

**IN THE  
MISSOURI COURT OF APPEALS  
SOUTHERN DISTRICT**

<b>Steven L. Reed,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>v</b>	)	
	)	<b>Case No. SD28747</b>
<b>Brenda M. Cirtin, City Clerk,</b>	)	
<b>City of Springfield,</b>	)	
	)	
<b>Respondent .</b>	)	

APPEAL TO THE MISSOURI COURT OF APPEALS  
SOUTHERN DISTRICT  
FROM THE CIRCUIT COURT OF GREENE COUNTY  
STATE OF MISSOURI  
The Honorable Judge J. M. Sweeney

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APPELLANT’S STATEMENT, BRIEF AND ARGUMENT

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## JURISDICTIONAL STATEMENT

This action is a petition for judicial review of a decision by a Greene County Circuit Court Judge. Judge J. M. Sweeney pointed out in open court that he sometimes has to rule against people in his court because it is about an issue he can not address and that if he rules against Reed he should appeal up to the appropriate court. This action is asking the Appeals Court to determine if the City of Springfield violated and or took actions that are and were contrary to State of Missouri Election Laws.

The City of Springfield claims that since their city charter is silent on write in candidates they do not have to follow or adhere to state law and/or statutes allowing such write in candidates. Every other city and county in Missouri allows such write ins per state law even though their charters are also silent on write in candidates. Write ins are required by: (1.) Missouri Constitution Article I Bill of Rights Section 25 (2.) Missouri Constitution Article VIII Suffrage and Elections Section 2 (3.) Missouri Revised Statutes Chapter 115 Election Authorities and Conduct of Elections Section 115.453.

Appellant Reed filed suit in this case contesting the legality and legitimacy of the Springfield Mayor and City County election that did not allow write ins and asked for emergency relief including the Judge requiring reprinting of ballots with lines and write ins printed on the ballot so voters could actually write in candidates per state law. The Greene County Circuit Court did not respond to the request before the election in question and thereby erred in not making a crucial ruling concerning the legitimacy of the election.

In State of Missouri ex. rel. Rainwater v. Ross, 161 Mo. App. 671; 143 S.W. 510 (Ct. App. Mo. 1912) Appellants, who sought on behalf of the State to void election

results, challenged a decision from the Jasper Circuit Court (Missouri), which entered a judgment for respondents, who sought to uphold the election results.

Opinion by Cox stated Jurisdiction is thus conferred by the Legislature upon the courts of this state to determine contested elections and the results thereof and under the terms of the Missouri statute it reaches back to the very initial steps of the election and includes every subsequent step by which the result was finally reached and declared. There is no limitation or restriction as to the scope of the investigation in such statutory contest and it goes *ex vi termini* to the whole election proceeding....

This appeal likely falls within the general appellate jurisdiction of the Missouri Court of Appeals, but it could also be looked at by the State Supreme Court since elected City officials help decide city taxing issues. As a final note: The City of Springfield filed Defendant City of Springfield Motion for Summary Judgment in the Federal Case concerning the Draft Claire McCaskill for Governor **Case No. 05-3133-CV-S-SWH** on June 5, 2008

**Appellant Reed feels very strongly this was done to detract Reed from this and the other case by making this Appeal and the response to the Federal Case due at the same time. The City of Springfield could have been civil and filed the Summary Judgment after this Appeal was filed.**

Causing hardship, intimidation and of harassment are not traits of friendly actions.

## STATEMENT OF FACTS

Steven Reed has been very active on community issues and in the political arena since 1990 while as a student at the College of the Ozarks. In the 90's Reed worked on getting Rail Passenger Service to the Ozarks and more recently from the late 90's to now on getting a technology park to the area of southwest Missouri ([www.technologypark2006.org](http://www.technologypark2006.org)), and Reed got both issues approved to get signatures to place both of them on the state of Missouri ballots in 2000 and 2002.

In 2007 Appellant Reed ran for Springfield City Council and did not win and after that election Reed contacted the Secretary of State who said Reed could run as a write in candidate for Mayor by filing a statement "Declaration of Intent Write-in Candidate (February 9, 2008),(LF page 95) with, and signed by Greene County Clerk Richard T. Struckhoff which this Court has been supplied with a copy of and is also Included under table of authorities. The Missouri Ethics Commission also said as soon as they received and approved his committee, Reed could start campaigning then.

Reed formed a bank account and mailed the proper forms. The Statement of Committee Organization was official on 02/15/2007 as per <http://www.mec.mo.gov/Scanned/PDF/2007/49273.pdf> (LF page 104)

A letter was then received from Richard Struckhoff stating that he had been notified and included a letter from City Attorney (LF pages 97-98) saying that to be a candidate for Mayor you must comply with section 13.4.1 of the Springfield City Charter (mainly this states the requirement of 200 signatures to be on the ballot).

Candidate Reed printed and distributed over 4,000 flyers and had at least three large signs on main streets in the city saying "Official Write-In Candidate for

Mayor. Appellant Reed figured the Court would step in and make sure the proper lines were put on the ballot as per Missouri law.

Clearly Appellant Under the Legal Concept:

From: <http://legal-dictionary.thefreedictionary.com/quasi>

A Quasi Contract is an obligation invoked by law in the absence of an agreement. Its purpose is to create a legal duty where, in fact, no promise or agreement was entered into by the parties. Appellant Reed believes it is a fact that since he met all of the requirements to be a write-in candidate that under Quasi law he was indeed a candidate. When an Administrative Agency makes rules and regulations, it is acting in a quasi-legislative capacity. quasi (kway-zeye, kwah-zee) adj., adv. from Latin for "as if," almost, somewhat, to a degree (always used in combination with another word). Quasi refers to things and actions which are not exactly or fully what they might appear, but have to be treated "as if" they were. QUASI. A Latin word in frequent use in the civil law signifying as if, almost. It marks the resemblance, and supposes a little difference between two objects. Dig. b. 11, t. 7, l. 8, Sec. 1. Civilians use the expressions quasi-contractus, quasi-delictum, quasi-possessio quasi-traditio, &c. End:

<http://legal-dictionary.thefreedictionary.com/quasi> Clearly a reasonable person would consider the following enough for Appellant to be considered a Candidate for the election in question.

Appellant Reed then filed on 4/06/07 and had petition served and on 4/09/07 filed a motion for a court-ordered injunction requiring that the ballots of April 3, 2007 not be counted and requesting the court order a new election to be held according to state law. Appellant was the Petitioner in Greene County Circuit, Cause No. 107CC1310,

before the Honorable Judge J. M. Sweeney. Appellant was represented by himself.

On 5/04/07 Appellant Reed filed a motion requesting Attorney General to be joined to the action. And again on 8/08/07 Reed asked for Attorney General and Secretary of State to be added to the lawsuit since it is clearly a public “election” issue.

Steven L. Reed Paid Rodney Burk who used to work for the sheriff’s department and is a private detective to serve Brenda M. Cirtin as the Clerk of the City of Springfield on April 6, at 1:42 p.m. with a lawsuit “Petition Contesting Election and Requesting New election 15 Pages Argument and 8 Exhibits... IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI. (LF pages 4-28)

Petitioner and Appellant Steven L. Reed has spent excessive money and time trying to get the proper out come whereas making sure we have free and open elections in Springfield, Missouri as Required by the State Constitution.

Original motion and exhibits which this Court has and can also be seen on the County Court website. Write- In Candidates are listed on all ballots except Springfield, Fair Grove, Ash Grove, Republic and others. <http://www.greenecountymo.org/election/> Under Past Elections April 8, 2003 Press Summary Write- ins were not listed for Cities like Battlefield extra: Yet the election Just held...SUMMARY REPORT Greene County, Missouri April 8, 2008 Municipal Election RUN DATE:04/08/2008 08:12 PM County Clerk Struckhoff is caught between a rock and a hard spot since he would have liked to allowed the write ins but he must answer to those who are in power i.e. city leaders who do not want to allow write- ins or in any way admit they are denying the rights of the voters. It could be that Richard Struckhoff wants to be sure to adhere to State Law and no questions about the other cities being listed as such.

Appellant filed Petition Contesting Election and Requesting New Election on April 6, 2007 at 12:51 p.m. Appellant Reed appealed the Circuit Court decision that the City of Springfield “has the authority to prescribe its own methods and rules for nomination of candidates.” on September 21, 2007 (LF Pages 1-3)

Concerning Claims that Attorney General and Secretary of State’s has a responsibility to the People of Springfield and the State to enforce Election Laws

Clearly Attorney General Jay Nixon and Secretary of State Robin Carnahan should have voluntarily come forward---It’s the peoples’ business but fund raising and not hurting anyone’s feelings may have come first. Mayor Tom Carlson is known or supposed to be a Democrat and has contributed to Candidates in the past. This case is being represented by Appellant Steven Reed when in fact it is the Peoples’ Business and Rights to have fair elections.

PETITIONER’S REQUEST THAT ATTORNEY GENERAL JOIN ACTION, REQUEST FOR IMMEDIATE RELIEF, DECLARATORY JUDGEMENT AND PETITIONER’S OPPOSITION TO REPENDENT MOTION TO DISMISS was filed on 5/04/07.

## **POINTS RELIED ON**

### **I**

1. The Motion/Trial Circuit Court clearly erred and was wrong in not enforcing state law of fair and open elections concerning the rights of Steven Reed and all the People of Springfield to run as, or vote for write in candidates are clear as Stated in the Missouri State Constitution and the Missouri Statutes. The ruling of the motion/trial Court is clearly against the preponderance of the evidence.” **Erroneous** adj. 1) in error, wrong. 2) not according to established law, particularly in a legal decision or court ruling.

The Circuit Court said that: “The Court Finds there is no legal authority to support the proposition that the city is required to allow write-in candidates.” 9/11/07 J M Sweeney.

Appellants claim of reversible error is simple in that the Appeals Court can or send back to the Circuit Court to order that a proper election occurs. The legal reasons the City is in violation of the State Statutes and Law are clear according to the State Constitution which is followed by every city in Missouri but Springfield. Clearly the Court erred in denying the claim without explaining why the State Statutes came up in the Arguments in Court and were included in a number of motions read to the court of which the hearing lasted for almost an hour and a half.

- (1.) **Missouri Constitution Article I Bill of Rights Section 25**
- (2.) **Missouri Constitution Article VIII Suffrage and Elections Section 2**
- (3) **Missouri Revised Statutes Chapter 115 Election Authorities and Conduct of Elections Section 115.453**

**In Bush v. Gore** (SUPREME COURT OF THE UNITED STATES GEORGE W. BUSH, et al., PETITIONERS v. ALBERT GORE, Jr., et al. ON WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT, December 12, 2000), (LF 43-73)

State ex rel. George M. Murphy, Realator, v. Jesse W. Barrett et al., Constituting the Board of Election Commissioners of the City of St. Louis, Missouri No. 39129 352 Mo. 1130; 181 S.W. 2<sup>nd</sup> 493; (1944 MO.)

Ted Whitaker, Elizabeth Whitaker, Bill Whitaker, Rocky Crouch, Treasa Crouch, Larry Crouch, and Patti Crouch, v. City of Springfield, No. 18987 (Ct. App. MO S.Dist. 889 S.W. 2d 869; 1994)

## II

The Motion/Trial Circuit clearly erred in not even commenting on arguments made by Appellant Reed in many motions and in open court that a City has to adhere and follow state law. To deny that the laws exist or to ignore them will not make the law in this case go away. Clearly the Motion/Trial Circuit Court did not want to wade into the mud, but it is clear the by-laws of a municipal corporation in order to be of any validity, must be consistent with its charter and the general statutes of the commonwealth creating it.

Kansas City v. J. P. Hallett (Ct. App. 59 Mo 160 K.C. 1894)

Gates v. City of Springfield, 744 S.W. 2d 487; (Ct. App. S. Dis. Div. 1 Mo. 1988)

Pitman v. Drabelle et al. 267 Mo. 78; 183 S.W. 1055 (Sup. Ct. Mo. 1916)

## III

The Motion/Trial Circuit Court erred in not addressing the facts that State Law or Statutes prevail over Local City Ordinances when there is a Conflict of meaning.

The Circuit Court said that: “The Court is persuaded that the City of Springfield, as a Charter City has the authority to prescribe its own methods and rules for nomination of candidates” 9/11/07 J M Sweeney

The Motion/Trial Circuit Court did not address the Legal Fact that State Law must prevail over any Ordinance of a City that is in Conflict with State Law or the

concept and legal issues of State Supremacy vs. Local Supremacy of Law. In this case the City of Springfield Charter is Silent on the issue of write in candidates, just like most Every City Charter in the State. Not discussing the fact that every other City in the State allows write in candidates per State Law and Statute was not addressed by the Court and is erroneous, 1) in error, wrong. 2) not according to established law, particularly in a legal decision or court ruling. Once a determination of conflict between a constitutional or statutory provision and a charter or ordinance provision is made, **the state law provision controls.**

Cape Motor Lodge, Inc., et al., v. City of Cape Girardeau, Missouri, et al., No. 67507 706 S.W. 2d 208; (Sup. Ct. Mo. 1986)

Reed v. Brown et. al. 67581 706 S.W. 2d. 866; (Sup. Ct. Mo. 1986)

#### IV.

The Motion/Trial Circuit Court erred in not addressing equal treatment and the rights of all citizens to vote as allowed. Appellant Reed's understanding of the Constitution is that violating an election law is not just against the people of that city but against the people of an entire state. If Springfield does not have to follow state law then why would other cities?

State v. Anslinger, Appellant 171 Mo. 600; 71 S.W. 1041 (Sup. Ct. Mo Div. 2 1903)

Foster v. Evert (No. 69617 751 S.W. 2d 42; Sup. Ct. 1988 Mo.)

Antonio, et al., v. Kirkpatrick, No. 78-4096 453 F. Supp. 1161; (US Dist. W. Cen. Div.)

#### V.

The Motion/Trial Circuit Court erred in not addressing the fact that the

Springfield City Attorney sent out a letter saying the write in was not allowed and it is the City Clerk of Springfield who is in charge of administrating the City elections and she was not mentioned in the letter by the City Attorney. The Question Appellant Reed is **asking this Court to address is did the Proper Authority (City Clerk Brenda Cirtin),** Address the Election Issue at hand and were there possible violations of duties and possible law violations?

City Clerk Brenda Cirtin is according to City Charter to administer or conduct elections:

**Section 13.2. Regulations of elections** The council shall provide by ordinance all regulations which it considers needful or desirable, not inconsistent with this Charter or state laws, for the conduct of municipal elections, including notice, for the prevention of fraud in such elections, and for the recount of ballots in case of doubt or fraud. Municipal elections shall be conducted by the city clerk unless otherwise provided by law. Approved by vote of the people August 8, 1978.

Appellant Reed could not force the governmental authorities to do their proper and legal jobs. Proper election duties in the election: from (LF 43-73)

Appellant also points out that violations of election laws can cause charges to be filed.

Kasten v. Guth, 395 S.W. 2d 433; (Mo. Supreme Court D. One 1965)

State of Missouri, ex rel. Benedict D. Ferro, et al. v. Mary Oellermann, Clerk of the City of Bridgeton, Missouri. And Earl L. Davis No. 33617 458 S.W. 2d 583; (1970 Ct. App. Mo. St. Louis)

**Missouri Revised Statutes Chapter 115, Election Authorities and Conduct of Elections, Section 115.631, August 28, 2007**  
**Class one election offenses.**

## VI. 6

The Motion/Trial Circuit Court erred in not addressing the fact that Appellant Reed has taken on the duties of the State i.e. including the Secretary of State and the Attorney General since they are the top officials that represent the People in legal and

election issues when the People are being violated by not having the laws enforced.

Missouri Protection and Advocacy Services, Inc., et al., v. Robin Carnahan Sec. of State, and Jeremiah Nixon Attorney General of State (No. 06-3014 499 F.3d 803; 2007 U.S. App. 19 Am. Disabilities Cas. BNA 1078; 13 Accom. Disabilities Dec. CCH P13-032 US Ct. App. Eight Dis. 2007)

#### **VII. 7**

The Motion/Trial Circuit Court erred in not addressing that Appellant Reed has been harassed by the City of Springfield on many occasions and the city fails to admit or live up to the fact. Clearly the Motion/Trail Court should be made to correct some of the past wrongs and reverse such conduct of the City of Springfield.

#### **8. VIII**

The Motion/Trial Circuit Court erred in not addressing the attempts by the City of Springfield to stifle **dissent** in the community concerning activism.

#### **9. IX.**

The Motion/Trail Circuit Court clearly erred in the fact that the one and a half hour hearing was not recorded by audio or stenograph.

## ARGUMENTS

### I

The Court of Appeals may reverse, remand, or set aside the Circuit Courts decision if that decision allows a city in Missouri to use its powers to act in a way that is contrary to the State Constitution. The Motion/Trial/Circuit Court clearly eroded in not taking a serious look at this case and the ramifications of a City not adhering to State Statues which in this case clearly point out that Write In Candidates are allowed:

**This BLATANT and OBVIOUS Exemption from Common**

**Law Practice and Public Policy Observance seems to be unique to Springfield**

**Missouri and at odds with the Public Policy of the State of Missouri.**

Petitioner Reed believes that write-in candidates bring issues to the public debate and are totally necessary when no one files to be on the ballot. In this last election cycle and likely every future election cycle there are people who win local city or school board elections as write-ins.

Appellant Reed asks the Court to review the following from the State Constitution:

***Missouri Constitution* Article VIII SUFFRAGE AND ELECTIONS**

**Section 2 August 28, 2006 Qualifications of voters--disqualifications.**

Section 2. All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of eighteen who are residents of this state and of the political Subdivision in which they offer to vote are entitled to vote at all elections by the people....

Source: Const. of 1875, Art. VIII, § 2 (as amended November 4, 1958).

(Amended November 5, 1974)

...(1964) In appeal from action to contest county school superintendent election, dicta

contained in opinion stated that if § 167.020, RSMo, were construed to prohibit write-in candidates it might be violative of this section and unconstitutional. *Kasten v. Guth* (Mo.), 375 S.W.2d 110.

***Missouri Constitution Article I BILL OF RIGHTS Section 25***

**August 28, 2006 Elections and right of suffrage.**

Section 25. That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Source: Const. of 1875, Art. II, § 9.

(1964) In appeal from action to contest county school superintendent election, dicta contained in opinion stated that if § 167.020 were construed to prohibit write-in candidates it might be violative of this section and unconstitutional. *Kasten v. Guth* Mo.), 375 S.W.2d 110.....

***Missouri Revised Statutes Chapter 115 Election Authorities and Conduct of Elections Section 115.453*** August 28, 2006

(4) Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate for election to office with the proper election authority, who shall then notify the proper filing officer of the write-in candidate prior to 5:00 p.m. on the second Friday immediately preceding the election day;...

Petitioner Reed argues that clearly due process, equal protection, free speech, and the right of the majority of the people to be involved in the election process are reasons this case must not be dismissed. **In *Bush v. Gore*** (SUPREME COURT OF THE UNITED STATES *GEORGE W. BUSH, et al., PETITIONERS v. ALBERT GORE, Jr.,*

et al. ON WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT, December 12, 2000), **the Supreme Court said...** The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. See, e.g., *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966) (“[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment”). It must be remembered that “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

The Circuit Trial Motion Court clearly erred in not addressing State Law concerning write ins and the disagreement Appellant Reed has with the City of Springfield over the State Statute applying to the city as it does to every other city in the State of Missouri.. In the following Case the State Supreme Court clearly points out that “Cities will adhere to state law in conducting elections...period. In State ex rel. George M. Murphy, Realator, v. Jesse W. Barrett et al., Constituting the Board of Election Commissioners of the City of St. Louis, Missouri No. 39129 352 Mo. 1130; 181 S.W. 2<sup>nd</sup> 493; (1944 MO.) overview says The board members argued that a city ordinance allowed them to print ballots for the mayor’s election that were separate from ballots for various state offices. However, the court held that the ordinance was invalid because it contradicted a state law on the same matter. In reaching its conclusion, the court held that state law withdrew from municipal authority issues related to the conduct of

elections The court held that “conduct of elections” included subjects such as ballots that were governed by both specific state law and the city ordinance challenged by the resident. Thus, the court held that the ordinance was invalid to the extent that it conflicted with state law regulating the printing of ballots. Outcome was the court granted the resident’s application and ordered the election members to comply with state law rather than city ordinance.

Mo. Rev. Stat. § 12195 expressly provides that the registration of voters and the conduct of elections held in applicable cities shall be governed by the provisions of this article and the provisions of the general election laws of Missouri, so far as the same are not inconsistent or in conflict herewith. “Election” is defined to mean any general, special, municipal and primary election unless otherwise specified, and shall include a submission to a vote of the people of any amendment, law or other public act or proposition. The repealing provisions of said act are significant. By § 12284, it is provided that all laws or parts of laws contrary to, in conflict or inconsistent with the provisions of this article are insofar as they affect cities described in the title of this article hereby repealed. (Emphasis ours.) Section 12195 withdraws authority from cities with respect to permanent registration and “conduct of elections.”

Counsel: Samuel H. Liberman for relator; Russell L. Dearmont, Emmett Golden, William L. Igoe, Leo Lyng and John J. Nangle of counsel..... (1) A citizen and qualified voter may invoke the writ of mandamus to compel election officials to carry out their duties in the manner required by law. *State ex rel. Faust v. Thomas*, 282 S.W. 34. (2) Ordinances which are in conflict with the charter, and which are not in harmony with the state law upon the same subject are invalid. *Wood v. Kansas City*, 162

Mo. 303, 62 S.W. 433; Asphalt & Granitoid Co. v. Hauessler, 201 Mo. 400, 100 S.W. 14; Bardenheier Wine & Liquor Co. v. St. Louis, 345 Mo. 637, 135 S. W. (2<sup>nd</sup>) 345; State ex rel. Rothrum v. Derby, 345 Mo. 1002, 137 S.W. Mo. (2<sup>d</sup>) 532; Ex Parte Tarling, 214 S.W. 929; Sec. 7442, R.S. 1939. (3) Section 38 of Ordinance 42,880 contravenes Section 5 of Article VII of the City Charter. Art. VII, Sec. 5, Art. II, Secs. 7, 9, Art. IV, Sec1 Charter of St. Louis. (4) Section 38 of Ordinance 42,880 is in conflict with Article 7, Chapter 76, R.S. 1939, particularly Sections 11594, 11595, 11602, 11603, and 11631. In re Graves, 325 Mo. 888 [\*\*\*2] 30 S.D. (2d) 149; State ex rel. Brown v. McMillan, 108 Mo. 153; Gaston v. Lamkin, 115 Mo. 20; City of Tarkio v. Seibert, 116 Mo. 415 (5) Section 37 of Ordinance 42,880 is in conflict with Article 5, Chapter 76, R.S. 1939, particularly Sections 11557 and 11560. (6) Sections 37 and 38 are in conflict with the recently enacted soldier's vote bill, Senate Bill 6, 62<sup>nd</sup> General Assembly, Extra Session. (7) Authority to enact the ordinance is not granted by Sections 11775 and 11776, R.S. 1939. Brown v. State, 323 Mo. 138, 19 S.W. (2d) 12; Turner v. Mo. Kan. & Texas R. Co., 346 Mo. 22, 142 S.W. (2d) 455; State ex rel. Major v. Ryan, 232 Mo. 77, 133 S.W. 8

In Ted Whitaker, Elizabeth Whitaker, Bill Whitaker, Rocky Crouch, Treasa Crouch, Larry Crouch, and Patti Crouch, v. City of Springfield, No. 18987 (Ct. App. MO S.Dist. 889 S.W. 2d 869; 1994) the same Honorable J. Miles Sweeney(as Motion or Trail Judge in this Case), ruled on a Charter Provision that was decided to be in conflict with a State Statute. Procedural posture says Appellant City of Springfield challenged a summary judgment from the Circuit Court of Greene County (Missouri), which was entered in favor of respondent property owners in a declaratory judgment suit that decided whether a rezoning request was improperly denied under Springfield, MO City

Charter § 11.18 concerning protest to proposed zoning changes due to inconsistency with Mo. Rev. Stat. § 89.060 and violation of Mo. Const. art. VI § 19(a).

Overview says the trial court agreed that the protest filed against the proposed zoning change was invalid and that only a simple majority of the council was required to approve the change. On review, the court declared that the City was not authorized to adopt a charter provision in conflict with an applicable statute. The court found that the charter specifically allowed what was not permitted by Mo. Rev. Stat. § 89.060..... Outcome was The court affirmed the trial court's judgment granting summary judgment to the property owners in their declaratory judgment suit against the city. Opinion by per curiam says Plaintiffs' contention that § 11.18 was in conflict with § 89.060 and invalid was based on Art. VI, § 19 (a) of the Missouri Constitution, which states: "Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are [\*\*6] consistent with the constitution of this state and not limited or denied by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law. In determining whether a charter provision violates Art. VI, § 19 (a) of the Missouri Constitution, the emphasis is whether it conflicts with the constitution, state statutes or the charter itself. *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W. 2d 208, 211 (Mo. Banc 1986). See also *Gates v. City of Springfield*, 744 S.W. 2d 487, 488 (Mo. App. S.D. 1988). The test for determining if a conflict exists is whether the ordinance or charter "permits what the statute prohibits" or prohibits what the state permits." See also *Miller v. City of Manchester*, 834 S.W. 2d 904, 907 (Mo. App. E.D. 1992).

The Circuit Trial Motion Court clearly erred in not specifically addressing the write in state statute and its application to the city of Springfield, Missouri. Clearly Appellant Reed points out that the Springfield City Charter is silent on write in candidates. The main issue is the City can not deny citizens the right to run as or vote for write in candidates under the simple concept of the city can not prohibit what the state permits “The test for determining if a conflict exists is whether the ordinance or charter “permits what the statute prohibits” or prohibits what the state permits.”

## II

Appellant Steven Reed contacted Sue Brown the County Clerk for Christian County and she said she always allows write in candidates because it is state law. Ms. Brown also suggested Reed talk with the Ozark City Attorney who said that clearly if Ozark were not allowing write ins and were Violating state law by being “repugnant” the Attorney General would be down suing the City of Ozark for violating state law. Ms Brown also pointed out that last year no one filed for one of the alderperson seats in the small town of Billings so she went and explained that they could get someone to run as a write in so the City could continue with their business of running the City i.e. a relief valve if you will to make sure government can keep operating.

The Judge brings up this issue in Kansas City v. J. P. Hallett (Ct. App.59 Mo 160 K.C. 1894) Opinion by Gill “It is not necessary to invoke the terms of the constitution to announce that the by-laws of a municipal corporation in order to be of any validity, must be consistent with its charter and the general statutes of the commonwealth creating it. This is a well understood principle of the common law. Such ordinances [\*\*5] or by-laws must not be repugnant to the legislative policy of the state, as manifested by its

general enactments. 1 Dill. On Municipal Corporations [4Ed.], section 329; Tiedeman on Municipal Corporations, sections 150.....

In a Case filed against the City of Springfield concerned the City of Springfield being in conflict with a State Statute and the court ruled against the City for that reason. In Gates v. City of Springfield, 744 S.W. 2d 487; (Ct. App. S. Dis. Div. 1 Mo. 1988) the same Judge as in this case the Honorable J. Miles Sweeney was overturned by this Court of Appeals. This Court of Appeals overturned the trial court. In this case Appellant Gates a accident victim appealed a judgment from the Circuit Court of Greene County (Missouri), dismissing the accident victim's personal injury complaint against respondent city. The accident victim filed suit, alleging he was injured when a vehicle driven by city's employee struck his vehicle. The city filed a motion to dismiss, alleging that the accident victim failed to give timely notice as required by Springfield, Mo., Charter § 19.10. The trail court dismissed the accident victim's suit. On appeal, the court reversed and remanded. The court held that the notice provisions of a charter which impeded the fundamental right of a citizen to seek redress for injuries resulting from negligent conduct by the city was in direct and irreconcilable conflict with a statute. Springfield, Mo., Charter § 19.10 was in conflict with Mo. Rev Stat. § 82.210 because Springfield, Mo. Charter 19.10 required serving notice on the city manager rather than the mayor, as required by the statute, and because it imposed the more onerous duty of giving notice in all negligence cases. The court rejected the argument that § 19.10 prevailed over Mo. Rev. Stat. § 82.210; although Springfield, Mo. § 19.10 was enacted first in time, Mo. Const. art. VI, § 19, prohibited the enactment of any charter provision that was inconsistent with state law.

Opinion by Holstein says: Plaintiff insists that the charter provision is inconsistent with the statute and is thus invalid, citing Mo. Const. art. VI, § 19 (1945, repealed 1971), and *City of Kansas City v. St. Paul Fire and Marine*, 639 S.W. 2d 903 (Mo. App. 1982). . . . The City argues that § 82.210 does not expressly permit actions against the city, but prohibits certain actions brought against cities. Thus, the City argues, the charter does not prohibit what the statute permits. This analysis assumes there is no express authority in the statutes permitting actions for negligence against cities. We reject such assumption. In addition to § 82.210, the common law has been adopted as the law of this state. § 1.010. Section 82.210 and the charter provision are in derogation of plaintiff's rights existing under common law. *Jones v. City of Kansas City*, 643 S.W. 2d 268, 270 (Mo. App. 1982). . . . The second question is whether the charter or the statutory provision shall prevail. Springfield adopted the charter provision in question in 1953. At the time of the charter adoption, Mo. Const. art. § 19 provided as follows:

Any city having [\*\*8] more than 10,000 inhabitants may frame and adopt a charter for its own government, consistent with and subject to the constitution of the state. . . . In 1971, the state constitution was amended to provide: Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution. . . . and are not limited by either the charter so adopted or by state. Mo. Art. VI, § 19(a). . . . A charter provision expanding such circumstances or imposing different conditions precedent exceeds the statutory limit. See *Mager v. City of St. Louis* 699 S.W. 2d. 68, 72 (Mo. App. 1985). Under either constitutional provision, § 19.10 of the charter is void. We reverse and remand to the

trial court for further proceedings consistent with this opinion.

The most important and clear issue of this case and a point of major importance is that a City may as an agent of the State can amend its charter or enact ordinances that are not in conflict with the State Constitution.

Citizens wanted to do away with Citizen Petition Initiative in St. Louis. The Petition process can be a last resort when People feel their elected officials will not address an issue, or when Citizens want an Issue brought up for Public Debate. In the following case it is clear that all citizens of the state must be afforded the same rights under law and especially in the area of elections. The Court ruled that the petition process must be allowed because State law allows it and that is the exact reasoning the City of Springfield must allow write in candidates for mayor and city council, otherwise the City of Springfield is in violation of State Law and its status as a legal municipality in Missouri is called into question.

In Pitman v. Drabelle et al. 267 Mo. 78; 183 S.W. 1055 (Sup. Ct. Mo. 1916) Plaintiff sought review of a decision from St. Louis City Circuit Court (Missouri), which dismissed the citizen's petition to enjoin the holding of an election for the adoption of two ordinances reversing to residents the power of the initiative. The trial court sustained the demurrer of defendant city officials.

Opinion in Banc. Says Plaintiff, a taxpaying citizen, sued to enjoin the holding of an election on the 29<sup>th</sup> of February, 1916, for the adoption of two ordinances proposed under article 5 of the charter of St. Louis, reserving to the people of that city the power "known as the initiative."

The ordinances to be submitted to a ballot are referred to in the petition by

number and title, and provide for “the use of separate blocks for residence by white and colored races and for the gradual [\*\*1056] complete occupancy of blocks by one of the two races to the exclusion of the other.”

[84] The ground of the petition is the alleged unconstitutionality of the provisions of the charter with reference to the exercise of the initiative in legislation, and the misappropriation of public money for the holding of the election. The defendants, the board [\*\*\*8] of election commissioners, the city comptroller and the city treasurer, demurred, whereupon the petition was dismissed, and plaintiff appealed to this court where the cause was advanced for public reasons.

The same principle governs the action of a municipal corporation which in its public capacity as an agent of the State government, may amend its charter in any manner or enact ordinances for any purpose not in conflict with the Constitution and the laws, State and Federal.

Hence it is evident that the feature of the charter under review is completely congruous with the constitutional policy that the people of the State at [\*\*\*12] large should enjoy the right of the initiate, and also the declared policy of the state expressed in the above acts of the Legislature granting the same powers as to the local administration and providing for their inclusion in the charters of the cities of the State. In view of this declaration of the public policy of the State through the medium of the highest exponents thereof, the Constitution and the General Assembly, we may dismiss from view any consideration of the suggestion that the amended charter of the city of St. Louis is out of Harmony with the Constitution or laws of the State in so far as it provides for the exercise by the people of that city of the power to legislate by the initiative.

A careful analysis of the sections of the present charter referring to the exercise of this auxiliary power to legislate, shows that it cannot be exercised at all unless the board of alderman shall fail to adopt a proposed ordinance submitted to them by the people of the city. Plainly this contrivance does not deprive the board of alderman of the power to originate and enact laws, for it leaves them with full authority to do and merely guards against their refusal to enact a local law which is approved [\*\*\*15] by a majority of the qualified voters of the city; unless it is supported by a majority of the voters it could not carry at the election and would never become law.

It is the very essence of free government that the laws regulating a community should reflect the view and voice of the majority of its voters. Hence the plan (initiative) by which the people are empowered to do business which their recalcitrant representatives have failed to perform, has met with full judicial sanction. [In re Pfahler, 150 Cal. 71, 88 P. 270; Pacific States T& T Co. v Oregon, 223 U.S. 118, 56 L. Ed. 377, 32 S. Ct. 224.]

We are unable to find anything in the language of the Constitution under review which prohibits the people of St. Louis, after having provided in their charter for one house of legislation, to reserve themselves the power to legislate in case of the refusal of that body to act. There being no restriction express or implied in the language of the Constitution of the State against the inclusion of this faculty in the [\*89] charter, and it being plain to a demonstration that the power thus reserved is not inconsistent with the laws of the State or nation, we hold [\*\*\*16] that the petition framed on the theory of the unconstitutionality of the initiative provisions of the charter stated no cause of action and the demurrer thereto was well taken.

V. Nor can it be doubted what judgment [\*\*\*17] would be given if it were shown that a law had been enacted violative of the fundamental principle upon which the government of the State and nation is founded, or destructive of the legal rights of person or property of any citizen or class of citizens of the United States. [Constitution of the United States, Amendment 14.] For it must be borne in mind that no citizen of this State has any legal or political right which does not belong to every other who has not forfeited it by conviction of crime.....

### III

The Motion/Trial Circuit Court did not address the Legal Fact that State Law must prevail over any Ordinance of a City that is in Conflict with State Law or the concept and legal issues of State Supremacy vs. Local Supremacy of Law.

An example was when Governor George Wallace was told by federal marshals that Federal Law or the rule of law supersedes State Law and that the blacks were going to enter the school, so does State Law supersedes Local Law. In Cape Motor Lodge, Inc., et al., v. City of Cape Girardeau, Missouri, et al., No. 67507 706 S.W. 2d 208; (Sup. Ct. Mo. 1986) the Court clearly says an ordinance can not prohibit what a state statute permits. In opinion by Higgins “under section 19 (a), the emphasis no longer is whether a home rule city has the authority to exercise the power involved; the emphasis is whether the exercise of that power conflicts with the Missouri Constitution, state statutes or the charter itself. Conflicts between local enactments and state law provisions are matters of statutory construction. Once a determination of conflict between a constitutional or statutory provision and a charter or ordinance provision is made, **the state law provision controls**. See St. Louis Children’s Hospital, 582 S.W. 2de at 691;

Hannah ex rel. Christ, 676 S.W. 2d at 513.

The test for determining if a conflict exists is whether the ordinance “permits what the statute prohibits” or “prohibits what the statute permits.” Page Western, Inc. v. Community Fire Protection Dist., 636 S.W. 2d 65, 67 (Mo. Banc 1982); Vest v. Kansas City, 355 Mo. 1, 194 S.W. 2d 38, 39 (1946).

In Reed v. Brown et. al. 67581 706 S.W. 2d. 866; (Sup. Ct. Mo. 1986) Opinion by Higgins says:

In Edwards v. St. Louis County, 429 S.W. 2d 718 (Mo. Banc 1968), this Court stated the following doctrines or theories of statutory construction:

Statutes which appear to be conflicting should be harmonized, if at all possible, so that they may stand together....But the last act of the legislature, if completely repugnant to a prior act, must be construed [\*\*5] as repealing the prior act by implication, to the extent of such a conflict, and is deemed to express the intent of the legislature...And the principle is applied even to the extent of the repeal (pro tanto) of a special statute by a later general statute if there is such total conflict that the two cannot stand together, and the legislative intent is fairly shown...”Ordinarily, a special or local law is not to be considered repealed by a general law upon the subject,...but that rule is inapplicable where...the two are in irreconcilable conflict, or are patently inconsistent,...and the legislative intention to supersede the local law and to prescribe one single authoritative rule which shall govern in all cases is made clearly manifest...

Id. At 721-22 (citations omitted); see also State ex rel. Crutcher v. Koeln, 332 Mo. 1229, 61 S.W. 2d 750, 755-56 (banc 1933).Section 115.517(3) is part of the “Comprehensive Election Act of 1977.” § 115.001, et seq., RSMo 1978. The effective date of the Act was

January 1, 1978. § 115.009, RSMo 1978. The purpose of the Act is to simply, clarify and harmonize the laws governing elections. 115.003, [\*\*6] RSMo 1978.” “Notwithstanding any other provision of law to the contrary, [the Act] shall apply to all public elections in the state, except elections for which ownership of real property is required by law for voting.” §115.005, ROMs 1978. The Act applies to elections for “public offices” which are defined to include “any office established by constitution, statute or charter,...under...the state of Missouri, or any other political subdivision...” §115.013(21), RSMo 1978. Wellston is a political subdivision. § 115.013(18), RSMo 1978. Therefore, the Comprehensive Election Act applies to elections in the City of Wellston....

Appellant Reed notes that Clearly the City of Springfield’s only argument at all against Petitioner Reed was that the City of Springfield requires a Petitioning “nominating process’ where you have to secure a number of voters’ signatures. The same is true to be on the ballot just as Ozark, Nixa (15 Signatures for Mayor), and all Cities require some number of signatures to be placed on the ballot. All those CITIES CHARTERS say nothing about Allowing Write- In Candidates ... they ALL Allow Write- In Candidates because Missouri State Law requires it. A second grader would know that when conflicts of laws occur that Federal Law overrides State Law and State Law overrides Local Laws. Actually there is not conflict here because the Springfield City Charter ONLY ADDRESSES BEING ON THE BALLET AND NOT ALLOWING CANDIDATES TO BE WROTE IN.

**IV.**

Appellant Reed sees this case as having merit in the current case. In effect not allowing free and open elections in Springfield effects the leadership of that city which could effect issues such as the economy which could effect the overall economy across the state and all the people of the State of Missouri.

The case State v. Anslinger, Appellant 171 Mo. 600; 71 S.W. 1041 (Sup. Ct. Mo. Div. 2 1903) was about voting in two places. Evidence was presented and defendant admitted to voting in precinct seven in St. Louis. Some witnesses testified that defendant also voted in precinct four, but other witnesses could not positively identify him at precinct four. Defendant contested his conviction for voting in two places at the same election. The court reversed and remanded. The court found no error in the evidence or instructions in that evidence of a witnesses motivation for a reward was admissible, an instruction concerning such evidence was not necessary, and an instruction on good character was not called for when the character trait evidenced at trail was not relevant to the offense. The court concluded, however, that defendant could not be convicted under Mo. Rev. Stat. § 7261 (1899), which by its wording only applied to elections in St. Louis because there was a prior statute in effect, Mo. Rev. Stat. § 2114 (1899), which already prescribed and punished voting twice in the same election. The court relied on Mo. Const. art 4, § 53, which prohibited the enactment of any local or special law where there existed a general law applicable to the case.

Opinion by Fox, J. says Section 2114, Revised Statutes 1899, is a general law applicable to the entire State and the defendant can be punished under its provisions. “Where a general law can be made applicable, no local or special law shall be enacted,” so says the Constitution.” ....The court, in the trail of this case, fixes the

punishment under the provisions of section 7261, Revised Statutes 1899, instead of section 2114, the general law of the State. We have reached the conclusion that was error. The general Assembly has no power to make an offense punishable in the City of St. Louis greater than in other subdivisions of the State, for the same offense.

The offense of voting at more than one election precinct in the city of St. Louis is no greater than voting at more than one election precinct in [\*\*1045] the most humble [\*613] village in the State. The offense is not against the peace and dignity of the people of the city of St. Louis, but against the peace and dignity [\*\*\*21] of the entire State. The offense is not against the people of any particular locality, but contemplates an injury to the entire people of the State by the violation of the provisions of its general law....

The Circuit Trial Motion Court clearly erred in not addressing the overall importance of elections to the entire community. In Foster v. Evert No. 69617 751 S.W. 2d 42; (Sup. Ct. 1988 Mo.) Opinion by Robertson Jr. says “If as a result of election irregularities the wrong candidate is declared the winner, more is at stake than the losing candidate’s disappointment; the people have lost the ability to impose their will through the electoral process. Thus to claim that a general election contest is no more than an adversary proceeding between a losing candidate and the officially announced winner [\*44] is to misunderstand the *raison d’etre* of election contests and to discount the importance the legislature has placed on accuracy in elections. An election contest, as we will later repeat, is an action by which the contestant challenges the conduct of the election itself. In bringing an election contest, the contestant speaks for the entire electorate, seeking to assure all that [\*\*6] the democratic process has functioned properly and the voter’s will is done.”.....

In Antonio, et al., v. Kirkpatrick, et al. (No. 78-4096 453 F. Supp. 1161; US Dist. W. Cen. Div.) the case surrounds equal treatment. Appellant Reed points out that this case shows why write in candidates should be allowed as equal treatment when all other cities in Missouri allow it. What reasons can the City of Springfield give to not allow such equal election participation, another words what would it hurt? In Antonio, et al., v. Kirkpatrick, et al. (No. 78-4096 453 F. Supp. 1161; US Dist. W. Cen. Div.) Opinion by Hunter says:

I. The first step in resolving the issue of the constitutionality of Missouri's durational residency requirement for the office of State Auditor is determining the appropriate equal protection standard to apply . The United States Supreme Court has developed two test for use when an allegedly unconstitutional classification is at issue. [\*\*6] See Developments in the Law-Equal Protection, 82 Harv.L.Rev. 1065 (1965). Under the traditional, or "rational basis," test, the classification will survive an equal protection attack if it is rationally related to a legitimate goal of the state. See *Dandridge v. Williams*, 397 U.S. 471, 25 L. Ed. 2d 491, 90 S. Ct. 1153 (1970). If the classification affects a fundamental right, however, or is based upon a "suspect" criterion, then it will be strictly scrutinized, and the state must demonstrate a "clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest." *Dunn v. Blumstein*, 405 U.S. 330, 341, 31 L. Ed. 2d 274, 92 S. Ct. 995 (1972); see *Shapiro v. Thompson*, 394 U.S. 618, 22 L. Ed. 2d 600, 89 S. Ct. 1322 (1969). The choice of standard thus depends upon "the interests affected and the classification [\*1164] involved." *Dunn v. Blumstein*, supra, 405 U.S. at 335. As another court previously has enunciated: Semantics aside, the question is resolved judicially by determining what is

more important to our form of government; the rights protected by the state law in question or the rights infringed by it...In addition, the Supreme Court has recognized that any limitations imposed by a state on the ability of candidates to obtain a position on the ballot necessarily places: ...burdens on two different, although overlapping, kinds of rights---the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms.....

#### V.

Concerning the Proper Authority did not carry out the proper election duties in the election: from (LF 43-73) Appellant Reed could not force the governmental authorities to do their proper and legal jobs. In an opinion by Judge J. Donnelly in Kasten v. Guth, 395 S.W. 2d 433; (Mo. Supreme Court D. One 1965) Opinion by Donnelly: ‘Such a construction ,’ says this court, speaking through, Barclay, J., in Bowers v. Smith, 111 Mo. 45, loc. Cit. 55, 20S.W. 101,16 L.R.A. 754, 33 Am.ST.Rep. 491, of a law as would permit the disfranchisement of large bodies of voters, **because of an error of a single official**, should never be adopted, where the language in question is fairly susceptible of any other. Wells v. Stanforth (1885), 16 Q.B.Div 245. ‘ Again (pages 61.62, of 111 Mo. , page 105 of 20 S.W. [16 L.R.A. 754, 33 Am.St.Rep. 491]: ‘If the law itself declares a specified irregularity to be 20 fatal, the courts [**\*\*4**] will follow that command irrespective their views of the importance of the requirement. Ledbetter v. Hall (1876), 62 Mo 422. In the absence of such declaration, the judiciary endeavor, as best they may, to discern whether the deviation from the prescribed forms of law had or

had not so vital an influence on the proceedings as **probably prevented a free and full expression of the popular will**

In State of Missouri, ex rel. Benedict D. Ferro, et al. v. Mary Oellermann, Clerk of the City of Bridgeton, Missouri. And Earl L. Davis (No. 33617 458 S.W. 2d 583; 1970 Ct. App. Mo. St. Louis) the City Clerk went beyond what her official duty was to try and stop a recall petition. In this case the city clerk refused to certify petitions for the recall of an official to the city council on the grounds that the petitions contained an insufficient number of signatures, that the signatures were solicited as the result of misstatements and misrepresentations, and the grounds for the removal of the official did not exist. The petitioner for recall argued that the clerk exceeded her powers. The trial court, concluding that certification was a discretionary act that could not be compelled, dismissed the application for mandamus, but the court reversed. The duty of the clerk was not discretionary. Once the clerk examined the petitions for recall, she had no choice but to certify the petitions to the city council. The clerk did not have the authority to determine whether the grounds for removal of the office were valid. Nor was it any concern of the clerk what statements were made by the solicitors of the petitions. The clerk's certificate did not overcome the petitioner's prima facie showing that there were sufficient signatures to require certification because she did not indicate why any signatures were stricken.

Opinion by Per Curiam; Smith the Realtors' application [\*\*5] for writ set forth several grounds upon which it is contended the clerk exceeded her powers and acted without authority. Those grounds can be categorized as follows: 1. The certificates did not set forth the particulars in which the petition with amendment was defective. 2. The

clerk did not make her determination within the time periods set forth in the city charter. 3. The certification as to Items 2 and 3 exceeded the powers and duties of the clerk. 4. The petitions contained enough signatures to require certification as sufficient. 5. The clerk acted arbitrarily, capriciously, illegally, unreasonably and without basis in law or fact in declaring the petitions insufficient.

Ground three, heretofore set out, is that the certification as to Items 2 and 3 exceeded the power of the clerk. Clearly it did not and those items of the certificates are a nullity. The charter is specific on what the clerk is authorized to determine. It grants no authority to reject a recall petition on either of the grounds set forth in Item 2 and 3.

Whether the grounds set forth for recall exist or not is ultimately what the electorate determines, not the clerk. Nor is it any concern of the clerk what statements were made by the solicitors of the petition. *State ex. rel. Westhues v. Sullivan*, 283 Mo. 546, 224 S.W. 327 [9,10]. By charter provision the petition must contain a general statement of the grounds for recall and this petition did. The clerk is in no position to judge and is given no authority to judge the reasons why any given individual signed the petition. If a sufficient number of valid signatures appear on the petition and the petition is in proper form she has no choice but to certify it as sufficient to the council.....

*Missouri Revised Statutes*

**Chapter 115**

**Election Authorities and Conduct of Elections**

**Section 115.631**

August 28, 2007

**Class one election offenses.**

**Appellant Reed points out that the law restrict violations of election laws as**

**follows:** 115.631. The following offenses, and any others specifically so described by law, shall be class one election offenses and are deemed felonies connected with the exercise of the right of suffrage. Conviction for any of these offenses shall be punished by imprisonment of not more than five years or by fine of not less than two thousand five hundred dollars but not more than ten thousand dollars or by both such imprisonment and fine: (1) Willfully and falsely making any certificate, affidavit, or statement required to be made pursuant to any provision of sections 115.001 to 115.641 and sections 51.450\* and 51.460, RSMo, including but not limited to statements specifically required to be made "under penalty of perjury"; or in any other manner knowingly furnishing false information to an election authority or election official engaged in any lawful duty or action in such a way as to hinder or mislead the authority or official in the performance of official duties. If an individual willfully and falsely makes any certificate, affidavit, or statement required to be made under section 115.155, including but not limited to statements specifically required to be made "under penalty of perjury", such individual shall be guilty of a class C felony;.....

Appellant Reed also wants the fact to be known that when a lady served a copy of the Draft Claire McCaskill Lawsuit (Case No. 05-3133-CV-S-SWH) on City Clerk Brenda Cirtin in 2005 Ms. Cirtin said that “Steven Reed really needs to get a life”.

## VI.

The Motion/Trial Circuit Court erred in not addressing the fact that Appellant Reed has taken on the duties of the State i.e. including the Secretary of State and the Attorney General since they are the top officials that represent the People in legal and

election issues when the People are being violated by not having the laws enforced.

In a case that concerned the mental condition of a voter and whether they could vote it was pointed out that the Secretary of State and the Attorney general as the top officials of the State of Missouri do have legal responsibilities to the People of the State, Missouri Protection and Advocacy Services, Inc., et al., v. Robin Carnahan Sec. of State, and Jeremiah Nixon Attorney General of State (No. 06-3014 499 F.3d 803; 2007 U.S. App. 19 Am. Disabilities Cas. BNA 1078; 13 Accom. Disabilities Dec. CCH P13-032 US Ct. App. 2007). In Opinion by Loken says A State’s “Eleventh Amendment Immunity” does not bar a suit against a state official to enjoin enforcement of an allegedly unconstitutional statute, provided that such officer [has] some connection with the enforcement of the [\*\*9] act.....

.... II. An Eleventh Amendment Issue

At the outset, defendants argue that the Missouri Secretary of State and Attorney General have no real connection with the enforcement of Missouri’s laws regarding the loss of voting rights by persons under guardianship and therefore this suit is barred by the Eleventh Amendment. Like the district court, we disagree.

A State’s Eleventh Amendment immunity “does not bar a suit against a state official to enjoin enforcement of an allegedly unconstitutional statute, provided that such officer [has] some connection with the enforcement of the act.” *Reprod. Health Servs. of Planned Parenthood of the St. Louis Region, Inc. v. Nixon*, 428 F.3d 1139, 1145 (8th Cir. 2005) (quotation omitted). Though broad authority to register voters and to administer voting and elections is delegated to local “election authorities” – the county clerk or the local board of election commissioners -- the Secretary of State is” the chief state election

official responsible for overseeing of the voter registration process.” See Mo. Rev. Stat. §§ 115.015, 115.141, 115.023.1, 115.155, 115.160.3. Moreover, § 115.195.3 obligates the Secretary of State to send local election authorities the names of persons who are adjudged incapacitated. As we will explain, Bob Scaletty was prevented from voting in the 2004 election by an error that may well have stemmed from his inclusion on a list of persons under guardianship that did not note the preservation of his right to vote. Finally, Missouri statutes appoint the Secretary of State as the “chief state election official” to administer the federal Help America Vote Act of 2002 and the National Voter Registration Act of 1993. See Mo. Rev. Stat. § 28.035, § 115.136.

The Attorney General has statutory authority to represent the state in Both criminal and civil cases. See Mo. Rev. Stat. § 56.060.1; § 27.030; § 27.060. Persons who knowingly attempt to vote when they are ineligible – which presumably would include persons under guardianship due to mental incapacity -- can be prosecuted for committing a class one election offense. See Mo. Rev. Stat. § 115.631(2).

The summary judgment record reflects considerable uncertainty, inconsistency, and apparent confusion among local guardians and election officials concerning the proper interpretation of the Missouri laws at issue. NOTE per Appellant Reed: “In these circumstances, we conclude that the Secretary of State and the Attorney General were potentially proper parties defendant for the injunctive relief sought had plaintiffs prevailed on the merits”. Accordingly, the Ex parte Young exception to Eleventh Amendment immunity applies. See *Reprod. Health Servs.*, 428 F.3d at 1145.

### III. Equal Protection Claims

In the last fifty years, the Supreme Court has considered many cases involving various

aspects of the right to vote. “[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 626 (1969). The Court's concern with these difficult issues is understandable, though the resulting array of opinions deciding disparate voting issues can be difficult to apply in a new context.

This case concerns a State's eligibility requirement for voting. Historically, deciding who is qualified to vote has been a relatively unfettered prerogative of the sovereign States. See *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 9 (1982) (“the right to vote, *per se*, is not a constitutionally protected right”). “The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised . . . absent of course the discrimination which the Constitution condemns.” *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50-51 (1959) (upholding a race-neutral literacy test because literacy “has some relation to standards designed to promote intelligent use of the ballot”). More recent decisions have given varying degrees of “close constitutional scrutiny” to voter eligibility requirements under the Equal Protection Clause, invalidating many, but not all. See *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966) (poll tax invalid because “[w]ealth, like race . . . is not germane to one's ability to participate intelligently in the electoral process”); *Carrington v. Rash*, 380 U.S. 89 (1965) (categorical disenfranchisement of residents in the military invalid); *Kramer*, 395 U.S. at 632-33, and *Cipriano v. City of Houma*, 395 U.S. 701, 704-706 (1969) (limiting right to vote in local elections to those with special interests invalid); *Evans v. Cornman*, 398 U.S. 419 (1970) (disenfranchising residents of

a federal enclave invalid); compare *Dunn v. Blumstein*, 405 U.S. 330, 360 (1972) (one year and three-month durational residence requirements invalid), with *Marston v. Lewis*, 410 U.S. 679 (1973) (fifty-day durational residence requirement valid). By contrast, in *Richardson v. Ramirez*, 418 U.S. 24, 55 (1974), the Court rejected a challenge to California laws denying ex-felons the right to vote in part because the Equal Protection Clause of § 1 of the Fourteenth Amendment “could not have been meant to bar outright a form of disenfranchisement which was expressly exempted from the less drastic sanction of reduced representation which § 2 imposed for other forms of disenfranchisement.”....

Appellant Reed questions why Secretary of State list all Missouri County Clerks all 118 of them on the SOS website if she has no administrative authority over them?

## VII

Micheal Schilling Deposition from the Federal Draft Claire case:

The following Deposition was completed today March 31, 2008.

It has become a little more popular to be an activist these days --- depending on who you talk to---some of Larry Rice’s people and other people have made the comments that it does not seem to be real favorable to have activism down here. But, laying that aside Reed was arrested on Election Day back in 1996 for simply handing out minimum wage materials by the City and the Judge at the time laughed and said she actually supported the minimum wage drive and she through it out of court, but the city went ahead and put Reed on a year probation, over that case, the SMS case when Vice Presidential Candidate Joe Lieberman was coming to town Reed was arrested for simply setting up a table in the public area which was where he was told he could set up the table to do Volunteer Voter Registration, and then this most

recent case, the Arrest for handing out “Draft Claire” she inspires people flyers in April of 2005 at Jackson Days. Does it look like there could be some kind of pattern here?

Schilling: Well it certainly looks like there is a pattern in that. End of Comments Mr. Mike Schilling Deposition for Federal Case.

## **VII. 8**

The Motion/Trial Circuit Court erred in not addressing the attempts by the City of Springfield to stifle dissent in the community concerning activism. One of the most serious issues about this whole case is that the reason we have such low involvement “of the people” is the mistrust of the government. In this case denying the people the option of a write in candidate sends the signal that we will restrict involvement when we want. If you “dare” to question authority we will ignore you and if necessary discredit you or make a mockery of you.

Appellant Reed points to the election that just occurred, the school board election. All the media reported that only the required number of people necessary filed for school Board, filed so no election was required. Which according to the Greene County records all Cities allowed write ins except Springfield I. E. School Board.....

Appellant Steven Reed sometimes says he has ran or started so many efforts Independent candidate ....Statewide Petitions for Technology Park and Rail Passenger Service ... and Voter Registration Drives that Reed may or likely knows more about the elections process than many or most of the Secretaries of States, or at least when they first came to office, even then many of the same people stay on who have studied the election laws.

**The Main Word on the Street was the current Mayor had that job until he was ready to Leave**

This sets up a scenario where the City Attorney i.e. top lawyer may have helped the City Clerk eliminate people to run against the Mayor. After that “task” was complete when he received notice that a person---i.e. Appellant had filed as a write in, the city Attorney did not confer with the city council about election law. The City Attorney moved via a letter to stop any such situation. If that was a violation of State Law it should be addressed for the people, rather than using legal maneuvers to “sweep it under the rug”. Around 8 people picked up Petitions and only one ended up turning it in. The one who did turn in signatures was disqualified because some of the people who got the signatures were not Springfield citizens. Appellant feels that is a stretch and questions where the City Charter requires or says that?

We are not having proper election---school board and city and the media, and the circuit court and if this and or the State Supreme Court does not CORRECT the situation everyone is in Violation of State Law as written.

Even the Judge Sweeney had a half laugh and frown when Appellant Reed said that if the City does not hold proper elections, the city of Springfield is in violation of the State Constitution and does not exist as a legal entity.

**Appellant Reed was likely Prejudiced because of other actions pending against the City of Springfield**

From: <http://www.merriam-webster.com/dictionary/prejudice>

judicial Date:13th century

1: injury or damage resulting from some judgment or action of another in disregard of one's rights; *especially* : detriment to one's legal rights or claims 2 a (1): preconceived judgment or opinion (2): an adverse opinion or leaning formed without just grounds or

before sufficient knowledge b: an instance of such judgment or opinion c: an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics.....

From: <http://www.answers.com/topic/prejudice>

- a. An adverse judgment or opinion formed beforehand or without knowledge or examination of the facts.
- b. A preconceived preference or idea.
2. The act or state of holding unreasonable preconceived judgments or convictions. See synonyms at [predilection](#).
3. Irrational suspicion or hatred of a particular group, race, or religion.
4. Detriment or injury caused to a person by the preconceived, unfavorable conviction of another or others. *tr.v.*, -diced, -dic·ing, -dic·es.
  1. To cause (someone) to judge prematurely and irrationally. See synonyms at [bias](#).
  2. To affect injuriously or detrimentally by a judgment or an act.....

Appellant Reed asked the Federal Magistrate Judge to

look at this and she quickly responded that it was not proper in federal court. Since the City did not want the Reed V. Choice case to ever see the “light of day” denying him the right to run as a write in ties the two cases together.

Appellant Reed is not happy about bringing negative issues to this Appellant Court but the only way to explain is that he feels he was badgered by the City of Springfield and still is. Appellant Reed filed a Federal Civil Rights Case in 2005 concerning his arrest by Springfield Police for “handing out flyers at a Democratic Event which said Draft Claire she inspires people”. Appellant Reed feels the McCaskill case and the write in case are “connected at the hip” because the City did not want Reed running as a write-in for Mayor when the public were clamoring on talk radio and across the city about how the Mayor was out of touch during the ice storm---holding press conferences talking about how many trees the parks department lost while seniors and thousands of people had 30 and 40 degree

temperatures in their homes with no electric. The City was likely concerned if the McCaskill Lawsuit concerning Reed's arrest at the Clarion Hotel during a political Rally ever saw news it would be an embarrassment and maybe even get Reed some real votes---there are many votes, 1,500 open that were not cast for Mayor, when you add the overall votes for all City Council Candidates. The point is, it was possibly a cover up of the Federal Case--- Case No. 05-3133-CV-S-SWH.

Again Appellant Reed points out this case was filed not for Appellant Reed, but Reed felt a civic duty as someone who has spent over 15 years promoting "more Voting" especially in local elections and Reed claims to have registered over 15,000 Voters.

Plaintiff Reed points out this is a Public Issue and in effect Reed is representing 150,000 people in Springfield who either could run as write-in for Mayor or vote for running Candidates. The City says the City Charter is silent and the only way to be a candidate is to get the proper petitions signed to run, but that is not the case all across the state. Every City in the state allows write-ins as per State Law and those City Charters are also silent on write-ins because State Law supersedes local laws and Ordinances.

**Concerning Possible intimidation form the City of Springfield**

Appellant Reed received three moving violations (2 on James River Expressway by police under bridges) and Reed was going to relatives and work, and a third ticket going to feed a 89 year old lady in a nursing home. All were from November 2007 to February of this year. No warnings were offered after they called in the officers came back with tickets and Reed believes that is targeting especially when James River is 70 M.P.H. but drops in some areas to 60M.P.H..

Also Appellant Reed has settled this case for now. Appellant Reed agrees this is a different case, but when you add them all together it seems as the City may “have it in” for Reed because of his persistence in what Reed calls Democracy Matters when we have fought wars in our whole history using that freedom as justification for that action.

**The City of Springfield has a Third Case Against Reed**

UPDATE:

The school has built a big new parking lot that could take all the parents cars--- actually at 3:00pm it is half empty. The Principal Gary could send letter to parents, but looks like they want to show they won---limit Reeds Parking Also Reed' car got a hit and run (April 22, 2008) \$500 damage by someone coming around the curve and hitting Plaintiff's Reed's car on the street. On Saturday people were parked all around Reed's house right next to a fire hydrant. Reed called 911 but it took police over 3 hours to arrive (April 26, 2008).

Plaintiff Reed moved to and helped paint home and fix up yard to status many say made one of the nicest houses on Estate Avenue in Springfield, Missouri. Presently Plaintiff Reed is concerned he may face a 6 month stint in jail for the below case:

Steven Reed attended a pre-trial conference on April 2, 2008 and talked with Judge Dennis Budd, Municipal Judge and Reed pointed out that he has at least three cases going on with the city and suggested that they should maybe throw out the parking ticket situation. The Judge said I am making no sense. Reed said his main concern with the City and even the Court is that they seem to be trumping up charges --- Reed showed the Judge --- the Prosecutor tried to stop him from showing (pulled paper back), the

Amended Motion from the City which says Reed could receive up to 6 months in jail and a one thousand dollar fine. Reed agreed to pay \$25 and said rather than guilty he wanted Alford Plea. Clearly Plaintiff Reed feels he committed no crime parking in his own drive, but was concerned the City was planning to have him spend six months in jail to prove a point. Reed will look at civil actions and or denying public access to park at your own residence. Reed asked the Judge if it is fair that people park all around our house next to the curb and even in front of a fire hydrant and next to our drive---State Trooper used to call out Police because state law says you have to stay back 10 feet from a drive. The Retired State Trooper (20 years), moved to Ozark after he sold this (house), and says the City and School drove him nuts over the parking and he wants nothing to do with Springfield anymore and Judge Dennis Budd said he did not want to hear it. When asked if Reed could do a citizens arrest or if the City Police would enforce the law against others---Reed was late because he stopped by the house and had trouble parking I.E. 3:30 and the Judge said he really does not care about those issues---yet he complained Reed was late to Court. When asked about how much time and tax payer money had been spent on the case by the prosecutor, he said they are on staff anyway. Reed questions why the Court, Judge, and Prosecutor would not agree to have the city come out and take a look at resolving the situation which includes serious public safety issues?

Plaintiff Reed said if the City wants to pay for relocation out of the area --- Reed would consider it---and Judge Budd would not comment.

Plaintiff Reed will meet with the City this week about the issue at a pre-trial hearing. . A COMPLETE investigation to the Denial of PUBLIC ACCESS. The City should allow a continuance on a Parking ticket that could lead to a \$1,000 fine and six

months in jail for Steven Reed.

B. Relief of the City of Springfield and the School Corporation by placing SIGNS allowing for proper parking by home owners at 1441 S. Estate Avenue and this needs to be an EMERGENCY SITUATION since people are parking illegally in the home owners spot. The City and the School are hereby notified of State and City laws that do not allow illegal parking and every day the City does not enforce the law the City should pay a \$1,000 fine to the home owners.

B. The City and School need to close the street entrance onto Verona and Estate because of safety hazards to the kids who walk down the sidewalk. Cars are blocking and the street is not wide enough to allow SAFETY VEHICLES through including ambulances and fire trucks. Most of the home owners on the two streets are Senior citizens who statistically more apt to need emergency medical attention.

Plaintiff Reed has contacted the Police and School Police many times, but in general they ignore the whole issue about safety and parking.

**The City has Worked to Discredit Plaintiff Reed' Public Service Efforts**

The City of Springfield has worked to discredit Reed by discrediting his public service efforts. Plaintiff Reed worked on getting Rail Passenger Service through Springfield and across the State. Last year the Department of Transportation in Missouri announced they were going to work on trying to get State funding for Passenger Service and the City announced that they did not think it would help the city that much the economic lady for the city said it would be more a novelty.

Plaintiff Reed went to City Council meeting and in 2000 submitted enough signatures around 1,000 to put the possible development of a Technology Park issue on

the Springfield ballot. Again in 2006 Plaintiff Reed turned in over 1,600 the amount to put an issue on the Springfield ballot and again the City refused. The City covered up the issue by not even putting out a Press Release saying why it was turned down or even that the signatures were turned in.

### **IX. 9**

The Motion Circuit Court clearly erred in the fact that the one and a half hour hearing was not recorded by audio or stenograph. At the Circuit Court hearing those present included: The Bailiff, City Attorney, Judge Sweeney, and Appellant Steven Reed. This case should be decided in Appellant and the Peoples favor for that reason if nothing else. Specifically due process of law was thwarted by not having a permanent record of the hearing in which Appellant Reed very eloquently laid out clear legal arguments that the City should adhere to State Law as required by the State Constitution.

In that hearing: Judge Sweeney himself said that he believes write in candidates should be allowed in Springfield Elections. He said that he may rule for Reed's case or against it, but that Reed needs to understand what some do not and that is his court may not be the proper place for the decision to be made. Judge Sweeney said that Reed may end up needing to Appeal it to the State Supreme Court which he said is where such a Constitutional Issue and Elections decisions on such an issue would most likely be made. Judge Sweeney asked the Springfield Attorney if he agrees the State Supreme Court would be the proper court that would rule on such an issue concerning the responsibilities of a City according to the State Constitution and the City Attorney said he agreed that the State Supreme Court would actually be the best place for the issue at hand concerning proper elections would best be decided.

## CONCLUSION

The Appellant Court is asked to either rule or ask the State Supreme Court to rule on having a special election to make the City of Springfield whole again with Missouri law. Appellant Reed respectfully suggest that the Appeals Court Order the City to pay all the expenses of Appellant Reed in running for Mayor, all cost copies, time, phone, gas etc. and all cost associated in filing the legal case and cost, time and money, printing, gas etc.. The Ruling allowing the City of Springfield to conduct elections in any way they like constitutes a severe burden on the most fundamental of constitutional rights, Advances no compelling state interest, is unnecessary and may fall Disproportionately on the poor, elderly, women, minorities and the disabled since it is hard enough for them to get to polling places and any further restrictions on how and whom they can vote for is totally unacceptable and is totally to the contrary of State Laws and Statutes and clearly we must enforce all laws or none at all. The United States Supreme Court has always applied strict scrutiny to analyze any restriction that abridges a right to vote. In this case a City Ordinance that is in direct conflict with State Law and restricts anyone from Springfield who is a registered voter from running for City Council or Mayor would fail even under any "Reasonableness" test and is **despicable when every other city in Missouri allows write in candidates but the City of Springfield does not.**

The end result should be that all future elections ill allow write ins for School Board and City Council Races including Mayor. And finally the Attorney General and Secretary of State should be ordered to issue statements supporting these actions. As a jester of good faith the City should place the economic issue of voting on developing a technology park on the City ballot since state law passed in 2004 allows them to do that.

**CERTIFICATE OF SERVICE AND COMPLIANCE**

I hereby certify that this brief complies with the type and volume limitations of MO. SUP. CT. R. 84.06(b). It contains no more than 31,000 words of text (specifically, containing 14,683 words). It was prepared using Microsoft Word for Windows 2003. The enclosed CD-ROM also complies with MO. SUP. CT. R. 84.06(g) in that it has been scanned for viruses using Symantec AntiVirus and is virus free. The files on the CD-ROM contain the brief in Microsoft Word for Windows 2003 format.

By: \_\_\_\_\_  
Steven L. Reed  
Pro Se

**Certificate of Service**

I certify that on \_\_\_\_\_ a true copy of the above was delivered and or mailed, and or faxed to the Missouri Court of Appeals Southern District 300 Hammons Parkway, Suite 300 Springfield, Missouri 65806-2546 Fax 417-895-6817 and Attorneys for the City of Springfield listed below.

Respectfully submitted,

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### Appendix

#### Missouri Constitution.

1. MO Const. Article I Bill of Rights Section 25
2. MO Const. Article VIII Suffrage and Elections Section 2

#### Missouri Statutes

Missouri Revised Statutes Chapter 115 Election Authorities and Conduct of Elections

Section 115.453