

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Susan E. Bindler
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

October 14, 2025

Andrew D. Wheaton
CITY COUNSELOR'S OFFICE
314 City Hall
1200 Market Street
Saint Louis, MO 63103-0000

RE: 25-8011 Don Clark, et al v. City of St. Louis, Missouri

Dear Counsel:

A petition for permission to appeal has been filed under the caption and miscellaneous case number shown above.

Counsel for the respondent is directed to file a response to this application within 10 days from service of the petition.

Upon receipt of the response, the matter will be submitted to the court for a ruling. All counsel will be advised of the court's decision. No briefing schedule will be established unless the court grants the petition.

The Clerk of the United States District Court is being notified of the filing of the petition. If the petition is granted, petitioner must pay the district court all required fees. Please refer to Federal Rule of Appellate Procedure 5 and the applicable statutory sections for further guidance and information.

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Susan E. Bindler
Clerk of Court

CMH

Enclosure(s)

cc: Lucas Chapman
Clerk, U.S. District Court, Eastern District of Missouri
Maureen Hanlon

District Court/Agency Case Number(s): 4:21-cv-00788-JMD

Caption For Case Number: 25-8011

Don R. Clark; Adonis H. Clark; Sherrie Clark-Torrence; Ashley Boureima Mourou; A.C., a minor, by and through her mother and next friend, Necole Fisher individually and as the surviving children of Decedent, Don Clark, Sr.

Respondents

v.

City of St. Louis, Missouri

Petitioner

Nicholas Manasco, in his individual capacity; Thomas Strode, in his individual capacity

Addresses For Case Participants: 25-8011

Andrew D. Wheaton
CITY COUNSELOR'S OFFICE
314 City Hall
1200 Market Street
Saint Louis, MO 63103-0000

Lucas Chapman
ATTORNEY GENERAL'S OFFICE
221 W. High Street
P.O. Box 899
Jefferson City, MO 65102

Clerk, U.S. District Court, Eastern District of Missouri
U.S. DISTRICT COURT
Eastern District of Missouri
111 S. Tenth Street
Saint Louis, MO 63102-0000

Maureen Hanlon
ARCH CITY DEFENDERS
Suite 390
440 N. Fourth Street
Saint Louis, MO 63102

FILED

OCT 10 2025

U.S. Court of Appeals
Eighth Circuit

In the
UNITED STATES COURT OF APPEALS
for the EIGHTH CIRCUIT

**DON RAY CLARK, JR., et al.,
Plaintiffs/Appellees,**

v.

**CITY OF ST. LOUIS, MISSOURI, et al,
Defendants/Appellant.**

On Petition to Appeal from the United States District Court
Eastern District of Missouri, Eastern Division
The Honorable Joshua Divine, District Judge

**DEFENDANT CITY OF ST. LOUIS'S
PETITION FOR PERMISSION TO APPEAL
ORDER DENYING MOTION TO SUBSTITUTE PARTIES
IN E.D.MO. NO. 4:21-CV-00788-JMD**

MICHAEL GARVIN
CITY COUNSELOR
Andrew Wheaton 65269MO
Deputy City Counselor
1200 Market St.
City Hall, Rm 314
St. Louis, MO 63103
314-622-3361/FAX 622-4956

RECEIVED

OCT 10 2025

U.S. COURT OF APPEALS
EIGHTH CIRCUIT

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INTRODUCTION

On September 30, 2025, the United States District Court for the Eastern District of Missouri denied the State-controlled St. Louis Board of Police Commissioners’ (collectively “the Board”) Motion to Substitute itself for the City of St. Louis (“City”) following the recent State takeover of City’s police department in this pending civil rights action. In its Motion to Substitute, the Board agreed with City that all of City’s liabilities transferred pursuant to newly enacted RSMo. § 84.325.3 – presumably because that result is mandated by controlling Missouri law. (Ex. C, Board’s Brief in Support, Doc. 205, at 3-4.) In denying the Board’s Motion to Substitute and ordering a result that no party advocated for, the district court failed to consider controlling state court precedent which impels the conclusion that all City’s obligations, responsibilities, and liabilities related to its operation of SLMPD transferred to the State of Missouri—just as all of the Board’s liabilities transferred to City following local control in 2013. *See, e.g., Holmes v. Zeller*, No. ED 112676, 2025 WL 2110585, n. 1 (Mo. Ct. App. July 29, 2025) (holding that, pursuant to substantively identical statutory language accompanying local control in 2013, “the Board transferred ***all*** of its obligations, responsibilities, and liabilities to City as the Board’s successor in interest”) (emphasis added); see also *State ex rel. Hawley v. City of St. Louis*, 531 S.W.3d 602 (Mo. Ct. App. 2017); *Banks v. Slay*, 875 F.3d 876 (8th Cir. 2017). The district court then compounded its error by misstating federal

law concerning both *Monell* liability and Eleventh Amendment immunity and relied on these misstatements and misconceptions among others, in denying the Board's motion.

In its order, the court determined that Mo. Rev. Stat. § 84.325.3 only transferred from City to the Board unidentified “contractual liabilities, utilities obligations, and the like,” if it transferred any interest at all, despite the statute stating that “[u]pon the assumption of control [of the St. Louis Metropolitan Police Department (“SLMPD”) by the Board], the state shall accept responsibility, ownership, and liability as successor-in-interest for contractual obligations and other lawful obligations of the municipal police department.” In putative support of its decision, the district court conducted a legally-deficient statutory analysis, in which it improperly construed the language of various sections of the statute, incorrectly distinguished between liabilities it determined were “of the municipal police department” versus those “of the city,” and ultimately determined that because *Monell* liabilities “arise[] from actions done *by* the City often *to* a police department,” they would not transfer under § 84.325.3. Then, despite controlling federal precedent mandating that the Board is not entitled to Eleventh Amendment immunity, the Court held that “[b]ecause the Board members may be able to assert a[n] [Eleventh Amendment immunity] defense not available to the City, they are not in an ‘identical position’ to the City” such that substitution would be inappropriate.

The lower court's errant statutory analysis is inconsistent with how SLMPD was organized under City, ignores controlling case law related to the operative transfer language, and contravenes Eighth Circuit and United States Supreme Court precedent concerning *Monell* liability and Eleventh Amendment sovereign immunity. Despite the district court's acknowledgment that § 84.325 would have no meaning if the phrase "municipal police department" was interpreted literally (as SLMPD, a division within City of St. Louis Department of Public Safety which held title to no assets or indebtedness, had no liabilities, and had no employees independent of City), the court still forced an exceedingly narrow interpretation "of the municipal police department" which ultimately treats the department as a quasi-separate legal entity, one which is one-and-the-same as City when it comes to transferring real property and assets, but separate and apart from City when it comes to accountability for alleged misconduct related to the operation of the department.

Furthermore, the court's conclusions concerning the Board's entitlement to Eleventh Amendment sovereign immunity and the source of *Monell* liabilities were unnecessary and inconsistent with Eighth Circuit and United States Supreme Court precedent. For decades, federal courts have held that the members of the St. Louis Board of Police Commissioners are not entitled to sovereign immunity for *Monell* claims. See *Auer v. Robbins*, 519 U.S. 452, 456 n.1 (1997); *Thomas v. St. Louis Bd. of Police Com'rs*, 447 F.3d 1082, 1085-86 (8th Cir. 2006). In *Thomas*, the Eighth

Circuit expressly stated that “[w]hile [Missouri Supreme Court case law] and . . . ensuing Missouri legislation may have undermined the status of *Auer*, the question is not free from doubt, and in any event, it is for the Supreme Court, not this Court, to overrule Supreme Court precedent.” *Thomas*, 447 F.3d at 1085-86. Despite this clear mandate, the district court erred insofar as it determined and considered for the purposes of denying the Board’s motion to substitute, that the Board members might be entitled to sovereign immunity.

This abuse of discretion, if allowed to stand, will affect dozens of ongoing lawsuits against City related to its operation of SLMPD, and even more that have not been filed – potentially costing City millions of dollars in expenses and improper judgments. Moreover, this Court’s intervention is critically necessary to provide clarity in light of inconsistent results that have already been reached on identical motions to substitute in both state and federal court (see, e.g., *Bufford, et al v. City of St. Louis, et al*, 4:22-cv-01319, Doc. 119 (granting Board’s Motion to Substitute itself for City of St. Louis)), or at least to vacate the District Court’s Order until this important issue of substantive state law may be finally decided by Missouri state courts in accordance with the principles of federalism as set forth herein. While City recognizes the extraordinary nature of interlocutory review pursuant to Fed. R. App. P. 5, it submits that the district court’s manifestly erroneous interpretation of state statutes affecting the rights and responsibilities of the City of St. Louis, the Board,

and the State of Missouri—parties who, prior to the court’s order, were in agreement that § 84.325.3 transferred City’s *Monell* liabilities to either the State or the Board—warrants immediate interlocutory review.

QUESTION PRESENTED

I. Whether the district court abused its discretion in its order denying the Board of Police Commissioners' Motion to Substitute when it: (1) failed to consider controlling state and federal law impelling the conclusion that Mo. Rev. Stat. § 84.325.3 transfers all responsibilities, obligations, and liabilities of the City of St. Louis, as related to its operation of the St. Louis Metropolitan Police Department, to the State of Missouri as the City's successor-in-interest; and (2) improperly considered and erroneously interpreted controlling Eighth Circuit Court of Appeals and United States Supreme Court precedent concerning *Monell* liability and Eleventh Amendment sovereign immunity.

REASONS FOR GRANTING PERMISSION TO APPEAL

Consistent with the district court's certification, an interlocutory appeal is necessary in this case, as the court's order has serious implications affecting the rights of all parties in approximately 70 pending state and federal lawsuits. The district court's order adopts an interpretation of Mo. Rev. Stat. § 84.325 which, if permitted to stand, is unmoored from and contravenes controlling state and federal law which adjudicated prior disputes over the rights and responsibilities of City, the Board, and the State following the assumption of local control over the SLMPD by City in 2013 and uniformly stuck City with the Board's liability as its successor in interest, *see Holmes v. Zeller*, No. ED 112676, 2025 WL 2110585 (Mo. Ct. App. July 29, 2025); *State ex rel. Hawley v. City of St. Louis*, 531 S.W.3d 602 (Mo. Ct. App. 2017). Now the shoe is on the other foot, but the district court's failure to consider or analyze this controlling precedent resulted in a radical departure from what should have been the result under controlling law: the State has now assumed all of City's obligations, responsibilities, and liabilities under State control just as City assumed them in 2013 under local control. Unless this Court intervenes – at least to vacate the underlying order pending resolution of this substantive state law issue in Missouri state court – mass confusion is sure to follow that will prejudice all parties in dozens of pending lawsuits and likely produce inconsistent results which cannot later be undone.

Recognizing the wide-ranging effects of his order, the district court expressly acknowledged that the underlying “order satisfies the requirements for an interlocutory appeal” under § 1292(b). (Ex. A, District Court Order, at 10.) As such, because the district judge made the requisite certification, and because the issues at the core to this appeal are likely to have widespread and long-lasting effects on multiple lawsuits and on the financial and legal relationship between City, the Board, and the State, City respectfully requests that this Court grant its Petition for Permission to Appeal, and ultimately vacate the district court’s order denying the Board’s Motion to Substitute.

I. Permission to Appeal Should be Granted because the District Court Abused its Discretion by Failing to Consider Controlling State Law and Improperly Considering and Erroneously Interpreting Federal Law.

The district court abused its discretion and erred as a matter of law when it denied the Board’s motion to substitute. “A district court abuses its discretion ‘when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when the court, in weighing all proper factors, commits a clear error of judgment.’” *Shipp v. Murphy*, 9 F.4th 694, 700-01 (8th Cir. 2021) (quoting *Kozlov v. Associated Wholesale Grocers, Inc.*, 818 F.3d 380, 393 (8th Cir. 2016)). Here, the district court failed to consider controlling Missouri law interpreting substantively similar language as that found in section 84.325.3, despite the

existence of multiple Missouri appellate decisions impelling the complete transfer of City's responsibilities, obligations, and liabilities. Additionally, the district court improperly considered and supported its decision by suggesting that Board might be able to successfully raise an Eleventh Amendment sovereign immunity defense, despite case law from this Court and the United States Supreme Court expressly stating otherwise. Taken together, along with the court's factual misstatements made on a record devoid of evidence, the district court failed to correctly weigh all proper factors and issued an erroneous order that this Court should vacate.

A. The district court failed to consider controlling state court precedent impelling the conclusion that *all* responsibilities, obligations, and liabilities of the City of St. Louis, related to its operation of SLMPD, transferred under § 84.325.3.

The district court's erroneous interpretation of section 84.325.3 is inconsistent with previous interpretations of nearly identical language transferring Board liabilities to City under local control and fundamental precepts of statutory construction necessary to give the statute meaning. These issues primarily arise from the court's blinkered interpretation of the phrases "contractual obligations and other lawful obligations" and "of the municipal police department." Each will be discussed in turn.

When discussing what obligations and liabilities transfer under section 84.325.3, the district court stated that the express mention of "contractual obligations" necessarily narrowed the scope of the following "other lawful

obligations,” as “[w]hen a specific provision (like ‘contractual’) is paired with a more general provision (like ‘other’), the specific term ‘limit[s] a general term to a subset of all the things or actions that it [could] cover[.]’” (Ex. A, at 5.) The court thought that its conclusion was further supported by the asset transfer contemplated in section 84.325.2, stating that “[s]ubsections 2 and 3, working together, contemplate transfer of contracts, debts, real property, and the like.” (*Id.*) What the district court failed to acknowledge, discuss, or contemplate, however, is that substantively identical statutory language was used to transfer the Board’s liabilities to City at the time of the adoption of local control with a contrary outcome.

On November 6, 2012, a majority of the votes in the State of Missouri approved Proposition A, which enabled City to establish a locally controlled, municipal police division in place of the existing, state-controlled Board. The statute enabling local control, Mo. Rev. Stat. § 84.344 (2012), required that City “adopt an ordinance accepting responsibility, ownership, and liability as successor-in-interest for contractual obligations, indebtedness, and other lawful obligations of the board of police commissioners.” Accordingly, the City Board of Aldermen adopted Ordinance No. 69489, whereby City accepted “responsibility, ownership, and liability as successor-in-interest for contractual obligations, indebtedness, and other lawful obligations of [the Board] of the Police Department.” St. Louis Mo.,

Ordinance 69489. The City also enacted Ordinance No. 69638, which finalized the transfer of real property from the Board to City.

In interpreting that transfer, which used language that is substantively identical to section 84.325.3, Missouri courts concluded that the language meant that City accepted **all** the liabilities of the Board as its successor-in-interest. For example, in *Holmes v. Zeller*, the Missouri Court of Appeals for the Eastern District was asked whether “the Board’s obligation to indemnify . . . former officers [was] binding on City.” *Holmes*, 2025 WL 2110585 at *2. The court concluded that “[a]pplication of the principles of non-contractual indemnity [under Special Order 3-05] . . . and to the Board’s consistent interpretation over time of its indemnity obligations to police officers who get sued for conduct occurring on the job compel us to conclude that City, **as the Board’s successor**, agreed as a matter of undisputed fact to indemnify [the former officers] and to pay [the judgment against them].” *Id.* at *4 (emphasis added). Additionally, the court held that “pursuant to 84.344.2 [and Ordinance 69489], City took full control of the SLMPD **and the Board transferred all of its obligations, responsibilities, and liabilities to the City as the Board’s successor-in-interest.**” *Id.* at *2 n.1 (emphasis added).

The same can be seen in other cases where City was required to pay judgments against the Board as its successor-in-interest for judgements outside the scope of the unidentified contractual liabilities contemplated by the district court’s order. *See*,

e.g., Banks v. Slay, 875 F.3d 876 (8th Cir. 2017) (concluding that City, as the Board’s successor-in-interest, was responsible for default judgment taken against Board in a case arising under 42 U.S.C. §1983).

In addition to the court’s lack of reference to controlling state law, the court’s statutory analysis was also errant. In its statutory analysis, the court improperly narrowed the scope of the transfer through its errant interpretation of the phrase “of the municipal police department,” despite the fact that other references to the “municipal police department” in § 84.325.3 necessarily refer to City as related to its operation and control of SLMPD.

In its briefing, despite the court’s statement otherwise, City’s argument stated that the phrase “municipal police department,” as used in §§ 84.325.2, 84.325.3, and 84.325.4, must refer to City, as related to its operation and control of SLMPD, as the sections lose meaning if “municipal police department” refers to anything other than City’s liabilities, responsibilities, property, and employees, and identical phrases in statutes should be read *in pari materia* and given consistent meaning throughout. *See Holmes v. Steelman*, 624 S.W.3d 144, 149 (Mo. 2021) (citing *Cosby v. Treasurer of State*, 579 S.W.3d 202, 206 (Mo. banc 2019)).

It is undisputed, as the district court acknowledged, that following the adoption of local control of SLMPD by City in 2013, SLMPD existed as a division of City’s Department of Public Safety from 2013 to 2025, and was therefore merely

an administrative arm of City and lacked a legal identity apart from City. *See Jordan v. Kansas City*, 929 S.W.2d 882 (Mo. Ct. App. 1996) (affirming dismissal of claim against city department and holding that a city department is “an administrative arm of the City which lacks a legal identity apart from the City”) (*citing State of Mo. ex rel. Gore v. Wochner*, 475 F.Supp. 274, 280 (E.D. Mo. 1979) (concluding that plaintiff failed to state a claim against the St. Louis Department of Personnel, as the Department lacked legal identity apart from City “and as such is not a suable entity”)). As such, consistent with its status as a mere administrative arm of City, SLMPD had no authority to enter contracts or incur contractual obligations,¹ owned no assets and incurred no debts, employed no employees, and had no obligations or liabilities independent of City itself.

This legal and factual reality is in significant tension with the court’s reading of § 84.325, which renders a majority of the statute meaningless barring necessary

¹ During the period of local control, SLMPD was required to follow the City’s processes and procedures in contracting with third-party entities, which mandated that all City contracts be in the City’s name, be approved by the Comptroller’s Office, and be attested to by the City Register. St. Louis City Charter, Article XXV Section 9. *See Newcomb v. Brennan*, 588 F.2d 825, 829 (8th Cir. 1977) (holding that matters of public record such as state statutes, city charter, and city ordinances are proper subjects for judicial notice). The City was responsible for the payment of any enforceable contract associated with SLMPD and, subject to any applicable legal defense, any judgment arising out of a breach of contract claim brought in relation to such contract. Similarly, the City was responsible for all other lawful obligations arising from SLMPD, including, but not limited to, judgments against the City related to police conduct, subject to any applicable affirmative defenses.

reference to City's liabilities, property, and employees. For example, Section 84.325.2 states that "[u]pon the assumption of control by [the Board] . . . any municipal police department within any city not within a county shall convey, assign, and otherwise transfer to the board title and ownership of all indebtedness and assets." Again, to be clear, SLMPD as an administrative arm of City lacking a legal identity, has no legal ability to convey, assign, or transfer **any** property to the Board. St. Louis Mo., Ordinance No. 69638 (finalizing transfer of Board real property and assets **to City**, not SLMPD). Similarly, § 84.325.4 states that "[the Board] shall initially employ, without a reduction in rank, salary, or benefits, all commissioned and civilian personnel of the municipal police department who were employed by the municipal police department immediately prior to the date the board assumed control." Again, as a division within City's Department of Public Safety, there were no employees "employed by the municipal police department," all referenced employees were solely City employees. Given these glaring issues with the "plain meaning" of the statute, as well as the need to give undefined phrases a consistent meaning within a statute, "municipal police department" in the context of § 84.325 can only refer to City, as related to its operation and control of SLMPD.

Under City's interpretation, which the Board adopted in bringing its Motion to Substitute, City would be required to transfer assets and indebtedness related to and used for its operation of SLMPD to the Board, the Board would be required to

continue to employ City employees who worked under SLMPD, and the State would accept responsibility, ownership, and liability as successor-in-interest for the obligations of City which exist because of City's prior operation of SLMPD. This interpretation is not only internally consistent throughout the section, but also consistent with the statutory framework accompanying local control which the General Assembly was attempting to replicate.

Had the district court properly considered controlling state law, it would have concluded, just as Missouri courts did in addressing substantively identical language, that City's responsibilities, obligations, and liabilities which exist because of City's prior operation of SLMPD transferred under § 84.325.3. As such, in failing to consider that law, the district court abused its discretion.

B. The district court also improperly considered and misstated controlling Eighth Circuit and Supreme Court precedent concerning *Monell* liability and Eleventh Amendment sovereign immunity.

While the district court's analysis should have ended with controlling state court precedent, the district court erroneously considered, and severely misstated, binding federal precedent concerning *Monell* liability and Eleventh Amendment sovereign immunity in support of its holding that § 84.325.3 transferred only a narrow slice of City's responsibilities, obligations, and liabilities related to its operation of SLMPD. This improper analysis, which the district court should not have conducted in the first place, was also an abuse of discretion.

The district court’s discussion of *Monell* liabilities and where those liabilities originate misstates substantive law. The district court stated that “[l]iability under *Monell* stems not from the actions of a police department (at least not directly), but instead from the actions of a municipality with final authority *over* that department.” (Ex. A, at 6.) Setting aside the impropriety of distinguishing between the police department and City such that the department is treated as a quasi-separate legal entity (which it unequivocally was not), *Monell* liability arising from the operation of municipal police department originates from the allegedly unconstitutional actions of individual police officers. Without an underlying unconstitutional act conducted by an officer, *Monell* liability cannot exist. *See Malone v. Hinman*, 847 F.3d 949 (8th Cir. 2017) (concluding that, where officer did not violate the plaintiff’s constitutional rights, there could be no 42 U.S.C. § 1983 or *Monell* liability on the part of the police chief or municipality) *citing Sanders v. City of Minneapolis, Minn.*, 474 F.3d 523, 527 (8th Cir. 2007). Additionally, the district court’s order improperly considers only so-called “official policy” claims – the least common mode of *Monell* liability that still involves official police department policies, presumably to support its position that liability “arises from actions done *by* the City often *to* a police department.”

This ignores, however, claims brought against a municipality under § 1983 which based on the existence of “an unofficial custom,” *see Monell v. Dep’t of Soc.*

Servs., 436 U.S. 658, 691 (1978), or “a deliberately indifferent failure to train or supervise,” *see City of Canton, Ohio v. Harris*, 489 U.S. 378, 389 (1989). To the extent that an unofficial custom claim, for example, is first and foremost predicated on “the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity’s employees,” it could be said that, under the district court’s erroneous interpretation of “of the municipal police department,” the liability originates from the department itself, not City. *Snider v. City of Cape Girardeau*, 752 F.3d 1149, 1160 (8th Cir. 2014).

Because any *Monell* liabilities belonged to City before they were transferred underscores that the district court did not need to engage in its tortured analysis regarding the origin of *Monell* liability and this Court need not do so either in the event this Petition to Appeal is granted. This is so because it is enough to say that, under a common-sense reading of § 84.325.3, any *Monell* liability that belonged to City because of City’s prior operation of the SLMPD transferred to the State of Missouri, just as the Board’s *Monell* liabilities transferred to City following local control.

Ultimately, the district court’s statutory interpretation of § 84.325.3 is facially unreasonable. There is no reason to believe that the Missouri General Assembly, in utilizing substantively identical transfer language that was previously used to transfer all of the Board’s liabilities to City intended to effectuate a severely limited

transfer (or no transfer at all) of phantom contractual obligations “and the like” which the district court utterly failed to identify. At bottom, considering the ample amount of previous case law and history surrounding the transfer language at issue, the district court’s lack of consideration constitutes an abuse of discretion warranting interlocutory intervention by this Court.

Additionally, the district court’s consideration of the Board members’ potential entitlement to Eleventh Amendment immunity for *Monell* claims was wholly improper, as this Court and the United States Supreme Court have expressly and unequivocally determined that the members of the Board are not entitled to such protections – at least unless or until the Supreme Court of the United States reverses itself and decides otherwise. In 1997, the United States Supreme Court concluded that the former St. Louis Board of Police Commissioners did not share the immunity of the State of Missouri under the Eleventh Amendment, as “[w]hile the Governor appoints four of the board’s five members, Mo. Rev. Stat. § 84.030 (1994), [the City] is responsible for the board’s financial liabilities, § 84.210, and the [B]oard is not subject to the State’s direction of control in any other respect,” and thus was “not an ‘arm of the State’ for Eleventh Amendment purposes.” *Auer*, 519 U.S. at 456 n.1 (citing *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 47-51 (1994); *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 401-02 (1979)).

In 2006, this Court held the same in *Thomas v. St. Louis Bd. of Police Com'rs*, concluding that, despite “recent developments in Missouri law that appear[ed] to have eroded that the Eleventh Amendment analyses in *Auer*,” the Board still did not enjoy Eleventh Amendment sovereign immunity in federal court, as “while [*Smith v. State*, 152 S.W.3d 275 (Mo. banc 2005)] and . . . ensuing Missouri legislation may have undermined the status of *Auer*, the question is not free from doubt, and in any event it is for the Supreme Court, not this Court, to overrule Supreme Court precedent.” *Thomas*, 447 F.3d 1082, 1085-86 (8th Cir. 2006). Despite the clear statement from this Court concerning the reevaluation of *Auer*, the district court took it upon itself to reopen an issue that had been closed for nearly three decades and did so in apparent opposition to years of binding case law holding that the Board was not entitled to such immunity. That the district court did so further supports City’s position that it abused its discretion.

But in any event, and setting aside for the moment the district court’s foray into Eleventh Amendment jurisprudence, it remains that whether or not the United States Supreme Court might someday reverse itself and decide that the Board enjoys Eleventh Amendment immunity should not have had any bearing on the issue before the district court. Either all of City’s responsibilities, obligations, and liabilities transferred or they did not, and the district court utterly failed to consider controlling state law impelling the conclusion that they did. Instead, the district court

manufactured an unworkable test that is antithetical to the statute’s purpose: “to ensure the continuity of operations of the municipal police force with minimized disruptions to the residents of [St. Louis], to provide for an orderly and appropriate transition in the governance of the police force, and to provide for an equitable employment transition for commissioned and civilian personnel.” Mo. Rev. Stat. § 84.325.1.

Prior to the district court’s order, the City and State were in agreement that, whether it was to the Board or to the State as successor-in-interest,² ***all the liabilities of the City related to its operation of SLMPD, including its Monell liabilities, certainly transferred, necessitating substitution.***

The State’s position, however, seems to have changed after the issuance of the district court’s order. *See, e.g., Del-Rio Swink v. Thomas Love, et al*, 4:25-cv-00569-ZMB, Doc. 34 (Board’s Motion to Withdraw its Motion to Substitute, filed on October 1, 2025) & Docket Text Order 37 (district court’s recognition of the State’s inconsistent positions regarding substitution). This inconsistency seriously calls into question the legal basis for SLMPD transfer to state control. Prior to this point, City, Board, and State all agreed that the statutory language at issue should be

² The City intends to file a declaratory judgment action in Missouri state court asking the state courts to determine whether the City’s liabilities, which arose from its operation of SLMPD, transferred to the State or the Board under section 84.325.3. Given the importance of these issues, the City believes that it is imperative that *state courts*, not federal, make the ultimate decision concerning what the section means.

interpreted in a manner which prioritizes an effective transfer. If the Board and State's position is that section 84.325.3 should be read in manner that seriously prejudices City (and, as described above, calls into question the effectiveness of the remainder of the transfer statute), the result will not only materially impact dozens of ongoing lawsuit but also call into question the legal validity of City's transfer of employees and property to the Board.

For all these reasons, the district Court abused its discretion. Leave to appeal should be granted, and the district court's order should be vacated.

CONCLUSION

In sum, given the myriad legal, factual, and functional issues with the district court's order denying the Board's motion to substitute, as well as the order's potential widespread effect on dozens of ongoing and potentially hundreds of future cases, leave to appeal should be granted and the district court's order vacated.

Respectfully submitted,

MICHAEL GARVIN
CITY COUNSELOR

/s/Andrew D. Wheaton #65369 (MO)
Deputy City Counselor
Aaron K. Waters, 24135673TX
Assistant City Counselor
City Hall, Rm 314
St. Louis, MO 63103
314-622-3361
Fax 314-622-4956
wheatona@stlouis-mo.gov
ATTORNEY FOR APPELLANT

/s/ Andrew Wheaton

Deputy City Counselor

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2025, a copy of the foregoing petition to appeal under Fed. R. App. P. 5(b) was served on counsel of record for all parties via e-mail and a paper copy was mailed via first class mail, postage prepaid to said counsel.

CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Fed. R. App. P. 5(c)(1), in that it contains 5,200 words as calculated by Microsoft Word.

/s/ Andrew Wheaton

Deputy City Counselor

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

DON R. CLARK, JR., et al.,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	
	)	
CITY OF ST. LOUIS, et al.,	)	No. 4:21-cv-00788-JMD
	)	
<i>Defendants.</i>	)	
	)	
	)	
	)	

Order Denying Motion to Substitute Parties

The Missouri General Assembly recently enacted a law transferring control of the St. Louis police force from the City of St. Louis to the State. The question before the Court is whether that law also transferred all the City’s related liabilities. The answer is no. States, as sovereigns, are by default immune from damages actions. Courts may interpret statutes to change that default, subjecting a State to damages liability, only when those statutes change the default unequivocally. This statute lacks anything close to a clear statement transferring the City’s liabilities to the State. To the contrary, the plain text transfers to the State only the liabilities of “the municipal police department,” not the liabilities of the City of St. Louis. Mo. Rev. Stat. § 84.325.3. Because the liabilities in this case were not transferred from the City to the State, the motion to substitute parties will be denied.

Background

For well over one hundred years, the St. Louis police force was controlled and operated by a state entity. Then, after a 2012 change in legislation, the City gained local control in 2013. *City of St. Louis Regains Control of Metropolitan Police Department*, Dep’t of Public

Safety, City of St. Louis (Sept. 1, 2013).¹ But last legislative session, a legislator introduced a bill to return control of the police force to the State, expressing concern that the police force, under control of the City, was mismanaged. *State Rep. Brad Christ Files Legislation to Enhance Public Law Enforcement and Address St. Louis Public Safety Crisis*, Missouri House of Representatives, Office of State Representative Brad Christ (Dec. 20, 2024);² see also Sarah Motter, *Bill to reshape Missouri law enforcement policies overwhelmingly passes House*, KCTV (Feb. 20, 2025, 12:32 PM CT).³ The Missouri General Assembly enacted that legislation to return the police force to state control and passed an emergency clause to make the legislation effective immediately instead of effective 90 days after the legislative session, Mo. Const. art. III § 29.

The statute creates a multi-member state board, the St. Louis Board of Police Commissioners, which “shall assume control of any municipal police force” in St. Louis. Mo. Rev. Stat. § 84.325.1. The legislation directs the preexisting St. Louis Metropolitan Police Department to “convey, assign, and otherwise transfer” to the Board of Police Commissioners “title and ownership of all indebtedness and assets, including, but not limited to, all funds and real and personal property held in the name of or controlled by the municipal police department.” *Id.* § 84.325.2. Finally, relevant here, the statute instructs the Board to assume the liabilities of the preexisting police department: “the state shall accept responsibility, ownership, and liability as successor-in-interest for contractual obligations

¹ <https://www.stlouis-mo.gov/archives/newsgram/city-regains-control-of-metropolitan-police-dept.cfm>

² <https://house.mo.gov/PressRelease.aspx?prid=254>

³ <https://www.kctv5.com/2025/02/20/bill-reshape-missouri-law-enforcement-policies-overwhelmingly-passes-house/>

and other lawful obligations *of the municipal police department.*” *Id.* § 84.325.3 (emphasis added).

Citing this language, the City and the Office of the Attorney General seek to substitute out the City as a defendant and substitute in the Board members in their official capacities as defendants. Those Board members are Brad Arteaga, Sonya Jenkins-Gray, Edward McVey, Chris Saracino, and St. Louis Mayor Cara Spencer. ECF 183. The plaintiffs oppose. They have brought *Monell* claims against the City based on the City’s alleged policies for managing and supervising the police force, and they argue that the statute reassigns only the liabilities of the “municipal police department,” not the liabilities of the City.

Standard of Review

Under Federal Rule of Civil Procedure 25(c), “[i]f an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.” “The decision whether to substitute parties lies within the discretion of the trial judge and he may refuse to substitute parties in an action even if one of the parties so moves.” *Froning’s, Inc. v. Johnston Feed Service, Inc.*, 568 F.2d 108, 110 n.4 (8th Cir. 1978).

Analysis

The Court agrees with the plaintiffs that substitution of parties is not proper. That is true for several reasons.

I.

Start with the plain text. Missouri law transfers to the State only the police department’s liabilities, not the City’s liabilities. Section 84.325.3 transfers the “lawful obligations of the municipal police department.” When interpreting state statutes, federal

courts use the “state court’s rules of construction,” *Brandt ex rel. Brandt v. Griffin*, 147 F.4th 867, 888 (8th Cir. 2025) (en banc), and the Missouri Supreme Court has held that if “the language of a statute is plain and unambiguous,” a reviewing court “is bound to apply that language as written,” *State ex rel. Bailey v. Fulton*, 659 S.W.3d 909, 912 (Mo. 2023). The most natural reading of the statute is that it does not transfer any of the City’s liabilities to the State. It transfers only the liabilities of the police department.

II.

The City asks the Court to deviate from the most natural interpretation, arguing that the statute makes no sense unless “police department” is construed to be a synonym for “City” for liabilities arising from the City’s operation of the municipal police department. In support, the City suggests that the police department had no liabilities in its name; every liability related to the police department was held in the name of the City (although the City expressed some uncertainty about this assertion at a hearing). This argument has some force. Section 1983 suits are typically brought against a municipality, not a police department, *e.g.*, *El-Alamin v. Radke*, 369 Fed. Appx. 770, at *1 (8th Cir. 2010), because municipal police departments typically are “simply departments or subdivisions of the City government,” *Ketchum v. City of West Memphis*, 974 F.2d 81, 82 (8th Cir. 1992). If the police department in fact had no liabilities, then applying the most natural meaning of the text might give the text no practical effect at all; there would be no liabilities to transfer. “When interpreting statutes, courts do not presume that the legislature has enacted a meaningless provision.” *Edwards v. Gerstein*, 237 S.W.3d 580, 581 (Mo. 2007).

But if departing from the most natural reading might be justified to transfer *some* of the City’s liabilities, it does not follow that the statute transfers *all* City liabilities related to

the police force. At most, the statute transfers those liabilities related to contracts, debts, utilities, and the like.

Consider first the express mention in the statute of “contractual obligations.” Section 84.325.3 says “the state shall accept responsibility, ownership, and liability as successor-in-interest for *contractual* obligations *and other* lawful obligations of the municipal police department” (emphasis added). If the legislature had intended to transfer every liability, there would have been no need to expressly identify contractual liabilities. That inclusion narrows the scope of the statute. When a specific provision (like “contractual”) is paired with a more general provision (like “other”), the specific term “limit[s] a general term to a subset of all the things or actions that it [could] cover[.]” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 195–96 (2012); *see also Aquila Foreign Qualifications Corp. v. Dir. of Revenue*, 362 S.W.3d 1, 5 (Mo. 2012). Here, the legislature’s decision to expressly include “contractual obligations” suggests the statute could be interpreted to transfer at most contractual obligations and similar obligations.

The same can be said of the subsection immediately preceding subsection 84.325.3. It instructs the St. Louis Police Department to “convey, assign, and otherwise transfer to the Board title and ownership of all indebtedness and assets, including, but not limited to, all funds and real and personal property held in the name of or controlled by the municipal police department.” Mo. Rev. Stat. § 84.325.2. Considering the specific enumerations in subsections 2 and 3, “other lawful obligations” can be interpreted to transfer only liabilities similar to those enumerated. Scalia & Garner, *Reading Law*, at 199–200; *Circuit City Stores, Inc. v. Director of Revenue*, 438 S.W.3d 397, 401 (Mo. 2014). Subsections 2 and 3, working together, contemplate transfer of contracts, debts, real property, and the like.

Different from all these is the category of liabilities at issue here: *Monell* liabilities. Liability under *Monell* stems not from the actions of a police department (at least not directly), but instead from the actions of a municipality with final authority *over* that department. “Section 1983 liability for constitutional violation may attach to a municipality if the violation resulted from (1) an ‘official municipal policy,’ . . . (2) an unofficial ‘custom,’ . . . or (3) a deliberately indifferent failure to train or supervise.” *Corwin v. City of Independence*, 829 F.3d 695, 699 (8th Cir. 2016) (quoting *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978), and citing *City of Canton v. Harris*, 489 U.S. 378, 389 (1989)).

In other words, *Monell* liabilities differ from other liabilities because of where they originate. A police department’s utility bill or contractual obligation most directly concerns the police department’s obligations. Either of those obligations might properly be said to be a “liability . . . of the municipal police department,” Mo. Rev. Stat. § 84.325.3, even if held in the name of the City. A *Monell* claim, in contrast, arises from actions done *by* the City often *to* a police department, such as imposing binding rules and regulations on the police department.⁴ *Monell* applies to injuries “‘caused’ by . . . municipal ‘policy,’” *City of Oklahoma*

⁴ It is unclear from the record how much the *Monell* claims depend on actions the City undertook directly as opposed to actions the City undertook indirectly by delegating authority to individuals within the police department. But that makes no difference because that delegation is still an act of the City imposed on the police department, and any delegation would be limited by rules and policies adopted by the City and imposed on the police department. See *Pembaur v. City of Cincinnati*, 475 U.S. 469, 485 (1986) (holding a county liable under § 1983 for the decision of a county prosecutor who was delegated authority by law and “was acting as the final decisionmaker for the county”); *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988) (O’Connor, J., for four justices) (observing that if “a city’s lawful policymakers could insulate the government from liability simply by delegating their policymaking authority to others, § 1983 could not serve its intended purpose”). “[W]hether an official had final policymaking authority is a question of state law.” *Praprotnik*, 485 U.S. at 124. Here, the 2012 state law that transferred authority from a state agency to the City vested *the City*, not the municipal police department, with the authority to govern the police

City v. Tuttle, 471 U.S. 808, 823 (1985) (quoting *Monell*, 436 U.S. at 691), so a liability for a *Monell* claim is not a liability “of the municipal police department.” Mo. Rev. Stat. § 84.325.3. It is a liability “of the city.”

So even assuming that the police department held no liabilities in its own name, courts can still give meaning to this statute without adopting the City’s wholesale departure from the most natural reading of the text. The Court need not—and cannot, on this record—enumerate all liabilities that might plausibly be transferred under this statute. It is enough to conclude that if the statute transfers liabilities incurred by the police department in the name of the City, those liabilities are contractual liabilities, utilities obligations, and the like. The text transferring only liabilities “of the municipal police department” cannot be stretched to include the “City’s” liabilities for injuries caused by the City’s policies.

III.

The doctrine of sovereign immunity reinforces this conclusion. The City’s argument runs headlong not only into the most natural reading of the statute, but also into the longstanding principle that States do not voluntarily take on liabilities absent an unequivocally clear statement of intent to do so. “Suits against state officials in their official capacity” are “treated as suits against the State.” *Hafer v. Melo*, 502 U.S. 21, 25 (1991). And States, by default, are entitled to immunity from damages actions. *Alden v. Maine*, 527 U.S.

force. Mo. Rev. Stat. § 34.344.8 (2012) (providing that if St. Louis “elects to establish a municipal police force under this section, the city shall establish a separate division for the operation of its municipal police force”) (repealed by H.B. 495, 103rd Gen. Assemb., 1st Reg. Sess. (Mo. 2025) (effective Mar. 26, 2025)); *id.* § 84.345.3 (providing that St. Louis “shall not be restricted or limited in any way in the selection of a police chief or chief of the division created under subsection 8 of section 84.344”) (repealed by H.B. 495, 103rd Gen. Assemb., 1st Reg. Sess. (Mo. 2025) (effective Mar. 26, 2025)). *Monell* liability is properly the City’s liability, not the municipal police department’s liability.

706, 713 (1999) (explaining that “the States’ immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today”). That immunity remains unless and until the State “(1) voluntarily invoke[s] federal court jurisdiction or (2) make[s] a clear declaration that it intends to submit itself to our jurisdiction.” *Harmon v. Preferred Family Healthcare, Inc.*, 125 F.4th 874, 882 (8th Cir. 2025) (cleaned up); *see also* Scalia & Garner, *Reading Law*, at 282–84.

Here, the State has done neither. It was the plaintiffs who invoked this Court’s jurisdiction. Although the Attorney General moved for substitution of the City as a defendant for the state Board, the State’s brief asserts that it retains sovereign immunity. Def’s. Resp. to Ct. Ord., at 3-4, ECF 205. The Attorney General’s motion thus is not a “clear’ indication of the State’s intent to waive its immunity.” *See Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 620 (2002); *Maysonet-Robles v. Cabero*, 323 F.3d 43, 52 (1st Cir. 2003) (“the State’s litigation conduct must be unambiguous”). The statute likewise contains no clear statement transferring the City’s *Monell* liabilities. Section 84.325 does not use “the most express language” to waive immunity—it does the opposite—and there are “reasonable construction[s]” of the text other than that it waives Missouri’s immunity. *Hankins v. Finnel*, 964 F.2d 853, 856 (8th Cir. 1992). Section 84.325 does not contain a clear declaration waiving Missouri’s immunity from *Monell* suits in federal court. *Cf. Maysonet-Robles*, 323 F.3d at 50–51.

Citing *Maysonet-Robles* from the First Circuit, the City argues that the Court could substitute the parties and then later find that the State still retains sovereign immunity. That puts the cart before the horse. Neither party in *Maysonet-Robles* appealed the district court’s decision to substitute parties, so the First Circuit did not address whether the motion

should have been granted. *Id.* at 48. Here, the Court must determine whether to grant the motion. This Court need not definitively resolve the issue of sovereign immunity before addressing the substitution motion. “[I]t is the entity’s *potential* legal liability, rather than its ability or inability to require a third party to reimburse it, or to discharge the liability in the first instance, that is relevant” for sovereign immunity analysis. *See Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 431 (1997) (emphasis added).

Even assuming that the State accepted liability for contracts and the like, a clear statement would still be needed to transfer the City’s *Monell* liability. “Statutory provisions waiving sovereign immunity are strictly construed.” *Allen v. 32nd Jud. Cir.*, 638 S.W.3d 880, 891 (Mo. 2022). This includes strictly construing the scope of a waiver. *See id.* at 891–92; *see also Lane v. Pena*, 518 U.S. 187, 192 (1996) (explaining that “a waiver of the Government’s sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign”). Voluntarily agreeing to one category of liabilities is not, without an additional clear statement, sufficient to waive immunity for other categories of liabilities.

Finally, the sovereign immunity issue cautions against substitution of parties because that issue remains contested. “Rule 25(c) substitution implements a discretionary determination by the trial court to facilitate the conduct of the litigation, so it is a procedural vehicle not designed to create new relationships among parties to a suit.” *Maysonet-Robles*, 323 F.3d at 49; *Matter of Covington Grain Co., Inc.*, 638 F.2d 1362, 1364 (5th Cir. 1981) (“Rule 25(c) is not designed to create new relationships among parties to a suit but is designed to allow the action to continue unabated when an interest in the lawsuit changes hands.”). Because the Board members may be able to assert a defense not available to the City, they are not in an “identical position” to the City. *ELCA Enters., Inc. v. Sisco Equip. Rental &*

Sales, Inc., 53 F.3d 186, 191 n.5 (8th Cir. 1995). The potential of the Board members raising a sovereign immunity defense, preventing this suit from continuing, cautions against substitution.

Conclusion

IT IS HEREBY ORDERED that the motion for substitution of parties is **DENIED**.
ECF 183.

Especially because this issue is common to many different cases in Missouri federal courts, the Court certifies that this order satisfies the requirements for an interlocutory appeal. 28 U.S.C. § 1292(b).

Dated this 30th day of September, 2025



JOSHUA M. DIVINE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DON R. CLARK, JR.; ADONIS H. CLARK; SHERRIE CLARK-TORRENCE; ASHLEY BOUREIMA MOUROU; and A.C., a minor through her mother and Next Friend NECOLE FISHER, individually and as the surviving children of Decedent, DON CLARK, SR.,

Plaintiff,

v.

CITY OF ST. LOUIS, et al.

Defendants.

Case No. 4:21-cv-788

MOTION FOR SUBSTITUTION OF PARTIES

The St. Louis Board of Police Commissioners (the “Board”) and Brad Arteaga, Sonya Jenkins-Gray, Edward McVey, Chris Saracino, and Mayor Cara Spencer (“Individual Board Members”), pursuant to Federal Rule of Civil Procedure 25(c), and due to a legislatively mandated transfer of certain responsibilities, ownership, liability, and obligations of the municipal police department under Section 84.325, RSMo, move the Court to substitute the Individual Board Members (in their official capacities) as named defendants in this matter – taking the place of the City of St. Louis. In support of this motion, the substituting parties state:

1. Effective March 26, 2025, the Missouri General Assembly enacted Section 84.020, RSMo., establishing “a board of police commissioners . . . to be the governing body of the permanent police force [in all cities not within a county].”

2. The St. Louis Metropolitan Police Department, as the governing body of the police force in St. Louis, Missouri, comes within the provisions of Section 84.020.

3. Also effective March 26, 2025, the Missouri General Assembly enacted Section 84.325, RSMo., mandating the new board of police commissioners to “assume control” of the police department during the implementation period of the act. *See* § 84.325.1, RSMo.

4. Upon the complete transfer of assets, *inter alia*, to the board of police commissioners, the St. Louis Metropolitan Police Department, as it was before the board of police commissioners assumption of control, “shall thereafter cease . . . operation[.]” *See* § 84.325.2 RSMo.

5. Section 84.325 also directs “the state [to] accept responsibility, ownership, and liability as successor-in-interest” upon the “assumption of control by the board of police commissioners[.]” *See* § 84.325.3, RSMo.

6. The Board has assumed control of the St. Louis Metropolitan Police Department, as required by Section 84.325.

7. Therefore, all “responsibility, ownership, and liability” of the St. Louis Metropolitan Police Department, as provided in Section 84.325, has been accepted by the Board, and a transfer of interest has occurred under Rule 25(c), warranting substitution of parties in this case.

8. The Board now “stand[s] in the shoes” of the City of St. Louis as provided in Section 84.325, and Rule 25(c) provides the procedural method to effectuate the transfer of interest. *See ELCA Enterprises, Inc. v. Sisco Equipment Rental & Sales, Inc.*, 53 F.3d 186, 190-91 (8th Cir. 1995); *Saberliner Corp. v. Gen. Elec. Co.*, 2014 WL 2013357, *1 (E.D. Mo. 2014).

9. The law is well-established that “[t]he St. Louis Board of Police Commissioners is not a suable entity.” *Edwards v. Baer*, 863 F.2d 606, 609 (8th Cir. 1988). Jurisdiction can only be obtained by suing the individual board members in their official capacity. *See id.*; *see also, D.H. v. Doe*, 2015 WL 1807780, at *1 (E.D. Mo. 2015).

For the foregoing reasons, the Board and the Individual Board Members respectfully request this Court grant this Motion for Substitution of Parties.

Respectfully submitted,

ANDREW BAILEY

Attorney General

/s/ Lucas Chapman

Lucas Chapman

Bar No. 76575MO

221 West High Street

Jefferson City, Missouri 65101

Phone: (573) 298-1764

Email: Lucas.Chapman@ago.mo.gov

*Attorney for the Board and Individual
Board Members*

Certificate of Service

I hereby certify that on Friday, July 25, 2025, a copy of the foregoing was electronically filed via the Court's electronic case management system (CM/ECF), which shall effect electronic service upon all counsel of record.

/s/ Lucas Chapman

Lucas Chapman

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

DON R. CLARK, JR., et al.,

Plaintiff,

v.

CITY OF ST. LOUIS, et al.,

Defendants.

Case No. 4:21-cv-788JMD

DEFENDANTS' RESPONSE TO COURT ORDER

Defendants Board of Police Commissioners, Nicholas Manasco, and Thomas Strode (collectively "Defendants"), by and through undersigned counsel, submit the following reply in response to the court order, dated September 4, 2025. Doc. 202.

I. INTRODUCTION AND PROCEDURAL HISTORY

Defendant's counsel submitted a Motion to Substitute Party pursuant to Federal Rule of Civil Procedure 25(c) on July 25, 2025. Doc. 183. The motion requested that the City of St. Louis be substituted for the Board of Police Commissioners ("the Board") as a result of the State of Missouri taking control of the St. Louis Metropolitan Police Department ("SLMPD") pursuant to Section 84.020 RSMo. Section 84.020 became effective as of March 26, 2025, and dictates that in all cities not within a county, there shall be a state-run board of police commissioners. *See* Section 84.020.1 RSMo. The statute effectually caused SLMPD to be under control of the state, instead of the City of St. Louis. As such, lawsuits that were currently pending against SLMPD through St. Louis City were transferred to the Missouri Attorney General's Office. However, on September 2, 2025, Governor Kehoe withdrew his

nominations for the Board until sometime in January 2026.¹ As a result of the Governor withdrawing the Board nominations, the Missouri Attorney General's Office filed a Motion to Withdraw its Motion to Substitute the Board on September 8, 2025. Doc. 203.

This Court entered an order that parties submit a brief answering the following questions: (1) whether the St. Louis Metropolitan Police Department had liabilities independent of the City of St. Louis; (2) whether the City of St. Louis retains liabilities before March 26, 2025, because Section 84.325.3 RSMo. transfers to the State only the liabilities "of the municipal police department," not the liabilities of the City; (3) the potential of a state sovereign immunity defense for the members of the Board of Police Commissioners in their official capacities; and (4) other issues the parties think important.

II. ARGUMENT

1. The SLMPD did not have liabilities independent of the City of St. Louis.

At the time of this incident, the City had control of SLMPD.² SLMPD operated as a subdivision within the City. As such, the City was also the policy maker of the SLMPD. Because the City controlled SLMPD, Plaintiffs in this case had to sue the City, instead of SLMPD directly.

Case law is clear that Plaintiff could not have sued SLMPD at the time because it was a subdivision of the City of St. Louis. "[C]laims against the St. Louis Metropolitan Police Department are [] subject to dismissal because the Police Department is not a suable entity under § 1983." *Martin v. St. Louis Metropolitan Police Department*, 2025 WL 2299406 * 2

¹ FIRST ALERT 4, *Gov. Kehoe Withdraws all SLMPD Board Picks*, (Sept. 2, 2025, 8:10 PM), <https://www.firstalert4.com/2025/09/03/gov-kehoe-withdraws-all-slmpd-board-picks/>.

² Alan Greenblatt, *After 152 Years, St. Louis Gains Control of its Police Force*, NPR, (Aug. 28, 2013, 2:09 PM), <https://www.npr.org/sections/thetwo-way/2013/08/28/216489820/after-152-years-st-louis-gains-control-of-its-police-force>.

(E.D. Mo. 2025) (*see Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (8th Cir. 1992)). Because SLMPD was a subdivision of the City, it was directly liable for SLMPD's actions. Additionally, all lawsuits had to be made against the City instead of SLMPD.

Because the City had liabilities in this case as a result of SLMPD, at the time, it was fully responsible for any liabilities incurred by the police department. As a subdivision of the City, SLMPD could not have had independent liabilities. However, as explained below, the liabilities that the City incurred will transfer as a result of Section 84.020 RSMo.

2. The liabilities held by the City will transfer as a result of Section 84.325.3 RSMo.

Section 84.325.3 states that “[u]pon assumption of control by the board of police commissioners . . . the state shall accept responsibility, ownership, and liability as successor-in-interest for . . . other lawful obligations of the municipal police department.” The statute would effectually transfer all “responsibility, ownership, and liability” of SLMPD to the State. Section 84.325.5 RSMo. Meaning, the liability that the City incurred as a result of SLMPD would now be the liability of the Board, as the Board is the successor-in-interest.

In the current case, the liability prior to March 26, 2025, had rested with the City. But after March 26, 2025, that liability transferred to the Board as a successor-in-interest pursuant to Section 84.325.3 RSMo. Federal Rule of Civil Procedure 25(c) dictates that when an interest is transferred, the court can order the transferee to be substituted or joined with the original party. If the successor-in-interest is substituted, they would “stand in the shoes” of the original party. *See Saberliner Corp. v. Gen. Elec. Co.*, 2014 WL 2013357, *1 (E.D. Mo. 2014). The only remaining count in this case against the City is for a policy of unconstitutionally deploying the SWAT team to execute drug-related search warrants, and failure to train and supervise officers about the reasonable deployment of the SWAT team in

executing search warrants. Doc. 71. This liability is a direct result of the City controlling SLMPD. But upon proper transfer of control of SLMPD to the Board, all liability prior to March 26, 2025, would rest with the Board.

However, given the Governor's announcement that he rescinded his nominations of the Board, it cannot be said that the Board has assumed control of SLMPD at this time. Statute 84.325.3 presupposes that Board members would have been selected to take effect. Since the Board member nominations were withdrawn, there can be no assumption of liabilities by the Board. Once the Board is properly nominated, the City's liability for this case prior to March 26, 2025 would transfer.

3. Board members in their official capacities are shielded from liability through state sovereign immunity.

The Kansas City Police Department operates under the same statutory framework as the newly formed St. Louis Police Board of Police Commissioners. *See* Section 84.350 RSMo. The Eighth Circuit found that that the Kansas City Board of Police Commissioners is entitled to sovereign immunity as it is a legal subdivision of the state. *Div. of Employment Sec., Missouri v. Bd. of Police Comm'rs*, 864 F.3d 974, 980 (8th Cir. 2017). "As a 'legal subdivision of the state,' a board of police commissioners has sovereign immunity for 'the operation and maintenance of a police force.'" *Id.* (quoting *Fantasma v. Kansas City Bd. of Police Comm'rs*, 913 S.W.2d 388, 391 (Mo. App. W.D. 1996)).

Additionally, before the control of SLMPD transferred to the City in 2013, it was controlled by a state-run Board of Police Commissioners.³ Prior to the 2013 transfer, the state-run Board was protected by state sovereign immunity. "The City of St. Louis Police

³ Alan Greenblatt, *After 152 Years, St. Louis Gains Control of its Police Force*, NPR, (Aug. 28, 2013, 2:09 PM), <https://www.npr.org/sections/thetwo-way/2013/08/28/216489820/after-152-years-st-louis-gains-control-of-its-police-force>.

Board of Commissioners is a state created entity . . . [that] is generally entitled to sovereign immunity []”. *Bittner v. City of St. Louis Police Bd. of Comm’rs*, 925 S.W2d 495, 499 (Mo. App E.D. 1996). This Court should similarly find that the Board, which is also a subdivision of the state, is entitled to sovereign immunity,

4. Governor’s revocation of Board members on September 2, 2025.

On September 2, 2025, Governor Mike Kehoe announced that he was rescinding his five selections for the Board as not to distract from a special session on redistricting.⁴ The Governor also announced that once the special session was completed, he fully intend to reinstate the same five nominations sometime in January of 2026.

According to Federal Rule of Civil Procedure 25(d) “[a]n action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer’s successor is automatically substituted as a party.” “The purpose of the Rule ... was to provide for the continuance of an action, personal in character, brought by or against a public officer, where a substantial need for continuing the action existed and the action could not, without statutory authority, be maintained against his successor after the officer ceased to hold office.” *Fleming v. Goodwin*. 165 F.2d 334, 337 (E.D. Mo. 1948).

Given the Governor’s recension of nominations, with no clearly named successor, it naturally follows that liability for this action would remain with the City of St. Louis until the Board nominations are re-selected. The AGO would continue to represent the Defendant officers in this case pursuant to Section 84.330 RSMo., which dictates that members of the police force are “officers of the state of Missouri.”

⁴ FIRST ALERT 4, *Gov. Kehoe Withdraws all SLMPD Board Picks*, (Sept. 2, 2025, 8:10 PM), <https://www.firstalert4.com/2025/09/03/gov-kehoe-withdraws-all-slmpd-board-picks/>.

Respectfully Submitted,

CATHERINE L. HANAWAY
Missouri Attorney General

/s/ Lucas Chapman
Lucas Chapman #76575
Assistant Attorney General
221 West High Street
Jefferson City, MO 65101
Phone: (573) 298-1764
Lucas.Chapman@ago.mo.gov

Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2025, the foregoing was filed electronically via the Court's electronic filing system and was served by operation of the CM-ECF system on all counsel of record.

/s/ Lucas Chapman
Assistant Attorney General

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 10/10/2025

Case Name: Don Clark, et al v. City of St. Louis, Missouri

Case Number: 25-8011

Docket Text:

PETITION for Permission to Appeal pursuant to 28 U.S.C. Section 1292(b), (Electronic) filed by Petitioner City of St. Louis, Missouri w/service 10/14/2025. [5567454] [25-8011]

The following document(s) are associated with this transaction:

Document Description: City of STL, MO Petition for Permission to Appeal

Notice will be mailed to:

Notice will be electronically mailed to:

Lucas Chapman: lucas.chapman@ago.mo.gov

Maureen Hanlon: mhanlon@archcitydefenders.org, dhussain@archcitydefenders.org

Andrew D. Wheaton: wheatona@stlouis-mo.gov