IN THE MISSOURI SUPREME COURT

APPEAL NO. SC93848

MISSOURI BANKERS ASSOC., INC., *et al.*,
Plaintiffs/Appellants,

v.

ST. LOUIS COUNTY, MISSOURI, *et al.*,
Defendants/Respondents.

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
DIVISION 33
HON. BRENDA STITH LOFTIN

Substitute Brief of Respondents St. Louis County, Missouri *and* Charlie A. Dooley

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STATEMENT OF FACTS

By ordinance approved on August 29, 2012 and amended on October 10, 2012, Respondent St. Louis County, Missouri ("County") enacted a "Mortgage Foreclosure Intervention Code," ("Mediation Program"), Chapter 727 of the St. Louis County Revised Ordinances ("SLCRO"). *L.F. 84-90.* The purpose of the Mediation Program was to address multiple problems exacerbated by the national mortgage foreclosure crisis as manifested in St. Louis County, including generally danger to the health, safety and welfare of the public and an increased burden on County's budget and the assessment and collection of real property taxes. *L.F. 84, 155-158.*

Prior to passage of the Mediation Program, the County Council received evidence of the significant number of foreclosures in St. Louis County during the preceding years, including issues attendant to these foreclosures: the resulting increase in crime and need for police services; increased vacancies, vandalism and theft; decreased property values; family disruption and harm to displaced children; the difficulty of performing fair and accurate property assessment due to both a reduced number of "arms-length" sales upon which the Assessor depends and the need for more individualized analysis of current market conditions; and the exertion of downward pressure on surrounding property values, directly influencing the provision of public services by causing reduced revenue even while causing an increased need for public services such as police protection and property maintenance. *L.F. 104-48, see also L.F. 155-58.*

The County Council also heard testimony from many residents who had been impacted by foreclosure, many of whom expressed frustration at the inability to

communicate with their loan servicers. *L.F.112-119*. General Counsel for Appellant Missouri Bankers Association implicitly acknowledged lenders' failure to deal fairly with homeowners in the past, admitting at a County Council hearing to the existence of a settlement between mortgage servicers and the federal government with proposed regulations "to reform mortgage loan servicing." *L.F. 133-43*.

The Mediation Program enacted by County requires lenders whose loans are secured by borrower-occupied residential properties ("Lenders") to offer the borrower ("Homeowner") an opportunity for mediation prior to foreclosure. *Section 727.400 SLCRO, L.F. 43-44*. Neither party is required to settle. A Homeowner who wishes to mediate must provide various financial statements and information to the mediation coordinator with whom County has chosen to contract ("Mediator"). *Section 727.500 SLCRO, L.F. 45-48*. Upon Lender's compliance with specific criteria enumerated in the ordinance, Mediator issues Lender a Certificate of Compliance. *Id.* The Certificate of Compliance must be filed with County's Assessor upon the filing with County's Recorder of Deeds of an instrument conveying title to foreclosed residential property. *Section 727.700 SLCRO, L.F. 48*. Failure to do so does not prevent recording of the instrument but subjects Lender to prosecution and a maximum $1,000 fine upon conviction. *Id.* Regardless of whether or not Lender is given a Certificate of Compliance, actual compliance with the ordinance's requirements is a complete defense against prosecution. *Id.*

Mediation is funded by Lenders, who are required to pay Mediator $100 upon notifying Homeowners of the right to request mediation. *Section 727.400 SLCRO, L.F.*

43-44. If a Homeowner elects to proceed with mediation, Lender must pay Mediator an additional $350 fee for mediation services to be provided. *Section 727.500 SLCRO, L.F. 45.* History suggests that approximately 15% of Homeowners may pursue mediation. *L.F. 152.*

Appellants Missouri Bankers Association and Jonesburg State Bank (collectively "Bankers") filed a six-count Petition for Declaratory Judgment in St. Louis County Circuit Court, asserting that Mediation Program had been enacted in derogation of various constitutional and statutory provisions and that the Mediation Program exceeded County's power under its Charter. *L.F. 17-33.*[1] The parties both filed motions for summary judgment, and Judge Brenda Stith Loftin entered judgment for County on November 14, 2012. *L.F. 242-52.*[2]

Bankers appealed Judge Loftin's judgment to the Eastern District Court of Appeals. *L.F. 268.* While the case was on appeal, the 2013 General Assembly enacted a new statute prohibiting the type of program that had been implemented by St. Louis County. The new statute, Section 443.454 RSMO, became effective on August 28, 2013 and provided as follows:

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[1] The case proceeded on Bankers' First Amended Verified Petition for Declaratory Judgment, which was filed on October 12, 2012. *L.F. 12.*

[2] Judge Loftin also entered judgment for Respondent Charlie A. Dooley, who was named as a defendant in his official capacity as County Executive. *L.F. 18.*

> The enforcement and servicing of real estate loans secured by mortgage or deed of trust or other security instrument shall be pursuant only to state and federal law and no local law or ordinance may add to, change, delay enforcement, or interfere with any loan agreement, security instrument, mortgage or deed of trust. No local law or ordinance may add, change, or delay any rights or obligations or impose fees or taxes of any kind or require payment of fees to any government contractor related to any real estate loan agreement, mortgage or deed of trust, other security instrument, or affect the enforcement and servicing thereof.

The Eastern District subsequently dismissed Bankers' appeal as moot, and the Supreme Court granted Bankers' Application for Transfer on February 25, 2014.

ARGUMENT

I. THE QUESTION OF COUNTY'S AUTHORITY UNDER MO. CONST. ART. VI §18(b) TO IMPLEMENT A MEDIATION PROGRAM HAS BEEN RENDERED MOOT BY THE GENERAL ASSEMBLY'S ENACTMENT OF A STATUTE PROHIBITING SUCH PROGRAMS. (Point I)

STANDARD OF REVIEW

Because the issue of mootness arose subsequent to the trial court's surrender of jurisdiction, there is no trial court action to review and therefore no applicable standard of review. Instead, courts may dismiss a case for mootness *sua sponte* because mootness implicates the justiciability of a case. *TCF, LLC v. City of St. Louis*, 402 S.W.3d 176, 181 (Mo. App. 2013).

ENACTMENT OF SECTION 443.454 RSMo PROHIBITING COUNTY'S FORECLOSURE MEDIATION PROGRAM SUPERSEDED COUNTY'S AUTHORITY UNDER MO. CONST. ART. VI §18(b) TO IMPLEMENT SUCH A PROGRAM, SO THAT THE QUESTION OF COUNTY'S ORIGINAL AUTHORITY TO ENACT SUCH A PROGRAM UNDER MO. CONST. ART. VI §18(b) HAS BECOME MOOT.

Under Mo. Const. Art. VI §18(b), Charter counties possess "an implied grant of such powers as are reasonably necessary to the exercise of the powers granted, so long as the exercise of such powers does not 'invade the province of general legislation' involving public policy of the State as a whole.'" *Barber v. Jackson County Ethics Comm.*, 935 S.W.2d 62, 66 (Mo. App. 1996) (citation omitted). "One of the powers

granted to charter counties . . . is the exercise of the sovereign right . . . to promote order, safety, health, morals, and the general welfare of society. . . ." *Id.* (citations omitted).

When originally enacted, County's Mediation Program was a reasonable response to the crisis in St. Louis County and was justified under Section 18(b) as a valid exercise of County's implied power to promote the order, safety, health, morals and general welfare of County residents. Foreclosures negatively impact County residents by causing - among other social ills - increased vacancies, increased vandalism and theft, decreased property values, family disruption, and harm to displaced children. *Statement of Facts, supra p. 8.* The Mediation Program was also a valid exercise of County's implied power to facilitate "a full and accurate assessment of all property . . . liable to taxation." *Hellman v. St. Louis County*, 302 S.W.2d 911, 915 (Mo. 1957); as noted in County's *Statement of Facts*, *supra p 8*, foreclosures are disruptive to the assessment process, in that they increase the difficulty of performing fair and accurate property assessment by reducing the number of "arms-length" sales upon which the Assessor depends in determining fair market value for surrounding properties. *L.F. 155-58.*

In addition to being a *reasonable* exercise of police powers, County's Mediation Program was consistent with State policy when originally enacted. *See L.F. 217-220.* But one year later, after County's Mediation Program had been challenged by Bankers and found by Judge Loftin to be consistent with State policy, the General Assembly enacted a new statute prohibiting the very activities which comprised the core of the Mediation Program:

The enforcement and servicing of real estate loans secured by mortgage or deed of

trust or other security instrument shall be pursuant only to state and federal law and no local law or ordinance may add to, change, delay enforcement, or interfere with any loan agreement, security instrument, mortgage or deed of trust. *No local law or ordinance may add, change, or delay any rights or obligations or impose fees or taxes of any kind or require payment of fees to any government contractor related to any real estate loan agreement, mortgage or deed of trust, other security instrument*, or affect the enforcement and servicing thereof.

Section 443.454 RSMo (emphasis added).

The General Assembly having expressed its intent to prevent the Mediation Program implemented by St. Louis County, County cannot look to Section 18(b) for authority to continue therewith and Bankers' Section 18(b) challenge has been rendered moot. "A case is moot where an event occurs that makes the court's decision unnecessary", and "Missouri courts do not decide moot issues." *Carlisle v. Carlisle*; 277 S.W.3d 801, 802 (Mo. App. 2009) (citations omitted).

Contrary to Bankers' assertion in Point I of their brief, the subsequent action of the General Assembly did not make County's Mediation Program "void." A void ordinance is one for which there was no authority at the time of enactment, *see Levinson v. City of Kansas City*, 43 S.W.3d 312, 320 (Mo. App. 2001) (municipal ordinance was void when it was not consistent with enabling ordinance then in effect). Rather than being void, the ordinance has been superseded to the extent the power to enact it was derived from Section 18(b), and the County has affirmed that it lacks authority under Section 18(b) to continue enforcement of the Mediation Program. "`[W]here an enactment supersedes the

statute on which the litigants rely to define their rights, the appeal no longer represents an actual controversy, and the case will be dismissed as moot.'" *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 325 (Mo. banc 2000) (citation omitted).

Bankers' arguments as to alleged conflicts with other State statutes have become moot in light of the General Assembly's specific declaration of policy in Section 443.454 RSMo. Bankers' attempt to bring this case within the parameters of *Bratton v. Mitchell*, 979 S.W.2d 232 (Mo. App. 1998), wherein an appellant argued that her challenge to the calculation of parole eligibility had not become moot by virtue of the department of corrections having acquiesced in her interpretation, is inapt. In the case at hand, it is not informal County statements which have rendered this Section 18(b) challenge moot but rather the enactment of the superseding statute.

Nor is Bankers' Section 18(b) argument saved from being moot by their desire to obtain attorney's fees. Bankers have mistakenly argued that "an adverse judgment on Count I . . . could have resulted in an award of attorneys' fees." *Brief at 23.* But the Missouri Declaratory Judgment Act does not authorize Bankers to seek such fees because it "does not give the trial court express authority to award attorney's fees or other costs against the state." *Client Services, Inc. v. Mo. Coordinating Bd. For Higher Education*, 30 S.W.3d 194, 195 (Mo. App. 2000). This .prohibition extends to counties as well as the State itself. *Baumli v. Howard County,* 660 S.W.2d 702, 705 (Mo. banc 1983). Accordingly, Bankers' challenge under Point I should be dismissed as moot.

II. TRIAL COURT DID NOT ERR IN ENTERING JUDGMENT FOR COUNTY BECAUSE EACH OF THE SIX LEGAL DEFICIENCIES CLAIMED BY BANKERS IN POINT II ARE FRIVOLOUS. (Point II)

STANDARD OF REVIEW

Bankers have listed a hodgepodge of grounds for reversal in Point II, which point fails to comply with the requirement of Rule 84.04(d)(1) that appellants "state concisely the legal reasons for the appellant's claim of reversible error" and "explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error." Bankers' assertion of legal error is that the court erred in granting summary judgment "because enacting the ordinance violates constitutional provisions." And rather than explaining how any particular constitutional provisions have been violated, Bankers chose simply to list six random and unconnected provisions which were not even identified by article or section number.

"Abstract statements of law, standing alone, do not comply with this rule." Rule 84.04(d)(4). Although the Court's preference is to decide cases on the merits, Bankers' shotgun approach of combining multiple errors of assertion into a single vague point on appeal is so defective as to impede disposition on the merits and to warrant dismissal. If the Court chooses to consider the merits of Bankers' defective point rather than dismiss it outright, the appropriate standard of review is for plain error. *Christeson v. State of Mo.*, 131 S.W.3d 796, 799 n. 5 (Mo. banc 2004); *J.A.D. v. F.J.D.*, 978 S.W.2d 336, 338 (Mo. banc 1998).

COUNTY'S MEDIATION PROGRAM DOES NOT IMPOSE ANY TAXES UPON LENDERS.

The first three grounds asserted by Bankers in Point II of their brief are all based upon the assumption that County's Mediation Program levies a tax upon those Lenders who wish to file foreclosure deeds without being subject to penalty. More specifically, Bankers contend that the fees paid by Lenders to the Mediator violate Art. X §22(a) of the Constitution prohibiting the imposition of a tax by any political subdivision without voter approval ("the Hancock Amendment"); violate Mo. Const. Art. X §25 prohibiting the imposition of any new tax of the transfer of real estate;[3] and violate both Art. X §1 and Art. VI §18(d) of the Missouri Constitution requiring that a county's exercise of the taxing power be authorized by the Constitution or General Assembly.

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[3] Bankers' argument in support of their claim that County's Mediation Program violates Mo. Const. Art. X §25 prohibiting the imposition of any new tax of the transfer of real estate consists of setting forth the text of Section 25 and the conclusion that the County "improperly imposes a tax on Lenders." *Bankers' Brief pp. 35-36.* By failing either to cite any appropriate and available precedent or to explain why they have not done so, Bankers should be deemed to have abandoned this point on appeal. *See Carden v. Mo. Intergovernmental Risk Management Assoc.*, 258 S.W.3d 547, 557 (Mo. App. 2008) (appeal dismissed due to deficient argument that did not comply with Rule 84.13).

The "tax" of which Bankers complain is the fee required to be paid by Lenders to Mediator for the services provided by Mediators: $100 for initial services provided upon issuance of a Notice of Foreclosure, and an additional $350 for cases which proceed toward mediation. None of the fees imposed upon Lenders are paid, either directly or indirectly, to County. Because of that fact, the fees cannot correctly be characterized as taxes.

"Taxes are 'proportional contributions imposed by the state upon individuals for the support of government and for all public needs.'" *Leggett v. Mo. State Life Ins. Co.*, 342 S.W.2d 833, 875 (Mo. banc 1960) (quoting *Taylor v. Gehner*, 45 S.W. 2d 59, 60 (Mo. 1931). "A tax . . . is a contribution required of its citizens by the state." *Jasper Land & Improvement Co. v. Kansas City*, 239 S.W. 864, 865 (Mo. 1922). "Fees or charges prescribed by law to be paid by certain individuals to public officers for services rendered in connection with a specific purpose ordinarily are not taxes." *Leggett v. Mo. State Life Ins. Co.*, 342 S.W.2d at 875.

In prohibiting the imposition of new "taxes" without voter approval, the purpose of the Hancock Amendment was "to rein in increases in *governmental revenues* and expenditures." *Roberts v. McNary*, 636 S.W.2d 332, 336 (Mo. 1982) (emphasis added), *overruled on other grounds* by *Keller v. Marion County Ambulance District* 820 S.W.2d 301 (Mo. banc 1991). *Roberts v. McNary* was ultimately overruled for having mistakenly construed the Hancock restrictions "far too broadly to be of much use as precedent." *Keller*, 636 S.W.2d at 305. Yet even in *Roberts v. McNary, supra*, it was recognized that

the Hancock Amendment restrictions on "taxes" applied only to "governmental revenues."

Here, Bankers have failed to allege facts suggesting the generation of any governmental revenues by the mediation requirements of which they complain. It is evident from their petition that payment for the mediation services goes directly and only to the providers of those services and not to St. Louis County. *L.F. 20.* Payments to third-party vendors do not become a part of the government's funds and therefore are not governmental revenues subject to the Hancock Amendment. Just as it is true that "[t]o qualify as total state revenues . . . the funds must be received into the state treasury," *In re Tri-County Levee District*, 42 S.W.3d 779, 785 (Mo. App. 2001), so, analogously, must funds be received into the County treasury to qualify as County funds.

The imposition of a new responsibility with attendant costs is wholly different from the imposition of a tax payable to the government indirectly through a third party. Insofar as it is only the latter which implicates the Hancock Amendment, Bankers have no basis for claiming a Hancock violation by being required to acquiesce in mediation if the prerequisites for same have been satisfied and to pay a mediator for the services to be provided. Indeed, governments regularly impose obligations upon their citizens which may have attendant costs. *See, i.e.,* Section 167.161 RSMo (requiring immunization of children attending public or private schools); Section 191.680 RSMo (requiring abatement of nuisance by owners of certain buildings); Section 307.350 RSMo (requiring vehicle safety inspections prior to registration). The fact that requirements imposed for the public good may cause the expenditure of money by a resident does not transform

that obligation into a "tax."

In *Grace v. St. Louis County*, 348 S.W.3d 120, 125 (Mo. App. 2011), St. Louis County residents raised a Hancock challenge to a County ordinance which required them to pay monthly fees to third-party waste haulers for the provision of particular waste-hauling services that had been mandated by County. Just as Bankers herein claim, the *Grace* plaintiffs claimed that payment of fees to third parties constituted payment of a tax - a tax which had not been approved by the voters pursuant to the Hancock Amendment. In rejecting the *Grace* plaintiffs' argument, the court observed that plaintiffs' direct payment of the fee to a third-party service provider negated the argument that the fee was a "tax":

> Although the Residents contend that we must apply the five factors from *Keller*, 820 S.W.2d at 304 n. 10 . . ., to determine whether the recycling fee, which was part of the waste removal bill, was subject to the Hancock Amendment, we disagree with the Residents' threshold argument. Under *Keller*, because this fee was not a "revenue increase by a local government" in the first instance, it was not a tax and did not require voter approval under the Hancock Amendment. Therefore, a *Keller* analysis is not necessary.

Id. at 126.

Bankers are identically situated to the *Grace* plaintiffs and equally erroneous in characterizing a fee for services as a "tax." Indeed, even when a service that had been provided to the taxpayer was much less direct and specific to that taxpayer, this Court has upheld a government's ability to require taxpayer third-party payments without the

necessity of a Hancock vote. In *Zahner v. City of Perryville*, 813 S.W.2d 855 (Mo. banc 1991), a taxpayer filed for refund of an assessment against his property to pay for improvements to the abutting road. The assessments were required to be paid directly to the contractor performing the work, with "no payment into the City's general fund." *Id.* at 859. Noting that the city had paid for such improvements from its general fund in the past, the taxpayer argued that there was no special benefit to the abutting property owner and that "the assessment was, in effect, a payment to the general revenue fund. . . ." *Id.* The Court called the argument "speculative" and upheld the assessment for public road improvements as having a "special purpose" which meant it was not a tax. *Id.*

Although it is apparent that Residents' Hancock challenge fails for lack of any "governmental revenues" being generated for County's use, it is also true that the five-factor analysis set forth in *Keller v. Marion County Ambulance District*, 820 S.W.2d 301 (Mo. banc 1991), affords no support to Residents' argument; all five factors would mitigate against characterizing the fees as "taxes. First, the fee is paid for provision of a specific service rather than periodically; second, it is paid only by Lenders using the mediator's services and not by all taxpayers; third, the fee is two-tiered so that the actual amount paid corresponds to and is dependent upon the amount of services being provided; fourth, the fee is not paid, either directly or indirectly, to a local government; and fifth, there is nothing in the record to suggest that foreclosure mediation has historically or exclusively been provided by any government. Thus even were the irrelevant *Keller* analysis to be applied, Bankers cannot prevail upon their claims that the mediation fee is a tax. There is no basis for any claim against County premised on the

notion that the mediation fee is a prohibited tax, and the trial court was correct in rejecting all of Bankers' arguments that relied on characterization of the mediation fees as taxes.[4]

MEDIATION PROGRAM DOES NOT DELEGATE JUDICIAL AUTHORITY TO MEDIATOR.

Bankers contend that County's Mediation Program violates Mo. Const. Art. V Section 1 and Art. II Section 1 by delegating judicial authority to the Mediator, who is empowered to withhold issuance of a Certificate of Compliance to Lenders not in compliance with the Mediation Program requirements. This subsection of Point II should be dismissed for the reason that Bankers have abandoned it by not providing any "appropriate and available precedent" in support of their argument as required by Rule 84.113, nor have they explained the unavailability of any such precedent. *See Carden v. Mo. Intergovernmental Risk Management Assoc.*, 258 S.W.3d at 557. Instead, Bankers have merely set forth the constitutional provision which they claim has been violated, *Bankers' Brief p. 38*, and cited two cases for the undisputed truths that the legislature had

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[4] Bankers' contention that the funding mechanism is inseparable from the remainder of the ordinance is contradicted by Section 1301.130 of the St. Louis County Revised Ordinances, which provides that "[t]he provisions of every ordinance are severable." *L.F. 193.*

no authority to invest other tribunals with judicial power[5] and that ordinances which violate constitutional provisions are void and unenforceable.[6] *Id. At 38-39*. They have offered no analysis of how the responsibility of issuing a Certificate of Compliance, based upon compliance with clearly articulated obligations, constitutes judicial activity by the Mediator. Their failure to offer any analysis should end consideration of this argument, because "[i]t is not the function of the appellate court to serve as advocate for any party to an appeal. . . . It would be unfair to the parties if it were otherwise." *Thummel v. King*, 570 S.W.2d 679, 686 (Mo. banc 1978).

If considered on the merits, Bankers' argument in this Point II subsection will be found to be specious. The gist of Bankers' argument is that "[t]he Mediation Coordinator . . . possesses the authority to find a Lender violated the Ordinance, refuse a Certificate of Compliance and, for all practical purposes, impose an Ordinance fine of $1,000 [and] . . . Lender cannot appeal the Coordinator's findings." *Bankers' Brief p. 39*. But it is evident from the very face of the ordinance by which the Mediation Program was established that Bankers' contentions are false.

The only authority possessed by the Mediation Coordinator, based on consideration of specifically articulated criteria, is to withhold issuance of a Certificate of

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[5] Citing *State Tax Comm. v. Administrative Hearing Comm.*, 641 S.W.2d 69 (Mo. banc 1982).

[6] Citing *Building Owners and Managers Assoc. of Metro. St. Louis*, 341 S.W.3d 143 (Mo. App. 2011).

Compliance. The Mediation Coordinator is *required* to issue the certificate to any Lender if:

(a) the Lender sent the Notice of Foreclosure and the Notice of Right to Request Mediation and forms as required by Section 400;

(b) the Lender provided all of the necessary paperwork as required by Section 727.500 4(a)-(d)and (5);

(c) the Lender's representative who participated in the mediation had the authority to negotiate and modify the loan in question, and the ability to review and approve options for the Homeowner's specific type of loan as required by Section 727.500(6); and

(d) the Lender paid all fees required by this Chapter.

Section 727.500.11 SLCRO, L.F. 39.

Non-issuance of a Certificate of Compliance amounts only to an assertion of probable cause as to one element of the offense at issue. It is then up to the County Counselor to determine whether prosecution will even be initiated.[7] The situation is analogous to the provision of a police officer's report stating that a person has driven under the influence of alcohol; the prosecutor may issue a charge if the report is deemed reliable and probable cause has been met as to all elements of the offense, but is not

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[7] Mo. Const. Art. VI, Section 18(e) authorizes the courts to take judicial notice of County's Charter, which provides that the County Counselor "shall prosecute violations of county ordinances." *St. Louis County Charter Section 5.030.1.*

required to do so.

Assuming that charges are issued, they must be proved, in court, beyond reasonable doubt. "'[A] vast gulf exists between the quantum of information necessary to establish probable cause and the quantum of evidence required to prove guilt beyond a reasonable doubt.'" *Norris v. Dir. of Revenue*, 156 S.W.3d 786, 788 (Mo. App. 2005) (citations omitted). County's ordinance provides that "it shall be a complete defense to prosecution hereunder that the Lender has in fact complied with the requirements set forth in Section 727.500.10(a)-(d)." *Section 727.700.1 SLCRO, L.F.97.*

Furthermore, it is up to the judge to determine whether a fine will be imposed and the amount of any such fine, even if the charges are proved. Thus Bankers' assertion that non-issuance of a Certificate of Compliance amounts to the imposition of a $1,000 fine "for all practical purposes" is patently false. Instead, Lenders who fail to comply with Mediation Program requirements are subject to a fine of *up to* $1,000 *if* they are convicted of a violation. *Section 727.700.2 SLCRO, L.F. 98.* Nothing in the Mediation Program purports to bypass the judicial process for obtaining a conviction or for the exercise of the judge's discretion in imposing punishment for a conviction.

County's Mediation Program clearly comports with the constitutional requirement for separation of powers, which requires only that final judgment be within the purview of the judiciary. "[A]n agency may perform adjudicative functions without violating the Constitution so long as the agency's decision is subject to 'direct review by the courts.'" *Asbury v. Lombardi*, 846 S.W.2d 196, 200 (Mo. banc 1993) (citations omitted). More recently, "[t]he quintessential power of the judiciary is the power to make *final*

determinations of questions of law." *Eastern Mo. Coalition of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755, 770 (Mo. banc 2012) (emphasis in original), *quoting Asbury v. Lombardi*, *id.* Because County's Mediation Program allows for determination of violations only by the judiciary, it adheres to the constitutional requirement for separation of powers.

MEDIATION PROGRAM DOES NOT PERMIT USE OF PUBLIC MONEY FOR PRIVATE BENEFIT.

Bankers argue that County's Mediation Program is "designed entirely to benefit individual homeowners" and that that it "grants public funds and valuable services to individuals, namely homeowners, in violation of the prohibition against counties granting public money or things of value to, or in aid of, any individual." *Appellants' Brief p. 35, citing Mo. Const. Art. VI §23.* Both of these two propositions are factually incorrect.

First, the record does not support Bankers' contention that the Mediation Program is "designed entirely to benefit individual homeowners." Instead, the purpose of the Mediation Program, as stated in the ordinance by which it was created, is to address multiple County problems caused by massive foreclosures. These problems include "negatively impacting property values, reducing the County's tax base, imposing increasing burdens upon the County's budget, and impeding the orderly assessment of value and the collection of real property taxes. . .", and the expectation was that foreclosure mediation would be beneficial not just to homeowners but to "lenders and to all of St. Louis County." *L.F. 84.* Indeed, Bankers themselves have acknowledged that County's intent in enacting the Mediation Program was to reduce the impact of the

foreclosure crisis "on the County's property values, tax base, budget and collection of real property taxes." *Bankers' Brief p.3.*

Second, the Mediation Program does not grant any "public money or thing of value" to individuals. The payments made by Lenders to Mediator do not become a part of the government's funds and therefore are not governmental revenues. As noted *supra p. 20*, funds be received into the County treasury to qualify as County funds. *See Grace v. St. Louis County*, 348 S.W.3d 120 (fees required to be paid by residents to waste haulers did not generate or qualify as revenue for County). Bankers' argument lacks merit and the trial court was therefore correct in entering judgment for County.

MEDIATION PROGRAM DOES NOT PERMIT COMPENSATION TO COUNTY OFFICERS IN EXCESS OF THEIR SALARY.

Bankers make the bald assertion that payment to Mediator of a fee for mediation services constitutes payment to a "public officer" in excess of the officer's salary, in violation of Mo. Const. Art. VI, Section 12. Bankers offer no support for characterizing Mediators under contract to County as "public officers," and Mediators are no more public officers than are any other persons who perform services that are required by law, *i.e.* vehicle inspectors who perform mandatory safety inspections required by Section 307.350 RSMo or nurses who give vaccinations required by Section 167.161 RSMo for school children.

Bankers having failed to present any argument or to offer any case law in support of the proposition that the Mediator is a public officer, their argument on this point should be disregarded. "If the party does not cite authority and does not explain why it

fails to do so, then the party is deemed to have abandoned that point." *Donovan v. Temporary Help*, 54 S.W.3d 718, 720 (Mo. App. 2001) (citation omitted). There is accordingly no basis for overturning the trial court's decision on this point.

Moreover, the performance of tasks by contract does not transform a private person into a public officer. In fact, not even all public employees are holders of public office, as pointed out in *State ex rel. Scobee v. Meriwether*, 200 S.W.2d 340 (Mo. banc 1947). In *Scobee*, a court reporter duly appointed for a term certain, by the circuit judge under statutory authority, was found not to hold public office. In so holding, the court noted that court reporters were not invested "with any of the usual indicia of an officer," including the posting of a bond, but were instead public *employees*. *Id.* at 342. *See also State ex rel. Webb v. Pigg*, 249 S.W.2d 435 (Mo. banc 1952) (Court clerk with appointed term of office, statutory duties and required to give bond held not to be "public officer" within constitutional provision). Mediator under County's Code has a contractual relationship with County and wields no sovereign power. Mediator is not a public officer subject to the limitations of Art. VI §12.

III TRIAL COURT DID NOT ERR IN ENTERING JUDGMENT FOR COUNTY BECAUSE COUNTY'S MEDIATION PROGRAM WAS AUTHORIZED BY MO. CONST. ART. VI §18(c)

STANDARD OF REVIEW

"The propriety of summary judgment is purely an issue of law" so that review on appeal is "essentially *de novo*." *THF Chesterfield North Development, L.L.C. v. City of Chesterfield*, 106 S.W.3d 13, 16 (Mo. App. 2003), *citing ITT Commercial Finance Corp. v. Mid–America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

MO. CONST. ART. V §18(c) AUTHORIZES MEDIATION PROGRAM

As Bankers themselves acknowledge, Mo. Const. Art. VI §18(c) grants charter counties the power to exercise legislative authority over services and functions of a municipality or political subdivision. . . ," and this grant of power allows for the exercise of police powers such as public health, police and traffic "in order to meet the 'peculiar' needs of the county." *Bankers' Brief p. 42*. This grant of power is "not subject to, but take[s] precedence over, the [General Assembly's] legislative power." *State ex rel. Shepley v. Gamble*, 280 S.W.2d 656, 660 (Mo. banc 1955). *See also St. Louis County v. City of Manchester,* 360 S.W.2d 638, 641 (Mo. banc 1962) ("the grant of municipal powers to charter counties under §18 of Art. VI is meaningful and vests rights which cannot be taken away or impaired by the general assembly. . . ").

Municipal enactment of foreclosure mediation programs similar to County's program has been consistently recognized as a valid exercise of municipal police power. In *Easthampton Savings Bank v. City of Springfield*, 874 F.Supp.2d 25 (D. Mass. 2012),

Springfield enacted a program which, like County's Mediation Program, required lenders to participate in city-approved mediation prior to foreclosure. After participation, the mediator would issue a certificate of participation which then entitled the mortgagee to proceed without penalty.

As is the case herein, no state statute specifically authorized the mediation program enacted by the city. Notwithstanding that fact, and notwithstanding the court's acknowledgement that the process might "extend the time line" for foreclosures as set forth in state statutes, *id.* at 3, the court recognized Springfield's municipal authority to enact such a program. The court did so based upon its appreciation of the fact, which is equally true in St. Louis County, that "[w]idespread mortgage foreclosures undisputably are an issue of serious public concern to municipalities." Because of that, the court concluded that the city's "modest effort . . . to soften this crisis . . . violates no Constitutional provision or state statute." *Id. at 7. See also Jepson v. Deutsche Bank National Trust Co.*, ___F.Supp.2d ___, 2013 WL5229842 at p. 6 (D. Mass. 9/18/13) (noting that various municipalities have adopted mortgage foreclosure mediation requirements in the absence of state statutes, and that "early results indicate that they are helpful in allowing both parties to reach mutually acceptable settlements").

Likewise, a municipal mortgage foreclosure mediation program was upheld in *Deutsche Bank National Trust Co. v. City of Providence*, P.C. No. 10-1240 (Providence Superior Ct. 5/17/10). As had the City of Springfield, the City of Providence enacted a mediation program without any specific statutory authority to do so. Acknowledging the "devastating foreclosure crisis," *id.* at 15, the court upheld the city's imposition of a fine

for entities in violation of the foreclosure mediation ordinance -- an ordinance that the court found had been appropriately enacted "to combat the current climate of increasing real estate foreclosures." *Id.* at 1.[8] As in *Easthampton*, the *Deutsche* court found that the mediation requirement was neither "overly burdensome or time consuming." *Id.*

As the most populous county in the State of Missouri, St. Louis County is peculiarly affected by a crisis which is rendering thousands of County residents homeless each year, causing local need for additional police and social services. *L.F. 150.* The unsecured and unmaintained properties caused by this crisis "present a danger to the health safety, and welfare of the public, including public safety officers . . . and constitute a public nuisance." *L.F. 84.* Increased foreclosures lead to increased crime rates and attendant costs. *L.F. 150.* To suggest as Bankers do that County lacks police power to address the local fallout from this national crisis, *Bankers' Brief p. 43*, is illogical; neither the fact that this crisis is nationwide nor the fact that municipalities across the nation face these same health and safety issues renders these issues any less local or urgent in St. Louis County. Section 18(c) authorizes County to provide municipal services and functions; it does not restrict County's exercise of police power to those municipal services and functions uniquely needed in St. Louis County.

The fact that the mortgage foreclosure crisis presents a local issue meriting

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[8] The *Deutsche* court did strike a provision which prohibited the recording of deeds for property as to which no mediation had occurred, but no such provision exists in County's Mediation Program.

exercise of County's constitutional authority was articulated clearly by Judge Van Amburg's in her dissenting opinion herein:

> The foreclosure epidemic that swept through St. Louis County is just such an urgent local problem. The summary judgment record herein reflects that in 2010, the peak year of the national foreclosure crisis, over 4,500 St. Louis County residents lost their homes to foreclosure. This number was more than a four-fold increase from the historical norm. Many neighborhoods saw in excess of eight foreclosure-related sales for each comparable owner-initiated sale, and foreclosed houses were commonly left abandoned and in poor condition. Property values in St. Louis County were falling, as was tax revenue used to support local government services such as school and fire districts.

Mo. Bankers Assoc. v. St. Louis County, ___ S.W.3d ___, 2013 WL 5629426 at p. 3 (Mo. App. 10/15/13). Judge Van Amburg went on to note the validity County's exercise of police power to implement a mediation program because "it creates a mechanism by which the County can protect its inhabitants from the scourge of widespread foreclosure, and its attendant ills of reduced property values, falling tax revenue, increased crime, disruption of families, and increased costs for police, fire, and emergency social services." *Id.* Finally, Judge Van Amburg observed that "the 'only consistent thread in the whole tangled skein of cases' on charter county power is that charter counties have substantial autonomy to regulate the disposition of real property within their borders." *Id.* (citation omitted). To find otherwise would be to subject the Constitution to legislative curtailment by the General Assembly.

Bankers imply that the Mediation Program is not sufficiently narrowly tailored to address one of the ill effects being targeted by the Mediation Program, that is, unsecured and unmaintained properties. Bankers argue that County's ordinance "makes no distinction or effort to address 'unsecured and unmaintained properties,' but instead covers all residential foreclosures." *Bankers' Brief p. 43.* Bankers' argument is premised upon the unstated and incorrect notion that County's exercise of police powers must be narrowly tailored to a particular problem. But in fact, County's police power is very broad. *Bezayiff v. City of St. Louis*, 963 S.W.2d 225, 229 (Mo. App. 1997) (upholding ordinance which authorized city to remove inoperable motor vehicles from private property). "The test of the validity of an exercise of police power is reasonableness." *Miller v. City Of Town & Country*, 62 S.W.3d 431, 437 (Mo. App. 2001) (upholding city ordinance which required permission of owner prior to hunting or trapping on public property). "A municipal ordinance will be deemed a legitimate exercise of police power if the expressed requirements of the ordinance bear a substantial and rational relationship to the health, safety, peace, comfort, and general welfare of the citizenry." *Lewis v. University City*, 145 S.W.3d 25, 32 (Mo. App. 2004) (citation omitted) (upholding city ordinance which authorized closing of residence from which drugs had been sold). It is reasonable for County to address the problem of increased property maintenance issues caused by foreclosure vacancies, even if not every single foreclosure results in an unmaintained property.[9]

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[9] Bankers' argument that failure to maintain property is a default under a deed of trust,

Ordinances enacted pursuant to the police power are presumed valid and Bankers' blanket criticism does not satisfy its burden of disproving the Mediation Program's validity. As noted in *Bezayiff* "[i]f reasonable minds might differ as to whether a particular ordinance has a substantial relationship to the protection of the general health, safety, or welfare of the public, then the issue must be decided in favor of the ordinance." *Id.* "The exercise of police power will be upheld if any state of facts either known or which could be reasonably assumed affords support for it." *Barber v. Jackson County Ethics Comm.*, 935 S.W.2d 62, 66 (Mo. App. 1996). Bankers herein have not presented any evidence to challenge County's authority to enact ordinances that protect public health and safety by minimizing foreclosures which cause property maintenance and crime problems, or challenging County's claim that other jurisdictions have successfully used foreclosure mediation to avert these problems.

County's Mediation Program is a legitimate exercise of County's police power under Mo. Const. Art. VI §18(c). The express grant of legislative power in Section 18(c) negates the need for specific statutory authority to implement this program. *See*

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and that County's Mediation Program obstructs lenders from taking over the property to remediate, should be disregarded. *Bankers' Brief p. 43.* There is no evidence in the record concerning the duties imposed on property owners by deeds of trust. Moreover, the property maintenance issue being addressed by County's Mediation Program is the one caused by ejectment of property owners via foreclosure, which is a separate issue from the problem of non-maintenance of property by on-site owners.

Chesterfield Fire Protection District of St. Louis County v. St. Louis County, 645 S.W.2d 367, 371 (Mo. banc 1983) (upholding County's creation of a Fire Standards Commission under its Section 18(c) power and rejecting the contention of various fire protection districts that training of firefighters was a matter of statewide concern that had been delegated to fire protection districts). The *Chesterfield Fire Protection District* court found that County's action was not governed by the finding in *Flower Valley Shopping Center, Inc. v. St. Louis County*, 528 S.W.2d 749 (Mo. banc 1975), i.e. that County needed more specific statutory authority to enact legislation under Section 18(b), because County's express grant of authority in Section 18*(c)* permitted County to enact fire standards not specifically authorized by state statutes.

This court should follow the longstanding precedent as set forth in *Chesterfield Fire Protection District* and uphold County's authority to exercise its Section 18(c) police power without regard to General Assembly legislation. County's Mediation Program bears a substantial and rational relationship to its stated goals of furthering the health, safety, peace, comfort and general welfare of its residents, and the trial court's grant of summary judgment should be affirmed based on County's police power under Mo. Const. Art. VI Section 18(c).

IV. TRIAL COURT DID NOT ERR IN ENTERING JUDGMENT FOR COUNTY BECAUSE EACH OF THE FOUR LEGAL DEFICIENCIES CLAIMED BY BANKERS IN POINT IV ARE FRIVOLOUS. (Point IV)

STANDARD OF REVIEW

Bankers have listed four more constitutional grounds for reversal in Point IV (beyond those six listed in Point II). As with Point II, Bankers' assertion of error is that the trial court erred in granting summary judgment to County "because enacting the ordinance violates constitutional provisions." As with Point II, Bankers then simply identified random constitutional provisions without reference to article or section numbers and without identifying how those provisions were violated. As with Point II, then, this point should be dismissed outright as defective or, if considered on the merits, should be subject to review only for plain error. *Christeson v. State of Mo.*, 131 S.W.3d 796, 799 n. 5 (Mo. banc 2004); *J.A.D. v. F.J.D.*, 978 S.W.2d 336, 338 (Mo. banc 1998).

COUNTY'S MEDIATION PROGRAM DOES NOT IMPAIR LENDERS' CONTRACTUAL RIGHTS.

Bankers have no claim for impairment of contract under Mo. Const. Art. I §13. Instead, County's reasonable exercise of the police power to promote health and safety for County residents would be valid and consistent with the Missouri Constitution even if it did interfere with Bankers' contracts (which County disputes):

> There . . . is no question but that abrogation of a contract or rights thereunder as a result of proper exercise of the police power does not

violate state or federal provisions against impairment of contracts. This is because the police power may not be hindered or frustrated by contracts between individuals or companies or governmental subdivisions. If an existing contract should have the effect of interfering therewith, it must necessarily give way to an appropriate exercise of the police power.

State ex rel. Kansas City v. Public Service Comm., 524 S.W.2d 855, 859 (Mo. banc 1975). *See also Blue Cross Hospital Service, Inc. of Mo. v. Frappier*, 681 S.W.2d 925, 930 (Mo. 1984), *vacated on other grounds* 472 U.S. 1014 (1985) ("Private executory contracts are not immune from the valid exercise of the police power, and persons cannot oust the state of its police power by making long-term contractual arrangements").

In fact, County's Mediation Program does not impair any contractual rights described in Bankers' First Amended Petition.[10] The program does not prevent Lenders from exercising any contractual right they may have to foreclose upon Homeowners, and they may exercise any such right without penalty. It is only the post-foreclosure recording of a deed which subjects Lenders to prosecution if they choose to refuse mediation. County therefore has not interfered with Bankers' claimed contractual rights, and any such rights are subject to County's valid exercise of police power so that Bankers' argument is without merit.

COUNTY'S MEDIATION PROGRAM IS NOT A RETROSPECTIVE LAW.

"Retrospective or retroactive laws are 'those which take away or impair vested

[10] There are no actual or sample Lender contracts in the record for the court to review.

rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past.'" *Garozzo v. Mo. Dept. of Ins., Financial Institutions & Professional Registration, Div. of Finance*, 389 S.W.3d 660 (Mo. banc 2013) (citation omitted) (upholding statute which barred issuance of mortgage loan originator license to an applicant who had been convicted of or pleaded guilty to a felony within seven years prior to the date of the application). But it is not enough to claim that past transactions may be involved in some tangential way. "'The constitutional inhibition against laws retrospective in operation . . . does not mean that no statute *relating* to past transactions can be constitutionally passed, but rather that none can be allowed to operate retrospectively so as to affect such past transactions to the substantial prejudice of parties interested.'" *Fisher v. Reorganized School Dist. No. R-V of Grundy County*, 567 S.W.2d 647, 649 (Mo. banc 1978), *quoting Willhite v. Rathburn*, 61 S.W.2d 708, 711 (Mo. 1933) (emphasis added).

Here, County's Code imposes a new obligation only on the prospective filing of a foreclosure deed, and only as to notices of foreclosure issued after the Code's effective date; there is no requirement to notify borrowers of a mediation option unless a notice of foreclosure is being prospectively issued. *Section 727.400 SLCRO, L.F. 92-93.* Thus, the ordinance does not impose a new duty on past transactions but only on actions taken after the ordinance becomes effective. The requirements imposed, moreover, merely prescribe a method for enforcement of Bankers' claimed rights and for that reason also do not impinge on Bankers' constitutional rights. "Procedural and remedial statutes 'not affecting substantive rights, may be applied retrospectively, without violating the

constitutional ban on retrospective laws.'" *Hess v. Chase Manhattan Bank, USA, N.A.*, 220 S.W.3d 758, 769 (Mo. banc 2007), *quoting Mendelsohn v. State Bd. of Registration for the Healing Arts*, 3 S.W.3d 783, 786 (Mo. banc 1999).

COUNTY'S MEDIATION PROGRAM DOES NOT EFFECT A TAKING OF PROPERTY.

Contrary to Bankers' argument, County's Mediation Program does not constitute a taking of Bankers' property without just compensation Under Mo. Const. Art. I §26. *See Appellants' Brief p. 42.* The program does not subject Bankers to the loss of any property as was the case in *Barket v. City of St. Louis*, 903 S.W.2d 269 (Mo. App. 1995) (threatened demolition of property in which mortgagee held security interest) or *State ex rel. Nixon v. Jewell*, 70 S.W.3d 465 (Mo. App. 2001) (extinguishment of liens on abandoned cemetery property). Instead, County has merely imposed pre-foreclosure procedures to be followed for identified properties, which is an appropriate use of County's police powers. "The government may regulate the use of private property through its police powers," *Jewell*, 70 S.W.3d at 467, and "[r]estrictions on property promoting `the health, safety, morals, or general welfare' have been viewed as permissible governmental action even when prohibiting the most beneficial use of the property." *Schnuck Markets, Inc. v. City of Bridgeton,* 895 S.W.2d 163, 168 (Mo. App. 1995), *citing Penn Central Transportation Co. v. New York*, 438 U.S. 104, 124 (1978). Whatever contractual right Bankers may have to recover their loans - including interest payments that may accrue if additional time is required to complete the mediation process - remains intact. Bankers have not alleged the loss of any property right and they have no

claim under Mo. Const. Art. I §26.

COUNTY'S MEDIATION PROGRAM DOES NOT VIOLATE BANKERS' RIGHT TO DUE PROCESS.

Bankers have alleged in ¶60 of their First Amended Petition that County's Mediation Program "deprives Plaintiffs of due process of law by determining compliance with its provisions and/or levying fines for private parties without any provision for judicial review in violation of Art. I, §10 of the Missouri Constitution." *L.F. 28.* As previously noted, *supra pp. 22-25*, Bankers' claim is contradicted by the clear language of the Mediation Program in that adjudication of any claimed violation is vested in the courts and subject to judicial review. Bankers' speculation about who could be subpoenaed in defense of a potential future charge would be determined by the court presiding over the charge, and presents no ripe issue for review by this court.

V. TRIAL COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT ON BANKERS' CLAIM THAT THE MEDIATION PROGRAM IS NOT AUTHORIZED BY COUNTY'S CHARTER. (Point V)

STANDARD OF REVIEW

Bankers' fifth point relied upon fails to comply with the requirement of Rule 84.04(d)(1) that appellants "state concisely the legal reasons for the appellant's claim of reversible error" and "explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error." Their abstract claim that the Mediation Program "is not authorized by County's Charter" violates Rule 84.04(d)(4). Although the Court's preference is to decide cases on the merits, Point V is so defective as to impede disposition on the merits and to warrant dismissal. If the Court chooses to consider the merits of Bankers' defective point rather than dismiss it outright, the appropriate standard of review is for plain error. *Christeson v. State of Mo.*, 131 S.W.3d 796, 799 n. 5 (Mo. banc 2004); *J.A.D. v. F.J.D.*, 978 S.W.2d 336, 338 (Mo. banc 1998).

COUNTY CHARTER AUTHORIZES ENACTMENT OF MEDIATION PROGRAM.

The St. Louis County Charter provides that County "shall have all powers possible for a county to have under the constitution and laws of Missouri as fully and completely as though they were specifically enumerated in this charter." *County Charter Section 1.030.* The County Council is specifically authorized to enact ordinances to "[e]xercise all powers and duties now or hereafter conferred upon counties, county courts, county governing bodies and county officers by the constitution, by law and by

this charter...." *County Charter Section 2.180.14, L.F. 199.* County's Charter could not be any broader in authorizing legislative action by the County Council, thus Bankers have no basis for contending that County's Charter is not broad enough to include authority for the challenged legislation.

COUNTY CHARTER DOES NOT PROHIBIT PAYMENT OF FEES TO THIRD PARTIES.

Bankers cite to the County Charter provision authorizing the County Council to "[e]stablish and collect fees for licenses, permits, inspections and services performed by county officers and employees," Section 2.180.4, and proceed to the *non sequitur* conclusion that this grant of authority is also a prohibition of the establishment of fees for services performed by non-County employees. *Respondents' Brief p.47.* As noted *supra pp. 25-26*, the Missouri Supreme Court has only recently affirmed County's authority to require the payment of fees to third parties for the provision of mandated services in *Grace v. St. Louis County*, 348 S.W.3d 120. Bankers not having offered any reason to distinguish payments to mediators from payments to waste haulers, this court should adhere to the *Grace* holding and reject Bankers' appeal on this ground.

MEDIATOR'S FEES NOT SUBJECT TO APPROPRIATION BY COUNTY.

Bankers have offered no case law or argument to support the proposition that County has the ability, much less the duty, to appropriate money paid to third parties and never received by County. "If the party does not cite authority and does not explain why it fails to do so, then the party is deemed to have abandoned that point." *Donovan v.*

Temporary Help, 54 S.W.3d at 720 (citation omitted). Further, the impossibility of County appropriation of money not within its coffers renders this argument frivolous.

VI. TRIAL COURT DID NOT ERR IN DENYING BANKERS' MOTION FOR SUMMARY JUDGMENT BECAUSE COUNTY WAS ENTITLED TO JUDGMENT AS MATTER OF LAW. (Point VI)

STANDARD OF REVIEW

If the court finds it appropriate to review the trial court's denial of summary judgment under *James v. Paul*, 49 S.W.3d 678 (Mo. banc 2001), the appropriate standard of review for this matter of law would be *de novo*. *See THF Chesterfield North Development, L.L.C. v. City of Chesterfield*, 106 S.W.3d at 16.

COUNTY WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Bankers have asserted no arguments supporting their entitlement to summary judgment, having merely incorporated their previous arguments that were directed against the entry of summary judgment for County. County has herein shown as a matter of law that the trial court not only did not err but acted correctly in granting summary judgment to County; except, however, that Mo. Const. Art. VI §18(b) can no longer be found to provide support for County's Mediation Program. Accordingly, County likewise relies on the entirety of its arguments *supra* to support the trial court's denial of Bankers' motion for summary judgment.

CONCLUSION

Based on the undisputed facts, County was entitled to judgment as a matter of law and the trial court's entry of summary judgment in County's favor was correct and should be affirmed on appeal.

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CERTIFICATE OF COMPLIANCE AND SERVICE

I certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 2010 and contains 10,272 words in total. The font is Times New Roman 13-point type.

I certify that a copy of this brief was served electronically this 14th day of April, 2014, on Jane Dueker, Stinson Leonard Street LLP, jane.dueker@ stinsonleonard.com; and John L. Davidson, John L. Davidson P.C., jldavidson@att.net.

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