

**IN THE  
SUPREME COURT OF MISSOURI**

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**No. SC93439**

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**ST. LOUIS COUNTY, MISSOURI, *et al.*,  
Plaintiffs/Appellants**

**v.**

**STATE OF MISSOURI, *et al.*,  
Respondents/ Respondents**

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**APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY  
CAUSE NO. 12AC-CC00801**

**HONORABLE PATRICIA S. JOYCE**

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**Reply Brief of Appellants St. Louis County, Missouri, *et al.***

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## ARGUMENT

### I. **Sovereign Immunity Does Not Bar Any of Plaintiffs’ Claims**

Defendants argue that Plaintiffs<sup>1</sup> cannot seek a declaration that the statute creating the Deputy Sheriff Salary Supplementation Fund (“DSSF”) is unconstitutional or that the actions of Defendants are unauthorized because all such declaratory relief is barred by sovereign immunity. Defendants ignore the cases cited by Plaintiffs establishing that lawsuits challenging unconstitutional and/or unauthorized actions of state officials are not barred by sovereign immunity. Appellants’ Brief, p. 18-20, 22, 25 and 29. Defendants instead rely on cases recognizing the general rule that the doctrine of sovereign immunity protects the state treasury from liability and suit for damages, and that state officials sued in their official capacity have the same immunity as the state from damages suits. *See, e.g. State ex rel. Mo. Dept. Of Agriculture v. McHenry*, 687 S.W. 2d 178, 182 (Mo. banc

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<sup>1</sup> Plaintiffs are St. Louis County police officer Sean D. Becker, St. Louis County transportation officer Emil Porter, St. Louis County deputy sheriff Kevin Cissell, St. Louis County Police Chief Tim Fitch, St. Louis County Sheriff Jim Buckles, St. Louis County Director of Department of Justice Services, Herbert Bernsen, and St. Louis County, Missouri (“County”). Defendants incorrectly state that the St. Louis County Executive is one of the plaintiffs in this case. (Respondents’ Brief at p. 6). He is not.  
(LF4)

1985). This general rule has no application to Plaintiffs’ constitutional challenge to the statute and to Defendants’ unauthorized and arbitrary actions.

Defendants characterize Counts I through IV of Plaintiffs’ first amended petition (LF137-154) as actions seeking payment of monies from the state treasury. They are not. Only Count IV seeks payment of money from the state treasury, and the state has consented to be sued for relief necessary to reverse Defendants’ arbitrary decision.

Defendants rely on *Redmond v. State*, 328 3d 818 (Mo. App. 2011) and *State ex rel. Kansas City Symphony v. State*, 311 S.W. 3d 272 (Mo. App. 2010) for the proposition that claims ostensibly seeking declaratory and injunctive relief, but with significant financial consequences, are barred by sovereign immunity. Neither of those cases stands for the novel proposition advanced by Defendants. Here, the only financial consequence from an order reversing the unlawful denial of salary supplementation to Plaintiffs Becker, Porter and Cissell is that benefits will be awarded in a non-discriminatory manner that carries out the purpose of the statute creating the DSSF. Further, the decisions in *Redmond* and *Kansas City Symphony* turn on the merits of those plaintiffs’ claims for mandamus, declaratory and injunctive relief, which are completely different than the claims advanced by Plaintiffs in this case.

Defendants fail to address Plaintiffs’ argument that Mo. Const. Art. V, §18, §57.278 RSMo, §527.080 RSMo, and §536.150 RSMo are consents to be sued and permit Plaintiffs to obtain the relief requested in Count IV. As Plaintiffs discussed more fully in Appellants’ Brief at p. 30-31, the requested relief is essential to afford judicial

review of Defendants’ actions that determine rights or privileges of Plaintiffs Becker, Porter and Cissell as well as other deputies who are intended beneficiaries of the DSSF.

Defendants argue that sovereign immunity protects Defendants’ discretion regarding spending. Respondents Brief at p. 16. It does not. Defendants are mere plain ministerial officers that are not beyond the strong arm of a court of equity. *Merchants’ Exchange of St. Louis v. Knott*, 111 S.W. 565, 574 (Mo. banc 1908). Even assuming, arguendo, that the statute creating the DSSF is a proper delegation of legislative authority, it does not give Defendants unbridled discretion regarding spending. Such unbridled discretion would clearly violate Mo. Const. Art. III, §1. Nor does the statute delegate to Defendants the power to decide the legal issue of whether St. Louis County’s employees who perform deputy sheriff functions are deputy sheriffs who are eligible to receive salary supplementation. That power belongs to the courts. Mo. Const. Art. V, §18. Plaintiffs have a direct and substantial interest in challenging the categorical denial of salary supplementation for the stated reason as claimed by defendants that Chief Fitch is not the sheriff, which is incorrect as a matter of law.<sup>2</sup> Nor does the statute authorize Defendants to receive and deposit the court costs paid for civil cases filed in the Circuit

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<sup>2</sup> By virtue of the 1979 St. Louis County Charter (LF 20-53 and LF 142-143), the St. Louis County Superintendent of Police is, as a matter of law, the Sheriff of St. Louis County and the employees listed on the grant application are deputy sheriffs. LF 144; *State on inf. Of Dalton ex rel. Shepley v. Gamble*, 280 S.W. 2d 656, 660 (Mo. banc 1955).

Court and Associate Circuit Court of St. Louis County<sup>3</sup> without using these court costs to supplement the salaries of the St. Louis County deputies who serve civil process and perform other judicial functions for these courts.

Plaintiffs are only asking for the \$100 per month plus benefits for the 2013 fiscal year that was awarded to deputy sheriffs throughout the state according to the 2013 funding formula established by MoSMART. LF 151. Defendants contend that the requested relief in Count IV would be over \$3 million dollars. Defendants' math is wrong. Count IV (LF 151) only seeks \$100 per month (\$1200 for 12 months) per deputy plus eligible fringe benefits. The total amount (including eligible fringe benefits) requested in Count IV is less than \$1.8 Million<sup>4</sup> and, as Defendants concede, there was

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<sup>3</sup> Since February 2011 the St. Louis County has collected court costs designated for the Deputy Sheriff Salary Supplementation Fund and the St. Louis County treasurer has remitted well over \$4.3 million to this fund (LF 140), but no DSSF funds have been awarded to supplement the salaries of St. Louis County employees who are licensed peace officers or deputies authorized to perform the same functions as the sheriff (LF 142).

<sup>4</sup> The \$100 per month per deputy requested in Count IV is only 59% of the amount requested in the grant application. Eligible fringe benefits based on \$100 per month per deputy would be 59% of the fringe benefits requested in the grant application (LF 123) which requested fringe benefits of \$672,155.21. Consequently, Count IV is requesting a

approximately \$1.8 million remaining in the appropriation. Respondents’ Brief at p. 16. This monetary relief is necessary to reverse Defendants’ arbitrary and unreasonable denial of Plaintiffs’ request for salary supplementation.

**II. Plaintiffs Have a Legally Protected Interest That Entitles Them to Challenge Defendants’ Underlying Authority and Defendants’ Discriminatory Actions**

Defendants argue that none of the Plaintiffs has standing to challenge Defendants’ discriminatory actions because the statute creating the DSSF does not create a “legal entitlement” to receive salary supplementation. In particular, Defendants argue that the intended beneficiaries of the DSSF do not have standing to challenge the denial of salary supplementation for a stated reason that as a matter of law is incorrect and arbitrary (LF 143-152, Amended Complaint ¶¶31-36, 52-59, 74 and 77). Defendants further argue that neither the person who signed the grant application nor the persons who paid the \$10 DSSF fees nor the sheriff who collects the fees have standing to challenge the constitutionality of the statute or the actions of Defendants. The logical inference to Defendants’ argument is that no one has standing to challenge what Defendants choose to do and no one would ever have standing to challenge the constitutionality of the statute that the defendants use as the authority for their actions.

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total of \$1.4 million for salary supplementation (\$100 per month x 12 months x 1171 deputies) plus fringe benefits of \$396,571.57, which would total less than \$1.8 Million.

Plaintiffs are not required to plead or prove a “legal entitlement” to grant monies in order to have standing to challenge the statute or Defendants’ underlying authority or their discriminatory actions. The Missouri Constitution<sup>5</sup> and statutes<sup>6</sup> empower this Court to declare rights, status and other legal relations and to review administrative rules and decisions that affect private rights and privileges. *Hill v. State Department of Public Health and Welfare*, 503 S.W.2d 6, 11 (Mo. banc 1973). Defendants are not above the strong arm of this Court. *Merchants’ Exchange*, 111 S.W. at 574. Plaintiffs’ standing is conferred by the constitutional and statutory provisions cited in Appellants’ Brief, which Defendants ignore and fail to address.

As made clear in Appellants’ Brief, Plaintiffs have a direct and substantial legal interest in challenging the statute that unlawfully delegates legislative authority to MoSMART and which, according to Defendants, gives MoSMART unbridled discretion to grant or deny salary supplementation without any judicial review. Plaintiffs have paid the DSSF court costs, and will be required to pay them to file future civil actions. Consequently, Plaintiffs are entitled to seek prospective relief from the burden of collecting, remitting and/or paying these unconstitutional court costs, which are not being

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<sup>5</sup> Mo. Const. Art. V, §18 and Mo. Const. Art. III, §1.

<sup>6</sup> Missouri’s declaratory judgment statute, §527.010-527.130 RSMo. and its Administrative Procedure and Review Act, §536.053 RSMo (standing to challenge rule) and § 536.150.1, RSMo (standing to challenge agency decision).

used to supplement salaries of the deputies who serve judicial process and perform other judicial functions in St. Louis County. LF 147-148. Plaintiffs also have a direct and substantial interest in seeking to overturn MoSMART’s rejection of Plaintiffs’ grant application for a stated reason that is incorrect as a matter of law.

**CONCLUSION**

For the reasons stated above and in Appellant’s Brief, the judgment of the trial court should be reversed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of September, 2013, a true and correct copy of the foregoing was served via the Court’s electronic filing system upon Robert Presson, Assistant Attorney General.

/s/Cynthia L. Hoemann  
Cynthia L. Hoemann

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 2010 and contains 1,662 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure. The font is Times New Roman, proportional spacing, 13-point type.

/s/ Cynthia L. Hoemann  
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