SC96683

IN THE SUPREME COURT OF MISSOURI

R.M.A. (a minor child), by next friend
RACHELLE APPLEBERRY

Appellant,

vs.

BLUE SPRINGS R-IV SCHOOL DISTRICT and
BLUE SPRINGS SCHOOL DISTRICT BOARD OF EDUCATION

Respondents.

Appeal from the Circuit Court of Jackson County
The Honorable Marco A. Roldan, Circuit Judge

BRIEF *AMICUS CURIAE* OF THE STATE OF MISSOURI, AS OF RIGHT, IN SUPPORT OF RESPONDENTS

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

As the State's chief legal officer, the Attorney General files this *amicus* brief on behalf of the State as of right. Sup. Ct. R. 84.05(f)(4). The State has a strong interest in the correct interpretation of the statutes passed by the General Assembly and in maintaining the predictability and consistency of the rule of law. R.M.A. argues that the public-accommodation proscription of the Missouri Human Rights Act (MHRA) applies against the government. The State submits this brief because, whatever the policy merits are of applying the public-accommodation proscription against the government, the legislature did not do so. R.M.A. advances an incorrect interpretation of the MHRA that would upend settled interpretive principles and hinder the predictability that flows from consistent application of textual canons.

If this Court were to reach the merits of this dispute, Respondents should prevail for the reasons stated in the government's brief in *Lampley v. Missouri Commission on Human Rights*, SC96885. But this Court need not and should not decide the merits, because local government entities do not constitute "person[s]" within the meaning of the public-accommodation provision of the MHRA. §§ 213.010(14), 213.065.2, RSMo.* The plain meaning

* Unless stated otherwise, all statutory references are to the Missouri Revised Statutes as supplemented through 2015, when R.M.A. filed the petition.

of the statute and relevant canons of construction confirm that R.M.A.'s interpretation of "person" lacks merit. This Court should resolve this appeal in Respondents' favor on that dispositive question of statutory interpretation.

On this question of statutory interpretation, R.M.A.'s burden is higher than the burden a plaintiff faces when suing a private defendant. This Court offers special solicitude to government defendants and will not apply a statute against the government without a "clearly manifest" statement from the legislature that the statute applies. Even if R.M.A.'s interpretation of the statute were arguable, R.M.A. could not meet that burden because the public accommodation proscription does not clearly and unambiguously apply against the government.

Well-established interpretive principles also undermine R.M.A.'s interpretation. First, the plain meaning of the definition of "person" in section 213.010(14) contradicts R.M.A.'s interpretation. The legislature easily could have included "political subdivisions" in that definition, but it did not do so. By contrast, in at least 36 other statutes, the legislature expressly defined "person" to include the government. But here the legislature omitted any mention of the government from the definition of "person" even as it—in the same section—expressly defined "employer" to include the government. Thus, both the ordinary and natural meaning of the statutory definition, and

powerful evidence of meaning from similar statutes, confirm that "person" in section 213.010(14) does not include governmental entities.

The rule against superfluous construction also weighs against R.M.A.'s interpretation. In the very same definitions section of the statute, the legislature defined "employer" expressly to include both "political and civil subdivisions" of the State, and "any person employing six or more persons within the state." § 213.010(7), RSMo. But if "any person" encompassed governmental entities, the legislature would not have needed to list the State and its political subdivisions separately as "employer[s]."

R.M.A.'s best counterargument fails in the face of another established principle of interpretation. Section 213.070 prohibits the government from, in relevant part, "discriminat[ing] on the basis of race, color, religion, national origin, sex, ancestry, [or] age, as it relates to employment." § 213.070(3), RSMo. R.M.A. contends that the modifier "as it relates to employment" pertains *only* to "age" and that the rest of the series bars discrimination in public accommodations. But the series-qualifier rule, which R.M.A. ignores, establishes that the modifier applies not only to "age," but also to "sex," "race," and all the other nouns. As the legislature has expressly recognized, the phrase in section 213.070 describes "an unlawful *employment* practice"; it does not extend the public *accommodation* proscription against the government. § 213.055.1(3), RSMo (emphasis added).

Whatever the policy merits or demerits are of the statute the General Assembly passed, the General Assembly did not apply the public-accommodation proscription against the State or its political subdivisions. The judgment of the trial court should be affirmed.

ARGUMENT

The proscription relating to public accommodation applies only to "persons," and the definition of that term excludes the government.

R.M.A. contends that the school district and the board of education, both governmental bodies, violated the statute that makes it unlawful "for any *person*" to deprive R.M.A. of the "full and equal use and enjoyment within this state of any place of public accommodation" because of R.M.A.'s sex. Appellant Br. 36–44; § 213.065.1–2, RSMo (emphasis added). R.M.A.'s argument fails because neither the District nor the Board is a "person" under the statute, and no similar provision applies against the government.

I. This Court will not apply a statutory provision against the government absent a "clearly manifest" statement by the General Assembly that it intended the provision to apply.

The National Employment Lawyers Association misstates the demanding burden R.M.A. faces when it asserts that "all reasonable doubts should be construed in favor of applicability." Amicus Br. Lawyers Assoc. 7 (citation omitted). The Lawyers Association accurately states the rule when a

plaintiff sues *private* defendants, but as even R.M.A. acknowledges, the rule is reversed for government defendants: This Court can apply the public accommodations proscriptions of the Missouri Human Rights Act against the Board and District only if the legislature clearly and unambiguously stated that the proscriptions apply against the government. "It is well-established in this state that the state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest." *Carpenter v. King*, 679 S.W.2d 866, 868 (Mo. banc 1984) (internal quotation marks, brackets, and citation omitted); Appellant Br. 38 (acknowledging that the *King* standard applies).

Multiple rationales justify this clear-statement rule. First, the government is unlike any other defendant. "The rule reflects the notion that the state is a unique entity in our society as the reservoir of the power and rights of all people. Narrowly construing the general provisions of a statute in favor of the state serves to preserve the state's sovereign rights and protect its capacity to perform necessary governmental functions." *King*, 679 S.W.2d at 868.

The rule is also necessary for a second reason. No plaintiff can sue the government—at any level—absent its express consent. Under federal law, political subdivisions like the Board and District have no sovereign

immunity. *See, e.g.*, *Jinks v. Richland Cnty.*, 538 U.S. 456, 466 (2003) ("[M]unicipalities, unlike States, do not enjoy a constitutionally protected immunity from suit."). But under Missouri law, the government enjoys immunity at every level. "[S]overeign immunity applies to the government *and* its political subdivisions unless waived or abrogated or the sovereign consents to suit." *Metro. St. Louis Sewer Dist. v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 921 (Mo. banc 2016) (emphasis added). This rule is all-encompassing and "applies to *all* suits against public entities." *Id.* (emphasis added). A court can impose liability against the government only if the legislature passes a statute waiving sovereign immunity and only if that waiver is "unequivocally expressed." *F.A.A. v. Cooper*, 566 U.S. 284, 290 (2012); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978); *accord Brentwood Glass Co., Inc. v. Pal's Glass Serv., Inc.*, 499 S.W.3d 296, 305 (Mo. banc 2016) ("Unless expressly waived by statute, sovereign immunity bars suit against the government or its subdivisions . . . ."); *Bellefontaine*, 476 S.W.3d at 921–22 (holding that immunity can be waived only "expressly").

In the light of this settled law, this Court cannot apply the relevant public accommodation proscription against the Board and District without the clearest statement by the legislature that it applies. If this Court has any doubt, it must rule "in favor of the [government]." *King*, 679 S.W.2d at 868.

II. The public-accommodation proscription does not apply to the government because the General Assembly intentionally excluded the government from the definition of "persons."

The ordinary and natural meaning of the MHRA's definition of "person" forecloses R.M.A.'s argument. The provision barring discrimination in public accommodations applies only to "person[s]," and the MHRA excludes the government from the definition of "person." Under the statute, "[p]erson" means "one or more individuals, corporations, partnerships, associations, organizations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized group of persons." § 213.010(14), RSMo. This definition never mentions the government, and for three reasons, the legislature's decision to omit reference to the government conveys an affirmative intent to exclude the government from coverage.

First, when the same statute mentions the government and "person" together, it employs those terms without overlap. In defining "employer," the legislature mentioned both the government and "person." "Employer" is defined as "the state, or any political or civil subdivision thereof, or any person employing six or more persons within the state." § 213.010(7), RSMo. If, as R.M.A. suggests, the word "person" already fully encompassed the government, defining "employer" to include both "person[s]" *and* "the state, or

any political or civil subdivision thereof" would be redundant. *Id.* R.M.A.'s argument fails because "[t]his Court must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language." *Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013).

Second, the legislature's decision to expressly mention the government when defining "employer" but to omit any reference to the government when defining "person" provides powerful evidence that the latter omission was intentional. *State ex rel. Goldberg v. Barber & Sons Tobacco, Inc.*, 649 S.W.2d 859, 861 (Mo. banc 1983). "It is well settled, in interpreting a statute, that the legislature is presumed to have acted intentionally when it includes language in one section of a statute, but omits it from another." *State v. Bass*, 81 S.W.3d 595, 604 (Mo. App. W.D. 2002). Courts routinely apply this principle when the inclusion and exclusion appear in separate sections of the same statute. *Id.*; *Russello v. United States*, 464 U.S. 16, 23 (1983). The principle carries even more force here because the inclusion and exclusion appear not only in the same statute, but also in the same *section* of the same statute.

Missouri courts have applied this principle in a scenario very similar to that presented here. Noting that other Missouri statutes expressly define "person" to include the government, the Court of Appeals held that a school district was not a "person" because the pertinent statute did not expressly

include the government. *St. Joseph Light & Power Co. v. Nodaway Worth Elec. Co-op., Inc.*, 822 S.W.2d 574, 577 (Mo. App. W.D. 1992).

Dozens of other statutes confirm that, when the legislature intends to include the government within the definition of "person," it does so expressly. In at least 36 other statutes, the General Assembly expressly defined the term "person" to include the government. *E.g.*, § 701.025(10), RSMo (defining "person" to include "the state of Missouri or any department thereof, or any political subdivision of this state"); § 260.818(6) (defining "person" to include the "state, municipality, commission, or political subdivision of this state"); §§ 32.385(4), 67.604(7), 189.010(5), 190.209(3), 190.300(5), 190.525(5), 194.210(20), 197.305(11), 230.360(17), 260.565(2), 260.1003(7), 315.005(7), 319.100(11), 393.298(6), 393.705(6), 394.020(2), 400.1-201(27), 402.130(6), 407.925(6), 407.1500(8), 409.1-102(20), 432.205(12), 436.218(9), 444.352(14), 444.510(13), 444.805(13), 447.503(10), 454.1503(19), 456.1-103(14), 469.401(9), 475.502(8), 577.161(2), 640.102(5), 644.016(15), RSMo (2017).

In stark contrast to these 36 statutes—and unlike the definition of "employer" in the same section, § 213.010—the legislature here omitted reference to the government in the definition of "person." That strong contrast supports a powerful inference that the legislature intended to exclude the government from the definition of "person" in section 213.010(14), and thus from the public-accommodation proscription of section 213.065.

Only once has a Missouri court applied the public-accommodation provision against a school district, and it did so only because the government failed to raise the argument that "person" excludes the government. *Doe ex rel. Subia v. Kansas City, Missouri Sch. Dist.*, 372 S.W.3d 43, 56 n.5 (Mo. App. W.D. 2012); *but see Pearson v. Koster*, 367 S.W.3d 36, 55 n.19 (Mo. banc 2012) (holding that the arguments of the parties do not justify misapplying a statute). That R.M.A. cannot point to a long history of applying the public-accommodation proscription against the government is telling. That provision does not apply against the government because the government is not a "person" under the MHRA.

III. The provision in section 213.070 barring discrimination because of sex applies to the government only in its capacity as an employer, not in all capacities.

R.M.A.'s principal counterargument rests on section 213.070. That section provides: "It shall be an unlawful discriminatory practice . . . [f]or the state or any political subdivision of this state to discriminate on the basis of race, color, religion, national origin, sex, ancestry, age, *as it relates to employment*, disability, or familial status as it relates to housing." § 213.070(3), RSMo (emphasis added).

R.M.A. argues that the modifier "as it relates to employment" applies only to the noun "age," not to race, color, religion, national origin, sex, or

ancestry. Appellant Br. 38. R.M.A. thus contends that the prohibition against sex discrimination applies against the government in more than its capacity as an employer under section 213.070(3), even if nothing else in the MHRA suggests such a broad application against the government. *Id.* R.M.A.'s argument fails because the legislature expressly recognized that the phrase in section 213.070(3) describes "an unlawful *employment* practice." Moreover, R.M.A.'s argument contradicts well-established principles of textual interpretation and at least four decisions of the Court of Appeals.

First, R.M.A.'s argument fails because the legislature has stated that this phrase describes "an unlawful employment practice." R.M.A. fails to mention that the same pertinent phrase appears not only in section 213.070, but also in section 213.055. There, the legislature declared that "to discriminate against[] any individual because of his or her race, color, religion, national origin, sex, ancestry, [or] age as it relates to employment" is "an unlawful *employment* practice." § 213.055.1(3), RSMo (emphasis added). Thus, the legislature expressly stated that the phrase on which R.M.A.'s argument rests refers to employment discrimination, not discrimination in any capacity.

Second, R.M.A.'s argument conflicts with established principles of statutory interpretation. Without identifying authority for the argument, R.M.A. asks this court to apply the "last-antecedent rule," which states that a

qualifier often applies to the most recent noun or verb. *Spradling v. SSM Health Care St. Louis*, 313 S.W.3d 683, 688 (Mo. banc 2010). But another rule of interpretation, the "series-qualifier" rule, supersedes the last-antecedent rule when the modifier follows a list or series of parallel nouns. "Where several words are followed by a clause as much applicable to the first and other words as to the last, the clause should be read as applicable to all." *Id.* In short, the last-antecedent rule gives way to the series-qualifier rule when the statute includes a "parallel construction that involves all nouns or verbs in a series." *Series-Qualifier Canon*, *Black's Law Dictionary* (10th ed. 2014).

This Court routinely applies this rule instead of the last-antecedent rule when the statute involves a series or list of similar nouns. Faced with a statute that defined "accounting officer" to mean "the county clerk, county comptroller, county auditor, accountant or other officer or employee keeping the principal records of the county," this Court expressly rejected the last-antecedent rule and applied the modifier "keeping the principal records" not only to "other officer or employee," but also to "county clerk, county comptroller," and so on. *Spralding*, 313 S.W.3d at 687–88 (citation omitted). Likewise, when construing a statute that defined a "legally qualified health care provider" as somebody "actively practicing or within five years of retirement from actively practicing substantially the same specialty as the defendant," this Court held that the modifier "substantially the same

specialty" applied to both those "actively practicing" and to those "within five years of retirement." *Id.*

Similarly, the U.S. Supreme Court routinely applies the series-qualifier rule, not the last-antecedent rule, where a statute enumerates a list of parallel nouns or verbs. Construing a statute that imposed criminal liability on a person "who receives, possesses, or transports in commerce or affecting commerce . . . any firearm," the U.S. Supreme Court expressly rejected the last-antecedent rule and held that the modifier "in commerce or affecting commerce" applied not only to "transports," but also to "receives" and "possesses." *United States v. Bass*, 404 U.S. 336, 338, 341 (1971). Similarly, the court distributed the phrase "not domiciled in Porto Rico" to every noun in the phrase "citizens or subjects of a foreign state or states, or citizens of a state, territory, or district of the United States not domiciled in Porto Rico." *Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 347 (1920). As the court held, "[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Id.* at 348; *see also Paroline v. United States*, 134 S. Ct. 1710, 1721 (2014) (rejecting the last-antecedent rule where the statute included a list of parallel nouns).

The series-qualifier rule applies here. The beginning of section 213.070 recites a list of nouns. Each noun has the same parallel structure. The

qualifier "as it relates to employment" can apply just as much to one noun as to all preceding nouns. Under these circumstances, the series-qualifier rule establishes that this Court should distribute the modifier "as it relates to employment" not only to "age," but also to "sex," "race" and the other preceding terms.

This construction not only makes sense grammatically; it also conforms to the purpose of the statute. *See Spradling*, 313 S.W.3d at 688 (instructing courts to consider the grammatical construction in the light of "legislative intent"). In dozens of other statutes, the legislature defined "person" to include the government. But it deviated from that practice in section 213.010 even as it expressly defined another term in the same section to include the government. The legislature carefully ensured that the anti-discrimination provisions would apply to the government in its capacity as an employer but declined to subject the government to suits about public accommodation. It would be odd for the General Assembly to so carefully avoid applying the public accommodations provision, § 213.065, to the government only to accidentally do so in a later provision. This Court should reject R.M.A.'s contention not only because the best grammatical reading distributes the modifier across each noun, but also because R.M.A.'s argument conflicts with this Court's presumption that the General Assembly does not undermine its

own statutory purposes. *See Dierkes v. Blue Cross & Blue Shield of Mo.*, 991 S.W.2d 662, 669 (Mo. banc 1999).

For these reasons, at least four decisions of the Court of Appeals have rejected R.M.A.'s interpretation of this statute. "[S]ection 213.070," the Court of Appeals has determined, "prohibits discrimination in employment, disability, and housing." *Coleman v. Carnahan*, 312 S.W.3d 377, 380 (Mo. App. E.D. 2010). Contrary to R.M.A.'s interpretation of that section, *Coleman* did not hold that section 213.070 applies to all forms of sex discrimination. It instead distributed the phrase "as it relates to employment" to each of the first seven nouns and held that these terms cumulatively prohibited "discrimination in *employment*." *Id.* (emphasis added). On at least three other occasions, the Court of Appeals has done the same. *Korando v. Mallinckrodt, Inc.*, 239 S.W.3d 647, 650 n.2 (Mo. App. E.D. 2007) (distributing the qualifier "as it relates to employment" to the previous noun "sex"); *McCullough v. Commerce Bank*, 349 S.W.3d 389, 397 (Mo. App. W.D. 2011) (citing the modifier to support the conclusion that "the legislature sought to prohibit any consideration of race or other improper characteristic no matter how slight *in employment decisions*" (emphasis added)); *McBryde v. Ritenour Sch. Dist.*, 207 S.W.3d 162, 170 (Mo. App. E.D. 2006) (same).

R.M.A. relies solely on a single decision issued after these four decisions. There, the Court of Appeals interpreted section 213.010(5), which

was identical to section 213.070 except for a single comma. The court held that "[t]he phrase 'as it relates to employment' limits *only* age discrimination claims to the employment context." *Doe ex rel. Subia v. Kansas City, Missouri Sch. Dist.*, 372 S.W.3d 43, 50 (Mo. App. W.D. 2012). The court offered no support for that conclusion. It did not acknowledge the long line of authority applying the series-qualifier canon. Nor did it recognize that its decision conflicted with at least four previous decisions.

Doe is incorrect and unpersuasive. The last-antecedent rule does not apply because the statute includes a series or list of parallel nouns. The more specialized series-qualifier rule establishes that the modifier applies to each noun that precedes the modifier. And that interpretation conforms to the legislature's purpose of excluding the government from the definition of "person."

All these reasons establish that the provision in section 213.070 applies to the government only in its capacity as an employer. But even if R.M.A. and *Doe*'s interpretation were the best reading of the statute, affirming the trial court would still be necessary. This Court can apply the contested provisions against the government only if the legislature's intention to apply the public-accommodation proscription against governmental entities is "clearly manifest." *King*, 679 S.W.2d at 868. That the Court of Appeals has rejected

R.M.A.'s argument at least four times means—at the very least—that the statute does not clearly and unambiguously support R.M.A.'s interpretation.

IV. Each of the other counterarguments fail.

R.M.A. argues that this Court must apply the public-accommodations provision to governmental entities because the statute includes government buildings as places of public accommodation. Appellant Br. 39. To be sure, "[p]laces of public accommodation" is defined to include "[a]ny public facility owned, operated, or managed by or on behalf of this state or any agency or subdivision." § 213.010(15), RSMo. But R.M.A. confuses the difference between *whom* the MHRA covers with *where* the law applies. Governments are not the only ones who use school facilities. Nearly all Missouri schools allow private organizations to use school facilities before or after hours. Pub. Health Law Ctr., *Missouri Community Use of School Property* (2015), http://goo.gl/9W2Ai2. About 93 percent of Missouri schools permit private organizations to use school gymnasiums. *Id.* fig. 1. Two-thirds of schools allow private organizations to use school cafeterias. *Id.* R.M.A. contends that listing schools as "places of public accommodations" would be meaningless if the provision about public-accommodation discrimination did not apply against school districts and boards. Appellant Br. 39. But listing schools as "places of public accommodations" serves a straightforward purpose: It

prevents private organizations from discriminating while using public facilities.

The Lawyers Association attempts a different form of argument. It asserts that "person" in section 213.010(14) includes the government because "person" includes groups of "individuals." Amicus Br. Nat'l Emp. Lawyers Assoc. 8. That argument suffers from several deficiencies. For one thing, it cannot overcome the stark contrast the legislature drew when it omitted any mention of the government from the definition of "person" but defined "employer" to include "the state . . . *or* any person." § 213.010(7), RSMo (emphasis added). More importantly, the argument fails because the District and the Board are not conglomerates of "individuals." Although the Board and District operate *through* individuals, "the state is a unique entity in our society as the reservoir of the power and rights of all people." *King*, 679 S.W.2d at 868. When a person sues an officer in her official capacity, for example, that suit is "not a suit against the official but rather is a suit against the official's office[, which] is no different from a suit against the State itself." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). The Lawyers Association ignores the fundamental difference between a governmental organization and a private organization: The government, as sovereign, is distinct from the individuals who comprise it. When R.M.A. sued

the Board and the District, R.M.A. sued sovereign government bodies, not collections of individuals.

The Lawyers Association's similar argument that "person" encompasses the District and the Board because each is a "corporation" likewise fails. Amicus Br. Lawyers Assoc. 9. True, school districts and boards are "public corporations." *E.g.*, *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 828 (Mo. banc 2013) (citation omitted). But as this Court has held, the term "corporation" in a statute refers only to private, not public corporations. "Unless otherwise specified, where the term 'corporation' is used in our statutes and Constitution it uniformly refers to private or business organizations, not to public corporations." *State ex rel. Ormerod v. Hamilton*, 130 S.W.3d 571, 572 (Mo. banc 2004). The public-accommodation proscription would apply against the government only if the definition of "person" included "public corporations," which it does not.

The Lawyers Association asks this Court to ignore *Ormerod* because it believes one of the decisions on which *Ormerod* relied does not support the holding in *Ormerod*. Amicus Br. Lawyers Assoc. 12–14. The Lawyers Association has provided no compelling reason to overrule *Ormerod*. Indeed, overruling *Ormerod* would be counterproductive because other statutes make clear that the legislature understands that "corporation" refers only to private organizations. When the legislature wants to cover both private and

public corporations, it uses *both* the term "corporation" and "public corporation." *E.g.*, § 454.1503(19) ("'Person' means an individual, *corporation*, . . . limited liability company, . . . *public corporation*, [or] government or governmental subdivision . . . ." (emphasis added)); §§ 32.385(4), 194.210(20), 260.1003(7), 400.1–201(27), 402.130(6), 407.1500(8), 409.1–102(20), 432.205(12), 436.218(9), 447.503(10), 456.1–103(14), 469.401(9), 475.502(8), RSMo (2017). If, as the Lawyers Association suggests, "corporation" included public and private corporations, the legislature would not need to designate both. The legislature's drafting choices conveys its understanding that "corporation" refers only to private organizations.

Finally, R.M.A. relies on the statute about the procedure for complaints, contending that the government must be a "person" because the procedural statute states that a plaintiff should list the name of a "person" on the complaint. Appellant Br. 41 (citing § 213.075.1, RSMo). But R.M.A. overlooks that the MHRA covers not just employers, but supervisors whom a plaintiff can name in a complaint. § 213.010(7), RSMo; *See Leeper v. Scorpio Supply IV, LLC*, 351 S.W.3d 784 (Mo. App. S.D. 2011). The complaint procedure also provides an opportunity to "join" or "substitute" a respondent when a person cannot name the proper respondent on the complaint form. § 213.075.4, RSMo. The form itself also clearly provides space to list the

"State or Local Government Agency That . . . Discriminated." LF 17. Nothing on the form prohibits a plaintiff from listing all necessary information.

Even if R.M.A.'s interpretation were correct, it would carry little weight. Section 213.075 outlines only the complaint procedure. It does not purport to affect substantive rights. In those statutes that do concern the substantive reach of the MHRA, the legislature carefully defined the term "person" to exclude the government.

R.M.A. can prevail only if the public accommodations provision clearly and unambiguously applies to the government. Appellant Br. 38 (citing *King*, 679 S.W.2d at 868). Because it does not, this Court must resolve all doubt "in favor of the [government]." *King*, 679 S.W.2d at 868.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the lower court.

March 27, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed and served electronically via Missouri CaseNet on March 27, 2018, to all counsel of record. The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 4,573 words.

/s/ *D. John Sauer*
First Assistant and Solicitor