

FILED

OCT - 9 2009

BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

BARBARA MANZARA,)
as an individual taxpayer,)
citizen and real property owner in a)
Distressed Community in the)
City of St. Louis, Missouri,)

and)

KEITH MARQUARD,)
as an individual taxpayer,)
citizen and real property owner in a)
Distressed Community in the)
City of St. Louis, Missouri,)

Plaintiffs,)

v.)

STATE OF MISSOURI,)

Serve:)

Attorney General Chris Koster)
207 West High Street)
Jefferson City, Missouri)

Defendant.)

Cause No:

Division:

DECLARATORY JUDGMENT

PETITION FOR DECLARATORY JUDGMENT

Comes now Plaintiffs Barbara Manzara and Keith Manquard, by and through their attorney Irene J. Smith and in support of their petition states:

1. Plaintiff Barbara Manzara is an individual taxpayer, citizen and real property owner who resides within a Missouri qualified census tract area, as designated by the United States Department of Housing and Urban Development under 26 U.S.C. Section 42, and within a distressed community as that term is defined in section 135.530, RSMo.

2. Plaintiff Keith Marquard is an individual taxpayer, citizen and real property owner who resides within a Missouri qualified census tract area, as designated by the

United States Department of Housing and Urban Development under 26 U.S.C. Section 42, and within a distressed community as that term is defined in section 135.530, RSMo.

3. Plaintiffs as taxpayers each have a legally protectable interest in the unconstitutional act of Defendant giving state revenue to reimburse private persons for acquisition cost, interest and property maintenance cost. Plaintiffs have an interest in preventing the improper disposition of state revenue. The allegations contained herein present questions that are ripe for judicial guidance.

4. Defendant State of Missouri has its capitol in Cole County, Missouri and is an entity formed as a state government by Act of Congress.

5. This Court has subject matter jurisdiction with regard to the issued raised in this lawsuit, namely the constitutionality of a Missouri statute as specified herein and venue is proper in this Court pursuant to Section 508.010 (5) RSMo. (2000).

6. On June 4, 2009 Governor Jeremiah Nixon signed into law SS#2 SCS HCS HB 191 containing Section 99.1205 known as the "Distressed Areas Land Assemblage Tax Credit Act". (Herein after referred to as "DALATCA".) The DALATCA became effective on August 28, 2009. (This bill herein after referred to as HB 191.)

7. Section 99.1205 of the Truly Agreed and Finally Passed SS #2 HCS HB191 provides:

1. This section shall be known and may be cited as the "Distressed Areas Land Assemblage Tax Credit Act".

2. As used in this section, the following terms mean:

(1) "Acquisition costs", the purchase price for the eligible parcel, costs of environmental assessments, closing costs, real estate brokerage fees, reasonable demolition costs of vacant structures, and reasonable maintenance costs incurred to maintain an acquired

eligible parcel for a period of five years after the acquisition of such eligible parcel.

Acquisition costs shall not include costs for title insurance and survey, attorney's fees, relocation costs, fines, or bills from a municipality;

(2) "Applicant", any person, firm, partnership, trust, limited liability company, or corporation which has:

(a) Incurred, within an eligible project area, acquisition costs for the acquisition of land sufficient to satisfy the requirements under subdivision (8) of this subsection; and

(b) Been appointed or selected, pursuant to a redevelopment agreement by a municipal authority, as a redeveloper or similar designation, under an economic incentive law, to redevelop an urban renewal area or a redevelopment area that includes all of an eligible project area or whose redevelopment plan or redevelopment area, which encompasses all of an eligible project area, has been approved or adopted under an economic incentive law.

In addition to being designated the redeveloper, the applicant shall have been designated to receive economic incentives only after the municipal authority has considered the amount of the tax credits in adopting such economic incentives as provided in subsection 8 of this section. The redevelopment agreement shall provide that:

a. The funds generated through the use or sale of the tax credits issued under this section shall be used to redevelop the eligible project area;

b. No more than seventy-five percent of the urban renewal area identified in the urban renewal plan or the redevelopment area identified in the redevelopment plan may be redeveloped by the applicant; and

c. The remainder of the urban renewal area or the redevelopment area shall be redeveloped by co-redevelopers or redevelopers to whom the applicant has assigned its

redevelopment rights and obligations under the urban renewal plan or the redevelopment plan;

(3) "Certificate", a tax credit certificate issued under this section;

(4) "Condemnation proceedings", any action taken by, or on behalf of, an applicant to initiate an action in a court of competent jurisdiction to use the power of eminent domain to acquire a parcel within the eligible project area. Condemnation proceedings shall include any and all actions taken after the submission of a notice of intended acquisition to an owner of a parcel within the eligible project area by a municipal authority or any other person or entity under section 523.250, RSMo;

(5) "Department", the Missouri department of economic development;

(6) "Economic incentive laws", any provision of Missouri law pursuant to which economic incentives are provided to redevelopers of a parcel or parcels to redevelop the land, such as tax abatement or payments in lieu of taxes, or redevelopment plans or redevelopment projects approved or adopted which include the use of economic incentives to redevelop the land. Economic incentive laws include, but are not limited to, the land clearance for redevelopment authority law under sections 99.300 to 99.660, the real property tax increment allocation redevelopment act under sections 99.800 to 99.865, the Missouri downtown and rural economic stimulus act under sections 99.915 to 99.1060, and the downtown revitalization preservation program under sections 99.1080 to 99.1092;

(7) "Eligible parcel", a parcel:

(a) Which is located within an eligible project area;

(b) Which is to be redeveloped;

(c) On which the applicant has not commenced construction prior to November 28, 2007;

(d) Which has been acquired without the commencement of any condemnation proceedings with respect to such parcel brought by or on behalf of the applicant. Any parcel acquired by the applicant from a municipal authority shall not constitute an eligible parcel; and

(e) On which all outstanding taxes, fines, and bills levied by municipal governments that were levied by the municipality during the time period that the applicant held title to the eligible parcel have been paid in full;

(8) "Eligible project area", an area which shall have satisfied the following requirements:

(a) The eligible project area shall consist of at least seventy-five acres and may include parcels within its boundaries that do not constitute an eligible parcel;

(b) At least eighty percent of the eligible project area shall be located within a Missouri qualified census tract area, as designated by the United States Department of Housing and Urban Development under 26 U.S.C. Section 42, or within a distressed community as that term is defined in section 135.530, RSMo;

(c) The eligible parcels acquired by the applicant within the eligible project area shall total at least fifty acres, which may consist of contiguous and noncontiguous parcels;

(d) The average number of parcels per acre in an eligible project area shall be four or more;

(e) Less than five percent of the acreage within the boundaries of the eligible project area shall consist of owner-occupied residences which the applicant has identified for acquisition under the urban renewal plan or the redevelopment plan pursuant to which the applicant was appointed or selected as the redeveloper or by which the person or entity was qualified as an applicant under this section on the date of the approval or adoption of such plan;

(9) "Interest costs", interest, loan fees, and closing costs. Interest costs shall not include attorney's fees;

(10) "Maintenance costs", costs of boarding up and securing vacant structures, costs of removing trash, and costs of cutting grass and weeds;

(11) "Municipal authority", any city, town, village, county, public body corporate and politic, political subdivision, or land trust of this state established and authorized to own land within the state;

(12) "Municipality", any city, town, village, or county;

(13) "Parcel", a single lot or tract of land, and the improvements thereon, owned by, or recorded as the property of, one or more persons or entities;

(14) "Redeveloped", the process of undertaking and carrying out a redevelopment plan or urban renewal plan pursuant to which the conditions which provided the basis for an eligible project area to be included in a redevelopment plan or urban renewal plan are to be reduced or eliminated by redevelopment or rehabilitation; and

(15) "Redevelopment agreement", the redevelopment agreement or similar agreement into which the applicant entered with a municipal authority and which is the agreement for the implementation of the urban renewal plan or redevelopment plan pursuant to which the applicant was appointed or selected as the redeveloper or by which the person or entity was qualified as an applicant under this section; and such appointment or selection shall have been approved by an ordinance of the governing body of the municipality, or municipalities, or in the case of any city not within a county, the board of aldermen, in which the eligible project area is located. The redevelopment agreement shall include a time line for redevelopment of the eligible project area. The redevelopment agreement shall state that the named developer shall be subject to the provisions of chapter 290, RSMo.

3. Any applicant shall be entitled to a tax credit against the taxes imposed under chapters 143, 147, and 148, RSMo, except for sections 143.191 to 143.265, RSMo, in an amount equal to fifty percent of the acquisition costs, and one hundred percent of the interest costs incurred for a period of five years after the acquisition of an eligible parcel. No tax credits shall be issued under this section until after January 1, 2008.

4. If the amount of such tax credit exceeds the total tax liability for the year in which the applicant is entitled to receive a tax credit, the amount that exceeds the state tax liability may be carried forward for credit against the taxes imposed under chapters 143, 147, and 148, RSMo, for the succeeding six years, or until the full credit is used, whichever occurs first. The applicant shall not be entitled to a tax credit for taxes imposed under sections 143.191 to 143.265, RSMo. Applicants entitled to receive such tax credits may transfer, sell, or assign the tax credits. Tax credits granted to a partnership, a limited liability company taxed as a partnership, or multiple owners of property shall be passed through to the partners, members, or owners respectively pro rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method.

5. A purchaser, transferee, or assignee of the tax credits authorized under this section may use acquired tax credits to offset up to one hundred percent of the tax liabilities otherwise imposed under chapters 143, 147, and 148, RSMo, except for sections 143.191 to 143.265, RSMo. A seller, transferor, or assignor shall perfect such transfer by notifying the department in writing within thirty calendar days following the effective date of the transfer and shall provide any information as may be required by the department to administer and carry out the provisions of this section.

6. To claim tax credits authorized under this section, an applicant shall submit to the department an application for a certificate. An applicant shall identify the boundaries of the

eligible project area in the application. The department shall verify that the applicant has submitted a valid application in the form and format required by the department. The department shall verify that the municipal authority held the requisite hearings and gave the requisite notices for such hearings in accordance with the applicable economic incentive act, and municipal ordinances. On an annual basis, an applicant may file for the tax credit for the acquisition costs, and for the tax credit for the interest costs, subject to the limitations of this section. If an applicant applying for the tax credit meets the criteria required under this section, the department shall issue a certificate in the appropriate amount. If an applicant receives a tax credit for maintenance costs as a part of the applicant's acquisition costs, the department shall post on its Internet web site the amount and type of maintenance costs and a description of the redevelopment project for which the applicant received a tax credit within thirty days after the department issues the certificate to the applicant.

7. The total aggregate amount of tax credits authorized under this section shall not exceed ninety-five million dollars. At no time shall the annual amount of the tax credits issued under this section exceed [ten] twenty million dollars. If the tax credits that are to be issued under this section exceed, in any year, the [ten] twenty million dollar limitation, the department shall either:

(1) Issue tax credits to the applicant in the amount of [ten] twenty million dollars, if there is only one applicant entitled to receive tax credits in that year; or

(2) Issue the tax credits on a pro rata basis to all applicants entitled to receive tax credits in that year. Any amount of tax credits, which an applicant is, or applicants are, entitled to receive on an annual basis and are not issued due to the [ten] twenty million dollar limitation, shall be carried forward for the benefit of the applicant or applicants to

subsequent years. No tax credits provided under this section shall be authorized after August 28, 2013. Any tax credits which have been authorized on or before August 28, 2013, but not issued, may be issued, subject to the limitations provided under this subsection, until all such authorized tax credits have been issued.

8. Upon issuance of any tax credits pursuant to this section, the department shall report to the municipal authority the applicant's name and address, the parcel numbers of the eligible parcels for which the tax credits were issued, the itemized acquisition costs and interest costs for which tax credits were issued, and the total value of the tax credits issued. The municipal authority and the state shall not consider the amount of the tax credits as an applicant's cost, but shall include the tax credits in any sources and uses and cost benefit analysis reviewed or created for the purpose of awarding other economic incentives. The amount of the tax credits shall not be considered an applicant's cost in the evaluation of the amount of any award of any other economic incentives, but shall be considered in measuring the reasonableness of the rate of return to the applicant with respect to such award of other economic incentives. The municipal authority shall provide the report to any relevant commission, board, or entity responsible for the evaluation and recommendation or approval of other economic incentives to assist in the redevelopment of the eligible project area. Tax credits authorized under this section shall constitute redevelopment tax credits, as such term is defined under section 135.800 RSMo, and shall be subject to all provisions applicable to redevelopment tax credits provided under sections 135.800 to 135.830 RSMo.

9. The department may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with

and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

8. In the fiscal note for Section 99.1205 it states that the annual cap on the Distressed Areas Land Assemblage Tax Credit is raised to twenty million dollars (\$20,000,000). "This may reduce general and total state revenues by up to \$20M, since the program has no current redemptions, but may induce other economic activity. The total program cap remains \$95M."

9. That granting a tax credit under the act will place a drain on the state coffers which Plaintiffs have an interest in as taxpayers.

10. That the application of 99.1205 affects Plaintiffs interest not only as taxpayers, but as property owners residing within a Missouri qualified census tract area, as designated by the United States Department of Housing and Urban Development under 26 U.S.C. Section 42, or within a distressed community as that term is defined in section 135.530, RSMo.

COUNT I

SECTION 99.1205 of THE TRULY AGREED TO AND FINALLY PASSED SS #2 HCS HB191 ALLOWS AN UNCONSTITUTIONAL GRANT OF PUBLIC MONEY IN VIOLATION OF ARTICLE III, SECTION 38(a) OF THE MISSOURI CONSTITUTION

11. Plaintiffs realign and incorporate by reference the above paragraphs 1-10 as fully stated as part of Count 1.

12. Article III, Section 38(a) states that:

The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation, excepting aid in public calamity, and general laws providing for pensions for the blind, for old age assistance, for aid to dependent or crippled children or the blind, for direct relief, for direct relief, for adjusted compensation, bonus or rehabilitation for discharged members of the armed services of the United States who were bona fide residents of this state during service, and for the rehabilitation of other persons. Money or property may also be received from the United States and be redistributed with public money of this state for public purpose designated by the United States.

13. Section 99.1205 allows the State in violation of Article III, Section 38(a) of the Missouri Constitution to grant property in the form of a tax credit to a private person, association, corporation “against the taxes imposed under chapters 143, 147, and 148, RSMo, except for sections 143.191 to 143.265, RSMo, in an amount equal to fifty percent of the acquisition costs, and one hundred percent of the interest costs incurred for a period of five years after the acquisition of an eligible parcel.”

14. Section 99.1205 is an unconstitutional granting of public money to “a private person, association or corporation” because the tax credit’s legislative defined purpose “to redevelop the eligible project area” does not service as the cost basis for Defendant’s tax credit expenditure.

WHEREFORE, Plaintiffs pray that this Honorable enter a declaratory judgment finding Section 99.1205 unconstitutionally void in violation of the Missouri Constitution, Article III, Section 38 (a), grant plaintiff cost, attorney fees and for such other orders as the Court deems fair and just in the premise.

COUNT II

THE TRULY AGREED TO AND FINALLY PASSED SS #2 HCS HB191 VIOLATES THE CLEAR TITLE REQUIREMENT OF ARTICLE III, SECTION 23

15. Plaintiffs realign and incorporate by reference the above paragraphs 1-14 as if fully stated as part of Count II

16. The Missouri Constitution Article III, Section 23 states, in relevant part, "No bill shall contain more than one subject which shall be clearly expressed in its title".

17. HB 191 was prefiled on December 29, 2008 for the 95th General Assembly, 1st Regular Session. As introduced for its first reading on January 7, 2009, the bill had as its title:

"AN ACT To repeal section 620.1881, RSMo, and to enact in lieu thereof one new section relating to the Missouri quality jobs act".

Section 99.1205 did not appear in the initial bill.

18. On January 22, 2009, the Bill was referred to the Committee on Job Creation and Economic Development. On February 4, 2009, the House Committee Substitute Bill was amended and ultimately adopted with the following title:

"AN ACT To repeal sections 135.155, 135.680, 620.1039, 620.1878, and 620.1881, RSMo, and to enact in lieu thereof ten new sections relating to job development."

Again, no language from 99.1205 appeared in the bill at this stage.

19. After being perfected with amendments, the bill had its third read and passed the House on February 5, 2009 with the following title:

"AN ACT To repeal sections 99.1090, 135.155, 135.680, 135.903, 620.495, 620.1039, 620.1878, and 620.1881, RSMo, and to enact in lieu thereof fourteen new sections relating to job development, with an emergency clause."

Again, no language from 99.1205 RsMO is in the bill at this point.

20. On February 5, 2009 HCS HB 191 was referred to the Fiscal Review Committee (Fiscal Note).

21. On February 5, 2009 the Senate took up HB 191 and referred the bill to the Committee on Jobs, Economic Development, and Local Government. On February 12, 2009, a Senate Committee Substitute bill for the House Committee Substitute bill with the title:

“AN ACT To repeal sections 100.760, 100.770, 100.850, 135.155, 135.680, 135.800, 135.802, 135.805, 253.550, 620.014, 620.017, 620.472, 620.495, 620.1039, 620.1878, and 620.1881, RSMo, and to enact in lieu thereof twenty- five new sections relating to tax incentives for business development, with an emergency clause and an expiration date for a certain section.”

22. The Senate took up HB 191 on February 5 and referred the bill to the Committee on Jobs, Economic Development, and Local Government. On February 12, 2009, a Senate Committee Substitute bill for the House Committee Substitute bill with the title:

“AN ACT To repeal sections 100.760, 100.770, 100.850, 135.155, 135.680, 135.800, 135.802, 135.805, 253.550, 620.014, 620.017, 620.472, 620.495, 620.1039, 620.1878, and 620.1881, RSMo, and to enact in lieu thereof twenty- five new sections relating to tax incentives for business development, with an emergency clause and an expiration date for a certain section.”

23. On April 8, 2009, the Committee on Governmental Accountability and Fiscal Oversight recommended the bill “do pass.” That same day, the motion to adopt the Senate Committee Substitute Bill was followed by another motion to adopt a Senate Substitute Bill for the Senate Committee Substitute Bill for the House Committee Substitute for House Bill 191; this measure was titled:

“An Act to repeal sections 32.105, 32.110, 32.111, 32.112, 32.115, 99.820, 99.865, 99.960, 99.1205, 100.286, 100.297, 100.760, 100.770, 100.850, 105.145, 135.090, 135.305, 135.327, 135.352, 135.460, 135.484, 135.490, 135.535, 135.550, 135.562, 135.575, 135.600, 135.630, 135.647, 135.679, 135.680, 135.700, 135.710, 135.750, 135.766, 135.800, 135.802, 135.805, 135.967, 208.770, 238.207,

238.212, 238.235, 253.550, 320.093, 348.430, 348.432, 348.434, 348.505, 447.708, 620.014, 620.017, 620.470, 620.472, 620.478, 620.495, 620.1039, 620.1878, 620.1881, and 660.055, RSMo, and to enact in lieu thereof sixty-five new sections relating to taxation, with penalty provisions and an emergency clause and an expiration date for a certain section.”

This is the first time Section 99.1205 appears in this HB191. After the consideration and adoption of amendments to the SS, the bill was placed on the informal calendar.

24. On May 14, 2009, the Senate Substitute was withdrawn and SS#2 offered. This bill is entitled:

“An Act to repeal sections 32.105, 99.820, 99.865, 99.1205, 100.286, 100.760, 100.770, 100.850, 105.145, 135.155, 135.352, 135.535, 135.680, 135.766, 135.800, 135.802, 135.805, 147.010, 208.770, 238.207, 238.212, 238.235, 253.545, 253.550, 253.559, 338.337, 447.708, 610.021, 620.014, 620.017, 620.472, 620.1878, and 620.1881, RSMo, and to enact in lieu thereof thirty-eight new sections relating to taxation, with penalty provisions and an emergency clause for a certain section.”

Amendments were made.

25. On May 15, 2009, following action by the Senate the day prior, the House adopted SS#2 as amended.

26. The Truly Agreed To and Finally Passed title for HB 191 is:

“AN ACT To repeal sections 32.105, 99.865, 99.1205, 100.286, 100.760, 100.770, 100.850, 105.145, 135.155, 135.352, 135.680, 135.766, 135.800, 135.802, 135.805, 147.010, 208.770, 238.207, 238.212, 238.235, 253.545, 253.550, 253.559, 338.337, 447.708, 610.021, 620.014, 620.017, 620.472, 620.1878, and 620.1881, RSMo, and to enact in lieu thereof thirty-six new sections relating to taxation, with penalty provisions and an emergency clause for certain sections.”

27. There are numerous topics included in the thirty-six new sections of HB 191, namely:

32.105 1- Definitions for “neighborhood assistance act” (32.100)

37.850 2 – No use of the word “tax”; commissioner of administration to maintain the Missouri Accountability Portal

99.865 3 – Establishes reporting requirements for municipalities to the department of economic development concerning status of redevelopment plans and projects

99.1205 4 – “Distressed areas land assemblage tax credit act”

100.286 5 – Authorizing the Missouri Development Finance Board to use development and reserve fund, infrastructure development fund, or the export finance fund to secure payment of any bonds or notes issued by the board

100.760 6 – Application requirements and credits allowed under the “Missouri Business Use Incentives for Large-Scale Development Act”

100.770 7 – Criteria considerations under the “Missouri Business Use Incentives for Large-Scale Development Act”

100.850 8 – Assessment fee to board for companies approved under “Missouri Business Use Incentives for Large-Scale Development Act”

105.145 9 - “The governing body of each political subdivision in the state shall cause to be prepared an annual report of the financial transactions of the political subdivision in such summary form as the state auditor shall prescribe by rule”

108.1000 10 – “The board may, at any time, issue build America bonds and recovery zone bonds for the purpose of paying any part of the cost of financing any qualifying project or projects, or part thereof, and for the purpose of purchasing any debt related to such project.”

108.1010 11 - No use of the word “tax”; discussing municipal bonding: “The department shall allocate recovery zone bonds to counties and large municipalities in accordance with Section 1400U-1 of the Internal Revenue Code of 1986, as amended, and shall provide notice of such allocation to each county and large municipality.”

108.1020 12 – “Build America bonds and any recovery zone bonds issued by the state of Missouri or an entity described in subsection 4 of section 108.1000 and the interest thereon shall be exempt from all taxation by the state of Missouri and its political subdivisions.”

135.155 13 – Definitions of “headquarters” facilities for purpose of receiving state tax credit

135.352 14 – Missouri low income housing tax credit eligibility

135.680 15 –MO community development [low income housing?] tax credit

135.766 16 – Small business tax credit

135.800 17 – Tax credit accountability act of 2004

135.802 18 – Required information on all tax credit applications

135.805 19 – Requirement that tax credit program recipients report to the department number of jobs created

147.010 20 – Missouri corporate annual franchise tax

208.77 21 – Tax exemption for “family development account” holders

238.207 22 – Petitioner requirements for [transportation development district]

238.212 23 – Form of public notice for a “transportation development district”

238.235 24 – Imposition of a sales tax to finance a “transportation development district”

253.545 25– Definition of terms for certified historic structures and other terms related to applicant eligibility

253.550 26 – Tax credit for costs incurred in rehabilitation of a certified historic property

253.559 27 – Application for approval of historic preservation tax credits

338.337 28 – State licensure requirements for “out-of-state wholesale drug distributor”

447.708 29 – Grants discretion to the director of the department of economic development to issue tax credits related to but not within new enterprise zones

610.021 30 – Allowances for a public governmental body's closure of a meeting to the public

620.014 31 – "Closed record" allowances for development projects currently negotiated by the department of economic development

620.017 32 – Requirements for contracts between the department of economic development any "any party" receiving "grants, loans, tax credits, other financial assistance or services to which a monetary value can be assigned"

620.472 33 – Departmental establishment of "a new or expanding industry training program, the purpose of which is to provide assistance for new or expanding industries for the training, retraining or upgrading of the skills of potential employees."

620.1878 34 – Definitions for the "Missouri Quality Jobs Act"

620.1881 35 – Notice of intent by company utilizing program to department of economic development

Section 1 36 – "Big Government Get Off My Back Act". ("No user fees imposed by the state of Missouri shall increase for the four-year period beginning on the effective date of this section, unless such fee increase is to implement a federal program administered by the state or is a result of an act of the general assembly...")

28. Section B of HB 191 states:

"Because of the need to spark economic growth to end the state's recession, the repeal and reenactment of sections 100.286, 100.760, 100.770, 100.850, 135.680, 253.545, 253.550, 253.559, 620.1878, and 620.1881 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 100.286, 100.760, 100.770, 100.850, 135.680, 253.545, 253.550, 253.559, 620.1878, and 620.1881 of this act shall be in full force and effect upon its passage and approval."

29. The title of HB191“Relating to taxation, with penalty provisions and an emergency clause for certain Sections” did not fairly apprise the legislators and the public of the subject matter of the pending laws and is overly inclusive and amorphous in violation of the Missouri Constitution, Article III, Section 23.

WHEREFORE, Plaintiffs pray that this Honorable enter a declaratory judgment finding that Section 99.1205 of HB 191 is unconstitutionally void in violation of the clear title requirement of Article III, Section 23 of the Missouri Constitution, grant plaintiff cost, attorney fees and for such other orders as the Court deems fair and just in the premise.

COUNT III

THE TRULY AGREED TO AND FINALLY PASSED SS #2 HCS HB191 VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE III, SECTION 21 OF THE MISSOURI CONSTITUTION

30. Plaintiffs realign and incorporate by reference the above paragraphs 1-29 as if fully stated as part of Count III.

31. Missouri Constitution Article III, Section 23 states, in relevant part, “No bill shall contain more than one subject which shall be clearly expressed in its title”

32. HB191 as finally passed contained multiple subjects just to name a few: closed record provisions, closure public meetings, tax credits, job quality act, of public notice for transportation district, licensure for out of state wholesale drug distributor, Missouri Accountability Portal, incentives for large scale development and user fees.

33. That HB191 clearly violates the single subject requirement of Missouri Constitution Article III, Section 23.

WHEREFORE, Plaintiffs pray that this Honorable enter a declaratory judgment finding that HB 191 unconstitutionally void in violation of the single subject requirement

of Article III, Section 23 of the Missouri Constitution, grant plaintiff cost, attorney fees and for such other orders as the Court deems fair and just in the premise.

COUNT IV

THE TRULY AGREED TO AND FINALLY PASSED SS #2 HCS HB191 VIOLATES THE ORIGINAL PURPOSE REQUIREMENT OF ARTICLE III, SECTION 21 OF THE MISSOURI CONSTITUTION

34. Plaintiffs realign and incorporate by reference the above paragraphs 1-33 as if fully stated as part of Count IV.

35. Missouri Constitution Article III, Section 21 states, “no bill shall be so amended in its passage through either house to change its original purpose.”

36. HB 191 was prefiled on December 29, 2008 for the 95th General Assembly, 1st Regular Session. As introduced for its first reading on January 7, 2009, the bill had as its title:

“AN ACT To repeal section 620.1881, RSMo, and to enact in lieu thereof one new section relating to the Missouri quality jobs act”.

Section 99.1205 did not appear in the initial bill.

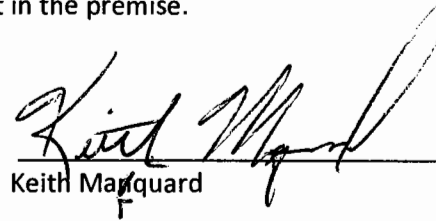
37. The changes made to HB 191 during the legislative process are not “germane” to the object of the legislation or its original subject. Thus, HB191 as enacted is void in violation of the original purpose precept of Missouri Constitution Article III, Section 21.

38. Plaintiffs as taxpayers each have a legally protectable interest in the unconstitutional act of Defendant giving state revenue to reimburse private persons for acquisition cost, interest and property maintenance cost. Plaintiffs are mindful of the impact on the state coffer and the effect on services that Defendant provides to Plaintiffs. The allegations contained herein present questions that are ripe for judicial guidance.

WHEREFORE, Plaintiffs pray that this Honorable enter a declaratory judgment finding that HB 191 unconstitutionally void in violation of the original purpose provision of


Article III, Section 21 of the Missouri Constitution, grant plaintiff cost, attorney fees and for such other orders as the Court deems fair and just in the premise.


Barbara Manzara


Keith Marquard

CITY OF ST. LOUIS)
)SS.
STATE OF MISSOURI)

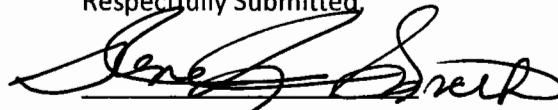
Plaintiffs appeared before me this 8th day of October, 2009 and the signed the foregoing Petition.


Irene J. Smith (NOTARY PUBLIC)

My Commission Expires:



Respectfully Submitted



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