Summary of SC99098, *City of Maryland Heights, et al. v. State of Missouri*
Appeal from the Cole County circuit court, Judge Cotton Walker
Argued and submitted November 2, 2021; opinion issued February 15, 2022

Attorneys: The state was represented by Michael E. Talent of the attorney general's office in St. Louis, (573) 751-3321. The challengers were represented by Paul Martin of Kistner, Hamilton, Elam & Martin LLC in St. Louis, (314) 805-8800, and Howard Paperner of Howard Paperner PC in St. Louis, (314) 961-0097.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state appeals from a judgment finding a statute prohibiting officials from directly using public funds to advocate for, support or oppose a ballot measure or candidate for public office violates the First and Fourteenth amendments of the federal constitution. In a unanimous decision written by Chief Justice Paul C. Wilson, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case. The statute does not violate the First Amendment in that it regulates not an official's speech but rather the official's use of public funds to subsidize that speech. Furthermore, because the statute's terms can be understood by a person of ordinary intelligence, the statute is not vague such that it violates the due process clause of the Fourteenth Amendment despite the possibility of some uncertainty in marginal cases.

Facts: In 2019, several cities, mayors and elected city council members (collectively, the challengers) sought declaratory relief against the state alleging section 115.646, RSMo, is unconstitutionally vague and is an unconstitutional content-based restriction on free speech. Section 115.646 provides, in pertinent part: "No contribution or expenditure of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office." The challengers subsequently sought partial summary judgment (judgment on the court filings, without a trial), which the circuit court granted. The circuit court concluded section 115.646 regulates speech based on content and failed strict scrutiny because the state's purported interests were superficial and the statute was not narrowly tailored to protect those interests. The circuit court also found the statute is unconstitutionally vague because section 115.646's operative terms are indefinite and require retroactive determination that an individual's conduct violates the statute. The court then dismissed the remaining counts of the petition as moot. The state appeals.

VACATED AND REMANDED.

Court en banc holds: (1) Section 115.646 does not violate the First Amendment of the United States Constitution. The statute does not regulate, limit or prohibit the challengers' speech; rather, it regulates the use of public funds to subsidize the challengers' speech, merely prohibiting them from using public funds to facilitate or augment that speech. Even assuming the challengers are authorized to use public funds to subsidize speech they believe is in the best interest of their political subdivisions, the legislature has stripped such authority from them, and doing so does not violate the First Amendment.

(2) Section 115.646 does not violate the due process clause of the Fourteenth Amendment of the United States Constitution. The void for vagueness doctrine ensures that laws give fair and adequate notice of proscribed conduct and protects against arbitrary enforcement. The test in enforcing the doctrine is whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. Neither absolute certainty nor impossible standards of specificity are required in determining whether terms are impermissibly vague. The terms "ballot measure" and "advocate, support, or oppose" are commonly understood by a person of ordinary intelligence. And while there may be uncertainty in some cases, complete specificity is not required for due process purposes.