IN THE SUPREME COURT OF MISSOURI

No. SC98907

ADAM L. LAYNE, DEFENDANT/APPELLANT

VS.

JAMES WILSON, et al., PLAINTIFFS/RESPONDENTS.

STATE OF MISSOURI, CROSS-CLAIM DEFENDANT/APPELLANT

VS.

CITY OF ST. LOUIS, CROSS-CLAIM PLAINTIFF/RESPONDENTS.

Appeal from the Circuit Court of the City of St. Louis

The Honorable Michael F. Stelzer, Judge

APPELLANT ADAM LAYNE'S BRIEF

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JURISDICTIONAL STATEMENT

This action involves the constitutionality of two state statutes—specifically whether sections 82.485 and 82.487 RSMo. (the "State Parking Statutes" or the "Statutes"), governing parking revenues in the City of St. Louis, violate Article VI, Section 22 of the Missouri Constitution, which prohibits laws fixing the powers and duties of municipal officers. This Court has exclusive jurisdiction. Mo. Const. art. III, § 3.

After Plaintiffs (at various times) filed motions for summary judgment, the trial court entered separate judgments declaring the Statutes unconstitutional and enjoining the parties from following them. *See* D180; A1; D240; A18; D241; A26. The City's Treasurer and the State appealed, however, this Court dismissed the appeals for lack of jurisdiction "because neither challenge[d] a "final judgment" as that phrase is used in section 512.020(5)." *Wilson v. City of St. Louis,* 600 S.W.3d 763, 773 (Mo. banc 2020).

All remaining issues were tried on June 29, 2020, and the judgment is now final because it disposed of the last claims in the lawsuit. *See* D325; A35.

Plaintiffs also filed a cross-appeal. D338. They appeal the trial Court's refusal to enjoin performance of certain contracts executed by the Treasurer's Office. This Court has jurisdiction to consider the cross-appeal. *See Doyle v. Tidball,* 2021 WL 3119116 *FN 2 (Mo. banc July 22, 2021) (quoting *Walsh v. Sw. Bell Tel. Co.,* 52 S.W.2d 839, 840 (Mo. 1932)("[W]hen the appeal of either appealing party

vests jurisdiction in this [C]ourt, the whole case must be heard here.")).

STATEMENT OF FACTS

A. Background

For more than forty years, the Treasurer of the City of St. Louis (the "Treasurer") has served as the "supervisor of parking meters," D207:P2. The Missouri legislature gave the City of St. Louis the ability to acquire parking lots and generally regulated parking therein. § 82.470, RSMo; A54. The State Parking Statutes (among others) name the Treasurer as the supervisor of parking meters and assign him a broad range of responsibilities, including installing parking meters, administering the parking meter fund and serving as chair of a Parking Commission which, in turn, has general responsibilities concerning parking. *See* §§ 82.485 and 82.487, RSMo; A54 and A56.

The Treasurer is to chair the Parking Commission. § 82.485, RSMo. The same law appoints the chairperson of the aldermanic traffic committee, the director of streets, and the comptroller as members of the Commission. *Id.* Finally, the law appoints another member (the director of parking operations) from the Office of the Treasurer to the Parking Commission. *Id.* That group approves the "guidelines governing the administrative adjudication, disposition and collection of any parking violations or complaints issued by the city"; modification to the parking fund budget; and the acquisition, development, regulation, and operation of parking facilities overseen by the parking division. § 82.487, RSMo; A56.

In addition to the statutes, the City also passed laws about parking oversight. D207:P2. The St. Louis City Charter (the

"Charter") creates an almost identical parking commission to the Parking Commission established by the State Parking Statutes. D207:P3.

B. Procedural History

James Wilson and Charles Lane, two residents of the City commenced this action. Plaintiffs named the City of St. Louis, the State of Missouri, Carl Phillips (as Director of Parking Operations), Darlene Green (as Comptroller), Stephen J. Runde (as Director of Streets[1]), Freeman Bosley Sr. (as Chair of the Board of Alderman's Traffic Committee), and the Treasurer as defendants. D257.

Wilson and Lane challenged the constitutionality of the State Parking Statutes. City Alderman Jeffrey Boyd intervened in the case and filed a petition with almost identical claims. Subsequently, Plaintiffs Boyd, Wilson, and Lane filed one amended petition, which was amended again later. D257. In addition to challenging the constitutionality of the State Parking Statutes, Plaintiffs ultimately sought a declaratory judgment regarding the validity of the schedule of parking fines and penalties in St. Louis City, and a declaratory judgment and injunctive relief as to compliance with the City's Professional Services Contract Ordinance. *Id.*

Originally a Defendant, the City of St. Louis answered Wilson and Lane's initial petition with its own cross-claim against the other Defendants. It joined in the challenge to the constitutionality of the State Parking Statutes. D291. The City then moved for summary

[1] Jamie Wilson is now the Director of Streets. D257:P1.

judgment on the constitutional question. D177. The trial court granted the City's motion. D180. Wilson, Lane, and Boyd subsequently filed their own motion for summary judgment nearly identical to the one filed by the City. D198.

With regard to standing, the City of St. Louis' Motion alleged only that "Street Director Wilson and Alderman Boyd are each required to assume additional powers and to perform additional duties as a result of the requirement that they serve on the parking commission referenced" in the State Parking Statutes. D174: P2. Plaintiffs' motion contains no facts with regard to the standing of the three Plaintiffs to bring this action, except that Plaintiff Jeffrey Boyd was the chair of the aldermanic traffic committee and he is "required to assume additional powers and to perform additional duties" as a result of the State Parking Statutes. D185: P2-3. The only assertions as to standing of Plaintiffs Wilson and Lane are in Plaintiffs' Third Amended Petition and the stipulation from the trial on Counts II and III of Plaintiff's Petition. The final judgment on Plaintiff's summary judgment motion found no additional facts except for those in the Uncontroverted Facts set forth by Plaintiffs. *See* D240; P3.

This case comes back to this Court for a second time. This Court previously considered an appeal filed by the Treasurer of the City of St. Louis and the State of Missouri from the trial court's orders granting summary judgment and finding the State Parking Statutes unconstitutional. Those appeals were dismissed because this Court lacked jurisdiction. *See Wilson v. City of St. Louis,* 600 S.W.3d 763 (Mo. banc 2020).

C. The Trial Court's Judgments

At the summary judgment phase, all three Plaintiffs and the City of St. Louis asked the trial court to invalidate the State Parking Statutes because they purportedly violate Article VI, Section 22 of the Missouri Constitution.

The trial court ruled that the State Parking Statutes violate Article VI, Section 22 because they create or fix the duties and powers of individual municipal officers of the City of St. Louis, namely the Comptroller, the Director of Streets, and the Chairperson of the Aldermanic Traffic Committee. *See* D180:P12; A12-13; D240:P7; A24; D241:P2; A27. The trial court did not address Plaintiff's arguments that the State Parking Statutes impermissibly create a new municipal commission or office. *See* D180; A1; D240; A18; D241; A26. After concluding the State Parking Statutes were unconstitutional, the trial court considered whether to sever the unconstitutional provisions. D180:P13; A13; D240:P7; A24. It ruled that it could not remove references to the Comptroller, the Alderman, and the Director of Streets because the State Parking Statutes would not be complete and capable of constitutional enforcement without those members of the Parking Commission. D180:P16; A16; D240:P7; A24.

After a trip to this Court and subsequent trial on the remaining claims in Plaintiffs' Third Amended Petition, the trial court issued an order and judgment in favor of Defendants on both Counts II and III (claims unrelated to constitutionality). D316; A35. The trial court determined that Plaintiffs did not show that "the

schedule of parking fines and penalties…is unlawful due to noncompliance with the terms and provisions of Section 17.62.050 of the City Code" or that the schedule is "unconstitutional in violation Art. II, § 1 of the Missouri Constitution." D316:P11-12; A45-46. As to Count III, the trial court found that Plaintiffs did not "demonstrate[] that the underwriter, garage equipment, and parking enforcement and management service contracts violate the PSO and are void." D316:P16; A50.

This appeal and Plaintiffs' cross-appeal followed.

POINTS RELIED ON

The trial court erred in granting summary judgment declaring the State Parking Statutes unconstitutional because Plaintiffs lack standing in that the record does not contain facts that would establish any injury to Plaintiffs.

E. Laborers Dist. Council v. St. Louis Cty., 781 S.W.2d 43 (Mo. banc 1989)
Sommer v. City of St. Louis, 631 S.W.2d 676 (Mo. App. 1982)
Am. Econ. Ins. Co. v. Ledbetter, 903 S.W.2d 272 (Mo. App. 1995)

The trial court erred in granting summary judgment declaring the State Parking Statutes unconstitutional because the State Parking Statutes permissibly fix the powers of a county office and officer in that they etablish the Parking Commission (a county office) and prescribe the duties of the Treasurer, acting as the supervisor of parking meters (a county officer).

City of Springfield v. Goff, 918 S.W.2d 786 (Mo. banc 1996)
St. Louis City v. Doss, 807 S.W.2d 61 (Mo banc. 1991)
State ex rel. McClellan v. Godfrey, 519 S.W.2d 4 (Mo. banc 1975)

The trial court erred in declaring the entirety of the State Parking Statutes unconstitutional rather than severing the provisions arguably applying to municipal officials because Plaintiffs did not carry their burden that the Statutes should not have been severed in that the portions of the Statutes governing the operation of the Parking Commission and the Treasurer's involvement are not incomplete and incapable of being executed in accordance with the legislative intent without the municipal officials on the Parking Commission.

Dodson v. Ferrara, 491 S.W.3d 542 (Mo. banc 2016)
Akin v. Dir. of Revenue, 934 S.W.2d 295 (Mo. banc 1996)
State ex rel. Enright v. Connett, 475 S.W.2d 78 (Mo. banc 1972)

The trial court erred in declaring the entirety of the State Parking Statutes unconstitutional rather than severing the Parking Commission from the Statutes because Plaintiffs did not carry their burden that the Statutes should not have been severed in that the Statutes governing the revenues and budget of the parking system in St. Louis City are not incomplete and incapable of being executed in accordance with the legislative intent without having a Parking Commission at all.

Dodson v. Ferrara, 491 S.W.3d 542 (Mo. banc 2016)
Akin v. Dir. of Revenue, 934 S.W.2d 295 (Mo. banc 1996)
State ex rel. Enright v. Connett, 475 S.W.2d 78 (Mo. banc 1972)

STANDARD OF REVIEW

The threshold issue is Plaintiffs' (and the City as cross-claimant's) standing to maintain this action. *See Schweich v. Nixon*, 408 S.W.3d 769 (Mo. banc 2013). "Prudential principles of justiciability . . . require that a party have standing to bring an action." *Id.* at 774 (internal quotations omitted). Standing is a question of law; on that issue, the Court's review is *de novo*. *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 87 (Mo. banc 2008). Because this part of the case is before the Court on appeal from motions for summary judgment, the "[f]acts set forth by affidavit or otherwise in support of a party's motion are taken as true unless contradicted by the non-moving party's response to the summary judgment motion. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993) (citation omitted). The Court "accord[s] the non-movant the benefit of all reasonable inferences from the record." *Id.* (citation omitted).

Should the Court conclude there is standing, it must then review the grant of summary judgment. That review is also *de novo*, with no deference due to the trial court's judgment. *Id.* (citation omitted). Specifically, this Court must decide whether the State Parking Statutes are constitutional. "Challenges to the constitutional validity of a state statute are subject to de novo review." *Hill v. Boyer*, 480 S.W.3d 311, 313 (Mo. banc 2016).

Finally, if the Court finds that summary judgment was properly granted, and the challenged statutory provisions are unconstitutional, it must determine whether the offending portions

can be severed from the remainder of the statutes. Any remaining provisions of the statutes are valid unless the court finds that the valid provisions are incomplete and are incapable being executed in accordance with the legislative intent. § 1.140, RSMo. This, too, is a legal issue that is reviewed *de novo*. *See Akin v. Dir. of Revenue*, 934 S.W.2d 295 (Mo. banc 1996).

INTRODUCTION

If the trial court properly ruled that the challengers below had standing – Appellant believes they did not – the ultimate issue presented here is whether the General Assembly may lawfully enact statutes establishing a county office to govern the parking revenues and budget of the City of St. Louis. Although the General Assembly has done so for decades, Plaintiffs (and the City) don't like it—they would prefer that only City officials control parking revenues. They relied on a constitutional provision that limits the General Assembly's ability to fix the powers and duties of municipal officers and convinced the trial court that the State Parking Statutes violate this provision.

But the City of St. Louis is a strange creation. The Constitution declares--and this Court has long held—that the "City" is also a County and that the General Assembly has the authority to regulate the county functions – even though we all call it a City. The legislature properly exercised that authority, just as it could with any other county, by establishing a Parking Commission for the county and outlining the responsibilities of the county Treasurer (now Appellant Layne). The legislature intentionally did this in order to ensure that State law, rather than the City Charter or ordinances, initially direct the expenditure of parking revenues and eliminate incentives for the City to abuse its power to raise revenues through parking enforcement.

Plaintiffs and the City have come to the wrong window. The General Assembly had the authority to do what it did. If the Plaintiffs

or the City find these laws unfair or improper, their remedy is with the General Assembly, not this Court.

ARGUMENT

I. First Point Relied On: The trial court erred in granting summary judgment declaring the State Parking Statutes unconstitutional because Plaintiffs lack standing in that the record does not contain facts that would establish any injury to Plaintiffs.

The trial court should not have entered summary judgment here because none of the parties requesting summary judgment had standing. "If a party is without standing to bring a particular claim, a court shall dismiss the claim because the court lacks the authority to decide the merits of the claim." *Weber v. St. Louis Cty.*, 342 S.W.3d 318, 323 (Mo. banc 2011). Defendant preserved this issue for appeal in its Motions to Dismiss. *See* D345; D346. This Court should reverse the judgment below and dismiss Plaintiffs' claims for lack of standing. *See* Rule 84.14.

To establish standing, a party must have a "legally protectable interest in the litigation so as to be directly and adversely affected by its outcome." *Mo. State Med. Ass'n*, 256 S.W.3d at 87. "A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff's interest is conferred by statute." *Weber v. St. Louis Cnty.,* 342 S.W. 3d 318, 323 (Mo. banc 2011)(citations and quotations omitted). "[P]laintiff must show a personal stake in the outcome of the controversy and allege some threatened or actual injury resulting from the putatively illegal action." *City of Slater v. State*, 494 S.W.3d 580, 586 (Mo. App. 2016). "A party who lacks standing may not seek a declaratory

judgment action." *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 132 (Mo. banc. 2000).

No Plaintiff has standing here. There are no facts in the record to establish standing. D185. Although there are allegations in the Petition, the summary judgment motion is wholly devoid of facts to establish standing. Wilson and Lane alleged no facts at all. D185. Boyd claims his status as an alderman somehow confers standing. D185. But this is not a basis for establishing standing.

The City asserts it has a legally protectable interest but fails to elaborate as to what that protectable interest is. D174. These facts—together with unsupported allegations in the Petition—are insufficient and the trial court should have dismissed Plaintiffs' claims before ever reaching the substance of the motions for summary judgment. The Parking Commission's existence does not adversely affect any Plaintiff. Indeed, even if the Parking Commission was severed from the State Parking Statutes, none of Plaintiffs' supposed injuries would be redressed.

A. Wilson, Lane, and Boyd do not have standing to challenge the constitutionality of the State Parking Statutes.

Missouri allows an individual to establish standing as a "taxpayer." But Wilson, Lane, and Boyd do not meet their burden. Nothing in their summary judgment motion establishes that they are taxpayers. And to establish taxpayer standing, an individual must "demonstrate a direct expenditure of funds through taxation, or an increased levy in taxes, or a pecuniary loss attributable to the

challenged transaction of a municipality." *Manzara v. State,* 343 S.W.3d 656, 659 (Mo. banc 20110(citing *E. Laborers Dist. Council v. St. Louis Cty.*, 781 S.W.2d 43, 47 (Mo. banc 1989)). "A direct expenditure of funds generated through taxation is a sum paid out, without any intervening agency or step, of money, or other liquid assets that come into existence through the means by which the state obtains the revenue required for its activities." *Manzara v. State*, 343 S.W.3d 656, 660 (Mo. banc 2011). This expenditure, however, cannot be a general operating expenditure. *See Mid-Am. Georgian Gardens, Inc. v. Mo. Health Facilities Review Comm.*, 908 S.W.2d 715 (Mo. App. 1995) (general operating expenditures that would have been incurred regardless of a particular decision do not qualify as "direct expenditures through taxation" that confer taxpayer standing).

Plaintiffs forwarded no facts in their summary judgment motion supporting their claim of taxpayer standing. *See* D185. There are no facts about a "direct expenditure of funds." *Id.* In fact, Plaintiffs do not claim they are taxpayers or even Missouri residents. *See Id.* The only facts that potentially relate to standing are that Jeffrey Boyd is an alderman, was the chairperson of the streets committee[2], was required to assume duties pursuant to the State Parking Statutes, and his duties are defined in the St. Louis City Charter. *Id.* And the trial court did not find otherwise. The trial

[2] Alderman Boyd is no longer the chair of the Streets, Traffic and Refuse Committee.

court found the same facts provided in the Statement of Uncontroverted Facts. *See* D240; A18.

Because of these deficiencies, the trial court erred in granting summary judgment. Respondents may argue that they made a record on standing later. The Parties did stipulate to a limited set of facts for the trial on Counts II and III. While those facts do state that Wilson, Layne, and Boyd are taxpayers and Lane and Boyd received parking tickets there are no facts beyond that. D266:P1. There are no facts about the expenditure of funds, for example. Only Boyd testified at trial, but did not attempt to establish his standing to bring Count I. Tr. 17-54. Plaintiffs do not establish their standing and it was their burden to do so. It was error for the trial court to allow this litigation to move forward.

Even if there are some facts in the record that relate to standing, Plaintiffs do not have any facts relating to *any* expenditure, let alone a "direct expenditure through taxation." Although Plaintiffs use the phrase "unlawful expenditures," in their Petition, even if they had proven it, that is not enough to confer taxpayer standing. *See Lee's Summit License, LLC v. Office of Administration,* 486 S.W.3d 409, 418 (Mo. App. 2016) ("[Plaintiff] asserted Count III in his capacity as a "taxpayer and resident" of Missouri. Beyond this bare assertion, there is no other explanation for [Plaintiff's] purported standing in the amended petition."). From reading the Petition, it is impossible to know what the expenditure is or if there has ever even been an expenditure. D257.

Further, neither the Petition nor the Motion for Summary Judgment alleged, much less proved, any expenditure by the Parking Commission itself. *Id.* The most generous reading of the Petition might lead to the conclusion that the expenditure related to the issuance of the parking tickets is the "unlawful expenditure." However, if Plaintiffs' contention is that the expenditures relating to the issuance of their parking tickets are the "unlawful expenditures" these are certainly general operating expenditures that would have been incurred regardless of the decision to operate under the State Parking Statutes. General operating expenditures do not confer taxpayer standing. *See* 908 S.W.2d at 718.

It is Plaintiffs' burden to prove that their "taxes went or will go to public funds that have or will be expended due to the challenged action." *City of Slater*, 494 S.W.3d at 587 (internal quotations omitted). In *City of Slater* one of the plaintiffs challenged the payment of a court surcharge and attempted to establish taxpayer standing by stating the requirement to pay the surcharge was an injury. The court determined that the plaintiff did not have standing to request declaratory or prospective injunctive relief regarding the surcharge because, the Court stated, "the injury claimed cannot be remedied by the relief he requests." *Id.* at 590. Similarly, the parking tickets Plaintiffs received cannot confer standing. Plaintiffs did not point to any specific parking tickets. Further, they did not allege that they would not have received parking tickets if the Parking Commission, pursuant to the State Parking Statutes, was not operating.

There can be no doubt that the City of St. Louis would issue parking tickets regardless of which Parking Commission was operating or if there was a Parking Commission at all. Parking tickets are a creature of City's municipal code – not state law. A judgment declaring the State Parking Statutes unconstitutional will not make their parking tickets disappear. Nor would invalidation of those statutes even affect parking tickets in the City of St. Louis. They have no injury this Court can address, though they could certainly make their case to the St. Louis City Board of Aldermen or the General Assembly.

This case presents an important opportunity for this Court to restate the rules of taxpayer standing. When you do so, it will be clear that Plaintiffs do not have it.

B. Boyd's status as an alderman does not confer standing.

Nor does Boyd have standing just because he is an alderman. In *Sommer v. City of St. Louis*, an alderman claimed standing to challenge the constitutionality of a city ordinance. The Court of Appeals said no. 631 S.W.2d 676, 679 (Mo. App. 1982)("As an alderman, Sommer has no judicially protectable interest in a determination of the constitutionality of a city ordinance. We find no authority conferring standing to sue on an elected official, as such, in this type of case, and Sommer cites to none. In his capacity as alderman, he patently sought an advisory opinion, which is not the function of the courts of this state to provide. Alderman Sommer lacks standing to sue in this case[.]").

The United States Supreme Court similarly found that individual elected officials do not have standing to sue solely because they hold office. *See Arizona State Legislature v. Arizona Independent Redistricting Commission,* 576 U.S. 787, 801-2 (2015)(Writing for the majority, Justice Ginsburg compares *Raines v. Byrd,* 521 U.S. 811 (1997) where the Court held that "individual members of Congress lack Article III standing" with the case at hand where the majority determined that the Arizona State legislature as a whole has standing to sue.).

Boyd claimed standing by virtue of his position as an alderman. D257:P2. The precedent is clear that without a "judicially protectable interest" Boyd's serving as an elected official does not automatically confer standing. While Boyd does allege that he is required to serve on the Parking Commission– and the trial court found that he was – that would be the case even if the State Parking Statutes are void. So an injury is not *due to* the Statutes.[3]

Even without the statutes, City ordinances establish a parking commission. The two commissions (statutory and ordinance) have similar responsibilities and duties. *See* St. Louis City Code 17.62.010; A58; St. Louis City Code. 17.62.050; A59. Therefore, the reality for

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[3] Since Boyd is no longer chairman of the Streets, Traffic, and Refuse Committee, if it had standing at the trial court (he did not), he lacks it now. *See* STREETS, TRAFFIC AND REFUSE COMMITTEE, *https://www.stlouis-mo.gov/government/departments/aldermen/committees/committee.cfm?committeeDetail=true&ComId=2* (last visited August 30, 2021)(Alderwoman Sharon Tyus serves as the chair).

individuals sitting on the Parking Commission implemented by the State Parking Statutes (like Boyd) will not change if the State Parking Statutes are invalidated or even if this Court severs the Parking Commission from the State Parking Statutes. Boyd, as the chair of the Streets, Traffic and Refuse Committee of the Board of Alderman is required by City ordinance to sit on the City's parking commission.

C. The City of St. Louis does not have standing for the purpose of a declaratory judgment action.

Nor does the City have a legally protectable interest in this case because invalidation of the State Parking Statutes will not provide any relief to the City. Like Boyd, Lane, and Wilson, the City's Statement of Uncontroverted Facts does not provide *any* facts relating to standing. *See* D174. And even if there are some facts in the record, the activities of the Parking Commission do not cause the City any injury.

Nor would the outcome of this case change the fact that a parking commission will continue to operate in the City. The St. Louis City ordinances that relate to their parking commission impose the same duties and responsibilities on city officials as the State Parking Statutes. Regardless of whether the State Parking Statutes are constitutional or not, there will still be a parking commission with similar individuals constituting the commission. The Court's declaration would change nothing for the City and it has no right to a declaration absent an injury.

II. Second Point Relied On: The trial court erred in granting summary judgment declaring the State Parking Statutes unconstitutional because the State Parking Statutes permissibly fix the powers of a county office and officer in that they etablish the Parking Commission (a county office) and prescribe the duties of the Treasurer, acting as the supervisor of parking meters (a county officer).

Even if Wilson, Lane, Boyd, or the City were injured, they cannot climb the steep hill the law has built for them. The State Parking Statutes are presumed valid unless they "clearly contravene a constitutional provision." *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012). Plaintiffs bear the burden "of proving the [State Parking Statutes] clearly and undoubtedly violate[] the constitution." *City of De Soto and James Acres v. Parson,* No. SC98991 at 5 (July 22, 2021)(quoting *Bd. of Managers of Parkway Towers Condo. Ass'n v. Carcopa,* 403 S.W.3d 590, 592 (Mo. banc 2013)(quotation marks omitted)). These presumptions may not be overcome unless there is no way for the Court to interpret and apply the State Parking Statutes in a constitutional manner. 361 S.W.3d at 386.

Under the doctrine of constitutional avoidance, when the Court can construe a statue or a bill in a way that avoids constitutional problems, it should. *See e.g., Lang v. Goldsworthy,* 470 S.W. 748, 752 (Mo. banc 2015); *State v. Vaughn,* 366 S.W.3d 513, 517 (Mo. banc 2012). Further, this Court presumes "the

Legislature d[oes] not intend to violate the organic law of the state." *State ex rel. McClellan v. Godfrey,* 519 S.W.2d 4, 8 (Mo. banc 1975). "Acts of the Legislature and provisions of the Constitution must be read together, and so harmonized as to give effect to both when this can be reasonably and consistently done." *Id.* at 9. And this Court presumes the legislature knows the law. *State ex rel. Nothum v. Walsh,* 380 S.W. 3d 557, 576 (Mo. banc 2012). Ultimately, "if one interpretation of a statute results in the statute being constitutional while another interpretation would cause it to be unconstitutional, the constitutional interpretation is presumed to have been intended." *Blaskey v. Smith & Entzeroth, Inc.,* 821 S.W. 2d 822, 838-39 (Mo. banc 1991).

Here, the presumption of validity cannot be overcome. Plaintiffs and the trial court relied on Article VI, Section 22 of the Constitution: "No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution." A53. There is no dispute that the City of St. Louis adopted its own charter. But the trial court failed to correctly analyze the application of Section 22 and whether the State Parking Statutes create or fix the duties of municipal office.

A. Article VI, Section 22 does not prohibit the General Assembly from creating a county office, like the Parking Commission.

Article VI, Section 22 prohibits the General Assembly from enacting a law that creates or fixes "the powers, duties or

compensation of any municipal office or employment, for any city framing or adopting its own charter." Mo. Const. art. VI, § 22; A53. Courts interpret constitutional provisions using the plain language of the provision. *See Wright-Jones v. Nasheed,* 368 S.W.3d 157, 159 (Mo. banc 2012)("Words used in constitutional provisions are interpreted to give effect to their plain, ordinary, and natural meaning."(citation omitted)). The plain language of Article VI, Section 22 makes clear that the General Assembly may not create a *municipal* office or set the powers, duties or compensation of a *municipal* office.

And that is how this Court has interpreted this provision. "[B]y its plain language, section 22 is limited to prohibiting the General Assembly from enacting state laws prescribing individual offices of a charter city and the duties and compensation of the officers holding those offices." *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. banc 1996) However, section 22 does not prohibit the General Assembly from creating a county commission and listing the individuals who will serve on that commission.

Therefore, this Court should interpret the State Parking Statutes as creating a county office. This interpretation avoids rendering the Statutes unconstitutional and maintains the presumption that the legislature enacted a constitutionally compliant law. This Court "will not presume the legislature intended to adopt an unconstitutional statute unless it clearly appears otherwise." *State ex rel. Neville v. Grate,* 443 S.W.3d 688, 695 (Mo. App. 2014)(citing *Spradlin v. City of Fulton,* 924 S.W.2d 259-262-63

(Mo. banc 1996)). This rule "properly serve[s] to avoid the temptation to substitute [the Court's] preferred policies for those adopted by the elected representatives of the people." *Spradlin v. City of Fulton,* 924 S.W.2d 259, 262-63 (Mo. banc 1996).

And this interpretation makes sense. Although it is prohibited from creating municipal offices in charter cities, the General Assembly is not prohibited from creating county offices and in fact has done so before. *See e.g.* § 54.010, RSMo ("There is created in all the counties of this state the office of county treasurer, except that in those counties having adopted the township alternative form of county government the qualified electors shall elect a county collector-treasurer."); § 55.010, RSMo ("In all counties of the first class having a charter form of government there shall be a county auditor who is the budget officer and accounting officer of the county[.]"); § 59.010, RSMo ("There shall be an office of recorder in each county in the state[.]").

Here, the General Assembly wanted to create an office to provide oversight of parking and parking revenue in the county commonly known as St. Louis City. More important, the General Assembly wanted to be able to direct how this office functions. Understanding that it could not exert control over municipal offices, the General Assembly created a county office instead. The Parking Commission as a county office also makes sense because it is chaired by a county officer.

B. The Parking Commission is also a county office because it is chaired by a county officer.

The trial court found the Statutes unconstitutional because, among other reasons, they impose duties on municipal officers. But Article VI, Section 22 is inapplicable because the State Parking Statutes create a county, not a municipal office. This Court has said the applicability of Section 22's prohibition turns solely on the classification of the office or officer. "The key to the applicability of Article 6, s 22 is the distinction between municipal and county offices. This constitutional provision covers only municipal offices… for any city." *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 9 (Mo. banc 1975) (internal quotations omitted).

The Office of the Treasurer of St. Louis is not a municipal office. It is a County office which exists by virtue of state statutes. *See* § 82.520, RSMo (fixing salary of Treasurer of City of St. Louis). Consistent with the statute, this Court has long held that the Treasurer of the City of St. Louis is a county officer. *See State ex inf. McKittrick v. Dwyer*, 124 S.W.2d 1173, 1174-76 (Mo. banc 1938) (holding City Treasurer is county officer, not municipal officer); *see also State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854, 855-56 (Mo. 1943) (invalidating city ordinance fixing salary of City Treasurer, relying on *McKittrick*'s holding that Treasurer is a county officer and not subject to City Charter). Thus, the Treasurer's office is a county—not a municipal—office and is not subject to the City's charter. *Nolte*, 172 S.W.2d at 855-56.

Plaintiffs claimed the Treasurer is a city official. D199; D7. Just as St. Louis is called a City when it is legally a County, the Treasurer may be called the "city treasurer," but he is a county officer, as this Court has confirmed. This has to do with the dual nature of St. Louis as a city and a county. While St. Louis is titled as a city, constitutionally and statutorily it is treated as both a city and a county. *See* Mo. Const. art. VI, § 31; § 1.080, RSMo. Therefore, St. Louis City has both city and county officers. The Treasurer is one of the county officers regardless of what title is used. The trial court agreed with this Court's precedent that the Treasurer is a county officer. *See* D316:P15; A49.

But the General Assembly's authority goes beyond just the Treasurer. The General Assembly may set the powers and duties of other officers in the City of St. Louis *when they perform county functions*. In *St. Louis City v. Doss*, this Court addressed the constitutionality of statutes creating the Office of City License Collector. 807 S.W.2d 61 (Mo banc. 1991). Those challenging the statutes claimed they imposed certain duties and restrictions on the Office of License Collector in violation of Article VI, Section 22 because the Office of License Collector was a municipal office. *Id.* The Court rejected the challenge, applying the interpretation of Article VI, Section 22 from *State ex rel. McClellan v. Godfrey*: "The constitutional provision covers only municipal office[s]. . . for any city." *Id.* at 63.

This Court also rejected the challenge because "[t]he constitution contains no prohibition against the legislature assigning

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

So it is here. Nothing in the constitution contains a prohibition against creating a county office—or a county parking commission—with responsibility to regulate parking. Like in *Doss*, Wilson, Lane, Boyd, and the City attempt to invalidate statutes that ascribe duties and powers to a county official and a county parking commission. The State Parking Statutes should be upheld like the statues at issue in *Doss* because the State Parking Statutes create powers and duties for county offices—the Treasurer and the Parking Commission. Because the Treasurer and the Parking Commission are part of the county government, *Doss* controls and the constitutional prohibition in Article VI, Section 22 is inapplicable.

There can be no doubt that the Treasurer and the Parking Commission member from the Treasurer's Office are county officials. *Doss* provides a test for determining when an official is acting as a county officer. As long as the officer "performs functions which are those identified with a county office, and so long as that office is elected in the state election as are other county offices, it remains a county office and subject to legislative control." *Id.* Thus, even if this Court had not previously held that the Treasurer is a county officer, the *Doss* test would dictate the same result since the Treasurer carries out similar functions to treasurers of other counties, such as taking in monies and issuing receipts. *See* § 54.102, RSMo. Additionally, the election for treasurer is in November, during the

state election, rather than April, the St. Louis City municipal election. Therefore, under *Doss*, the Treasurer is a county officer.

And the Treasurer chairs the Parking Commission in his capacity as the supervisor of parking meters. Just like this Court should presume the Parking Commission is a county office because it was created by the General Assembly, it should presume the office of supervisor of parking meters is a county office as well. To assume the General Assembly directed a city official to chair a county office or vis-versa is not logical nor comports with the presumption that the legislature enacts constitutionally compliant statutes.

C. The State Parking Statutes do not fix the powers, duties, or compensation of any municipal office in St. Louis City.

No municipal office of the City of St. Louis is under the control of the General Assembly pursuant to the State Parking Statutes with regard to the powers, duties or compensation of that office. Section 82.485 includes one passing reference to three municipal officials. The Parking Commission "shall consist of the supervisor of parking meters as chairperson, the chairperson of the aldermanic traffic committee, the director of streets, the comptroller and the director of the parking operations." § 82.485, RSMo; A54. Neither Section 82.485 nor Section 82.487 require anything of these individual officers. In fact, the only officer that has any duties imposed by statute is the supervisor of parking meters. The supervisor of parking meters is a county officer and therefore, there is no violation of Article VI, Section 22 with regard to that office.

The chairperson of the aldermanic traffic committee, the director of streets, and the comptroller are not obligated to carry out any special duties or tasks pursuant to the State Parking Statutes. The statutes do not even require these officers to attend parking commission meetings. The General Assembly did not impose a quorum requirement on the commission, implying that it is likely that the General Assembly recognized that the commission may at times have to operate with less than the full slate of members. Thus, the Parking Commission can operate with only two members and the municipal members are not required to attend.

Neither Plaintiffs nor the City of St. Louis have any facts in the record beyond vague assertions that additional duties are imposed on municipal offices. *See* D173:P5; D199:P7. To be certain, there are duties described of the Parking Commission as a Commission. But the Parking Commission is a county office lawfully created by the General Assembly. There is no prohibition on imposing whatever duties the General Assembly deems appropriate on the Parking Commission.

D. Even if there are duties imposed on the municipal offices, the General Assembly may direct municipal officers to perform county functions.

Even if the State Parking Statutes required participation of the municipal officers, the General Assembly may do so. Municipal officers can be required to participate in activities that are a purely county function. In *Godfrey*, plaintiffs challenged the statutory

requirement that the Mayor of St. Louis call an election for county medical examiner. The Court ruled this did not violate Article VI, Section 22 because this act involved St. Louis City as a county, not a city. "The activity of the mayor, called for by the Act, creates no constitutional violation because such activity does not involve the City of St. Louis in its capacity as a city but as a county. In that capacity the mayor is subject to the general laws of the state." *Godfrey*, 519 S.W.2d at 9.

Here, the individuals named to the Parking Commission are appointed to a county commission and oversee a county function. Thus, as in *Godfrey*, individuals serving on the Parking Commission do not perform additional municipal duties; rather, they perform a county function incident to their municipal duties. Accordingly, these individuals are subject to the general laws of the state—the State Parking Statutes.

And, the State Parking Statutes are not invalid because they do not impose municipal duties on municipal officers. This is the central point of *State ex rel. Sprague v. City of St. Joseph*. 540 S.W.2d 877 (Mo. banc 1977). In *Sprague*, this Court invalidated the application of a statute to charter cities like St. Joseph that required the establishment of a Board of Plumbing Examiners. In reaching its decision, the Court expressly contrasted the City of St. Louis to St. Joseph, noting: "[T]he only offices St. Joseph can have are municipal offices, it being a constitutional charter city." 549 S.W.2d at 877. St. Louis City, by contrast, is both a city and a county, with both city and county officers. As such, this case is the corollary of *Sprague*—

because the City of St. Louis can have both municipal and county officers, the General Assembly has the authority to assign responsibilities to officers operating in either capacity.

The matter at hand is also distinguishable from *State ex rel. Burke v. Cervantes* because that case clearly dealt with a city function—firefighters. 423 S.W.2d 791 (Mo. banc 1968). In *Burke*, the challenged statute directed the mayor of St. Louis to appoint an arbitration board to resolve disputes between the mayor and city firefighters. In that regard, the mayor was a city officer *dealing with a municipal function*. In *Godfrey*, this Court similarly distinguished *Cervantes*: "[*Cervantes*], relied on heavily by respondent, is clearly distinguishable in that it dealt with city policemen and firemen in connection with city affairs." *Godfrey*, 519 S.W.2d at 9. Here, by contrast, the State Parking Statutes do not require a municipal officer to establish a municipal board or commission. Rather, they appoint a county officer as the head of a county office to be in charge of a county function.

St. Louis City-as-county is no doubt unique. This Court's prior jurisprudence has properly acknowledged that the entity must perform dual functions. The Parking Commission is a county office and the General Assembly has the authority to impose requirements on the Commission even if – as did the law in *Godfrey* – those requirements impact officeholders who also have city-as-city duties.

III. THIRD POINT RELIED ON: The trial court erred in declaring the entirety of the State Parking Statutes unconstitutional rather than severing the provisions arguably applying to municipal officials because Plaintiffs did not carry their burden that the Statutes should not have been severed in that the portions of the Statutes governing the operation of the Parking Commission and the Treasurer's involvement are not incomplete and incapable of being executed in accordance with the legislative intent without the municipal officials on the Parking Commission.

Even if the trial court got it right as regards standing and the substantive constitutional issues, its severance analysis was wrong. The stated reason for this lawsuit was to challenge the inclusion of municipal officers on the Parking Commission—but the Plaintiffs and City asked for much more. They asked that entire chunks of the statute related to budgeting matters be struck. The trial court went along.

The trial court's broad approach is contrary to this Court's well-established precedent. Courts must presume "the legislature intended to give effect to the other parts of the statute that are not invalidated." *Dodson v. Ferrara*, 491 S.W.3d 542, 558 (Mo. banc 2016). A statute is presumed valid and will not be held unconstitutional unless it "clearly contravene[s] a constitutional provision." *Legends Bank*, 361 S.W.3d at 386.

If a court does find a portion of the statute invalid, it should sever the unconstitutional portion unless it finds the valid provision cannot stand on its own. *See* § 1.140, RSMo. Here, the trial court found that including three municipal officers on the Parking Commission was unconstitutional. But rather than striking that language—to essentially remove these members from the Commission--the trial Court struck the two statutes containing the challenged provisions *in their entirety*.

But it's even worse. While Section 82.485 actually mentions the three municipal officials, the trial court *also* struck Section 82.487 which does not even make a single mention of the officials. A54; A56. In other words, the trial court struck an entire statute that did not contain a single unconstitutional word. The question here is whether the Parking Commission can operate if these individuals are no longer members of the Commission. The answer to that question is yes. The related issue is whether the supervisor of parking meters can maintain their duties regardless of who serves on the Parking Commission. The answer to that question is also yes.

Courts have long held that unconstitutional component parts of a statute should be severed in order to preserve the constitutional portion of the statute. *See State ex rel. Enright v. Connett*, 475 S.W.2d 78 (Mo. banc 1972). In *Enright*, the United States Supreme Court invalidated a provision of a statute setting up community college districts and elections for trustees. Upon remand, this Court severed the unconstitutional provision and left the remaining provisions intact. "We hold that after eliminating the alternative

system for electing trustees from component districts under certain circumstances, enough remains which is good to clearly show the legislative intent, and to furnish sufficient details of a working plan by which that intention may be made effectual." 475 S.W.2d at 82 (internal quotations omitted).

Eliminating certain members of the Parking Commission does not make the Parking Commission inoperable. As discussed above, the General Assembly potentially foresaw that certain members may be absent for one reason or another and therefore, did not impose a quorum requirement on the Parking Commission to operate. On any given day, the Parking Commission as the law is currently constituted, may only have two members. Thus, the trial court committed error when it refused to sever the three municipal officials from the Parking Commission. If under the statute as enacted the Parking Commission is capable of functioning with only the supervisor of parking meters and the director of parking operations, there is no reason the Parking Commission could not function that way if the municipal members must be severed.

In addition to specifying the members of the Parking Commission, Section 82.485 provides the responsibilities of the supervisor of parking meters, including oversight of the parking meter fund. These duties include enforcing "any statute or ordinances now or hereafter established pertaining to the parking of motor vehicles" and making "all disbursements on any parking contracts, including employment, consulting, legal services, capital improvement, and purchase of equipment and real property."

§ 82.485, RSMo; A54. As in *Enright*, there is enough left after removing the "municipal" officials from the State Parking Statutes to show the legislative intent and "furnish sufficient details of a working plan."

Removing the "municipal" officers from the Parking Commission will still leave a complete, enforceable statute. The legislature intended to task the Treasurer with the duties of "supervisor of parking meters." These duties are not dependent on a five-person Parking Commission as provided in the statute, nor do they even rely on the existence of the Parking Commission at all. The supervisor of parking meters is the only person with these duties and does not rely on the other officials on the Parking Commission – three of whom the trial court found were municipal officers – to carry out these duties. The trial court had no basis to strike the statute in its entirety when the offensive portions – having to do with Commission membership – could have been extracted from the scheme.

The trial court committed error of even greater magnitude when it struck Section 82.487 because that section may stand alone even if some officials are removed from the Parking Commission. Section 82.487 has nothing to do with the membership of the Commission, it simply describes the duties and responsibilities of the Parking Commission. None of these responsibilities or duties (such as "budget modifications for the parking fund" and the "acquisition, development, regulation, and operation of such parking facilities or spaces owned…leased or managed by the parking

division") rely on a five-person Parking Commission. § 82.487, RSMo; A56. A Parking Commission constituted of the supervisor of parking meters and the director of parking operations (both of whom are drawn from the office of the County Treasurer) can still carry out all of the prescribed duties.

Plaintiffs attacked only the constitutionality of a small piece of the State Parking Statutes. While they argued – and the trial court (incorrectly) concluded – that municipal officials are unconstitutionally required to sit on the Parking Commission, they make no mention of the majority of the statutes granting the Treasurer the authority to act as supervisor of parking meters and oversee the parking meter fund. *See* § 82.515, RSMo; § 82.516, RSMo. Removal of the city officials from the State Parking Statutes would not affect the overall scheme implemented to regulate parking and parking revenues in the City of St. Louis. Plaintiffs' arguments all but concede that the Treasurer should continue to act in her capacity as supervisor of parking meters and control the budget.

IV. POINT RELIED ON FOUR: The trial court erred in declaring the entirety of the State Parking Statutes unconstitutional rather than severing the Parking Commission from the Statutes because Plaintiffs did not carry their burden that the Statutes should not have been severed in that the Statutes governing the revenues and budget of the parking system in St. Louis City are not incomplete and incapable of being executed in accordance with the legislative intent without having a Parking Commission at all.

Finally, even if it is not possible to sever the city officers from the Parking Commission (it is), it was nonetheless error for the trial court to strike the remainder of the statutes rather than simply eliminating the Parking Commission. Even if there were no Parking Commission, it is clear that the General Assembly intended to regulate parking revenues in the City of St. Louis and to have the Treasurer involved.

The trial court should have severed the unconstitutional portion of the statutes (the Parking Commission) and left the remaining provisions. Without the Parking Commission, the legislative intent of the State Parking Statutes—namely, ensuring parking revenues and the parking budget are under the purview of the Treasurer—remains intact and capable of enforcement. *See Dodson*, 491 S.W.3d at 558; *see also* § 1.140, RSMo.

The State Parking Statutes are capable of constitutional enforcement without the Parking Commission. Section 82.485

assigns certain duties and responsibilities to the Treasurer as the supervisor of parking meters, including establishing a parking meter fund. *See* § 82.485, RSMo; A54. The Treasurer can establish and maintain a parking meter fund regardless of the existence of a Parking Commission. The Treasurer as supervisor of parking meters is also required to submit an operating budget reviewed by the Parking Commission prior to submission to the St. Louis City Board of Alderman. The intent behind this requirement was to ensure a second level of approval of the operating budget. If the Treasurer simply submits a budget for approval to the Board of Alderman, that second level of approval remains.

It does not matter whether the entire Parking Commission creates the budget or just the supervisor of parking meters. The Treasurer can write the budget, and seek approval from the St. Louis City Board of Alderman. The intent of the legislature, that the Treasurer creates the budget and oversees its implementation, remains even without a Parking Commission.

The same is true of Section 82.487. The Treasurer as supervisor of parking meters has certain responsibilities under this provision. For instance, the supervisor of parking meters is required to oversee parking facilities or spaces owned, leased, or managed by the parking division. §82.487, RSMo; A56. Although the Parking Commission provides additional oversight of the Treasurer in the performance of these duties, the Treasurer alone could still carry out this statutory responsibility. And more important, the intent of the legislature to charge the Treasurer with these duties remains.

The underlying intent behind the State Parking Statutes is the legislature's desire that power over parking revenues and the parking budget not rest solely with the City's municipal government. This intent is evident from the legislature vesting this power in the Treasurer, a county officer rather than leaving it to reside with the municipal government. The legislature is within its constitutional charge to do this because the legislature may utilize its police powers to limit the powers of charter cities.

Because a charter city cannot exercise authority in contravention to state statute, the State may utilize its police powers to limit the power of charter cities. *See Petition of City of St. Louis*, 266 S.W.2d 753 (Mo. 1954). The St. Louis City charter "does not restrict the State Legislature under its police powers in matters pertaining to the general public interest." *Id.* at 755. Police powers are appropriately "lodged with the legislative branch," which has the prerogative to "determine…what measures are appropriate…for the protection of the public morals, the public health, or the public safety." *State ex rel. Kansas City v. Pub. Serv. Comm'n*, 524 S.W.2d 855, 862 (Mo. banc 1975).

Here, the legislature utilized its police powers to enact legislation "pertaining to the general public interest" by establishing a scheme to regulate parking and parking funds. It determined that parking in the state's largest City-as-county was a matter of public safety and necessitated the legislature stepping in to provide a basic framework for oversight. Parking in the City of St. Louis is a matter pertaining to the general public interest because it affects the ability

of the public at large to safely work in, visit, and enjoy the amenities of the City.

In *Goff*, the Court determined a statute establishing requirements for zoning protest petitions did not violate Article VI, Section 22. The Court held that the General Assembly while not being able to direct what officers of charter cities must do, can "limit the powers a charter city may exercise through its officers." 918 S.W.2d at 789. "The constitution does not prohibit the legislature from establishing procedures by which charter cities may make substantive determinations regarding the use of private property through zoning regulation." *Id.*

Here, the General Assembly, through the Treasurer and Parking Commission limited the power of St. Louis City vis-à-vis parking and parking revenues. The General Assembly, like with the zoning protest petition requirement in *Goff*, established the protocol for distributing St. Louis City's parking revenues. Much like zoning requirements, parking is an issue that affects the general welfare. The ability to conduct business, enjoy St. Louis City, and public safety all hinge, in some ways, on available and orderly parking and parking enforcement. If Respondents want "relief" from having to follow a valid, enforceable state statute, they can lobby the General Assembly to make a change to the State Parking Statutes. Otherwise, this Court should sever the Parking Commission and allow the remaining portions of the valid State Parking Statutes to be enforced for the public good.

The legislature, since the enactment of the original State Parking Statute in 1951 (section 82.487 was not enacted until 1994), has entrusted the control of the parking revenues and initial budget to the Treasurer. This has not changed through multiple iterations of the State Parking statutes. These statutes did not even include a Parking Commission, as currently constituted. *See* House Bill No. 1716, Gen. Assem., 2nd Reg. Sess. (1990). Rather, 82.485 enabled a "parking meter commission" without defined membership. This statute, however, always included the supervisor of parking meters' duty to submit a budget for approval to the Board of Alderman. In other words, what remained constant, is the intent to ensure that the City cannot utilize power over parking revenues unjustly and unfairly.

CONCLUSION

This Court need not reach the merits of Plaintiffs' argument regarding the State Parking Statutes because Plaintiffs and the City of St. Louis lack standing to bring their claims. The Court may reverse the grant of summary judgment on that basis alone and dismiss the claims of unconstitutionality for lack of standing.

However, if there is standing, the State Parking Statutes are constitutional under Article VI, Section 22. The General Assembly has been clear in its intent to regulate Parking in the City of St. Louis and has done so for decades by placing parking under the County Office of Treasurer and requiring other officials to participate in that county function. Precedent requires this Court to acknowledge that authority. But even if the Generally Assembly went too far here, so

did the trial court when it conducted an incorrect severability analysis. Therefore, Appellant respectfully requests this Court reverse the decision of the Trial Court granting summary judgment and enter the judgment the trial court should have entered—in favor of the Defendants. However, if this Court finds that some portions of the State Parking Statutes are unconstitutional, Appellant respectfully requests this Court reverse the trial court's judgment in part and sever only those provisions necessary to cure the invalidity and enter the Judgment that the trial court should have.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned counsel certifies that a copy of this document was served on counsel of record through the Court's electronic notice system on August 30, 2021 and by United States Postal Service to:

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This brief complies with the limitations contained in Supreme Court Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that 10,621 words are contained in this brief.

/s/ Charles W. Hatfield