Nos. SC85845 and SC85846

IN THE
MISSOURI SUPREME COURT

SHAWN C. BROWN,

Appellant,

v.

RHONDA F. SHAW, ET AL.,

Respondents.

Appeal from the Circuit Court of St. Charles County
Honorable Lucy D. Rauch
Case No. 04CV124604

BRIEF FOR RESPONDENT ATTORNEY GENERAL

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JURISDICTIONAL STATEMENT

The Attorney General accepts Brown's jurisdictional statement with one addition. As noted **in the Attorney General's *Responses to Plaintiff's Motion to Expedite Appeal*, this court may have already lost jurisdiction to adjudicate this case on the merits because this case is before the Court on a date less than "six weeks before the date of the election." § 115.125.2, RSMo Supp. 2003.**

Section 115.125.2, enacted by the Legislature in 2003, provides that "No court shall have the authority to order an individual or issue be placed on the ballot less than six weeks before the date of the election, except as provided in sections 115.361 and 115.379." The exceptions provided in §§ 115.361 and 115.379 are not applicable here; thus, Brown's request to this court to place his name on the ballot appears to fall within the prohibition of § 115.125.2.

On February 24, 2004, this court ordered Brown's name on the ballot, arguably within the deadline provided by § 115.125.2. Respondent Shaw argues that the court's action was impermissible because the deadline contained in § 115.125.2 had already passed by the time the court entered its order – that is, that § 115.125.2 requires action by the court prior to midnight on February 23, 2004. *Resp. Shaw's Ans. to Pet. for Mandamus*, ¶ 1e. Regardless of whether the statutory deadline is February 23 or 24, this court will still render its decision in this case after that date.

The most likely legislative purpose behind § 115.125.2's language is to create a final deadline for all changes to the ballot. This is because various election activities must occur

in the weeks prior to an election. *See, e.g.*, § 115.281 (absentee ballots must be available six weeks prior to election date) and § 115.127.2 (election notices must be published in the weeks immediately prior to election date). The statute provides election authorities with a final deadline they can rely on and a complete ballot they can use for these statutorily-required pre-election activities. Changes to the ballot after the six week deadline stymie the purposes served by these activities.

Brown argues that § 115.125.2 is a deadline for a candidate's name to be ordered *on* the ballot, but that a candidate's name could be removed from the ballot by the procedures spelled out in § 115.383, presumably up to the election day. *Brown's Mot. for Interim Relief,* ¶ 5. The Attorney General acknowledges that the terms of § 115.125.2 permit Brown's interpretation because the statute speaks of ordering a person's name "on" the ballot, as opposed to taking it "off." Nevertheless, because of the legislative purpose behind this provision, the most reasonable interpretation is that § 115.125.2 prohibits a court from ordering changes to the ballot after the six week deadline.

By entering its Alternative Writ of Mandamus placing Brown's name on the ballot "until further order of the Court," this court's action contravenes the legislative purpose behind the statutory deadline because the ballot is not in its final form until the court renders its decision. Consequently, this court may have lost jurisdiction to adjudicate this case on the merits according to the terms of § 115.125.2 because its decision will be rendered after the statutory deadline.

STANDARD OF REVIEW

The trial court upheld the constitutionality of §§ 115.346[1] and 71.005, RSMo Supp. 2003. This court's review of that decision is governed by the familiar rule of *Murphy v. Carron*: the reviewing court will affirm the trial court's decision unless "there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976).

[1] All citations are to RSMo 2000, unless otherwise noted.

ARGUMENT

I. The Attorney General takes no position regarding the applicability of § 115.346 to Brown's circumstances or to Fourth Class cities generally, or on the question of Brown's status as taxpayer of record. (Responds to Brown's Point Relied On I)

In his first point on appeal, Brown asks this court to review the facts of his unique situation and determine that his candidacy is not barred by the application of these facts to § 115.346. Brown also asks this court to hold that § 115.346 does not apply to Fourth Class cities, or that Brown is not the taxpayer of record for the unpaid city taxes at issue. The Attorney General does not take a position on these issues because the Attorney General's only role in this proceeding is to defend the facial constitutionality of § 115.346.[2]

[2] To the extent Brown raises an "as applied" challenge to the statute's constitutionality, this issue is properly addressed by the other Respondents to this case.

Furthermore, the Attorney General does not disagree with Brown's contention that statutes which regulate access to the ballot should be construed to prevent the disqualification of candidates. *See State ex inf. Mitchell v. Heath,* 132 S.W.2d 1001, 1004 (Mo. 1939) (observing that various Missouri courts have "given a liberal construction" to statutes "prescribing requirements of eligibility to elective offices");[3] *see also Lewis v. Gibbons*, 80 S.W.3d 461, 470 (Mo. banc 2002) (Wolff, J., dissenting). To the extent this court can interpret the text of § 115.346 to the facts of Brown's situation to permit Brown's name to be placed on the ballot, it may do so. Courts must, however, give effect to statutory language as written even when the

[3] The other cases Brown cites for this proposition throughout his brief are not directly on point because both deal with courts' liberal construction of election laws "in aid of the right of suffrage," not candidacy. *See Application of Lawrence*, 185 S.W.2d 818, 820 (Mo. banc 1945) and *Chomeau v. Roth*, 72 S.W.2d 997, 999 (Mo. App. 1934).

court might prefer a different policy determination than that spelled out by the Legislature. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 261 (Mo. banc 1998).[4]

[4] The court's interpretation of § 115.346 should also be guided by the principle that statutes are presumed constitutional, and that the court will not invalidate a statute unless it "'plainly and palpably affronts fundamental law embodied in the constitution.'" *Linton v. Missouri Veterinary Med. Bd.*, 988 S.W.2d 513, 515 (Mo. banc 1999) (*quoting Consol. Sch. Dist. v. Jackson County*, 936 S.W.2d 102, 103 (Mo. banc 1996)).

II: The Missouri Constitution's guaranty of "free and open elections" does not prohibit the Legislature from enacting reasonable eligibility requirements for potential candidates for municipal office. (Responds to Brown's Point Relied On II)

Article I section 25 of the Missouri Constitution protects (1) **the right of "every qualified voter [to] freely exercise the right to cast his vote without restraint or coercion of any kind," and (2) "the right of any eligible citizen to become a candidate for public office."** ***Preisler v. Calcaterra*****, 243 S.W.2d 62, 64 (Mo. 1951).** Brown asks this court to find in the second prong a requirement that a potential candidate must be at fault before his name is not placed on a ballot because of failure to pay a fee. **To make his argument, he relies on two factually distinguishable cases,** ***State ex rel. Haller v. Arnold*** **and** ***State ex rel. Neu v. Waechter*****, that involve individuals "eligible" for office.**

In ***Haller*****, the candidate attempted to pay his required filing fee by the statutory deadline, but the treasurer was not at his office on the last day to file the candidate's certificate and fee. 210 S.W. 374, 375 (Mo. 1919). The court determined that the mere absence or unavailability of the treasurer to receive the candidate's fee by the filing deadline would not be an obstruction that would prohibit an "eligible" candidate from running for office.** ***Id.*** **at 376. As the court explained, it is obvious that "any eligible candidate for office is entitled to the whole of the last day" within which to present himself to the electorate for their vote, and the candidate should**

not be "deprived of the privilege of running for a public office" merely because the person who is required by law to give him a receipt for the filing fee is unavailable. *Id.* Similarly, in *Neu,* the candidate attempted to pay his filing fee by the deadline but the treasurer refused to accept the fee because the candidate had previously filed as a candidate for a different office. *State ex rel. Neu v. Waechter,* 58 S.W.2d 971, 972-73 (Mo. 1933).

Brown's scenario is entirely different than the candidates' situations in *Haller* and *Neu,* but he tries to engraft the court's analysis in these cases to require that he be found "at fault" before the St. Peters City Clerk can decide he is not eligible to have his name placed on the ballot according to § 115.346. In *Haller* and *Neu,* the candidates had not paid their filing fees because of an unavailable or uncooperative city official; their efforts to timely pay their fees were either directly or indirectly thwarted by the officials. Due to the officials' actions, this court required a showing of "fault" on the part of the candidates before their names would not be placed on the ballot. Brown's argument that he, too, was thwarted from timely paying his city taxes is unpersuasive. App. Br. 22-23. Although the facts are in dispute on who his tax bill was sent to, Brown has never alleged that he personally attempted to pay his city taxes to the collector on or before January 20, 2004 and that the collector refused to accept payment. To the contrary, when Brown paid his taxes on January 27, 2004, the collector accepted them and gave him a receipt. Tr. 73-74.

Consequently, Brown cannot be said to have been "thwarted" in his attempts to pay his city taxes before § 115.346's deadline.

Brown's circumstances are entirely distinguishable from *Haller* and *Neu* for another reason: the nature of the fees at issue. There is a critical distinction between filing fees that an election official refuses or is unavailable to accept prior to the statutory deadline, and a person's separate obligation to timely pay his city taxes or municipal user fees, which are owed independent of his desire to run for public office. *Cf., Corrigan v. City of Newaygo,* 55 F.3d 1211, 1216 (6th Cir. 1995) ("The duty of paying taxes and water and sewer assessments is undertaken when a resident chooses to own property."). One repercussion of a person's failure to timely pay city taxes and user fees is that he will be ineligible for candidacy for municipal office, but this is not the only repercussion that flows from this failure. Failure to pay a candidate filing fee, on the other hand, carries no repercussion other than related to a person's candidacy. **Thus, the nature of the filing fees owed by the candidates in *Haller* and *Neu* are different in kind from Brown's independent obligation to timely pay his city taxes and municipal user fees.**

In addition to the difference between Brown's circumstances and those at issue in *Haller* and *Neu,* the free and open elections guaranty is not violated by § 115.346 because the guaranty only applies to "eligible" people. *Preisler v. City of St. Louis,* 322 S.W.2d 748, 753 (Mo. 1959). Section 115.346's requirement that only

individuals who are not in arrears on city taxes or municipal user fees may be candidates for municipal office is an "eligibility" requirement for office.

In *Labor's Educational and Political Club v. Danforth,* this court clarified the difference between "eligibility requirements" and "qualification requirements." 561 S.W.2d 339 (Mo. 1977). For the purposes of its opinion, it adopted the following definitions: "Eligible means capable of being chosen; while qualified means the performance of the acts which the person chosen is required to perform before he can enter into office." *Id.* at 344 *quoting State ex rel. Elliott v. Bemenderfer,* 96 Ind. 374 (Ind. 1884). The court held that the disclosure requirements for constitutional officers were not additional eligibility requirements but rather were "qualifications."

Following *Danforth,* in *State ex rel. McElroy v. Anderson,* the court explained that the residency requirement for prosecuting attorneys was an eligibility requirement and not a qualification. 813 S.W.2d 128, 129 (Mo. App. E.D. 1991). "Qualifications" were the threshold characteristics a person must possess "to be able to function in the position of prosecutory attorney" or to represent the state in court. *Id.* By contrast, the residency requirement was not a qualification necessary for a person to be able to represent the state in court, but was an "eligibility requirement" to seek the office of prosecuting attorney. *Id.*

Brown tries to distinguish *McElroy* by labeling the residency requirement a "fitness requirement to hold the office throughout the term of office, not the right to be a candidate for the office in the first instance." App. Br. 34. This is an incorrect characterization; the statute in *McElroy* made residency a prerequisite for a person to be able to run for the office – not a requirement to *hold* office – by stating that "there shall be elected . . . a prosecuting attorney . . . who has been a bona fide resident of the county in which he seeks election for twelve months next preceding the date of the general election at which *he is a candidate* for such office." § 56.010 *quoted in McElroy*, 813 S.W.2d at 129 (emphasis added). Indeed, the court characterized the residency requirement as an "eligibility requirement imposed upon the prosecuting attorney *as a condition to seeking public office*." 813 S.W.2d at 129 (emphasis added).

Because those individuals who are in arrears on city taxes or municipal user fees are not "eligible" for candidacy, § 115.346's requirement does not infringe on Missouri's constitutional guaranty that eligible citizens have a right to become candidates for public office. Section 115.346 no more "works a forfeiture" of Brown's purported "right to run for office," App. Br. 34, than would durational residency requirements, age restrictions, or other legislative enactments that narrow the field of prospective candidates to those "eligible" for candidacy.

In support of this proposition is the fact that Missouri courts have never applied Article I § 25's guaranty of "free and open elections" to strike down the constitutionality of other candidate eligibility requirements, such as requirements that candidates be a certain age, be a resident of a particular locality for a period of time, or be registered voters. *See*, *e.g.*, *Lewis v. Gibbons*, 80 S.W.3d 461 (Mo. banc 2002) (upholding durational residency requirement for associate circuit court judge); *State ex rel. Campbell v. Svetanics*, 548 S.W.2d 293 (Mo. App. 1977) (upholding a durational residency requirement for candidates for St. Louis alderman); *cf.*, *Stiles v. Blunt*, 912 F.2d 260 (8th Cir. 1990) (upholding Missouri's minimum age requirement for state representative). As this court stated, "[t]hat all elections shall be 'free and open' does not mean that there cannot be reasonable regulations of elections in the interest of good citizenship and honest government." *State ex rel. Dunn v. Coburn*, 168 S.W. 956, 958 (Mo. 1914).

III. Under the appropriate reasonable basis standard of review, or even under a form of heightened scrutiny, § 115.346 should be upheld as constitutional because it helps the state achieve three important state goals: (1) enforcing municipalities' tax codes; (2) promoting law-abiding citizens in public office; and (3) decreasing public cynicism toward elected officials. (Responds to Brown's Point Relied On III)

This court should affirm the circuit court's conclusion that § 115.346 is constitutional because the statute is reasonably related to achieving various state goals and does not violate Brown's right to equal protection under the U.S. Constitution. In its review of the circuit court's decision, this court should follow the federal courts that have looked at similar provisions and review § 115.346 using the reasonable basis standard. *Corrigan v. City of Newaygo*, 55 F.3d 1211 (6th Cir. 1995); *Hunt v. City of Longview*, 932 F. Supp. 828 (E.D. Tex. 1995) *aff'd without opinion*, 95 F.3d 49 (5th Cir. 1996); and *Deibler v. City of Rehoboth Beach*, 790 F.2d 328 (3rd Cir. 1986). This court should also reject Brown's arguments that Missouri's Constitution and caselaw compel this court to review § 115.346 under a "strict scrutiny" standard – a standard that would require an unprecedented holding that a person's ability to run for office is a "fundamental right." *See Asher v. Lombardi*, 877 S.W.2d 628, 630 (Mo. banc 1994). Furthermore, as explained in the previous section, Article I § 25's guaranty of free and open elections should not be interpreted to guarantee to all individuals the right to run for office because it only guaranties "eligible" individuals the right to run. Finally, because § 115.346 is a reasonable

way for the state to achieve at least three goals, this court should affirm the circuit court's decision.

As a preliminary matter, Brown should not be heard to assert that § 115.346 is a violation of the Equal Protection Clause of the Missouri Constitution, found in Article 1, § 2, because he did not raise this issue in his petition at trial. The requirements to raise and preserve a constitutional issue include that a plaintiff must: (1) raise the constitutional issue at the first possible opportunity, and (2) "designate specifically the constitutional provision claimed to have been violated," for instance "by explicit reference to the article and section or by quotation of the provision itself." *Callier v. Dir. of Revenue*, 780 S.W.2d 639, 641 (Mo. banc 1989) *quoting City of Eureka v. Litz*, 658 S.W.2d 519, 521 (Mo. App. 1983). In his Petition, First Amended Petition, and Second Amended Petition, Brown alleged § 115.346 violated "Article I, §§ 8, 10 and 25 of the Missouri Constitution and the United States Constitution Amendments I, V and XIV." *Pet. ¶ 15, First Am. Pet. ¶ 23, Brown's Second Am. Pet.*, ¶ 31. Nowhere in these pleadings did he assert a violation of Missouri's Equal Protection Clause, found in Article I, § 2. Under the principles expressed in *Callier*, he cannot raise this alleged constitutional violation here. Nevertheless, if this court permits Brown to argue that § 115.346 violates his rights under the Missouri Constitution, his argument is not persuasive, as described below.

A. This court should review § 115.346 under the reasonable basis standard.

This court should analyze Brown's claim that § 115.346 violates his constitutional right to equal protection under the reasonable basis standard because § 115.346 does not involve a type of ballot access restriction that warrants heightened scrutiny.

In response to Equal Protection challenges, Missouri courts have generally applied the reasonable basis test unless the classification at issue involves a suspect classification or a fundamental right. *See, e.g., Stewart v. Dir. of Revenue*, 702 S.W.2d 472, 474-75 (Mo. banc 1986). Suspect classes are those, "such as race, national origin, or illegitimacy," because these require "'extraordinary protection from the majoritarian political process' for historical reasons." *Etling v. Westport Heating & Cooling Servs. Inc.*, 92 S.W.3d 771, 774 (Mo. banc 2003) (per curiam) *quoting Riche v. Dir. of Revenue*, 987 S.W.2d 331, 336 (Mo. banc 1999). "Fundamental rights" include, but are not limited to, freedom of speech, freedom of interstate travel, and the right to vote. *Id; see also State v. Williams*, 729 S.W.2d 197, 200 (Mo. banc 1987) (observing that "the group of rights expressly held to be 'fundamental' is not large.").

Missouri's reasonable basis standard indicates that a classification will survive reasonable basis scrutiny if "the state's purpose in creating the classification is legitimate and 'if any statement of facts reasonably may be conceived to justify the means chosen to accomplish that purpose.'" *Linton v. Missouri Veterinary Med. Bd.*, 988 S.W.2d 513, 515-16 (Mo. banc 1999) (*quoting Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 103-04 (Mo. banc 1998) *quoting McGowan v. Maryland*, 366 U.S. 420, 426 (1961)). Under the reasonable basis test, that this court may view the Legislature's

choices as "socially undesirable, unwise, or even unfair is of little consequence" as long as the classification serves the "legislature's legitimate policy." *Findley v. City of Kansas City*, 782 S.W.2d 393, 396 (Mo. banc 1990).

The United States Supreme Court and the Missouri Supreme Court have agreed that there is no "fundamental right" to run for public office. *Asher v. Lombardi*, 877 S.W.2d 628, 630 (Mo. banc 1994) citing *Clements v. Fashing*, 457 U.S. 957, 963 (1982). **And this court noted that in this context, Missouri's equal protection clause is equivalent to that of the United State's. *Asher*, 877 S.W.2d at 630 n. 1.**

1. *Article I, § 25 of the Missouri Constitution does not give Brown a fundamental right of candidacy.*

Brown claims that Article I § 25's "free and open elections" guaranty elevates his desire to run for office to the status of a "fundamental right" under the Missouri Constitution, and thus elevates this court's analysis to strict scrutiny. This court has refused to make such extensions to the list of "fundamental rights." *Cf., Batek v. Curators of Univ. of Missouri*, 920 S.W.2d 895, 898 (Mo. banc 1996) (identifying fundamental rights as a "classification that includes only basic liberties explicitly or implicitly guarantied by the United States Constitution."). And it would make no sense to add a free-form right to be a candidate as Brown demands. Rather, as explained in Point II, the "free and open elections" guaranty has been interpreted to guarantee "eligible" candidates the right to run for public office – not ineligible candidates such as Brown. Were this court to accept Brown's argument, every restriction on access to the ballot – such as age, durational

residency requirements, or others – would be subject to strict scrutiny because these requirements all pose a barrier to candidacy for those who wish to run. This court has previously upheld such restrictions in the past under reasonable basis scrutiny. *See, e.g.*, *Lewis v. Gibbons*, 80 S.W.3d 461, 466-467 (Mo. banc 2002) (per curiam). There is no bright-line distinction between those eligibility requirements and § 115.346's requirement that a potential candidate not be in arrears on city taxes or user fees.

2. *This court should be guided by U.S. Supreme Court precedent.*

Brown argues that federal Equal Protection caselaw is of limited relevance to this case, App. Br. 39, because of Missouri's constitutional guarantees. This court rejected a similar argument in *Asher v. Lombardi*, 877 S.W.2d 628 (Mo. banc 1994). In that case, Asher asked this court to apply a higher standard of scrutiny to a statute that prohibited merit employees from becoming candidates for office because the statute "restrict[ed] his opportunity to participate equally in the political process." *Id.* at 630. In rejecting Asher's claim, the court noted there was "no reason to read Missouri's equal protection clause differently from the United States Constitution's" in this context. *Id.* at n. 1. And there is no reason to reach a different conclusion in the context of this case. Although *Asher* was not a ballot access case, its conclusion that the right to run for office is not "fundamental," is based on *Clements v. Fashing*, 457 U.S. 957 (1982), a ballot access case.[5]

[5] In addition, the three federal cases that address issues similar to this one all agree that the right to run for office is not "fundamental." *Corrigan v. City of Newaygo*, 55 F.3d

Furthermore, *Asher* is only one of numerous cases in which individuals have raised claims that a particular statute violated both the federal Equal Protection clause and the Missouri Equal Protection clause, and this court has typically applied only one analysis to the equal protection challenge, thus implying that the two clauses guarantee the same protections. *Id. See, e.g., Batek v. Curators of Univ. of Missouri*, 920 S.W.2d 895 (Mo. banc 1996); *State v. Stokely*, 842 S.W.2d 77 (Mo. banc 1992).

This court should continue to be guided by U.S. Supreme Court precedent in this area, including *Clements v. Fashing*. There the Court held that the provision that limited a current officeholder's ability to become a candidate for another public office "discriminates neither on the basis of political affiliation nor on any factor not related to a candidate's qualifications to hold political office." 457 U.S. 957, 967 (1982) (plurality opinion). Considering it an insignificant interference with access to the ballot, the Court only required the restriction to pass the reasonable basis test. *Id*.

B. This court should not apply heightened scrutiny to § 115.346.

1211, 1214 (6th Cir. 1995), *Hunt v. City of Longview*, 932 F. Supp. 828, 839 (E.D. Tex. 1995) *aff'd without opinion* 95 F.3d 49 (5th Cir. 1996), and *Deibler v. City of Rehoboth Beach*, 790 F.2d 328, 334 (3rd Cir. 1986).

The U.S. Supreme Court has applied heightened scrutiny to certain ballot access cases, but these cases deal primarily with two types of restrictions: (1) those that classify based on wealth, and (2) those that burden "new or small political parties or independent candidates." *Id.* at 964-65. Other courts have followed this approach. *See Golden v. Clark*, 564 N.E.2d 611 (N.Y.1990); *see also O'Connor v. Nevada*, 27 F.3d 357, 360 (9th Cir. 1994) (indicating that heightened scrutiny is appropriate for ballot restrictions that involve wealth or economic status or that are based on a candidate's association with a political party).

Lubin v. Panish is an example of a case where the Supreme Court applied heightened scrutiny because of a ballot access restriction based on wealth. 415 U.S. 709 (1974). In *Lubin*, an indigent candidate alleged that the $701.60 filing fee necessary to be placed on the ballot in the primary for county supervisor violated his right to equal protection. *Id.* at 710. Although the state had an important and legitimate interest in the integrity of its ballot, "[s]election of candidates solely on the basis of ability to pay a fixed fee without providing any alternative means [was] not reasonably necessary to the accomplishment of the State's legitimate election interests." *Id.* at 718.

Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), is an example of a case where the Supreme Court applied heightened scrutiny because of a ballot access restriction that burdened new or small political parties or candidates. The Court invalidated an Illinois law that required a new political party or independent party's candidate for local office to obtain more signatures for access to the ballot than a candidate

for statewide office. *Id.* at 187. The Court has reviewed these types of laws with heightened scrutiny because restrictions on minor or independent parties or candidates may implicate freedom of association for the reason that they classify based on the candidate's association with a particular political party. *See Clements v. Fashing*, 457 U.S. 957, 965 (1982) (plurality opinion).

Unlike the wealth-based restriction found in *Lubin v. Panish*, § 115.346 does not restrict access to the ballot on the basis of wealth. People may fail to pay their city taxes and municipal user fees for a variety of reasons – including the reasons, unrelated to wealth, given by Brown. **Moreover, the requirement that people pay city taxes and municipal user fees is a result of their decision to live in a city that requires these taxes; the obligation to pay taxes is not intended as a means to limit those who may run for city office. *See Corrigan v. City of Newaygo*, 55 F.3d 1211, 1215 (6th Cir. 1995) ("The tax-paying requirement is a means of collecting taxes, not a means of restricting political speech or the right to vote.").**

Regarding the second type of case that warrants heightened scrutiny, Missouri courts, like the Supreme Court in *Illinois State Board of Elections v. Socialist Workers Party*, have recognized that laws that inhibit new or independent political parties' access to the ballot require greater scrutiny. For example, in *State ex rel. Coker-Garcia v. Blunt*, the Court of Appeals, Western District, struck down a Missouri statute that required local candidates of a new statewide political party to show that they had sufficient local support through signed petitions. 849 S.W.2d 81 (Mo. App. W.D. 1993). The court in *Coker-*

Garcia indicated that it must apply strict scrutiny to see whether the state used the "least restrictive means" possible to achieve its goals. *Id.* at 85. But the court also indicated that "[b]ecause state ballot access restrictions endanger vital individual constitutional rights, 'a State must establish that its classification is necessary to serve a compelling interest.'" *Id.* (*quoting Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)).

Although the court in *Coker-Garcia* was correct in its narrow holding that heightened scrutiny applied to the ballot access restriction at issue in that particular case because it affected minor or new political parties, it was incorrect, for the reasons explained above, to imply that all ballot access restrictions require strict scrutiny.

In this case, § 115.346 does not warrant heightened scrutiny because it does not deprive any cognizable group access to the ballot and it does not inhibit any new or independent political party from organizing and placing their candidate's name on the ballot. Political parties may form in opposition to the city's tax code and they may select an eligible candidate to run for office. *Cf., Corrigan v. City of Newaygo*, 55 F.3d 1211, 1215 (6th Cir. 1995) ("The provision [similar to § 115.346] does not have the effect of preventing the expression of political views or the forming of groups for this purpose.") and *Antonio v. Kirkpatrick*, 579 F.2d 1147, 1149 (8th Cir. 1978) (observing that a residency requirement for Missouri State Auditor "does not unfairly burden a discrete minority group of voters because the requirement is totally unrelated to the status of voters.").

Absent evidence that voters have organized in political protest against the tax code, voters who want to vote for a potential candidate who is in arrears on city taxes or municipal user fees do not constitute an association or movement. *See Corrigan*, 55 F.3d at 1215; *cf. Lorenz v. Colorado*, 928 P.2d 1274, 1281 n.11 (Colo. 1996) (observing that the voters who want to vote for a candidate who has refused to run for office because the candidate could not then hold a gaming license "do not constitute an independently identifiable group."). Section 115.346, like the minimum age requirement for state representative at stake in *Stiles v. Blunt*, "does not deprive voters of their rights to vote for, associate with, or speak out on behalf of candidates representing minor parties or unusual view points." *Stiles v. Blunt*, 912 F.2d 260, 266 (8th Cir. 1990). As a result, § 115.346 does not limit any ideologically-based group's access to the ballot, and thus it does not require heightened equal protection scrutiny.

To support his argument that this court should review § 115.346 with strict scrutiny, Brown looks beyond *State ex rel. Coker-Garcia v. Blunt*, to dicta in *Jackson County Board of Election Commissioners v. Paluka* and this court's decision *in Labor's Educational and Political Club v. Danforth*, but these cases are easily distinguished from the present case.

In fact, Brown's reliance on *Paluka* is disingenuous. The language Brown cites from *Paluka* as providing the appropriate standard for scrutiny in this case is pure dicta because the court did not, and could not, rest its decision on the constitutional issue. *Jackson County Bd. of Election Comm'rs v. Paluka* 13 S.W.3d 684, 689 (Mo. App. W.D. 2000)

("This court has no jurisdiction to decide the constitutionality of the statutory scheme. . . . [I]t is unnecessary to reach the constitutional issues . . ."). Because the *Paluka* court's language is dicta, it should not be afforded any weight. *See State on inf. Dalton v. Miles Labs. Inc.*, 282 S.W.2d 564, 573 (Mo. banc 1955). In addition, the dicta in *Paluka* relied in part on the Court of Appeals' decision in *Coker-Garcia v. Blunt*. As described above, *Coker-Garcia*'s language regarding the correct standard of scrutiny to apply was incorrect to the extent it implied that all restrictions on access to the ballot deserve heightened scrutiny. Finally, before concluding that a candidate must receive "express [and] direct" notice of his duty to file a personal financial disclosure statement, the court in *Paluka* pontificated that "[t]he right to run for office implicates not only the fundamental political rights of the candidate, but also the rights of the voters." It cited *William v. Rhodes*, 393 U.S. 23 (1968) for this proposition, but it neither addressed nor distinguished this court's statement that "[t]he right to run for office is not a 'fundamental right.'" *Asher v. Lombardi*, 877 S.W.2d 628 (Mo. banc 1994). The court also did not cite an alternative source for this "fundamental right."

In *Labor's Educational and Political Club v. Danforth*, this court confirmed that, "[u]nfortunately, the right of a person to seek public office is one of the nebulous areas where strict scrutiny is sometimes applied and sometimes not." 561 S.W.2d 339, 347-348 (Mo. banc 1977). In its analysis, the court traced other courts' interpretation of the U.S. Supreme Court's precedent in *Bullock v. Carter*, and noted that these other courts had reached different conclusions on whether the right of a person to seek public office was a

"fundamental right." *Id*. As a result, the court went on to hold that "a law denying the right to run for public office based on the particular office sought also requires strict scrutiny." *Id*. at 348. But that statement doesn't cover this case for two reasons. First, § 115.346 is not "based on the particular office sought" because it applies to all municipal offices. Second, both the U.S. Supreme Court and this court have subsequently adopted a different standard.

Since *Danforth*, the U.S. Supreme Court has stated that a person's desire to run for public office is not a "fundamental right." *Clements v. Fashing*, 457 U.S. 957, 963 (1982) (plurality opinion) ("Far from recognizing candidacy as a 'fundamental right,' we have held that the existence of barriers to a candidate's access to the ballot 'does not of itself compel close scrutiny.'") *quoting Bullock v. Carter*, 405 U.S. 134, 143 (1972). This court has recognized and agreed with the Supreme Court's conclusion. *Asher v. Lombardi*, 877 S.W.2d 628, 630 (Mo. banc 1994) *citing Clements v. Fashing*, 457 U.S. 957, 963 (1982). Consequently, *Danforth* is no longer persuasive support for the proposition Brown cites it for. *But see Lewis v. Gibbons*, 80 S.W.3d 461, 468 (Mo. banc 2002) (per curiam) (White, J., dissenting).

C. Section 115.346 helps the state achieve at least three of its goals.

Thus, this court should not apply heightened scrutiny to § 115.346's restriction on candidacy, but should apply the reasonable basis test. This reasonable basis test provides that a law does not violate equal protection if there is a "plausible policy reason for the classification." *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). Section 115.346 is a

constitutional way for the Legislature to accomplish at least three legitimate goals: (1) to assist municipalities in the enforcement of their local taxes and fees; (2) to ensure law-abiding people govern Missouri's municipalities; and (3) to decrease public cynicism towards local government. Section 115.346 passes the reasonable basis test. It passes that test because the statute's restrictions on ballot access are reasonably related to achieving those goals.

1. *The state's interest in enforcing local tax codes*

The Missouri Constitution gives local political subdivisions, such as cities, the authority to tax, "under power granted to them by the general assembly for county, municipal, and other corporate purposes." MO. CONST. art. X, § 1. It is in the interest of the state that its municipalities are sustained by the taxes and fees of their citizens. The restriction in § 115.346 serves that interest.

Indeed, § 115.346 assists in the enforcement of the local tax code in the same way as a city charter provision at issue in *Corrigan v. City of Newaygo*. 55 F.3d 1211 (6th Cir. 1995). There, the Sixth Circuit upheld a provision that prohibited city residents who were "in default to the City" from eligibility for local elected or appointed office. *Id*. at 1213, 1218. The Sixth Circuit applied the reasonable basis test to the provision and concluded the city had shown the provision was reasonably related to its legitimate interests. The court found that the provision served the city's goal of enforcing its economic tax regime. *Id.* at 1216. Not only did it punish those individuals who did not fulfill their financial obligations

to the city, but it also provided people who want to run for office an incentive to pay their taxes. *Id.*

The court in *Corrigan* noted that the Supreme Court has recognized government entities' interest in administering the tax system as so significant as to outweigh a person's religious objection to paying taxes. *Id.* at 1217 (*citing United States v. Lee*, 455 U.S. 252 (1982)). The court observed that in contrast to *Lee*, where the governmental interest in the payment of taxes was found sufficiently compelling to outweigh the "'fundamental right' analysis that the Free Exercise Clause require[d,]" the ballot access ordinance here only had to pass the significantly lower standard of reasonable basis review. *Corrigan*, 55 F.3d at 1217. The Sixth Circuit concluded that the charter provision was "rationally related to the administration of the tax system" and thus did not violate plaintiffs' equal protection rights. *Id.* Because the Sixth Circuit selected the tax enforcement rationale as the basis for its holding, it did not need to decide whether the other justifications presented would pass reasonable basis review. *Id.* at 1216-17.

Contrary to Brown's assertions, it is not difficult to see why the state has a particular interest in the timely payment of taxes by candidates for municipal office, and thus seeks to enforce its tax code through measures such as § 115.346. Municipal officials are the standard bearers for municipal government and their conduct is held to a higher standard for this reason. If they display a lack of respect for local government, it follows that the citizenry will echo that disrespect. The Legislature's recognition that it is important that municipal officers timely pay their city taxes and fees, as opposed to other state officers,

does not make the Legislature's determination irrational. The Legislature has implicitly recognized that citizens' payment of these taxes and fees will follow municipal officers' lead, and may not be similarly influenced by other officers' payment histories.

In the same manner, Brown complains that, as a tax enforcement measure, § 115.346 is unreasonably applied only to candidates for office. Simply because there are other ways to enforce the payment of local taxes and fees does not mean that the legislature acted unreasonably in enacting § 115.346 as another means to accomplish that goal. As Brown himself states, the purpose behind § 115.346 is "to ensure payment of city taxes and fees by all candidates for elective city offices." *Second Am. Pet.* ¶ 18. This follows from the Legislature's policy determination that it is particularly important for candidates for municipal office to timely pay these taxes and fees as an example for the citizenry. Similar to § 115.346, another Missouri statute required that school directors had previously paid their state and county taxes in the year prior to their election. *State ex inf. Mitchell v. Heath*, 132 S.W.2d 1001, 1004 (Mo. 1939). This court noted that the likely purpose behind this requirement "is to have such officers, who impose taxes on others and determine how they shall be spent, chosen from among those citizens who have been paying, and will likely continue to pay, taxes." *Id.*

2. *The state's interest in having its municipalities governed by law-abiding people*

Missouri has a longstanding policy that requires its local lawmakers to be current on their tax obligations. For over 100 years, Missouri has required, for certain cities, that

"[n]o person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes . . ." § 5916, RSMo 1899; *see also State ex rel. Dearing. v. Berkeley*, 41 S.W. 732, 733 (Mo. 1897) (holding that City Attorney who paid his delinquent city taxes by the end of the day when the election was in progress satisfied the statutory requirement related to arrearages on city taxes); *Watts v. Flenoy*, 938 S.W.2d 311, 313 (Mo. App. E.D. 1997) (declaring that sales tax imposed on motor vehicles is not a city tax and therefore does not fall within § 79.250's prohibition). Section 115.346 also serves the legitimate state goal of requiring those people who make and enforce local laws to obey those laws.

The Supreme Court has recognized that each state may prescribe the qualifications of its officers. *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973). Requiring individuals, under § 115.346, to be current in their tax obligations before they can be certified as candidates for local office is an appropriate qualification for local officials and is reasonably related to the state goal of seeking law-abiding lawmakers. As stated by this court in the context of a public official who was convicted of federal crimes, "[t]he public is entitled to the service of public officials who are of the highest character." *State ex inf. Peach v. Goins*, 575 S.W.2d 175, 183 (Mo. banc 1978). Timely payment of taxes and fees is a reasonable proxy for a candidate's respect for the tax code.

Other potential candidates have brought challenges to candidate eligibility requirements that are proxies for candidate characteristics. For example, the Eighth Circuit rebuffed a challenge to Missouri's minimum age requirement of 24 for state representative.

Stiles v. Blunt, 912 F.2d 260 (8th Cir. 1990). Just as some delinquent taxpayers may otherwise be law-abiding citizens, some individuals below the age of 24 may have the maturity and skills necessary to serve as state officeholders. Nonetheless, the court concluded that the age restriction was permissible: "Missouri's objective of ensuring that its lawmakers have some degree of maturity and life experience is constitutional and the minimum age requirement is a legitimate means of accomplishing this objective." *Id.* at 267. The court in *Stiles* also observed that "the state's interest in maturity and experience entitles it to draw the line somewhere, and the line it has drawn is not unreasonable." *Id.* at 266 n.10. Similarly, it is reasonable for the Missouri General Assembly to use § 115.346 as a means to ensure that its local public officials possess the character and respect for the law necessary for good governance.

Brown argues that § 115.346 does not help achieve the state goal of seeking law-abiding lawmakers because he is a "demonstrably law abiding citizen," App. Br. 44, who paid his taxes to a mortgage company and reasonably relied on the company to pay his taxes. That Brown may have had the best of intentions to timely pay his city taxes does not make it unreasonable for the Legislature to determine that, as a general proposition, someone who does not timely pay their city taxes and municipal user fees – just like someone who accumulates unpaid parking tickets – demonstrates a lack of respect for the community and for local government.

The timely payment of city taxes and municipal user fees serves as a benchmark of a person's respect for local law, in the same way as the length of a person's residence in a

particular community serves as a benchmark for that person's familiarity with, and commitment to, the community. This court in *Lewis v. Gibbons* noted that the purpose behind "residency statutes is to ensure that governmental officials are sufficiently connected to their constituents to serve them with sensitivity and understanding." **80 S.W.3d 461, 466 (Mo. banc 2002) (per curiam)**. Even though some potential candidates who do not meet a durational residency requirement may be connected to their constituency, it is still reasonable for the Legislature to use length of residency as a benchmark for this characteristic. In the same way, § 115.346 helps ensure that candidates for municipal office are law-abiding citizens.

Brown also argues that § 115.346's requirement is irrational because the timely payment of city taxes and municipal user fees has no relationship with "holding" elective office in Fourth Class cities. That a municipal officer's failure to timely pay city taxes and municipal user fees once in office is or is not a basis for impeachment does not mean that the Legislature acted irrationally in mandating the requirement of § 115.346 for potential candidates. Moreover, § 79.250 conditions election or appointment to city office on payment of city taxes. Section 115.346 seeks to prevent delinquent taxpayers from attempting to become city officials in the first place, and the statute specifically helps achieve that goal.

3. ***The state's interest in decreasing public cynicism towards local government***

Finally, Missouri seeks to encourage its citizens' respect for government. Allowing public officials to create tax and fee obligations for other people, while they themselves remain delinquent in their obligations, increases cynicism towards government. It demonstrates to people that their local leaders are hypocrites. Missouri has a legitimate goal in seeking respect for government officials on the local level, because this helps establish a law-abiding citizenry. *Cf.*, *State v. Lock*, 259 S.W. 116, 124 (Mo. 1924) (observing that "[i]f courts and public officials, charged with its enforcement, violate the law of the land in their zeal to convict, it follows that the people, who look to their knowledge and integrity, will not respect the law."). Section 115.346 helps achieve this goal because it prohibits individuals who are in arrears on city taxes or municipal user fees from running for office. The statute directly prohibits those individuals who would seek to create tax obligations on others while remaining in arrears themselves from holding public office. This furthers the legitimate state goal of encouraging citizens' respect for local officeholders.

In *Deibler v. City of Rehoboth Beach*, the Third Circuit incorrectly rejected the argument that the timely payment of taxes was rationally related to the city's interests in encouraging public respect for city government. There, the court struck down a city charter's requirement that a candidate for city commission be a non-delinquent taxpayer on the basis that the requirement failed the reasonable basis test. 790 F.2d 328 (3rd Cir. 1986); *see also Hunt v. City of Longview*, 932 F Supp. at 840-841 (E.D. Tex. 1995) *aff'd without opinion at* 95 F.3d 49 (5th Cir. 1996) (rejecting under the reasonable basis test a

city charter provision that certain city officeholders must not be in arrears on city taxes or liabilities). The city asserted that only non-delinquent taxpayer candidates "can earn the community's respect and obedience." *Deibler*, 790 F.2d at 335. Judge Ziegler[6] rejected this argument because he determined that by limiting the field of candidates, the city "denied voters the opportunity to establish standards for their representatives through the power of the ballot box." *Id.* at 336.

The court's analysis in *Deibler* was misguided, in that the reasonable basis test requires only a minimal showing to justify the means used to accomplish the state's purpose. *Linton v. Missouri Veterinary Med. Bd.*, 988 S.W.2d 513, 515-16 (Mo. banc 1999). It is reasonable for the state to use punctual payment of taxes and fees as a benchmark for candidates who will command the public's respect. The reasonable basis test does not allow a court to second-guess the wisdom of such a policy determinations by the Legislature. *See id*. at 516. Even more so here than in *Deibler* – where a city charter provision was at issue – Missouri's highest legislative body has made the policy determination that candidates for municipal office must not be in arrears on city taxes or municipal user fees. Missouri did not act unreasonably in its decision that "[a] law requiring

[6] **Judge Ziegler authored the judgment of the court. Judge Sloviter concurred in the judgment only and offered a separate opinion; Judge Weis dissented.**

that candidates be current in taxes may promote respect for public officials and may reduce distrust." *Deibler*, 790 F.2d at 341, (Weis, J., *dissenting*).[7]

Brown also argues that § 115.346 does not decrease public cynicism towards government because it tells the public that there are barriers to candidacy "that are only understood by and designed to benefit incumbent politicos at the expense of political outsiders." App. Br. 44-45. But § 115.346 makes no distinction between incumbents and their challengers; rather, no one who owes the city taxes or municipal user fees may run for office, whether previously elected or not. The statute applies evenhandedly to all candidates regardless of political affiliation or incumbency. Moreover, Brown previously was a candidate for St. Peters city office, Tr. 82-83, so he ought to have as much familiarity with § 115.346 as an incumbent candidate.

Section 115.346 helps Missouri accomplish at least three legitimate state goals: enforcing local tax codes, promoting law abiding local officers, and decreasing public cynicism towards government. The statute is reasonably related to achieving these goals, and thus this court should uphold its constitutionality.

D. Section 115.346 passes the *Anderson* balancing test.

[7] **Judge Weis only analyzed the ballot access restriction's application to nonresidents of the city. *Deibler*, 790 F.2d at 341, n.1.**

Because of Brown's conclusion that § 115.346 fails to survive reasonable basis scrutiny, he does not think the statute would survive the intermediate level of scrutiny the U.S. Supreme Court applied in *Anderson v. Celebrezze*, a ballot access case that focused not on equal protection rights but on the First and Fourteenth Amendment rights of voters. 460 U.S. 780 (1983). The *Anderson* balancing test usually applies in cases where voters or political parties are plaintiffs and where their First and Fourteenth-Amendment protected rights – as opposed to an individual candidate's rights – are the primary focus of the case. *See, e.g., Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997); *Colorado Libertarian Party v. Sec'y of State of Colorado*, 817 P.2d 998 (Colo. 1991). In this case, no St. Peters voters have joined Brown as plaintiffs, so the *Anderson* balancing test is not the appropriate standard to apply here. Some courts have, however, construed Supreme Court precedent to require the application of the *Anderson* balancing test in all ballot access cases, regardless whether the constitutional challenge is based on the candidates' or voters' First Amendment-protected rights or the Fourteenth Amendment equal protection clause. *See, e.g., Zielasko v. Ohio*, 873 F.2d 957 (6th Cir. 1989) (indicating the *Anderson* balancing test was the correct standard to apply rather than categorizing an election law as "subject either to strict scrutiny or the traditional rational relation test."). In any event, if this court chooses to apply the *Anderson* balancing test, § 115.346 survives scrutiny.

In *Anderson*, the Supreme Court rejected Ohio's early filing deadline for independent candidates as unconstitutional under an analysis that focused on the voting and freedom of association rights of the candidate's supporters. 460 U.S. 780 (1983). The

Court spelled out a balancing test to be applied. *Id.* at 789. First, a court should consider the "character and magnitude" of the injury to the plaintiff's First and Fourteenth Amendment-protected rights. *Id.* Next, the court should look at the interests the state puts forward to justify the burden it has imposed. *Id.* Finally, the court should determine the "legitimacy and strength" of the state's interests, and also the extent that it is necessary to burden the plaintiff's rights because of the state's interests. *Id.* According to the Court, reasonable non-discriminatory restrictions can be justified by the state's important regulatory interests. *Id.* at 788.

The Court has clarified the *Anderson* balancing test in a more recent case: *Burdick v. Takushi*. 504 U.S. 428 (1992). In *Burdick v. Takushi*, the Court observed that when associational rights are only minimally burdened, the state need not establish a compelling interest to tip the scales in its favor. *Id.* at 439. The Court concluded that "[the] legitimate interests asserted by the state [were] sufficient to outweigh the limited burden that the write-in voting ban impose[d] upon Hawaii's voters." *Id.* at 440.

Thus, when applying the *Anderson* balancing test to the facts of this case, the minimal burdens on Brown's First and Fourteenth Amendment-protected rights are outweighed by the state's legitimate interests that are effectuated by § 115.346. Section 115.346 does not restrict Brown's speech or prohibit him from associating in a group and advocating a political position. *See Deibler v. City of Rehoboth Beach*, 790 F.2d 328, 333 (3rd Cir. 1986). It merely provides that he may not be a candidate for local office if, on the last date for candidate certification, he is in arrears on city taxes or municipal user fees.

Furthermore, nothing prohibits Brown from having his name placed on the ballot in a future election if he is not in arrears on his city taxes or municipal user fees on the last date of filing for candidacy for that election. In that sense, the restriction is a temporary, curable impediment to his candidacy. *Cf., Zielasko v. Ohio*, 873 F.2d 957, 962 (6th Cir. 1989) (Jones, J., *dissenting)* (noting the distinction between those election restrictions that temporarily burden a voter's right to support a candidate – such as age or general filing deadlines – and those restrictions that are permanent in nature).

Because the character and magnitude of the injury to Brown's First and Fourteenth Amendment-protected rights is minimal, the state need not establish a compelling interest to outweigh the minimal burden § 115.346 places on Brown's rights. *See Burdick v. Takushi*, 504 U.S. 428, 439 (1992). Here, the Missouri Legislature has a significant interest in the fiscal responsibility of candidates for municipal office, whose actions affect the lives of Missouri citizens.

As explained previously, § 115.346 directly helps Missouri achieve its important and legitimate state goals of enforcing local tax codes, promoting law-abiding citizens in public office, and decreasing cynicism towards local government. In *Burdick v. Takushi*, the Court found that comparable "legitimate interests" asserted by the state were sufficient to outweigh the limited burden imposed on the voters. *Id.* at 440. At least one court has indicated that if a ballot access law imposes only reasonable non-discriminatory restrictions, it is subject to a "less rigorous *Anderson* balancing test" which is the equivalent of reasonable basis review. *Johnson v. Admin. Office of the Courts*, 133 F.

Supp. 2d. 536, 539 (E.D. Ky. 2001). Just as § 115.346 passed reasonable basis review, the application of the *Anderson* balancing test favors the state's legitimate and important interests as outweighing any slight affect § 115.346 may have on Brown's rights. Accordingly, § 115.346 is a reasonable, non-discriminatory restriction on access to the ballot, and is therefore constitutional.

E. Section 115.346 passes strict scrutiny.

Even if this court decides that this case involves a "fundamental right," and therefore deserves strict scrutiny, § 115.346 survives that scrutiny because it is narrowly tailored to help the state achieve a compelling state interest. First, the state interests served by § 115.346 – enforcing its local tax codes, promoting law-abiding public officials, and decreasing public cynicism towards government – can collectively be viewed as "compelling state interests." Missouri has a compelling interest in supporting its local tax codes so that local governments do not become a drain on the state treasury. Missouri also has a compelling interest in upholding the foundations of local government: law-abiding public officials who, by their example, engender law-abiding citizens who respect and comply with local law.

Section 115.346 is narrowly tailored to support these compelling state interests. It gives potential candidates time until the last day to file a declaration of candidacy to resolve any arrearages the prospective candidate may have. This is a narrowly tailored means to allow potential candidates to investigate and resolve their arrearages. The fact that Brown

chose not to confirm that his city taxes were properly paid prior to the deadline provided in § 115.346 does not mean that the statute is not narrowly tailored.

Brown says that because his failure to timely pay taxes was "without fault or intention," the statute "sweeps too broadly in snaring the innocent candidate along with the scofflaw." App. Br. 40-41. Brown proposes that the state's interests would be better served by giving candidates notice and an opportunity to cure their delinquency prior to "unceremoniously removing [a candidate's] name from the ballot." App. Br. 41.
But Brown is incorrect in asserting that strict scrutiny requires some type of notice process before removing a candidate's name from the ballot. First of all, § 115.346 prevents a person's name from being placed *on* the ballot, so it is not accurate to say that there should be notice before a candidate's name is removed from the ballot.

Second, § 115.346 clearly gives every candidate the opportunity – up to and including the last day to file a declaration for candidacy – to investigate and settle up his arrearages with the city. For some candidates who file their declarations for candidacy early, like Brown, they may have approximately three weeks after taxes are due to call the county collector and insure that their city taxes and fees were timely paid. This demonstrates that § 115.346 is narrowly tailored to achieve the state's goals.

Finally, § 115.346 prevents the electorate from throwing away their votes on a candidate who will later be deemed ineligible to be elected to office under § 79.250 because of the city taxes or municipal fees he owes. **Section 115.346 effectively prevents would-be candidates who owe city taxes and user fees from having their**

names placed on the ballot. This, in turn, prevents the city from having to prevent a candidate from taking office because he owes taxes or user fees. ***See State ex rel. Selsor v. Grimshaw,*** **762 S.W.2d 868 (Mo. App. E.D. 1989).** Thus, § 115.346 is narrowly tailored to achieve compelling state interests, and can be upheld as such.

CONCLUSION

For the reasons stated above, this court should affirm the circuit court's judgment, enter an Order quashing the Alternative Writ of Mandamus issued on February 24, 2004, and Order Respondent Chrismer to remove Brown's name from the April 6, 2004 ballot for mayor of the City of St. Peters.

Respectfully submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

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