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SC97544

IN THE SUPREME COURT OF MISSOURI

JAMES WILSON, et al., Plaintiffs/Appellees,

vs.

CITY OF ST. LOUIS, et al., Defendant/Respondent

Appeal from the Circuit Court of St. Louis City, Missouri
The Honorable Michael F. Stelzer, Circuit Judge

BRIEF OF APPELLANT STATE OF MISSOURI

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JURISDICTIONAL STATEMENT

The case before the Court involves the constitutional validity of §§ 82.485 and 82.487, RSMo. Because this action involves the constitutionality of legislative action of the General Assembly it is within the Court's exclusive jurisdiction pursuant to Article V, § 3 of the Missouri Constitution.

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STATEMENT OF FACTS

At issue in this appeal is the constitutionality of §§ 82.485 and 82.487, RSMo. ("Parking Statutes"); App 35-38. The Parking Statutes are legislation initially enacted in 1951. See L. 1951, p. 347, §§ 1, 2. Section 82.485.1 provides that "The treasurer of any city not within a count is hereby made and constituted supervisor of parking meters." Subsections 2, 3, and 4 of § 82.485 describe the duties of the supervisor of parking meters, and of the Parking Commission. Subsection 4 of § 82.485 sets forth who must serve on the Parking Commission. Section 82.487 pertains to the Parking Commission and the Treasurer, as supervisor of parking meters, and sets forth the duties for each.

Plaintiffs James Wilson and Charles Lane, and Intervenor-Plaintiff Jeffrey Boyd ("Plaintiffs") filed a Petition for a declaratory judgment and permanent injunction in Count I of their respective Petitions against City of St. Louis ("City"), Defendants Tishaura O. Jones ("Treasurer"), State of Missouri ("State") and other defendants alleging that the Parking Statutes violate Mo. Const. Art. VI, § 22. Doc. 2, pgs. 1-7; Doc. 9, p. 1-7. Counts II through VI of the petitions were not directed to the State. *Id.*

The City filed a cross-claim against the State seeking a declaratory judgment that the Parking Statutes violate Mo. Const. Art. VI, § 22 and filed a motion for summary judgment Doc. 14-18. On April 5, 2018, the court granted City's motion for summary judgment on its claim for declaratory judgment, ruling that the Parking Statutes are unconstitutional and void in violation of Art. VI, § 22 of the Missouri Constitution because they create or fix the duties or powers of municipal offices of the City, namely, the Comptroller, the Chairperson of the Aldermanic Traffic Committee, and the Director of Streets. Doc. 21, pgs. 12-13; App 1-17.

In Count I of Plaintiffs' petitions in the underlying lawsuit, Plaintiffs sought declaratory judgment raising the same allegations concerning the Parking Statutes and moved for partial summary judgment. Doc. 56, p. 1. Plaintiffs also sought a permanent injunction. Doc. 57, p. 1. Upon agreement of the parties, the trial court consolidated the hearing on the merits with the preliminary injunction request pursuant to Rule 92.02(c)(3). Doc. 56, p. 2. The parties agreed to submit the case to the court based upon the pleadings, 19 stipulated exhibits and a Joint Stipulation. *Id.*

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The trial court granted Plaintiffs permanent injunctive relief, noting that in its April 5, 2018 Order it had previously held the Parking Statutes unconstitutional and void under Article VI, § 22 of the Missouri Constitution. Doc. 57, p. 2; App 26-34. Pursuant to Supreme Court Rule 74.01(b), the trial court found that there was no just reason for delay and certified the judgment as final for purposes of appeal. Doc. 57, p. 8; App 34.

On January 2, 2019, the trial court granted the City's motion to certify the court's orders and judgment dated April 5, 2018 and October 25, 2018 as final for purposes of appeal. Doc. 83, pgs. 1-2. The Treasurer and the State filed timely notices of appeal. Doc. 58, 61, 81.

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POINTS RELIED ON

I. The trial court erred in holding §§ 82.485 and 82.487 ("Parking Statutes") unconstitutional because the General Assembly has power to enact the Parking Statutes that apply to county entities in that they do not create or fix the powers and duties of municipal offices of any charter city as prohibited by Mo. Const. Art. VI, § 22 and thus, are not beyond the authority of the General Assembly.

City of St. Louis v. Doss, 807 S.W.2d 61, 62-63 (Mo. banc 1991)

State ex rel. McClellan v. Godfrey, 519 S.W.2d 4, 9 (Mo. banc 1975)

Mo. Const. Art. VI, § 22

§ 82.485 RSMo.

§ 82.487 RSMo.

II. The trial court erred in finding the Parking Statutes unconstitutional in their entirety because any unconstitutional provision of the Statutes is severable from the remainder of the Statutes, in that Missouri law creates a strong presumption of severability that was not overcome in this case, the remaining

portions of the Statutes are complete and susceptible of enforcement, and the remaining Statutes are such that the legislature would have enacted them had it known that the rescinded portions were invalid.

Dodson v. Ferrara, 491 S.W.3d 542 (Mo. 2016)

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§ 1.140 RSMo.

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SUMMARY OF THE ARGUMENT

The trial court erred in declaring the Parking Statutes unconstitutional because it misapplied Article VI, § 22 of the Missouri Constitution. While Article VI, § 22 prohibits statutes that impose duties upon the municipal officers of a charter city, under the facts here, the Treasurer's office is not a municipal office governed by the St. Louis City Charter. The Treasurer and the Parking Commission that the Treasurer supervises are "county" – not municipal – entities and not subject to the city charter. Therefore, the statutory duties and obligations imposed by the Parking Statutes do not implicate Article VI, § 22. Moreover, the plain meaning of the statutory language and the presumption of constitutional validity cannot be overcome.

Finally, the statute gives the city—acting as county—some input by including the Comptroller, the Chairperson of the Aldermanic Traffic Committee, and the Director of Streets on the Parking Commission. To the extent this Court finds any merit to the constitutional challenge, it should go no further than to sever these provisions of the statute while upholding the remaining provisions of the statute.

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ARGUMENT

Standard of Review

The constitutionality of a statute is a question of law subject to *de novo* review. *Hodges v. City of St. Louis*, 217 S.W.3d 278, 279 (Mo. banc 2007). The legal arguments herein were preserved in the trial court below in the briefing on the parties' motions for summary judgment. Doc. 19 pgs. 1-16; 39 pgs. 1-14.

I. The trial court erred in holding §§ 82.485 and 82.487 ("Parking Statutes") unconstitutional because the General Assembly has power to enact the Parking Statutes that apply to county entities in that they do not create or fix the powers and duties of municipal offices of any charter city as prohibited by Mo. Const. Art. VI, § 22 and thus, are not beyond the authority of the General Assembly.

A. The Parking Statutes established the Treasurer and Parking Commission.

The Treasurer exists by virtue of Missouri state statutes. *See, e.g.,* § 82.490 RSMo. (fixing the salary and the elected term of the City Treasurer). The Treasurer's Office is not a subdivision or branch of the City or municipal government that is established or governed by the City's Charter. The Treasurer's Office accordingly has its own payroll,

its own employees, and its own code of conduct. Likewise, the salaries of the employees of the Treasurer's Office are paid for, not from the City tax revenues, but, rather, from the money that the Treasurer's Office generates from parking meters, parking garages, and parking tickets.

Section 82.485.1 provides that 'The treasurer of any city not within a county is hereby made and constituted supervisor of parking meters." Subsection 2 states, in part, that it shall be the Treasurer's duty to "establish and supervise a parking division to enforce any statute or ordinances now or hereafter established pertaining to the parking of motor vehicles, including automated zone parking and all other parking functions, and to make all disbursements on any parking contracts, including employment, consulting, legal services, capital improvement and purchase of equipment and real property which may hereafter be made." Subsection 3 requires the Treasurer, as supervisor of parking meters, to establish and maintain a parking meter fund. The Parking Statutes provide for the creation of the Parking Commission and expressly state that such Commission shall be "supervised" by the City Treasurer. § 82.485.4 RSMo; App 35-36.

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The Treasurer serves as the Supervisor of Parking Meters and is charged with the responsibility of installing, maintaining, and repairing parking meters, and also has the duty to collect parking meter fees. § 82.485.2 RSMo. At all times relevant to this matter, the Treasurer's duties have also included "establish[ing] and supervis[ing] a parking enforcement division and a parking meter division to enforce any statute or ordinances now or hereafter established pertaining to the parking of motor vehicles...." *Id.*

The Treasurer is also the appointed "Chairperson" of the Parking Commission. § 82.485.4 RSMo. The other members of the Parking Commission are the chairperson of the aldermanic traffic committee (a member of the Board of Alderman), the Director of Streets (a representative of the Mayor), the Comptroller, and the Director of Parking Meter Operations. *Id.* As Chairperson of the Parking Commission, the Treasurer has the authority to issue revenue bonds and pledge parking division and other revenues for the purpose of capital improvements and debt service. § 82.485.3 RSMo. The Treasurer is further authorized and required to establish and maintain a Parking Meter Fund, and any other funds deemed to be necessary to

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provide for public parking. § 82.485.4 RSMo. Under the oversight of the Parking Commission, the Treasurer has the statutory authority to "make and pay contracts and other obligations." § 82.485.2 RSMo.

B. Mo. Const. Art. VI, § 19(a) permits the enactment of statutes that limit or deny the exercise of a charter power.

The Missouri Constitution specifically permits the enactment of statutes that limit or deny the exercise of a charter power in Article VI, Section 19(a). Article VI, Section 19(a), establishes a hierarchy under which constitutional charter cities may operate:

> Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, *provided such powers* are consistent with the constitution of this state and *are not limited or denied* either by the charter so adopted or *by statute.*

Mo. Const. Art. VI, §19(a) (emphasis added); App 39-40.

Under this hierarchy, "the emphasis is whether the exercise of that [home rule] power conflicts with the Missouri Constitution, State

statutes or the charter itself... Once a determination of conflict between a constitutional or statutory provision and a charter or ordinance provision is made, the State law provision controls." *Cape Motor Lodge, Inc. v. City of Cape Girardeau,* 706 S.W.2d 208, 211 (Mo. banc 1986). *See also State ex inf. Hannah v. City of St. Charles,* 676 S.W.2d 508, 513 (Mo. banc 1984) ("Under §19(a), a constitutional charter city is prohibited from exercising its home rule power in a manner that is inconsistent with a State statute").

C. Mo. Const. Art. VI, § 22 prohibits the General Assembly from enacting any statute "creating or fixing the powers, duties or compensation of any municipal office" of any charter city but it does not negate statutes that apply to charter cities.

Article VI, § 22 of the Missouri Constitution prohibits the General Assembly from enacting any statute "creating or fixing the powers, duties or compensation of any municipal office" of any charter city. As stated in the Constitution:

> No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution, and all

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such offices or employments heretofore created shall cease at the end of the terms of any present incumbents.

Mo. Const. Art. VI, § 22; App 41. There is no dispute that the City of St. Louis is a constitutional charter city.

This provision of our State Constitution thus prohibits the Missouri General Assembly from enacting statutes "creating or fixing the powers, duties or compensation of any municipal office … for any city framing or adopting its own charter…." *Id.* Nothing in Article VI, Section 22 of the Missouri Constitution elevates the charter powers of the City of St. Louis above the General Assembly's power to enact statutes or has the effect of allowing the City to pre-empt or exclude the enactment of statutes related to municipal powers. Statutory limitations and provisions operate at a wholly different level - a higher level - than the charter and represent the retained power of the State to enact statutes (by the Legislature or through initiative petition) which limit or deny powers to the charter city. Accordingly, whatever limitations that Article VI, Section 22 may impose relative to city charters, those limitations do not negate or void the effect of Article VI, Section 19(a) that empowers the State to enact statutes limiting or

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denying powers to charter cities. *State v. Williams*, 548 S.W.3d 275, 280 n.5 (Mo. banc 2018) (explaining that constitutional provisions should be read in harmony). Rather, when a statute denies a power to a charter city or limits a power of the charter city, it abrogates or supersedes the power by higher authority. *See, e.g., City of St. Louis v. Doss,* 807 S.W.2d 61, 63 (Mo. banc 1991) (later enacted statute which conflicts with city provision supersedes the provision and renders the provision unlawful).

D. Mo. Const. Art. VI, § 22 does not prohibit the enactment of the Parking Statutes that create or impose additional duties on "county offices" of the Treasurer and Parking Commission.

The Treasurer is not a "municipal office of a city" but, rather, is a "county" office. *State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854, 856 (Mo. 1943). The Parking Statutes – that are administered by the Treasurer and by the Parking Commission it supervises – do not create or fix duties for "a municipal office of a city that has adopted its own charter." As a result, the Parking Statutes do not violate or contravene the terms of Mo. Const. Art. VI, § 22.

This Court most recently addressed the scope and applicability of Art. VI, § 22 in its opinion in *City of St. Louis v. Doss*, 807 S.W.2d 61,

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62-63 (Mo. banc 1991), and the decision in *Doss* is dispositive. Similar to the argument made in the trial court, the City of St. Louis in *Doss* claimed that certain Missouri statutes unconstitutionally imposed certain duties upon a charter city in violation of Mo. Const. Art. VI, § 22. *Id.* at 61-62.

The specific statutes that the City sought to invalidate in *Doss* were those that govern the office of the City License Collector, namely, Sections 82.340 and 82.410, RSMo. This Court noted that the City's License Collector's Office has been "created by statute pursuant to § 82.340." *Id.* at 61. In seeking to invalidate those statutes, the City filed a lawsuit against Stephen Doss, the duly appointed License Collector for the City of St. Louis. Similar to the claim now pending before this Court against the Treasurer's Office, the City in *Doss* claimed that the statute governing the License Collector's Office was invalid because it imposed upon the City Comptroller certain duties and restrictions, allegedly in violation of Mo. Const. Art. VI, § 22. *Id.* at 62-62.

This Court rejected the City's argument and upheld as valid the State statutes that the City had sought to challenge. In *Doss,* this

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Court drew a distinction between "municipal offices" and "county offices." As stated by the Court: "The key to the applicability of [a]rt. [VI], § 22, is the distinction between municipal offices and county offices." *Id.* at 63. The trial court failed to fully consider this key factor when it examined Mo. Const. Art. VI, § 22.

Mo. Const. Art. VI, § 22 prohibits the legislative enactment of State statutes that create or impose additional duties on "municipal offices" but does not prohibit the legislative enactment of State statutes that create or impose additional duties on "county offices." *Id.* "The constitutional provision [Art. VI, § 22] covers only municipal offices for any city." *Id.* (quoting *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 9 (Mo. banc 1975)). In *McClellan*, the office of the City's License Collector was a "county office," not a "municipal office," and, therefore, the constitutional prohibition of Mo. Const. Art. VI, § 22 against laws that create additional duties for municipal offices did not apply to the City's License Collector. *Id.* This Court rejected the attempt to invalidate Sections 82.340 and 82.410, RSMo, and it did so because "[t]he constitution contains no prohibition against the legislature assigning a

state or *county official* the responsibility to issue licenses and collect license taxes for a municipality." *Id.* (emphasis added).

Doss holds that the prohibition under Mo. Const. Art. VI, § 22 applies to "municipal," not "county" offices. *Doss* controls so long as the Treasurer's Office, like the License Collector's Office, is a "county office" rather than a "municipal office." *Id.* According to Missouri statutes and case law, the Treasurer's Office is a "county office," not a "municipal office." Indeed, this Court has so ruled, and done so repeatedly. *State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854, 856 (Mo. 1943) (the office of City Treasurer was a "county", not "municipal" office, and, therefore, "that part of the [City] charter fixing the Treasurer's salary is void, it being repugnant" to Missouri statute); *State, on Inf. of McKittrick v. Dwyer*, 124 S.W.2d 1173, 1176 (1938) ("The word 'county' … includes the City of St. Louis, and the [City's] mayor was without authority to appoint respondent to the office of treasurer of the City of St. Louis"). Thus, the trial court's invalidation of the Parking Statutes should be rejected. *Doss,* 807 S.W.2d at 63; *see also Preisler v. Hayden*, 309 S.W.2d 645, 649 (Mo. 1958) (Missouri Supreme Court rejected constitutional challenge under Mo. Const. Art. VI, § 22 to State statutes

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establishing duties of City License Collector, and the Court did so for the reason that "the office of License Collector must be classed as a county office" such that Art. VI, § 22 did not apply).

Additional support for the constitutionality of the Parking Statutes is found in *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo. banc 1975), where the Board of Election Commissioners for the city of St. Louis challenged as unconstitutional the statutory scheme creating the office of City Medical Examiner. *Id.* at 5. In *McClellan*, the statutes were enacted to abolish the office of county coroner in certain classes of counties and to create the office of county medical examiner. One of the issues before this Court was whether the statute was unconstitutional as imposing an unlawful responsibility on the mayor of St. Louis City because the statute "imposes on, or allows, the mayor the right not only to call the election but to appoint a medical examiner and to fix the latter's compensation." *Id.* at 9. It was argued that the statutes unconstitutionally interfered with the exercise of the duties of a municipal office of the city of St. Louis, a charter city. *Id.* Citing *Stemmler v. Einstein,* 297 S.W.2d 467 (Mo. banc 1956), and *Preisler v. Hayden*, 309 S.W.2d 645 (Mo. 1958), this Court ruled that it

had been already determined that the status of a county office or county officer was not subject to the restrictions found with regard to duties of a municipal office in a charter city. *McClellan,* 519 S.W.2d at 9. This Court concluded that the office of Medical Examiner was a county office and it was replacing the county office of coroner. The Court emphasized that "[t]he activity of the mayor, called for by the Act, creates no constitutional violation because such activity does not involve the city of St. Louis in its capacity as a city but as a county. In that capacity the mayor is subject to the general laws of the state." *Id.* at 9. Therefore, "the city of St. Louis and the officers thereof come within the purview of §§ 58.700 and 58.765…." *Id.* at 10.

In so holding, *McClellan* distinguished the holding in *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791 (Mo. 1968), by clarifying that *Cervantes* dealt with city policemen and firemen in connection with city affairs. *McClellan,* 519 S.W.2d at 9. Here, the Treasurer and the city officers on the Parking Commission that the Treasurer supervises are acting in their capacity as county officers and are subject to the general laws of the State under the holding in *McClellan*. *McClellan* discussed the facts of *State v. Dwyer*, 124 S.W.2d 1173 (Mo. banc 1926), and noted

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there was a challenge to a statute regulating the election of county treasurers and that the statute included language referring to "counties." *McClellan*, 519 S.W.2d at 8. The Court stated that "[t]he fact that the statute's coverage was limited to counties of certain size with certain forms of government did not prevent the law from being one 'general in its character to the whole state.'" *Id.* at 8. (citation omitted).

Here, the trial court erred in applying *Cervantes* to the facts of this case. *Cervantes* is distinguishable because it involved a state law that allowed the mayor to appoint an arbitration board to resolve wage and condition-of-employment disputes between the mayor and city firefighters. *Cervantes,* 423 S.W.2d at 793. The Court noted that these were employment disputes between the mayor and the firefighters of the city. The mayor was determined to be a "municipal office" and not a county one. *Id.* at 794. Under *McClellan*, when there are State regulated activities that do not involve the city of St. Louis in its capacity as a city but as a county, the mayor and city officers are subject to the statute. Here, the Parking Statutes do not involve the city in its capacity as a city because they have general state-wide application and

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do not set duties between the mayor and city employees. Thus, the trial court erred when it failed to follow precedent concerning when city officials, including the mayor, are considered acting in their capacity as a county.

The trial court also erred in relying on *State ex rel. Sprague v. City of St. Joseph*, 549 S.W.2d 873 (Mo. 1977). Sprague challenged a state law that created, in every city with 15,000 or more residents, a three-member Board of Plumbing Examiners and installed as members the chairmen of the city's Board of Health and two plumbers appointed by the mayor. *Id.* at 875. The Court determined that the City of St. Joseph was, by law, *just a city and not also a county*, which is why the Court found the law unconstitutional. *Id.* at 877 (emphasis added). "[T]he only offices St. Joseph can have are municipal offices, it being a constitutional charter city. That being the case, the legislature cannot create or establish for St. Joseph a board of examiners of plumbers or say who its members shall be or their duties or compensation or who shall appoint them." *Id.* at 877. As *McClellan* demonstrates, the result turns on the specific facts that determine whether the city of St. Louis is acting in its capacity as a city or a county.

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"The state has the right in the exercise of the police power to prescribe a policy of general state-wide application which applied to special charter cities." *City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W.2d 65, 70 (Mo. 1974), (citing *Petition of City of St. Louis*, 166 S.W.2d 753, 755 (1954)). "Interference in the performance of the duties of the city officers, for the purpose of securing compliance with state policy, is not 'fixing the powers (or) duties' of a municipal office, which is what the constitution prohibits." *City of St. Louis*, 517 S.W.2d at 70. In enacting the Parking Statutes, the General Assembly exercised its police power in a general state-wide application to manage parking. Therefore, the trial court's judgment should be reversed.

E. The plain and ordinary meaning of the Parking Statutes gives effect to the General Assembly's intent to establish the Treasurer and Parking Commission as county entities to regulate parking.

"The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning." *Howard v. City of Kansas City*, 332 S.W.3d 772, 779 (Mo. banc 2011)(quoting *Farmers' & Laborers' Co-op*

Ins. Ass'n v. Director of Revenue,742 S.W.2d 141, 145 (Mo. banc 1987)); *see also* Matthew Davis, Note, *Statutory Interpretation in Missouri*, 81 Mo. L. Rev. 1127, 1128–29 (2016). The General Assembly is presumed to be aware of other laws when it legislates. *Turner v. School District of Clayton*, 318 S.W.3d 660, 667 (Mo. banc 2010). Therefore, it is presumed to be aware of the organization of St. Louis City offices under its charter.

Courts enforce statutes as they have been written, not as they might have been written. *Id.* at 667. The General Assembly might have written the Parking Statutes differently, but it did not. The legislative intent is clear—the Treasurer has the authority by the plain language of the statutes to "establish and supervise a parking enforcement division and a parking meter division to enforce any statute or ordinance . . . pertaining to the parking of motor vehicles . . . and all other parking functions, and to make disbursements on any parking contracts, including employment, consulting, legal services, capital improvement and purchase of equipment and real property…." Mo. Rev. Stat. § 82.485.2; App 35. Thus, this Court should reverse the trial court's ruling as to the unconstitutionality of the Parking Statutes.

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F. The Parking Statutes are presumed constitutional and any doubts regarding their constitutionality are construed in favor of constitutionality.

"[S]tatutes are presumed to be constitutional, and this Court is to construe any doubts regarding a statute in favor of its constitutionality." *McEuen v. Mo. State Board of Educ.*, 120 S.W.3d 207, 209 (Mo. banc 2003); *see also Rentschler v. Nixon*, 311 S.W.3d 783, 786 (Mo. banc 2010) ("A statute is presumed valid and will not be held unconstitutional unless it clearly contravenes a constitutional provision."); *Jackson County Sports Complex Auth. v. State*, 226 S.W.3d 156, 160 (Mo. banc 2007) ("laws enacted by the legislature and approved by the governor have a strong presumption of constitutionality."); *Gen. Motors Corp. v. Dir. of Revenue*, 981 S.W.2d 561, 566 (Mo. banc 1998) (The court must "adopt any reasonable reading of the statute that will allow its validity," and "resolve any doubts in favor of constitutionality."). Moreover, the burden of proving a clear and undoubted constitutional violation rests heavily on "[t]he person challenging the act . . . ." *Rentschler*, 311 S.W.3d at 786; *see also State v. Salter*, 250 S.W.3d 705, 709 (Mo. banc 2008).

Here, as demonstrated above, the burden of proving a clear and undoubted constitutional violation went unmet. As the decisions in *Doss* and *McClellan* demonstrate, the Parking Statutes do not "clearly and undoubtedly contravene the constitution" or "plainly and palpably affront fundamental law embodied in the Constitution" as they must in order for this Court to affirm the trial court's ruling. *See Smith v. Coffey*, 37 S.W.3d 797, 800 (Mo. banc 2001). The presumption of constitutional validity under the governing statutes and case law cannot be overcome. Thus, the trial court's judgment should be reversed.

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~~III.~~II. The trial court erred in finding the Parking Statutes unconstitutional in their entirety because any unconstitutional provision of the Statutes is severable from the remainder of the Statutes, in that Missouri law creates a strong presumption of severability that was not overcome in this case, the remaining portions of the Statutes are complete and susceptible of enforcement, and the remaining Statutes are such that the legislature would have enacted them had it known that the rescinded portions were invalid.

The trial court specifically ruled that the Parking Statutes violate Article VI, § 22 because they create or fix the duties or powers of municipal offices of the City, "namely, the Comptroller, the Chairperson of the Aldermanic Traffic Committee, and the Director of Streets." ("City Officers"). Doc. 21, pgs. 12-13; App 12-13. Even if this Court upholds the trial court's ruling, this Court should find that the trial court erred in failing to sever the unconstitutional provisions from the Parking Statutes. By statute, the strong presumption in favor of severability is set forth in § 1.140, RSMo.:

> The provisions of every statute are severable. If any provision of a statute is found by a court of

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> competent jurisdiction to be unconstitutional, the remaining provision of the statute are valid unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

"Upon a finding of invalidity as to one provision of a statute, courts are to presume that the legislature intended to give effect to the other parts of the statute that are not invalidated." *Dodson v. Ferrara*, 491 S.W.3d 542, 558 (Mo. 2016) (citing *Akin v. Dir. of Revenu*e, 934 S.W.2d 295, 300-301 (Mo. banc 1996)).

Here, the trial court determined that the Parking Statutes are unconstitutional because the statutes fixed the duties or powers of City Officers. The relevant part of the statute states:

> The supervisor of the parking meters shall each year

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> submit for approval to the board of aldermen, having first been reviewed by the parking commission, an operating budget .... The parking commission, which shall consist of the supervisor of parking meters as chairperson, the *chairperson of the aldermanic traffic committee, the director of streets, the comptroller and the director of the parking meter operations,* shall approve parking policy as necessary to control public parking, shall set rates and fees to ensure the successful operation of the parking division, and require a detailed accounting of parking division revenues from any agent or agency, public or private, involved in the collection of parking revenues.

§ 82.485.4. RSMo (emphasis added); App 35.

The trial court erred because "[t]his Court must uphold valid portions of a statute despite the invalidity of other portions when: (1) after separating the invalid portions, the remaining portions are in all respects complete and susceptible of constitutional enforcement; and

(2) the remaining statute is one that the legislature would have enacted if it had known that the rescinded portion was invalid." *Dodson*, 491 S.W.3d at 558. Even if the City Officers are unconstitutionally serving on the Parking Commission, which they are not, those requirements should be severed from the other provisions of the Parking Statutes so that the remainder need not be invalidated. The other provisions of the statutes are not "essentially and inseparably connected with, and so dependent upon" the City Officers serving the on the Parking Commission. § 1.140, RSMo. The Parking Commission can continue to operate with the Treasurer and the Director of Parking Meter Operations as members. The Parking Statutes are not "incomplete [or] incapable of being executed" without the City Officers. *Id.* Therefore, the trial court's judgment should be reversed.

CONCLUSION

For the foregoing reasons, the trial court's judgment should be reversed.

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