

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

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|---------------------------------------|---|----------|
| STATE OF MISSOURI, |) | |
| GOVERNOR MICHAEL L. PARSON, |) | |
| and ATTORNEY GENERAL |) | |
| ANDREW BAILEY, in their official |) | |
| capacities |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | |
| |) | |
| ST. LOUIS COUNTY, MISSOURI |) | Case No. |
| |) | |
| and |) | |
| |) | |
| SAM PAGE, in his official capacity as |) | |
| St. Louis County executive, |) | |
| |) | |
| Respondents. |) | |
| |) | |
| Serve at: 41 South Central |) | |
| Clayton, MO 63105 |) | |

**Verified Petition for Declaratory Judgment, Injunctive
Relief, and Temporary Restraining Order**

1. The State of Missouri, Governor Michael L. Parson, and Attorney General Andrew Bailey, bring this action to ensure that St. Louis County and the County Executive defer to the Governor’s exclusive appointments authority under Article IV, § 4 of the Missouri Constitution to fill a vacancy in the office of the St. Louis County Prosecuting Attorney.

2. St. Louis County Executive Dr. Sam Page has publicly announced his intent to fill a forthcoming vacancy in the office of the St. Louis County Prosecuting Attorney.

3. County Executive Page and St. Louis County have solicited applications for that position and interviewed candidates, despite being warned by the Governor and Attorney General that the Governor will exercise his authority to appoint a prosecutor to serve until the next election.

4. The Governor and Attorney General bring this action in order to enforce the Missouri Constitution and provide certainty to the citizens of Missouri and St. Louis County that the individual who holds the office of the St. Louis County Prosecuting Attorney does so without a cloud of uncertainty.

Parties, Venue, and Jurisdiction

5. Petitioner State of Missouri is a sovereign state, and its government is responsible for the safety and welfare of all Missourians.

6. Petitioner Michael L. Parson is the Governor of the State of Missouri. Governor Parson is Missouri's chief executive officer and is obligated carry out the State's laws.

7. Petitioner Andrew Bailey is the Attorney General of the State of Missouri. Attorney General Bailey is the Missouri's chief legal officer and is obligated to represent and defend the State's legal interests.

8. Both Governor Parson and Attorney General Bailey bring this action in their official capacities.

9. Under § 27.060, RSMo, the Attorney General may institute, as here, “in the name and on behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary[.]”

10. Respondent Sam Page is the County Executive of St. Louis County, Missouri. Respondent’s official place of business is in St. Louis County, Missouri.

11. Respondent St. Louis County is a county and body corporate and public under Article VI, § 18(a) of the Missouri Constitution.

12. Respondent County operates under a charter first adopted in 1979.

13. This Court has jurisdiction because both Respondents are located in St. Louis County, Missouri.

14. This Court has the authority and power to enter a declaratory judgment under § 527.010, RSMo.

15. Venue is proper in St. Louis County, Missouri, under § 508.060, RSMo.

Facts Applicable to All Counts

16. On November 6, 2024, the St. Louis County Executive's Office announced that Respondent Page was beginning to accept applications for an anticipated vacancy in the Office of the St. Louis County Prosecuting Attorney.¹

17. Respondents, in fact, opened an application for candidates on or about November 6, 2024.

18. Wesley Bell is currently the Prosecuting Attorney for St. Louis County.

19. Missouri's unofficial election results indicate that Mr. Bell received the most votes in the race for United States Representative for Missouri's 1st Congressional District.²

20. If the official certified results confirm that Mr. Bell won that race, he will be sworn in as a member of the United States House of Representatives on January 3, 2025.

¹ See "Sam Page accepting applications to replace Wesley Bell as St. Louis County Prosecuting Attorney," KSDK.com, available at: <https://www.ksdk.com/article/news/politics/applications-to-replace-wesley-bell-st-louis-county-prosecuting-attorney-sam-page/63-caa59fc0-4ebf-43bf-a516-4218be37ea36>

² See Unofficial Election Results for the November 6, 2024 General Election, available at: <https://enr.sos.mo.gov/>.

21. At that point, there will be a vacancy in the Office of the St. Louis County Prosecuting Attorney.

22. On November 7, 2024, Petitioners sent a letter to Respondent Page concerning the vacancy. *See Exhibit A*, attached hereto and incorporated herein.

23. Petitioners informed Respondent Page that under Article IV, § 4 of the Missouri Constitution, the Governor “shall fill all vacancies in public offices, unless otherwise provided by law[.]” *Ex. A*, p.1 (citing MO. CONST. ART. IV, § 4).

24. Petitioners informed Respondent Page that Respondent County’s charter “cannot and does not displace the Governor’s authority for this position.” *Ex. A*, pp.1-2.

25. In fact, Respondent County’s charter has a provision in § 5.050 stating that “A vacancy in the office of prosecuting attorney shall be filled by the county executive subject to confirmation by the council. The person so selected shall be a member of the same political party as the previous occupant. He shall hold office until January 1 following the next general election at which a successor shall be elected for the unexpired or the full term as the case may be.”

26. Petitioners' letter provided Respondent Page with several examples of situations where courts have resolved conflicts between a county's charter and the Missouri Constitution in favor of state law. *Ex. A*, p.2.

27. Petitioners' letter also informed Respondent Page about § 105.050, RSMo, which also states that the Missouri Governor shall fill vacancies in the office of a prosecuting attorney.

28. That statute provides, in part, that "If any vacancy shall happen from any cause in the office of the . . . prosecuting attorney . . . the governor, upon being satisfied that such vacancy exists, shall appoint some competent person to fill the same until the next regular election for attorney general, prosecuting attorney or assistant prosecuting attorney, as the case may be[.]"

29. Petitioners asked Respondent Page to respond no later than 5:00 p.m. on November 12, 2024 "and confirm that you will not usurp the Governor's exclusive appointments power." *Ex. A*, p.3.

30. Respondent Page replied to Petitioners before that date and time in a letter that disagreed with Petitioners. *See Ex. B*, attached hereto.

31. Respondents disagree that the Governor has the power to fill this under Article IV, § 4 of the Missouri Constitution.

32. Respondents Page and St. Louis County accepted applications for this vacancy through approximately November 15, 2024.

33. Respondents intend to appoint an individual to fill the anticipated vacancy if and when Mr. Bell is sworn in as a United States Representative on January 3, 2025.

34. Respondents have taken steps to do so, including announcing that Respondent Page is receiving applications, reviewing applications, interviewing candidates, and replying to Petitioners stating that they disagree the Governor has the authority to fill this vacancy.

35. Governor Parson has also announced that the Governor's Office will accept applications to fill this vacancy. Interested candidates were able to apply at boards.mo.gov.³

36. There is now a real and existing controversy between the parties to this case concerning which public official has the authority to fill vacancies in the office of a county prosecuting attorney, and especially in the Office of the St. Louis County Prosecuting Attorney, and the validity and scope of § 5.050 of Respondent County's charter.

37. Citizens of Missouri deserve certainty in resolving this dispute before January 3, 2025.

³ See "Governor Parson Opens Applications for St. Louis County Prosecuting Attorney Appointment," available at: <https://governor.mo.gov/press-releases/archive/governor-parson-opens-applications-st-louis-county-prosecuting-attorney>.

38. The Supreme Court of Missouri recently held, “the constitution is clear, the Governor may fill all vacancies in public offices unless the law provides an alternative method.” *Cope v. Parson*, 570 S.W.3d 579, 585 (Mo. banc 2019).

39. “When a conflict [between state law and a county charter] occurs, the resolution thereof, as a general principle, depends on whether the functions are ‘private, local corporate functions’ or ‘governmental.’” *State ex rel. St. Louis County v. Campbell*, 498 S.W.2d 833, 836 (Mo. App. 1973) (citing *Grant v. Kansas City*, 431 S.W.2d 89, 92 (Mo. banc 1968)).

40. Section 5.050 of Respondent County’s charter concerns a governmental function.

41. The duties of a prosecuting attorney, including the St. Louis County Prosecuting Attorney, are police powers.

42. Appointing a prosecuting attorney is an exercise of a police power.

43. Appointing a prosecuting attorney advances the administration of justice.

44. Appointing a prosecuting attorney promotes the safety and protection of citizens.

45. Section 56.010, RSMo, provides that “there shall be elected in each county of this state a prosecuting attorney, who shall be a person learned in the law, duly licensed to practice as an attorney at law in this state, and

enrolled as such, at least twenty-one years of age, and who has been a bona fide resident of the county in which he seeks election for twelve months next preceding the date of the general election at which he is a candidate for such office and shall hold his office for four years, and until his successor is elected, commissioned and qualified.”

46. The Missouri General Assembly has authority to pass legislation applicable to all counties, including counties with a charter form of government, that describes the process for filling vacancies in the office of a prosecuting attorney.

47. Section 56.010 is a general law pertaining to the organization of counties, police powers, state policy, public safety, and the administration of justice.

48. Prosecuting attorneys, including the St. Louis County Prosecuting Attorney, receive support and assistance from the State of Missouri, including through the Missouri Office of Prosecution Services.

49. One prosecuting attorney’s decision to charge or not charge a suspect can have implications outside of the prosecuting attorney’s principal jurisdiction.

50. Many crimes, including in St. Louis County, have consequences beyond the boundaries of a local governmental entity where any element of a crime occurred.

51. Those consequences include impacts on victims and victims' families, resources of law enforcement agencies in multiple jurisdictions, and regional public safety.

52. On March 29, 1966, the Attorney General's Office through Attorney General Anderson, issued an opinion stating that Article VI, § 18(e) of the Missouri Constitution granting counties with a charter form of government certain powers "cannot be construed to deny to the legislature the power to direct a charter county to have a full time prosecuting attorney to enforce the criminal and other laws of the state." *See Att'y. Gen. Op. 234-66.* It concluded by stating that "the legislature has the power to determine that the needs of an urban population are so urgent that it may require the prosecuting attorney to devote his full and entire energy to the prosecution of persons accused of violation of the criminal laws." *Id.*

53. As the opinion stated, "the almost exclusive function of a Prosecuting Attorney is to prosecute and enforce the criminal laws enacted by the legislature. This is an exercise of the sovereign power of the state delegated by the legislature to the respective prosecuting attorneys of the state." *Id.*

54. The St. Louis County Prosecuting Attorney's predominate function is to prosecute and enforce the criminal laws enacted by the Missouri legislature.

55. The St. Louis County Prosecuting Attorney exercises the sovereign power of the State of Missouri as delegated by the legislature.

56. Under Respondent County's own charter, "[t]he prosecuting attorney shall possess and exercise all the powers and duties now or hereafter given to that office by the constitution, by law and ordinance." St. Louis Co. Charter § 5.060. That includes the power to receive an appointment by the Missouri Governor under the Constitution.

57. Provisions in Article VI of the Missouri Constitution authorizing charter forms of county government do not divest a state official from exercising a power lawfully possessed, including the Governor's powers under Article IV, § 4 of the Constitution.

58. Respondent County is prohibited by the Constitution from divesting the Governor from a power he lawfully possesses under another constitutional provision, namely Article IV, § 4.

59. Respondent Page is prohibited by the Constitution from implementing a power that the Governor exclusively possesses under another constitutional provision, namely Article IV, § 4.

60. To the extent there is a conflict between Article IV, § 4 of the Missouri Constitution and Missouri's statutes, including § 105.050, RSMo, on the one hand, and § 5.050 of Respondent County's charter on the other hand, the conflict can and should be resolved in favor of the Governor once the

Governor announces his intent to fill a vacancy and takes steps to fill the vacancy.

61. Even if Respondent County may have a provision in its charter vesting the county executive and/or county council with authority to fill this vacancy under Article VI, § 18(b) of the Constitution, such a provision in the County charter gives way to the Governor's discretion to fill the vacancy in the first instance.

Count I – Declaratory Judgment

62. Petitioners incorporate and re-allege all paragraphs above as though more fully set forth herein.

63. The Missouri Governor has the power to fill a vacancy, including the anticipated vacancy described above, in the office of the St. Louis County Prosecuting Attorney under Article IV, § 4 of the Missouri Constitution and § 105.050, RSMo

64. Respondents do not have that power under those legal provisions.

65. Petitioners have no other adequate remedy at law other than this suit.

66. This matter is ripe for judicial determination.

67. This Court should declare that the Missouri Governor has the power to fill a vacancy in the office of the St. Louis County Prosecuting Attorney.

68. This Court should declare that Respondents have no authority to do so after the Governor announced his intent and took steps to fill that vacancy.

Count II – Violations of Article IV, § 4 of the Missouri Constitution and § 105.050, RSMo.

69. Petitioners incorporate and re-allege all paragraphs above as though more fully set forth herein.

70. The Missouri Governor has the power to fill a vacancy, including the anticipated vacancy described above, in the office of the St. Louis County Prosecuting Attorney under Article IV, § 4 of the Missouri Constitution and § 105.050, RSMo.

71. Respondents do not have that power under those legal provisions.

72. Respondents are violating Article IV, § 4 of the Missouri Constitution and § 105.050, RSMo by taking steps to fill a vacancy in the office of the St. Louis County Prosecuting Attorney.

73. Petitioners will be irreparably harmed if Respondents fill the vacancy in the office of the St. Louis County Prosecuting Attorney.

74. The public interest will be promoted if the Governor exercises his appointments power under Article IV, § 4 of the Missouri Constitution and § 105.050, RSMo.

75. The public interest will be harmed if Respondents move forward with filling the vacancy in the office of the St. Louis County Prosecuting Attorney.

Requests for Relief

WHEREFORE, Petitioners respectfully request this Court:

- A. Enter a judgment declaring that the Missouri Governor has the power to fill a vacancy in the office of the St. Louis County Prosecuting Attorney that supersedes a provision in St. Louis County's charter granting the county executive and county council that authority;
- B. Enter a judgment declaring that Respondents have no authority to fill that vacancy after the Governor announced his intent and took steps to fill that vacancy;
- C. Issue a temporary restraining order prohibiting Respondents from taking any further steps to fill the anticipated vacancy in the office of the St. Louis County Prosecuting Attorney;
- D. Preliminarily enjoin Respondents from taking any further steps to fill the anticipated vacancy in the office of the St. Louis County Prosecuting Attorney;
- E. Permanently enjoin Respondents from filling the anticipated vacancy in the office of the St. Louis County Prosecuting Attorney; and

F. To grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,


ANDREW BAILEY
Missouri Attorney General

/s/ Andrew Crane
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Attorneys for Petitioners

VERIFICATION

I, Andrew Crane, after first being duly sworn upon my oath, state that I have read the foregoing Petition and that I am familiar with the information it contains therein, and that the matters set forth therein are true and correct to the best of my knowledge, information, and belief.

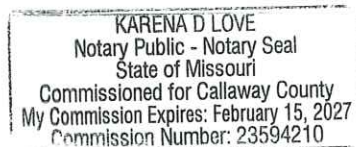


Andrew Crane
Missouri Attorney General's Office on behalf the State of Missouri

Subscribed and sworn before me, a Notary Public in and for the State of Missouri, this 27th day of November, 2024.



Notary Public



My commission expires: February 15th 2027