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JURISDICTIONAL STATEMENT

This appeal involves, *inter alia*, the question of whether Mo. Rev. Stat. § 162.666 titled the "St. Louis Students' Bill of Rights," violates various provisions of the United States and Missouri Constitutions, including the Missouri constitutional prohibition against special laws, the Supremacy Clause of the United States Constitution and other constitutional provisions. Supreme Court jurisdiction is therefore proper pursuant to Article V, § 3, of the Missouri Constitution because the appeal involves the validity of a Missouri statute.

STATEMENT OF FACTS

A. Background

In May 1998, the Missouri Legislature enacted Senate Bill 781 ("SB 781"), which contained a number of revisions to the Missouri educational statutes. Several of these statutory provisions directly affected Appellant, the Board of Education of the City of St. Louis (the "Board of Education") and are involved in this case.

The focus of this litigation concerns a SB 781 provision entitled the "St. Louis Students' Bill of Rights" (the "Student Bill of Rights").[1] The Student Bill of Rights provides that if approved by the voters of the City of St. Louis, the Board of Education will have to implement very specific student assignment procedures and certain educational practices normally left to the discretion of the local school district. Specifically, the Student Bill of Rights provides that:

* * *

> 3. [The] district [i.e., the Board of Education] shall reinstitute the basic kindergarten through eighth grade system of grade schools within the district.
>
> 4. Every child within the district of the appropriate age and appropriate aptitude for discipline and openness to instruction

[1] Mo. Rev. Stat. § 162.666 (2002).

shall have the right to attend a basic kindergarten through eighth grade school.

5. Every child within the district shall have the right to attend such school closest to such child's home.

6. Every child within the district shall have the right to transfer to any other such school within the district.

7. The district shall have the right to transport children to relieve overcrowding…but shall not be permitted to displace any child who has elected to attend the school located closest to such child's home.

8. The per pupil expenditure of funds for the cost of education shall be equalized to the greatest extent possible, with appropriate variation allowable in order to accommodate the special remedial needs of children who test below grade level and the needs of gifted children.

9. Schools for gifted children with accelerated academic programs shall be established and evenly distributed across the district…Children who attend schools for the gifted shall have the right to attend such school which is located closest to such child's home and shall have the right to transfer to or attend any other school for the gifted within the district.

> 10. The provisions of the St. Louis Students' Bill of Rights shall only become effective upon approval by a majority of the voters of the city of St. Louis voting thereon. The governing board of the transitional district established pursuant to section 162.1100 may conduct a legal analysis of the program enumerated in this section, shall publish any such analysis and make the analysis available to the public and shall propose, to the extent that the program is consistent with the Missouri and United States Constitutions, [sic] place before the voters of the city of St. Louis no later than March 15, 1999, a proposal to implement the program. If approved by a majority of such voters, the program shall be implemented consistent with the Missouri and United States Constitutions.[2]

SB 781 also created the Transitional School District (the "Transitional District").[3] The Transitional District was provided with various responsibilities, including the limited obligation to place the Student Bill of Rights on the ballot for a public vote "to the extent that the program is consistent with the Missouri and United States Constitutions."[4] To the extent the Student Bill of Rights was to be

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2 Id.

3 Mo. Rev. Stat. § 162.1100 (2002).

4 Mo. Rev. Stat. § 162.666.10 (2002).

placed on the ballot, it had to be placed for a vote no later than March 15, 1999.[5] The Transitional District was also given authority to impose, after voter approval, a sales or property tax within the City of St. Louis to raise funds for education within the City (hereinafter the "Sales Tax").

In the fall of 1998, the Transitional District hired counsel to conduct a legal analysis of the Student Bill of Rights.[6] After counsel's review, he advised the Transitional District that the Student Bill of Rights was unconstitutional in its entirety.[7] In accordance with Missouri law, the Transitional District refused to place the issue on the ballot.[8]

B. Procedural History of This Case

On November 30, 1998, Respondent filed a Petition in Mandamus in the Twenty-Second Judicial Circuit Court of Missouri against the Transitional District. Respondent sought an order requiring that the Transitional District place the Student Bill of Rights on the ballot.[9] On January 22, 1999, after various proceedings, including the addition of the Board of Election Commissioners for the City of St. Louis as a defendant, the circuit court dismissed Respondent's case

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5 Id.

6 Appendix at A-42, A-43 and A-45.

7 Id.

8 Mo. Rev. Stat. § 162. 666.10 (2002).

9 Legal File at 84 (hereinafter "LF at __").

because he had failed to seek the proper relief in his Petition.[10] The circuit court noted in its order that the Transitional District's duty to place the Student Bill of Rights on the ballot was not absolute:

> The statute says, in plain terms, that the board of the Transitional School District must do two things: first, publish any legal analysis of the student bill of rights which it chooses to undertake (it is not required to undertake such an analysis, but it must publish one if it does so); second, propose to the extent that the program is consistent with the Missouri and United States Constitutions and [sic] place before the voters the proposition set forth in the statute.[11]
>
> * * *
>
> Unfortunately, the statutory language here at issue requires that the student bill of rights go before the voters only to the extent consistent with the state and federal constitutions.[12]

The circuit court dismissed the Respondent's Petition concluding the Student Bill of Rights' constitutionality must be determined before the court could

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10 LF at 84.

11 Appendix at A-37-38.

12 Appendix at A-38.

rule on whether it should be placed before the voters, and the Respondent had failed to seek such relief.[13]

On January 29, 1999, the court granted Respondent leave to file his First Amended Petition, which attempted to cure the defects in his original Petition. In addition to seeking a writ of mandamus, Respondent then sought a declaratory judgment that the Student Bill of Rights was constitutional under the United States and Missouri Constitutions.[14] Respondent, however, took no further action to pursue his claim on an expedited basis prior to the March 15, 1999 deadline imposed by the Legislature for placement of the Student Bill of Rights on the ballot.

On July 1, 1999, the Transitional District was dissolved by the State Board of Education (the "State Board") pursuant to authority granted to them by the Missouri Legislature.[15] Specifically, the Legislature in SB 781 had provided the State Board with authority to dissolve the Transitional District upon a finding that it had "accomplished the purposes for which it was established and is no longer needed."[16] No one appealed the State Board's decision.

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13 Appendix at 39.

14 See LF at 84.

15 LF at 85-86.

16 Mo. Rev. Stat. § 162.1100.12 (2002).

On October 4, 1999, Plaintiff filed his Second Amended Petition, which sought largely the same relief as his prior Petition but added the Board of Education as a defendant.[17] The Board of Education was joined by court approval the same day.

After various proceedings, including removal to federal court and remand, the case was ultimately tried before the Honorable Robert H. Dierker of the Twenty-Second Judicial Circuit in October 2001. The parties to the case at that time included only Appellant Board of Education, Respondent Thomas Bauer and Defendant Board of Election Commissioners. Because the Transitional District had been dissolved during the litigation by the State Board of Education, it had been dismissed by the circuit court after the court concluded that the "Transitional District no longer exists" and its individual board members had "no standing to file an answer or otherwise litigate this action."[18]

The central question before the circuit court at trial was whether the Student Bill of Rights is constitutional under the United States and Missouri Constitutions. After a half-day trial on October 11, 2001 and subsequent briefing by the parties, the circuit court issued an order on July 31, 2002 upholding the Student Bill of Rights' constitutionality. The circuit court directed that the Board of Education and Transitional District (which, as noted above, had already been dismissed from

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17 LF at 1.

18 LF at 18.

the action) certify the Student Bill of Rights for placement on the ballot at the "next regularly scheduled general election,"[19] or November 5, 2002. The court also directed the Board of Election Commissioners to place the issue on the ballot.[20]

On August 16, 2002, the Board of Education filed a motion with the circuit court requesting that the court stay its order pending appeal.[21] The court denied that motion on August 26, 2002.[22] On August 27, 2002, the Board of Education filed its Notice of Appeal of the July 31, 2002 order with the circuit court.[23] In accordance with Rule 81.05(b), the appeal was effective August 31, 2002.

Subsequently, the Board of Education filed a motion for stay with this Court, requesting that a stay be issued prohibiting the Student Bill of Rights from appearing on the ballot until this appeal was decided. That stay was granted on October 17, 2002.

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19 LF at 108.

20 LF at 108-09.

21 LF at 110.

22 LF at 116.

23 LF at 117.

POINTS RELIED ON

I. The Trial Court Erred In Ordering The Transitional District and The Board Of Education To Certify The Student Bill Of Rights For Placement On The Ballot, And In Ordering the Board of Election Commissioners To Place The Student Bill of Rights On The Ballot, Because:

A. The Transitional District Has No Authority To Certify The Student Bill Of Rights In That The State Had Revoked Any Such Authority Prior To Entry Of The Circuit Court's Order And The Transitional District Had Also Been Dismissed From The Case.

B. The Board of Education Has No Authority To Certify The Student Bill Of Rights In That The Plain Language Of The Statutes Does Not Grant The Board Any Such Authority.

C. The Board Of Election Commissioners Has No Authority To Place The Student Bill Of Rights On The Ballot In That The Plain Language Of The Statutes Grants The Commissioners No Such Authority Without Proper Certification From An Authorized Political Subdivision.

United Air Lines, Inc. v. State Tax Comm'n, 377 S.W.2d 444 (Mo. 1964)

State v. Union Elec. Co., 220 S.W.2d 1 (Mo. 1949) (en banc)

Pearson v. City of Washington, 439 S.W.2d 756 (Mo. 1969)

State ex rel. St. Louis Housing Authority v. Gaertner, 695 S.W.2d 460 (Mo. 1985) (en banc)

II. The Trial Court Erred In Ordering That The Student Bill Of Rights Be Placed On The Ballot Because This Case Was Moot In That The Legislature Directed That The Student Bill Of Rights Be Placed On The Ballot No Later Than March 15, 1999, Which It Intended As An Absolute Deadline, And That Deadline Has Already Passed.

Howard v. Banks, 544 S.W.2d 601 (Mo. Ct. App. 1976)

Farmers and Merch. Bank and Trust Co. v. Dir. Of Rev., 896 S.W.2d 30 (Mo. 1995) (en banc)

III. The Circuit Court Erred In Ruling That The Student Bill Of Rights Is A Valid Special Law Because The Student Bill Of Rights Violates The Missouri Constitution, Art. III, § 42, In That No Notice Of The Special Law Was Published In The Affected Locality Prior To Its Introduction Into The General Assembly, Nor Were The Other Requirements Of § 42 Followed.

Mo. Const. art. III, § 40

Mo. Const. art. III, § 42

Ashbrook v. Schaub, 60 S.W.2d 1085 (Mo. 1901)

Treadway v. State, 988 S.W.2d 508 (Mo. 1995) (en banc)

IV. The Circuit Court Erred In Ruling That There Is A Substantial Justification For The Student Bill Of Rights Because No Such Justification Exists In That A General Law Could Have Achieved The Same Result.

School Dist. of Riverview Gardens v. St. Louis County, 816 S.W.2d 219 (Mo. 1991) (en banc)

Hunter Avenue Property v. Union Elec. Co., 895 S.W.2d 146 (Mo. Ct. App. 1995)

Harris v. Missouri Gaming Comm'n, 869 S.W.2d 58 (Mo. 1994)

V. The Circuit Court Erred In Ruling That The Student Bill Of Rights Does Not Violate Due Process Because The Legislatively Prescribed Ballot Language Is Misleading And Deceptive In That It Does Not Inform The Voter Of All That He Or She Is Voting On.

State ex rel. El Dorado Springs v. Holman, 363 S.W.2d 552 (Mo. 1962) (en banc)

Northern Trust Co. v. City of Independence, 526 S.W.2d 825 (Mo. 1975) (en banc)

VI. The Circuit Court Erred In Ruling That The Student Bill Of Rights Does Not Violate The Prohibition Against Doubleness In Ballot Propositions Because The Student Bill Of Rights' Ballot Language Contains Two Separate And Distinct Propositions In Violation Of This Court's Prior Decisions.

Barrett v. Maitland, 246 S.W.2d 267 (Mo. 1922) (en banc)

Phelps County v. Holman, 461 S.W.2d 689 (Mo. 1971) (en banc)

City of Raytown v. Kemp, 349 S.W.2d 363 (Mo. 1961) (en banc)

VII. The Circuit Court Erred In Ruling That The Student Bill Of Rights Does Not Violate The United States Constitution's Supremacy Clause Because The Legislature Intended That The Student Bill Of Rights' Constitutionality Be Evaluated Based On The Law And Facts As They Existed In 1998; And When Examined As Of That Time, The Student Bill Of Rights Is Wholly In Violation Of The United States Constitution's Supremacy Clause In That It Contravened Federal Court Orders Designed To Remedy Constitutional Transgressions.

U.S. Const. art. VI, cl. 2

Trailiner Corp. v. Dir. Of Rev., 783 S.W.2d 917 (Mo. 1990) (en banc)

United States v. Scotland Neck Bd. Of Educ., 407 U.S. 484 (1972)

Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776, 346 U.S. 485 (1953)

ARGUMENT

I. The Trial Court Erred In Ordering The Transitional District and The Board Of Education To Certify The Student Bill Of Rights For Placement On The Ballot, And In Ordering the Board of Election Commissioners To Place The Student Bill of Rights On The Ballot, Because:

A. The Transitional District Has No Authority To Certify The Student Bill Of Rights In That The State Had Revoked Any Such Authority Prior To Entry Of The Circuit Court's Order And The Transitional District Had Also Been Dismissed From The Case.

B. The Board of Education Has No Authority To Certify The Student Bill Of Rights In That The Plain Language Of The Statutes Does Not Grant The Board Any Such Authority.

C. The Board Of Election Commissioners Has No Authority To Place The Student Bill Of Rights On The Ballot In That The Plain Language Of The Statutes Grants The Commissioners No Such Authority Without Proper Certification From An Authorized Political Subdivision.

The circuit court's order directs the Transitional District and the Board of Education to certify the Student Bill of Rights for placement on the ballot at the "next regularly scheduled general election."[24] The court's order also directs the

[24] LF at 108.

Board of Election Commissioners to place the proposition on the ballot, regardless of whether these certifications were received.[25]

The circuit court lacked the authority to enter such orders as a matter of law. None of these entities possess the statutory authority to take the actions ordered by the court. By entering the order, the court expanded the powers of these three political subdivisions far beyond the powers granted to them by the Legislature. And courts cannot supply political subdivisions with powers not provided by the Legislature.[26]

The function of the judiciary is to interpret the law and regard the statutes as written by the Legislature.[27] As a result, this Court must reverse the circuit court's order. The circuit court's decision is an error of law and is reviewed *de novo*.[28]

A. The Transitional School District

As a political subdivision created by the General Assembly, the Transitional District derived its powers and authority from the State.[29] It may

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25 LF at 108-09.

26 United Air Lines, Inc. v. State Tax Comm'n, 377 S.W.2d 444, 452 (Mo. 1964); State ex rel. Benson v. Union Elec. Co., 220 S.W.2d 1, 3 (Mo. 1949) (en banc).

27 Laughlin v. Forgrave, 432 S.W.2d 308, 314 (Mo. 1968) (en banc).

28 Williams v. Kimes, 996 S.W.2d 43, 44-45 (Mo. 1999).

29 City of Dellwood v. Twyford, 912 S.W.2d 58, 59 (Mo. 1995) (internal

exercise only those powers that are granted by the Legislature.[30] "[W]here the Legislature has authorized a municipality to exercise a power and prescribed the manner of its exercise, the right to exercise the power given in any other manner is necessarily denied."[31]

The Transitional District was initially granted the authority to place the Student Bill of Rights on the ballot by the Legislature and then only by a date certain.[32] The Legislature, however, also made provisions for the revocation of that authority. The Legislature specifically allowed the State Board to revoke all of the Transitional District's powers by dissolving the Transitional District upon a finding that it had "accomplished the purposes for which it was established and is

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citation omitted).

[30] State ex rel. St. Louis Housing Authority v. Gaertner, 695 S.W.2d 460, 462 (Mo. 1985) (en banc) (powers of political subdivisions "are limited to those expressed or implied by statute, and any doubt should be construed against the grant of power") (internal citation omitted).

[31] Pearson v. City of Washington, 439 S.W.2d 756, 760 (Mo. 1969) (internal citation omitted).

[32] Mo. Rev. Stat. § 162.666.10 (2002).

no longer needed."[33] The State Board dissolved the Transitional District effective July 1, 1999.[34]

The Legislature made no provisions for the transfer of responsibility for placing the issue on the ballot to another entity.[35] No party challenged the validity of the State Board's act in dissolving the District, and the time for an appeal of that decision has long passed. Because the Transitional District then had no authority to place the Student Bill of Rights on the ballot, the circuit court erred in ordering it to take such action.[36]

Even if the Transitional District did maintain the authority to certify the Student Bill of Rights, the court did not have jurisdiction over the Transitional District to order the Transitional District or its officers to take any action. The Transitional District Defendants had been dismissed from the case in December 2000 by the circuit court after the court found that the "Transitional District no longer exists," and that the former individual Transitional District board members

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[33] Mo. Rev. Stat. § 162.1100.12 (2002).

[34] See LF at 85-86.

[35] Even the circuit court acknowledged in December 2000 that "In this case, the matter of substitution is obfuscated by the absence of any provision in law identifying the successor. Indeed, §162.1100 does not seem to contemplate a successor [to the Transitional District]." LF at 18.

[36] See United Air Lines, 377 S.W.2d at 452; Union Elec., 220 S.W.2d at 3.

"[have] no standing to file an answer or otherwise litigate this action."[37] As a non-party, the court lacked the jurisdiction to order the Transitional District Defendants to take any action.[38]

The circuit court erroneously justified its action by relying on Rule 52.13(e).[39] This Rule simply provides that where an existing corporation has been sued and served with process, or appeared in an action, the action is not affected by that company's dissolution and any judgment is effective against the last directors and officers. Nowhere, however, does Rule 52.13(e) allow a court to enter an order against the officers of a political subdivision that has been dismissed from the action and is not a party at the time of trial. As a result, this Court should reverse the circuit court's order to the Transitional District to certify the Student Bill of Rights.

B. The Board of Education of the City of St. Louis

This Court should also reverse the circuit court's Order directing the Board of Education to certify the Student Bill of Rights to the Board of Election Commissioners. Such an order is beyond the scope of the statutes as written. The duty of this Court is to take the statute as it stands.[40]

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37 LF at 18.

38 State ex rel. Morris v. McDonald, 817 S.W.2d 923, 926 (Mo. Ct. App. 1991).

39 LF at 96.

40 Blessing v. Chicago, B. Q. & R. Co., 171 S.W.2d 602, 603 (Mo. 1943) (en

The primary rule of statutory construction is to ascertain the intent of the Legislature, to give effect to that intent if possible, and to consider words used in their plain and ordinary meaning.[41] Where the language of a statute is clear, a court should regard the laws as meaning what they say; the Legislature is presumed to have intended exactly what it states directly and unambiguously.[42] Where the statutory language is unambiguous, no room is afforded for construction.[43]

Section 162.666 establishing the Student Bill of Rights is clear and unambiguous: The Transitional District was the only entity authorized to call for an election and place the Student Bill of Rights on the ballot.[44] Nowhere in

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banc).

[41] Wolff Shoe Co. v. Dir. of Rev., 762 S.W.2d 29, 31 (Mo. 1988) (en banc) (internal citation omitted).

[42] State ex rel. Bunker Resource, Recycling and Reclamation, Inc. v. Dierker, 955 S.W.2d 931, 933 (Mo. 1997) (quoting In re Estate of Thomas, 743 S.W.2d 74, 76 (Mo. 1988) (en banc).

[43] Brownstein v. Rhomberg-Haglin and Assoc., Inc., 824 S.W.2d 13, 15 (Mo. 1992) (internal citation omitted).

[44] Mo. Rev. Stat. § 162.666.10 (2002) (governing board of the Transitional District shall no later than March 15, 1999 place Student Bill of Rights before voters of the City of St. Louis to the extent constitutional).

Section 162.666, or any other statutory provision, is the Board of Education authorized to submit the Student Bill of Rights to the voters. The courts, under the guise of construction, cannot supply authority to a political subdivision that the Legislature has not provided.[45] Because the Legislature did not expressly provide this authority, nor did it intend to provide it, the circuit court lacked the power to order the Board of Education to take such an action. "The courts cannot transcend the limits of their constitutional powers and engage in judicial legislation supplying omissions and remedying defects in matters delegated to a coordinate branch of our tripartite government."[46]

Although Section 162.666 is unambiguous and thus no further analysis is necessary, further evidence of the Legislature's intent is found in other sections of the Missouri statutes. The Legislature imposed many special obligations on the Transitional District and similarly, provided it with many special powers. There were at least twenty such powers and obligations that were unique to the Transitional District.[47] They were not provided to, or imposed upon, any other

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[45] United Air Lines, 377 S.W.2d at 452; Union Elec., 220 S.W.2d at 3.

[46] Bd. of Educ. of the City of St. Louis v. State, 47 S.W.3d 366, 371 (Mo. 2001) (en banc) (internal citations omitted).

[47] Mo. Rev. Stat. §§ 162.1100.2(2); 162.1100.4(1)-(6); 162.1100.5; 162.1100.6(1)-(5); 162.1100.7; 162.1100.8; 162.1100.9; 162.1100.10; 162.1100.11 (2002)

Missouri school district, including the Board of Education. These included the responsibility to determine the constitutionality of the Student Bill of Rights and the obligation to place the issue on the ballot to the extent that it was constitutional.[48]

Of all these special powers and obligations, the Legislature made provision for the transfer of only one power upon dissolution of the Transitional District – the power to collect the proceeds of the Transitional District's Sales Tax.[49] The express mention of one thing implies the Legislature's exclusion of another.[50] The Legislature's specificity in transferring only one power to the Board of Education demonstrates its intent that all other powers and obligations, including the power to place the Student Bill of Rights on the ballot, are not to be transferred to the Board of Education.[51] If the Legislature had wanted the Board of Education to have such powers, it could have expressly so stated.

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[48] Mo. Rev. Stat. § 162.666.10 (2002).

[49] See Mo. Rev. Stat. § 162.1100.2(1) (2002) (providing for the assignment of the sales tax revenue from the Transitional District to the Board of Education). See supra at 11.

[50] Harrison v. MFA Mut. Ins. Co., 607 S.W.2d 137, 146 (Mo. 1980) (en banc).

[51] This analysis remains equally true even if the Board of Education is the successor to the Transitional District as the circuit court ruled. LF at 95-96. If the

Since the Legislature did not provide the Board of Education with the authority to place the Student Bill of Rights before the public, the circuit court lacked the authority to order the Board of Education to undertake such action.[52] The circuit court erred in doing so, and this Court should reverse the circuit court's order.

C. Board of Election Commissioners

This Court should also reverse the circuit court's order directing the Board of Election Commissioners to place the Student Bill of Rights on the ballot. The Board of Election Commissioners is not statutorily authorized to place this matter on the ballot unless it is certified by another authorized, political subdivision. The Commissioners' role, as defined by State law, is only to serve as the administrative election authority. Its responsibilities include preparing required notices and overseeing the election process once the State or a political subdivision calls for an election and moves to place an issue on the ballot.[53]

The Board of Election Commissioners has no independent grant of authority from the Legislature to take the action ordered by the circuit court, and the courts

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circuit court is correct that the Board of Education is the Transitional District's successor, then the Legislature's decision to transfer only one power to the successor is within the Legislature's discretion and must be upheld.

[52] United Air Lines, 377 S.W.2d at 452; Union Elec., 220 S.W.2d at 3.

[53] See, e.g., Mo. Rev. Stat. § 115.023 (2002); § 115.125 (2002).

cannot grant authority where none exists.[54] This is especially true where, as here, the Legislature has revoked the authority of any entity to place the issue on the ballot.

The circuit court lacked the power to order the Board of Election Commissioners to place the Student Bill of Rights on the ballot without proper certification, and this Court must, therefore, reverse the order.

II. The Trial Court Erred In Ordering That The Student Bill Of Rights Be Placed On The Ballot Because This Case Was Moot In That The Legislature Directed That The Student Bill Of Rights Be Placed On The Ballot No Later Than March 15, 1999, Which It Intended As An Absolute Deadline, And That Deadline Has Already Passed.

The circuit court erred in ruling that this case is not moot. The plain language of the statute demonstrates that the Legislature intended for the Student Bill of Rights to be placed before the voters no later than March 15, 1999 or not at all.[55]

Since the legislative deadline has passed, this case is moot and the court erred in ordering the Student Bill of Rights placed on the ballot.[56] The circuit court has effectively established by judicial ruling a new deadline for an election

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54 United Air Lines, 377 S.W.2d at 452; Union Elec., 220 S.W.2d at 3.

55 Mo. Rev. Stat. § 162.666.10 (2002).

56 Pub. Water Supply Dist. No. 5 v. City of DeSoto, 8 S.W.3d 206, 208 (Mo. Ct. App. 1999).

where none was contemplated by the Legislature. The circuit court decision is an error of law and is reviewed *de novo*.[57]

A. The Statutory Mandate

The starting point in statutory interpretation is always the plain language of the statute.[58] Words in a statute "should be given their plain and ordinary meaning whenever possible."[59] Courts will look elsewhere for interpretation only when the meaning is ambiguous or the plain meaning would lead to an illogical result defeating the purpose of the Legislature.[60]

The plain language of the Student Bill of Rights is unambiguous, and thus no further analysis is necessary. The Legislature expressly stated that the Transitional School District "shall propose, to the extent that the program is consistent with the Missouri and United States Constitutions, [sic] place before the voters of the City of St. Louis no later than March 15, 1999, a proposal to implement the program."[61] Generally the use of the word "shall" in a statute will

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57 Williams, 996 S.W.2d at 44-45.

58 Jones v. Dir. Of Rev., 981 S.W.2d 571, 574 (Mo. 1998) (en banc).

59 Spradlin v. City of Fulton, 982 S.W.2d 255, 258 (Mo. 1998) (en banc) (internal citation omitted).

60 Id.

61 Mo. Rev. Stat. § 162.666.10 (2002) (emphasis added).

be interpreted as mandatory.[62] And where the term is mandatory, any act taken that is not in compliance with the mandate renders the act "illegal and void…."[63]

The ultimate determination of whether the term "shall" is mandatory or directory depends not on a rigid rule, however, but rather on context and legislative intent.[64] And the context of Senate Bill 781 demonstrates that the Legislature's intent in using the word "shall" is mandatory in this instance.[65]

The statute addressing the Student Bill of Rights was enacted as part of Senate Bill 781 (1998) that was designed, *inter alia*, to facilitate the settlement of the Liddell desegregation litigation in St. Louis. March 15, 1999 was not a random date – rather, it coincided with the other statutory deadline in SB 781. That deadline provided that the financial terms of SB 781 would only be effective if the St. Louis and Kansas City desegregation cases were settled by March 15, 1999.[66] Thus, the Legislature's intent was that by March 15, 1999, the outcome of the matters addressed by SB 781 would be known: either there would be a settlement or there would not; either there would be a Student Bill of Rights or

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62 Howard v. Banks, 544 S.W.2d 601, 603-04 (Mo. Ct. App. 1976).

63 State ex rel. Ellis v. Brown, 33 S.W.2d 104, 107 (Mo. 1930) (en banc).

64 Farmers & Merch. Bank & Trust Co. v. Dir. of Rev., 896 S.W.2d 30, 32-33 (Mo. 1995) (en banc).

65 See State v. Withrow, 8 S.W.3d 75, 79-80 (Mo. 1999) (en banc).

66 Mo. Rev. Stat. § 163.035 (2002).

there would not. And, all parties would be able to move forward with those matters determined.

The Board is not alone in this view of the meaning of the March 15, 1999 deadline. The Missouri Attorney General – charged with defending state statutes – agrees that the March 15, 1999 deadline was purposefully selected by the Legislature to coincide with the March 15, 1999 settlement deadline. The Attorney General also agrees that the deadline was intended by the Legislature as absolute and its passage renders this case moot:

> Because March 15, 1999, has now long since come and gone, and the [Transitional District] has been dissolved and no longer exists, this action to now force placement of the Students' Bill of Rights before the voters is moot and should be dismissed. It is well established that a cause of action is moot when a judgment would not have any practical effect, or when an event has occurred that makes a decision unnecessary or without effectual relief.[67]

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[67] LF at 24, Missouri State Board of Education's Response to Order to Show Cause dated January 11, 2001.

B. The Circuit Court's Order

The circuit court agreed with the Board of Education and Attorney General that March 15, 1999 was specifically selected by the Legislature as a date of importance: "Presumably March 15, 1999, was selected because it would provide some assurance that all St. Louis school issues would be disposed of by that date."[68]

The circuit court nonetheless held that the Student Bill of Rights could be ordered on the ballot, despite the significance of the deadline to the Legislature. The basis for the court's ruling was that the deadline was important, "[b]ut nothing in Senate Bill 781 evinces a legislative intent to clothe the Transitional School District with a veto power over the placement of the proposition on the ballot through inaction."[69] The circuit court's conclusion is misplaced.

The Transitional District never "vetoed" the Student Bill of Rights' placement on the ballot. The Transitional District's legislative charge was to place the Student Bill of Rights on the ballot only to the extent constitutional.[70] Upon the advice of counsel,[71] the Transitional District did not place the Student Bill of Rights on the ballot because the District believed it to be wholly

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68 LF at 97-98.

69 LF at 98.

70 Mo. Rev. Stat. § 162.666.10 (2002).

71 Not counsel for the Board of Education.

unconstitutional.[72] Such action is not a "veto," but a political subdivision adhering to its legislative mandate. The Transitional District was only exercising the authorization granted to it by statute.

Prior to March 15, 1999, there is no dispute that the judiciary had the authority to order the Student Bill of Rights on the ballot prior to that date to the extent that the Student Bill of Rights was constitutional. The Transitional District never had "veto" power. The question that must drive this Court's ruling, however, is legislative intent. As described, that intent was for the Student Bill of Rights to appear on the ballot by March 15, 1999 or not at all. The circuit court simply did not have the power to extend the March 15, 1999 deadline.

The fact that Respondent did not timely pursue his litigation prior to the March 15 deadline is not a sufficient reason to override legislative intent. Respondent initially filed this action three and one half months prior to the deadline. Respondent, however, failed to pursue his case on an expedited basis. In fact, Respondent took no action to prosecute this litigation at all following the filing of his First Amended Petition in January 1999 until September 1999, six months after the legislative deadline passed.

Since March 15, 1999 has long since passed, and the Transitional District has been dissolved and no longer exists, this action is moot. By granting Respondent's relief, the circuit court effectively established a new deadline for an

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[72] See supra at 72.

election where no such date was contemplated by the Legislature. Such an action is illegal and void and should be reversed.[73]

III. The Circuit Court Erred In Ruling That The Student Bill Of Rights Is A Valid Special Law Because The Student Bill Of Rights Violates The Missouri Constitution, Art. III, § 42, In That No Notice Of The Special Law Was Published In The Affected Locality Prior To Its Introduction Into The General Assembly, Nor Were The Other Requirements Of § 42 Followed.

The Student Bill of Rights is void in its entirety because it is a special or local law in violation of the Missouri Constitution, Article III, § 40.[74] The Student Bill of Rights is a special law because it is closed ended and could never, by its very terms, apply to any other political subdivision other than the Board of Education.

The circuit court itself specifically found that the Student Bill of Rights is a special law. The court, however, said that the law was not invalid because a "substantial justification" for the law exists. While the Board disagrees with the conclusion that a substantial justification exists (as set forth in Point Relied on No. IV), that issue need not be reached. Even if such justification is present, the law is still invalid because the Legislature failed to follow the express constitutional

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[73] See Brown, 33 S.W.2d at 107.

[74] See Mo. Rev. Stat. § 162.666 (2002).

procedures for enacting a special law. The failure to follow these constitutional procedures is a fatal flaw that renders the Student Bill of Rights invalid and void.[75]

The circuit court's ruling is an error of law and is reviewed *de novo*.[76]

A. Special Law

Article III, § 40 of the Missouri Constitution expressly prohibits the Legislature from enacting local or special laws:

> The general assembly shall not pass any local or special law:
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> ******
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> (21) creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, elections or school districts;
>
> . . . .
>
> (24) regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes;
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> . . . .
>
> (30) where a general law can be made applicable, and whether a general law could have been made applicable is a judicial

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[75] Ashbrook v. Schaub, 60 S.W. 1085, 1086 (Mo. 1901). See also Treadway v. State, 988 S.W.2d 508, 512 (Mo. 1999) (en banc) (special law must comply with requirements of Art. III, § 42 of the Missouri Constitution).

[76] Williams, 996 S.W.2d at 44-45.

> question to be judicially determined without regard to any legislative assertion on that subject.[77]

In analyzing whether a law is a special law, the fundamental question to be asked is whether the legislation is "open-ended" or "not open-ended" legislation.[78] Classifications are considered open-ended, and therefore generally constitutional, if it is possible that the status of the members of the class could change.[79] Thus, for example, legislation applying to certain political subdivisions based upon their population is generally not a special law - even if only a few subdivisions fall in that class - since at some point in the future there could be other political subdivisions that fall into that category.[80]

Legislation that is not open-ended, however, singles out one or a few political subdivisions by immutable characteristics, i.e., characteristics that are not capable of change. Such statutes are classified as special and, therefore, are unconstitutional.[81] "Classifications based on historical facts, geography, or constitutional status focus on immutable characteristics and are therefore facially

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77 Mo. Const. art. III, § 40.

78 O'Reilly v. City of Hazelwood, 850 S.W.2d 96, 99 (Mo. 1993) (en banc).

79 Harris v. Mo. Gaming Comm'n, 869 S.W.2d 58, 65 (Mo. 1994) (en banc).

80 O'Reilly, 850 S.W.2d at 99; School Dist. of Riverview Gardens v. St. Louis County, 816 S.W.2d 219, 221-22 (Mo. 1991) (en banc).

81 O'Reilly, 850 S.W.2d at 99.

special laws."[82] "The focus is not on the size of the class comprehended by the legislation. Rather the issue is the nature of the factors used in arriving at that class."[83]

The Student Bill of Rights is a closed-ended unconstitutional special law because it is based on geography and the status of the class members can never change. The statute initially states that it applies to any "metropolitan school district."[84] Subsequent provisions, however, limit its applicability solely to the St. Louis Public Schools. The Student Bill of Rights explicitly states that "this section shall be known and may be cited as the St. Louis Students' Bill of Rights" and provides that it "shall only become effective upon approval by a majority of the voters of the [C]ity of St. Louis."[85] The ballot language required by the legislation further demonstrates the special law nature of the Student Bill of Rights. It also provides that the Student Bill of Rights can only be implemented in the St. Louis Public Schools:

> Shall the St. Louis School District reinstitute the basic kindergarten through eighth grade neighborhood school system within the district

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82 Harris, 869 S.W.2d at 65 (internal citation omitted).

83 Tillis v. City of Branson, 945 S.W.2d 447, 449 (Mo. 1997) (en banc).

84 Mo. Rev. Stat. § 162.666.2 (2002).

85 Mo. Rev. Stat. § 162.666.1 and .10 (2002) (emphasis added).

and be required to permit students to attend the school closest to their home?[86]

The express language of the statute makes it clear that in no event will the St. Louis Student Bill of Rights ever apply to any other school district other than the St. Louis Public Schools.

The Student Bill of Rights' statute is analogous to the statute struck down by this Court in Tillis v. City of Branson.[87] In Tillis, this Court ruled that a statute granting certain powers to cities meeting certain requirements and "located in a county that borders the state of Arkansas" was invalid because the requirement that a city be in a county bordering Arkansas made the statute closed-ended.[88] The status of the members of the class could never change.

Similarly, by specifically referring to the St. Louis School District, the Legislature made the Student Bill of Rights' statute a close-ended special law based on geography. The statute will never apply to any other political subdivision other than the Board of Education. Thus, the statute is in violation of the Missouri Constitution, Article III, §§ 40(21), 40(24), and 40(30).

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86 Mo. Rev. Stat. § 162.666.11 (2002).

87 Tillis, 945 S.W.2d 447 (Mo. 1997) (en banc).

88 Id. at 448.

B. Failure to Follow Constitutional Procedures

The circuit court found that the Student Bill of Rights is in fact a special law.[89] After concluding that it is a special law, however, the circuit court then erred by concluding that the Student Bill of Rights was not an "invalid special law" because there was "substantial justification" for the law.[90]

Even if such justification exists, the Student Bill of Rights still violates the Missouri Constitution because the Legislature did not follow the specific Missouri constitutional provisions requiring publication and notice in affected localities prior to passage of a special law. Article III, §42 of the Missouri Constitution sets forth exacting procedures for passage of a special law:

> No local or special law shall be passed unless a notice, setting forth the intention to apply therefor and the substance of the contemplated law, shall have been published in the locality where the matter or thing to be affected is situated at least thirty days prior to the introduction of the bill into the general assembly and in the manner provided by law. Proof of publication shall be filed with the general

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89 LF at 105 (Court cannot rule out that § 162.666 is facially a special law, but concludes it is not "an invalid special law").

90 LF at 105-06.

assembly before the act shall be passed and the notice shall be recited in the act.[91]

The Respondent, who had the burden of proof in this case, presented no evidence that the Legislature complied with the Missouri Constitutional notice and publication provisions. No such evidence was presented because none exists. In fact, a review of Senate Bill 781 (1998), which contains the St. Louis Student Bill of Rights' provisions, demonstrates that at a minimum the required notice was not recited in the Act.[92] Failure to follow these constitutional procedures is not a mere procedural technicality. If they are not followed, the entire law is void.[93]

The circuit court's failure to rule that the Student Bill of Rights is an unconstitutional special law because the Legislature failed to comply with the notice and publication provisions is error as a matter of law. The circuit court's order should be reversed and § 162.666 declared invalid and void.

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91 Mo. Const. art. III, § 42. See also Mo. Rev. Stat. §§ 21.280, 21.290 (2002).

92 See Senate Bill 781 (1998).

93 Ashbrook v. Schaub, 60 S.W. 1085, 1086 (Mo. 1901). See also Treadway v. State, 988 S.W.2d 508, 512 (Mo. 1999) (en banc) (special law must comply with requirements of Art. III, § 42 of the Missouri Constitution).

IV. The Circuit Court Erred In Ruling That There Is A Substantial Justification For The Student Bill Of Rights Because No Such Justification Exists In That A General Law Could Have Achieved The Same Result.

While agreeing with the Board of Education that the Student Bill of Rights is a special law, the circuit court concluded that the Student Bill of Rights is not an "invalid special law" because there is "substantial justification" for the Student Bill of Rights applying only to the Board of Education. The circuit court's conclusion is an error of law that is reviewed *de novo*.[94]

The party defending a special law must demonstrate a "substantial justification" for the law. In order to prove substantial justification, a party must show that the situation addressed "…is so unique that a law of general applicability could not achieve the same result."[95] This was not demonstrated in this case.

The first two justifications cited by the circuit court focus on the fact that at the time of Senate Bill 781 there was only one "metropolitan district" and one "transitional school district."[96] While the circuit court did not elaborate on why

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94 Williams, 996 S.W.2d at 44-45.

95 See Riverview Gardens, 816 S.W.2d at 221; Hunter Avenue Property v. Union Elec. Co., 895 S.W.2d 146, 153-54 (Mo. Ct. App. 1995) (internal citations omitted).

96 LF at 105-06 (there is only one metropolitan school district in the state; the

this fact was substantial justification for a special law, the court appears to have concluded that requiring the Legislature to pass a general law in such circumstances would be "useless formalism."[97] The circuit court's ruling is in error and sets a precedent that eviscerates the prohibition against special laws.

The fact that only one entity falls within a legitimate class established by the Legislature (in this case, the metropolitan class of school districts) does not justify the passage of some other law at a later time that identifies by name the entity (or entities) then falling in the class at the time the new legislation is passed. There are simply no cases supporting this proposition. The latter law is still a closed-ended special law because it is based upon immutable characteristics, and no new political subdivisions will ever fall in the class established by the latter law.[98]

If the circuit court's reasoning is followed to its logical conclusion, the Legislature could pass special laws with impunity. The Legislature could simply pass a very narrow but valid general law creating a general class, and then subsequently pass other laws identifying by name the political subdivisions in the valid class on the grounds that "These are the only ones in the class at this time." There is no foundation in Missouri law for such a proposition.

Transitional School District can only exist in a city not within a county).

97 LF at 106.

98 Harris, 869 S.W.2d at 65.

The other justification cited by the circuit court is the fact that only one metropolitan school district in the state was subject to federal judicial supervision at the time the Student Bill of Rights was adopted, the St. Louis City district. The trial court reasoned that this constituted substantial justification for identifying the St. Louis City school district by name. The trial court erred in reaching this conclusion because a general law still could have addressed the same issue and achieved the same result.[99]

The Legislature was fully aware of the pending St. Louis desegregation case. In fact, several statutory provisions passed at the time of Senate Bill 781 reference or are contingent upon the "federal school desegregation case"[100] or the "federal court's jurisdiction."[101] These laws apply to all metropolitan districts that are subject to a federal desegregation order and will apply to all metropolitan districts in the future that meet the same criteria.

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[99] See Riverview Gardens, 816 S.W.2d at 221-22.

[100] Mo. Rev. Stat. § 162.1100.1 (2002).

[101] Mo. Rev. Stat. § 163.035.2 (2002); Mo. Rev. Stat. § 162.1100.5 (2002). See also Mo. Rev. Stat. §§ 162.1060.2 ("federal desegregation order"), 162.1060.5 ("federal district court"), 162.1060.7 ("federal court desegregation order"), 162.1100.1 ("federal school desegregation case"), and 162.1100.5 ("school desegregation case").

If indeed the Legislature believed that the voting provisions of the Student Bill of Rights should apply to the St. Louis City school district because of the federal court's jurisdiction over the desegregation case, as the circuit court believed, the Legislature could have enacted a general law requiring implementation of the Student Bill of Rights in all metropolitan districts but requiring a vote of the people in any district subject to the "jurisdiction of the federal court in a school desegregation case." Thus the law would have applied even handedly to all similarly situated political subdivisions now in existence or those that fell into the class at a future time.

Instead, however, the Legislature made the implementation subject to a vote only in the City of St. Louis district by identifying the City district by name. The Legislature's own actions in drafting general laws that still address the fact that the St. Louis City district was subject to court jurisdiction belies the circuit court's finding that it was necessary to identify the St. Louis City school district by name in the Student Bill of Rights statute.

V. The Circuit Court Erred In Ruling That The Student Bill Of Rights Does Not Violate Due Process Because The Legislatively Prescribed Ballot Language Is Misleading And Deceptive In That It Does Not Inform The Voter Of All That He Or She Is Voting On.

The Student Bill of Rights is unconstitutional under the Due Process Clauses of the United States and Missouri Constitutions because the ballot

language specifically required by Senate Bill 781 is so misleading, deceptive, and vague as to deny voters their due process of law. The circuit court's finding that the ballot language is not misleading is an error of law that is reviewed *de novo*.[102]

The Student Bill of Rights essentially requires the St. Louis school system to incorporate five distinct concepts: 1) a K-8 system; 2) district wide, absolute "neighborhood schools;" 3) equalized per pupil expenditures; 4) specified accelerated programs for gifted children; and 5) the unabridged right for any student to transfer to any school in the district. The Student Bill of Rights provides that it will become effective only upon approval by a majority of the voters of the City of St. Louis. The Student Bill of Rights provides that the proposal shall be submitted substantially as follows:

> Shall the St. Louis School District reinstitute the basic kindergarten through eighth grade neighborhood school system within the district and be required to permit students to attend the school closest to their home:
>
> [ ] Yes [ ] No

This ballot language required by the statute is unconstitutional and void.[103]

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[102] Williams, 996 S.W.2d at 44-45.

[103] Only the Legislature may correct this unconstitutional language. See, e.g., Pollock v. Wetterau Food Distrib. Group, 11 S.W.3d 754, 767 (Mo. Ct. App. 1999) (court must interpret statute as written and may not add language).

The ballot language violates the voters' right to due process[104] because it is vague, misleading, and does not inform the voter of all that he or she is voting on. Ballot language need not contain all particularities; however, it must not be so vague as to be unfair or misleading.[105] As explained by this Court in approving a bond issue proposition:

> We have concluded, however, that the proposition submitted and voted on by the voters was clear and that the sentence in the instructions to voters with reference to utilization of the sales tax to retire these 'general obligation bonds' did not mislead them or cause them to approve bonds which otherwise they might have rejected.[106]

This is not the case with the Student Bill of Rights. The Student Bill of Rights explicitly requires the proposition to ask whether the St. Louis School

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[104] See Laubinger v. Laubinger, 5 S.W.3d 166, 173 (Mo. Ct. App. 1999) ("An allegation that statute is void for vagueness is grounded in the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, § 10, of the Missouri Constitution.").

[105] State ex rel. El Dorado Springs v. Holman, 363 S.W.2d 552, 557-58 (Mo. 1962) (en banc). See also Mid-State Distrib. Co. v. City of Columbia, 617 S.W.2d 419, 423 (Mo. Ct. App. 1981).

[106] Northern Trust Co. v. City of Independence, 526 S.W.2d 825, 832 (Mo. 1975) (en banc).

District shall reinstitute the K-8 system and be required to permit students to attend the school closest to their home. Nowhere in this ballot language does it refer to the other provisions of the Student Bill of Rights, such as programs for gifted students, equalized per pupil expenditures, and requiring the District to allow students to attend any school.

These provisions are entirely distinct propositions from a kindergarten through eighth grade structure and "neighborhood" schools – yet, the voters will have no idea, based upon the language of the proposition, that they are voting on these issues. The ballot language may cause the voters to approve a concept (i.e. unrestricted transfers between schools, certain gifted student programs, or equalized pupil expenditures), which they may otherwise have rejected for good reason. If the voters intend to place these mandates on their school system, they are entitled to know they are doing so when they vote.[107]

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[107] The circuit court commented that the Board of Education might not have standing to raise this due process argument. The circuit court was in error. The Legislature has directed the Student Bill of Rights' constitutionality be evaluated in its entirety. Under the circuit court's interpretation, the Student Bill of Rights' constitutionality could be evaluated only to the extent the named defendant had standing to raise a constitutional issue, which is clearly not what the Legislature intended. LF at 102.

The circuit court addressed this issue indirectly, stating "…the voters are told exactly what they are voting on…."[108] This is simply not the case as is evident from comparing the mandatory ballot language against the practices that will be required if the Student Bill of Rights is approved. The ballot language is misleading and vague and therefore unconstitutional under the Due Process Clauses of the United States and Missouri Constitutions.

VI. The Circuit Court Erred In Ruling That The Student Bill Of Rights Does Not Violate The Prohibition Against Doubleness In Ballot Propositions Because The Student Bill Of Rights' Ballot Language Contains Two Separate And Distinct Propositions In Violation Of This Court's Prior Decisions.

The Bill of Rights is invalid because it contains two separate and distinct propositions, which is prohibited by Missouri law. The circuit court's conclusion to the contrary is an error of law that is reviewed *de novo*.[109]

In Barrett v. Maitland,[110] this Court found that the ballot at issue, mandating that the voters vote on two distinct issues via a single "yes" or "no" vote, was void for doubleness of propositions to be voted upon by the electorate. The Court reached this conclusion "because the voter, in order to get what he earnestly wants,

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108 LF at 103.

109 Williams, 966 S.W.2d at 44-45.

110 Barrett v. Maitland, 246 S.W. 267 (Mo. 1922) (en banc).

is compelled to vote for things which he does not want. It is a species of legal fraud to thus compel votes."[111]

Numerous Missouri decisions condemn doubleness in submissions at elections.[112] It is held to be a kind of legal fraud, because it may compel the voter in order to get what they earnestly want to vote for something that they do not want, or vice versa. In Maitland, this Court stated that the doctrine against doubleness is firmly fixed in Missouri law and explained the dangers of doubleness as follows:

> Where questions are referred to the electors, whether they are amendments to the [c]onstitution or questions of any other nature, they must be submitted separately so that each may stand or fall upon its own merits. But two questions cannot be treated together, to stand or fall upon a single vote. It needs no argument to show the injustice of such a submission. By it several interests may be combined; an unpopular measure may be tacked on to one that is popular, and carried on the strength of the latter. A necessary matter

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111 Id. at 272.

112 See, e.g., Phelps County v. Holman, 461 S.W.2d 689, 690 (Mo. 1971) (en banc); City of Raytown v. Kemp, 349 S.W.2d 363, 368 (Mo. 1961) (en banc); State ex rel. Schwerdt v. Reorganized School Dist. R-3, Warren County, 257 S.W.2d 262, 266 (Mo. Ct. App. 1953).

> may be made to carry with it some private speculation for the benefit of a few. Things odious and wrong in themselves may receive the popular approval because linked with propositions whose immediate consummation is deemed essential. It is against the very spirit of popular elections.[113]

The circuit court concluded that the Student Bill of Rights' ballot language was not void for doubleness because the Student Bill of Rights' provisions are "interdependent."[114] There is no basis for this conclusion.

For example, the two components of the Student Bill of Rights actually identified in the ballot language have no interdependence. Allowing students to attend the school closest to their home[115] and a K-8 system are entirely separate and distinct issues. A school district could implement a neighborhood school system without a K-8 system, and in fact the Board of Education presently does. Similarly, a school district could implement a K-8 system without neighborhood schools. There is no interdependency whatsoever.

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113 Maitland, 246 S.W. at 272.

114 LF at 103.

115 The Board of Education already has and implements a policy requiring assignment of students to provide maximum convenience to students and parents. Board Policy P5117. Thus, the District already has neighborhood schools to the extent possible.

The wisdom of the rule against doubleness is demonstrated by the facts of this case. Some voters may strongly desire neighborhood schools, but strongly oppose a K-8 system. These voters will face the very conundrum this Court has prohibited: choosing between voting "yes" and supporting a proposition to which the voter is strongly opposed in order to support the proposition they favor, and voting "no" to defeat the measure despite favoring one aspect of the ballot measure.[116] Similarly, some voters may desire a K-8 system, but oppose equalization of expenditures because such equalization may result in discontinuation of valuable educational practices which their child or children need or desire, such as magnet schools. Considering that the Student Bill of Rights incorporates five concepts, the voters face almost unlimited conflicts.

The voters should not be required to vote on the merits, or lack thereof, of five distinct educational concepts in a single vote. By requiring a single vote, the Student Bill of Rights violates the rule against doubleness and is therefore unconstitutional.

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[116] And voters may well want to vote against a K-8 system given its projected cost of implementation of more than $180 million. See LF at 83. While the circuit court found the cost substantially less, the court proffered no detailed analysis explaining its conclusion.

VII. The Circuit Court Erred In Ruling That The Student Bill Of Rights Does Not Violate The United States Constitution's Supremacy Clause Because The Legislature Intended That The Student Bill Of Rights' Constitutionality Be Evaluated Based On The Law And Facts As They Existed In 1998; And When Examined As Of That Time, The Student Bill Of Rights Is Wholly In Violation Of The United States Constitution's Supremacy Clause In That It Contravened Federal Court Orders Designed To Remedy Constitutional Transgressions.

A. The Legislature Intended That the Constitutionality of the Bill Of Rights be Evaluated as of the State of the Law and Facts Existing in December 1998.

The circuit court erred in ruling that the determination of the Student Bill of Rights' constitutionality should be based upon the state of law and facts as they exist today, or at some unknown time in the future.[117] Rather, this determination must be based upon the law and facts as they existed in December 1998. This is because the Student Bill of Rights' legislation includes key provisions that, when read together, demonstrate this was the Legislature's intention. The circuit court's ruling is an error of law that is reviewed *de novo*.[118]

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117 LF at 100.

118 Williams, 966 S.W.2d at 44-45.

The first provision demonstrating the Legislature's intent is the Legislature's mandate that the Transitional District's obligation was to place the Student Bill of Rights on the ballot only to the extent that the Student Bill of Rights was constitutional.[119] By imposing this mandate, the Legislature was unambiguously expressing its intention that the Student Bill of Rights' constitutionality be evaluated prior to its placement on the ballot.

The second provision is the Legislature's mandate that the matter be placed on the ballot no later than March 15, 1999.[120] Based on state election laws, in order for the Student Bill of Rights to be placed on the ballot in that timeframe, the Transitional District would have had to certify the matter to the Board of Election Commissioners no later than December 23, 1998.[121] By placing a deadline on submission of the issue to the voters of March 15, 1999, while simultaneously stating that the matter must be submitted only "to the extent that the program is consistent with the Missouri and United States Constitutions," the Legislature's intention is clear: The Student Bill of Rights' constitutionality should be evaluated based on the facts and law existing prior to the time the Transitional District was required to

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119 Mo. Rev. Stat. § 162.666.10 (2002).

120 Id.

121 See Plaintiff's Petition in Mandamus at 4-5. The Board of Education believes the required certification date was earlier, but assumes the accuracy of Plaintiff's position for this brief.

certify the issue to the Board of Election Commissioners (i.e. December 1998 or earlier).

Because this Court's role is to give effect to the Legislature's intent,[122] this Court must evaluate the constitutionality of the Student Bill of Rights as of the law and facts existing in December 1998.

B. The Entire Student Bill of Rights Violated Existing Court Orders in Liddell in December 1998 and Consequently was Unconstitutional as a Violation of the Supremacy Clause.

In December 1998, the Liddell litigation remained under active court jurisdiction. Various injunctive orders remained in effect, governing the manner in which the Board of Education could assign students and operate its programs.[123] As outlined below, the terms of the Student Bill of Rights violated these various orders. As such, they were a violation of the Supremacy Clause of the United States Constitution.[124]

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122 Trailiner Corp. v. Dir. of Rev., 783 S.W.2d 917, 920 (Mo. 1990) (en banc).

123 See Order L(266)99 at 19, dated March 12, 1999; Defendant's Exhibit D-8.

124 U. S. Const. art. VI, cl. 2; United States v. Scotland Neck Bd. of Educ., 407 U.S. 484, 488 (1972). See also Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776, 346 U.S. 485, 500-01 (1953).

It is well established that state laws in contravention of federal court orders violate the Supremacy Clause.[125] "[W]hen federal power is constitutionally exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented, or extended by a state…."[126]

1. The Student Bill Of Rights' Requirement That the Board Implement a Kindergarten Through Eighth Grade Education System Violated Court Orders.

The Student Bill of Rights' provisions requiring the Board to implement a K-8 and 9-12 educational system[127] violated express court orders in Liddell. The remedial orders in Liddell required the dismantling of the prior K-8 system of education in the St. Louis Public Schools and the implementation of the middle school program with a K-5, 6-8, and 9-12 grade structure. The court required this change to "assist in remedying the educational deprivations which resulted from the

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125 Scotland Neck, 407 U.S. at 488 ("[S]tate policy must give way when it operates to hinder vindication of federal constitutional rights.").

126 Garner, 346 U.S. at 500-01.

127 See Mo. Rev. Stat. § 162.666.3 and .4 (2002).

dual system which the Court of Appeals found to have existed."[128] This requirement was reaffirmed by the district court on at least two subsequent occasions.[129]

Because the terms of the Student Bill of Rights requiring the Board to implement a K-8 educational system were contrary to court orders, they are unconstitutional and void.

2. The Student Bill Of Rights' Requirement That All Students Have the Right to Attend the School Closest to Home Violated Court Orders.

The provisions of the Student Bill of Rights stating that each child in the District shall have the right to attend the school closest to such child's home[130] also violated court orders. Although many students in the St. Louis Public Schools already attended (and still do attend) their neighborhood schools, the court's orders also required the transportation of students to achieve a racially integrated student

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[128] Liddell v. Bd. of Educ., 491 F. Supp. 351, 357 (E.D. Mo. 1980), aff'd, 667 F.2d 643 (8th Cir. 1981).

[129] See Liddell v. Bd. of Educ., 795 F. Supp. 930, 932 (E.D. Mo. 1992) (affirming the Board's obligation to implement certain numbers of elementary, middle and high schools), aff'd in part, remanded in part, Liddell v. Bd. of Educ., 988 F.2d 844 (8th Cir. 1993); District Court Order G(470)92 dated July 7, 1992; Liddell v. Bd. Of Educ., Case No. 72-0100 GFG(6).

[130] Mo. Rev. Stat. § 162.666.5 and .9 (2002).

body at targeted city schools.[131] These orders required "integrating the enrollment in the schools through adoption of clustering" and "reassignment and transportation."[132]

In 1998, targeted regular and magnet schools were required to maintain a racial balance of 55% black, 45% white, plus or minus five percentage points.[133] Requiring the Board to allow students to attend the school closest to their home would violate these orders by prohibiting mandatory reassignment of students to achieve the required racial balance in the regular schools.

In addition, the court's orders required that access to the District's twenty-seven magnet schools be based upon a random lottery system and adhere to certain racial balance guidelines.[134] Granting unrestricted access to students living closest to the school would have also violated these orders.

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131 See Liddell, 491 F. Supp. at 352, 356 (E.D. Mo. 1980) (approving desegregation plan requiring Board to transport students to achieve a racial balance of 30-50% black at targeted schools); Liddell v. Bd. of Educ., 795 F. Supp. 930, 932, 933 (E.D. Mo. 1992) (holding Board must achieve racial balance of 55% black, 45% white, ± 5% at targeted city schools).

132 Liddell, 491 F. Supp. at 357.

133 Liddell, 795 F. Supp. at 933; Liddell, 696 F. Supp. 444, 457 (E.D. Mo. 1988) aff'd, Liddell v. Bd. of Educ., 907 F.2d 823 (8th Cir. 1990).

134 Liddell, 696 F. Supp. at 459.

Because the terms of the Student Bill of Rights requiring the Board to allow students to attend the school closest to home were contrary to court orders, they are unconstitutional and void.

3. The Student Bill Of Rights' Requirement That All Students Have the Right to Transfer to Any Other School in the District Violated Court Orders.

As discussed in subsection 2 immediately above, the court's orders required racially balanced student bodies at both magnet schools and targeted regular schools. Maintenance of this requirement would have been impossible if students were allowed to transfer to any school in the District.[135] Unrestricted transfers within the District would have stripped the Board of its ability to assign students to schools to achieve the required level of racial balance.

In addition, the court's orders required that admission to the District's magnet schools be based upon a lottery and established priorities.[136] These priorities, in descending order, included educational continuity, sibling priority, priority for black students in non-integrated schools, and priority for white county students.[137] Allowing students the unabridged right to attend magnet schools would have

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135 Mo. Rev. Stat. § 162.666.6 and .9 (2002).

136 Liddell, 696 F. Supp. at 457-59.

137 Id. The priority for white County students has since been eliminated and City and County white students now participate in the lottery on equal footing.

violated these various court orders. Because the terms of the Student Bill of Rights requiring the Board to allow students to attend any school violated court orders, they are unconstitutional and void.

4. The Student Bill Of Rights' Requirement That Per Pupil Expenditures be Equalized Violated Court Orders.

The court's orders in Liddell required the implementation of many special remedial programs in schools that remained all black, as well as specialized programs in magnet schools to increase their attractiveness to an integrated population.[138] Integrated schools also received some specialized programs, but not to the extent such services were provided to non-integrated and magnet schools. Thus, it was often the case that magnet schools had the highest per pupil expenditures, followed by all black schools, and finally regular integrated schools in descending order.[139] Implementation of the requirement that district expenditures be equalized would have forced violation of the court's orders requiring these special remedial and enhancement programs.

The Student Bill of Rights' exception allowing variations "in order to accommodate the special remedial needs of children who test below grade level"

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[138] See Liddell v. Bd. of Educ., 731 F.2d 1294, 1312-18 (8th Cir. 1984); Liddell, 696 F. Supp. at 448, 467.

[139] Hammonds, Transcript at 80.

would not have averted this result.[140] The additional funding for magnet and non-integrated schools was tied directly to school type rather than the level of achievement of the students attending those schools.[141]

Because the terms of the Student Bill of Rights requiring equalized per pupil expenditures violated court orders, they are unconstitutional and void.

5. The Student Bill Of Rights' Provision Concerning Gifted Programs Violated Court Orders.

The Student Bill of Rights' provisions concerning separate schools for gifted children violated court orders because these types of schools were expressly established, along with their location, by court order.[142] Similarly, all admissions' procedures and enrollment guidelines were also established by court order.[143] Those provisions regarding the right of students to attend the gifted program closest to home, or any gifted program in the District, were also inconsistent with court orders for the reasons identified in Sections VII(B)(2) and VII(B)(3).

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140 Mo. Rev. Stat. § 162.666.8 (2002).

141 Liddell, 696 F. Supp. at 448, 467; Liddell, 491 F. Supp. at 357 (stating that remedial programs in all black schools will not be limited to children with low test scores).

142 Liddell, 696 F. Supp. at 460, 461.

143 Id. at 457-58.

Because the terms of the Student Bill of Rights concerning gifted programs violated court orders, they are unconstitutional and void.

CONCLUSION

Appellant the Board of Education respectfully requests that this Court reverse the circuit court's July 31, 2002 order, declare Mo. Rev. Stat. § 162.666 invalid and void and direct the circuit court to enter judgment in favor of the Board of Education of the City of St. Louis. The order should be reversed because: (1) the circuit court lacked the requisite authority to enter the July 31, 2002 order, and (2) even if the circuit court did have the requisite authority, the circuit court erred as a matter of law in ruling that the Student Bill of Rights does not violate both the United States and Missouri Constitutions.

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RULE 84.06(c) CERTIFICATION

I hereby certify in accordance with Rule 84.06(c) that this brief includes the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b) and includes 10,823 words in its entirety.

_____

CERTIFICATE OF VIRUS FREE DISK

I hereby certify that the disk filed with this Brief required by Rule 84.06(g) has been scanned for viruses and that it is virus free.

_____

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed this _____ day of _____, 2003, by prepaid United States mail to: Charles R. Oldham, Attorney for Relator, facsimile 314-367-0926, 5227 Westminster Place, St. Louis, MO 63108; Rufus J. Tate, Jr., facsimile 314-726-00424, 7751 Carondelet Avenue, Suite 803, St. Louis, Missouri 63105, Attorney for Board of Election Commissioners.

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