

**Summary of SC91631, *State ex rel. Collector of Winchester, Missouri, and City of Winchester, Missouri v. The Honorable Michael T. Jamison***

Proceeding originating in the St. Louis County circuit court, Judge Michael T. Jamison  
Argued and submitted Nov. 10, 2011; opinion issued Jan. 17, 2012

**Attorneys:** The city was represented by John W. Hoffman and Douglas R. Sprong of Korein Tillery LLC in St. Louis, (314) 241-4844; John F. Mulligan Jr. of Clayton, (314) 725-1135; and Howard Paperner of St. Louis, (314) 961-0097. St. Louis County was represented by Cynthia L. Hoemann, an associate county counselor in Clayton, (314) 615-2591; and James H. White, a special assistant county counselor from St. Louis, (314) 995-9742. Charter Communications was represented by Robert P. Berry, Jessica W. Kennedy and David C. Baxter of Berry & Maxson LLC in St. Louis (314) 480-5881; and Eric S. Tresh of Sutherland, Asbill & Brennan LLP in Atlanta, (404) 853-8579. The state was represented by the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A Missouri municipality and its city collector seek relief from a trial court's order striking and dismissing claims it brought, as a class representative, against a telecommunications company to collect business license taxes from the company. The trial court based its order on a Missouri statute that purports to bar cities and towns from serving as class representatives in such suits. In a 6-1 opinion written by Judge Laura Denvir Stith, the Supreme Court of Missouri orders a permanent writ of mandamus to issue, compelling the trial court to vacate its order. The trial court exceeded its discretion in striking the class claims from the city's suit, as the statute purporting to prohibit cities from serving as class representatives in suits of this nature conflicts with a procedural rule of this Court, and the legislature did not follow the Missouri Constitution's requirements to supersede that rule.

Judge William Ray Price Jr. wrote a dissenting opinion. He would hold that section 71.675 does not violate the state constitution because it is not procedural in nature but rather governs the substantive powers of Missouri cities and towns, preventing one political subdivision from extending its control to matters that affect the voters of other political subdivisions.

Judge Jodie Capshaw Asel, a circuit judge in the 13th Judicial Circuit (Boone and Callaway counties), sat in this case by special designation in place of Judge George W. Draper III.

**Facts:** In 2010, the city of Winchester and its collector filed a class action lawsuit against Charter Communications on behalf of itself and other similarly situated Missouri municipalities. The suit was based on Winchester's claim that Charter consistently has failed to comply with validly enacted municipal ordinances requiring it to pay license taxes on various income derived from Charter's business. In 2011, the trial court granted Charter's motion to strike Winchester's class claims based on the company's belief that section 71.675, RSMo Supp. 2009, bars cities and towns from serving as class representatives in suits of this nature. Winchester now petitions

this Court for a writ of mandamus compelling the trial court to vacate its order striking the city's class claims.

### **PRELIMINARY WRIT QUASHED. PERMANENT WRIT ORDERED TO ISSUE.**

**Court en banc holds:** The trial court exceeded its authority in striking Winchester's class claims pursuant to section 71.675. Article V, section 5 of the Missouri Constitution vests this Court with the authority to establish procedural rules that have the force and effect of law. Pursuant to this authority, this Court promulgated Rule 52.08, which sets forth the requirements for class action lawsuits. Nothing in that rule prohibits municipalities from serving as class representatives in suits against telecommunications companies to enforce or collect business license taxes.

In enacting section 71.675, the legislature changed the requirements for serving as a class representative in such suits by, in effect, adding a requirement that the class representative not be a city or town when the defendant is a telecommunications company. While article V, section 5 permits the legislature to amend a procedural rule of this Court, such as Rule 52.08, it also requires that the amendment process must be accomplished "by a law limited to the purpose" of so doing. Section 71.675 was not limited to amending Rule 52.08's requirements for class actions, nor did the statute even mention the rule by name. Where, as here, a statute and the constitution conflict, this Court has no choice but to strike down the offending portion of the statute.

**Dissenting opinion by Judge Price:** The author would hold that section 71.675 does not violate article V, section 5 of the state constitution. Although the principal opinion is correct that court rules supersede contradictory statutes that are procedural in nature, section 71.675 does not tamper with the mechanics or functionality of Rule 52.08 governing class action procedures. Rather, it is a valid exercise in legislative control over the substantive powers of Missouri's cities and towns, and the legislature had a rational basis in enacting it. The purpose of each political subdivision is to represent the interests of its own voters, not those of other political subdivisions. Yet, in serving as a class representative, a city or town would extend its control over litigation that affects voters of other political subdivisions and would be responsible, at least initially, for funding litigation that would benefit the taxpayers of other jurisdictions. As such, the author would quash the preliminary writ of prohibition.