

**IN THE SUPREME COURT OF MISSOURI**

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**SC91736**

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**EASTERN MISSOURI COALITION OF POLICE,  
FRATERNAL ORDER OF POLICE, LODGE 15,**

**Respondent,**

**v.**

**CITY OF CHESTERFIELD,**

**Appellant.**

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**Appeal from the Circuit Court of St. Louis County  
Twenty-First Judicial Circuit, Division 20,  
Honorable Judge Colleen Dolan  
Case No. 09SL-CC00023**

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**SUBSTITUTE BRIEF OF RESPONDENT**

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## INTRODUCTION

This case raises the simple question whether the City of Chesterfield must permit its police officers to democratically decide whether or not they want the Fraternal Order of Police, Lodge 15 to represent them in collective bargaining. In Independence-NEA v. Independence School District, 223 S.W.3d 131, 133 (Mo.banc 2007), this Court held that Article I, Section 29 of the Missouri Constitution<sup>1</sup> guarantees the right of collective bargaining to *all* public sector employees.

This Court specifically explained how their holding would be applied in the interim until the Missouri Public Sector Labor Law<sup>2</sup> could be amended to include public sector employees that had previously been excluded:

“To be consistent with article I, section 29, the statute’s exclusion of teachers cannot be read to preclude teachers from bargaining collectively. Rather, the public sector labor law is read to provide procedures for the exercise of this right

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<sup>1</sup> Article I Section 29 of the Missouri Constitution provides: “That employees shall have the right to organize and to bargain collectively through representatives of their own choosing.”

<sup>2</sup> The Public Sector Labor Law, §§105.500 – 105.520, RSMo., implements the constitutional right of collective bargaining for public employees other than police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, and all teachers of all Missouri schools, colleges and universities. §105.510, RSMo.; Independence, 223 S.W.3d at 136 and n.2.

for those occupations included, but not to preclude omitted occupational groups from the exercise of the right to bargain collectively, because all employees have that right under article I, section 29. Instead of invalidating the public sector labor law to the extent that it excludes teachers, this Court’s reading of the statute recognizes the role of the general assembly, or in this case, the school district – in the absence of a statute covering teachers – to set the framework for these public employees to bargain collectively through representatives of their own choosing.”

Independence, 223 S.W.3d at 136.

Relying on this Court’s decision in Independence, the trial court and subsequently the Missouri Court of Appeals found that the actions of the City of Chesterfield violated the constitutional rights of the City’s police officers and sergeants as guaranteed in Article I, Section 29. (Legal File pages (“L.F.”) 47, 48; Court of Appeals’ Opinion, pages (“Ct. App.”) 4-10).

Contrary to this Court’s decision in Independence, the City of Chesterfield argues, nevertheless, that its police, unlike most other Missouri public employees, have no such right to bargain collectively through representatives of their own choosing. The trial court and the Court of Appeals correctly rejected this position.

The City’s position lacks a legal foundation. It principally relies on the pre-Independence, inapposite decision, Quinn v. Buchanan, 298 S.W.2d 413 (Mo.banc 1957) and a distortion of the Independence decision. Further, it makes a number of unsupportable contentions that would reduce Article I, Section 29 to a nullity, including that the separation of powers doctrine precludes any court from ordering it to comply

with the Missouri Constitution; that it lacks the power to comply with Article I, Section 29; that this constitutional provision is elective, only applying to employers who voluntarily recognize a bargaining representative; and that there is no evidence that the officers want to be represented by FOP Lodge 15, even though most of them signed cards authorizing FOP Lodge 15 to be their collective bargaining representative, and all of them are members of FOP Lodge 15.

The true nature of the City of Chesterfield's position is revealed in its Conclusion. (Appellant's Substitute Brief ("App. Br.") at 45). There, the City brazenly contends that this Court should be swayed by politics, anti-union prejudice, and alleged facts that are not part of the record. It presumptively declares that some undefined "electorate"<sup>3</sup> has made "clear" that the era of public employee unionism is "unsustainable" and "now over." The City dismisses the trial court's decision, which follows the mandates of Independence, as "an anachronism to be set aside without regret." While acknowledging that "these facts are not part of the record, and are not relevant" to the issue before the Court, the City nonetheless proclaims that its political views should "matter" to this Court.

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<sup>3</sup> Plainly, this reference cannot apply to the Missouri electorate that ratified Article I, Section 29 or even the Missouri General Assembly that has not enacted any anti-union measures that have succeeded elsewhere. Apparently, the City refers to anti-union rhetoric from Wisconsin and a few other states – views that have so far not even been ratified by the electorates of those states.

The City of Chesterfield's complete disregard for the record and governing legal authority exposes its legal arguments as a thin disguise for a political rant that has no place in the adjudication of this case. Article I, Section 29 is a constitutional guarantee; not something that changes with the political winds. Police officers, who risk their safety daily to enforce the law for others, must finally be afforded the simple Article I, Section 29 right to bargain collectively through representatives of their own choosing.

## **JURISDICTIONAL STATEMENT**

Defendant/Appellant, City of Chesterfield (“Chesterfield” or “City”) appealed a Declaratory Judgment entered in favor of Plaintiff/Respondent, Eastern Missouri Coalition of Police, Fraternal Order of Police, Lodge 15 (“FOP Lodge 15”). Honorable Judge Colleen Dolan of Division 20 of the Circuit Court of St. Louis County, Missouri, entered her Findings of Fact, Conclusions of Law and Judgment on July 16, 2010 following a non-jury trial. In the judgment, Chesterfield was ordered to “expeditiously establish a framework for collective bargaining” to include the scope of the bargaining unit and procedures for a certification election for the exclusive bargaining unit for the police officers and sergeants employed by the City.

On or about May 3, 2011 the Eastern District of the Missouri Court of Appeals affirmed in part and amended in part the trial court’s declaratory judgment. Pursuant to Rule 83.02, Missouri Rules of Civil Procedure, the Court of Appeals transferred this case to the Supreme Court of Missouri due to the general interest and importance of the issues presented.

## STATEMENT OF FACTS

Pursuant to Rule 84.04(c) and 84.04(f) FOP Lodge 15 submits its Statement of Facts as a more “fair and concise statement of facts relevant to the questions presented.”

FOP Lodge 15 is a Missouri corporation. (L.F. 38). The City of Chesterfield, Missouri is a municipal corporation formed and existing under the laws of Missouri. (L.F. 38). The City operates the Chesterfield Police Department, which is the city department having law enforcement authority for the City of Chesterfield. (L.F. 38).

The Chesterfield Police Officers’ Association is a sister organization to FOP Lodge 15 comprised of FOP Lodge 15 members that are employed as police officers and sergeants for Chesterfield. (L.F. 39). All of the members of the Chesterfield Police Officers’ Association are also FOP Lodge 15 members. (Trial Transcript, page (“Tr.”) 43-44). In 2007, the executive board of the Chesterfield Police Officers’ Association contacted Respondent regarding the procedural steps to the collective bargaining process. (L.F. 38).

In July and August of 2007, fifty-three (53) police officers and sergeants employed by Chesterfield signed a “Fraternal Order of Police, Lodge 15, Representation Interest Card” which stated that they supported the certification of FOP Lodge 15 as their exclusive representative for collective bargaining purposes with the City. (Tr. 13, 48-49, 60-61, 102-106; Trial Exhibit (“Ex.”) 2; L.F. 39). The number of signed cards demonstrated an overwhelming majority of support of the City’s police officers and sergeants for FOP Lodge 15 to act as their exclusive representative for collective bargaining purposes with the City. (Tr. 12; L.F. 39).

On September 5, 2007, FOP Lodge 15 legal counsel sent correspondence to the members of the Chesterfield City Council, Chief of Police and Mayor requesting “voluntary recognition of [FOP] Lodge 15 as the exclusive bargaining representative for the City of Chesterfield Police Officers and Sergeants as its Bargaining Unit for the purposes for collective bargaining.” (Tr. 14-17; Ex. 4-6; L.F. 39).

On October 3, 2007, the City sent correspondence to FOP Lodge 15 indicating that Chesterfield declined to voluntarily recognize FOP Lodge 15 as the exclusive representative for its police officers and sergeants. (Tr. 17; Ex. 7; L.F. 39-40).

On October 4, 2007, FOP Lodge 15 sent a reply to Chesterfield again requesting voluntary recognition of FOP Lodge 15 as the exclusive bargaining representative of the City’s police officers and sergeants. (Tr. 18; Ex. 8; L.F. 40).

On October 17, 2007, FOP Lodge 15 sent further correspondence to the City requesting Chesterfield to “establish a framework for police officers to bargain collectively through representatives of their own choosing.” (Tr. 18-19; Ex. 9; L.F. 40).

On October 31, 2007, Chesterfield replied to FOP Lodge 15 indicating in part:

We reviewed your letter of October 17, 2007 and disagree with the assertion that the City of Chesterfield has a duty to establish a framework for police officers to choose their union representative for purposes of collective bargaining. The court’s opinion, correctly recognizing Chesterfield’s membership in the legislative branch of state government, states “...this Court’s reading of the statue [sic] recognizes the role of the general assembly, or in this case, the school district – in the absence of the statue [sic] covering teachers – to set the framework

for these public employees to bargain collectively through representatives of their own choosing.” “Role” is clearly different than “duty.”

Nothing in Independence – National Education Association v. Independence School District, 223 S.W.3d 131 (Mo. 2007) requires or mandates that Chesterfield voluntarily recognize FOP Lodge 15 as the bargaining unit for the City’s Police Officers and Sergeants. As indicated in our previous letter, dated October 3, 2007, the City of Chesterfield respectfully declines to voluntarily recognize FOP Lodge 15 as the exclusive bargaining representative for its Police Officers and Sergeants.

Acting in it [sic] legislative capacity, the City of Chesterfield declines, at this time, to establish a framework for recognition of FOP Lodge 15 as the bargaining representative for the City’s Police Officer and Sergeants...

(Tr. 19; Ex. 10; L.F. 40).

On November 18, 2008, FOP Lodge 15 sent correspondence to Chesterfield, indicating in part:

As part of the recognition process for police officers, Missouri law requires that a framework for collective bargaining be established by the City. The issues that the framework would need to address include the process for recognition, the method of requiring and holding bargaining sessions and method of adoption, modification or amendment to agreements from bargaining sessions. The framework must include the ability of employees to meet, confer and discuss proposals and for results of such discussion to be put into writing and presented to

the “appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.” Independence – National Education Association v. Independence School Dist., 223 S.W.3d 131 (Mo. banc 2007).

(Tr.19-20; Ex. 11; L.F. 41).

On December 8, 2008, Chesterfield responded to FOP Lodge 15’s November 18, 2008 correspondence stating that nothing had changed requiring it to alter the position taken in the City’s October 31, 2007 letter. (Tr. 20-21; Ex. 12; L.F. 41).

FOP Lodge 15 filed its Petition against Chesterfield on January 5, 2009. (L.F. 1, 6).

In February and March of 2009, sixty-eight (68) police officers and sergeants employed by Chesterfield signed or re-signed FOP Lodge 15 Representation Interest Cards due to officer turnover since 2007. (Tr. 50-52, 87; Ex. 3; L.F. 41). At the time the cards were signed in 2009, there were approximately ten sergeants and sixty-four or sixty-five police officers employed by the City. (Tr. 50; L.F. 41).

On February 13, 2009, Chesterfield filed its Motion to Dismiss (L.F. 29-30) which the court denied in an order dated April 22, 2009. (L.F. 31-32).

The case was heard without a jury before Division 20 of the Circuit Court of St. Louis County on February 8, 2010. (L.F. 4) On April 9, 2010 both parties submitted proposed findings of fact and conclusions of law. (L.F. 4)

On July 16, 2010 the trial court entered its Findings of Fact, Conclusions of Law and Judgment. (L.F. 4, 38-50) The Court found in favor of FOP Lodge 15 and ordered

the City of Chesterfield to expeditiously establish a framework for collective bargaining. (L.F. 4, 50).

Chesterfield has never recognized FOP Lodge 15 or any other organization as the exclusive bargaining representative for any of the police officers or sergeants employed by the City. (Tr. 22, 52, 65-66, 85, 118, 124, 148-150; L.F. 42).

Chesterfield has never created a framework for collective bargaining purposes for its police officers and sergeants. (Tr. 22, 52, 66, 85, 149; L.F. 42).

The City appealed the trial court's judgment to the Eastern District of the Missouri Court of Appeals. (L.F. 51-54). On May 3, 2011 the Court of Appeals issued its Opinion affirming in part and amending in part the trial court's declaratory judgment, and, due to the general interest and importance of the issues presented, transferred the case to the Supreme Court of Missouri. (Court of Appeals Opinion ("Ct. App.") 9-10).

**POINTS RELIED ON**

**I. The trial court and the Court of Appeals did not err in declaring that Chesterfield has a legally enforceable duty to establish a framework for collective bargaining pursuant to Article I, Sections 29 of the Missouri Constitution and the Missouri Supreme Court's holding in Independence-NEA v. Independence School District, 223 S.W.3d 1131 (Mo.banc 2007).**

Missouri Constitution, Article I, Section 29

Independence-National Education Association v. Independence School District,  
223 S.W.3d 1131 (Mo.banc 2007)

Missey v. Cabool, 441 S.W.2d 35 (Mo. 1969)

Quinn v. Buchanan, 298 S.W.2d 413 (Mo.banc 1957)

**II. The trial court and the Court of Appeals did not err in declaring that FOP Lodge 15 has standing to sue on behalf of its members through the doctrine of associational standing.**

- A. FOP Lodge 15's members have standing to bring suit in their own right.**
- B. The interests FOP Lodge 15 seeks to protect are germane to its purpose.**
- C. FOP Lodge 15's members did not need to participate individually in the lawsuit to obtain the relief requested.**
- D. The trial court did not err in admitting FOP Lodge 15's Representation Interest Cards.**
- E. Chesterfield's standing arguments are outdated and unsubstantiated.**
- F. The collective bargaining representative of Chesterfield's police officers and sergeants is entitled to be their exclusive collective bargaining representative.**

Ferguson Police Officers Association v. City of Ferguson, 670 S.W.2d 921  
(Mo.App.E.D. 1984)

Bankers Assoc. v. Div. of Credit Unions, 126 S.W.3d 360 (Mo.banc 2003)

Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977)

Independence-National Education Association v. Independence School District,  
223 S.W.3d 1131 (Mo.banc 2007)

**III. The trial court and the Court of Appeals did not err in ordering Chesterfield to “expeditiously establish a framework for collective bargaining” because the separation of powers doctrine does not forbid such relief, in that the trial court’s order only provided general guidance for the framework’s contents.**

- A. Chesterfield’s argument relying on the separation of powers doctrine is inapposite and unfounded.**
- B. The doctrine of separation of powers substantiates the trial court’s judgment ordering Chesterfield to adopt a collective bargaining framework for its police officers and sergeants.**

Missouri Constitution, Article I, Section 29

Independence-National Education Association v. Independence School District,

223 S.W.3d 1131 (Mo.banc 2007)

Lenette Realty v. City of Chesterfield, 35 S.W.3d 399 (Mo.App.E.D. 2000)

State Tax Com’n v. Administrative Hearing, 641 S.W.2d 69 (Mo.banc 1982)

## ARGUMENT

**I. The trial court and the Court of Appeals did not err in declaring that Chesterfield has a legally enforceable duty to establish a framework for collective bargaining pursuant to Article I, Sections 29 of the Missouri Constitution and the Missouri Supreme Court’s holding in Independence-NEA v. Independence School District, 223 S.W.3d 1131 (Mo.banc 2007).**

### *Applicable Standard of Review*

Murphy v. Carron, 536 S.W.2d 30 (Mo.banc 1976) sets out the standard of review for a judge-tried case. The trial court’s judgment will be sustained unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law. Id. at 32.

### *Argument in Support of the Trial Court’s Judgment*

The City of Chesterfield argues that it has no lawfully enforceable duty to adopt a framework for collective bargaining, hold a certification election, or recognize the exclusive collective bargaining agent for its police officers and sergeants because Article I, Section 29 of the Missouri Constitution does not create any affirmative duties for municipalities. (App. Br. 19).

The Missouri Constitution, Article I, Section 29 states “[t]hat employees shall have the right to organize and to bargain collectively through representatives of their own choosing.” This Court, in its holding in Independence, extended this right to apply to all public employees, including those not covered by Missouri’s Public Sector Labor Law. 223 S.W.3d at 133.

The City of Chesterfield makes many assumptions about the constitutional right to organize and to bargain collectively as guaranteed to employees by the Missouri Constitution and this Court's decision in Independence. Chesterfield argues that this constitutional provision (1) fails to set out a right for which labor unions can enforce on behalf of their members; (2) does not set out a right of employees or their union to compel action by an employer; (3) prevents courts from protecting it through equitable remedies; and (4) puts no duty on municipalities to take any action whatsoever. (App. Br. 20).

Chesterfield argues it has no duty to establish a framework for collective bargaining and that the trial court had no authority to order the City to do so. (App. Br. 19-30). However, the trial court did not err in its Findings of Fact, Conclusions of Law and Judgment by ordering the City to establish a framework for collective bargaining. (L.F. 50). The trial court cited the following to support its judgment:

“Basic legal principles are easily applied to the context of the Independence decision which recognized that police officers have a right to bargain collectively through representatives of their own choosing. Independence, 223 S.W.3d at 133, 139. Since the basic corresponding legal principle to any right is a duty, one person or entity cannot have a legal right to do something without another person or entity having some legal duty to act. *See generally* Wesley Newcomb Hohfeld, Fundamental Legal Conceptions as Applied in Judicial Reasoning, 26 Yale L. J. 710 (1917).”

(L.F. 46-47).

The trial court made other pertinent findings regarding the duty of the employer in its Order Denying [Chesterfield's] Motion to Dismiss. The trial court dismissed the City's Motion to Dismiss and held as follows:

Defendant argues the term "role", used by the Court in its opinion, does not mean the City of Chesterfield has the "duty" to establish the framework. Essentially, defendant is asserting that even if plaintiff has a right, there is no remedy that this court can afford it if defendant refuses to allow plaintiff to exercise that right. The court finds the holding in Independence does establish a duty on the part of the City to establish the framework for collective bargaining in the absence of a statute enacted by the general assembly.

(L.F. 31).

In its Findings of Fact, Conclusions of Law, and Judgment, the trial court cited to the Missouri Supreme Court's decision in Independence and found that Chesterfield has a duty to establish a framework for collective bargaining for its police officers and sergeants. (L.F. 45) The trial court declared that the City has "deprived its employees of their rights under Article 1, Section 29 to bargain collectively through representatives of their own choosing." (L.F. 47). The City's denial of its employees' rights created "a real, substantial, presently existing controversy admitting of specific relief." Camden County, 282 S.W.3d at 856. The Court of Appeals agreed with the trial court's judgment and opined that "[e]mployees have a constitutional right to bargain collectively under a procedural framework set by their employer. (Ct. App. 6 citing Independence, 223 S.W.3d at 136).

In its brief, Chesterfield relies heavily on Quinn v. Buchanan, 298 S.W.2d 413 (Mo.banc 1957) which was decided fifty years prior to Independence. The City makes the defective argument that because the Court in Independence failed to “overrule or even cite Quinn”, FOP Lodge 15’s argument relying on Independence is somehow flawed. (App. Br. 22). Subsequently, Chesterfield argues, the trial court and Court of Appeals, by relying on the Independence, were mistaken and improperly granted relief to FOP Lodge 15 because the trial court failed to address the Quinn decision in its Findings of Fact, Conclusions of Law and Judgment. (App. Br. 22 citing to L.F. 38-50).

Quinn is easily distinguished from Independence and subsequently, this case as well. The defendant in Quinn was a private-sector employer engaged in the business of meat processing and was by no means a public-sector employer like the City in this case or the school district in Independence. Quinn, 298 S.W.2d at 416. The defendant employer in Quinn engaged in coercion to induce its employees to withdraw their choice of union representation. Id. Further, Quinn was a class action suit brought by individual members of the union but not by the union itself. Id. In 1957, voluntary associations were not considered entities that could sue and be sued. Id. at 418. The Court in Quinn interpreted Article I, Section 29, but based its decision on the coercive actions of the defendant employer. The Court of Appeals rightfully found “Quinn inapplicable” and “factually inapposite” to this case. (Ct. App. 5). Unlike Quinn, this case involves the inaction of the City of Chesterfield. That is, the City disallowed its police officers and sergeants to bargain collectively by failing to recognize an exclusive bargaining

representative of its police officers and sergeants, refusing to adopt a framework for collective bargaining purposes, and refusing to hold a certification election.

Chesterfield relies on Quinn for its argument that “Sec. 29, Art. 1 is not a labor relations act, specifying rights, duties, practices and obligations of employers and labor organizations.” (App. Br. 20-21 citing 298 S.W.2d at 418). To support its statements regarding Article I, Section 29, the Court in Quinn cites New York case law that supposedly dealt with a similar New York constitutional provision. 298 S.W.2d at 418. However, the Superior Court of New Jersey discussed Quinn and described that the New York cases cited in Quinn were decided in a different context where the employer was not required to bargain with employee representatives under its pre-existing law. Johnson v. Christ Hospital, 84 N.J. Super. 541, 551-552 (1964). The Court in Johnson stated “that to accept the contention of defendant which construes Article I, [section 29] to impose no affirmative duty upon an employer to bargain collectively with the representative of his employees renders impotent the rights guaranteed to employees under the constitutional provision.” Id. at 555.

However, placed in proper perspective, Quinn need not be read as inconsistent with the Supreme Court's directive to the public employers in Independence to establish a framework for collective bargaining. The issue in Quinn was whether the Court could order mandatory injunctive relief remedying the private employer's discriminatory discharge by reinstatement. 298 S.W.2d 413. The Court held that Article I, Section 29 does not by itself give power to the Courts to order mandatory injunctive relief against a private sector employer. Id. at 419. However, the Court in Quinn also observed that

Article I, Section 29 “is a declaration of a fundamental right of individuals. It is self-executing to the extent that all provisions of the Bill of Rights are self-executing, namely: Any governmental action in violation of the declared right is void. As between individuals, because it declares a right the violation of which surely is a legal wrong, there is available every appropriate remedy to redress or prevent violation of this right.” Id. at 418-419. The Court stated that in the absence of legislation, employees may enforce and protect their rights from infringement by others “by any appropriate common law or code remedy.” Id. at 417. Here, the Court of Appeals recognized that Quinn acknowledged “that the constitutional right of collective bargaining could not be denied by the government.” (Ct. App. 6 citing Quinn, 298 S.W.2d at 417).

Further, Quinn supports the proposition that a public sector employer has a duty under Article I, Section 29, enforceable by mandatory injunction, to permit its employees to select a collective bargaining representative and bargain with that representative. That view was expressed by the Supreme Court even before Independence in Missey v. Cabool, 441 S.W.2d 35 (Mo. 1969), which ordered the defendant city to reinstate employees discriminatorily fired for exercising their collective bargaining rights. The Court in Missey stated that the defendant city had an enforceable “constitutional duty to meet and consider” the proposals of the employees’ representative. Id. at 45. While the public employer is not required to agree, it must “meet, confer and discuss” employee proposals. Id. at 41.

Chesterfield mistakenly argues that the principles from Quinn remain “the governing and controlling law.” (App. Br. 21). It was not necessary for the Court in

Independence or the trial court in this case to even address the Quinn v. Buchanan holding as stated in the Court of Appeals Opinion. (Ct. App. 5). The Independence Court and the trial court here were not faced with a set of facts that involved private-sector employer coercion. The Independence Court had an entirely dissimilar set of facts involving the complexities of collective bargaining in the public sector for employees that had previously been excluded from collective bargaining under the Public Sector Labor Law in §§105.500-105.520 RSMo. Here, Chesterfield, a municipal government employer, refused to allow its employees to bargain collectively contrary to Quinn which was decided fifty years before Independence. Private sector employer coercion was not an issue before the trial court in this case. While Quinn may give some insight into Article I, Section 29, it is no more controlling than any private-sector case that cites to the constitutional provision while dealing with an entirely dissimilar fact pattern.

Chesterfield further mistakenly tries to distinguish the facts in Independence to the facts in this case to support its argument that Quinn is still binding precedent and therefore it has no duty to take any action to allow its employees to exercise their constitutional rights. (App. Br. 23, 25-26). The Supreme Court's decision in Independence is more pertinent and applicable than a fifty year old holding regarding a public sector employer. (Ct. App. 6). The Court of Appeals is constitutionally bound by the Missouri Supreme Court's most recent pronouncements on a subject and must follow the last controlling decision of the Court. (Ct. App. 6 citing Godfrey v. Union Elec. Co., 874 S.W.2d 504, (Mo.App.E.D. 1994) citing Missouri Constitution, Article V, Section 2).

The City misguidedly argues that Independence is distinguishable from the present case because the employer in Independence “had already voluntarily recognized and entered into collective bargaining and an agreement with the union plaintiffs.” (App. Br. 23). The City basically argues that the employer in Independence only had a duty to act because it had already agreed to do so. This argument is entirely contradictory to the plain meaning of the holding in Independence. The Court in Independence unambiguously stated that all employees shall have the right to organize and to bargain collectively through representatives of their own choosing” under Article I, Section 29. 223 S.W.3d at 133. The Court placed no qualifier on this holding that sets forth that its holding only applied if the employer had already contractually obligated itself to do so. All employees are guaranteed this right and no employer inaction should be allowed which denies any public sector employee the ability to exercise this right.

Chesterfield claims that the portion of Independence on which FOP Lodge 15 relies<sup>4</sup> was “merely dicta” and thus “not binding precedent for the trial court.” (App. Br.

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<sup>4</sup> “To be consistent with article I, section 29, the statute’s exclusion of teachers cannot be read to preclude teachers from bargaining collectively. Rather, the public sector labor law is read to provide procedures for the exercise of this right for those occupations included, but not to preclude omitted occupational groups from the exercise of the right to bargain collectively, because all employees have that right under article I, section 29. Instead of invalidating the public sector labor law to the extent that it excludes teachers, this Court’s reading of the statute recognizes the role of the general assembly, or in this

23). Contrary to Appellant’s arguments, the Court’s comments regarding the role of the employer to set the framework for collective bargaining are vital to the entirety of the decision. The Court specifically recognized “the role of the general assembly, or *in this case*, the school district” to set the framework. Id. at 136. The Court then mentioned that through the Independence School District’s “discussion procedure,” the district had already recognized the teachers’ right to bargain collectively. Id. The “discussion procedure” was the type of framework that the Court noted when it referred to the role of the employer to develop a collective bargaining framework. Thus, any language of the Court referring to an employer’s duty to set a framework is not only essential to the case before the Court, it was critical to the Court’s fundamental holding, and subsequent application thereof, that all public employees have the constitutional right to organize and bargain collectively through representatives of their own choosing.

Chesterfield agrees with the holding in Independence that gives public employees the right to organize and bargain collectively through representatives of their own choosing and acknowledges that the City’s employees have this right under Article 1, Section 29. (App. Br. 20, 22, 24-25). Chesterfield argues that its employees have the right to bargain collectively through representatives of their own choosing, but it has no duty to allow them the ability to exercise that right. The right to bargain collectively

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case, the school district – in the absence of a statute covering teachers – to set the framework for these public employees to bargain collectively through representatives of their own choosing.” Independence, 223 S.W.3d at 136.

implies that the employees must have someone to bargain with. The Court of Appeals applied basic logic to dispel the City's arguments stating that "if one is granted the right to bargain, he must bargain with someone other than himself." (Ct. App. 7). As discussed before, collective bargaining entails two parties: the employer and the employees' representative. Chesterfield's reasoning reduces the Independence decision to a nullity. The City's suggestion that it has no corresponding duty "renders meaningless those rights guaranteed to City's employees under article I, section 29." (Ct. App. 7). A constitutional employee right to "organize and bargain collectively" with no corresponding duty by an employer to honor that right, is no right at all.

If the City's employees have the right to bargain collectively, the City has the duty to create the collective bargaining framework as prescribed in Independence and subsequently to bargain with the bargaining unit representative chosen by the police officers and sergeants. The Court of Appeals interpreted the Supreme Court's opinion "to mean that an employer of statutorily excluded employees must not only adopt procedures for collective bargaining but also participate in the process it created." (Ct. App. 6 supported by Judge Price's opinion in Independence, 223 S.W.3d at 147).

The City argues that this implicit duty of public employers to meet and confer with employee representatives from Independence and Missey v. Cabool, does not apply to Chesterfield since "no employee of the Chesterfield police department has ever actually asked to bargain collectively with the City" and because the City "has only received four letters from counsel for FOP" asking for recognition, for a framework for collective bargaining, and for a certification election for the representative of the City's police

officers and sergeants. (App. Br. 29). The City’s unsound argument – that it needs individuals to ask the City to collectively bargain with their representatives – laughs in the face of the entire labor movement. “Collective” bargaining is just that: collective. If individuals were bargaining with the employer, the process would be known as “employee bargaining” rather than collective bargaining through “representatives of their own choosing.” (Article I, Section 29 of the Missouri Constitution). Here, the police officers and sergeants employed by Chesterfield have chosen their representative and the City continued to ignore and make excuses for their requests to engage in the collective bargaining process. If the City doubted that FOP Lodge 15 represented the employees as it claimed, they were asked to conduct an election as provided for in a collective bargaining framework.

The City cannot now make the argument that it cannot “collectively bargain (much less set up a formal framework for collective bargaining)” until it has proof of “actual City employees who want to bargain collectively.” (App. Br. 30). This argument is just another excuse put forth by the City to deny its employees their constitutional right to collective bargaining. Chesterfield claims that it “might well act to set a framework for collective bargaining” if “even a single employee were to come forward with such a request.” (App. Br. 30). The City has already had its chance and failed to act. At the trial, three Chesterfield employees came forward and specifically asked the court to order the City of Chesterfield to establish a collective bargaining framework including procedures for an election and the meet and confer process. (Tr. 53, 72, 91-92).

Chesterfield claims that it would act if individuals come forward, but individuals have

come forward and the City continues to “effectively extinguish” the police officers’ rights “by the City sitting on its hands and refusing to act.” (Ct. App. 7 quoting the trial court’s order, L.F. 47). Here, Chesterfield has refused to voluntarily recognize the exclusive bargaining representative chosen by its police officers and sergeants and refused to hold an election to select a collective bargaining representative. (L.F. 48). The City has never created a framework for collective bargaining purposes for its police officers and sergeants. (L.F. 48). As fittingly and accurately stated by the Court of Appeals when affirming the decision of the trial court: the “employees’ constitutional right of collective bargaining implies a corresponding duty of City to facilitate the exercise of that right.” (Ct. App. 7). The City of Chesterfield has not fulfilled its duty to its police officers and sergeants.

**II. The trial court and the Court of Appeals did not err in declaring that FOP Lodge 15 has standing to sue on behalf of its members through the doctrine of associational standing.**

*Applicable Standard of Review*

As stated in Point 1 above, Murphy v. Carron, 536 S.W.2d 30 sets out the standard of review for a judge-trying case. The trial court's judgment will be sustained unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law. Id. at 32.

*Argument in Support of the Trial Court's Judgment*

In its Brief, Chesterfield argues that FOP Lodge 15 does not have standing to sue due to the absence of individual plaintiffs and the inadmissibility of FOP Lodge 15's Representation Interest Cards. (App. Br. 32-39). The City further argues that associational standing does not exist for FOP Lodge 15 for the claims brought in the present suit. (App. Br. 33). Contrary to Chesterfield's contentions, the trial court and Court of Appeals correctly found that FOP Lodge 15 has associational standing to bring this suit representing its members to protect their constitutional right to bargain collectively through representatives of their own choosing. (L.F. 42-45; Ct. App. 2-4).

Under Missouri law, a party has standing if it "is directly and adversely affected by the action in question." Ste. Genevieve School Dist. v. Board of Alderman, 66 S.W.3d 6, 10 (Mo.banc 2002). An association, such as a union, can have standing in either one of two ways (1) by seeking judicial review from injuries to its own rights or (2) by seeking to vindicate whatever rights its members may enjoy. Ferguson Police Officers

Association v. City of Ferguson, 670 S.W.2d 921, 924 (Mo.App.E.D. 1984) citing Warth v. Seldin, 422 U.S. 490, 511 (1975). When an association is not itself affected by the actions of a party, the association has standing to sue the adverse party on behalf of its members if associational standing exists. Bankers Assoc. v. Div. of Credit Unions, 126 S.W.3d 360, 363 (Mo. banc 2003). The Missouri Courts have long applied the United States Supreme Court’s test for associational standing to Missouri associations. Ferguson Police, 679 S.W.2d at 924.

Before an association can bring suit on behalf of its members, the following criteria must be met: (1) the members must have standing to bring suit in their own right; (2) the interests the association seeks to protect must be germane to its purpose; and (3) neither the claim asserted nor the relief requested must require the participation of individual members in the lawsuit. Id. citing Hunt v. Washington State Apple Advertising Comm’n, 432 U.S. 333, 343 (1977).

**A. FOP Lodge 15’s members have standing to bring suit in their own right.**

The first element of associational standing requires that the association allege that “its members, or any of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit.” Ferguson Police, 670 S.W.2d at 924 citing Warth v. Seldin, 442 U.S. at 511.

Here, FOP Lodge 15’s members have been denied their constitutional right to bargain collectively through representatives of their own choosing as guaranteed by

Article I, Section 29 of the Missouri Constitution. FOP Lodge 15's members are suffering immediate and continuing injury from Chesterfield's ongoing refusal to adopt a framework for collective bargaining for its police officers and sergeants. Any of FOP Lodge 15's members employed by the City could bring a suit in their individual capacity. Contrary to the City's argument, the trial court and the Court of Appeals appropriately found that FOP Lodge 15's members are legally entitled to a collective bargaining process as discussed throughout this brief and the respective court decisions and thus have standing to bring this suit in their own right. (L.F. 43; Ct. App. 3-4).

**B. The interests FOP Lodge 15 seeks to protect are germane to its purpose.**

The court in Ferguson Police Officers Association v. City of Ferguson, found that the second element of associational standing was met given that the goals of the association were to "promote the welfare of its members and to improve their working conditions" and the association's suit sought to protect the members constitutional rights thus improving their working conditions and welfare in general. 670 S.W.2d at 925. The court went on to say that the "members of the association agreed to bring the suit and feel it is in their best interest." Id.

Here, FOP Lodge 15 seeks to protect its members' constitutional right to collectively bargain as guaranteed by Article I, Section 29 of the Missouri Constitution. Fighting for and defending the constitutional rights of its members is one of the primary principles of FOP Lodge 15 and one of the main reasons the association was formed. (L.F. 44) For the foregoing reasons, the trial court and subsequently the Court of

Appeals' Opinion found that FOP Lodge 15 satisfied the second element of associational standing. (L.F. 43-44; Ct. App. 3-4).

**C. FOP Lodge 15's members did not need to participate individually in the lawsuit to obtain the relief requested.**

A request for prospective relief generally does not require membership participation, in contrast to a case where money damages or some other relief is sought that is specific to individual members. Bankers Assoc., 126 S.W.3d at 363; Ferguson Police, 670 S.W.2d at 925-926.

Here, like the plaintiff in Ferguson Police, FOP Lodge 15 sought a declaratory judgment in order to determine the rights of its members. Therefore, FOP Lodge 15's members are not individually required in this suit to obtain the court's determination of the rights, obligations, and liabilities that exist among the parties. (L.F. 44).

The Court of Appeals' Opinion only slightly mentions the elements of associational standing since Chesterfield presented "no further challenge to [FOP Lodge 15's] satisfaction of the Ferguson criteria for standing." (Ct. App. 4). The Court of Appeals found no abuse of discretion in the trial court's decision that FOP Lodge 15 fulfilled the conditions of standing set forth in Ferguson Police. (Ct. App. 4).

FOP Lodge 15 has standing to sue on behalf of its members through the doctrine of associational standing. FOP Lodge 15 satisfies all the elements of associational standing: (1) its members have standing to bring suit in their own right; (2) the interests the association seeks to protect are germane to its purpose; and (3) neither the claim

asserted nor the relief requested require the participation of individual members in the lawsuit. Ferguson Police, 679 S.W.2d at 924. (L.F. 42).

**D. The trial court did not err in admitting FOP Lodge 15's Representation Interest Cards.**

Chesterfield further argues that FOP's Representation Interest Cards were inadmissible by the trial court. Trial courts are vested with broad discretion on the admissibility of evidence. Giddens v. Kansas City Southern Ry. Co., 29 S.W.3d 813, 819 (Mo.banc 2000). A trial court's ruling is presumed correct and reversed only when that "ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." C & W Asset Acquisition v. Somogyi, 136 S.W.3d 134, 137 (Mo.App.S.D. 2004) citing Anglim v. Mo. Pac. R.R. Co., 832 S.W.2d 298, 303 (Mo.banc 1992).

In its Findings of Fact, Conclusions of Law, and Judgment, the trial court admitted, over the City's objections, Exhibits 2 and 3 into evidence which were Representation Interest Cards signed by City police officers and sergeants in 2007 and 2009 respectively. (L.F. 39, 41). By signing said Representation Interest Cards, the officers and sergeants stated that they supported the certification of FOP Lodge 15 as their exclusive representative in collective bargaining and allowed FOP Lodge 15 to act as their exclusive bargaining representative. (L.F. 39). As the City acknowledged in its brief, three Chesterfield police officers: Sergeant David Weiss, Officer Laura Obermeyer, and Officer James Carroll testified that they voluntarily signed Representation Interest

Cards. (App. Br. 4). Chesterfield further acknowledged that Officer Carroll testified that he and others obtained the signed Representation Interest Cards in Exhibit 2 and 3 from the Chesterfield police officers and sergeants on behalf of FOP Lodge 15 and that a “large amount of them” possibly a “majority” were signed in his presence. (App. Br. 4).

Here, the trial court’s ruling on the admissibility of Exhibits 2 and 3 is not arbitrary or unreasonable as to shock the sense of justice or indicate a lack of careful consideration. The admission of the Representation Interest Cards was based on the discretionary determination of the trial court that the Cards were authentic and trustworthy. The Court of Appeals found “no abuse of discretion” concerning the trial court’s admission of the Cards. (Ct. App. 4).

Chesterfield argues that FOP Lodge 15 can not establish associational standing without proving that it represents the alleged bargaining unit. (App. Br. 37-38) The City contends that without admittance of the Cards, there was no other admissible evidence on that subject. (App. Br. 38). Contrary to the City’s argument, the trial court transcript and legal file provide ample evidence that FOP Lodge 15 represents the alleged bargaining unit. The Chesterfield Police Officers’ Association, is a sister organization to FOP Lodge 15 comprised of FOP Lodge 15 members that are employed as police officers and sergeants for Chesterfield. (L.F. 39). All of the members of the Chesterfield Police Officers’ Association are also FOP Lodge 15 members. (Tr. 43-44). In 2007, the executive board of the Chesterfield Police Officers’ Association contacted FOP Lodge 15 regarding the procedural steps to the collective bargaining process. (L.F. 38).

Countering the City’s argument, the Court of Appeals opined, “the cards notwithstanding,

the record contains sufficient evidence to support the trial court's finding that [FOP Lodge 15] does in fact exist and represents its members." (Ct. App. 4).

**E. Chesterfield's standing arguments are outdated and unsubstantiated.**

Chesterfield relies on Quinn v. Buchanan, 298 S.W.2d 413 (Mo.banc 1957) to support its argument that FOP Lodge 15 may not bring this action to vindicate the rights of its members under Article I, Section 29. (App. Br. 32-34). Chesterfield argues that FOP Lodge 15 cannot maintain this suit on behalf of the employees and must file a class action suit or include specific individual plaintiffs. (App. Br. 32).

Quinn v. Buchanan is antiquated legal precedent on the subject of standing for labor unions. Quinn was decided in 1957 prior to the US Supreme Court's 1977 decision in Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977) regarding associational standing. Since adopting the Hunt test for associational standing, the Missouri Supreme Court and the Missouri Court of Appeals for the Eastern District have both consistently held that voluntary associations can have associational or representational standing if all the required elements are met. Ferguson Police, 670 S.W.2d 921; St. Louis Police Officers' Ass'n v. Sayad, 685 S.W.2d 913 (Mo.App.E.D. 1984); Missouri Health Care Ass'n v. Attorney General, 953 S.W.2d 617 (Mo.banc 1997); HBA v. City of Wildwood, 32 S.W.3d 612 (Mo.App.E.D. 2000); Bankers Assoc. v. Div. of Credit Unions, 126 S.W.3d 360 (Mo.banc 2003).

The City maintains that the Court in Quinn required individual union members to bring suit personally or as representatives of their class under Article 1, Section 29. (App. Br. 32). However, the Court in Quinn was actually referring to wrongful discharge

cases when it noted that a damages cause of action could only be brought by an individual. Strinni v. Mehlville Fire Protection Dist., 681 F. Supp.2d 1052, 1079 (8th Cir. 2010).

Contrary to Chesterfield's inaccurate and obsolete argument that the absence of individual plaintiffs voids FOP Lodge 15's standing to sue on behalf of its members, Missouri Courts now hold that individual plaintiffs are not required, as long as any one member of the association is suffering from injury as a result of the challenged action. Citizens for Rural Preservation v. Robinett, 648 S.W.2d 117, 133 (Mo.App.W.D. 1982). Here, FOP Lodge 15's members are suffering harm because the City refuses to allow its police officers and sergeants to exercise their constitutional rights to bargain collectively through representatives of their own choosing.

Chesterfield argues that a union might have associational standing for other causes of action or other types of relief such as the teachers' union in Independence, where plaintiffs sued to enforce their already existing contracts. (App. Br. 33). In theory, Chesterfield is making the argument that FOP Lodge 15 cannot sue to enforce the constitutionally protected collective bargaining rights of its members that the City is denying them, but it would be able to sue to enforce a contract if the City actually allowed its employees to exercise said rights.

The City claims that its "threshold issues" involving FOP Lodge 15's standing are that "no individuals were parties to the action claiming a deprivation of their personal rights to collective bargaining" and 'FOP failed to prove that more than three individuals

within the purported bargaining unit... signed ‘representation interest cards’” making the cards unauthenticated and thus inadmissible. (App. Br. 34-35).

Chesterfield’s argument that individual plaintiffs are required as parties in this suit is merely a hollow attempt to cloud the legal waters of this case were standing should not even be an issue. Any argument that a labor organization cannot represent its members in a case involving their constitutional right to collective bargaining is absurd. Labor organizations exist to allow employees to voice their opinions through a common representative. Employees avoid being singled out by employers for fear of retribution and retaliation due to their labor involvement. Based on the City’s arguments, it would require one or more of its employees to bring suit, singling him/herself out from the rest of the employees and potentially placing a figurative target on his/her back by the employer. The City’s requirement of individual involvement places a chilling effect on the employees’ ability to protect their constitutional rights.

Regardless of the admissibility of the Representation Interest Cards as discussed above, and regardless of the lack of individual plaintiffs, FOP Lodge 15 has standing to sue on behalf of its members as set forth above.

Chesterfield also argues that neither FOP Lodge 15 nor its members can define the bargaining unit. (App. Br. 35). The City cites to Wrinkle v. Local 2, 867 S.W.2d 633 (Mo.App.S.D. 1993) for its argument that “a group of public employees cannot simply assert they constitute a bargaining unit.” (App. Br. 28). Many distinctions can be made between the Wrinkle case and the case at hand. In Wrinkle, a group of union members, “the intervenors,” sought review of a State Board of Mediation decision dismissing their

request to be placed in a bargaining unit consisting only of themselves. 867 S.W.2d at 634. The intervenors were nineteen (19) employees of a public body and members of a bargaining unit comprised of sixty (60) employees. Id. The court held that the intervenors were neither a public body nor a bargaining unit within the meaning of the governing statute §105.525 and therefore did not have the right to appeal the decision. Id. at 637. In Wrinkle, the plaintiffs were a minority fringe group of an existing and recognized bargaining unit. Id. at 634. The recognized union bargaining unit would have been allowed by §105.525 to bring the aforementioned appeal of the Board's decision. Id. at 636.

Here, unlike the plaintiffs in Wrinkle, no one has been recognized as the bargaining representative of the City's police officers and sergeants due to Chesterfield's refusal to recognize their exclusive bargaining representative, hold a certification election to establish an exclusive bargaining representative, or adopt a framework to enforce collective bargaining. Here, FOP Lodge 15 has fought for the constitutional rights of its members to collectively bargain through representatives of its members' choosing. The individual plaintiffs in Wrinkle were not allowed to appeal the Board's decision because they were existing members of a recognized bargaining unit; however, that issue is far removed from the issues in this case. The situation in Wrinkle can not be analogized to this suit which was brought to defend members' constitutional right to collectively bargain.

Chesterfield further argues FOP Lodge 15 is not the proper plaintiff to bring this suit because the City has not contractually obligated itself to collectively bargain with its

police officers and sergeants. (App. Br. 33, 35). However, Chesterfield fails to acknowledge that FOP Lodge 15 brought this suit on behalf of its members, the City's police officers and sergeants, to enforce their constitutionally protected right to bargain collectively, and not as the collective bargaining representative.

Chesterfield's argument is circular. If the City had already recognized FOP Lodge 15 as the exclusive bargaining representative of its police officers and sergeants and had contractually entered into an agreement, there would be no need for this suit. The duty of the City rather than their voluntary decision to allow representation is the very essence of this action. Chesterfield's actions and/or inactions have been the one and only roadblock to allowing FOP Lodge 15's members to have an exclusive bargaining representative of their choosing. The City first refuses to allow FOP Lodge 15 to be the exclusive bargaining representative and then argues that FOP Lodge 15 must be the exclusive bargaining representative in order to have standing to bring this suit.

**F. The collective bargaining representative of Chesterfield's police officers and sergeants is entitled to be their exclusive collective bargaining representative.**

Chesterfield argues that "collective bargaining" as used in Article I, Section 29, was not meant to be defined as "exclusive or closed-shop bargaining." (App. Br. 22). In Independence, while the majority did not fully expound upon the full nature of the right to collective bargaining, as that issue was not directly before the court, Justice Price further explained the extent of the constitutional right to collective bargaining in his concurring opinion. Justice Price stated that:

The statutes guarantee the right of public employees, through their *exclusive* bargaining representative, to present proposals regarding salary and working conditions to a governing body. It also requires the governing body to meet, confer and discuss the proposals with the labor organization that is the *exclusive* bargaining representative of the employees. Again, teachers are afforded the same rights under Clouse and Peters. See Clouse, 206 S.W.2d at 542; Peters, 506 S.W.2d at 432.

Independence, 223 S.W.3d at 144. Justice Price specifically set out that the right to collective bargaining for teachers and police officers is the same as the rights to collective bargaining for all occupations and that such right to collective bargaining specifically includes the ability of the bargaining unit members to choose an exclusive bargaining representative. Id.; *see also* Section 105.520 RSMo.

Justice Price indicated that an employer is required to meet with employees' exclusive bargaining representative for each bargaining unit regarding proposals set out by the union and for the employer to meet and discuss such proposals with the employees' representative. Id. at 145. Justice Price stated that the school district was "obligated by law to meet and confer with the exclusive bargaining representative of its employee groups. The meet and confer procedure adopted by the board [ ] violates section 105.520 as well as the rights of the teachers recognized in Clouse and Peters." Independence, 223 S.W.3d at 145; *see* Clouse, 206 S.W.2d at 542; Peters, 506 S.W.2d at 432. Justice Price set out in clear terms that teachers and police officers' rights to

collective bargaining are the same as the rights afforded occupations covered by the public sector labor act.

In its Amicus Curiae Brief, the City of Hazelwood (“Hazelwood”), argues that Article I, Section 29 does not mandate exclusive representation relying wholly on the use of the plural form of “representatives” in the constitutional provision. (Hazelwood Amicus Curiae Brief, (“Haz. Br.”) 9-10). Hazelwood, a non-party to this case, attempts to draw connections between its case and the case at hand. Unlike Chesterfield, Hazelwood adopted a framework for bargaining which provided the employees to select a bargaining representative from a union or another individual, represent him/herself, or not participate at all in the bargaining process. (Haz. Br. 1-3). The issue of exclusive representation has not been properly presented in this appeal and thus should not be dealt with by the Court. Ensor v. Director of Revenue, 998 S.W.2d 782, 786 (Mo.banc 1999). The facts of the Hazelwood case are entirely different than the present case were the employer refused to adopt a framework for collective bargaining (and refused to voluntarily recognize or hold a certification election to recognize the collective bargaining representative of its employees). Chesterfield has not established nor does it desire to attempt to establish a framework for collective bargaining thus making discussion of exclusivity premature. While a discussion on the true meaning of “collective bargaining” could constitute an entire appellate brief on its own, any further discussion of the topic here would detract from the present, actual issues in this case.

If Article I, Section 29 applies to all employees under Independence, the right of employees to have an exclusive bargaining representative is implicit in that right. Here,

an overwhelming majority of the police officers and sergeants employed by Chesterfield signed Representation Interest Cards indicating that they supported the certification of FOP Lodge 15 as their *exclusive* representative for collective bargaining purposes with the City. (L.F. 39, 41). Chesterfield has not only denied these employees their right to bargain collectively through representatives of their own choosing, it has denied their right to have an exclusive bargaining representative.

**III. The trial court and the Court of Appeals did not err in ordering Chesterfield to “expeditiously establish a framework for collective bargaining” because the separation of powers doctrine does not forbid such relief, in that the trial court’s order only provided general guidance for the framework’s contents.**

*Applicable Standard of Review*

As set forth in Points 1 and 2 above, Murphy v. Carron, 536 S.W.2d 30 sets out the standard of review for a judge-trying case. The trial court’s judgment will be sustained unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law. Id. at 32.

*Argument in Support of the Trial Court’s Judgment*

**A. Chesterfield’s argument relying on the separation of powers doctrine is inapposite and unfounded.**

The City of Chesterfield argues that the trial court’s judgment violates the separation of powers doctrine from the Missouri Constitution<sup>5</sup> because the “trial court had no power... to grant the relief which its Findings of Fact, Conclusions of Law and

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<sup>5</sup> Article II, Section 1 of the Missouri Constitution provides: “The powers of government shall be divided into three distinct departments--the legislative, executive and judicial--each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.”

Judgment decreed.” (App. Br. 41). Pursuant to the Missouri Supreme Court’s holding in Independence and the Missouri Court of Appeals’ decision in Lenette Realty & Investment Co. v. City of Chesterfield, 35 S.W.3d 399 (Mo.App.E.D. 2000) the trial court ordered Chesterfield to “establish a framework for collective bargaining” to include the scope of the bargaining unit, certification election procedures, and procedures for the meet and confer process. (L.F. 50).

Chesterfield relies on language from State v. Banks, 454 S.W.2d 498 (Mo.banc 1970) for its proposition that the doctrine of separation of powers inhibits the trial court and the Court of Appeals from “encroachment upon the legislature” by the courts. (App. Br. 43). State v. Banks involved the historical power of a legislative body to judge the qualifications of its own members. 454 S.W.2d at 501. In State v. Banks, the Court’s decision to defer to the legislature was guided by Article II, Section 18 of the Missouri Constitution which specifically stated that each house of government would be the sole judge of its members’ qualifications. Id. at 500. Thus, in actuality, State v. Banks furthers the idea that it is the judiciary’s responsibility to protect enumerated constitutional rights as it did in State v. Banks.

Chesterfield also cites to important language from State v. Banks which stated that the separation of powers doctrine is “‘vital to our form of government’ ... because it ‘prevent[s] the abuses that can flow from centralization of power.’” (App. Br. 43 citing 454 S.W.2d at 132). The separation of powers doctrine is meant to protect constitutional rights of the people and prevent one branch of government from acquiring too much power. The City’s argument fails on its own points. By refusing to allow its police

officers and sergeants the ability to exercise their constitutional rights, the City has usurped the power of the judiciary in declaring its own version of the constitutionality of its employees' rights. Here, the trial court and the Court of Appeals protected the constitutionally guaranteed collective bargaining rights of the City's police officers and sergeants.

The trial court and subsequently the Court of Appeals addressed the Lenette Realty decision on the subject of separation of powers. (L.F. 47-48; Ct. App. 9). In Lenette Realty, the Missouri Court of Appeals upheld the trial court's judgment which determined that the existing zoning restriction was invalid and ordered the city "to place a reasonable zoning classification" on the properties in question. 35 S.W.3d 408-409. Here, the trial court, noting the decision in Lenette Realty, explicitly stated, "[i]n this case, plaintiff is not requesting, and the court is not ordering, that defendant City establish or adopt a particular framework. Rather, the City is ordered to adopt a reasonable framework of its choosing for collective bargaining." (L.F. 48). The trial court recognized that Chesterfield's actions, or lack thereof, were invalid by denying the constitutional rights of its employees, and ordered the City to remedy the situation without violating the doctrine of separation of powers. (L.F. 48).

Chesterfield seemingly makes the argument that the trial court ordered the City to pass a specific City ordinance thereby adopting an explicit collective bargaining framework detailed by the court's decision. Chesterfield argues that it "is a legislative branch entity, whose functions the courts cannot usurp by ordering it to act in a specific

fashion.” (App. Br. 41). In its Judgment, the trial court makes no such order or even mentions that the City must pass a specific ordinance to comply with its ruling.

Here, the trial court merely ordered the City to adopt “a framework for collective bargaining” to include the usual elements of a collective bargaining framework. (L.F. 50). The trial court’s order allowed Chesterfield the flexibility to comply with its judgment without placing stringent guidelines on the contents of the framework. Any so-called “specifics” of said framework were mere perimeters of a typical framework for collective bargaining purposes. As stated in the Court of Appeals’ Opinion, the trial court’s order comports “with the constitution by respecting City’s authority to define the specific terms of a framework for collective bargaining and providing only general guidance on basic components thereof (*e.g.*, scope, procedures for elections, procedures for meeting and conferring).” (Ct. App. 9).

“Collective bargaining” as a term of art entails “negotiations between an employer and the representatives of organized employees to determine the conditions of employment.” (Ct. App. 6 citing Independence, 223 S.W.3d at 138, n.6, citing Law Dictionary (8<sup>th</sup> Ed. 2004)). Collective bargaining requires more than just talking to or meeting with an employee or group of employees. In its order, the trial court set out the basic components required to initiate the collective bargaining process. In order to collectively bargain with employees, a specified bargaining unit must be established. Accordingly the trial court stated that the City’s framework was to include “the scope of an appropriate bargaining unit.” (L.F. 50). In order to collectively bargain with employees, an employee representative must be elected. For that reason the trial court

instructed the City to include “procedures for the election process.” (L.F. 50).

Procedures for the negotiations between the employer and the representative of the employees would need to be described; consequently the trial court directed the City’s framework to include “procedures for the meet and confer process.” (L.F. 50).

In its Opinion, the Court of Appeals distinguishes between the general perimeters set forth in the trial court’s order with the portion of the court’s directive that it deems “too specific to withstand constitutional scrutiny.” (Ct. App. 9). The Court of Appeals stated that specifically directing Chesterfield to designate FOP Lodge 15 as the exclusive bargaining unit “preempts the very procedures yet to be adopted.” (Ct. App. 9). By amending the trial court’s order, the Court of Appeals made an explicit distinction of specific terms that would violate the separation of powers doctrine; consequently affirming that the remaining elements of the trial court’s order withstood constitutional scrutiny by not violating the separation of powers doctrine.

In its brief, Chesterfield argues that the holding of Independence does not allow the courts “to set the framework for public sector collective bargaining.” (App. Br. 43). Acceptance of the City's argument, that it can not be ordered to establish a framework for collective bargaining, would render the Supreme Court’s decision in Independence meaningless. The Court in Independence specifically held that the employer, the school district, must “set the framework for these public employees to bargain collectively through representatives of their own choosing” due to the absence of a statute covering teachers. 223 S.W.3d at 136. Police, just like the plaintiff teachers in Independence, currently have no statutory framework to exercise their constitutional right of collective

bargaining.<sup>6</sup> Therefore Chesterfield, like the Independence School District, must provide a framework for the police officers and sergeants to bargain collectively through representatives of their own choosing. Chesterfield’s distinction of itself as a “legislative branch entity” does not make it immune to the constitutional rights guaranteed to its employees by Article I, Section 29.

Chesterfield uses the separation of powers doctrine as a legal scapegoat while it ignores the constitutional rights of its employees solely because it is a municipal government employer. The City is theoretically arguing that since it is a “legislative branch entity” it can refuse to set a framework for collective bargaining as proscribed in Independence and can not be held responsible for denying the constitutional rights of its police officers and sergeants. Private sector employers can not rely on the doctrine of separation of powers to ignore the constitutional rights of their employees, therefore neither should the City of Chesterfield.

**B. The doctrine of separation of powers substantiates the trial court’s judgment ordering Chesterfield to adopt a collective bargaining framework for its police officers and sergeants.**

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<sup>6</sup> Under §105.510, RSMo., police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, and all teachers of all Missouri schools, colleges and universities are all excluded from the statutory framework laid out in the Public Sector Labor Law, §§105.500-.520, RSMo.

The purpose of the doctrine of separation of powers is to prevent the abuses that can flow from the centralization of power. State Tax Com'n v. Administrative Hearing, 641 S.W.2d 69, 73-74 (Mo.banc 1982). The doctrine's function is to prohibit concentrated, unchecked power in the hands of one branch of government. Asbury v. Lombardi, 846 S.W.2d 196, 200 (Mo.banc 1993). "The authority that the constitution places exclusively in the judicial department has at least two components – judicial review and the power of courts to decide issues and pronounce and enforce judgments." Dabin v. Director of Revenue, 9 S.W.3d 610, 614 (Mo.banc 2000).

It is clear that the separation of powers doctrine is used to prevent abuses, not perpetuate them. Chesterfield chooses to use the doctrine as a shield arguing that it prohibits the judiciary from granting FOP Lodge 15's members relief from denial of their constitutional rights. In actuality, separation of powers is the very doctrine that allows FOP Lodge 15 to bring this case to protect the rights of its members through the checks and balances that the judicial branch provides. The inaction of Chesterfield is subject to review by the judiciary to ensure protection of the constitutional rights of the City's employees. Separation of powers is meant to protect the rights of individuals, not to be utilized to deny them their guaranteed constitutional rights.

Other courts have found that one of the exceptions to the separation of powers doctrine is when constitutionally guaranteed or protected rights are threatened. Dade County Class. Teach. Ass'n. v Legislature, 269 So.2d 684, 686 (Fla. 1972). In that case dealing with the collective bargaining rights of teachers, the Florida Supreme Court acknowledged that the "judiciary is in a lofty sense the guardian of the law of the land

and the Constitution is the highest law. A Constitution would be a meaningless instrument without some responsible agency of government having authority to enforce it.” Id. Here, it is the responsibility of the judiciary to correct the wrongs that Chesterfield has perpetrated through its inaction. The City police officers and sergeants must rely on the judiciary to protect their constitutional right to bargain collectively.

### **CONCLUSION**

The judgment of the Circuit Court of St. Louis County must be sustained in its entirety (with the exception of the amendment by the Eastern District Court of Appeals’ Opinion) because it is supported by substantial evidence, is not against the weight of the evidence, and does not erroneously declare or apply the law. Chesterfield’s arguments are without merit and fail to substantiate its claim that FOP Lodge 15 is not entitled to relief. Article I, Section 29 of the Missouri Constitution and the Missouri Supreme Court in Independence have set forth that it is the role of the City of Chesterfield to set the framework for its public employees to bargain collectively through representatives of their own choosing. FOP Lodge 15 has standing to bring this suit on behalf of its members through the doctrine of associational standing. The doctrine of separation of powers is not a barrier to this Court granting relief to the City’s employees for the denial of their constitutional rights to bargain collectively through representatives of their own choosing.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 6<sup>th</sup>, 2011, a copy and a computer disk of the foregoing were served via U.S. Mail, postage prepaid to the following:

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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel for Respondent, FOP Lodge 15 hereby certifies that this Brief is typed in Times New Roman, 13 point type, using Microsoft Word. This Brief contains 11,375 words, which is within the word count limit allowed by Rule 84.06(b). This Brief is otherwise in compliance with Rule 84.06(b).

The undersigned further certifies that the computer disk served in conjunction with this Brief has been scanned for viruses using Norton Anti-Virus and has been found to be virus free.

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