

**IN THE SUPREME COURT
OF THE STATE OF MISSOURI**

No. SC100898

ROBUST MISSOURI DISPENSARY 3, LLC,

Plaintiff – Appellant

v.

ST. LOUIS COUNTY, et al.

Respondents – Appellees.

**APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS
COUNTY TWENTY-FIRST JUDICIAL CIRCUIT
THE HONORABLE BRIAN H. MAY, JUDGE**

SUBSTITUTE BRIEF OF RESPONDENT ST. LOUIS COUNTY

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JURISDICTIONAL STATEMENT

This appeal arises from the declaratory judgment action filed by Plaintiff-Appellant Robust Missouri Dispensary 3, LLC (“Appellant Dispensary”) against Defendant-Respondents St. Louis County and Wayne Wallingford, in his official capacity as Missouri’s Director of Revenue, seeking to limit the County’s authority to implement a sales tax on adult-use marijuana permitted by constitutional amendment. D64. Respondent St. Charles County intervened. D75. On April 22, 2024, the Circuit Court, the Honorable Judge Brian May presiding, granted Respondents St. Louis County and St. Charles County’s motions for summary judgment and denied Appellant Dispensary’s motion for summary judgment. D121; A1-A3. Appellant Dispensary appealed this order on May 2, 2024. D122. The Missouri Court of Appeals, Eastern District, issued its order reversing the Circuit Court on November 12, 2024. A4-A7. Respondents timely applied for transfer from the Missouri Court of Appeals to this Court. Resp. App. A3. This Court sustained this application for transfer and ordered the cause transferred on January 28, 2025. Resp. App. A32. This Court has jurisdiction over this cause as set forth in Article 5, Section 10 of the Missouri Constitution.

STATEMENT OF FACTS

This case involves Appellant Dispensary’s attempt to limit the County’s authority to implement a sales tax on adult-use marijuana permitted by constitutional amendment. The Missouri Constitution was amended in 2022 to include Article XIV, Section 2 (referred to hereinafter as “Article XIV, Section 2” or “Section 2”), legalizing marijuana use for adults and imposing controls on commercial production and distribution of same. A11 (MO. CONST., Art. XIV, § 2). In its first paragraph, addressing the “Purpose” of the section, Article XIV, Section 2, states that the intent of the section:

is to prevent arrest and penalty for personal possession and cultivation of limited amounts of marijuana by adults twenty-one years of age or older; remove the commercial production and distribution of marijuana from the illicit market; prevent revenue generated from commerce in marijuana from going to criminal enterprises; prevent the distribution of marijuana to persons under twenty-one years of age; prevent the diversion of marijuana to illicit markets; protect public health by ensuring the safety of marijuana and products containing marijuana; and ensure the security of marijuana facilities.

MO. CONST., Art. XIV, § 2.1. This “Purpose” paragraph emphasizes that “t[o] the fullest extent possible, this section shall be interpreted in accordance with the purpose and intent set forth in this section.” MO. CONST., Art. XIV, § 2.1.

Article XIV, Section 2.6, provides that each licensed retail marijuana facility shall collect a tax of six percent (6%) on retail sale of non-medical marijuana. MO. CONST., Art. XIV, § 2.6(1). This section also states:

Pursuant to Article III, Section 49 of this Constitution, *the governing body of any local government* is authorized to impose, by ordinance or order, an additional sales tax in an amount not to exceed three percent on all tangible personal property retail sales of adult use marijuana sold *in such political subdivision*.

MO. CONST., Art. XIV, § 2.6(5) (emphasis added). This section specifies that “[t]he tax authorized by this paragraph shall be *in addition to* any and all other tangible personal property retail sales taxes allowed by law....” *Id.* (emphasis added). Neither “governing body” nor “political subdivision” are defined in Article XIV, Section 2.6. *See* MO. CONST.,

Art. XIV, *generally*. Article XIV defines “local government” as “in the case of an incorporated area, a village, town, or city and, in the case of an unincorporated area, a county.” MO. CONST., Art. XIV, § 2.2(12).

The County is “a body corporate and politic.” D94 ¶ 2 (*citing* D95, St. Louis County Charter, § 1.010). Thus, it is a legal subdivision of the State of Missouri. MO. CONST., Art. VI, § 1. The County Charter was established “as the fundamental law for the government of the [C]ounty.” D94 ¶ 3 (*citing* D95, St. Louis County Charter, Preamble). *See also* MO. CONST., Art. VI, § 18(a) (“Any county having more than 85,000 inhabitants, according to the census of the United States, may frame and adopt and amend a charter for its own government as provided in this article, and upon such adoption shall be a body corporate and politic.”) Therefore, the County is a charter county organized in accordance with the Missouri Constitution. D94 ¶ 4 (*citing* MO. CONST., Art. VI, § 1 and D95, St. Louis County Charter, § 1.010). The County Council is the governing body of St. Louis County. D94 ¶ 5 (*citing* D95, St. Louis County Charter, § 2.010). It performs its duties, in part, by enacting ordinances and orders. D94 ¶ 6 (*citing* D95, St. Louis County Charter, § 1.030). Its powers include enacting ordinances and orders that govern in both unincorporated St. Louis County, and in certain circumstances, such as those authorized by the Missouri Constitution and approved by the voters, in incorporated areas of St. Louis County. D94 ¶ 7 (*citing* D95, St. Louis County Charter, §§ 2.010; 2.180.21). The members of the Council serve districts that together comprise the entire County, not just unincorporated areas. D94 ¶ 8 (*citing* D95, St. Louis County Charter, § 2.030). Additionally, the physical boundaries of the County encompass both incorporated and unincorporated areas. D94 ¶ 9 (*citing* D95, St. Louis County Charter, § 1.020). Thus, the political subdivision of the governing body (County Council) is all of the County, including both its incorporated and unincorporated areas. D94 ¶ 10 (*citing* D95, St. Louis County Charter, § 1.020).

Article XIV, Section 2.6, permits a public governing body of a local government to enact an ordinance to impose the authorized additional sales tax on adult use marijuana in its political subdivision (the “Additional Sales Tax”) if such ordinance is “submit[ed] to

the voters of the political subdivision, at a municipal, county or state general, primary or special election....” MO. CONST., Art. XIV, Section 2.6(5). In this case, the County Council, representing voters of both unincorporated and incorporated areas of St. Louis County, properly enacted an ordinance submitting to the voters of both unincorporated and incorporated areas of St. Louis County a proposition regarding the County’s authority to collect taxes on marijuana sales within the boundaries of St. Louis County. D94 ¶¶ 11-12. Together, the voters of St. Louis County, residing in both unincorporated and incorporated areas, approved of the County taxing sales of adult use marijuana within the boundaries of the political subdivision of St. Louis County on April 4, 2023. D94 ¶ 13.

The Dispensary is a marijuana dispensary located in Florissant, Missouri, an incorporated area of St. Louis County. D78 ¶ 1. The Dispensary sued the County and the Director of Revenue for the State of Missouri (the “Director of Revenue”) to challenge the levy of sales taxes to be collected by marijuana facilities under Article XIV of the Missouri Constitution, Florissant’s Prop M, and the County’s Prop M. D64, *passim*. The Dispensary contends that Article XIV of the Missouri Constitution does not permit a county to impose the Additional Sales Tax within the boundaries of an incorporated village, town, or city. D64 ¶ 30. The Dispensary moved for summary judgment in the Circuit Court, arguing that “the local government for purposes of Article XIV, Section 2 is either a village, town, or city *or* a county. It is not both.” D85 p. 2. The Dispensary further argued that “[i]n an incorporated area, the local government is only a city, town, or village, not a county.” D85 p. 2.

The County’s position is that the definition of “local government” necessarily includes both incorporated and unincorporated areas of the County. D99, pp. 6-7 and 13-14. The Circuit Court agreed, concluding that “the definition of ‘*Local Government*’ should be read to include the County as to incorporated and unincorporated areas to as to avoid an absurd and inconsistent result.” A3 (emphasis in original). The Circuit Court also specifically rejected the Dispensary’s argument, stating that “the Court cannot accept Plaintiff’s interpretation of ‘*Local Government*’ from Section 2(12) given the language found in sections 5(3) and 5(4) of Article XVI [sic] §2 of the Missouri Constitution.” A2

(emphasis in original). Looking to Article XIV’s “stated purpose for guidance,” the Circuit Court stated that Article XIV “provides that it is designed in part to make marijuana legal under state and local law for adults and to control the commercial production and distribution system while protecting public health.” A2 (*citing* MO. CONST., Art. XIV, Section 2.1). The Circuit Court found that:

If Plaintiff’s interpretation were accepted then a municipality or city would essentially be given carte blanche to ignore any County ordinance or regulation, including those related to public health and safety wholly unrelated to the taxing issue. For example, Section 5(4) would allow Florissant to place a dispensary within less than 1000 feet of any then-existing school, and the County, and other cities in the Ferguson-Florissant school district would have no say in that decision. This absurd outcome would directly contradict the stated purpose of the Article.

A2 (footnotes omitted). As such, the Circuit Court concluded that the County is “constitutionally authorized to enact a retail tax.” A3.

POINTS RELIED ON

- I. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT FOR RESPONDENTS AND DENIED APPELLANT DISPENSARY'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE PLAIN LANGUAGE OF ARTICLE XIV, SECTION 2 AUTHORIZES THE COUNTY TO IMPOSE THE ADDITIONAL SALES TAX AND APPELLANT DISPENSARY'S INTERPRETATION RENDERS LANGUAGE TO MERE SURPLUSAGE.**

Buechner v. Bond, 650 S.W.2d 611, 613 (Mo. banc 1983)

Macon Cnty. Emergency Bd. v. Macon Cnty. Comm'n, 485 S.W.3d 353, 355 (Mo. banc 2016)

Russello v. U.S., 464 U.S. 16, 23 (1983)

U.S. v. Gonzales, 520 U.S. 1, 5 (1997) (*citing Webster's Third New International Dictionary* 97 (1976))

- II. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS AND DENIED APPELLANT DISPENSARY'S MOTION FOR SUMMARY JUDGMENT BECAUSE ITS PROPOSED INTERPRETATION WOULD LEAD TO ABSURD RESULTS.**

City of Olivette v. St. Louis County, 507 S.W.3d 637, 640 (Mo. Ct. App. E.D. 2017)

Readey v. St. Louis Cnty. Water Co., 352 S.W.2d 622, 625 (Mo. 1961)

Southwestern Bell Yellow Pages, Inc. v. Dir. of Revenue, 94 S.W.3d 388, 390 (Mo. banc 2002)

- III. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS AND DENIED APPELLANT DISPENSARY'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE PURPOSE AND INTENT OF ARTICLE XIV, SECTION 2, ARE ONLY SUPPORTED BY AN INTERPRETATION AUTHORIZING THE COUNTY TO IMPOSE THE ADDITIONAL SALES TAX.**

City of Olivette v. St. Louis County, 507 S.W.3d 637, 640 (Mo. Ct. App. E.D. 2017)

D.E.G. v. Juvenile Officer of Jackson Cnty., 601 S.W.3d 212, 216 (Mo. banc 2020)

Dubinsky v. St. Louis Blues Hockey Club, 229 S.W.3d 126, 130 (Mo. App. E.D. 2007)

Readey v. St. Louis Cnty. Water Co., 352 S.W.2d 622, 625 (Mo. 1961)

IV. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS AND DENIED APPELLANT DISPENSARY'S MOTION FOR SUMMARY JUDGMENT BECAUSE APPELLANT DISPENSARY'S PROPOSED DEFINITION OF "LOCAL GOVERNMENT" IS WITHOUT MERIT.

Akins v. Dir. of Revenue, 303 S.W.3d 563, 565 (Mo. banc 2010)

City of Chesterfield v. State, 590 S.W.3d 840, 844 (Mo. banc 2019)

In re Finnegan, 327 S.W.3d 524, 426 (Mo. banc 2010)

Stiers v. Director of Revenue, 2015 WL 343310, *3 (Mo. Ct. App. E.D. 2015),
overturned on other grounds, 477 S.W.3d 611 (Mo. banc 2016)

ARGUMENT

This case poses a straightforward statutory interpretation question for the Court. Appellant Dispensary’s interpretation of the definition of “local government” as only including the municipality in incorporated areas conflicts with the language of Article XIV, Section 2 at a whole. As discussed below, Appellant Dispensary’s proffered interpretation is simply wrong. A coherent reading of Section 2 as a whole unambiguously provision supports the conclusion that the County is a “local government” for the purposes of “such political subdivision,” including both incorporated and unincorporated areas. MO. CONST., Art. XIV, § 2.6(5). However, if the Court entertains Appellant Dispensary’s interpretation of the definition of “local government,” the Court must then apply the rules of statutory construction to confront the ambiguity this introduces into Section 2 as a whole. Where there is an ambiguity in the plain language of a piece of legislation, as there is here, the Court may apply the rules of statutory construction to resolve the ambiguity. *United Pharmacal Co. of Mo. Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 910 (Mo. banc 2006). It is well-established that when engaging in statutory interpretation, “[t]he legislature will not be presumed to have ‘inserted idle verbiage or superfluous language in a statute.’” *State ex rel. Goldsworthy v. Kanatzar*, 543 S.W.3d 582, 586 (Mo. banc 2018) (internal citation omitted). The “construction of a statutory scheme should avoid unreasonable or absurd results.” *MacColl v. Mo. State Highway Patrol*, 665 S.W.3d 290, 297 (Mo. banc 2023). Courts should interpret a statute “as a symmetrical and coherent regulatory scheme and fit, if possible, all parts into a harmonious whole.” *Food & Drug Admin v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000).

The issue before the Court centers around the definition and *subsequent use* of the phrase “local government” in Article XIV, Section 2. The definition of “local government” in Section 2 is: “in the case of an incorporated area, a village, town, or city *and*, in the case of an unincorporated area, a county.” MO. CONST., Art. XIV, § 2.2(12) (emphasis added). The word “and,” in addition to the context provided by the entirety of Section 2, the definition of “local government” necessarily includes the County in both incorporated and unincorporated areas. The Circuit Court agreed, concluding that “the definition of ‘Local

Government’ should be read to include the County as to incorporated and unincorporated areas to as to avoid an absurd and inconsistent result.” A3 (emphasis in original).

Appellant Dispensary’s position is that the definition of “local government” in Section 2.2(12) establishes that “the local government authorized to impose this tax is a city town or village, or a county. It is not both.” *See* Appellant Dispensary’s Brief, p. 22. However, as discussed in Section I below, this interpretation of the definition of “local government” renders other language in Article XIV, Section 2 superfluous, undermines the “stated purpose” of the Section, and contradicts all real-world understanding of the phrase.

In addition, as set forth in Section II below, if this definition applies throughout Section 2, it leads to immediate absurd results. Section 2.5(3) states that the only ordinances binding on a facility are those of the local government in which it sits. It is uncontroverted that the only health ordinances applicable in Florissant are those of St. Louis County. Therefore, if Appellant Dispensary’s interpretation of “local government” is uniformly applicable throughout Section 2, then the direct effect is that no health ordinances would be applicable to dispensaries located in incorporated areas of the County. This in itself is an absurd result.

Appellant Dispensary relies on its interpretation of the definition of “local government” to the exclusion of every other part of Article XIV, Section 2. To avoid the conclusion that its interpretation of “local government” renders other language in Section 2 superfluous, Appellant Dispensary asserts that any language in Section 2 contradicting Appellant Dispensary’s interpretation of the “local government” is impermissibly rendering the definition superfluous. Appellant Dispensary’s attempt to wield the statutory rules against rendering language superfluous as a shield protecting its interpretation of the definition of “local government” should be disregarded. The simple fact is that reading the definition of “local government” to include the city *and* the county allows all provisions of Article XIV, Section 2 to be read in harmony.

The Court must interpret the entirety of the Amendment “in a manner that is consistent with reason” and reject constructions that “produce an unreasonable, oppressive, or absurd result.” *Bd. of Educ. of City of St. Louis v. Daly*, 272 S.W.3d 228, 234 (Mo. App.

E.D. 2008) (citing *David Ranken, Jr., Technical Institute v. Boykins*, 816 S.W.2d 189, 192 (Mo. banc 1991), *overruled on other grounds, Alumax Foils, Inc. v. City of St. Louis*, 939 S.W.2d 907 (Mo. banc 1997) (“law favors statutory construction that harmonizes with reason”). The Court must “presume that the legislature intended that each word, clause, sentence, and provision of a statute has effect and should be given meaning.” *Dubinsky v. St. Louis Blues Hockey Club*, 229 S.W.3d 126, 130 (Mo. App. E.D. 2007). The interpretation of “local government” proffered by Respondents, wherein both the municipalities and the County are considered “local governments” under Article XIV, Section 2, gives effect to the stated purpose and every other clause and word of Section 2 and avoids an absurd result.

STANDARD OF REVIEW

The standard of review of a grant of a motion for summary judgment is *de novo*. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993) (superseded on other grounds). An appellate court applies the same criteria as the trial court and summary judgment is only proper if the moving party established that there is no genuine issue as to the material facts and the movant is entitled to judgment as a matter of law. *Green v. Fotoohighiam*, 606 S.W.3d 113, 115 (Mo. banc 2020). The appellate court will affirm the trial court’s granting of summary judgment if it is correct as a matter of law on any grounds raised in the motion and supported by the summary judgment record. *Loerch v. City of Union Missouri*, 643 S.W.3d 597, 602 (Mo. Ct. App. E.D. 2022). In determining whether a party has established a right to judgment, issues of statutory interpretation are questions of law reviewed *de novo*. *Lisle v. Meyer Electric Co., Inc.*, 667 S.W.3d 100, 103 (Mo. banc 2023).

I. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT FOR RESPONDENTS AND DENIED APPELLANT DISPENSARY’S MOTION FOR SUMMARY JUDGMENT¹ BECAUSE ARTICLE XIV,

¹ Respondent St. Louis County, Respondent St. Charles County, and Appellant Dispensary all filed motions for summary judgment on substantially identical grounds. D77, D100, D119. The Circuit Court granted Respondents’ motions for summary judgment and denied Appellant Dispensary’s motion for summary judgment. D121.

SECTION 2 AUTHORIZES THE COUNTY TO IMPOSE THE ADDITIONAL SALES TAX AND APPELLANT DISPENSARY'S INTERPRETATION RENDERS LANGUAGE TO MERE SURPLUSAGE.

The key question before the Court is whether the language in Article XIV, Section 2, authorizes the County to impose the Additional Tax within incorporated areas as well as unincorporated areas of the County. The operative language of Article XIV, Section 2, states that “the governing body of *any local government* is authorized to impose, by ordinance or order, an additional sales tax in an amount not to exceed three percent on all tangible personal property retail sales of adult use marijuana sold *in such political subdivision*.” MO. CONST., Art. XIV, § 2.6(5). Appellant Dispensary contends that the definition of “local government” requires this section to be read such that only one local government may impose the Additional Sales Tax in any given area – either the city town or village in an incorporated area or the county in an unincorporated area, not both.” *See* Appellant Dispensary’s Brief, p. 22. However, this interpretation is invalid because it violates the basic rules of statutory construction, including (1) it requires excision of multiple other provisions of Section 2, rendering statutory language as mere surplusage; (2) it leads to the immediate absurd result that no health ordinances apply to Appellant Dispensary or other dispensaries in incorporated areas; and (3) it contravenes the stated legislative purpose.

It is a well-established rule of constitutional interpretation that a Court must give meaning to every word or phrase and should “never presume that our legislature acted uselessly and should not construe a statute to render any provision meaningless.” *Am. Civil Liberties Union of Mo. v. Ashcroft*, 577 S.W.3d at 891-92. “Words used in constitutional provisions must be viewed in context; their use is presumed intended, and not meaningless surplusage.” *Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. banc 1983).

The use of the phrase “any local government” in this section is significant for two reasons. First, the use of “any” acknowledges that there may be more than one local government authorized to impose such tax in any given political subdivision. “Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately

of whatever kind.” *U.S. v. Gonzales*, 520 U.S. 1, 5 (1997) (citing Webster’s Third New International Dictionary 97 (1976)). See also *Graine Re, Inc. v. Nat’l Credit Union Admin. Bd.*, 956 F.3d 1041, 1045 (8th Cir. 2020). Appellant Dispensary, citing the Court of Appeals’ opinion in this case but no other case law, claims that the word “any” is modifying “the singular noun ‘political subdivision,’ indicating that a single local government – not multiple overlapping governments – holds the taxing authority.” See Appellant Dispensary’s Brief, p. 28 (citing the Court of Appeals Opinion at pp. 8-9). This conclusion makes no sense. While it is true that each local government is its own political subdivision, it is also true that there are multiple local governments within that political subdivision. The logical conclusion is that the use of “any” indicates the intent that *any* of these local governments may impose the Additional Sales Tax throughout its political subdivision. *Gonzales*, 520 U.S. at 5 (stating that where the statute does not have language “limiting the breadth of that word,” the term “any” must be read to include “all” of the described item).

Further, as stated above, Article XIV, section 2.6(5) states that “*the governing body of any local government* is authorized to impose, by ordinance or order, an additional sales tax in an amount not to exceed three percent on all tangible personal property retail sales of adult use marijuana sold in *such political subdivision*.” MO. CONST., Art. XIV, § 2.6(5) (emphasis added). The use of the two phrases “any local government” and “such political subdivision” indicates that such phrases must have two distinct meanings. Appellant Dispensary’s interpretation would require that both “any local government” and “such political subdivision” be read as synonymous terms. This interpretation violates the basic tenets of constitutional interpretation. Since different terms were used, the court should assume that the word choices were intentional and meaningful. *Macon Cnty. Emergency Bd. v. Macon Cnty. Comm’n*, 485 S.W.3d 353, 355 (Mo. banc 2016) (“It is presumed that each word, clause, sentence, and section of a statute will be given meaning and that the legislature did not insert superfluous language.”). The words must have different meanings. *Russello v. U.S.*, 464 U.S. 16, 23 (1983) (“We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.”). Therefore, St.

Louis County is a local government and the tax applies to its political subdivision in its entirety. As set forth herein, the political subdivision includes both incorporated and unincorporated areas. If the drafters had intended otherwise, they would have so stated.

In addition, the use of the phrase “such political subdivision” is significant because it makes clear that each “governmental body of any local government,” including the County Council, is authorized to enact an ordinance that applies to its political subdivision to seek approval to impose the Additional Sales Tax throughout the entirety of “such political subdivision.” There is no dispute that the physical boundaries of the County encompass both incorporated and unincorporated areas. D95, St. Louis County Charter, §§ 1.010 and 1.020. (“St. Louis County, Missouri shall continue to be a body corporate and politic... and the boundaries shall continue as at present unless legally changed.”). Further, St. Louis County has those authorities given by the electorate for Countywide application. *Id.*, § 2.180.21 (“the council shall have, by ordinance, the power to... [p]rovide the terms upon which the county shall perform any services and functions of any municipality or political subdivision in the county, except school districts, when accepted by a vote of a majority of the qualified electors voting thereon in such municipality or subdivision....”). The Missouri Constitution’s “grant of authority pertains to the performance of the services and functions of a municipality both outside of and within incorporated areas of the county.” *City of Olivette v. St. Louis County*, 507 S.W.3d 637, 640 (Mo. Ct. App. E.D. 2017). *See also Pepper v. St. Charles County*, 517 S.W.3d 590, 596 (Mo. Ct. App. E.D. 2017).

Appellant Dispensary seeks to use its interpretation of the definition of “local government” as a cudgel that invalidates all contradictory language, arguing that its belief that only one local government may impose the Additional Sales Tax trumps all other sections. *See* Appellant Dispensary’s Brief, pp. 28-29. However, even Appellant Dispensary acknowledges that “[i]n construing individual sections, the constitution must be read as a whole considering other sections that may shed light on the provision in question.” *Id.*, p. 28 (*quoting Pestka v. State*, 493 S.W.3d 405, 409 (Mo. banc 2016)). The other provisions of Section 2, by utilizing the phrase “any local government” indicate that

Article XIV authorizes more than one “local government” to impose the Additional Sales Tax.

Based on the plain language of Article XIV, Section 2, St. Louis County is authorized to impose the Additional Sales Tax throughout St. Louis County because the “political subdivision” of St. Louis County includes both incorporated and unincorporated areas.²

II. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS AND DENIED APPELLANT DISPENSARY’S MOTION FOR SUMMARY JUDGMENT BECAUSE ITS PROPOSED INTERPRETATION WOULD LEAD TO ABSURD RESULTS.

Section 2.5(3) states, “[t]he only local government ordinances and regulations that are binding on a marijuana facility are those of the local government where the marijuana facility is located.” Article XIV, Section 2.5(3). As stated above, St. Louis County is the Countywide health regulating authority for both incorporated and unincorporated areas. *City of Olivette*, 507 S.W.3d at 638-39; *Readey v. St. Louis Cnty. Water Co.*, 352 S.W.2d 622, 625 (Mo. 1961). It is uncontroverted that the only health ordinances applicable in Florissant are those of St. Louis County. D94, ¶17. Therefore, if Appellant Dispensary’s interpretation of “local government” is uniformly applicable throughout Section 2, then the direct effect is that *no health ordinances* would apply to dispensaries located in incorporated areas. This is not a hypothetical result; it is a direct result of the language in Section 2.5(3), if Appellant Dispensary’s contention that the only “local government” for purposes of Section 2 is Florissant were to be accepted by this Court.

Appellant Dispensary attempts to circumvent the invalidation of its preferred outcome due to this absurd result by arguing that “[i]f the [Circuit] court’s concerns were valid, it would have addressed them by holding that section 2.5(3)... applies only to ordinances enacted under article 14, leaving the enforceability of health ordinances passed under other laws unaffected. *See* Appellant Dispensary’s Brief, p. 24. However, this

² The County does not dispute Florissant’s ability to also collect the Additional Sales Tax within its political subdivision, as provided by MO. CONST., Art. XIV, § 2.6(5).

attempted solution fails because it requires the Court to *insert* language into Section 2. *Southwestern Bell Yellow Pages, Inc. v. Dir. of Revenue*, 94 S.W.3d 388, 390 (Mo. banc 2002) (“Courts cannot add words to a statute under the auspice of statutory construction.”). The plain language of Section 2.5(3) states that only local government ordinances apply. If Appellant Dispensary’s definition of “local government” prevails, meaning that only Florissant ordinances apply, then absolutely no health ordinances apply to Appellant Dispensary or any other dispensaries in incorporated areas of St. Louis County. This is an absurd result.

The Court of Appeals sidesteps this absurd result by stating that the Counties’ argument is that the Appellant’s interpretation of “local government” “would lead to the effective nullification of county ordinances regarding health and welfare as those ordinances are applied to marijuana dispensaries.” A6, fn 2. This is an inaccurate statement of both the Counties’ argument and the absurdity that would result from adoption of Appellant’s interpretation. The definition of “local government” as including only Florissant would *not* nullify any county ordinances, it would simply lead to a situation where Article 2 wholly exempts any dispensary in an incorporated area from being subject to those ordinances. The absurd result is that marijuana dispensaries – and only marijuana dispensaries – would be subject to no health ordinances despite the stated purpose of Article XIV, Section 2 including the “protect[ion] of public health.” MO. CONST., Art. XIV, § 2.1. Once again, the Appellant’s proffered interpretation of “local government” is wildly inconsistent with the Section as a whole.

III. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS AND DENIED APPELLANT DISPENSARY’S MOTION FOR SUMMARY JUDGMENT BECAUSE THE PURPOSE AND INTENT OF ARTICLE XIV, SECTION 2, ARE ONLY SUPPORTED BY AN INTERPRETATION AUTHORIZING THE COUNTY TO IMPOSE THE ADDITIONAL SALES TAX.

As stated in the “Purpose” provision of Article XIV, Section 2, and reiterated by the Circuit Court in its Opinion, “the purpose of this section is to make marijuana legal under state and local law for adults twenty-one years of age or older, and to control the

commercial production and distribution of marijuana under a system that licenses, regulates, and *taxes the businesses involved while protecting public health.*” MO. CONST., Art. XIV, § 2.1 (emphasis added) and A2. The intent of the section is:

to prevent arrest and penalty for personal possession and cultivation of limited amounts of marijuana by adults twenty-one years of age or older; remove the commercial production and distribution of marijuana from the illicit market; prevent revenue generated from commerce in marijuana from going to criminal enterprises; prevent the distribution of marijuana to persons under twenty-one years of age; prevent the diversion of marijuana to illicit markets; protect public health by ensuring the safety of marijuana and products containing marijuana; and ensure the security of marijuana facilities.

MO. CONST., Art. XIV, § 2.1. Thus, the express terms of the text of Article XIV provide that one of the purposes of the Constitutional amendment is to *tax while protecting public health.* It is obvious that the drafters considered the economic impact and potential revenue generation related to marijuana sales in conjunction with the public health responsibility in ensuring safe products, facilities, and environmental controls and addressing community health impacts. Thus, it is only logical that the portions of the revenue generated from taxation of marijuana sales be capturable by the entities responsible for fulfilling the public health duties associated with legalized marijuana. The purpose provision of Article XIV, Section 2 makes clear that “[t]o the fullest extent possible, this section shall be interpreted in accordance with the purpose and intent set forth in this section.”

The Circuit Court properly rejected Appellant Dispensary’s argument after looking to Article XIV’s “stated purpose for guidance,” which “provides that it is designed in part to make marijuana legal under state and local law for adults and to control the commercial production and distribution system while protecting public health.” A2 (*citing* MO. CONST., Art. XIV, Section 2.1). The Circuit Court found that:

If Plaintiff’s interpretation were accepted then a municipality or city would essentially be given carte blanche to ignore any County ordinance or regulation, including those related to public health and safety wholly unrelated to the taxing issue. For example, Section 5(4) would allow Florissant to place a dispensary within less than 1000 feet of any then-existing school, and the County, and other cities in the Ferguson-Florissant

school district would have no say in that decision. This absurd outcome would directly contradict the stated purpose of the Article.

A2 (footnotes omitted). Thus, the Circuit Court concluded that “the definition of ‘*Local Government*’ should be read to include the County as to incorporated and unincorporated areas as to avoid an absurd and inconsistent result” and held that the County is “constitutionally authorized to enact a retail tax.” A3. This approach is consistent with the rules of statutory construction, which require that the Court “presume that the legislature intended that each word, clause, sentence, and provision of a statute has effect and should be given meaning.” *Dubinsky*, 229 S.W.3d at 130.

Under Article VI of the Missouri Constitution, the electorate in a county with more than 85,000 inhabitants, such as St. Louis County, has a right to establish a charter government. MO. CONST., Art. VI, § 18(a); D94 ¶ 14. Once the electorate in such a county adopts a charter form of government, it is considered a “separate class of count[y].” MO. CONST., Art. VI, § 18(a). Such counties, including St. Louis County, are permitted by statute to “make additional health rules... as will tend to enhance public health....” Mo. Rev. Stat. § 192.300.1. Pursuant to this, the County Council is authorized to “[a]cquire, establish, construct, equip, improve, extend, repair, maintain, manage, and operate public hospitals, sanitariums, health centers, institutions and clinics....” D94 ¶ 15 (*citing* D95, St. Louis County Charter, §§ 2.180(15), 4.120-4.155). This power is both for incorporated and unincorporated areas of the County as the Countywide health regulating authority. *City of Olivette*, 507 S.W.3d at 638-39. *See also Readey*, 352 S.W.2d at 625 (rejecting an argument that the County Council’s power to enact public health ordinances was limited to areas outside incorporated cities because “by virtue of the constitutional, statutory, and charter provisions [as set forth], the county council was and is authorized to enact ordinances tending to enhance the health of all the residents of St. Louis County, irrespective of whether they also reside within a municipality.”).

Florissant is a city within the County, having a population of 52,533, according to the 2020 census. D94 ¶ 16. Florissant relies on the County to provide public health related services, including through the County Department of Public Health and through

establishment of ordinances including those regarding hospitals, joint contracts for promotion of public health, health service contracts, indoor clean air code, department of public welfare, waste management, sanitation systems, animal control, and air pollution control.. D94 ¶ 17 (*citing* D98, St. Louis County Revised Ordinances (“SLCRO”) §§ 601.040, 602.020, 603.010-080, 604.020-040, 605.010, 606.020, 607.020, 609.010, 611.020-030, 612.020).

Because the purpose and intent of Article XIV inextricably links taxation and public health, the only logical interpretation of the language at issue here is that the governing body of the political subdivision with the responsibility to protect public health must be at least one of the local governmental entities with authority to implement the Additional Sales Tax. The County has Countywide health regulating authority. *City of Olivette*, 507 S.W.3d at 638-39 (“One of the powers conferred by the state is found in Section 192.300 of the Missouri Revised Statutes, which authorizes counties to enact ordinances that enhance public health and prevent disease.”). “The Court’s primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue.” *D.E.G. v. Juvenile Officer of Jackson Cnty.*, 601 S.W.3d 212, 216 (Mo. banc 2020). In order to give effect to the stated purpose and intent of Article XIV, Section 2, the County must be authorized to implement the Additional Sales Tax.

IV. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS AND DENIED APPELLANT DISPENSARY’S MOTION FOR SUMMARY JUDGMENT BECAUSE APPELLANT DISPENSARY’S PROPOSED DEFINITION OF “LOCAL GOVERNMENT” IS WITHOUT MERIT.

Article XIV, Section 2, states: “[l]ocal government’ means, in the case of an incorporated area, a village, town, or city *and*, in the case of an unincorporated area, a county.” MO. CONST., Art. XIV, § 2.2(12) (emphasis added). Appellant Dispensary’s insistence that this language unambiguously establishes that there is only one local government for purposes of an incorporated or unincorporated area is undermined by the plain language of the definition.

A. The County is a “Local Government” in both Incorporated and Unincorporated Areas of St. Louis County within the Definition in Article XIV, Section 2.

An inquiry into interpretation of a constitutional provision looks at the ordinary meaning of the text. *In re Finnegan*, 327 S.W.3d 524, 426 (Mo. banc 2010). This includes words such as “and” and “or.”

“The word ‘and’ is a conjunction used to join words or groups of words and means ‘added to’ or ‘plus.’ The word ‘or’ also is a conjunction; however, ‘or’ is used to indicate an alternative, the equivalent or substitutive character of two words or phrases, or approximation or uncertainty.”

Stiers v. Director of Revenue, 2015 WL 343310, *3 (Mo. Ct. App. E.D. 2015), *overturned on other grounds*, 477 S.W.3d 611 (Mo. banc 2016) (internal citations omitted). Considering the plain and ordinary meaning of the words, the operative definition of “local government” includes *both* the County *and* the relevant village, town, or city in incorporated areas. MO. CONST., Art. XIV, § 2.2(12) (emphasis added).

If the drafters of Art. XIV of the Missouri Constitution had intended to convey that local government for an incorporated area shall not include the County, in defiance of long-standing interpretation and common-sense practicalities, they could have used the word “or” to do so, or otherwise specified that *only* the village, town, or city is local government in this isolated instance. They did not do so.

As explained above, the only logical conclusion is that the authorization in Article XIV, Section 2, for a local government to impose the Additional Sales Tax is meant to allow the County to impose the Additional Sales Tax in both incorporated and unincorporated areas.

B. There is No Legitimate Dispute that the County is a Local Government.

Appellant Dispensary contends any interpretation of the definition of “local government” that acknowledges that there is more than one local government in incorporated areas requires “rewriting” of the definition of “local government.” *See* Appellant Dispensary’s Brief, p. 30. Even if this is true, which Respondents contest, it may be necessary for the Court to “look beyond the plain meaning of the statute” where “the

language is ambiguous or would lead to an absurd or illogical result.” *Akins v. Dir. of Revenue*, 303 S.W.3d 563, 565 (Mo. banc 2010). In this case, use of the word “and” reflects the long-standing precedent that local government for an incorporated area includes both the village, city, or town *and* the county.

The County is a charter county organized in accordance with the Missouri Constitution. D94 ¶ 4 (*citing* MO. CONST., Art. VI, § 1 and D95, St. Louis County Charter, § 1.010). The County Charter was established “as the fundamental law for the government of the [C]ounty.” D94 ¶ 3 (*citing* D95, St. Louis County Charter, Preamble). The County is “a body corporate and politic.” D94 ¶ 2 (*citing* D95, St. Louis County Charter, § 1.010). As such, it is a legal subdivision of the State of Missouri. MO. CONST., Art. VI, § 1. The County Council, as the body vested with all legislative power of the County, is “the governing body of any local government,” within the terms of Article XIV, Section 2.

As discussed above, the physical boundaries of the County encompass both incorporated and unincorporated areas. *See* Mo. Rev. Stat. § 46.145. Additionally, the County Council is the governing body of the County. D94 ¶ 5 (*citing* D95, St. Louis County Charter, § 2.010). The members of the Council serve districts that together comprise the entire County, not just the unincorporated areas. D94 ¶ 8 (*citing* D95, St. Louis County Charter, § 2.030).

The law does not limit the jurisdiction of the County to unincorporated portions of the County. The governing body of the County, the County Council, possesses legislative power for the entire County. D94 ¶ 8, 12 (*citing* D95, St. Louis County Charter, §§ 2.010 and 2.030).

Pursuant to the authority set forth in the Constitution, the County Charter authorizes the County to furnish municipal services in areas outside of incorporated areas. D94 ¶ 18 (*citing* D95, St. Louis County Charter, § 2.180.22, *et seq.*). However, the fact that the County provides municipal services in unincorporated St. Louis County does not mean that the County does not provide services to incorporated areas as well. The County does provide services in incorporated areas. D94 ¶ 19 (*citing* D95, St. Louis County Charter § 2.180.1, *et seq.*). In the words of the Missouri Supreme Court, “St. Louis County is

responsible for providing municipal-type services, such as police, street maintenance, and zoning, to the unincorporated areas while simultaneously providing county-type services, including court systems, jails, and roads, to the county as a whole.” *City of Chesterfield v. State*, 590 S.W.3d 840, 844 (Mo. banc 2019). *See also Avanti Petroleum, Inc. v. St. Louis Cnty.*, 974 S.W.2d 506, 510 (Mo. Ct. App. E.D. 1998) (holding that a St. Louis County ordinance related to public health “is authorized and enforceable against vendors in both unincorporated and incorporated St. Louis County.”). The County performs its public health functions on a countywide basis. *Readey*, 352 S.W.2d at 625 (rejecting an argument that the County Council’s power to enact public health ordinances was limited to areas outside of incorporated cities because “by virtue of the constitutional, statutory, and charter provisions [as set forth], the county council was and is authorized to enact ordinances tending to enhance the health of all the residents of St. Louis County, irrespective of whether they also reside within a municipality.”). *See also City of Olivette*, 507 S.W.3d at 638-39 (stating that the County has the power “to enact ordinances that enhance public health and prevent disease” in both incorporated and unincorporated areas of the County as the Countywide health regulating authority); *City of Town and Country v. St. Louis County*, 657 S.W.2d 598, 604 (Mo. banc 1983) (“St. Louis County has several departments which render services. These include the Department of Community Health and Medical Care, Parks and Recreation, Public Works, Highways and Traffic, Police, and Planning. Certain services provided by these departments are available to all residents of St. Louis County, whether they reside in the unincorporated area or incorporated areas.”).

Therefore, it is well-established law that the County Council is the governing body of the political subdivision of St. Louis County and it is authorized to create law as a local government with physical boundaries encompassing both incorporated and unincorporated areas. There are constitutional, statutory and charter provisions, and caselaw applying those provisions, that establish that the County has jurisdiction over both incorporated and unincorporated areas, and therefore, the only logical conclusion is that the authorization in Article XIV, Section 2, for a local government to impose the Additional Sales Tax in such

political subdivision is meant to allow the County to impose the Additional Sales Tax in both incorporated and unincorporated areas.

Appellant Dispensary's argument favors an unnatural conclusion – that the County is *not* a local government. D89 p. 10-11. But Appellant Dispensary does not and cannot deny that the County *is* a local government. Appellant Dispensary also admits that “marijuana sales that occur in an incorporated village, town, or city *also occur in a county*” and thus “[m]arijuana sales that occur in Florissant *also occur in St. Louis County.*” D89 p. 6 (emphasis added). However, Appellant Dispensary asks the Court to completely disregard these basic facts in favor of its interpretation that only one local government exists in Florissant, arguing that “St. Louis County is not the ‘local government’ authorized by Article XIV to impose a tax on [Plaintiff’s] sales in Florissant.” *Id.* The argument is illogical.

The entire County is within the definition of “local government” in Article XIV, Section 2.2, as the Circuit Court found when it granted the County’s motion for summary judgment.

C. Appellant Dispensary’s Interpretation that the County is Only Authorized to Impose the Additional Sales Tax in Unincorporated St. Louis County Subverts the Will of County Voters.

Article XIV, Section 2.6, permits the governing body of any local government to impose the Additional Sales Tax for “such political subdivision,” not a part of such political subdivision, if such ordinance or order imposing the Additional Sales Tax is “submit[ed] to the voters of the political subdivision, at a municipal, county or state general, primary or special election, a proposal to authorize the governing body of the political subdivision to impose a tax.” MO. CONST., Art. XIV, Section 2.6(5). In this case, the County Council, which represents voters of both unincorporated and incorporated St. Louis County, properly enacted an ordinance submitting to the voters of unincorporated and incorporated St. Louis County a proposition regarding County’s authority to collect taxes on marijuana sales within the boundaries of St. Louis County. D94 ¶¶ 11-12 (*citing* D96, St. Louis County Ordinance No. 28,680 (enacted Jan. 17, 2023) and D95, St. Louis County Charter

§ 2.010, et seq.). Together, the voters of St. Louis County, residing in both unincorporated and incorporated areas, voted on the ballot measure to determine whether the County was authorized to implement the sales tax within the boundaries of the political subdivision of St. Louis County. D94 ¶ 13 (*citing* D97, St. Louis County Election Results April 2023). The ballot measure passed authorizing the imposition of the tax. *Id.* As such, the Court correctly found that the County was entitled to summary judgment and denied Appellant Dispensary's Motion for Summary Judgment.

CONCLUSION

For the reasons stated herein, this Court should affirm the Circuit Court's grant of the County's Motion for Summary Judgment because the plain language of Article XIV, Section 2 authorizes the County to impose the Additional Sales Tax as "Any Local Government" in its "political subdivision." In addition, the Court should affirm the Circuit Court's denial of Appellant Dispensary's Motion for Summary Judgment because its proposed definition of "Local Government" as excluding the County lacks merit and would lead to absurd results.

WHEREFORE Respondent St. Louis County respectfully requests that this Court affirm the Circuit Court's Order granting its Motion for Summary Judgment and denying Appellant Robust Missouri Dispensary 3, LLC's Motion for Summary Judgment and for such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,
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CERTIFICATE OF COMPLIANCE AND SERVICE

I certify that this brief complies with the type-volume limitation of Rule 84.06(b) and (c) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word Version 2024 found in the Microsoft 365 Office Suite of programs and contains 8641 words in total but not inclusive of the Cover, Signature Block, and Certification of Compliance and Service. The font is Times New Roman, with proportional spacing and 13-point type. I also certify that this brief includes the information required by Rule 55.03 and that I signed the original of this brief as required by Rule 55.03.

I certify that a true copy of the foregoing was electronically filed on Tuesday, April 22, 2025, and served via the Court's Electronic Notification System to Appellant's and Co-Respondents' counsel in accordance with Rules 43.01 and 103.08.

/s/ Laura Robb
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