SC98907

IN THE SUPREME COURT OF MISSOURI

ADAM L. LAYNE, et al., Defendants/Appellants,

vs.

JAMES J. WILSON, et al., Plaintiffs/Respondents,

STATE OF MISSOURI, Cross-Claim Defendant/Appellant,
vs.
CITY OF ST. LOUIS, Cross-Claim Plaintiff/Respondent.

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

BRIEF OF RESPONDENTS JAMES J. WILSON, CHARLES A. LANE, AND JEFFREY L. BOYD

Respectfully Submitted,

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JURISDICTIONAL STATEMENT

Respondents/Cross-Appellants Boyd, Lane, and Wilson ("Individual Respondents") are dissatisfied with the accuracy of the Jurisdictional Statement in Appellant Adam Layne's August 30, 2021 Brief ("Layne Brief"). The Statement inaccurately indicates this Court has exclusive jurisdiction over this appeal pursuant to Mo. Cont. Art. III, § 3. That provision is irrelevant to this appeal. It is Art. V, § 3, of the Missouri Constitution that vests this Court with jurisdiction over this appeal.[1]

[1] The Brief filed herein by the State of Missouri on August 30, 2021 ("State Brief") contains a Jurisdictional Statement that is neither inaccurate nor incomplete.

STATEMENT OF FACTS

Individual Respondents Wilson, Lane, and Boyd are dissatisfied with the completeness of the Statements of Fact in the Layne Brief and the State Brief, and therefore submit the following statement of facts pursuant to Rule 84.04(f) of the Missouri Supreme Court Rules; this Statement does not repeat the facts described in the State Brief and Layne Brief with which they agree.

The City of St. Louis ("City") is a constitutional charter city organized pursuant to the Missouri Constitution and the charter of the City ("Charter").[2] Mo. Const. Art. VI, Sec. 31; State ex rel. McDaniel v. Schramm, 272 Mo. 541, 546-47 (Mo. 1917); City of Bridgeton v. City of St. Louis, 18 S.W.3d 107, 110 (Mo. App. E.D. 2000). Respondent Jeffrey Boyd ("Boyd") is an alderman of the City of St. Louis and is the chairperson of the aldermanic Streets, Traffic and Refuse Committee. His duties as alderman are prescribed by provisions of the Charter, including Art. IV, § 1. Respondent Jamie Wilson ("Wilson") is the director of the City's Department of Streets. The duties of the Director of Streets are prescribed by provisions of the Charter, including Art. XIII, §§ 1, 13. Darlene Green ("Green") is Comptroller of the City of St. Louis. Comptroller Green's duties are prescribed by provisions of the Charter, including Art. XV, § 2 and Art XX. § 9. D185, 266.

Sections 82.485.4 and 82.487, RSMo ("Parking Statutes") purport to create a commission to oversee parking in the City. The Parking Statutes direct that the Parking

[2] The Individual Respondents request that the Court take judicial notice of the City's Charter. *See* Mo. Const. Art. IX, Sec. 21; *Kirby v. Nolte*, 164 S.W.2d 1, 3 (Mo. 1941).

Commission is to be composed of the director of the City's Street Department (Wilson), the alderman-chairperson of the City's aldermanic traffic committee (Boyd), the City's Comptroller (Green), the City Treasurer and the director of parking operations. § 82.485.4, RSMo. Parking Commission members must: 1) approve parking policy as necessary to control public parking; 2) set rates and fees to ensure the successful operation of the parking division; and 3) require a detailed accounting of parking division revenues. § 82.485.4, RSMo. The commission is also directed to review a budget for the operations of a "parking division" and the office of the supervisor of parking meters. § 82.485.2, RSMo. Further, the Parking Commission is required to approve guidelines governing the adjudication, disposition and collection of any parking violations issued by the City, approve budget modifications of the parking fund, and approve the acquisition, development, regulation and operation of parking facilities or spaces. § 82.487.1., RSMo.

The Parking Statutes impose duties upon Boyd, Wilson, and Green that add to those respective municipal duties they must discharge as Alderman, Director of Streets and comptroller of a charter city. D185, 186, 187.

The Parking Statutes also create the position of Supervisor of Parking Meters, which is assigned to the City's Treasurer. §§ 82.485.1, 82.485.4, RSMo. The Supervisor of Parking Meters is responsible for installing the City's parking meters and overseeing a statutorily created "parking meter fund." § 82.485.4, RSMo. The Supervisor is also required to serve as the chairperson of the Parking Commission § 82.485.4, RSMo, and to prepare an operating budget for each fiscal year and submit the budget for approval to the

City's Board of Aldermen. § 82.485.4, RSMo. Members of the Parking Commission are tasked with reviewing the operating budget prior to its review by the Board of Aldermen. § 82.485.3-4, RSMo.

The office of Supervisor of Parking Meters presently is occupied by Appellant Layne.[3] Layne's predecessor in office, Tishaura Jones, acting in her capacity as Supervisor of Parking Meters, executed numerous documents purportedly on behalf of the City as a constitutional charter city. For example, Jones executed a Certificate Concerning Trust Indenture in 2015 on behalf of the City of St. Louis in her capacity as Supervisor of Parking Meters. D197, p. 1. The Certificate attested that the original Trust Indenture executed by her predecessor remained in full force and effect. *Id*. The Trust Indenture referred to the City of St. Louis as "a constitutional charter city . . . acting through the Treasurer of the City of St. Louis in his capacity as Supervisor of Parking Meters," and refers to the parking division as a division of the City of St. Louis. D197, p. 7. The indenture was also signed by the mayor, countersigned by the comptroller, approved as to form by the city counselor, and deposited with the City register. D197, p. 103. Supplemental Trust Indenture No. 4 was executed in the same manner. D196, p. 27. This was also true for a Tax Compliance Agreement (D193), Continuing Disclosure Agreement (D194), and Bond Purchase Contract (D195) executed in 2015. All were executed on behalf of the City by the Treasurer acting in her capacity as supervisor of parking meters.

[3] He also presently serves as the City's Treasurer.

The Individual Respondents moved for partial summary judgment on April 23, 2018, seeking a declaratory judgment in their favor on their Parking Commission Constitutionality Claims. D198. That same day, the Treasurer (Respondent Layne's predecessor), filed a motion seeking, among other things, a stay of the Trial Court's April 5, 2018 Order granting the City's motion for summary judgment and declaring the Parking Commission Statutes unconstitutional. D183.

On May 9, 2018, the Trial Court denied the stay motion. D206. On October 25, 2018, it then granted the Individual Respondents' Motion for Partial Summary Judgment, D240, and their Motion For Permanent Injunctive Relief. D241. In its Order and Judgment issuing a permanent injunction it restrained, the Trial Court observed that it had already declared the Parking Commission Statutes void, the Treasurer had represented to the Trial Court that she nevertheless intended to continue to follow them, and the City's ordinances creating a Parking Commission are to be given effect, and therefore restrained the Treasurer, and all those acting with her, from following the Parking Commission Statutes. D241. The Trial Court then certified its Judgment as final for purposes of appeal, leading to the previous interlocutory appeals to this Court. D248.

After this Court dismissed those interlocutory appeals,[4] the Individual Respondents filed on April 18, 2020, their Third Amended And Consolidated Petition For Declaratory Judgment and Injunctive Relief. D256, 257. Appellants State and Layne then filed Answers thereto. D261, 264. Appellant Layne's Answer admitted that

[4] *Wilson v. City of St. Louis*, 600 S.W. 3d 763 (Mo. banc 2020).

Individual Respondent Boyd served as the Chair of the City Board of Aldermen's Streets Traffic and Refuse Committee ("Parking Committee Chair"). D261, ¶ 7.

On June 25, 2020, all parties entered into a Joint Stipulation Of Facts And Exhibits ("Stipulation"). D266. That Stipulation resolved, as a matter of fact, that Respondent Boyd served as the Parking Committee Chair, and that both Respondent Lane and he were licensed to operate motor vehicles and had received parking tickets issued by agents of the Treasurer's Office of the City. D266, ¶¶ 1, 3.

After the second appeal to this Court in this case, Appellant Layne filed the Legal File on April 21, 2021 and a Supplemental Legal File on August 30, 2021. Neither Legal File contained any Petition filed by the Individual Respondents prior to their April 8, 2020, Third Amended And Consolidated Petition For Declaratory Judgment And Injunctive Relief. Thus, although the Legal File contains the Trial Court's October 25, 2018, Orders granting partial summary judgment in favor of the Individual Respondents as to the unconstitutionality of the Parking Statutes and giving them a permanent injunction in aid of that declaratory judgment, the record herein does not contain the operate pleading upon which those claims were adjudicated and tried.

Respondents' two summary judgment motions argued that the Parking Statutes violate Mo. Const. Art. VI, § 2 in two ways: (1) by establishing the Parking Commission, the Parking Statutes create a municipal office or commission; and (2) by requiring the City's Comptroller, Director of Streets, and the Chairperson of the Aldermanic Traffic Committee to serve on the Parking Commission, the Parking Statutes impose duties on municipal officers. D173, 177, 198, 199.

The trial court ruled that the Parking Statutes violate Article VI, Section 22 because they "create and fix the duties 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." D180, p. 10; D240, p.7.

INTRODUCTION

Appellant Layne contends that the Parking Statutes not only are constitutional, they are venerable laws that implement sound policy. Layne's Brief, p. 13 (stating that the General Assembly has "for decades" statutorily regulated parking revenues and budget of the City of St. Louis and that "legislature . . . intentionally…ensure[d] that state law" would control parking revenues to prevent city abuse); Layne's Brief, p. 41 (contending that legislature's enactment of the Parking Statutes effectuates public interest and promotes public safety). But neither the age of these laws nor a debate about their worthiness is germane to appropriate disposition of this appeal. Rather, this Court simply is required to determine whether the Parking Statutes require City officials to shoulder duties and engage in activities that they would not be required to undertake absent these provisions. It is manifestly evident that, apart from the existence of these state laws, several City officials would be relieved of multiple duties and tasks. Thus, this court should rule that the Parking Statutes violate Art. VI, § 22 of the Missouri Constitution and affirm the Trial Court's judgments declaring their unconstitutionality.[5]

ARGUMENT

I. The Parking Statutes violate Mo. Const. Art. VI, § 22 (In response to the State's first point relied on and Appellant Layne's second point relied on).

The Parking Statutes violate Mo. Const. Art. VI, § 22 in two ways. First, by purporting to create a parking commission to oversee parking in the City of St. Louis, the

[5] The Individual Respondents are not pursuing their cross-appeal, notice of which was filed in the trial court on January 21, 2021.

Parking Statutes unlawfully create a municipal commission. *See State ex rel. Sprague v. St. Joseph*, 549 S.W.2d 873, 879 (Mo. 1977) (holding that Article VI, Section 22 prevents the general assembly from creating new boards for charter cities). Second, by requiring the City's Comptroller, Director of Streets, and the chairperson of the aldermanic Streets, Traffic and Refuse Committee aldermanic traffic committee to serve on the Parking Commission, the Parking Statutes unlawfully impose duties on municipal officers. *See City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. 1996) (explaining that Mo. Const. Art. VI, § 22, provides that "the General Assembly may not tell the officers of a charter city what they must do."). Although the trial court addressed only the second constitutional infirmity in its summary judgments, this Court can affirm the summary judgments on any basis supported by the record. *Burian v. Country Ins. & Fin. Servs.*, 263 S.W.3d 785, 787 (Mo. App. W.D. 2008).

Layne and the State do not dispute that the City's comptroller, director of streets, and the chairperson of the aldermanic traffic committee are municipal officers, nor do they dispute that the Parking Statutes assign duties to these municipal officers by requiring them to serve on the Parking Commission. Those undisputed circumstances, on their own, establish that the trial court did not err in finding the Parking Statutes unconstitutional. *City of Springfield*, 918 S.W.2d at 789.

Nonetheless, Appellants argue that a fourth member of the Parking Commission, the City's Treasurer, is a county officer. Layne's Brief, pp. 27-28; State's Brief, p. 12. According to Appellants, the Treasurer's status as a county official and role as chairperson of the Parking Commission compel the conclusion that the Parking

Commission is also a creature of the county. Layne argues further that the General Assembly can assign additional duties to municipal officers without violating Mo. Const. Art. VI, § 22 so long as those duties serve "county functions." Thus, according to Appellants, the Treasurer's supposed status as a county official necessarily is imputed to the five-person Parking Commission, even though the commission is populated mostly by municipal officers, and the commission's consequent status as a county commission justifies the General Assembly's conscription of the municipal officers.

These arguments have no basis in law or logic. As explained more fully below, the Parking Commission is a city commission because it performs municipal functions. Whether the Treasurer is a county office has no bearing on that analysis. Furthermore, even if the Parking Commission were a county commission, Mo. Const. Art. VI, § 22, would forbid the General Assembly from assigning additional duties to the City's comptroller, director of streets, and the chairperson of the aldermanic traffic committee by requiring them to serve on the Parking Commission. For both of these reasons, the trial court did not err in holding that the Parking Statutes are unconstitutional.

A. The Parking Commission is a municipal commission.

Appellants are correct that the key to Mo. Const. Art. VI, § 22, and therefore the key to this case, is the distinction between municipal and county offices. *State ex rel. McClellan v. Godfrey,* 519 S.W.2d 4, 9 (Mo. 1975). However, they have not correctly explained that distinction.

This Court has consistently held that the officers of the City of St. Louis who perform the functions and duties generally exercised by county officers are county

officers, whereas the officers who perform functions and duties pertaining to municipal government are municipal officers. *See, e.g.*, *Stemmler v. Einstein*, 297 S.W.2d 467, 469 (Mo. 1956). It is beyond dispute that the regulation of parking is generally a municipal function. *See, e.g.,* § 304.120, RSMo; *Wilhoit v. City of Springfield*, 171 S.W.2d 95, 98 (1943) ("That cities have the authority to regulate parking under its police power is not open to question so long as they are not unreasonable in their regulatory measures."). Thus, by establishing the Parking Commission to oversee parking in the City of St. Louis, the Parking Statutes establish a municipal commission in violation of Mo. Const. Art. VI, § 22.

i. Officers in the City of St. Louis who perform functions and duties pertaining to municipal government are municipal officers.

It is well-established that "the constitutional [delegation of] authority to cities to adopt and amend a charter, Mo. Const. art. VI, §§ 19–22, intends to grant cities broad authority to tailor a form of government that its citizens believe will best serve their interests." *Goff*, 918 S.W.2d at 789. In order to give effect to that authority, "the General Assembly is expressly prohibited [by Art. VI, § 22] from dictating the types of municipal offices and employment charter cities must establish or the powers or compensation of officers and employees of charter cities." *Id*. "In other words, the General Assembly may not tell the officers of a charter city what they must do." *Id*.

This constitutional limitation on the State's power to interfere with municipal offices is easy to enforce with respect to offices in charter cities other than St. Louis.

That is, "Sec. 22 of Art. VI, 1945 Constitution, applies to all offices in cities of the constitutional class created under Sec. 19, Art. VI, 1945 Constitution, because the only offices they can have are municipal offices." *Preisler v. Hayden*, 309 S.W.2d 645, 647 (Mo. 1958). Thus, in every charter city across Missouri other than St. Louis, the legislature may not establish or prescribe the duties of any office.

The City of St. Louis, of course, has no less "authority to tailor a form of government that its citizens believe will best serve their interests" than any other constitutional charter city. *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. 1996). However, because the City of St. Louis is also a county, it is required to perform county functions. As a result, certain offices in the City of St. Louis are classified as county offices, which the legislature can create and direct without implicating Art. VI, section 22. *Preisler*, 309 S.W.2d at 648.

Not surprisingly, this Court has frequently construed Art. VI, section 22 in light of "the dual nature of the City of St. Louis," thereby establishing "principles to be applied in determining which of its officers are county officers." *Id*. Most importantly, it is evident that the distinction between county and municipal offices depends on whether the office performs functions and duties pertaining to the state or the municipal government. In determining whether a function pertains to the state or to St. Louis in its capacity as a municipal corporation, this Court has considered whether the function is generally assigned to municipal or county officers, and whether the function serves distinctly local concerns. In this case, both factors indicate that the Parking Commission is a municipal commission.

In *Preisler*, for example, this Court considered whether the office of License Collector is a municipal or county office. *Id*. This Court concluded that the License Collector is a county office because of "the many duties of the office which are county functions in the other counties of this state (as recognized by the 1911 Act)." *Id*. at 649. Similarly, this Court considered it significant that "when [the office of License Collector] was created, . . . many duties of the City Collector (which as hereinabove stated, we have held to be a county office) were transferred to this office." *Id*. Even the issuance of municipal licenses, this Court noted, "is not an exclusive municipal function as there are provisions for other counties to collect licenses of various kinds." *Id*. Thus, the basis for this Court's determination that the License Collector was a county office was that the functions it performed generally are assigned to county offices.[6] *See also Stemmler,* 297 S.W.2d at 469 (explaining that "such of [the City of St. Louis'] officers as have performed the functions and duties generally exercised by county officers have been held to be county officers . . ., as distinguished from municipal officers.") (*citing State ex rel.*

[6] *Preisler* also relied on the fact that the License Collector is elected at the "State November election and for vacancies to be filled by appointment by the Governor, as usually provided for other county offices." *Preisler*, 309 S.W.2d at 649. However, this Court has repeatedly invalidated procedures for filling offices where such procedures are inconsistent with the office's character as a county or municipal office. *State on inf. Barker v. Koeln*, 270 Mo. 174, 192 S.W. 748 (1917); *State, on Inf. of McKittrick v. Dwyer*, 343 Mo. 973, 124 S.W.2d 1173 (1938). That being the case, it is clear that the municipal or county status of an office determines the proper method of appointment to the office, not the other way around. In any event, any rule based on whether an officer is elected at the State or local election is not helpful to determining whether the Parking Commission is a county or municipal office, because its members are elected at separate elections.

Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 639 (Mo. 1896); *State on inf. of McKittrick v. Dwyer*, 343 Mo. 973, 124 S.W.2d 1173 (Mo. 1938)).

This Court's more recent decisions employ the same functional analysis employed in *Preisler*. In *State ex rel. Burke v. Cervantes*, this Court considered whether a statute requiring the mayor of St. Louis to appoint a fireman's arbitration board to consider certain grievances violated Mo. Const. Art. VI, § 22. 423 S.W.2d 791, 792 (Mo. 1968). This Court concluded that the duty to oversee "the wages and working conditions of all employees, including firemen, of the city" is vested in the City's municipal officers, and therefore statutes which assign duties of that kind to St. Louis's mayor violate Mo. Const. Art. VI, § 22 and impermissibly invade St. Louis' home rule authority. *Id*. at 794.

Likewise, in *State ex rel. McClellan v. Godfrey* this Court considered whether a statute authorizing St. Louis' mayor to order presentation of a proposition for establishment of a medical examiner at a special election violated Article VI, § 22. 519 S.W.2d 4 (Mo. 1975). First, the Court concluded that the Medical Examiner is unquestionably a county office because it replaces the county office of coroner. *Id*. at 9. That being the case, the Court held that the Mayor's activities with respect to the Medical Examiner are county activities that do not implicate Article 6, Section 22. *Id*. In reaching this conclusion, this Court distinguished *Cervantes* on the ground that *Cervantes* "dealt with city policemen and firemen in connection with city affairs." *Id*.

Finally, *City of St. Louis v. Doss* revisited the issue of the proper classification of the License Collector of the City of St. Louis. 807 S.W.2d 61 (1991). In reaffirming that the office of License Collector is a county office, this Court explained that "so long as the

License Collector performs functions which are those identified with a county office, and so long as that office is elected in the state elections as are other county offices, it remains a county office and subject to county control." *Id*. at 62 (emphasis added).

Thus, this Court's decisions addressing the distinction between municipal and county offices in the City of St. Louis establish that the distinction depends on the functions assigned to the office. In *Preisler* and *Doss*, this Court concluded that the License Collector is a county office primarily because the functions it performs are typically assigned to county officials. In *Godfrey*, this Court concluded that the Medical Examiner is a county office because it performs the duties previously delegated to the county office of coroner. And in *Cervantes*, the duty to appoint members of a fireman's arbitration board was a municipal function because it "deal[s] with city policemen and firemen in connection with city affairs." Here, then, the Parking Commission's status as a county or municipal entity must be determined by asking whether the duties assigned to it are "generally exercised by county officers [or by] municipal officers." *Stemmler,* 297 S.W.2d at 469.

ii. The functions that the Parking Statutes assign to the Supervisor of Parking Meters and the Parking Commission are generally performed by municipal officers.

It is beyond dispute that functions pertaining to perking are generally exercised by municipal offices rather than county offices. For example, the legislature has authorized municipalities by ordinance to "[r]egulate the parking of vehicles on streets by the installation of parking meters for limiting the time of parking and exacting a fee therefor

or by the adoption of any other regulatory method that is reasonable and practical." § 304.120, RSMo. There is no comparable delegation of authority to counties.

Similarly, every city and town, including constitutional charter cities, is authorized to "finance and pay for the planning, designing, acquisition, construction, equipment and improvement of property for parking motor vehicles . . .." § 71.360; *see also Wilhoit v. City of Springfield*, 237 Mo. App. 775, 171 S.W.2d 95, 98 (1943) ("That cities have the authority to regulate parking under its police power is not open to question so long as they are not unreasonable in their regulatory measures."). That authority also extends to constitutional charter counties (§ 71.360), which have municipal characteristics that counties without charters lack. *Missouri Bankers Ass'n, Inc. v. St. Louis Cty.*, 448 S.W.3d 267, 272 (Mo. 2014) (explaining that "[a] charter county 'functions in a dual capacity, sometimes performing state functions and sometimes performing municipal functions....'") (quoting *Schmoll v. Hous. Auth. of St. Louis Cty.*, 321 S.W.2d 494, 498 (Mo. 1959)). There is no comparable delegation to counties without charters, which tends to show that regulating parking is a municipal function rather than a state function.

Furthermore, the functions assigned to the Supervisor of Parking Meters and Parking Commission pertain to distinctly local concerns. The Parking Statutes expressly state that the Parking Commission acts **"[o]n behalf of the city"** in approving multiple aspects of the parking division's operations, and reference "parking revenues collected by the **city**." §§ 82.487.2(5), 82.487.2(6) (emphasis added). The City's Board of Aldermen must approve the parking division's annual budget (§ 82.485.4) and all or part of the net change in the parking meter fund's balance is transferred to the City's general fund. §

82.485.4. And the Supervisor of Parking Meters is tasked with enforcing the City's parking ordinances. § 82.485.1. Clearly, the collection of a city's revenue for deposit into the city's general fund and the enforcement of City ordinances are functions generally exercised by municipal offices, pertaining to distinctly local concerns.

The Treasurer's activities as Supervisor of Parking Meters confirm these points. For example, in a supplemental trust indenture executed in connection with the issuance of $6.4 million in parking revenue bonds, the Treasurer signed on behalf of the City of St. Louis in her capacity as supervisor of parking meters. D196. The City is party to the trust indenture not as a county, but as a "constitutional charter city. D196, p. 4. The indenture was also signed by the City's mayor and approved as to form by the city counselor. D196, p. 19. The comptroller's countersignature and city counselor's approval as to form are unique City Charter requirements for City contracts. City Charter, Art. X, Section 2 (city counselor), Art. XXV, Section 9 (comptroller). The Treasurer and the other City officials all signed under the heading "The City of St. Louis, acting through the Supervisor of Parking Meters." D196, p. 19. The same bond issue was authorized by ordinance approved by the City's Board of Aldermen. D192. The ordinance expressly stated that the City was acting through the Treasurer in her capacity as supervisor of parking meters. D192, p. 1. The City was the issuer of the bonds (D192, p. 3), and the ordinance authorized City officials to execute the various bond documents. D192, pp. 4-6. The party obligated to pay principal and interest on the bonds is the "City of St. Louis, a constitutional charter city." D196, p. 22.

While the Individual Respondents recognize that the Court's constitutional analysis is not governed by the content of City bond documents or ordinances, the fact remains that the Treasurer of the City of St. Louis, in his or her capacity as Supervisor of Parking Meters, has acted on behalf of the City and entered financial obligations on behalf of the City as a charter city and not as a county official.

In sum, the Parking Statutes assign duties and functions to the Parking Commission that generally are exercised by municipal offices, not county offices, and these functions pertain to distinctly local concerns. That being the case, the Parking Commission is properly classified as a municipal "office". *See*, *e.g.*, *Stemmler*, 297 S.W.2d at 469.

iii. Appellants' arguments claiming that the Parking Commission is a county commission are meritless.

Despite this Court's numerous decisions explaining that the character of an office depends on the functions it performs, Appellants omit discussion of the functions that the Parking Commission performs. In other words, Appellants do not claim that that the duties and functions prescribed by the Parking Statutes are generally exercised by county officials, which this Court has described as a defining feature of county offices. *Stemmler, supra,* 297 S.W.2d at 469.

Instead, Appellants argue that the Parking Commission is a county commission because the City's Treasurer serves as its chairperson. Layne's Brief, p. 26; State's brief, p. 12. This argument contains three interdependent claims: (1) that the office of Treasurer is exclusively a county office; (2) that the Treasurer is in charge of the Parking

Commission; and (3) that the Treasurer's status as a county office is imputed to the Parking Commission as a consequence of Treasurer's oversight responsibility as to it. Each of these contentions is wrong: (1) The Treasurer performs both county and municipal functions; (2) the Treasurer is not in charge of the Parking Commission; and (3) county offices in St. Louis are recognized by the county functions they perform, not by the officials who are required to serve those functions.

1. The Treasurer performs both county and municipal functions.

Regarding the first claim, both Appellants emphasize the alleged circumstance that the office of Treasurer is exclusively a county official. Appellants cite two decisions of this Court, *State, on Inf. of McKittrick v. Dwyer*, 343 Mo. 973, 979 (Mo. banc 1938), and *State ex rel. Dwyer v. Nolte*, 172 S.W.2d 854 (Mo. 1943), to support this proposition. However, neither case addressed the Treasurer's role as Supervisor of Parking Meters. As explained above, the determination as to whether an office is classified as a county or municipal office depends on the functions it performs, so this omission alone renders *State, on Inf. of McKittrick v. Dwyer* and *State ex rel. Dwyer v. Nolte* of dubious relevance.

More importantly, in *State, on Inf. of McKittrick v. Dwyer*, this Court explicitly recognized that "the treasurer of the city performs official duties relating to the city as a political subdivision and also performs official duties relating to the city in its corporate capacity." 343 Mo. 973, 979 (Mo. banc 1938). Thus, even if the Treasurer generally is a county office, and even if the Treasurer serves on the Parking Commission (it is actually

the Supervisor of Parking Meters who is assigned that role), it would not resolve whether the Treasurer's duties as Supervisor of Parking Meters are duties "relating to the city as a political subdivision [or are] official duties relating to the city in its corporate capacity." *Id*.

2. The Treasurer is not in charge of the Parking Commission.

The second proposition supporting Appellants' defense of the Parking Statutes – that the Treasurer is in charge of the Parking Commission – is also incorrect.

First, the Parking Statutes require the Treasurer to serve in a position "known as the 'supervisor of parking meters,'" and name the Supervisor of Parking Meters as the chairperson of the Parking Commission. §§ 82.485.4, 82.487.2. Had the legislature intended that the Treasurer chair the Parking Commission in her capacity as Treasurer, there would be little sense in it creating the separate office of "supervisor of parking meters." Thus, since the legislature may not be charged with having done a meaningless act (see *Staley v. Missouri Director of Revenue*, 623 S.W.2d 246, 1981)), this Court should find that the Supervisor of Parking Meters is a distinct City office apart from the office of Treasurer.

Even more problematically, Appellant Layne's claim that he is "in charge" of the Parking Commission (*see* Layne's brief, p. 33) ignores the fact that the Parking Statutes make the supervisor of Parking Meters subservient to the Parking Commission in numerous respects, notwithstanding the Supervisor of Parking Meter's role as chairperson. The Supervisor of Parking Meter's authority shall be subject to "the

oversight . . . by the parking commission." § 82.487.2. The Parking Commissioner, not the Supervisor of Parking Meters, "shall be the city's authority for overseeing public parking . . .." § 82.487.1. Payments to the City's general revenue must be approved by the Parking Commission, § 82.487.2 (6), and the Supervisor of Parking Meters is required to make periodic reports to the City's Comptroller. §§ 82.487.2(5), (6). The annual parking budget must be approved by the Parking Commission. *Id*. All parking policies, rates and fees must be approved by the Parking Commission.

Thus, contrary to the Appellants' argument, the Parking Statutes clearly dictate that Appellant Layne, in his capacity as Supervisor of Parking Meters, answers to the Parking Commission.

3. County offices in St. Louis are recognized by the county functions they perform, not by the officials who are required to perform those functions.

Finally, the third proposition supporting Appellants' defense of the Parking Statutes – that the Treasurer's supposed status as a county office is imputed to the Parking Commission – is at odds with this Court's decisions regarding the nature of county and municipal offices in the City of St. Louis.

As explained above (Section 1.A.i), county offices in St. Louis are recognized by the county functions they perform, not by the officials who are required to serve those functions. *Preisler*, 309 S.W.2d at 648 (concluding that the License Collector is a county office because of "the many duties of the office which are county functions in the other counties of this state); *Stemmler,* 297 S.W.2d at 469 (explaining that "such of [the City of

St. Louis'] officers as have performed the functions and duties generally exercised by county officers have been held to be county officers and subject to the general laws of the State relating to the selection and duties of county officers, as distinguished from municipal officers."); *Doss*, 807 S.W.2d at 63 ("So long as the License Collector performs functions which are those identified with a county office, and so long as that office is elected in the state elections as are other county offices, it remains a county office and subject to county control.") (emphasis added).

Thus, even if the Treasurer is exclusively a county officer, and even if the Treasurer is in charge of the Parking Commission, those circumstances would not determine whether the Parking Commission is a county office. Instead, the proper analysis examines whether the functions performed by the Parking Commission generally are performed by county or municipal officials. The duties and functions that the Parking Statutes assign to the Supervisor of parking meters and the Parking Commission are generally exercised by municipal officials, not by county officials, so it ineluctably follows that the Supervisor of Parking Meters and the Parking Commission are municipal offices that cannot be created by statute. For this reason, the trial court did not err in holding that the Parking Statutes are unconstitutional.

B. Regardless of whether the parking commission is a municipal or county commission, the General Assembly cannot require the City's comptroller, director of streets and the chairperson of the aldermanic traffic committee to serve on the commission.

The Individual Respondents' second challenge to the Parking Statutes is that the Parking Statutes assign additional duties to the City's Comptroller, Director of Streets,

and the Chairperson of the Aldermanic Traffic Committee, each of whom is a municipal officer and not a county officer, by requiring them to serve on the Parking Commission.

As noted earlier, Layne and the State do not dispute that the City's Comptroller, Director of Streets, and the Chairperson of the Aldermanic Traffic Committee are municipal officers, nor do they dispute that the Parking Statutes assign duties to these municipal officers by requiring them to serve on the Parking Commission. These undisputed circumstances, on their own, establish that trial court did not err in finding the Parking Statutes unconstitutional. *See City of Springfield, supra,* 918 S.W.2d at 789 (explaining that Mo. Const. Art. VI, § 22 provides that "the General Assembly may not tell the officers of a charter city what they must do.").

Appellants attempt to avoid this obvious result by claiming that statutes requiring the City's municipal officers to assume additional duties do not implicate Mo. Const. Art. VI, § 2 as long as those duties pertain to county functions. Appellants sole support for this proposition is this Court's decision in *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo. 1975).

The reasoning in *Godfrey* does not apply to the circumstances presented here. In *Godfrey*, this Court held that a statute authorizing the Mayor of the City of St. Louis to call an election for the county medical examiner did not violate Mo. Const. Article VI, Section 22 because "the activity of the mayor, called for by the Act, . . . does not involve the city of St. Louis in its capacity as a city but as a county." *Id*. at 9. This Court reasoned that "in that capacity the mayor is subject to the general laws of the state." *Id*. (emphasis added).

Here, in contrast, the duties that the Parking Statutes impose on City Alderman Boyd, City Director of Streets Wilson, and City Comptroller Green pertain to the City in its capacity as a city. Furthermore, the Parking Statutes apply only to the City of St. Louis, rather than to counties or cities generally like the Act considered in *Godfrey*. Finally, this Court has expressed doubt as to whether "a mere isolated act of appointment" - like the activities considered in *Godfrey* – implicates the "powers, duties or compensation" protected by Mo. Const. Article VI, Section 22. *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791, 794 (Mo. 1968) (Judge Eager, concurring). The duties that the Parking Statutes impose on the City's municipal officials, however, are considerably more onerous than a "mere isolated act of appointment."

Again, this Court has explained that the essence of Mo. Const. Art. VI, § 22 is that "the General Assembly may not tell the officers of a charter city what they must do." *See City of Springfield,* 918 S.W.2d at 789. To the extent *Godfrey* cuts against that principle, its reasoning is not applicable here.

Thus, the Parking Statutes do precisely what Art. VI, Sec. 22, forbid: they tell municipal officers what to do. For that reason, as well as the fact that the Parking Commission is a municipal commission, the trial court did not err in holding that the Parking Statutes are unconstitutional.

II. The provisions of the Parking Statutes requiring City officials to serve on the Parking Commission are not severable (response to Appellant Layne's third point relied on and the State's second point relied on).

Both Appellants argue that the trial court erred in declaring the entirety of the Parking Statutes unconstitutional because the provisions that require the City's municipal officials to serve on the Parking Commission can and should be severed. This argument, of course, has no application if this Court concludes that the Parking Commission is itself an unconstitutional municipal commission.

Unconstitutional provisions of a statute are inseverable from the remaining provisions of the statute if the valid provisions of the statute "are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or [if] the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." § 1.140, RSMo.

The creation of a governing board − the Parking Commission in this case − is essentially and inseparably connected with, and dependent upon, the duties assigned to the Commission. Per the Parking Statutes, the Treasurer is designated to serve as municipal Supervisor of Parking meters and reports to the five-member Parking Commission, a majority of which are City officials. § 82.485.4, RSMo. The Parking Statutes place authority over City parking policies, revenues, budget decisions, property acquisition and development, enforcement and other parking-related functions with the State-created Parking Commission. Although the Treasurer is designated the "supervisor of parking meters" (§ 82.485.1), the statutory provisions express the legislative intent that

the Treasurer be "subject to the oversight" of a Parking Commission consisting of mostly City officials in order to oversee the City's parking affairs. § 82.487.2.

Thus, it is evident that the legislature meant to provide the City with the ability to exert control over the Parking Commission when it exercised its oversight, policy-making and supervisory authority over City parking matters. Indeed, it appears that even the State agrees this was the legislature's intent. State's Brief, p. 21 (stating that the Parking Statutes' "[r]ules regarding membership and regulation of the Parking Commission invite City Officials to participate and provide local input on the State's policy").

The Appellants' request to sever the statutory provisions requiring City representation on the Parking Commission would defeat that legislative intent, leaving only the Treasurer and her employee to establish City parking policies and to control City parking revenues. Under similar circumstances, the Missouri Supreme Court invalidated eight statutes that created a comprehensive, local regulatory scheme for plumbers. *Sprague v. St. Joseph*, 549 S.W.2d 873 (Mo. 1977). *Sprague* held that eight statutes creating the regulatory scheme for the City of St. Joseph were unconstitutional and invalid, not just the discrete provisions requiring charter city officials to serve on a board. *Sprague*, 549 S.W.2d at 880.[7] One of the eight statutes required that the chairman of a city's board of health serve as member of the local regulatory board, in violation of Article VI, Section 22. *Sprague* held the entire series of statutes unconstitutional. *Id*.

[7] *Sprague* held Missouri §§ 341.010, RSMo, through 341.080, RSMo, unenforceable as to charter cities based upon Article VI, Section 22. 549 S.W.2d at 880. Only § 341.040, RSMo, addressed the constitution of a local board of examiners for plumbers.

Had it employed the reasoning advocated here by Defendant Layne, the *Sprague* court would have severed the offending statutory terms, leaving only plumbers on the board to regulate plumbers. Instead, the Supreme Court declared the entire regulatory scheme (all eight statutes) unenforceable as to charter cities due to the Article VI, Section 22 limitation. The logic of the *Sprague* approach is inescapable − laws creating a governing board and assigning it authority and duties are inseparably connected. *See also*, *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791, 792 (Mo. 1968) (former state statute 290.360, RSMo, requiring mayor to appoint members to a local fireman's labor arbitration board to render recommendation violated Article VI, Section 22, leading Court to also declare a separate statute establishing the board's duties also invalid § 290.350, RSMo).

As in *Sprague*, it is certain that the statutory provisions governing authority over City parking policies and revenues are "essentially and inseparably connected with, and so dependent upon," the provisions governing the composition of the Parking Commission, such that it cannot be presumed that State lawmakers "would have enacted the valid provisions without the void one." Mo. Rev. Stat. § 1.140.[8]

Moreover, Sections 82.485 and 82.487 are interdependent. If the Section 82.485.4 provisions governing the composition of the Parking Commission are unconstitutional and invalid, it disables the Parking Commission from performing its obligations and duties under both § 82.485 and §82.487. For example, § 82.487.2 provides that the

[8] The Individual Respondents do not concede that all other provisions of §§ 82.485, RSMo, and 82.487, RSMo, are valid. However, for purposes of this brief and analysis of the application of § 1.140, RSMo, in this limited context, they assume such without conceding that other provisions of the Parking Statutes are valid.

Treasurer, in the capacity of Supervisor of Parking Meters, is subject to oversight by the Parking Commission. In the absence of a properly constituted Parking Commission, that oversight function cannot be performed. The same result occurs with respect to § 82.487.1, RSMo, which establishes the Parking Commission as the City's authority for all parking issues. Those provisions are meaningless if the statutes establishing the Parking Commission's composition are unconstitutional.

Finally, in urging the Court to sever the unconstitutional sections of the Parking Statutes, the Appellants openly hope to accomplish a result in which Appellant Layne and the director of parking meters are the sole members of the Parking Commission. The Court should decline the suggestion that it, by judicial fiat, can lawfully reduce the size of the Parking Commission from five to two. Among other problems such inartful judicial surgery would cause is that would create a Frankensteinesque five-person Parking Commission with only two members. Yet a Parking Commission reduced to two members, where the legislature contemplated there be five, cannot form a quorum, and therefore it cannot lawfully transact business. *See Reynolds County Tel. Co. v. Piedmont*, 133 S.W. 141, 366-37 (Mo. App. 1911) (finding that meeting of board of aldermen was not legal, and therefore no business transacted was binding on the city, where at the time there were four members of the board but only two members of the board were present at the meeting when the resolution was passed); *Jackson v. Board of Dirs. of the Sch. Dist.*, 9 S.W.3d 68, 74 (Mo. App. 2000) (finding that school board used improper procedure where a three-member committee was appointed to conduct hearing that did not constitute a quorum of the nine-member board); *New Process Steel, L.P. v. NLRB*, 560

U.S. 674, 680 (2010) (finding that statute required National Labor Relations Board's powers to be vested at all times in a group of at least three members because Board quorum requirement is that three participating members are necessary at all times for the Board to act); 27 Kan. Op. Att'y Gen. No. 93-140 (Oct. 29, 1993), 1993 WL 503034, at *1 (noting generally accepted rule that a quorum is the majority of the body and stating that a five-member board requires three members to form a quorum).

For these reasons, the trial court did not err in holding that the requirement that the director of the City's Street Department, the alderman-chairperson of the City's aldermanic traffic committee, and the City's comptroller serve on the Parking Commission cannot be severed from the remainder of the Parking Statutes.

III. The provisions of the Parking Statutes that create the Parking Commission are not severable (response to Appellant Layne's fourth point relied on)

Appellant Layne also contends that the trial court should have severed all the portions of the Parking Statutes that create the Parking Commission and leave the remainder intact. That would leave intact just the portions of the Parking Statutes that create the office of Supervisor of Parking Meters and prescribe the duty to establish a parking fund.

This Court should reject Appellant Layne's suggestion because the portions of the Parking Statutes creating his role as supervisor of parking meters are inseparably connected with the portions dealing with the Parking Commission. Per the Parking Statutes, the supervisor of parking meters reports to the five-member Parking Commission, a majority of which are City officials. § 82.485.4, RSMo. Although the

Treasurer is designated the "supervisor of parking meters" (§ 82.485.1), the Parking Statutes express the legislative intent that the Treasurer be "subject to the oversight" of a Parking Commission consisting of mostly City officials in order to oversee the City's parking affairs. This is consistent with the fact that Parking Statutes place authority over City parking policies, revenues, budget decisions, property acquisition and development, enforcement and other parking-related functions with the Parking Commission.

As the State admits, the Parking Statutes reflect the legislature's intent to enable the City to exert control over the Supervisor of Parking Meters by making that office subject to the oversight of a Parking Commission that is comprised, in part, of municipal officials. State's Brief, p. 21 (stating that the Parking Statutes' "[r]ules regarding membership and regulation of the Parking Commission invite City Officials to participate and provide local input on the State's policy"). That being the case, it simply cannot be presumed that the legislature would have enacted the remainder of the Parking Statutes without providing for the Parking Commission.

IV. The Individual Respondents have standing (response to Appellant Layne's first point relied on).

Appellant Layne argues that none of the Respondents --- neither Boyd, Lane, Wilson, nor even the City --- have sufficient interests in this matter to muster the constitutional challenges that led to the Trial Court's judgments (notably, the State appears content that all the Respondents have standing to bring their claims as it has never maintained any concerns as to justiciability). Layne appears to suggest outright-by strong implication at least-that the challenges Respondents have brought implicate only

political questions that solely are the province of the General Assembly to resolve. "Plaintiffs have come to the wrong window. If they wish to change the laws governing parking revenues in the City of St. Louis, they should convince the legislative." Layne's brief, p.13.

Instinctively, this diversionary contention seems not just unpalatable but wrong; in fact, it is both. The legislature has seen fit to provide for a statutory vehicle, the Declaratory Judgment Act, by which court challenges may be brought to determine whether legislation is lawful. § 527.020, RSMo. Appellant Layne may, of course, defend his turf in this Court, but this Court should reject his contention that no person or entity is entitled to get a declaratory judgment as to the validity of the highly unusual set of Parking Statutes.

A. Both Respondents Wilson and Lane are well within the zone of interests implicated by the Parking Statutes because they operate cars in the City, have received parking tickets issued by the Parking Division of the Treasurer's Office, and thus they are subject to the regulatory and quasi-criminal control of the Parking Commission as it exists pursuant to those provisions.

Respondents Wilson and Lane Wilson are licensed operators of motor vehicles who live in the City of St. Louis and have received parking tickets issued by the City's parking division, which ultimately is supervised by the unconstitutional statutory Parking Division. D266; §§ 82.485.4C ("parking commission . . . shall approve parking policy shall approve parking policy as necessary to control public parking, [and] shall set rates and fees to ensure the successful operation of the parking division…"); 82.487.1 ("The parking commission . . . shall be the City's authority for overseeing public parking . . . ");

82.487.2 ("The treasurer . . . shall be the parking supervisor [and] shall be subject to the oversight and authorized funding…by the parking commission…").

Appellant Layne argues that Wilson's and Lane's interests are inadequate because the tickets they were issued will not disappear if the Parking Statutes are invalidated, citing *City of Slater v. State*, 494 S.W.3d 580 (Mo. App. W.D. 2016), as his sole supporting authority. However, *City of Slater* ruled only that a plaintiff challenging a court surcharge did not have standing because he did not seek a refund of the surcharge and he did not argue that he would be subject to the surcharge in the future. Here, the fact Wilson and Lane are licensed operators of motor vehicles who live in the City of St. Louis clearly demonstrates that Wilson and Lane are subject to continuing regulation pursuant to the unlawful Parking Statutes, and it is reasonable to infer that they are likely to be issued tickets again in the future.

Not only is *City of Slater* inapposite due to that factual dissimilarity, it addressed a scenario that is wholly different in kind than the environment the Parking Statutes create for Respondents Wilson and Lane. As alleged, they drive and park in the City; those are routine things for many, if not most, people who reside in the St. Louis metropolitan area. What entity regulates such normal, everyday conduct? The parking commission that exists pursuant to the Parking Statutes is the answer to that question. Indeed, the Parking Statutes literally declare that it is the parking commission that regulates <u>all</u> matters pertaining to, or involved with, parking in the City. Thus, the Parking Commission directly, not remotely, affects Respondents Wilson's and Lane's lives. Just as Dr. Kunkel and Mr. Snyder had standing to challenge the validity of actions taken by the State Board

of Registration for the Healing Arts because they were subject to its "authority", *Missouri Ass'n v. State Bd.*, 343 S.W. 3d 348, 354 (Mo. banc 2011), so too do Mssrs. Lane and Wilson have material interests that are affected by the regulatory actions of the parking commission. "Standing can, after all, be based on interest "that is attenuated, slight or remote." *St. Louis County v. State*, 424 S.W. 3d 450, 453 (Mo. banc 2014). *See also Ste. Genevieve v. Board of Alderman,* 66 S.W. 3d 793, 802-803 (standing is sufficient even if interest is remote, and determination of worthiness of standing is based on allegations in petition).

B. Respondent Boyd has standing to challenge the Parking Statutes because the Parking Statutes require him to serve on the unconstitutional Parking Commission.

Remarkably, Appellant Layne argues that even Respondent Boyd does not have standing to challenge the Parking Statutes, even though he is required to serve on the unconstitutional Parking Commission. The premise of his argument is the erroneous claim that the Parking Statutes do not require individuals on the Parking Commission to do anything not required under City ordinance. Layne's Brief, p. 21-22.

In fact, there are material differences between the duties and responsibilities imposed by the Parking Statutes and the City's parking ordinances. For example, the Parking Statutes authorize the Supervisor of Parking Meters to establish joint public-private parking ventures (§ 82.487.2(1)), and Boyd, as a member of the Parking Commission, is required to oversee these activities. In contrast, the City's ordinances do not specifically authorize joint public-private parking ventures, meaning that Boyd's

obligation to oversee these activities would likely cease upon invalidation of the parking Statutes. This is far from an academic difference, as the previous Supervisor of Parking Meter's controversial practice of outsourcing parking functions to private actors has sparked lawsuits in the past. *Rencher v. Jones*, 440 S.W.3d 472, 474 (Mo. App. E.D. 2014) (relying on § 82.487.2(1), RSMo, in holding that Treasurer's practice of outsourcing parking functions is lawful).

Furthermore, the Parking Statutes are silent as to: when the Parking Commission must meet; whether its meetings must be transcribed; if consultation with City legislators is required for approval of any parking program; whether any generally accepted parking management principles need be respected; and if solicitation of the City legislative body's input as to parking programs and policies must occur. The City's ordinances provide all of these details. D188, p. 2 (§§17.62.040 (records), 17.62.050C (management principles, Aldermanic input)); D191, p. 4 (Ordinance No. 70611 (monthly meetings)); A2-3, A19.

Moreover, the schemes differ regarding the percentage of parking revenues that are transferred to the City's general fund. The Parking Statutes require the Supervisor of Parking Meters to transfer a portion of the parking meter fund to the City's general fund each year, and that portion can be *up to* forty percent "of the parking meter fund's net change in the fund's balance after all payments for capital improvements and debt service have been made." § 82.485.4. In contrast, the City's ordinances mandate that the transfer be equal to forty percent of the net change in the parking meter fund. D191, p. 3; A16. Thus, as a member of the state-created Parking Commission, Boyd is required to oversee

and review Appellant Layne's discretionary determination as to how much of the City's parking revenue should go to the general fund, whereas that duty would not exist if the Parking Statutes are invalidated.

Thus, contrary to Appellant Layne's representations, the Parking Statutes require Respondent Boyd to approve and participate in activities that he would not have to review or participate in if the statutes were invalidated. This is clearly sufficient to give Boyd standing to challenge the constitutionality of these laws.[9]

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[9] Appellant Layne also distorts the record in his effort to resolve this case on standing grounds. For example, he states that "[t]he Parties did stipulate to a limited set of facts for the trial on Counts II and III" and that the stipulation contained no facts regarding Boyd's position on the Parking Commission. Layne Brief, p. 18. The record, although defective, dispositively belies Appellant Layne's wholly incorrect characterization. The subject "Joint Stipulation Of Facts And Exhibits", D266, reflects the Parties' filed agreement that the facts recited are "stipulated to" generally and "admi[tted] into the record . . .." Id., 1st ¶. And ¶ 3 of the Stipulation describes Boyd's position "as the Chair of the Streets, Traffic, and Refuse Committee of the Board of Aldermen", meaning that the Parking Statutes thereby forced him to serve on the Parking Commission. It is difficult to understand why Appellant Layne has so inaccurately described this Stipulation to this Court. Further, it is puzzling that Appellant Layne fails to acknowledge that this same information as to Boyd's status was before the Trial Court when it granted the Individual Respondents' Motion For Partial Summary Judgment in the form of a Boyd Affidavit. See D187, ¶¶ 5, 6, 7. Layne so strains to find a basis for non-justiciability of the important issue as to the unconstitutionality of the Parking Statutes that he reaches outside the record to have this Court imagine certain facts and circumstances exist that would serve his ends. In footnote 2, p. 17 of his Brief, Layne states without authority or citation to the record that Alderman Boyd no longer is Chair of the Streets, Traffic and Refuse Committee. Layne then proceeds at footnote 3 on p. 21 of his brief to cite what appears to be a City website in support of his out-the-record contention no longer serves on the Parking Commission. He offers no support for this Court's ability to judicially notice Missouri political subdivision websites for the purpose of governing information pertinent to its disposition of appeals. Although Appellant does not acknowledge this, no such authority exists. Even in this era of widespread, free internet availability of codified versions of political subdivision ordinances, Missouri law prohibits notice of such laws. In fact, it is a surprising but indubitable realty that Missouri appellate courts still, fairly routinely, are disabled from adjudicating issues due

Further, Appellant Layne incorrectly characterizes *Ariz. St. Legislature v. Arizona Independent*, 575 U.S. 787 (2015) and *Raines v. Boyd*, 521 U.S. 811 (1997) as recognizing some sort of principle that is a bar to the Boyd's standing. Layne Brief, p. 20. He makes the further comment that "servi[ce] as an elected official does not automatically confer standing". Id. Of course that is true, but it proves nothing here. Were Boyd suing due to being upset that the City Streets Department had failed to install a stop sign at the intersection of Maple and First as directed by ordinance to accomplish, he would of course lack sufficient personal injury to peruse such a claim. But Raines and *Arizona* recognize the obvious; if an individual legislator is suing because the government is doing something unique to his position that he believes to be unlawful, he has more than sufficient "skin in the game" to obtain judicial redress for this injury. *See Kerr v. Hickenlooper*, 824 F. 3d 1207, 214 (10th Cir. 2016) (analyzing Raines and *Arizona*, and explaining a legislator would have standing if the alleged injury "zeroed in on [the] Individual Member"). Here, the Parking Statutes zero in on Boyd due to his role

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the Court's inability to take notice of such local laws. See., e.g., City of Cape Girardeau v. Kuntze, 507 S.W. 3d 89, 91 n. 1 (Mo. App. E.D. 2016) (declining to address "issue as the ordinances have not been properly made part of the record" and further explaining "courts may not take judicial notice of city ordinances"). Finally, even if this Court were to indulge Layne by creating new law as to judicial notice of political subdivision website-stored information, and further determined that an official who had obtained a trial court judgment protecting his office somehow loses standing to protect that judgment on appeal by virtue of his departure from that office, the remedy would not be to treat his claim as suffering extirpation. Rather, the response would have to be substitution of Boyd's successor in office pursuant to Rule 52.13(d); Layne represents that the City webpage in question indicates that Boyd's successor is Sharon Tyus.

as Chair of the Aldermanic Streets Committee and their command that, merely because of that status, he must serve on the Parking Statutes version of the Parking Commission.[10]

V. Appellants Have Failed To Complete And Submit A Legal File Containing Everything Necessary For Resolution Of The Questions They Have Presented (Response to all of Appellants' Points Relied On).

Appellants Layne and State request that this Court reverse the Trial Court's declarations as to the invalidity of the Parking Statutes[11] but the record they have complied herein do not contain the Individual Respondents operative Petition and Answers thereto, that the Trial Court considered in making those rulings. Rule 81.12(a)(b) (record on appeal must contain "all record … necessarily to the determination of all questions to be presented"; it must include the pleadings upon which the action was tried. Appellants failure in this regard means "there is nothing for this court to review". Buford v. Mello, 40 S.W. 3d 400, 402 (Mo. App. E.D. 2021). Although this Court and Respondents have the means to supplement the record and possibly rectify this deficiency, that does not relieve Appellants of their responsibility to ensure their appeals are reviewable in compliance with Rule 81.12. Consequently, their "appeal[s] must be dismissed. Id.

[10] Layne's contention that Boyd has suffered no injury because, even if the statutory version of the Parking Commission is vanquished, he would still have to serve on a City-ordinance directed Parking Commission is unadulterated sophistry. The ordinance-grounded version is actually substantially different and, in any event, he would be ordered to serve pursuant to a legal mandate, not one that is created unconstitutionally; the distinction between an unlawful command given by an entity that has no authority to even issue the command is, in itself, actionable by the party who is commanded.

[11] Layne Brief Point Relied On II, III, IV; State Brief, Point Refined On I, II.

CONCLUSION

For the forgoing reasons, the trial court's summary judgments invalidating § 82.485 and § 82.487 should be affirmed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned counsel certifies that a true and correct copy of the foregoing was served on counsel of record through the Court's electronic notice system on January 31, 2022, and by United States Postal Service to:

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The undersigned certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 11,444 words.

/s/ Elkin L. Kistner