting §5916 of the Revised Statutes of 1899 that applied to Fourth Class cities); *see also State on inf. Dearing v. Berkeley*, 41 S.W. 732, 733 (Mo. 1897) (holding that City Attorney who paid his delinquent city taxes by the end of the day when the election was in progress satisfied the requirement that “No person shall be elected [who is in] arrears for any unpaid city taxes . . .”) and *Watts v. Flenoy*, 938 S.W.2d 311, 313 (Mo. Ct. App. E.D. 1997) (declaring that sales tax imposed on motor vehicles is not a city tax and therefore does not fall within §79.250's prohibition that a person elected to office shall not be in arrears on unpaid city taxes). Section 115.346 also serves the legitimate state goal of requiring those people who make and enforce local laws to obey those laws.

The Supreme Court has recognized that each state may prescribe the qualifications of its officers. *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973). Requiring individuals, under §115.346, to be current in their tax obligations before they can be certified as candidates for local office is an appropriate qualification for local officials and is reasonably related to the state goal of seeking law-abiding lawmakers. As stated by this court in the context of a public official who was convicted of federal crimes:

The public is entitled to the service of public officials who are of the highest character.

It is of paramount importance to the public to have confidence in the honor and integrity of public officials. Society expects much from its public officials and rightly so.

State ex inf. Peach v. Goins, 575 S.W.2d 175, 183 (Mo. banc 1978).

Furthermore, Missouri has an interest in ensuring that its cities and municipalities are governed by individuals who demonstrate a commitment to the local city or municipality, and who are generally “good public citizens.” An individual who timely pays taxes and user fees shows that he or she takes obligations to the city seriously. Moreover, if elected, he will be spending money that comes from his own pocket, not just from the pocket of someone else.

In *Deibler v. City of Rehoboth Beach*, the court struck down a city charter’s requirement that a candidate for city commission be a non-delinquent taxpayer on the basis that the requirement failed the rational basis test. 790 F.2d 328 (3rd Cir. 1986); *see also Hunt v. City of Longview*, 932 F Supp. at 840-841 (E.D. Tex. 1995) *aff’d without opinion at* 95 F.3d 49 (5th Cir. 1996). The city asserted that non-delinquent taxpayers demonstrate a greater commitment to the well-being of the city. *Deibler*, 790 F.2d at 334. Judge Ziegler⁵ rejected this argument because he determined that a person’s failure to pay taxes could be the result of “economic, ideological, or other personal grounds” and that it did not reflect the person’s commitment to city government. *Id.* at 334. The *Deibler* court’s analysis was misguided, in that the reasonable basis test requires only a minimal showing to justify the means used to accomplish the state’s purpose. *Linton v. Missouri Veterinary Med. Bd.*, 988 S.W.2d 513, 515-16 (Mo. banc 1999).

⁵ Judge Ziegler authored the judgment of the court. Judge Sloviter concurred in the judgment only and offered a separate opinion; Judge Weis dissented.

Admittedly, it is conceivable that a person could demonstrate that although he lacked financial resources to pay his city taxes and municipal user fees, he still possessed a high degree of commitment to the city. Nevertheless, it is reasonable for the state to use punctual payment of taxes and fees as a benchmark for candidates who abide by the laws, demonstrate a commitment to the city's well-being, and are generally good public citizens. The reasonable basis test does not allow a court to second-guess the wisdom of the legislature's policy determinations. *See id.* at 516. Missouri did not act irrationally in its decision that failure to pay taxes "indicates a lack of community responsibility." *Deibler*, 790 F.2d at 341 (3rd Cir. 1986), (Weis, J., *dissenting*).⁶

The Eighth Circuit rebuffed a similar challenge to Missouri's minimum age requirement of 24 for state representative. *Stiles v. Blunt*, 912 F.2d 260 (8th Cir. 1990). Just as some delinquent taxpayers may otherwise be good citizens, some individuals below the age of 24 may have the maturity and skills necessary to serve as state officeholders. Nonetheless, the court concluded that the age restriction was permissible: "Missouri's objective of ensuring that its lawmakers have some degree of maturity and life experience is constitutional and the minimum age requirement is a legitimate means of accomplishing this objective." *Id.* at 267.

The court in *Stiles* also observed that "the state's interest in maturity and experience entitles it to draw the line somewhere, and the line it has drawn is not unreasonable." *Id.* at 266 n.10. Similarly,

⁶ Judge Weis only analyzed the ballot access restriction's application to nonresidents of the city. *Deibler*, 790 F.2d at 341, n.1.

it is reasonable for the Missouri General Assembly to use §115.346 as a means to ensure that its local public officials possess the character necessary for good governance.

3. ***The state's interest in decreasing public cynicism towards local government***

Finally, Missouri seeks to encourage its citizens' respect for government. Allowing public officials to create tax and fee obligations for other people, while they themselves remain delinquent in their obligations, increases cynicism towards government. It demonstrates to people that their local leaders are hypocrites. Missouri has a legitimate goal in seeking respect for government officials on the local level, because this helps establish a law-abiding citizenry. *Cf., State v. Lock*, 259 S.W. 116, 124 (Mo. 1924) (observing that “[i]f courts and public officials, charged with its enforcement, violate the law of the land in their zeal to convict, it follows that the people, who look to their knowledge and integrity, will not respect the law.”). Section 115.346 helps establish this goal because it prohibits candidates who are in arrears on city taxes or municipal user fees from running for office. The statute directly prohibits those individuals, who would seek to create tax obligations on others while remaining in arrears themselves, from holding public office. This furthers the legitimate state goal of encouraging citizens' respect for local officeholders. Section 115.346, similar to the ordinance in *Deibler*, “may promote public respect for public officials and may reduce distrust.” *Deibler v. City of Rehoboth Beach*, 790 F.2d 328, 341 (3rd Cir. 1986) (Weis, J., *dissenting*).

Because §115.346 helps Missouri accomplish this and two other legitimate state goals, and does not affect a suspect category or classification under the Supreme Court's ballot access jurisprudence, this court should uphold it.

POINT III: The trial court erred in declaring §115.346, RSMo 2000, unconstitutional in that it does not violate the voters' or Burgess' First Amendment-protected right to freedom of association in that the state's interests in enforcing local tax codes, promoting law-abiding local public officers, and decreasing public cynicism toward local government outweigh the minimal infringement on voters' and Burgess' associational rights.

The First Amendment protects people's rights to associate together and form political parties to pursue common political goals. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357 (1997). Here, the City of Wildwood voters challenge the impact of §115.346 on their associational rights.⁷ Thus, their claim invokes the balancing test described by the Supreme Court in *Anderson v. Celebrezze*. 406 U.S. 780 (1983). In addition, some courts have construed Supreme Court precedent to require the application of the *Anderson* balancing test in all ballot access cases, regardless whether the constitutional challenge is based on First Amendment-protected free speech, freedom of association, or the Fourteenth Amendment equal protection clause. *See, e.g., Zielasko v. Ohio*, 873 F.2d 957 (6th Cir. 1989) (indicating the *Anderson* balancing test was the correct standard to apply rather than categorizing an election law as "subject either to strict scrutiny or the traditional rational relation test) and *Libertarian Party of Maine v. Diamond*, 992 F.2d 365, 370 (1st Cir. 1993) (applying *Anderson* balancing by recognizing courts' need to balance the legitimate interest of the

⁷ Burgess also alleges that §115.346 operates as an unconstitutional poll tax. There is no grounds for this assertion, as §115.346 does not require voters to pay a fee before they can vote.

states' desire for fair and orderly elections with the First Amendment rights of voters and candidates).

In any event, §115.346 meets the *Anderson* balancing test.

A. The *Anderson* balancing test is the proper standard to evaluate the voters' and Burgess' claim that §115.346 violates their First Amendment-protected right to freedom of association.

In *Anderson v. Celebrezze*, the Supreme Court rejected Ohio's early filing deadline for independent candidates as unconstitutional under an analysis that focused on the voting and freedom of association rights of the candidate's supporters. 460 U.S. 780 (1983). The Court in *Anderson* specifically noted that it did not base its decision on a separate equal protection analysis, but instead on the First and Fourteenth Amendments. *Id.* at 788 n.7. The Court characterized the rights of voters as "fundamental," but also that the "state's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Id.* at 788. The Court spelled out a balancing test to be applied:

[A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

Anderson, 460 U.S. at 789. The Court indicated that the state has a greater difficulty justifying restrictions that “limit[] political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status.” *Id.* at 792-93. The Court concluded that the restriction at issue unconstitutionally burdened voters’ freedom of choice and association, and was not outweighed by the state’s interest in the early filing deadline. *Id.* at 806.

The Court has clarified the *Anderson* balancing test in two more recent cases: *Timmons v. Twin Cities Area New Party* and *Burdick v. Takushi*. In *Timmons*, the Court upheld Minnesota’s law that prohibits a candidate from appearing on the ballot for more than one political party. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 369-70 (1997). After repeating the *Anderson* balancing test, the Court added that:

Regulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s “important regulatory interests” will usually be enough to justify “reasonable nondiscriminatory restrictions.”

Id. at 358-59, quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). In *Timmons*, the Court recognized that because the burdens imposed on the political party’s associational rights were not severe, “the State need not narrowly tailor the means it chooses to promote ballot integrity.” *Timmons*, 520 U.S. at 365. In *Burdick v. Takushi*, the Court observed that when associational rights are only minimally burdened, the Court need not establish a compelling interest to tip the scales in its favor. 504 U.S. at 439. The Court concluded that “[the] legitimate interests asserted by the state [were] sufficient

to outweigh the limited burden that the write-in voting ban impose[d] upon Hawaii’s voters.” *Id.* at 440.

Therefore, when reviewing whether a ballot access restriction implicates voters’ First Amendment right to freedom of association, this court should ask the three questions of the *Anderson* balancing test. First, the court must identify the character and magnitude of the voters’ interests. Second, the court must evaluate the state’s justifications for the restriction. Finally, the Court must consider “the legitimacy and strength of each of [these] interests, [and] it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). When applying the *Anderson* balancing test, the court should consider the guidance from *Timmons* and *Burdick*: that lesser burdens on associational rights only require less exacting review, and that a state need not show that the restriction serves a compelling governmental interest to outweigh a minimal intrusion on associational rights.

B. Section 115.346 passes the *Anderson* balancing test.

1. Section 115.346 minimally affects the voters’ and Burgess’ right to freedom of association.

(a) *The voters’ claim*

In *Corrigan v. City of Newaygo*, the Sixth Circuit considered a similar freedom of association claim, made by a voter, that exclusion of particular candidates from the ballot due to their failure to pay taxes resulted in a violation of the voters’ freedom of association. 55 F.3d 1211 (6th Cir. 1995). The court found that the ordinance restricting candidacy to non-delinquent taxpayers did not “have the effect

of preventing the expression of political views or the forming of groups for this purpose.” *Id.* at 1215.

The court further stated:

A person who mistakenly overlooks paying, or cannot immediately pay, local property tax cannot claim to be part of an association or movement when, as here, none of the plaintiffs claim that the taxes were not paid because they were engaging in a tax protest against an unjust law. The tax-paying requirement is a means of collecting taxes, not a means of restricting political speech or the right to vote.

Id. Furthermore, the court noted that none of the voters had claimed that they wanted to vote for these particular candidates because the candidates had failed to pay taxes or even that these candidates represented a unique political viewpoint. *Id.* Thus, the *Corrigan* court found that the plaintiffs had failed to assert any “associational interests that would be protected as fundamental rights under the Constitution.” *Id.*

As in *Corrigan*, Burgess’ ineligibility as a candidate for the City of Wildwood Council, based on the application of §115.346, only minimally implicates voters’ interests. Voters do not have a First Amendment-protected right to vote for a particular candidate. *Zielasko v. Ohio*, 873 F.2d 957, 961 (6th Cir. 1989). As stated in *Stiles v. Blunt*:

While it is true that voters will not be able to vote for appellant in this year’s election, their fundamental rights of voting, speech, and association do not confer upon them an absolute right to support a specific candidate regardless of whether he or she has satisfied reasonable eligibility requirements.

912 F.2d 260, 266 (8th Cir. 1990). Similar to the voters in *Corrigan*, the City of Wildwood voters have not asserted that they wanted to vote for Burgess because he owed the city money for his business license fee or other fees. Thus, they have not asserted associational interests that require constitutional protection. *See Corrigan*, 55 F.3d at 1215.

Moreover, §115.346 does not infringe on voters' protected right to participate equally in an election with other people in the jurisdiction. *See Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). If the City of Wildwood voters want to protest against the city tax code, they can assemble and offer a candidate for election. Section 115.346 does not prohibit them from expressing political views or organizing together for this purpose. *See Corrigan*, 55 F.3d at 1215.

As stated by the court in *Joseph v. City of Birmingham*, the critical inquiry is whether the challenged law substantially diminishes the field of candidates, and thus substantially diminishes voter choice, and whether the law has a disparate impact on a cognizable political group. 510 F. Supp. 1319, 1330 (E.D. Mich. 1981). Here, there is no evidence that any political group forfeited their access to the ballot based on §115.346. Thus, §115.346 has a small or insignificant affect on voters' freedom to associate for the advancement of their beliefs.

(b) *Burgess' claim*

Burgess, too, claims that §115.346 has unconstitutionally infringed on his First Amendment-protected right to freedom of association. That claim, too, lacks merit. Section 115.346 does not prohibit him from associating in a group and advocating a political position. *See Deibler v. City of Rehoboth Beach*, 790 F.2d 328, 333 (3rd Cir. 1986). It merely provides that he may not be a candidate for local office until he no longer owes money to the city. Unless §115.346 acts to deny

access to the ballot to a cognizable group of individuals who share an ideology, it does not violate anyone's right to associate for the advancement of their beliefs.

Notably, the facts of the present case are distinguishable from those present in *Deibler v. City of Rehoboth Beach*. *Id.* at 328. In *Deibler*, the plaintiff was a member of a tax protest group that disagreed with the city's tax policies; members of the group paid their taxes into an escrow account instead of turning them over to the city. *Id.* at 330. Deibler sought public office so that he could represent the tax protest group's views. *Id.* He was rejected as a candidate for city commission because he did not meet the city charter's requirement that candidates be current in their tax payments. *Id.* at 329-30.

Notwithstanding Deibler's clear tax protest motivation for not paying the taxes he owed, the court rejected his claim that the tax payment requirement burdened his right to freedom of association as it did not "inhibit the formation of a political association and [did] not deny the right of the Rehoboth Concerned Taxpayers Association to advance a representative candidate." *Id.* at 333. The court applied the *Anderson* balancing test and recognized that the requirement that candidates be current on their tax obligations excluded those people "who, for economic[,] political or other reasons, have not paid their tax obligations." *Id.* at 333. But the court recognized that First Amendment freedoms "are not abridged by the obligation to pay taxes[]" and that "failure to pay a tax, even as a means of political expression, is without First Amendment protection." *Id.* (citations omitted).

Because the ballot restriction did not inhibit Deibler from forming a political association or deny the right of the tax protest organization to offer a candidate, "the burden is not constitutionally suspect." *Id.* at 333. The court determined that there was no need to balance to balance the legitimacy of the

government interest at stake since the candidate Deibler had not “advance[d] any constitutionally suspect burden.” *Id.*

In contrast with Deibler’s tax protest motivation, nothing in the record indicates Burgess’ failed to pay his business license fee for the years after 1995 as a protest against the City, or even that he lacked the financial resources to pay the fees. In fact, Burgess acknowledged the validity of some of the zoning violations that formed the basis for the city’s assessment of him as owing some of the taxes and fees. L.F. at 11. Thus, even more so here than as in *Deibler*, Burgess’ associational rights are not affected by §115.346.

Furthermore, nothing prohibits Burgess from paying the fees he owes to the City of Wildwood. Thus, the restriction on his access to the ballot is not permanent in nature. Once Burgess is no longer in arrears to the City, he will be eligible to run for office. In that sense, the restriction is a temporary, curable impediment to his candidacy. *Cf., Zielasko v. Ohio*, 873 F.2d 957, 962 (6th Cir. 1989) (Jones, J., *dissenting*) (noting the distinction between those election restrictions that temporarily burden a voter’s right to support a candidate -- such as age or general filing deadlines -- and those restrictions that are permanent in nature).

Under the first prong of the *Anderson* balancing test, the character and magnitude of the injuries to the voters’ and Burgess’ First and Fourteenth Amendment-protected rights is minimal. Accordingly, the state need not establish a compelling interest to outweigh the minimal burden §115.346 places on the voters’ and Burgess’ rights. *See Burdick v. Takushi*, 504 U.S. 428, 439 (1992).

2. Section 115.346 serves Missouri’s legitimate and important interests in enforcing local tax codes, ensuring its local public officers are law-abiding citizens, and encouraging public respect for local officials.

Missouri has the power to establish reasonable requirements for its officeholders. *State ex rel. Burke v. Campbell*, 542 S.W.2d 355, 358 (Mo. Ct. App. 1976). More importantly, the Missouri Legislature has a significant interest in the fidelity of local public officers, whose actions closely affect the lives of Missouri citizens. As recognized previously, Missouri’s interest in §115.346 falls into three main categories.

First, as stated in Point II.B.1., Missouri has an important interest in assisting its local cities and municipalities in enforcing their tax codes. In *Johnson v. Administrative Office of the Courts*, the court concluded that the state’s “strong interest” in having qualified circuit court clerks justified the requirement that a circuit court clerk candidate pass a detailed written examination. 133 F. Supp. 2d 536, 540 (E.D. Ky. 2001). Missouri’s interest in enforcing its local tax codes is an equally strong interest because if people fail to conscientiously pay their fees and taxes, the operation of local government would be significantly hampered, if not thwarted altogether. It is an important interest of the state that its cities and municipalities receive the fees and taxes necessary to supply local services.

Next, Missouri has a strong interest in ensuring that its local officers respect local law, demonstrate a commitment to the city, and are conscientious public citizens. *See State ex inf. Peach v. Goins*, 575 S.W.2d 175, 183 (Mo. banc 1978). Missouri has an interest in seeking law-abiding local public officials who demonstrate integrity and character. Failure to pay their own portion of local taxes and fees demonstrates a person’s willingness to place themselves “above the law.” Missouri has

a significant interest in ensuring its local officials who create and enforce local laws also consider themselves bound by these same laws.

Finally, the legitimacy of local government officials is an important state interest because people's willingness to be governed depends, in part, on their respect for the government. The legitimacy of local government would be undermined if elected local officeholders lack a bare minimum of respect for the city, as evidenced by their failure to pay their local taxes and fees. Allowing individuals to make and enforce the law when they persist in violating the public trust would only encourage Missourians' mistrust and cynicism toward local government officials.

3. *Section 115.346's minimal effect on voters' and Burgess' associational rights is outweighed by the significance of Missouri's interests in the character and conduct of its local public officials.*

As explained previously, §115.346 directly helps Missouri achieve its important and legitimate state goals in enforcing local tax codes, requiring local public officials to abide by the law, and decreasing cynicism towards local government. In *Burdick v. Takushi*, the Court found that comparable "legitimate interests" asserted by the state were sufficient to outweigh the limited burden imposed on the voters. 540 U.S. 428, 440 (1992). At least one court has indicated that if a ballot access law imposes only reasonable non-discriminatory restrictions, it is subject to a "less rigorous *Anderson* balancing test" which is the equivalent of rational basis review. *Johnson v. Admin. Office of the Courts*, 133 F. Supp. 2d. 536, 539 (E.D. Ky. 2001).

As described above, Missouri has legitimate and important interests in enforcing its local tax codes, supporting law-abiding public officials, and encouraging respect for local public officials.

Section 115.346 only has minimal effect, if any, on voters' or Burgess' associational rights because it does not interfere with their right to associate for a political purpose or advocate a particular cause.

Thus, application of the *Anderson* balancing test favors the state's legitimate and important interests as outweighing any slight affect §115.346 may have on voters' or Burgess' associational rights.

Accordingly, §115.346 is a reasonable, non-discriminatory restriction on access to the ballot, and is therefore constitutional.

POINT IV: The trial court erred in declaring §115.346, RSMo 2000, unconstitutional because §115.346 is not unconstitutionally vague in that its plain language is reasonably understood by a person of ordinary intelligence.

The “void for vagueness” doctrine has a basis in the Fourteenth Amendment’s Due Process clause and Missouri’s due process clause, located in Art. 1, §10 of the Missouri Constitution. *See Fitzgerald v. City of Maryland Heights*, 796 S.W.2d 52, 55 (Mo. Ct. App. E.D. 1990). “These clauses require that statutes whose enforcement may result in a deprivation of liberty or property be worded with precision sufficient to enable reasonable people to know what conduct is proscribed so they may conduct themselves accordingly.” *Id.* The Constitution demands greater clarity for those laws that may “inhibit the exercise of constitutionally protected rights.” *State ex rel. Nixon v. Telco Directory Publ’g*, 863 S.W.2d 596, 600 (Mo. 1993).

This court has also noted that ambiguity does not condemn a law as unconstitutionally vague. *See Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 105 (Mo. 1997). Furthermore, courts have a duty to uphold ambiguous laws and interpret them “in a manner that conforms to the demands of the Constitution.” *Id.* The standard for gauging whether the language of a statute violates due process because it is unconstitutionally vague is whether “the words used bear a meaning commonly understood by persons of ordinary intelligence.” *Id. quoting State v. Allen*, 905 S.W.2d 874, 877 (Mo. banc 1995).

The Constitution does not demand greater clarity of the language of §115.346 than its commonly understood meaning because Burgess has neither a fundamental right to hold office, nor a property interest in an office he has not been elected to. *See State on inf. McKittrick v. Kirby*, 163

S.W.2d 990, 995 (Mo. 1942) (observing “[i]t has been uniformly held that a public office is not property in the constitutional sense and that the right to be appointed to public office is not a natural or property right within the protection of the due process clause.”). Moreover, §115.346 minimally affects the exercise of constitutionally protected rights because voters do not have a right to vote for a particular candidate. *Zielasko v. Ohio*, 873 F.2d 957, 961 (6th Cir. 1989).

Burgess protests that the City of Wildwood Attorney’s letter indicating that some of Burgess’ fees “may or may not also fall within the scope of Section 115.346[]” is “prima facie evidence of that [sic] the language is of this Statute is unconstitutionally vague . . .” L.F. at 12. Burgess confuses ambiguity with unconstitutionality. People may differ on their interpretation of a statute, but “[c]ourts have long accepted responsibility for providing meaning to laws that are ambiguous.” *Missourians for Tax Justice Educ. Project*, 959 S.W.2d at 105. Missouri courts have interpreted and applied statutory language similar to §115.346 in the past, thus demonstrating that its application is not hindered by unconstitutionally vague language. *See, e.g., State on inf. Dearing v. Berkeley*, 41 S.W. 732 (Mo. 1897) and *State ex rel. Selsor v. Grimshaw*, 762 S.W.2d 868 (Mo. Ct. App. E.D. 1989).

Furthermore, the City Attorney’s letter, dated January 24, 2002, only indicated that he was not certain whether §115.346 applied to some of the fees Burgess owed, such as the “TGA fees, occupancy permits and BOCA code permits”; he did not indicate that his uncertainty over the application of §115.346 applied to the business license fee owed by Burgess for the years following 1995. L.F. at 24. Since the issue of whether §115.346 applies to the “TGA fees, occupancy permits and BOCA code permits” is an issue not addressed by the trial court in this case, this court should

remand this case and instruct the trial court to determine §115.346's applicability to these fees and permits.

Burgess also asserts that §115.346 is unconstitutionally vague because it fails to define “arrears,” L.F. at 13, but this argument fails because the term “arrears” has plain meaning. A dictionary’s definition of a word is its plain meaning. *Delta Air Lines, Inc. v. Dir. of Revenue*, 908 S.W.2d 353, 356 (Mo. banc 1995). The dictionary definition of “arrears” is “[a]n unpaid, overdue debt or an unfulfilled obligation.” *American Heritage Dictionary* 102 (3rd ed. 1996); *see also Black’s Law Dictionary* 109 (6th ed. 1990) (defining arrears as “[m]oney which is overdue and unpaid”). These definitions do not suggest that the term lacks clearly established meaning.

Burgess supports the argument that §115.346 is unconstitutionally vague by recalling that the City of Wildwood certified him as a candidate in 2000, even though §115.346 was in effect at that time and Burgess’ circumstances regarding the business license and zoning issues were the same as at the time of the 2002 election. Burgess’ argument, at its core, is one of estoppel: if the City of Wildwood City Clerk certified him previously as a candidate under the same set of circumstances that he faced in 2002, then the City should be estopped from claiming that §115.346 now disqualifies him from candidacy.

This argument fails because the doctrine of estoppel does not generally run against local government entities. “It is a well-established principle in Missouri that a governmental unit is not estopped by illegal or unauthorized acts of its officers” *McDonald Special Rd. Dist. v. Pickett*, 694 S.W.2d 273, 277 (Mo. Ct. App. S.D. 1985) quoting *State ex rel. Southland Corp. v. City of Woodson Terrace*, 599 S.W.2d 529, 531 (Mo. Ct. App. E.D. 1980); *but see Murrell v. Wolff*, 408

S.W.2d 842 (Mo. 1966) (observing that although equitable estoppel is not ordinarily applicable against a city in the exercise of its governmental functions, the courts may apply it in “exceptional cases where required by right and justice.”). Furthermore, this court should remand this issue to the trial court to determine if Burgess’ circumstances warrant application of the estoppel principle against the City. *Cf.*, *Armstrong v. Elmore*, 990 S.W.2d 62, 64 (Mo. Ct. App. W.D. 1999) (noting that for purposes of justiciability, “a case is moot if a judgment rendered has no practical effect upon an existent controversy”).

* * *

Burgess has raised numerous factual and constitutional arguments that were not addressed by the Circuit Court. These issues are properly remanded to the Circuit Court for its consideration. *See Bracey v. Monsanto Co.*, 823 S.W.2d 946, 949 (Mo. banc 1992) (remanding to the trial court certain issues due to the inadequacy of the record before the Missouri Supreme Court) and *Anderson v. Dyer*, 456 S.W.2d 808, 815 (Mo. Ct. App. 1970) (following the “general rule that when there are issues in a case that have not been determined in the trial court, an appellate court will usually order a new trial after reversal.”).

CONCLUSION

For the reasons stated above, this court should reverse the trial court’s erroneous declaration that §115.346 is unconstitutional, and remand the case for further proceedings.

Respectfully submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

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The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus free.

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