IN THE MISSOURI SUPREME COURT

GLENDALE SHOOTING CLUB, INC.,
A Missouri Non-Profit Corporation,

Plaintiff,

vs.

WILLIAM K. LANDOLT and JERI F. LANDOLT,
Husband and Wife,

Defendants.

Appeal No. SC 99701

On Appeal from the Circuit Court of Franklin Count
the Honorable Craig E. Hellman

BRIEF OF RESPONDENT

DANNA McKITRICK, P.C.
BY: /s/ David R. Bohm
David R. Bohm, #35166
Lauren L. Wood, #57808
7701 Forsyth Blvd., Suite 1200
St. Louis, MO 63105-3907
(314) 726-1000/(314) 725-6592
E-Mail: dbohm@dmfirm.com
lwood@dmfirm.com
ATTORNEYS FOR RESPONDENT

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STATEMENT OF FACTS

Plaintiff/Respondent, Glendale Shooting Club, Inc. ("Glendale") is a Missouri not-for-profit corporation in good standing. See ¶1 of Plaintiff's Statement of Uncontroverted Facts ("SOF"), L.F. 6 and Defendant's Response to Plaintiff's SOF ("SOF Response"), L.F. 15. Paul Fischer is currently Glendale's president (see ¶2 of the SOF and SOF Response, L.F. 6 and 15).

Glendale owns approximately 107 acres of land in Franklin County, Missouri, the legal description of which is as follows:

> All that part of the West fractional half of Section Eleven (11), Township Forty-two (42) North, Range One (1) East of the 5th P. M., lying East of the Meramec River and North of the right of way of the St. Louis and San Francisco Railroad, containing 106. 97 acres, according to survey by Jesse F. Ekey, County Surveyor, made July 9, 1920, and recorded in Surveyor's Record 9, Page 68, in the office of the Recorder of Deeds of Franklin County, Missouri.

("Glendale Property"). (see ¶3 of the SOF and SOF Response, L.F. 6 and 15).

Defendants/Appellants, William K. Landolt and Jeri F. Landolt, husband and wife ("Landolts"), own an approximately 78-acre tract of land in Franklin County, Missouri on which their home and outbuildings sit, and which lies immediately to the east of Plaintiff's property ("Landolt's Property"). (see ¶5 of the SOF and SOF Response, L.F. 6 and 15). Defendant Landolts' property is known and numbered as 2917 Meramec Terrace Rd., Robertsville, MO 63072. (see ¶6 of the SOF and SOF Response, L.F. 6 and 15).

There are currently five separate firearm ranges on Glendale's Property. These include a range limited to pistols and .22 caliber rimfire rifles (which is the range located closest to the Landolts' property), three multi-purpose 50-yard ranges, and a 200-yard rifle range (which is farthest away from the Landolts' property). (See ¶ 7 of the SOF, L.F. 6 and ¶6 of the Fischer Affidavit, L.F. 7).[1]

On or about February 2, 1987, The Franklin County Circuit Court, in case no. CV183-501CC, entered Judgment in favor of the former owners of the Landolt Property (whose last name was Racine), which, among other things, enjoined certain uses of Glendale's Property, as follows:

> (A) The shooting or discharging of firearms before 9:00 a.m. or after dark or 6:00 p.m. (whichever sooner occurs) is prohibited;
>
> (B) The Defendant (Glendale Shooting Club) shall be restricted to no more than ten (10) shooting matches per year involving in total thirteen (13) days, which may include not more than two (2) 2-day high-power rifle matches with no more than twenty (20) persons permitted to shoot at one time therein;
>
> (C) There shall be no more than two (2) matches in any one calendar month and these shall be held on no more than one Sunday in any one month;
>
> (D) No more than eight (8) persons shall be shooting at one time during any pistol match;

[1] In their response to Glendale's SOF, the Landolts denied this allegation on the basis of lack of knowledge. However, this is not an appropriate basis for a denial of a factual allegation in a summary judgment motion and should therefore be deemed admitted.

> (E) There shall be no shooting or discharging of firearms by groups of more than eight (8) persons at any time other than during a rifle match;
>
> (F) There shall be no shooting or discharging of shotguns or firearms of a caliber greater than a .22 firearm (short- or long-range ammunition, standard velocity only) except between the hours of 9:00 a.m. and 6:00 p.m.on Tuesdays, Thursdays, and Saturdays, and during a rifle match;
>
> (G) That all shooting matches shall be supervised by a trained range (safety) officer to ensure proper and safe shooting at all times…

(See ¶8 of the SOF, L.F. 6, and Ex. 4 to the SOF, L.F. 9).

The injunction entered in case no. CV183-501CC was based on a finding that the noise emanating from firearms ranges operated on Glendale's property constituted a nuisance. See ¶9 of the SOF, L.F. 6, and the Judgment in CV183-501CC, L.F. 9. Specifically, the court made the following finding in its Judgement:

> use of (Glendale's) land as described by the evidence constituted an abatable continuing temporary nuisance…to the extent that it substantially impaired the right of the Plaintiffs to peacefully enjoy their own adjoining land.…(T)the sustained noise found by the court to be a nuisance did cause actual inconvenience and physical discomfort to the Plaintiffs.

(See L.F. 9, the 1987 Amended Judgment, which was Ex. 4 to the SOF).

The Landolts intimate in the Statement of Facts in their brief that the Injunction was also issued in part based upon stray bullets or ricochets either hitting the real property now owned by the Landolts or violating the air space

over the property. However, this is not so. The Court as part of the 1987 Judgment (L.F. 9) awarded nominal damages for the trespass, but did not refer to the trespass as a basis for the injunction. Instead, the injunction was granted based on the noise emanating from shooting activity taking place on Glendale's Property.

The Landolts further assert in their Statement of Fact that shooting on Glendale's Property made the use of the property now owned by Landolts "virtually impossible." However, the Circuit Court made no such finding in 1987, Instead, this language appeared in the Court of Appeals opinion, and should not be treated as a finding of fact.

On or about October 27, 1998, Glendale filed suit against the Racines, who then owned the property now owned by the Landolts, Franklin County case no. 20CV-0183051, seeking to set aside the above-referenced injunction. (See ¶10 of the SOF and the Response to the SOF, L.F. 6 and 15).

After the Landolts purchased the property known and numbered as 2917 Meramec Terrance Rd., they sought, and were granted, leave to intervene in the suit seeking to set aside the injunction. (See ¶11 of the SOF and the Response to the SOF, L.F. 6 and 15).

On or about November 13, 2001, Glendale Shooting Club and the Landolts entered into a Stipulation for Mutual Release and Dismissal, whereby they agreed:

> That for a period of not less than twenty (20) years from the date of this agreement, neither party to this action, nor their representatives, attorneys, heirs, executors, administrators, predecessors, successors, assigns nor subrogees shall petition this or any other court to strike, alter, set aside, or otherwise modify this Court's previously entered and currently existing and continuing orders entered regarding the real property identified in the above-style cause CV183-510CC on the 2nd day of February of ordering and 1987 (sic) ordering and otherwise enjoining Defendant Glendale Shooting Club, Inc. from certain actions as are contained therein.

(See ¶12 of the SOF and Response to the SOF, L.F. 6 and 15, and the Stipulation for Mutual Release attached as Exhibit 5 to the SOF, L.F. 10). The twenty-year period set forth in the parties' stipulation has now expired. (See ¶13 of the SOF and Response to the SOF, L.F. 6 and 15).

After the Circuit Court entered Judgment in case no. CV183-501CC, §537.294 R.S.Mo. was enacted into law in or about 1988. In or about 2008, approximately seven years after entry of the parties' stipulation, §537.294 was amended. See the discussion of the statute in *Landolt v. Glendale Shooting Club, Inc.*, 18 S.W.3d 101, 103 (Mo.App.E.D. 2000) and in *Goerlitz v. City of Maryville*, 333 S.W.3d 450 (Mo. Banc 2011). The statute as currently written provides, in relevant part:

> Owners and users of such firearm ranges shall not be subject to any civil action in tort or subject to any action for public or private nuisance or trespass and no court in this state shall enjoin the use or operation of such firearm ranges on the basis of noise or sound emission resulting from the use of any such firearm range. Any actions by a court in this state to enjoin the use or operation of such firearm ranges and any damages awarded or imposed by a

> court, or assessed by a jury, in this state against any owner or user of such firearm ranges for nuisance or trespass are null and void.

(See ¶14 of the SOF, L.F. 6).[2]

[2] The Landolts objected that the terms of the statute speak for themselves. However, this does not address the allegations of timing of passage of the amendments, and this objection was not well taken.

POINTS RELIED ON

POINT I

THE COURT SHOULD NOT CONSIDER APPELLANT LANDOLTS' ARGUMENTS IN POINT I OF THEIR BRIEF BECAUSE IT IS MULTIFARIOUS IN THAT IT ARGUES THAT THE CIRCUIT COURT'S JUDGMENT IS ERRONEOUS FOR VIOLATING TWO SEPARATE PROVISIONS OF THE MISSOURI CONSTITUTION, ARTICLE I §§26 AND 28.

Kirk v. State, 520 S.W.3d 443 (Mo. 2017)

Macke v. Patton, 591 S.W.3d 865 (Mo. 2019)

Mo.S.Ct. Rule 84.04(d)

POINT II

THE COURT SHOULD NOT CONSIDER APPELLANT LANDOLTS' ARGUMENTS IN POINT II OF THEIR BRIEF BECAUSE IT IS MULTIFARIOUS IN THAT IT ARGUES THAT THE CIRCUIT COURT'S JUDGMENT IS ERRONEOUS FOR VIOLATING TWO SEPARATE PROVISIONS OF THE MISSOURI CONSTITUTION, ARTICLE I §§26 AND 28.

Kirk v. State, 520 S.W.3d 443 (Mo. 2017)

Macke v. Patton, 591 S.W.3d 865 (Mo. 2019)

Mo.S.Ct. Rule 84.04(d)

POINT III

THE COURT SHOULD NOT CONSIDER APPELLANT LANDOLTS' ARGUMENTS IN POINT III OF THEIR BRIEF BECAUSE IT IS MULTIFARIOUS IN THAT IT ARGUES THAT THE CIRCUIT COURT'S JUDGMENT IS ERRONEOUS FOR VIOLATING TWO SEPARATE PROVISIONS OF THE U.S. CONSTITUTION, THE FIFTH AND FOURTEENTH AMENDMENTS.

Kirk v. State, 520 S.W.3d 443 (Mo. 2017)

Macke v. Patton, 591 S.W.3d 865 (Mo. 2019)

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THE COURT SHOULD NOT CONSIDER APPELLANT LANDOLTS' ARGUMENTS IN POINT IV OF THEIR BRIEF BECAUSE IT IS MULTIFARIOUS IN THAT IT ARGUES THAT THE CIRCUIT COURT'S JUDGMENT IS ERRONEOUS FOR VIOLATING TWO SEPARATE

PROVISIONS OF THE U.S. CONSTITUTION, THE FIFTH AND FOURTEENTH AMENDMENTS.

Kirk v. State, 520 S.W.3d 443 (Mo. 2017)

Macke v. Patton, 591 S.W.3d 865 (Mo. 2019)

Mo.S.Ct. Rule 84.04(d)

POINT V
(RESPONDING TO POINT I OF APPELLANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE ARTICLE I § 26 OF THE MISSOURI CONSTITUTION IN THAT THE PROHIBITION ON ISSUING AN INJUNCTION OR OTHERWISE PROVIDING RELIEF AGAINST FIREARMS RANGES FOR NUISANCE DOES NOT CONSTITUTE A TAKING.

3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158 of the American Legion, 548 S.W.3d 137 (Ark. 2018)

Baltimore & Potomac R. Co. v. Fifth Baptist Church, 108 U.S. 3172 S. Ct. 719, 27 L. Ed. 739 (1883)

Spiek v. Michigan Dep't of Transp., 572 N.W.2d 201 (Mich. 1998)

Mottl v. Mo. Lawyer Trust Account Foundation, 133 S.W.3d 142 (Mo.App.W.D. 2004)

Missouri Constitution, Art. I, §26

POINT VI
(RESPONDING TO POINT I OF APPELLANTS' BREIF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE ARTICLE I §28 OF THE MISSOURI CONSTITUTION IN THAT THE PROHIBITION ON ISSUING AN INJUNCTION OR OTHERWISE PROVIDING RELIEF AGAINST FIREARMS FOR NUISANCE DOES NOT CONSTITUTE A TAKING FOR PRIVATE PURPOSE.

Moore v. Scroll Compressors, LLC, 632 S.W.3d 810 (Mo. App. 2021)

Labrayere v. Bohr Farms, LLC, 458 S.W.3d 319 (Mo. 2015)

Missouri Constitution, Art. I, §28

POINT VII
(RESPONDING TO POINT II OF APPELANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE ARTICLE I § 26 OF THE MISSOURI CONSTITUTION IN THAT THE STATUTE DOES NOT AUTHORIZE PHYSICAL TRESPASS ON THE LANDOLT'S PROPERTY.

McCollum v. Dir. of Revenue, 906 S.W.2d 368 (Mo. 1995)

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THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE ARTICLE I §28 OF THE MISSOURI CONSTITUTION IN THAT THE PROHIBITION ON ISSUING AN INJUNCTION OR OTHERWISE PROVIDING RELIEF AGAINST FIREAMRS RANGES FOR TRESPASS DOES NOT CONSTITUTE A TAKING FOR PRIVATE PURPOSE.

Moore v. Scroll Compressors, LLC, 632 S.W.3d 810 (Mo. App. 2021)

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(RESPONDING TO POINT III OF APPELLANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE THE FIFTH AND FOURTEENTH AMENDMENTS OF THE

U.S. CONSTITUTION IN THAT THE PROHIBITION ON ISSUING AN INJUNCTION OR OTHERWISE PROVIDING RELIEF AGAINST FIREAMRS RANGES FOR NUISANCE DOES NOT CONSTITUTE A TAKING.

3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158 of the American Legion, 548 S.W.3d 137 (Ark. 2018)

Baltimore & Potomac R. Co. v. Fifth Baptist Church, 108 U.S. 3172 S. Ct. 719, 27 L. Ed. 739 (1883)

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U.S. Constitution, 5th Amendment

U.S. Constitution, 14th Amendment

POINT X
(RESPONDING TO POINT IV OF APPELLANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE THE FIFTH OR FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION IN THAT THE STATUTE DOES NOT

AUTHORIZE PHYSICAL TRESPASS ON THE LANDOLTS' PROPERTY.

Moore v. Scroll Compressors, LLC, 632 S.W.3d 810 (Mo. App. 2021)

Labrayere v. Bohr Farms, LLC, 458 S.W.3d 319 (Mo. 2015)

U.S. Constitution, 5th Amendment

U.S. Constitution, 14th Amendment

ARGUMENT

Introduction

In 1987, the Franklin County Circuit Court entered an injunction, at the behest of the former owners of the Landolts' Property, limiting activities on the firearms range operated by Glendale on its adjoining property. After passage of §537.294 R.S.Mo. by the General Assembly, and its amendment in 2008, which prohibited courts from entering injunctions against firearm ranges,[3] Glendale filed this lawsuit seeking dissolution of the injunction pursuant to the terms of the statute. The Court granted summary judgment in favor of Glendale, dissolving the injunction.

The Landolts do not contest on appeal that the statute on its face requires dissolution of the 1987 injunction or that the Court was without

[3] A "firearm range" is defined as: ""any rifle, pistol, silhouette, skeet, tap, black powder or other similar range in this state used for discharging firearms in a sporting event or for practice or instruction in the use of a firearm, or for the testing of a firearm." §537.294.1(1) R.S.Mo.

authority to vacate the injunction. Instead, they argue, as they did in the Circuit Court, that the statute effects or authorizes a taking without compensation, and is therefore unconstitutional pursuant to Art. I, §§26 and 28 of the Missouri constitutions, and the 5th and 14th Amendments to the United States constitution. For the reasons stated below, §537.294 R.S.Mo. does not constitute or authorize a taking, and therefore is not unconstitutional. Alternatively, if the statute does effect or authorize a taking without compensation, it would only be because of the provision which prohibits recovery of damages for nuisance or trespass, which is severable from the remainder of the statute which prohibits a court from entering an injunction against a firearm range on the basis of noise or sound emission, such that the provision of the statute prohibiting entry of injunctions against firearm ranges should be upheld.

Standard of Review

Glendale agrees with the Landolts that review of the Circuit Court's decision is de novo, both because the Landolts appeal from the grant of a summary judgment, *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.,* 854 S.W.2d 371, 376 (Mo. banc 1993) and because this appeal presents a question as to the constitutionality of a statute. *State v. Vaughn*, 366 S.W.3d 513, 317 (Mo. banc 2012).

Because the Landolts bring a facial challenge to the validity of §537.294.2, specific facts relating to Glendale's use of its property and the impact of that use on the Landolts' Property is irrelevant. As explained by the Eastern District Court of Appeals in *Bennett v. St. Louis Cty., Missouri*, 542 S.W.3d 392, 397 (Mo. App. 2017):

> The distinction between a facial challenge and an as-applied challenge lies both in the remedy the parties seek and the analysis of the court. A facial challenge to the constitutionality of an ordinance is more challenging than an as-applied challenge. *See, e.g., Bruni v. City of Pittsburgh*, 824 F.3d 353, 362–63 (3d Cir. 2016); *United States v. Bramer*, 832 F.3d 908, 909–10 (8th Cir. 2016). The court must evaluate the ordinance generally, instead of specifically to plaintiff's particular set of circumstances. An as-applied challenge, conversely, would require Appellants to argue that the Ordinance was unconstitutionally applied to their individual circumstances. *See, e.g., Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 462–63, 462 n.20, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978). "A successful as-applied challenge bars a law's enforcement against a particular plaintiff, whereas a successful facial challenge results in 'complete invalidation of a law.' " *Bruni*, 824 F.3d at 362 (quoting *CMR D.N. Corp. v. City of Philadelphia*, 703 F.3d 612, 624 (3d Cir. 2013)). Appellants chose to make a facial challenge and not an as-applied challenge. Thus, we only review the facial constitutionality challenges to the Ordinance and need not discuss the specific facts of Appellants' arrests.

A party challenging a statute as unconstitutional "must establish that no set of circumstances exists under which the Act would be valid." *State v. Perry,* 275 S.W.3d 237, 243 (Mo. 2009). The Landolts have made no such showing.

POINT I

THE COURT SHOULD NOT CONSIDER APPELLANT LANDOLTS' ARGUMENTS IN POINT I OF THEIR BRIEF BECAUSE IT IS MULTIFARIOUS IN THAT IT ARGUES THAT THE CIRCUIT COURT'S JUDGMENT IS ERRONEOUS FOR VIOLATING TWO SEPARATE PROVISIONS OF THE MISSOURI CONSTITUTION, ARTICLE I §§26 AND 28.

Article I, §26 of the Missouri Constitution provides, in relevant part: "That private property shall not be taken or damaged for public use without just compensation." Article I, §28 of the Missouri Constitution prohibits the taking of private property for private use, regardless of whether compensation is paid, with certain narrow exceptions. While both articles address taking of private property, they contain very different strictures thereon.

The Landolts argue in Point I of their brief that §537.294.2 R.S.Mo. violates both Article I, §26 and Article I, §28. Thus, Point I is improperly multifarious. "A point relied on violates Rule 84.04(d) when it groups together multiple, independent claims rather than a single claim of error, and a multifarious point is subject to dismissal." *Kirk v. State*, 520 S.W.3d 443, 450 n.3 (Mo. 2017). "Multifarious points relied on are noncompliant with Rule

84.04(d) and preserve nothing for review." *Macke v. Patton*, 591 S.W.3d 865, 869 (Mo. 2019).

Because Point I is improperly multifarious, the Court should refuse to consider the argument made by the Landolts in Point I of their Brief.

POINT II

THE COURT SHOULD NOT CONSIDER APPELLANT LANDOLTS' ARGUMENTS IN POINT II OF THEIR BRIEF BECAUSE IT IS MULTIFARIOUS IN THAT IT ARGUES THAT THE CIRCUIT COURT'S JUDGMENT IS ERRONEOUS FOR VIOLATING TWO SEPARATE PROVISIONS OF THE MISSOURI CONSTITUTION, ARTICLE I §§26 AND 28.

As they did in Point I of their brief, the Landolts again argue in Point II that §537.294.2 constitutes a taking of their property in violation of Article I, §26 and Article I, §28 of the Missouri Constitution. Thus, like Point I, Point II of the Landolts' brief is multifarious and should be dismissed. Glendale will not repeat the argument from Point I here.

POINT III

THE COURT SHOULD NOT CONSIDER APPELLANT LANDOLTS' ARGUMENTS IN POINT III OF THEIR

BRIEF BECAUSE IT IS MULTIFARIOUS IN THAT IT ARGUES THAT THE CIRCUIT COURT'S JUDGMENT IS ERRONEOUS FOR VIOLATING TWO SEPARATE PROVISIONS OF THE U.S. CONSTITUTION, THE FIFTH AND FOURTEENTH AMENDMENTS.

The Fifth Amendment to the U.S. Constitution sets forth a number of different rights, ending with "…nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.." The Fourteenth Amendment provides, in part, that "…nor shall any State deprive any person of life, liberty, or property, without due process of law…"[4]

While there are similarities between these two Amendments, they are not identical in their provisions. Yet, in Point III of their brief, the Landolts argue that §537.294.2 violates both the 5th and 14th Amendment. Thus, Point III of the Landolts brief is multifarious and should not be considered by this Court, for the same reasons as set forth in Point I of this brief.

POINT IV

THE COURT SHOULD NOT CONSIDER APPELLANT LANDOLTS' ARGUMENTS IN POINT IV OF THEIR

[4] The Landolts do not cite anywhere in their brief the specific provisions of the Fifth or Fourteenth Amendment they claim to be violated by §537.294.2.

BRIEF BECAUSE IT IS MULTIFARIOUS IN THAT IT ARGUES THAT THE CIRCUIT COURT'S JUDGMENT IS ERRONEOUS FOR VIOLATING TWO SEPARATE PROVISIONS OF THE U.S. CONSTITUTION, THE FIFTH AND FOURTEENTH AMENDMENTS.

Again, in Point IV of their brief, the Landolts argue that §537.294.2 violates both the 5th and 14th Amendment. Thus, Point IV of the Landolts brief is multifarious and should not be considered by this Court, for the same reasons as set forth in Points I and III of this brief.

POINT V
(RESPONDING TO POINT I OF APPELLANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE ARTICLE I § 26 OF THE MISSOURI CONSTITUTION IN THAT THE PROHIBITION ON ISSUING AN INJUNCTION OR OTHERWISE PROVIDING RELIEF AGAINST FIREARMS RANGES FOR NUISANCE DOES NOT CONSTITUTE A TAKING.

In addressing the Landolts' contention that §537.294.2 authorizes an unconstitutional taking, this Court must start with the presumption that the

statute is constitutional. "Statutes are presumed constitutional and will be found unconstitutional only if they clearly contravene a constitutional provision." *State v. Honeycutt,* 421 S.W.3d 410, 414 (Mo. banc 2013). "The person challenging the validity of the statute has the burden of proving the act clearly and undoubtedly violates the constitutional limitations." *Id.*

A. **§537.294.2 Is Not a Taking**

The Landolts primarily rely on *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319 (Mo. 2015) in arguing that §537.294.2 authorizes an unconstitutional taking. The plaintiffs in *Labrayere* argued that §537.296 R.S.Mo., which prohibited injunctions and limited damages on nuisance claims emanating from property primarily used for crop or animal production, was an unconstitutional taking of private property. However, the Court in *Labrayere* never addressed whether the limitations imposed by §537.296 constituted a taking. Instead, the Court held that:

> Assuming for the sake of argument only that the statute effectuates a regulatory taking (emphasis added), Appellants' constitutional challenge fails because diminution of rental value is the benchmark for awarding just compensation for a temporary taking.

Id. at 330.

Thus, whether a statute prohibiting certain actions for nuisance or trespass, as is the case with §537.294.2,[5] is an unconstitutional taking has never been decided in this state. *See Goerlitz v. City of Maryville*, 333 S.W.3d 450, fn. 4 (Mo. banc 2011), wherein the Court specifically noted:

> (A)n owner of real property has a number of rights that are associated with ownership. The parties have not addressed, nor does this Court, whether (§537.294.2) constitutes a taking of one of those rights so as to entitle the owner to compensation pursuant to article I, section 26, of the Missouri Constitution.

The Landolts argue at p. 26 of their brief that §537.294 is the most far-reaching immunization of firearm ranges in the United States, without any citation or support for this assertion. In fact, 46 states provide for immunity, of some sort, to owners, operators and users of firearms ranges from actions for nuisance and/or trespass. *See*: https://rangeservices.nra.org/media/4075/gun-range-protection statutes.pdf, wherein state statutes relating to noise from gun ranges is collected. Many of these statutes provide immunity similar to that provided by §537.294.2.[6]

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[6] *E.g.*, Wisc. Stat. Ann §895.527 which provides, in relevant part:

> (2) A person who owns or operates a sport shooting range is immune from civil liability related to noise resulting from the operation of the sport shooting range.
> (3) A person who owns or operates a sport shooting range is not subject to an action for nuisance or to zoning conditions related

Glendale has been unable to find a case holding that any such statute constitutes or authorizes an unconstitutional taking. In fact, case law from other states supports the conclusion that §537.294.2 does not constitute a taking.

In *3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158 of the American Legion*, 548 S.W.3d 137 (Ark. 2018), the plaintiff challenged as an unconstitutional taking a statute which provided that shooting ranges are immune from noise-based lawsuits if the range is in compliance with local noise-control ordinances.

> to noise and no court may enjoin or restrain the operation or use of a sport shooting range on the basis of noise.

See also, Cal.Civ.Code §3482.1, which provides, in relevant part:

> (b)(1) Except as provided in subdivision (f), a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time construction or operation of the range was approved by a local public entity having jurisdiction in the matter, or if there were no such laws or ordinances that applied to the range and its operation at that time.

(the full Wisconsin and California statutes are at Respondent's Appdx. 8-9 and 4-5, respectively)

Illinois' statute also protects range operators from trespass claims. 740 ILCS 130/5 (b) (full statute at Respondent's Appdx 6-7).

The Arkansas statute in question provides, in relevant part:

> A person who operates or uses a sport shooting range is not subject to an action for nuisance, and no court of the state may enjoin the use or operation of a sport shooting range on the basis of noise or noise pollution, if the sport shooting range is in compliance with noise control ordinances of units of local government…at the time the sport shooting range was constructed and began operation.

§16-105-502(b) Ark. Code Annotated (full statute at Respondent's Appdx. 2-3).

The Arkansas Supreme Court held: "However, the mere fact that a partial use of one's property is burdened by regulation does not amount to a taking." *Id.* at 143. The Court further held that, "the burden on appellants' use of their property, and its diminution in value, is insufficient to rise to the level of a taking."

In *Moon v. North Idaho Farmers Ass'n*, 96 P.3d 637 (Id 2004), the Idaho Supreme Court considered whether a statute that granted immunity from nuisance claims to grass farmers who burned the post-harvest straw and stubble in their fields (provided they comply with certain provisions of the statute) worked an unconstitutional taking of the plaintiffs' neighboring real property. The Court identified the question before it as:

> whether the grant of immunity to the grass farmers can be deemed a 'taking' from the plaintiffs. In other words, have the plaintiffs been deprived, by the statute, of their common law right to bring a nuisance action and/or trespass action, without remuneration.

Id. at 642.

> The *Moon* Court noted that plaintiffs had
>
> not alleged any 'special and peculiar' damage…but only such damages as naturally and unavoidably result from the field burning and are shared generally by property owners whose lands lie within the range of the inconveniences necessarily incident to proximity to the fields being burned."

Id. at 645. The Court concluded that without such special and peculiar damage the legislation "granting immunity to the grass farmers does not represent an unconstitutional taking under either the state or federal constitution," citing *Richards v. Washington Terminal Co.*, 233 U.S. 546, 34 S.Ct. 654, 58 L.Ed. 1088 (1914).[7]

> Any diminution of the value of property not directly invaded nor peculiarly affected, but sharing in the common burden of incidental damages arising from the legalized nuisance, is held not to be a 'taking' within the constitutional provision.

Id., 233 U.S. at 554., 34 S.Ct. at 657.

In the Landolt's brief, they improperly attribute a quotation from *Richards* as being from *Baltimore & Potomac R. Co. v. Fifth Baptist Church,* 108 U.S. 317, 318–19, 2 S. Ct. 719, 720, 27 L. Ed. 739 (1883). In fact, the Court

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[7] *See also: In re Pure Air & Water of Chemung Cty. v. Davidsen*, 246 A.D.2d 786, 787, 668 N.Y.S.2d 248 (1998) (holding the state right-to-farm statute did not violate due process) and *Barrera v. Hondo Creek Cattle Co.*, 132 S.W.3d 544, 549 (Tex. App. 2004) (holding the Texas right-to-farm law did not constitute an unconstitutional taking).

in *Baltimore & Potomac* did not even address the issue of whether a taking had occurred for 5th Amendment purposes, much less whether a statute was unconstitutional for authorizing a taking without compensation. Instead, it merely addressed whether, under the specific circumstances presented the railroad had engaged in a compensable nuisance. However, of particular interest from *Baltimore & Potomac* is the following quote:

> Undoubtedly a railway over the public highways of the district, including the streets of the city of Washington, may be authorized by congress, and if when used with reasonable care it produces only that incidental inconvenience which unavoidably follows the additional occupation of the streets by its cars, with the noises and disturbances necessarily attending their use, no one can complain that he is incommoded. Whatever consequential annoyance may necessarily follow from the running of cars on the road with reasonable care is *damnum absque injuria.*[8] The private inconvenience in such case must be suffered for the public accommodation.

Id., 108 U.S. at 317, 2 S.Ct. 719.

Similar language appears in *Richards.* Like in *Baltimore & Potomac*, the plaintiff in *Richards* claimed numerous injuries from the operation of the railroad, including that his home was "damaged by vibrations caused by the movement of trains on the track or in the tunnel, resulting in cracking the

[8] Black's Law Dictionary (6th ed) p 393, defines *damnum absque injuria* as follows: "Loss, hurt, or harm without injury in the legal sense; that is, without such breach of duty as is redressible by a legal action. A loss or injury which does not give rise to an action for damages against the person causing it."

walls ..., breaking glass ..., and disturbing the peace and slumber of the occupants." *Id.*, 233 U.S. at 550, 34 S.Ct. at 655. The Court found these alleged damages to be *damnum absque injuria* (i.e., legally non-compensable) because they were suffered to some extent by all within the vicinity of the railroad tracks, 233 U.S. at 551, 34 S.Ct. at 656.

However, Richards suffered particularized injury not similarly suffered by others living in the vicinity of the railroad tracks and tunnel, which the Court held to be a compensable taking under the 5th Amendment. Specifically, a fan system was in place in the railroad tunnel which blew gases and smoke through a portal very near to plaintiff's home, damaging his furniture and rendering the house less habitable than it would have been otherwise.

In *Spiek v. Michigan Dep't of Transp.*, 572 N.W.2d 201 (Mich. 1998), plaintiffs (property owners) complained that noise, dust, vibration, and fumes emanating from an adjacent stretch of freeway constituted a taking of their property for which they were entitled to compensation. The Court in *Spiek* ultimately held that because the plaintiffs were not complaining of a species of damages <u>different in nature</u> than that of other property owners in the vicinity of the freeway they had not stated a cause of action for a taking of private property for which compensation was due.

In reaching its conclusion, the Court in *Spiek* engaged in extensive explication of *Richards*. It first discussed how the Court in *Richards* had held that the claims made by plaintiff in that case of vibrations resulting in cracked walls, braking glass and disturbance of peace and sleep were non-compensable "because this type of harm is that which all persons living near the railroad would suffer in common." *Spiek* at 206. The *Spiek* Court then held that the Michigan Court of Appeals had erred in holding the Spieks could recover if they suffered to a different degree from noise, dust, vibration, and fumes from the freeway than did other nearby residents, noting:

> plaintiff in *Richards* prevailed, not merely on the basis of a difference in degree from the inconvenience experienced by the public at large, but because the harm he suffered was different in kind or character from that experienced by those similarly situated."

Id.

The *Spieks* Court noted that:

> Courts commonly refer to the persistent passing of trains on a railroad, or planes in the air, or vehicles on the road as 'legalized nuisances.' (citation omitted) …. If such a legalized nuisance affects all in its vicinity in common, damages generally are not recoverable under just-compensation theory. Courts treat such common harms as incidental effects not amounting to an appropriation. (citation omitted) …. If such a legalized nuisance affects all in its vicinity in common, damages generally are not recoverable under just-compensation theory. Courts treat such common harms as incidental effects not amounting to an appropriation.

Id. at 208.

The court noted that the right to just compensation exists only where a "landowner can allege a unique or special injury, that is, an injury that is different in kind, not simply in degree, from the harm suffered by all persons similarly situated." *Id.* at 209.

By passage of §537.294.2, noise emanating from firearms ranges was made a "legalized nuisance". Exposure to noise from shooting of firearms is a species of damages naturally and unavoidably the result of the operation of a firearms range, just as is noise and vibrations from a freeway or railroad, shared generally by property owners whose lands lie within proximity to the range and is not special or peculiar to the Landolts. Thus, similar to the finding in the above cases, including *Spiek,* §537.294.2's grant of immunity to operators of a firearms range does not authorize an unconstitutional taking.

Assuming arguendo that the Landolts could prove they suffered unique and peculiar damage of a nature different from their neighbors, this is not relevant here, where the Landolts have brought a facial challenge to the constitutionality of the statute, rather than an as applied challenge. The Landolts have not proven that there is no circumstance under which the statute's grant of immunity to firearm ranges would be constitutional.

Finally the Landolts citation to the following language from *Hoffman v. Kinealy*, 389 S.W.2d 745, 753 (Mo. 1965) is not helpful to their claim:

> The constitutional guaranty of protection for all private property extends equally to the enjoyment and the possession of lands. An arbitrary interference by the government *or by its authority*, with the reasonable enjoyment of private lands is a taking of private property without due process of law, which is inhibited by the Constitution. (Emphasis added in Appellant's brief).

There are two problems with Landolts' reliance on this language. First, this is a quotation from Tiedeman's Limitation of Police Powers, §122, not a holding by the Court. Second, this language is at best dicta. In *Hoffman*, the alleged taking was the result of the refusal of the building commissioner of the City of St. Louis to issue an occupancy permit for a pre-existing lawful non-conforming use of plaintiff's property. In other words, the alleged taking there was by direct action of the city and did not involve an alleged interference with property rights by a private party, pursuant to government authority.

B. There is No State Action Here as Required for an Action to Constitute a Taking for Due Process Purposes

Importantly, the state action required for an alleged taking to violate Art. I, §26 or the federal due process clauses (either the 5th or 14th Amendments to the U.S. Constitution) is not present here. In *Mottl v. Mo. Lawyer Trust Account Foundation*, 133 S.W.3d 142 (Mo.App.W.D. 2004), the plaintiff claimed that when his lawyer placed funds belonging to plaintiff in an IOLTA

account with the result that interest earned thereon was paid over to the Foundation, pursuant to Supreme Court Rule 4-1.15, this constituted a taking in violation of the Takings Clause of the 5th Amendment, applicable to the states through the 14th Amendment.

This Court held that the Takings Clause only applies to state action, "not to acts of private persons or entities, and is only offended by action of the state." *Id.* at 146. It noted that for an action to be attributable to the state, it has to both be

> caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible and that "the party charged with the deprivation must be a person who may fairly be said to be a state actor."

Id. quoting *Mf'rs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999).

Because the placement of Mr. Mottl's funds in an IOLTA account, and the transfer of the funds to the Foundation were authorized by Supreme Court Rule 4-1.15, this satisfied the first prong of the state action test. However, after noting that the placement of Mr. Mottl's funds in the IOLTA account and subsequent transfer of interest to the Foundation was the result of acts of a private party, his attorney, the Court determined that the second element necessary to find a taking was not present. The Court held that, "[A]ction taken by a private entity with the mere approval or acquiescence of the State is not state action." *Mottl*, at 147. Therefore, the placement of Mottl's funds

in an IOLTA account by his attorney was held not to constitute a taking for purposes of the 5th Amendment.

Similarly, here, any noise emanating from a privately-owned firearms range is the result of actions of private actors, and is not attributable to the state, so that the second prong for finding a state action, necessary to state a claim for an unconstitutional taking, is not present. Thus, the statute does not violate Art. I §26 of the Missouri Constitution.

C. Even Assuming that the Portion of §537.294.2 Prohibiting Recovery of Damages for Nuisance is Unconstitutional, this Prohibition may be Severed from the Prohibition on Injunctions Against Firing Ranges, so that §537.294.2 Prohibition on Injunctions is Valid.

Section 1.140, R.S.Mo. provides that:

> The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions 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.

"§ 1.140 requires courts to *presume* severability of the valid provisions unless the valid provision is essentially and inseparably connected with and dependent upon an invalid provision." *Akin v. Dir. of Revenue*, 934 S.W.2d

295, 301 (Mo. 1996) (emphasis by the court). In *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 889 (Mo. 2006) the Supreme Court stated:

> This Court has an obligation to sever unconstitutional provisions of a statute unless 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.

The Court in *Akin* further stated:

> The test of the right to uphold a law, some portions of which may be invalid, is whether or not in so doing, after separating that which is invalid, a law in all respects complete and susceptible of constitutional enforcement is left, which the legislature would have enacted if it had known that the exscinded portions were invalid. (citation omitted). Moreover, under the statutory standard noted previously, the legislature is presumed to have intended this Court to give effect to the parts of the statute which are not invalidated.

Id. at 300–01, quoting *Simpson v. Kilcher,* 749 S.W.2d 386 (Mo. banc 1988).

While one way that the legislature has of indicating what provisions are severable is to separate a statute into separate sections, *Akin* at 301, this is not required for the Court to find unconstitutional provisions of a statute to be severable.

In *Gen. Motors Corp. v. Dir. of Revenue*, 981 S.W.2d 561 (Mo. 1998), the Court was confronted by a statue which stated, in relevant part:

> If an affiliated group of corporations files a consolidated income tax return for the taxable year for federal income tax purposes and

> fifty percent or more of its income is derived from sources within this state as determined in accordance with section 143.451, then it may elect to file a Missouri consolidated income tax return....

The Court found that the provision requiring that a corporation derive fifty percent of its income from within the state was an unconstitutional discrimination against interstate commerce, in violation of the Commerce Clause. The Court therefore severed (and struck) the language "and fifty percent or more of its income is derived from sources within this state as determined in accordance with section 143.451," and found the remainder of the statute to be valid.

Similarly, here, assuming arguendo that the provisions of §537.294.2 prohibiting recovery of damages against firearms ranges for nuisance or trespass constitute an unconstitutional taking, this portion of the statute can be severed from the provision prohibiting courts in this state from entering injunctions against firearms ranges for nuisance or trespass, and the prohibition on injunctions is clearly constitutional.

The required remedy for a taking under both the 5th Amendment and Art. I, §26 of the Missouri Constitution is "just compensation," not entry of an injunction. *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct 2162, 2179 (2019) ("As long as just compensation remedies are available…injunctive relief will be foreclosed."). *See also Clay County Realty Co. v. City of Gladstone,* 254 S.W.3d 859, 863 (Mo. 2008).

The Court in *Labrayere, supra*, held that assuming the statute in question there constituted a taking, it nevertheless did not violate Art. I, §26 because it authorized recovery of reduction in diminution of rental value of the claimant's property, thus "provid(ing) for damages consistent with constitutionally required just compensation." *Id.* at 329, ftn. 7. The legislature is otherwise free to change the substantive provisions of either common or statutory law, including limiting the availability of injunctive relief in an action for nuisance.

In this case, the provisions prohibiting entry of an injunction against a firearms range as the result of nuisance or trespass can be easily severed from the remaining provisions of the statute, preserving the remainder of the statute and the legislature's intention to prohibit injunctions against firearms ranges. Specifically, the portion of the statute struck out, below, could be severed from the remaining provisions of the statute:

> ~~All owners and authorized users of firearm ranges shall be immune from any criminal and civil liability arising out of or as a consequence of noise or sound emission resulting from the use of any such firearm range. Owners and users of such firearm ranges shall not be subject to any civil action in tort or subject to any action for public or private nuisance or trespass and~~ no court in this state shall enjoin the use or

operation of such firearm ranges on the basis of noise or sound emission resulting from the use of any such firearm range. Any actions by a court in this state to enjoin the use or operation of such firearm ranges ~~and any damages awarded or imposed by a court, or assessed by a jury~~, in this state against any owner or user of such firearm ranges for nuisance or trespass are null and void.

Because damages are not at issue with regard to the relief sought by Plaintiff's Petition, this Court need not reach the issue of whether the damages prohibition is constitutional in deciding this Appeal, but if is so inclined and finds the prohibition of damages unconstitutional the court should simply sever this portion of the statute.

POINT VI
(RESPONDING TO POINT I OF APPELLANTS' BREIF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE ARTICLE I §28 OF THE MISSOURI CONSTITUTION IN THAT THE PROHIBITION ON ISSUING AN INJUNCTION OR OTHERWISE PROVIDING RELIEF AGAINST

FIREARMS FOR NUISANCE DOES NOT CONSTITUTE A TAKING FOR PRIVATE PURPOSE.

Article I, Sec. 28 of the Missouri Constitution generally prohibits the taking of private property for private use, with or without compensation. Although the Landolts have stated summarily in Points I and II of their Brief that §537.294.2 violates Art. I, §28, they make no argument as to how the statute constitutes a taking for private use. As such, the Court should ignore the Landolts' claim that the statute violates Art. I, §28. "Rule 84.13(a) prohibits (the Court's) consideration of allegations of error in any civil appeal that were not briefed." *Moore v. Scroll Compressors, LLC*, 632 S.W.3d 810, 819 (Mo. App. 2021)

Even if this Court undertakes to consider a position not argued in Appellant's Brief, *ex gratia,* §537.294.2 clearly does not constitute a taking for a private purpose, in that (1) the statute does not result in a taking of private property (for the reasons stated in Point V, above, and because the statute promotes a public purpose. As the Supreme Court has stated:

> The fact that private parties benefit from a taking does not eliminate the public character of the taking so long as there is some benefit to "any considerable number" of the public. *[State ex rel. §, et al. v. Dolan*, 398 S.W.3d 472, 476 (Mo. banc 2013)] quoting *In re Kansas City Ordinance No. 39946*, 298 Mo. 569, 252 S.W. 404, 408 (1923). A use is public if it is reasonably likely to create some "public advantage" or "public benefit." *Dolan*, 398 S.W.3d at 476 (citing *In re Coleman Highlands*, 401 S.W.2d 385, 388 (Mo.1966))….

Labrayere at 328. For instance, regulations enacted to promote economic development have generally been found to serve a public purpose, including those that promote the agricultural economy. *Id.* The Court in *Labrayere* held: "The fact that some parties will receive direct benefits and others will sustain direct costs does not negate the public purposes advanced by section 537.296." *Id.*

Here, §537,294.2 promotes the public interest of having a citizenry well-trained in the safe and effective use of firearms, and thus is not a taking for a private purpose. As the 7th Circuit has noted:

> The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective.

E*zell v. City of Chicago*, 651 F.3d 684, 704 (2011). Further, firearms training offered by firearms ranges promotes military preparedness, which is also in the public interest. Because §537.294.2 serves a public purpose, it does not violate Art. I, §28.

POINT VII
(RESPONDING TO POINT II OF APPELANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE

ARTICLE I § 26 OF THE MISSOURI CONSTITUTION IN THAT THE STATUTE DOES NOT AUTHORIZE PHYSICAL TRESPASS ON THE LANDOLT'S PROPERTY.

In Point II of their Brief, the Landolts argue that §537.294.2 is an unconstitutional taking because it authorizes physical trespass upon their property. However, their interpretation of the statute is absurd, and clearly is beyond what the legislature intended. For instance, they argue that Glendale could park cars of members (and guests) and place targets on the Landolts' property, and even enter the Landolts' home with impunity.

Statutes "should be interpreted to avoid absurd results." *State ex rel. Jackson §County v. Spradling*, 522 S.W.2d 788, 791 (Mo. banc 1975)." *McCollum v. Dir. of Revenue*, 906 S.W.2d 368, 369 (Mo. 1995).

> When engaging in statutory interpretation, we are to presume a logical result, as opposed to an absurd or unreasonable one, and we are always led to avoid statutory interpretations that are unjust, absurd, or unreasonable. (internal quotation marks and citations omitted).

State ex rel. Jones v. Prokes, 637 S.W.3d 110, 116 (Mo. App. 2021), transfer denied. In that case, two statutes made communications between a probationer and his probation officer confidential and generally prohibited their being disclosed or used in court. Based on these statutes, the trial court had prohibited introduction of: (1) forged documents provided by a probationer to his probation officer showing the probationer had attended AA and NA

courses, and (2) testimony from the probation officer concerning threats made to him by the probationer. The Court ultimately held, in a mandamus action, that, "It would be an absurd and unreasonable result to interpret the privilege statutes to give an offender license to attempt to deceive, harass, threaten, or bribe his or her probation officer with impunity." *Id.* at 118. It held the statutes could be harmonized by allowing use of evidence of the type excluded by the trial court in an action where a probationer was accused of fraud or tampering with a judicial officer.

Similarly, the statute here should be given a reasonable interpretation, so that it prohibits an action for trespass based upon activities on the property of the firearms range, while not prohibiting an action for physical trespass on a neighboring property by persons associated with the range. This would harmonize §537.294.2 with Art. I, §26.

Further, for the reasons stated in Point V, §537.294.2 does not constitute a taking.

POINT VIII
(RESPONDING TO POINT II OF APPELLANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE ARTICLE I §28 OF THE MISSOURI CONSTITUTION IN

THAT THE PROHIBITION ON ISSUING AN INJUNCTION OR OTHERWISE PROVIDING RELIEF AGAINST FIREAMRS RANGES FOR TRESPASS DOES NOT CONSTITUTE A TAKING FOR PRIVATE PURPOSE.

As set forth in Point VI of this Brief, the Landolts offer no argument in their brief regarding how §537.294.2 violates Art. I, §28 of the Missouri Constitution, so the Court should simply ignore this portion of Point II of their brief. Further, for the reasons set forth in Point VI, §537.294.2 does not violate Art. I, §28. The argument in Point VI is hereby incorporated herein by reference and will not be repeated here.

POINT IX
(RESPONDING TO POINT III OF APPELLANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE THE FIFTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION IN THAT THE PROHIBITION ON ISSUING AN INJUNCTION OR OTHERWISE PROVIDING RELIEF AGAINST FIREAMRS RANGES FOR NUISANCE DOES NOT CONSTITUTE A TAKING.

For the reasons previously stated in Point V of this Brief, which are incorporated herein by reference, §537.294.2 does not constitute or authorize an unconstitutional taking of private property, so it does not violate the 5th or 14th Amendment to the U.S. Constitution.

POINT X
(RESPONDING TO POINT IV OF APPELLANTS' BRIEF)

THE CIRCUIT COURT DID NOT ERR IN DISSOLVING THE INJUNCTION PREVIOUSLY ISSUED IN CASE NO. CV183-501CC BECAUSE §537.294.2 DOES NOT VIOLATE THE FIFTH OR FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION IN THAT THE STATUTE DOES NOT AUTHORIZE PHYSICAL TRESPASS ON THE LANDOLTS' PROPERTY.

For the reasons previously stated in Point VII of this Brief, which are incorporated herein by reference, §537.294.2 does not permit Glendale or persons associated with it to engage in physical trespass on the Landolts' property, so that the statute does not constitute or authorize an unconstitutional taking of private property, in violation of the 5th or 14th Amendments to the U.S Constitution.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the decision of the Franklin County Circuit Court dissolving the injunction entered by it in 1987 in Case No. CV183-501CC.

Respectfully Submitted,

DANNA McKITRICK, P.C.

BY: /s/ David R. Bohm
David R. Bohm, #35166
Lauren L. Wood, #64690
7701 Forsyth Blvd., Suite 1200
St. Louis, MO 63105-3907
(314) 726-1000/(314) 725-6592 fax
E-Mail: dbohm@dmfirm.com
lwood@dmfirm.com
ATTORNEYS FOR RESPONDENTS

CERTIFICATION OF COMPLAINCE

The undersigned certifies that this Brief of Respondent includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this Brief is 9,424, exclusive of the certificates of service and this certificate of compliance.

/s/ David R. Bohm

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 10th day of October, 2022, Respondent's Brief, Appendix to Respondent's Brief, and Certificate of Compliance pursuant to Mo.S.Ct. Rules 84.06, were served via the Court's electronic noticing system, and separately via email, upon:

David L. Baylard
Damian R. Struzzi
Baylard, Billington, Dempsey & Jensen, P.C.
30 S. McKinley
Union, Mo 63084

/s/ David R. Bohm

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