

**IN THE  
MISSOURI SUPREME COURT**

**No. SC91454**

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**MIKE WEBER, et al.,**

**Appellants,**

**v.**

**ST. LOUIS COUNTY, MISSOURI, et al.,**

**Respondents.**

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**SUBSTITUTE REPLY BRIEF OF APPELLANTS**

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**SUBMITTED BY**

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**2. THE CIRCUIT COURT ERRED IN DISMISSING THE AMENDED PETITION BECAUSE THE THREE PLAINTIFFS ARE EACH CITIZENS OF ST. LOUIS COUNTY, RESIDENTS OF AN ILLEGAL TRASH DISTRICT, AND TAXPAYERS WHOSE MONEY HAS GONE TO THE CREATION AND ADMINISTRATION OF THE ILLEGAL MONOPOLY TRASH DISTRICTS AND TO THE PROSECUTION OF THOSE ST.**

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THEIR LAWSUIT APPROXIMATELY ONE YEAR AFTER ST. LOUIS  
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**4. THE CIRCUIT COURT ERRED IN DISMISSING THE AMENDED  
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THE COURTS OF MISSOURI HAVE THE POWER TO DECLARE ST.  
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**5. THE CIRCUIT COURT ERRED IN DISMISSING COUNTS 2 AND 4 OF THE AMENDED PETITION SINCE MONEY HAD AND RECEIVED AND, IN THE ALTERNATIVE, UNJUST ENRICHMENT ARE VIABLE CLAIMS FOR PLAINTIFFS TO OBTAIN THE RETURN OF MONIES PAID UNDER AN ILLEGAL SCHEME AND ORDINANCES TO THE THREE MONOPOLY TRASH HAULERS WHO OBTAINED THEIR SPECIAL MONOPOLY STATUS THROUGH THE INVALID ORDINANCES, WHO WERE IN PRIVITY OF CONTRACT WITH ST. LOUIS COUNTY, AND WHO USED ST. LOUIS COUNTY TO COLLECT SUMS ALLEGEDLY OWED THE MONOPOLY TRASH HAULERS THROUGH CRIMINAL PROSECUTIONS.**

**6 THE CIRCUIT COURT ERRED IN DISMISSING COUNT 3 OF THE AMENDED PETITION:**

**A. SINCE DEFENDANTS' COLLECTION OF MONIES FROM CITIZENS OF ST. LOUIS COUNTY PURSUANT TO ILLEGAL AND VOID AB INITIO TRASH DISTRICT ORDINANCES CONSTITUTES OR MAY CONSTITUTE A DECEPTIVE OR UNFAIR PRACTICE ACTIONABLE UNDER THE MISSOURI MERCHANDISING PRACTICES ACT;**

**B. SINCE DEFENDANTS’ EMPLOYMENT AND USE OF THE  
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## **STATEMENT OF FACTS**

Article 2 Section 24 of St. Louis County's Charter requires an election before St. Louis County could establish trash districts. (L.F. pages 25-26).

In 2007, the Missouri General Assembly amended §260.247 R.S.Mo. to make the two-year notice provision applicable to county actions displacing existing trash haulers.

During the summer of 2008, St. Louis County established trash districts and contracted with the three Defendant trash hauling companies granting each a monopoly to provide trash services in unincorporated districts within St. Louis County. (L.F. pages 298-305, 328-331, 306-313, 323-327, and 314-322).

On October 21, 2008, the Missouri Court of Appeals for the Eastern District of Missouri ruled that St. Louis County's trash district ordinances and scheme were subject to the two-year notice provision of §260.247 R.S.Mo.

St. Louis County and the three Defendant monopoly trash haulers ignored the Court of Appeals decision that §260.247 R.S.Mo. applied to St. Louis County's trash district ordinances and scheme. (L.F. pages 28, 29). No notice was ever given. (L.F. pages 28, 29).

On November 24, 2008, St. Louis County purported to enact its final trash district ordinances. (L.F. pages 280-284).

The three Defendant monopoly trash haulers accepted their monopoly status, contracted with St. Louis County, and began to provide monopoly trash hauling services. (L.F. pages 29). The three Defendant monopoly trash haulers charged a service charge to their captive customers and if a customer did not pay, the three Defendant monopoly trash haulers had St. Louis County criminally prosecute the nonpaying citizen. (L.F. page 30).

St. Louis County and the Defendant monopoly trash haulers ignored Article 2 Section 24 of the St. Louis County Charter and no election approving the trash district ordinances or scheme was ever held. (L.F. page 29).

Plaintiffs filed their petition on September 11, 2009.

**POINTS RELIED ON**

**1. THE CIRCUIT COURT ERRED IN DISMISSING THE AMENDED PETITION BECAUSE ST. LOUIS COUNTY AND THE THREE DEFENDANT MONOPOLY TRASH HAULERS WHO WERE IN PRIVITY WITH IT VIOLATED AND ARE VIOLATING ARTICLE 2 SECTION 24 OF THE ST. LOUIS COUNTY CHARTER WHICH FORBIDS THE CREATION OR OPERATION OF TRASH DISTRICTS WITHOUT AN APPROVING VOTE OF THE PEOPLE.**

Schmoll v. Housing Authority of St. Louis County, 321 S.W.2d 494 (Mo. 1959)

Lancaster v. Atchison County, 180 S.W.2d 706 (Mo. banc 1944)

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**3. THE CIRCUIT COURT ERRED IN DISMISSING THE AMENDED PETITION SINCE NONE OF THE ELEMENTS OF LACHES WERE PLED IN THE PETITION AND BECAUSE NONE OF THE ELEMENTS OF LACHES EXIST IN THIS CASE SINCE THE THREE PLAINTIFFS FILED THEIR LAWSUIT APPROXIMATELY ONE YEAR AFTER ST. LOUIS COUNTY ENACTED THE FINAL TRASH DISTRICT ORDINANCE, ESTABLISHED THE TRASH DISTRICTS, AND CONTRACTED WITH THE THREE MONOPOLY TRASH HAULERS.**

Sheehan v. Sheehan, 901 S.W.2d 57 (Mo. banc 1995)

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Niedermeyer v. Curators of University of Missouri, 61 Mo.App. 654, 1885

WL 1669 (Mo. App. 1895)

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**6. THE CIRCUIT COURT ERRED IN DISMISSING COUNT 3 OF THE AMENDED PETITION:**

**A. SINCE DEFENDANTS' COLLECTION OF MONIES FROM CITIZENS OF ST. LOUIS COUNTY PURSUANT TO ILLEGAL AND VOID AB INITIO TRASH DISTRICT ORDINANCES CONSTITUTES OR MAY CONSTITUTE A DECEPTIVE OR UNFAIR PRACTICE ACTIONABLE UNDER THE MISSOURI MERCHANDISING PRACTICES ACT;**

**B. SINCE DEFENDANTS' EMPLOYMENT AND USE OF THE THREAT OF AND ACTUAL CRIMINAL PROSECUTION OF ST. LOUIS COUNTY CITIZENS FOR THOSE CITIZENS WITH THE COURAGE TO FACE CRIMINAL PROSECUTION UNDER THE VOID AB INITIO TRASH DISTRICT ORDINANCES TO COLLECT THE BILLS OF THE THREE MONOPOLY TRASH HAULERS CONSTITUTES OR MAY CONSTITUTE AN UNFAIR PRACTICE ACTIONABLE UNDER THE MISSOURI MERCHANDISING PRACTICES ACT.**

State ex rel. Nixon v. Continental Ventures, Inc., 84 S.W.3d 114 (Mo. App. 2002)

Ullrich v. CADCO, Inc., 244 S.W.3d 772 (Mo App. 2008)

§417.021.1 R.S.Mo.

16 C.S.R. 60-8.020(2)

## ARGUMENT

1. THE CIRCUIT COURT ERRED IN DISMISSING THE AMENDED PETITION BECAUSE ST. LOUIS COUNTY AND THE THREE DEFENDANT MONOPOLY TRASH HAULERS WHO WERE IN PRIVITY WITH IT VIOLATED AND ARE VIOLATING ARTICLE 2 SECTION 24 OF THE ST. LOUIS COUNTY CHARTER WHICH FORBIDS THE CREATION OR OPERATION OF TRASH DISTRICTS WITHOUT AN APPROVING VOTE OF THE PEOPLE.

St. Louis County argues that it has great power and authority over trash removal. In fact, Appellants agree that the St. Louis County Charter confers broad powers on the County to provide municipal services and to regulate public health. Appellants concede that *if* Respondents collected trash from County residents on a county-wide basis and *if* every county resident was charged the same amount for said service, then the St. Louis County Charter would likely permit such a trash collection program without the need for a vote by County citizens. The issue in this case is *not* whether the County has authority, by ordinance, to create *a* trash collection program. Instead, the issue is whether the County has authority, by ordinance alone, to create *this* particular trash collection program.

The instant trash collection program does not collect trash county-wide nor is each County resident charged the exact same amount for trash collection

services as every other County resident subject to the program. Instead the trash collection program purportedly enacted by the County divides the unincorporated areas of the County into eight trash collection districts (L.F. 287), assigns a private monopoly trash hauler exclusive rights to collect trash in each district (L.F. 292), allows the imposition of different fees and charges for trash collection districts in each trash collection district (L.F. 293); and threatens County residents with criminal prosecution should they fail to enter into contracts with or timely pay the monopoly trash haulers. (L. F. 283).

It is the County's creation of districts with significant differences – in terms of the private monopoly trash hauler serving the district and in the amount charged to residents – that distinguishes the instant trash collection districts from purely administrative divisions of the County such as the County's police precincts. Unlike the trash collection districts, for example, the County provides police services for its unincorporated areas through one entity: the St. Louis County Police Department. Citizens are not charged directly by the St. Louis County Police Department for the services it renders. Neither the service provider nor the service charge for County police protection varies from police precinct to precinct. In contrast, the County has created trash collection districts with real differences between them. And the County has expended tax monies to create the trash collection districts and enforce its trash collection ordinances all without holding

the vote required by Article 2 Section 24 of the St. Louis County Charter.

Article 2 Section 24 provides that the County Council may:

**Provide for the creation of districts in the  
unincorporated areas of the county within which may  
be provided** police protection, fire protection, public  
water supply, streets, sidewalks, street lighting, sewers,  
sewage disposal facilities, **garbage and refuse collection  
and disposal**, and such kindred facilities **as the voters  
therein by a majority of those voting thereon may  
approve, the same to be paid for from funds raised by  
special assessment, general taxation or service charge,  
or any combination thereof within such districts;** and,  
when authorized by law, provide for the consolidation of  
such functions with those now performed in existing  
districts[.]

St. Louis County Charter Article 2 Section 24 (emphasis added). Again, no  
election approving the trash collection districts was held.

Because St. Louis County violated its charter, the trash collection district  
ordinance is void ab initio. St. Louis County is a constitutional charter county and

its charter both confers whatever power the County exercises and delineates the limits of those powers. Schmoll v. Housing Authority of St. Louis County, 321 S.W.2d 494, 498, 499 (Mo. 1959) (St. Louis County Charter is the fundamental organic law of St. Louis County, and acts inconsistent with the charter are void); see e.g., Barber v. Jackson County Ethics Commission, 935 S.W.2d 62, 67 (Mo. App. 1996); State ex rel. St. Louis County v. Campbell, 498 S.W.2d 833, 836 (Mo. App. 1973). In this case, Article 2 Section 24 does not prohibit the County from collecting trash, but it does enjoin the County from collecting trash by means of trash collection *districts* by which it – through the agency of the monopoly trash haulers – assesses service charges of varying amounts unless the County first gets approval for such districts from the voters.

When, as here, a charter or statute requires something be done a certain way then it cannot be done otherwise. Lancaster v. County of Atchison, 180 S.W.2d 706, 709 (Mo. banc 1944). In this case, Article 2 Section 24 of the St. Louis County Charter requires that the trash collection *districts* created by the County be approved by vote of the citizens. Despite this, the County attempted to create trash collection districts in violation of St. Louis County's own charter. St. Louis County and the monopoly trash haulers chose to ignore the requirement that the creation of the districts be approved by a vote of the citizens. As such, the

Appellants’ purported creation and enforcement of trash collection districts – as reflected in Ordinances 23,023; 23,221; and 23,785 – is void ab initio.

St. Louis County has publicly and repeatedly stated that it created trash collection *districts*. (See exhibits 4 and 5 attached to petition and contained in the attached appendix). Despite such prior and public pronouncements, both St. Louis County and the monopoly trash haulers now eschew calling them “districts” in their respective briefs. Instead, Respondents euphemistically refer to the trash collection districts as “collection areas,” “service areas,” and, in a display of pure bureaucratese, “areas that were administratively designated by the County for the purpose of soliciting bids for services under its [trash collection] program.”

Respondents are reduced to such creatively evasive writing because they argue that the prohibition against creating “districts” without a vote, as set forth in Article 2 Section 24, does not really mean “districts” in the plain and ordinary sense of the word. Instead, Respondents claim that “districts” means “permanent taxing districts.” Respondents contend that because the trash collection districts under the County’s program do not have the power to levy taxes, the County’s trash collection districts are not “districts” under Article 2 Section 24 of the County Charter.

Respondents’ argument, however, is simply wrong. First, the words “permanent taxing district,” appear nowhere in Article 2 Section 24. Respondents

are simply trying to rewrite Article 2 Section 24 to include the words they wish it contained rather than adhering to the words actually in Article 2 Section 24.

Second, Respondents' innovative interpretation that "districts" means "districts with taxing powers" ignores the plain language in Article 2 Section 24 stating that trash collection services provided within a district may "be paid from funds raised by special assessment, general taxation **or service charge**, or any combination thereof." Article 2 Section 24 of the St. Louis County Charter (emphasis added). The inclusion of the words "service charge" in Article 2 Section 24 reveals that the Respondents' argument that districts must have taxing power is fatally flawed.

In 1976, just three years before the County Charter was approved,<sup>1</sup> the Missouri Supreme Court held that a fee imposed by a city for trash collection services was a "service charge" and not a "tax" and, therefore, the trash collection fee did not have to be submitted to approval by the voters under R.S. Mo. § 260.245. Craig v. Macon, 543 S.W.2d 772, 774 (Mo. 1976). Thus, Missouri law at the time St. Louis County Charter was approved was that a "service charge" for trash collection was not a "tax." The general rule of statutory construction is that when a legal term of art is used the drafters adopt the meaning associated with the

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<sup>1</sup> The current St. Louis County Charter was approved by the voters on November 6, 1979.

term. See e.g., Morrisette v. United States, 342 U.S. 246, 263 (1952). Another rule of construction is that courts will assume legislative bodies are aware of existing law when the body drafts new provisions. See e.g., Miles v. Apex Marine Corp., 498 U.S. 19, 32 (1990).

In this case, the Missouri Supreme Court must assume that the County Charter incorporates the judicially established difference between a “tax” and a “service charge.” Because a (non-tax) “service charge” is included along with “special assessment” and “taxation” in Article 2 Section 24, it is evident that Article 2 Section 24 requires approval for the trash collection districts regardless of whether the trash collection services are paid for by “taxes” or by a (non-tax) “service charge.”

Even under the Hancock Amendment, Article X Section 22(a) of the Missouri Constitution, a “service charge” is not a tax. See e.g., Missouri Growth Association v. Metropolitan St. Louis Sewer District, 941 S.W.2d 615, 624 (Mo. App. 1997) (fee for services is not a tax). Thus, Article 2 Section 24 requires an election to approve a trash collection district even in a situation where the Hancock Amendment does not.

In sum, Article 2 Section 24 forbids the County from creating trash collection districts paid for by (non-tax) “service charges” or by “taxes” without first holding an election. Contrary to Respondents’ argument, Article 2 Section 24

does not *just* forbid the County from creating a trash collection having the power to tax without first putting the issue to a vote. Instead, Article 2 Section 24 forbids exactly what happened here: the creation, without an election, of trash collection districts with trash collection service being paid for by (a non-tax) service charge imposed upon County residents.

Therefore, because Article 2 Section 24 of St. Louis County's Charter forbids the establishment of trash districts without an election, the Circuit Court erred in dismissing the amended petition and this Court should reverse the dismissal.

**2. THE CIRCUIT COURT ERRED IN DISMISSING THE AMENDED PETITION BECAUSE THE THREE PLAINTIFFS ARE EACH CITIZENS OF ST. LOUIS COUNTY, RESIDENTS OF AN ILLEGAL TRASH DISTRICT, AND TAXPAYERS WHOSE MONEY HAS GONE TO THE CREATION AND ADMINISTRATION OF THE ILLEGAL MONOPOLY TRASH DISTRICTS AND TO THE PROSECUTION OF THOSE ST. LOUIS COUNTY RESIDENTS WITH THE COURAGE TO CIVILLY DISOBEY THE VOID ST. LOUIS COUNTY MONOPOLY TRASH DISTRICT ORDINANCES.**

Missouri law acknowledges the primacy of the people by allowing taxpaying citizens standing to challenge any illegal expenditure of their tax dollars or any

illegal government program for which any of their hard earned tax dollars are spent. See e.g., O'Reilly v. City of Hazelwood, 850 S.W.2d 96, 98 (Mo. banc 1993); Eastern Missouri Laborers District Council v. St. Louis County, 781 S.W.2d 43, 47 (Mo. banc 1989). Missouri law is crystal clear that a Missouri taxpayer has standing to challenge illegal government action if the taxpayer simply shows “that their taxes went or will go to public funds that have been or will be expended due to the challenged action.” O'Reilly v. City of Hazelwood, 850 S.W.2d 96, 98 (Mo. banc 1993); Duvall v. Coordinating Board for Higher Education, 873 S.W.2d 856, 858 (Mo. App. 1994).

It is undisputed that the taxes paid by the three Plaintiffs have been and will be spent on St. Louis County's illegal and void trash district ordinances and program.

There is no further requirement for taxpayer standing. The taxpayer does not otherwise have to show that he is within some “zone of interest.” A taxpayer whose taxes are spent on illegal government action has a legitimate interest and standing to challenge the illegal government program. Defendants' argument that Missouri taxpayers need to show some other or further membership in some special “zone of interest” is contrary to the modern taxpayer standing doctrine and rule of law established by the Missouri Supreme Court first and most clearly in

Eastern Missouri Laborers District Council v. St. Louis County, 781 S.W.2d 43, 47 (Mo. banc 1989).

The “zone of interest” cases cited by Defendant monopoly trash haulers are not taxpayer standing cases. With taxpayer standing, the three Plaintiffs in this case may bring, maintain, and prevail if their taxes are spent on an illegal government program or ordinance no matter what the illegality. Put another way, in Missouri, a taxpayer is within the “zone of interest” to contest the legality of an ordinance or government program on which his tax dollars are spent.

In addition, the three Plaintiffs are residents of illegal monopoly trash districts and compelled by the illegal threat of prosecution and punishment to contract with and deal with the each of the Defendant monopoly trash haulers.

Therefore, since Plaintiffs properly pled, were prepared to prove, and there is no dispute that the three Plaintiffs are taxpayers of St. Louis County, whose St. Louis County taxes have been, and will be spent on Defendants illegal and void ab initio trash district ordinances and scheme, the three Plaintiffs had standing, and the Circuit Court erred in dismissing the amended petition.

**3. THE CIRCUIT COURT ERRED IN DISMISSING THE AMENDED PETITION SINCE NONE OF THE ELEMENTS OF LACHES WERE PLED IN THE PETITION AND BECAUSE NONE OF THE ELEMENTS OF LACHES EXIST IN THIS CASE SINCE THE THREE PLAINTIFFS FILED**

**THEIR LAWSUIT APPROXIMATELY ONE YEAR AFTER ST. LOUIS COUNTY ENACTED THE FINAL TRASH DISTRICT ORDINANCE, ESTABLISHED THE TRASH DISTRICTS, AND CONTRACTED WITH THE THREE MONOPOLY TRASH HAULERS.**

First, laches as a basis for dismissal is only valid, if the elements of laches are unquestionably established by the allegations in the petition. See e.g., Sheehan v. Sheehan, 901 S.W.2d 57, 59 (Mo. banc 1995); Hemas Insurance Corp. of America v. Ryerson, 108 S.W.3d 90, 92 (Mo. App. 2003).

Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. Mere delay in asserting a right, in itself, does not constitute laches. The delay must work to the disadvantage and prejudice of the opposing party. In other words, laches requires that a party with knowledge of the facts giving rise to his rights delays assertion of them for an excessive time and the other party suffers legal detriment therefrom.

Royalty v. Royalty, 264 S.W.3d 679, 687 (Mo. App. 2008) (quotation marks and citations omitted); accord Shellabarger v. Shellabarger, 317 S.W.3d 77, 83 (Mo. App. 2010).

In this case, none of the elements of laches were pled in the amended petition so dismissal for laches is error.

Second, even going outside the petition, as Defendants do but should not, the elements of laches are in no way satisfied in this case.

St. Louis County passed the final trash district ordinances on or about November 24, 2008.

St. Louis County and the three Defendant monopoly trash haulers apparently reached their agreements on monopoly trash district service during the summer of 2008.

The citizen plaintiffs filed the initial petition on September 11, 2009.

No unreasonable neglect or delay is shown by these undisputed facts. See e.g., County of St. Francois v. Brookshier, 302 S.W.2d 1, 6 (Mo.1957) (4 year delay is not enough for laches).

Third, and finally, before laches is applied, the plaintiffs are allowed the opportunity to explain the delay. Ste. Genevieve County Levee District #2 v. Luhr Bros., Inc., 288 S.W.3d 779, 785 (Mo. App. 2009). “Where a party offers an explanation for the delay, equity does not compel the application of the doctrine of

laches to preclude enforcement of an agreement.” Ste. Genevieve County Levee District #2 v. Luhr Bros., Inc., 288 S.W.3d 779, 785 (Mo. App. 2009). The explanation is presented at trial.

Therefore, as the defense of laches has not been established by the allegations of the amended petition, and as the facts in this case show none of the elements of laches, the Missouri Supreme Court should reverse the dismissal for defendants.

**4. THE CIRCUIT COURT ERRED IN DISMISSING THE AMENDED PETITION BECAUSE THE CASE PRESENTED IS NOT MOOT SINCE THE COURTS OF MISSOURI HAVE THE POWER TO DECLARE ST. LOUIS COUNTY’S TRASH ORDINANCES ILLEGAL AND VOID AB INITIO, TO STOP THE ILLEGAL TRASH DISTRICT PROGRAM, AND TO ORDER THE RETURN OF THE SERVICE FEES UNLAWFULLY ASSESSED.**

Mootness does not apply to nor interfere with a Missouri court declaring an unlawful ordinance void. R.E.J., Inc. v. City of Sikeston, 142 S.W.3d 744 (Mo. banc. 2004).

Mootness does not apply to nor interfere with a Missouri court ordering a stop to an unlawful program. See e.g. O’Reilly v. City of Hazelwood, 850 S.W.2d 96 (Mo. banc.1993).

Mootness does not apply to nor interfere with a Missouri court ordering the return of monies unlawfully collected or collected pursuant to an unlawful scheme. See e.g., Brink v. Kansas City, 198 S.W.2d 710 (Mo. 1947).

While Defendants have put their unlawful scheme into motion, nothing stops a Missouri court from stopping what was wrongfully begun and continued.

In O'Reilly v. City of Hazelwood, supra, a St. Louis County Boundary Commission was established and operated. The Boundary Commission approved the annexation by Hazelwood of certain lands generally North of Highway 70 near Lambert Airport. Hazelwood accepted the annexation and began providing services to the property. Despite the work undertaken by the Boundary Commission and Hazelwood's reliance upon it, the Missouri Supreme Court nevertheless declared the completed annexation and operating Boundary Commission illegal and void. O'Reilly v. City of Hazelwood, 850 S.W.2d 96, 100 (Mo. banc 1993).

Just because a government and those in privity with it, like St. Louis County and the three Defendant monopoly trash haulers, put an illegal ordinance and scheme into operation does not, through misapplication of the mootness doctrine, render the illegal ordinance and scheme immune from lawful challenge.

In addition, while vested rights and nonconforming uses exist in zoning law, the three Defendant monopoly trash haulers, do not have any vested right to

continue to profit from their special monopoly status which was conferred upon them illegally by St. Louis County. See e.g., State ex rel. Claudia Lee & Associates, Inc. v. Board of Zoning Adjustment of Kansas, 207 S.W.3d 107, 112 (Mo. App. 2009). Outside of zoning, vested rights do not protect defendants from the law. See e.g., Hadacheck v. Sebastian, 239 U.S. 394, 410 (1915).

Accepting Defendants argument, on mootness and vested rights, would permanently saddle St. Louis County residents with illegal monopoly trash haulers whose illegal special status could not be changed by law or the courts.

The three Defendant monopoly trash haulers, each in privity of contract with St. Louis County, achieved their special monopoly status through illegal and void ordinances. With the invalidity of the trash district ordinances, the special monopoly status of the three Defendant monopoly trash haulers rightfully ends. As the courts of Missouri have repeatedly held, those doing business with the government bear the risk of invalidity of their arrangement. See e.g., County of St. Francois v. Brookshire, 302 S.W.3d 1, 5 (Mo. 1957).

Therefore, as Plaintiffs' claims were not barred by mootness, the Circuit Court erred in dismissing the amended petition, and this Court should reverse the dismissal.

**5. THE CIRCUIT COURT ERRED IN DISMISSING COUNTS 2 AND 4 OF THE AMENDED PETITION SINCE MONEY HAD AND RECEIVED**

**AND, IN THE ALTERNATIVE, UNJUST ENRICHMENT ARE VIABLE CLAIMS FOR PLAINTIFFS TO OBTAIN THE RETURN OF MONIES PAID UNDER AN ILLEGAL SCHEME AND ORDINANCES TO THE THREE MONOPOLY TRASH HAULERS WHO OBTAINED THEIR SPECIAL MONOPOLY STATUS THROUGH THE INVALID ORDINANCES, WHO WERE IN PRIVACY OF CONTRACT WITH ST. LOUIS COUNTY, AND WHO USED ST. LOUIS COUNTY TO COLLECT SUMS ALLEGEDLY OWED THE MONOPOLY TRASH HAULERS THROUGH CRIMINAL PROSECUTIONS.**

Illegal exactions or payments, required by illegal or improper government actions, are commonly recovered under the cause of action of money had and received. See e.g., Brink v. Kansas City, 198 S.W.2d 710, 716 (Mo. 1946); Niedermeyer v. Curators of University of Missouri, 61 Mo.App. 654, 1895 WL 1669 (Mo. App. 1895).

St. Louis County's trash district ordinances and awarding of monopoly status to the three Defendant monopoly trash haulers is illegal and void ab initio. The three Defendant monopoly trash haulers contracted with St. Louis County and are in privity with St. Louis County. The three Defendant monopoly trash haulers use St. Louis County to collect their bills since they have St. Louis County criminally prosecute any citizen with the courage not to pay the illegal exactions of

the three monopoly trash haulers. See St. Louis County v. Skaer, 321 S.W.3d 350 (Mo. App. 2010).

Long ago, the Missouri Supreme Court declared:

This cause is for money had and received. Such an action is founded upon the principle that no one ought to unjustly enrich himself at the expense of another, and it is maintainable in all cases where one person has received money or its equivalent under such circumstances that in equity and good conscience he ought not to retain it and, ex aequo et bono it belongs to another.

Brink, 198 S.W.2d at 716-17 (quotation marks and citations omitted).

It is illegal and unjust for the three Defendant monopoly trash haulers to keep their ill-gotten gain. The citizens of St. Louis County should be made whole.

With illegal government exactions, there is no consideration of “benefit.” Brink, 198 S.W.2d at 716. The Missouri Supreme Court has rejected defendants’ “benefit” defense.

Defendant also makes the point that plaintiff’s assignors got value received for the payment made on the tax bills, and in equity and good conscience should not be heard to complain, and in any event, ‘defendant is entitled to a

setoff for the value of such ‘benefit.’ **The benefit which defendant invokes for the basis of the claimed setoff was not asked for nor voluntarily accepted, but was imposed by fraud and conspiracy . . . .**

Brink, 198 S.W. at 716 (emphasis added).

Independently, the Restatement (Third) of Restitution also supports the citizen Plaintiffs ‘claim for their money back. See Section 6(2) Restatement (Third) of Restitution and Unjust Enrichment (T.D. No. 12991).

Payment of money resulting from a mistake by the payor as to the existence or extent of the payor’s obligation to an intended recipient gives the payor a claim in restitution against the recipient to the extent the payment was not due.

Section 6(2) Restatement (Third) of Restitution and Unjust Enrichment (T.D. No. 12991).

Plaintiffs paid money to the three Defendant monopoly trash haulers under threat of criminal prosecution by St. Louis County. In reality the trash district ordinances and entire monopoly trash district scheme were illegal and void. Plaintiffs paid something not properly owed and are entitled to their money back. Defendants have no facts and no law, allowing them to keep the monies

wrongfully wrought from the citizens of St. Louis County. Because the three Defendant monopoly trash haulers have been unjustly enriched and received monies under false pretenses, this Court should reverse the dismissal of Counts 2 and 4 of the amended petition and allow this matter to go to trial.

**6. THE CIRCUIT COURT ERRED IN DISMISSING COUNT 3 OF THE AMENDED PETITION:**

**A. SINCE DEFENDANTS' COLLECTION OF MONIES FROM CITIZENS OF ST. LOUIS COUNTY PURSUANT TO ILLEGAL AND VOID AB INITIO TRASH DISTRICT ORDINANCES CONSTITUTES OR MAY CONSTITUTE A DECEPTIVE OR UNFAIR PRACTICE ACTIONABLE UNDER THE MISSOURI MERCHANDISING PRACTICES ACT;**

**B. SINCE DEFENDANTS' EMPLOYMENT AND USE OF THE THREAT AND ACTUAL CRIMINAL PROSECUTION OF ST. LOUIS COUNTY CITIZENS FOR THOSE CITIZENS WITH THE COURAGE TO FACE CRIMINAL PROSECUTION UNDER THE VOID AB INITIO TRASH DISTRICT ORDINANCES TO COLLECT THE BILLS OF THE THREE MONOPOLY TRASH HAULERS CONSTITUTES OR MAY**

**CONSTITUTE AN UNFAIR PRACTICE ACTIONABLE UNDER THE  
MISSOURI MERCHANDISING PRACTICES ACT.**

The Missouri Merchandising Practices Act forbids “unfair practices” in consumer transactions and should be liberally construed to protect consumers. State ex rel. Nixon v. Continental Ventures, Inc., 84 S.W.3d 114, 117 (Mo. App. 2002); §417.021.1 R.S.Mo.

The Missouri Merchandising Practices Act does not have the same elements or defenses as common law fraud. See e.g., Ullrich v. CADCO, Inc., 244 S.W.3d 772, 777, 778 (Mo. App. 2008); Schuchmann v. Air Services Heating & Air Conditioning, Inc., 199 S.W.3d 228, 232 (Mo. App. 2006).

The MMPA supplements the definition of common law fraud, eliminating the need to prove an intent to defraud or reliance. The statute and the regulation paint in broad strokes to prevent evasion thereof due to overly meticulous definitions.

Ullrich v. CADCO, Inc., 244 S.W.3d 772, 777, 778 (Mo. App. 2008) (quotation marks, parentheses, and citations omitted); accord Schuchmann v. Air Services Heating & Air Conditioning, Inc., 199 S.W.3d 228, 232 (Mo. App. 2006).

As set forth in Missouri cases, and as set forth in Missouri regulations, an “unfair practice” includes more than deception, fraud, or misrepresentation.

Schuchmann v. Air Services Heating & Air Conditioning, Inc., 199 S.W.3d 228, 232 (Mo. App. 2006).

Missouri regulations state:

Proof of deception, fraud, or misrepresentation is not required to prove unfair practices as used in section 407.020.1, RSMo.15 C.S.R. 60-8.020(2).

Defendants together used the illegal and void ab initio trash district ordinances to obtain money from St. Louis County citizens and consumers.

Using illegal and void laws to pull money from St. Louis County citizens is or may be an “unfair practice.”

Using monopoly status, illegally awarded by St. Louis County, to wrench money from St. Louis County citizens is or may be an “unfair practice.”

Using St. Louis County to collect bills from St. Louis County citizens by threatening and actually undertaking criminal prosecutions of St. Louis County citizens, under an illegal and void ab initio ordinance, is or may be an “unfair practice.”

Additionally, falsely telling St. Louis County citizens that no election needed to be held in order to create the trash collection districts is an actionable

misrepresentation or omission under the Missouri Merchandising Practices Act. See e.g., State ex rel. Nixon v. Beer Nuts, Ltd., 29 S.W.3d 828, 838 (Mo. App. 2000).

Respondents' argument boils down to allowing the robber to keep the product of his crimes after he is caught.

There is no doubt that an illegal ordinance is, according to the Missouri Supreme Court, "void ab initio" or void from the beginning. O'Reilly 850 S.W.2d at 99-100. Giving effect to "void ab initio" requires returning the monies collected or received pursuant to the illegal scheme from the beginning. See Brink 198 S.W.2d at 716.

The Merchandising Practices Act is broader than common law fraud and the common law fraud requirements do not apply. An unfair practice is actionable without misrepresentation or material omission although we have all three in the instant case.

Because the three Defendant monopoly trash haulers collected monies (1) pursuant to illegal and void ab initio trash district ordinances; and (2) with the help of threatened and actual prosecutions of citizens and consumers for violation of the same void ordinances, the three citizen plaintiffs properly pled a civil action under the Missouri Merchandising Practices Act. Therefore, the dismissal of the amended petition by the Circuit Court was error.

## **CONCLUSION**

The Circuit Court erred in dismissing the three citizen Plaintiffs' amended petition for the following independent reasons:

1. Article 2 Section 24 of the St. Louis County Charter required an election before St. Louis County could impose trash districts upon its citizens but Defendants did so without any approving election;
2. Article 2 Section 24 of the St. Louis County Charter applies to municipal service districts created by the County regardless of whether the district has taxing powers;
3. Section 260.247 R.S.Mo. requires two years' notice to preexisting trash haulers but St. Louis County displaced the preexisting trash haulers without the required notice;
4. St. Louis County's trash district ordinances were illegal and void ab initio; and,
5. Defendant monopoly trash haulers should return the proceeds from their illegal monopoly status and from their use of St. Louis County to criminally prosecute those citizens who refused to pay the Defendant monopoly trash hauler bills, under the claims of money had and received unjust enrichment, and the Missouri Merchandising Practices Act.

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### **CERTIFICATE OF COMPLIANCE**

The undersigned counsel hereby certifies pursuant to Rule 84.06(c) that this substitute reply brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations contained in Rule 84.06(b); and (3) contains 6,587 words, exclusive of the sections exempted by Rule 84.06(b)(2), based on the word count that is part of Microsoft Word 2010. The undersigned counsel further certifies that the CD-ROM has been scanned and is free of viruses.

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### **CERTIFICATE OF SERVICE**

The undersigned counsel of record for Appellants hereby certifies that copies of the Substitute Reply Brief of Appellants were delivered via U.S. Mail, postage prepaid, along with an electronic copy on CD-ROM to Patricia Redington, County Counselor, 41 South Central Ave., Clayton, MO 63105; Robert Epperson and Edward Dowd, Dowd Bennett LLP, 7733 Forsyth, Suite 1410, Clayton, MO 63105; Brian McGovern, McCarthy Leonard Kaemmerer, L.C., 400 S. Wood Mill Rd., Chesterfield, MO 63017; and Scott Dickenson and John Ryan, Lathrop & Gage LLP, 10 S. Broadway, Ste. 1300, St. Louis, MO 63102 on this \_\_\_\_ day of April, 2011.

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