

**IN THE
SUPREME COURT OF MISSOURI**

No. 85225

**THOMAS G. (JERRY) THOMPSON, et al.,
Appellants,**

v.

**CLARK HUNTER, MORGAN COUNTY COLLECTOR, et al.,
Respondents.**

**On Petition for Review from the
Morgan County Court, 26th Judicial District
Honorable Mary Dickerson**

**BRIEF OF AMICI CURIAE
ASSOCIATED INDUSTRIES OF MISSOURI AND
MISSOURI CHAMBER OF COMMERCE & INDUSTRY**

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JURISDICTIONAL STATEMENT

This appeal involves the construction of Article X, Section 11 of the Missouri Constitution (“Section 11”), Article X, Section 22 of the Missouri Constitution (“Section 22”), Article X, Section 23 of the Missouri Constitution (“Section 23”), Article X, Section 24 of the Missouri Constitution (“Section 24”) and Section 139.031.¹ This Court has jurisdiction of this appeal pursuant to Missouri Supreme Court Rule 83.04. *See* Order dated May 27, 2003.

¹ All statutory citations are to the Revised Statutes of Missouri of 2000, as amended, unless otherwise noted.

INTEREST OF THE AMICI

The parties to this appeal have provided their consent for the filing of this brief.² Associated Industries of Missouri (“AIM”) is a Missouri not for profit corporation in good standing. AIM represents more than 1,200 small and large businesses and manufacturers in Missouri that pay real property taxes, including school taxes. AIM seeks to ensure that Missouri remains home to a strong and diverse business and industrial community whose goods and services are known throughout the world for their quality, competitiveness and reliability.

The Missouri Chamber of Commerce & Industry (“Chamber”) is a Missouri not for profit corporation in good standing. The Chamber is the largest statewide general business organization in Missouri. The Chamber represents nearly 3,000 employers that pay real property taxes, including school taxes, and almost 200 local chambers of commerce in advancing the cause of Missouri business.

In this case, the trial court’s decision held that the revenue limitations contained in Article X, Section 22 of the Missouri Constitution were implicitly preempted in 1998 by the passage of Amendment 2, which amended Article X, Section 11 of the Missouri Constitution. The trial court’s decision is contrary to the express language of the Missouri Constitution and the purpose behind the enactment of Article X, Sections 16-24 of the Missouri Constitution (the “Hancock Amendment”). *See Fort Zumwalt School*

² Although copied on this brief, the Attorney General is no longer a party to this matter as the trial court dismissed him from the case.

District v. State, 896 S.W.2d 918, 921 (Mo. banc 1995) (“Read as a whole, the Hancock Amendment, art. X, §§ 16-24, aspires to erect a comprehensive, constitutionally-rooted shield erected to protect taxpayers from government’s ability to increase the tax burden above that borne by the taxpayers on November 4, 1980.”); *Beatty v. Metropolitan St. Louis Sewer District*, 914 S.W.2d 791, 798 (Mo. banc 1995) (Robertson, J. concurring) (“Prior to the adoption of the Hancock Amendment, the people had given their elected representatives carte blanche authority to raise taxes. The Hancock Amendment revokes that consent and establishes a presumption that government has taken enough from the taxpayers and, as to local government, forbids the government from reaching any deeper into their pocketbooks without the taxpayers’ express approval *in advance*.”) (emphasis in original).

Additionally, the trial court concluded that the Article X, Section 23 declaratory judgment remedy for Hancock violations must be commenced prior to the date that the offensive tax is due. That conclusion is clearly erroneous. In *City of Hazelwood v. Peterson*, 48 S.W.2d 36, 41 (Mo. banc 2001), this Court clearly stated that “Missouri’s statutory procedures do not govern the remedies found in article X of this state’s constitution.” In *Fort Zumwalt*, 896 S.W.2d at 923, this Court specifically held that a declaratory judgment action was an appropriate remedy under the Hancock Amendment.

Finally, the trial court’s decision held that petitioner’s petition for refund of taxes illegally collected pursuant to the Hancock Amendment should be dismissed with respect to any plaintiffs that did not individually satisfy the procedural requirements of Section 139.031 even though the plaintiffs satisfied the procedural requirements. In *City of*

Hazelwood, 48 S.W.3d at 41, this Court held that taxpayers are not precluded seeking refunds under the Hancock Amendment for failure to comply with statutory refund procedures. *See also Ring v. Metropolitan St. Louis Sewer District*, 969 S.W.2d 716, 719 (Mo. banc 1998).

As representatives of thousands of Missouri businesses and employees, Amici have a particular interest in maintaining the protection against increased taxation in contravention of the Hancock Amendment. If the trial court's determination were affirmed, school districts throughout the State would be allowed to evade the requirements of the Hancock Amendment and impose substantial additional taxes upon the members of Amici. Consequently, Amici have a direct interest in the outcome of this case and this Court's interpretation of Section 11 and the Hancock Amendment.

STANDARD OF REVIEW

This appeal is a review of the trial court's dismissal of Appellants' petition. In ruling on the propriety of the dismissal, "the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 464 (Mo. banc 2001).

Furthermore, Section 11, Section 22, Section 23 and Section 24 are taxation provisions. Tax provisions are construed against the tax collector, and if the right to tax is not plainly conferred, it will not be extended by implication. *United Air Lines, Inc. v. State Tax Commission*, 377 S.W.2d 444, 448 (Mo. banc 1964), quoting *Leavell v. Blades*, 141 S.W. 893, 894 (Mo. 1911) ("When the tax gatherer puts his finger on the citizen, he must also put his finger on the law permitting it.").

STATEMENT OF THE ISSUES

The plain and unambiguous language of Section 22 requires political subdivisions, including school districts, to obtain voter approval before increasing tax levy rates. The plain and unambiguous language of Section 11 provides restrictions upon the ability of school districts to increase tax levy rates, but does not evidence any intention to preempt Section 22. Must school districts comply with both Section 11 *and* Section 22 before raising tax levy rates?

In *City of Hazelwood v. Peterson*, 48 S.W.3d 36, 41 (Mo. banc 2001), this Court held that “Missouri’s statutory tax refund procedures do not govern the remedies found in article X of this state’s constitution.” Appellants seek remedies under Article X, Section 23 of the Missouri Constitution. Are Appellants barred from seeking remedies under Section 23 based upon an alleged failure to comply with Missouri’s statutory tax refund procedures?

POINTS RELIED ON

- I. THE TRIAL COURT ERRED IN DISMISSING APPELLANTS' PETITION BECAUSE THE PETITION STATED A CLAIM UPON WHICH RELIEF COULD BE GRANTED IN THAT SCHOOL DISTRICTS MUST COMPLY WITH BOTH ARTICLE X, SECTION 11 AND ARTICLE X, SECTION 22 OF THE MISSOURI CONSTITUTION BEFORE INCREASING TAX LEVY RATES.**

City of Hazelwood v. Peterson, 48 S.W.3d 36 (Mo. banc 2001);

Green v. Lebanon R-III School District, 13 S.W.3d 278 (Mo. banc 2000);

Rathjen v. Reorganized School District of R-II of Shelby County, 284 S.W.2d 516
(Mo. banc 1955);

Roberts v. McNary, 636 S.W.2d 332 (Mo. banc 1982);

MO. CONST. art. X, §22;

MO. CONST. art. X, §11.

II. THE TRIAL COURT ERRED IN DISMISSING APPELLANTS' PETITION AS UNTIMELY FOR FAILURE TO FILE IT BEFORE THE OFFENSIVE TAX WAS DUE BECAUSE THE FILING WAS TIMELY IN THAT ARTICLE X, SECTION 23, CONTAINS NO REQUIREMENT THAT THE DECLARATORY JUDGMENT ACTION IT AUTHORIZES MUST BE MAINTAINED BEFORE THE OFFENSIVE TAX IS DUE.

City of Hazelwood v. Peterson, 48 S.W.3d 36 (Mo. banc 2001);

MO. CONST. art. X, §23.

ARGUMENT

I. THE TRIAL COURT ERRED IN DISMISSING APPELLANTS' PETITION BECAUSE THE PETITION STATED A CLAIM UPON WHICH RELIEF COULD BE GRANTED IN THAT SCHOOL DISTRICTS MUST COMPLY WITH BOTH ARTICLE X, SECTION 11 AND ARTICLE X, SECTION 22 OF THE MISSOURI CONSTITUTION BEFORE INCREASING TAX LEVY RATES.

A. Interpretation of Unambiguous Constitutional Provision

The substantive issue in this case is whether school districts must comply with both Section 11 *and* Section 22 before raising tax levy rates after the passage of Amendment 2, amending Section 11, in 1998. Because as a matter of law Section 11 does not preempt Section 22, Appellants' Petition stated a claim upon which relief could be, and should have been, granted. Accordingly, this Court should reverse the trial court's dismissal of Appellants' petition.

1. Hancock Amendment

In 1980, the Missouri Constitution was amended by the addition of Article X, §§ 16-24 (collectively, the "Hancock Amendment"). The purpose of the Hancock Amendment was to "rein in increases in governmental revenue and expenditures." *Roberts v. McNary*, 636 S.W.2d 332 (Mo. banc 1982). Section 22(a) prohibits political

subdivisions, including school districts, from raising taxes without voter approval:

“Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted *or from increasing the current levy of an existing tax,* license or fees, above that current levy authorized by law or charter when this section is adopted *without the approval of the required majority of the qualified voters of that county or political subdivision voting thereon* If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.”³

This Court recently applied the requirements of Section 22 to school tax levy increases. In *Green v. Lebanon R-III School District*, 13 S.W.3d 278, 282 (Mo. banc 2000), this Court concluded that the school district defendants bore the burden of establishing that

³ Emphasis added here and throughout unless otherwise noted.

under Section 22 their tax levy rates were not required to be rolled back or reapproved by voters.

The Hancock Amendment did not nullify other constitutional limitations on taxation, however. In that regard, Article X, section 24(a) provides:

“The provisions for voter approval contained in sections 16 through 23, inclusive, of this article *do not abrogate and are in addition to other provisions of the constitution* requiring voter approval to incur bonded indebtedness and to authorize certain taxes.”

2. Section 11

(a) Prior to Amendment 2

Section 11 limits local tax rates and dates back to the Missouri Constitution of 1875. The purpose of Section 11 was to “limit the expenses of county government.” *State ex rel. Hirni v. Missouri Pacific Railway Company*, 27 S.W. 367, 369-70 (Mo. 1894). Prior to the passage of Amendment 2 in 1998, Section 11(b) provided, in relevant part:

“Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

...For school districts formed of cities and towns, including the school district of the City of St. Louis—one dollar and twenty-five cents on the hundred dollars assessed valuation.”

Prior to the passage of Amendment 2, Section 11(c) imposed serious restrictions upon obtaining voter approval for tax levies in excess of \$1.25 per hundred dollars assessed valuation. Political subdivisions, including school districts, were required to obtain a two-thirds majority voter approval to increase tax rates above the ceilings set forth by Section 11(b). However, for school districts increasing the rate to a maximum of three times the limit set forth by Section 11(b) (*i.e.*, \$3.75 per hundred dollars assessed valuation), a simple majority voter approval sufficed:

“provided in school districts the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified *and not to exceed one year*, except as herein provided, *when the rate period of levy and the purpose of the increase are submitted to a vote* and a majority of the qualified electors voting thereon shall vote therefor[.]”

Additionally, Section 11(c) provided that Section 11 was not intended to preempt other tax restrictions imposed by law. In that regard, Section 11(c) provides “*that the rates herein fixed, and the amounts by which they may be increased may be further limited by law.*”

(b) Amendment 2

The voters adopted Amendment 2 in 1998. As stated above, prior to the passage of Amendment 2, Section 11 allowed a school district tax levy to be increased anywhere from \$1.26 to \$2.75 only with voter approval *for the specific purpose of the increase and only for one year or for such period as set forth in the ballot initiative.*

Amendment 2 addressed Sections 11(b) and 11(c). In relevant part, Section 11(b) now provides:

“Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

...For school districts formed of cities and towns, including the school district of the City of St. Louis—two dollars and seventy-five cents on the hundred dollars assessed valuation.”

Section 11(c) continues to restrict increases above the tax ceilings of Section 11(b). Generally, a two-thirds voter approval is required to increase the rates above the Section 11(b) ceilings. However, for school districts seeking to raise the rates above \$2.75, but less than \$6.00, a lesser standard of voter approval controls:

“provided in school districts the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed six dollars on the hundred dollars assessed valuation, except as herein provided, *when the rate and purpose of the increase are submitted to a vote* and a majority of the qualified electors voting thereon shall vote therefor[.]” Section 11(c).

3. School Districts Must Comply with Section 11 and Section 22

There is no room for judicial construction of a Constitutional provision that on its face is clear; its express language controls. *City of Hazelwood v. Peterson*, 48 S.W.3d 36, 39 (Mo. banc 2001).

Amendment 2 eliminated the necessity of setting forth both the specific purpose for tax levies and the time for which a levy increase would be permitted for rates up to \$2.75. Amendment 2 also dispensed with the requirement of determining a rate period for voter-approved increases in the levy up to \$6.00, but it retained the requirement that a *specific purpose* be set before the voters for increases to a rate that is anywhere from \$2.76 to \$6.00. Amendment 2, however, does not speak of dispensing with the requirement in Section 22 that the voters approve the increase even though the specific purpose need no longer be set forth for increases to a rate of up to \$2.75. Moreover, Section 11(c) continued to include the statement “*that the rates herein fixed, and the amounts by which they may be increased may be further limited by law.*”

The plain language of the constitutional provisions is clear. The “law” of Section 22 requires voter approval for *any* tax increase by political subdivisions. Section 11 imposes additional requirements upon school districts in raising their levies to certain levels. The express language of Section 11 and Section 22 is conclusive.

Respondents argue that, as a matter of law, Section 11 implicitly preempted the voter-approval requirement of Section 22 for increases in the rate of the school tax levy to up to \$2.75. Neither Respondents, nor the trial court, identified any language in Section 11 indicating that school tax levies may be increased in the absence of

compliance with the voter approval requirement of Section 22.⁴ That is because there is no such language. Indeed, the clear language of Section 11(c) provides that such tax levy increases “*may be further limited by law*[.]” The most obvious “law” limiting tax increases is the Hancock Amendment, including Section 22.

This Court should resist Respondents’ attempts to divert this Court from the plain language of Section 11. The language of Section 11 is clear, and it must be followed. Respondents’ preference for a different result cannot override the plain meaning of Section 11. Because the trial court’s decision dismissing Appellants’ petition was based on an misconstruction of Section 11 by ignoring its express language, this Court should reverse the trial court’s determination.

⁴ Respondents’ reliance on *Green v. Lebanon R-III School District*, 13 S.W.3d 278, 283 (Mo. banc 2000) does not support Respondents’ position. Before the lower courts, Respondents noted that in *Green*, this Court cited *Three Rivers Junior College District v. Statler*, 421 S.W.2d 235, 238-39 (Mo. banc 1967) for the proposition that Section 11(b) addressed the amount of tax that a school district could levy “without voter approval.” Obviously, that citation does not address the substantive issue in this case because the Hancock Amendment was not added to the Missouri Constitution until thirteen years after this Court’s decision in *Three Rivers*. See also, *City of Hazelwood v. Peterson*, 48 S.W.2d 36, 41 (Mo. banc 2001).

B. Even if The Constitutional Provisions Were Ambiguous, the Constitutional Provisions Must Be Interpreted in *Para Materia*.

As stated above, because the language of the constitutional provisions is plain, there is no room for construction. However, even if the language were ambiguous, in construing the Missouri Constitution, this Court gives due regard to the primary objectives of the provision under scrutiny “*as viewed in harmony with all related provisions, considered as a whole.*” *Roberts*, 636 S.W.2d at 334. It is true that when a direct conflict exists between the plain language of two constitutional provisions, the latter in time prevails. *See State ex rel. McKittrick v. Bode*, 113 S.W.2d 805 (Mo. banc 1938). But this rule does not apply when there is no direct conflict. No language in Section 11 so much as mentions Section 22, so there can be no express preemption. Moreover, this Court has consistently attempted to avoid repeal by implication by interpreting the constitution in harmony, considered as a whole.

In *Rathjen v. Reorganized School District of R-II of Shelby County*, 284 S.W.2d 516 (Mo. banc 1955), this Court addressed the canon of construction regarding the disfavor of repeal by implication in the context of Section 11. In *Rathjen*, the taxpayers argued that the phrase “school purposes” in Section 11(c) should be implicitly limited to the usual and ordinary expenses of maintaining and operating schools so as to exclude the construction of school buildings. This Court refused to so limit the express language:

“Plaintiffs are, in effect, asking us to imply an exception where none exists under the express terms or plain intendments of the constitutional provision. *The law is well settled that it is the duty of*

the court, in construing the constitution, to give effect to an express provision rather than an implication.” Id. at 522.

Rathjen controls this issue.

To make their direct conflict claim, Respondents argue that the change in the school tax ceiling in Section 11(b) served no purpose other than to preempt Section 22. This is incorrect. The voter approval requirements of Section 11 and Section 22 differ. As noted above, prior to the passage of Amendment 2, a school district tax levy could be increased to anywhere from \$1.26 to \$2.75 under Section 11(c) only with simple majority voter approval *for the specific purpose of the increase and for a specified, limited time period*. Section 22 requires simple majority voter approval of merely the tax increase, and also contains a roll-back requirement that is not found in Section 11. While Amendment 2 dispensed with the requirement in Section 11(c) that voter approval be received *for the specific purpose and limited timing* of a levy increase to a rate that is between \$1.26 to \$2.75, it contains no verbiage dispensing with the requirement set forth in Section 22 that the voters still approve the increase. Specifically, after Amendment 2, a school district may raise its levy to a rate of up to \$2.75 per hundred dollars assessed value for an indefinite period of time and without setting forth the specific purpose pursuant to Section 11, *provided that the school district still obtains voter approval as required by Section 22*. This reading of the plain language takes into account the language of both Sections 11 and 22, and is consistent with the reenactment of the language of Section 11(c) *“that the rates herein fixed, and the amounts by which they may be increased may be further limited by law.”*

In summary, the plain and unambiguous language of Section 11 does not provide for preemption of Section 22, nor can such preemption be found by implication. The purpose of Amendment 2 was obviously to alter the points at which the two-thirds voter approval requirements of Section 11(c) are triggered and, as expressed by the language of Section 11 as modified by Amendment 2, to dispense with the requirement that school districts set forth the specific purposes and specific time period for tax levy increases up to \$2.75 *when such increases are presented to the voters consistent with Section 22*. It appears beyond dispute that Morgan County failed to present its tax levy increase to the voters consistent with Section 22. Therefore, this Court should reverse the trial court's determination that Appellants' petition did not state a claim upon which relief could be granted.

II. THE TRIAL COURT ERRED IN DISMISSING APPELLANTS' PETITION AS UNTIMELY FOR FAILURE TO FILE IT BEFORE THE OFFENSIVE TAX WAS DUE BECAUSE THE FILING WAS TIMELY IN THAT ARTICLE X, SECTION 23, CONTAINS NO REQUIREMENT THAT THE DECLARATORY JUDGMENT ACTION IT AUTHORIZES MUST BE MAINTAINED BEFORE THE OFFENSIVE TAX IS DUE.

Article X, § 23 of the Missouri Constitution provides taxpayer remedies for Hancock Amendment violations:

“Notwithstanding other provisions of this constitution or other law, any taxpayer of the state, county, or other political subdivision shall have standing to bring suit in a circuit court of proper venue and additionally, when the state is involved, in the Missouri supreme court, to enforce the provisions of sections 16 through 22, inclusive, of this article and, if the suit is sustained, shall receive from the applicable unit of government his costs, including reasonable attorneys' fees incurred in maintaining such suit.”

While Respondents have not disputed the appropriateness of the declaratory judgment remedy, they argue that filing such an action is untimely unless it is filed within the same tax year. They further argue that an action for refund of unconstitutionally collected taxes will not lie for plaintiffs that did not comply with the procedural requirements for tax refunds set forth in Section 139.031. In support of these

contentions, they cite the concurring opinion in *Green*. However, even if the concurring opinion were controlling, it does not stand for the proposition cited by Respondents.

The concurring opinion in *Green* set forth the issue as follows:

“To be eligible for *tax refunds*, the taxpayers’ lawsuits must be timely filed under the statutory scheme. The issue of timeliness—and hence of *eligibility for refunds*—is a major issue left open by the principal opinion, and the parties, to be addressed after these cases are remanded to the trial court.

“Whether taxpayers have a remedy *for refunds* is dependent upon statute, not on the constitution.” 13 S.W.3d at 287

The concurring opinion noted that Section 23, by its own terms, “gives taxpayers standing to bring ‘actions for interpretation’ of the Hancock Amendment.” *Id.* at 287. Thus, even if the concurring opinion were binding upon the Court, the only proposition argued by Respondents that is supported by the concurrence is that compliance with the statutory prerequisites for refund is required. Thus, even under the concurring opinion, *Appellants actions for declaratory judgment and plaintiffs’ refund claims were timely filed.*⁵

⁵ Appellants stated in their Petition that they complied with Section 139.031. Pursuant to the applicable standard of review, this Court is required to accept this allegation as true.

Furthermore, subsequent to *Green*, this court unanimously decided *City of Hazelwood*. A review of the facts in *City of Hazelwood* demonstrates that Respondents' arguments are erroneous. On August 6, 1996, an election was held asking the voters of the Florissant Valley Fire Protection District ("District") to approve a tax increase. 48 S.W.3d at 38. On August 9, 1996, the official election results showed that the proposed increase passed by 13 votes. *Id.* Shortly thereafter, an election contest was filed. *Id.* Notwithstanding the contest, the District levied the increase. *Id.*

On January 3, 1997, *after the close of the taxable year*, several individual plaintiffs filed a class action seeking recovery of excess taxes levied as a result of the disputed election. *Id.* The opinion does not state whether the individual plaintiffs paid their taxes under protest.⁶ On February 14, 1997, the trial court set aside the election and ordered a new election at which the voters failed to approve the tax increase. *Id.*

After determining that the District had violated the Hancock Amendment because the voters had not approved the tax increase, this Court addressed the ability of the

⁶ A reasonable interpretation of this Court's opinion would indicate that the individual plaintiffs did not pay under protest. Specifically, this Court noted with respect to the City of Hazelwood's payment of the increased tax, "Acting in accordance with the Fire Service Agreement, Hazelwood submitted the increased payments, but noted that the payments were made 'under protest.'" The Court's failure to make a similar statement with respect to the individual plaintiffs implies that they did not act in the same manner as the City of Hazelwood.

plaintiffs to obtain relief as a class. In addressing the District’s argument that it was protected from refunds by sovereign immunity, the unanimous Court stated:

“They argue that Missouri law does not permit the use of class actions in tax refund cases. This argument is valid insofar as it relates to Missouri’s statutory tax refund procedure. *Nevertheless, Missouri’s statutory tax refund procedures do not govern the remedies found in article X of this state’s constitution.*

“In *Spradling*, this Court noted that Missouri’s statutory tax refund provisions operated as a limited waiver of the state’s sovereign immunity. ‘When a state consents to be sued, it may be sued only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit.’ *Unlike a statutory remedy, however, the remedy in Article X, section 23 is not a typical waiver of the state’s sovereign immunity.* To the contrary, the constitutional amendment carves out specific state actions for which the state has no sovereign immunity to waive. The people of Missouri have reserved to themselves the constitutional right to enforce the Hancock Amendment, *which operates as a wholly independent mechanism for the refund of unconstitutional taxes.* In a suit brought under article X, section 23 of our constitution, the ‘plaintiffs are not precluded from bringing a Rule 52.08 class action if such a class

action is appropriate under the specific facts of the case.” *Id.* at 41
(citations omitted).

If Respondents’ position on the satisfaction of the procedural requirements were correct, this Court would have dismissed the petitions of the individual plaintiffs in *City of Hazelwood* for at least two reasons, either of which would have been sufficient for dismissal: (1) the individual plaintiffs did not file suit in the same year in which the taxes were actually paid; and (2) there was no evidence that the individual plaintiffs satisfied the statutory requirements for tax refunds. The Court’s affirmation of the refunds to the individual plaintiffs demonstrates that Respondents’ position is erroneous, and that this Court should reverse the trial court’s dismissal of Appellants’ petition on the basis that it was untimely.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's decision and remand this case to the trial court with instructions to enter an Order: (1) declaring that Appellants' petition stated a claim upon which relief could be granted; (2) declaring that Appellants' petition should not have been dismissed on the basis of timeliness; (3) declaring that the Morgan County School District unconstitutionally increased its tax levy in 1999-2001; and (4) directing the trial court to determine the amount of refund to be afforded each of the Appellants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing were mailed first class, postage prepaid, on this 30th day of June 2003, to: Craig S. Johnson, The Col. Darwin Marmaduke House, 700 East Capitol, P.O. Box 1438, Jefferson City, Missouri 65102; Alex Bartlett, Attorneys at Law, P.O. Box 1251, Jefferson City, Missouri 65102; Marvin Opie, Morgan County Prosecuting Attorney, 211 East Newton, Versailles, Missouri 65084; and Todd S. Jones, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102.

CERTIFICATE REQUIRED BY RULE 84.06(C)

I hereby certify that the foregoing brief includes the information required by Supreme Court Rule 55.03 and complies with the limitations contained in Supreme Court Rule 84.06(b). The foregoing brief contains 5,059 words.

The undersigned further certifies that the disk simultaneously filed with the briefs filed with this Court under Supreme Court Rule 84.05(a) has been scanned for viruses and is virus-free.