



JENKINS & KLING, P.C.
ATTORNEYS AT LAW

Admitted to Practice in
Missouri

Stephen L. Kling, Jr.
Email skling@jenkinskling.com

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Via Federal Express

Mr. Thomas F. Simon, Clerk
Supreme Court of Missouri
Supreme Court Building
207 West High Street
Jefferson City, Missouri 65102-0150

FILED
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THOMAS F. SIMON
CLERK, SUPREME COURT

Re: *James Trout v. State of Missouri, et al.* – SC88476

Dear Mr. Simon:

Background

This firm and the undersigned represent interested parties, Laura T. Bryant, who was recently re-elected to the Creve Coeur City Council in April 2007, and her treasurer, David Griege. Mr. Griege has been treasurer of the Citizens to Elect/Re-elect Laura Bryant Committee since the time she first ran and was elected to office of Creve Coeur City Council in 2001.

On July 19, 2007, this Court handed down an Opinion in *James Trout v. State of Missouri, et al.* (SC88476) wherein the Court held that the repeal of the campaign contribution limits law was invalid. An order also accompanied the Opinion which authorized other interested persons to submit amicus letter briefs addressing the issue of the effect of the invalidity of §130.032 RSMo. Supp. 2006 on campaign contributions collected in reliance on that section and to address whether the effect [of such invalidity] is retrospective or prospective only.

The Missouri legislature's decision in 2006 to remove campaign contribution limits in §130.032 RSMo. was a significant change to Missouri's campaign finance law, the ramifications of which affected the campaigns of countless statewide candidates in 2007, including Ms. Bryant's recent campaign for Creve Coeur City Council.

From the inception of her 2007 campaign for Creve Coeur City Council, Ms. Bryant's platform was directly tied to the importance of property rights of residents and businesses and the need to fight the statewide abuse of eminent domain. As such, Ms. Bryant was very concerned that local developers might rush to support and contribute to her opposing

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candidate. For example, during the April 2006 Creve Coeur City Council election, a Creve Coeur developer's political action committee collected and spent approximately \$10,000.00 on behalf of a particular pro-development candidate who supported the use of eminent domain for private development. Ms. Bryant's efforts, along with the efforts of others, resulted in the enactment of an amendment to the City of Creve Coeur Charter, which imposed more stringent requirements for the City to authorize the use of eminent domain.

Given the new campaign finance law and Ms. Bryant's anticipation that wealthy developers might contribute to Ms. Bryant's opponent, she collected approximately \$13,000.00 in campaign contributions from friends, neighbors and family members who expected nothing in return except for her pledge to foster good and honest City government. In her good faith reliance on the then-existing Missouri campaign contribution law, Ms. Bryant accepted several donations which far exceeded the previous \$325.00 per individual contribution limit. It is these contributions which enabled Ms. Bryant to run a strong, truthful and independent campaign. Nearly every dollar collected was spent on her campaign, primarily consisting of educational and related materials. Reports regarding the money collected and the expenditure of that money were filed with the local Board of Elections.

Argument

With respect to a court's invalidation of an unconstitutional statute, the rule is that "An unconstitutional statute is no law and confers no rights. . . (citations omitted). . . This is true from the date of its enactment, and not merely from the date of the decision so branding it." *State ex rel. Cardinal Glennon Memorial Hospital for Children v. Gaertner*, 583 S.W.2d 107, 118 (Mo. banc 1979), citing *State ex rel. Miller v. O'Malley*, 342 Mo. 641, 652, 117 S.W.2d 319, 324 (Mo. banc 1938). However, an exception to this rule has emerged, and "[t]he modern view, however, rejects this rule **to the extent that it causes injustice to persons who have acted in good faith and reasonable reliance** upon a statute later held unconstitutional." (emphasis added). *State ex rel. Cardinal Glennon Memorial Hospital for Children*, 583 S.W.2d at 118.

Ms. Bryant exemplifies the need for this modern view exception. First, Ms. Bryant acted in good faith reliance on the then-existing Missouri statute, which allowed a candidate to receive unlimited contributions from an individual contributor. Second, Ms. Bryant did not have any advantage over her opponent by relying on then-existing Missouri law which allowed unlimited contributions, since her opponent had the same opportunity as she did to accept unlimited campaign contributions from individual contributors. Finally, to ask Ms. Bryant to return funds which have already been almost completely exhausted on campaign expenses for a municipal campaign which has already concluded, would be a huge hardship

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to Ms. Bryant. Ms. Bryant is a major wage earner in her household and has two children whom she helps support, and such an imposition would place a substantial financial strain on her family.

Mr. Griege, Ms. Bryant's treasurer, also could be caught up in a retroactive application of the Opinion, at least to the extent of filing revised campaign finance reports to the local Board of Elections and possible review by the Missouri Ethics Commission for compliance.

Conclusion

For the foregoing reasons, on behalf of Ms. Bryant and Mr. Griege, we respectfully request that this Court adhere to the modern view pronounced in *State ex rel. Cardinal Glennon Memorial Hospital for Children v. Gaertner*, and declare that, to the extent §130.032 RSMo. Supp. 2006 applies retroactively, those campaign contributions accepted by candidates for elections which were already completed prior to the Court's Opinion on July 19, 2007 are not required to be refunded, due to the extreme hardship that refunding contributions already spent on elections already concluded would impose on those candidates and the minimal harm or injustice which would result if those contributions were not refunded.

Respectfully submitted,

JENKINS & KLING, P.C.

By: _____


Stephen L. Kling, Jr., #29520
Kelly E. Shamel, #56598
10 South Brentwood Blvd., Ste. 200
St. Louis, Missouri 63105
(314) 721-2525 (Telephone)
(314) 721-5525 (Telecopy)
skling@jenkinsklings.com

Attorneys for Laura T. Bryant and
David Griege

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cc: Robert L. Hess (via fax and first class mail)
Jeremiah W. Nixon (via fax and first class mail)
Alana M. Barragan-Scott (via fax and first class mail)
Jane E. Dueker (via fax and first class mail)
Gretchen Garrison (via fax and first class mail)
Charles W. Hatfield (via fax and first class mail)
Luann V. Madsen (via fax and first class mail)
Harvey M. Tettlebaum (via fax and first class mail)
James R. Layton (via fax and first class mail)