

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

In re GREG TUMLIN and FRED HALE,)

Relators/Plaintiffs,)

v.)

CITY OF ST LOUIS *et al.*,)

Respondents/Defendants.)

Case No. 2422-CC01579

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS**

COMES NOW Respondents/Defendants City of St. Louis (the "City"), Comptroller Darlene Green, Treasurer Adam Layne, and Mayor Tishaura Jones (collectively, "Defendants"), by and through their counsel Sheena Hamilton, City Counselor for the City of St. Louis, and for their memorandum of law in support of their motion for judgment on the pleadings state as follows:

INTRODUCTION

City taxpayers Greg Tumlin and Fred Hale ("Plaintiffs") challenge the constitutionality of the City's direct financial assistance program known as "Guaranteed Basic Income," and claim, without support, that this program violates Article VI, §§ 23 and 25 of the Missouri Constitution. Remarkably, Plaintiffs' arguments ignore over 50 years of controlling Missouri law that is fatal to their claims, ignore that the Missouri Supreme Court has affirmed the constitutionality of direct financial payments to private persons in an analogous case, and ignore that, pursuant to well-established Missouri law, the constitutional provisions at issue are not violated when public money, even where expended directly to private persons, is expended or utilized to accomplish a public purpose.

Here, as the peoples' elected representatives have legislatively determined pursuant to Ordinance 71591, the Guaranteed Basic Income ("GBI") program serves a public purpose, and it is therefore constitutional. As the City of St. Louis Board of Alderman legislatively determined, direct financial payments will combat the publicly significant and catastrophic effects of a global pandemic by providing critically needed financial support to the City's most vulnerable, which, in its view, will benefit our community as a whole in multiple, substantial ways – including by reducing housing instability which unquestionably contributes to the deterioration of public welfare, decreasing the devastating impact of correlated drug use, and stabilizing and stimulating our City economy in a way that will significantly benefit the City's people as a whole. Because Ordinance 71591 serves a public purpose, it is constitutional. *See, e.g., Americans United v. Rogers*, 538 S.W.2d 711, 719 (Mo. 1976). While Plaintiffs may disagree with the Board of Alderman's discretionary determination in this regard, the place to voice their disagreement is at a voting booth – not by way of this meritless lawsuit. And, even if the Court were to disagree with the City's legislative determination, separation of powers and Missouri Supreme Court precedent require the Court to defer to the City's legislative determination that GBI serves a public purpose. *See State ex rel. Jardon v. Indus. Dev. Auth. of Jasper Cnty.*, 570 S.W.2d 666, 676 (Mo. 1978) ("[D]etermination of what constitutes a public purpose is primarily for the legislative department and it will not be overturned unless found to be arbitrary and unreasonable.")

Not only do Plaintiffs' fundamentally disregard Missouri law holding that the expenditure of public funds to private persons is constitutional where it serves a public purpose, Plaintiffs also improperly attempt to utilize the extraordinary writ of mandamus to directly challenge the constitutionality of an Ordinance where doing so is squarely foreclosed by well-established Missouri precedent. "Mandamus is not available 'to directly challenge and determine the validity

or constitutionality of an ordinance or statute respecting the duty involved.” *State ex rel. Mason v. Cnty. Legislature*, 75 S.W.3d 884, 888 (Mo. App. W.D. 2002) (quoting *State ex rel. Chiavola v. Vill. of Oakwood*, 931 S.W.2d 819, 825 (Mo. App. W.D. 1996)). That alone dooms Plaintiffs’ Petition in Mandamus to failure. Notably, during a conference with the Court this morning, Plaintiffs appeared to abandon their claim for relief in mandamus when Defendants pointed this out and shifted strategy by making a procedurally improper emergency motion for temporary restraining order which itself comes more than a year and a half after the Ordinance at issue became law and months after hundreds of families have received, planned around, and relied on lawful monthly payments made pursuant to Ordinance 71591.

As set forth more fully herein, judgment as a matter of law should be entered on the pleadings in favor of the Defendants on all counts for the following reasons: 1) Plaintiffs’ claims fail as a matter of law because, as the elected representatives of the people of the City of St. Louis have determined by legislation, the primary object of the expenditures at issue is to serve a public purpose, and 2) Mandamus is not the appropriate remedy to challenge the constitutionality of an ordinance or the discretionary acts of public officials.

LEGAL STANDARD

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Mo. Sup. Ct. R. 55.27(b). Judgment on the pleadings is proper where, from the face of the pleadings, the moving party is entitled to judgment as a matter of law. *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 134 (Mo. banc 2000). When considering a motion for judgment on the pleadings, a court will treat the admitted allegations of the moving party and the well-pleaded allegations of the non-moving party as true for purposes of the motion. *Id.* By moving for judgment on the pleadings, a party does not admit legal conclusions or the

opposing party's construction of the subject matter. *Mitchell v. Nixon*, 351 S.W.3d 676, 680 (Mo. App. W.D. 2011). Where "the question before the court is strictly one of law," the court should enter judgment on the pleadings. *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599-600 (Mo. banc 2007) (citing *RGB2, Inc. v. Chestnut Plaza, Inc.*, 103 S.W.3d 420, 424 (Mo. App. S.D. 2003)).

ARGUMENT

I. PLAINTIFFS' CLAIMS FAIL AS A MATTER OF LAW BECAUSE, AS THE ELECTED REPRESENTATIVES OF THE PEOPLE OF THE CITY OF ST. LOUIS HAVE DETERMINED BY LEGISLATION TO WHICH THIS COURT MUST DEFER, THE PRIMARY OBJECT OF THE EXPENDITURES AT ISSUE IS TO SERVE A PUBLIC PURPOSE.

In *Americans United v. Rogers*, our Missouri Supreme Court considered the constitutionality of payments made by the State of Missouri directly to private persons under a statutory scheme popularly known as "the Financial Assistance Program." The Trial Court entered its judgment declaring that, among other things, the direct payments authorized by the Financial Assistance Program were unconstitutional, and did so based on substantially the same argument advanced by Plaintiffs in this case – that the Missouri Constitution prohibits the expenditure of public money to any private person. In its seminal and controlling decision, the Missouri Supreme Court reversed and explicitly held that the direct financial support payments to private Missouri citizens were constitutional because they served a public purpose. *Americans United v. Rogers*, 538 S.W.2d 711, 719 (Mo. 1976). Plaintiffs now invite this Court to commit the same error that warranted reversal in *Americans United*, and they do so with *ipse dixit* which ignores decades of controlling Missouri precedent.

In *Americans United*, the Missouri General Assembly authorized direct financial payments to 10,000 individual college students, and empowered a Continuing Board for Higher Education with the sole authority to " . . . select qualified recipients to receive financial assistance, make such

awards of financial assistance to qualified recipients and determine the manner and method of payment to the recipient.” *Id.* at 713 (quoting RSMo. § 132.210). It was undisputed that payment of the financial awards was made by individual checks made payable directly from public funds to individual students, and no binding provision of law prevented the students from doing with the money as they pleased. *Id.* at 714. Notably, the General Assembly recognized in the Program’s enabling statute that direct payments to private individuals served a public purpose because, among other reasons, “the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of his capabilities and only when financial barriers to his economic, social and educational goals are removed.” *Id.* at 713-14.

The Court began its legal analysis by reiterating that, where Courts consider an attack on the constitutionality of a legislative enactment, they must be “guided by the established principle that: ‘The state constitution, unlike the federal constitution, is not a grant of power, but as to legislative power, it is only a limitation; and, therefore, except for the restrictions imposed by the state constitution, the power of the state legislature is unlimited and practically absolute.’” *Id.* at 716 (quoting *Kansas City v. Fishman*, 362 Mo. 352, 241 S.W.2d 377 (1951)).¹ Because this is so, “[a]n act of the legislature is presumed to be valid and will not be declared unconstitutional unless it clearly and undoubtedly contravenes some constitutional provision. *Id.* (citing *State ex rel.*

¹As a constitutional charter city, City likewise has broad home rule powers derived from Article VI, Section 19(a) of the Missouri Constitution, which provides that “[a]ny 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 of this state and are not limited or denied either 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.” Mo. Const. Art. VI, § 19(a). The Missouri Supreme Court has recognized the broad authority vested in City by Article VI, Section 19(a) of the Missouri Constitution, and held that “[p]ursuant to this constitutional provision, if a charter city’s power to adopt an ordinance is challenged, the Court will uphold the ordinance upon finding: (1) the ordinance is not preempted by statute, and (2) the locality acted within the constitutional parameters of the authority delegated to it in its charter.” *Coop. Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571, 576 (Mo. 2017). Thus, as set forth herein, the principles of legislative deference articulated by the Supreme Court in *Americans United* are equally applicable in this case.

Eagleton v. McQueen, 378 S.W.2d 449 (Mo. banc 1964)). For this reason, prospective plaintiffs challenging the constitutionality of legislation face a heavy burden, and “[l]egislative enactments should be recognized and enforced by the courts as embodying the will of the people unless they are plainly and palpably a violation of the fundamental law of the constitution. *Id.* at 716 (quoting *Borden Company v. Thomason*, 353 S.W.2d 735 (Mo. banc 1962) (additional internal citations omitted)).²

In addressing the analogous constitutional challenge to the expenditure of public money to private persons, our Supreme Court held that the statutory direct payment program was constitutional and did not unconstitutionally grant public money to private persons because the direct payment program had a “public purpose.” *Id.* at 718.³ In so holding, the Court applied what had long been and continues to be the law in Missouri: that constitutional provisions regarding the expenditure of public money to private persons are not violated when public money, even where expended directly to private persons, is expended or utilized to accomplish a “public purpose.” *Id.* at 719-720 (citing *State v. Land Clearance For Redevelopment Auth.*, 364 Mo. 974, 270 S.W.2d 44, 52—53 (banc 1954); *Annbar Associates v. West Side Redevelopment Corp.*, 397 S.W.2d 635, 653 (Mo. banc 1966); *see also State ex inf. Danforth ex rel. Farmers' Elec. Co-op., Inc. v. State Env't Improvement Auth.*, 518 S.W.2d 68, 74—

² Plaintiffs in this case appear to assert that Ordinance 71591 is facially unconstitutional, and therefore bear the burden to establish that “no set of circumstances exists under which the ordinance would be valid.” *St. Louis Ass'n of Realtors v. City of Florissant*, 632 S.W.3d 414, 419 (Mo. App E.D. 2021) (citing *State v. Perry*, 275 S.W.3d 237, 243 (Mo. banc 2009)). A facial challenge to the constitutionality of an ordinance is more challenging than an as-applied challenge. *Bennett v. St. Louis Cty.*, 542 S.W.3d 392, 397 (Mo. App. E.D. 2017). The court must evaluate the ordinance generally, instead of specifically to Plaintiffs’ particular set of circumstances, and the court should construe the ordinance to be in harmony with state law unless “no set of circumstances exists under which the ordinance would be valid.” *St. Louis Ass'n of Realtors*, 632 S.W.3d at 419.

³ *Americans United* analyzed Art. III § 38a, which is a corollary and analogous provision to Art. VI §§23, 25 governing the State General Assembly. The legal analysis in under both provisions is the same and the same public purpose test applies. *See, e.g., Menorah Med. Ctr. v. Health & Educ. Facilities Auth.*, 584 S.W.2d 73, 78 (Mo. 1979) “This court has attached the same public purpose provision [applicable to Art. III § 38a] to similar provisions of Article VI, ss 23 and 25.”

75 (Mo. 1975) (“It has long been recognized in Missouri.. that the constitutional prohibitions [on granting public money to private persons] are not violated when money and property are expended or utilized to accomplish a ‘public purpose.’”)

The Court noted that Article X, Section 3 of the Missouri Constitution explicitly provides that “[t]axes may be levied and collected for public purposes...” Mo. Const. art. X, § 3. And, critically, our Missouri Supreme Court held that “[t]he presence of a legitimate ‘public purpose’ makes society or the people of this state the direct beneficiary of the expenditures.” *Id.* at 719 (emphasis added). The Court acknowledged that direct payment recipients privately and individually benefitted from direct payments, but held that “benefit is to be distinguished from purpose and incidental private benefit does not preclude a transcendent public purpose.” *Id.*

Because higher education contributes towards the betterment of society, and because nothing in the Missouri Constitution prohibited the legislature from declaring the encouragement of higher education by way of direct payments to private individuals to be a public purpose, the legislature’s direct payment program could not be said to be “arbitrary” or “unreasonable” and was therefore constitutional. *Id.*

Here, like in *Americans United*, the City’s direct relief program unquestionably serves a public purpose and is therefore constitutional. Indeed, the program at issue has a public purpose arguably more pressing and significant than the laudable effort to encourage higher education at issue in *Americans United*. The City Board of Alderman’s duly enacted legislation, to which this Court must defer, aimed to combat the publicly significant and catastrophic effects of a global pandemic by providing critically needed financial support to the City’s most vulnerable, which, in its view, would serve a critically important public purpose and benefit our community as a whole economically. As the legislation at issue put it, the “COVID-19 health emergency impacted

working families who were already struggling and disproportionately affected vulnerable households, including children, their families, and seniors.” Pls. Pet, Ex. E, Ord. 71591. So, the City, through its legislative body and elected Mayor, aimed to stabilize the economy and combat, among other things, the resultant threat of evictions and housing instability which unquestionably contribute to the deterioration of public welfare, increased mortality rates, drug use, and the expenditure of public funds through multiple City Departments – including the Police Department, Emergency Medical Service, and Department of Human Services. *Id.* And, like in *Americans United*, the direct relief payments are targeted to support those enrolled in schools. Moreover, as in a bevy of other supporting cases set forth below, a primary benefit of the GBI program is an economic one that benefits our City economy as a whole. As the City’s Legislative Body explicitly determined by law, “it is necessary and critical to invest in management support for implementation of [the guaranteed basic income program]” to aid in the recovery from the COVID-19 health emergency and support working families and vulnerable households. *Id.* Like in *Americans United*, because this Court is obliged to defer to the Board of Alderman’s determination that GBI serves a public purpose, and because the BOA’s determination in that regard is not arbitrary or unreasonable, this Court must find Ordinance 71591 constitutional.

To the extent that Plaintiffs assert that direct financial support payment is a novel approach, it makes no difference and should not alter the above dispositive analysis. As an initial matter, there is nothing novel about direct financial payments of public money to private individuals intended to serve a public purpose. Indeed, the Missouri Supreme Court has held that such direct payments are constitutional. And, in any event, the Missouri Supreme Court has rejected a static approach to what may constitute a “public purpose” in favor permitting Missouri’s legislative bodies to adopt new approaches in response to shifting public concerns and changing conditions:

"To be guided solely by whether a given activity had, at some previous time, been recognized as a public purpose would make the law static. Such a standard would compel us to retain in the law, as appropriate for public expenditure, activities which have ceased to be of public concern; and would prevent us from adopting new public functions regardless of how essential to the public welfare they may have become by reason of changed conditions. Nor can we be governed alone by the fact that only a portion of the public will be directly benefited, or benefited in a greater degree than the public generally." *Laret Inv. Co. v. Dickmann*, 345 Mo. 449, 134 S.W.2d 65, 68 (banc 1939). See also *Kansas City v. Liebi et al.* (reported as *In re Kansas City Ordinance No. 39946*), 298 Mo. 569, 252 S.W. 404 (banc 1923), and *Bowman v. Kansas City*, 233 S.W.2d 26 (Mo. banc 1950).

Americans United v. Rogers, 538 S.W.2d 711, 719 (Mo. 1976). In sum, the Plaintiffs' challenge to GBI in this case flies in the face of controlling Missouri authority. Indeed, Missouri Courts have routinely and consistently affirmed the constitutionality of public expenditures ostensibly made to private entities where, despite being made to private entities, they served a public purpose.

A year after *Americans United*, the Missouri Supreme Court again rejected the same position advanced by Plaintiffs in this case, and held that public financing of a steam-electric generating plant did not violate Article VI, Section 23 or Article VI, Section 25 of the Missouri Constitution where the expenditure of public funds because the project served a public purpose. *State ex rel. Mitchell v. City of Sikeston*, 555 S.W.2d 281, 291 (Mo. 1977) ("[N]o violation of sec. 23 or 25, art. VI, Missouri Constitution, occurs where the expenditure of public funds is for a public purpose.") (citing *State ex rel. Farm Elec. Coop., Inc. v. State Env. I. A.*, 518 S.W.2d 68 (Mo. banc 1975); *State ex rel. City of Boonville v. Hackmann*, 293 Mo. 313, 240 S.W. 135 (Mo. banc 1922)).

The next year, the Missouri Supreme Court held that granting of public funds via a bond issue to a corporation that would lease, run, and profit from an industrial development was constitutional and did not violate Article VI, Section 23 or Article VI, Section 25 of the Missouri

Constitution because, even though the expenditure of public funds was made to and benefitted private interests, the expenditure was for a public purpose. *State ex rel. Jardon v. Indus. Dev. Auth. of Jasper Cnty.*, 570 S.W.2d 666, 674 (Mo. 1978). The Court again reiterated that constitutional provisions concerning the grant of public funds to private persons are not violated when payments to private persons are made for a public purpose *State ex rel. Jardon v. Indus. Dev. Auth. of Jasper Cnty.*, 570 S.W.2d 666, 676 (Mo. 1978). And, the Court again reiterated that the “determination of what constitutes a public purpose is primarily for the legislative department and it will not be overturned unless found to be arbitrary and unreasonable.” *Id.* at 674 (citing *State ex inf. Danforth ex rel. Farmers' Elec. Co-op., Inc. v. State Env't Improvement Auth.*, 518 S.W.2d 68, 74 (Mo. 1975)). Notably, the Missouri Supreme Court relied on decisions from other State High Courts which recognize that broad, transcendent objectives such as to increase the resources of the community, promote the economy, or generally contribute to the welfare of a community's people may constitute public purposes sufficient to render expenditures to private persons constitutional. *Id.* at 675. Particularly applicable in this case is the following excerpt adopted by our State's highest court:

“The consensus of modern legislative and judicial thinking is to broaden the scope of activities which may be classed as involving a public purpose. 37 Am.Jur., Municipal Corporations, Sec. 132. It reaches perhaps its broadest extent under the view that economic welfare is one of the main concerns of the city, state and the federal governments. This is manifested by the great bulk of recent social security programs of the nation and the state. Of special pertinence are those providing for unemployment insurance and security, thus decreasing what the Tennessee Supreme Court calls ‘unemployment's twin offspring, hunger and crime.’ *Azbill v. Lexington Manufacturing Co.*, 188 Tenn. 477 Sup., 221 S.W.2d 522, 524.” 131 N.W.2d at 17.

Id. at 675 (quoting *Green v. City of Mt. Pleasant*, 256 Iowa 1184, 131 N.W.2d 5 (1964)).

In the years since this string of foundational Missouri Supreme Court decisions, Missouri Courts

have consistently and repeatedly issued decisions which support Defendants' position, fatally undermine Plaintiffs', and impel the conclusion that Ordinance 71591 is constitutional.

In 2006, the Missouri Court of Appeals for the Eastern District held that public funding of the Cardinal's Major League Baseball Stadium, by way of public money provided to the wealthy private owner of a Major League ballpark, was constitutional and did not violate Article VI, Section 23 of the Missouri Constitution because the "primary intent" of the challenged expenditure was to serve a public purpose. *Moschenross v. St. Louis Cnty.*, 188 S.W.3d 13, 22 (Mo. App. E.D. 2006) ("If the primary intent of the public expenditure is to serve a public purpose, the expenditure will be considered legal"). In that case, the expenditure of public money to the wealthy was constitutional because the "primary intent" was that it would result in economic impacts that would benefit the community as a whole. *Id.* at 22.

Moschenross followed the Western District's 1991 decision in *Rice v. Ashcroft*, which similarly upheld the expenditure of public money to private persons to finance what is now known as the Dome at America's Center (previously the Edward Jones Dome). *Rice v. Ashcroft*, 831 S.W.2d 206, 207 (Mo. App. E.D. 1991). As in *Moschenross*, the Court held that, under the "primary effect" test, the "incidental private benefits [to the private recipients of financing] did not take away from the primary purpose of the participation of the county and city in the financing, which was to increase convention and sports activity in the areas." *Id.* at 22. Thus, the expenditure of public money to private entities did not violate Article VI, Section 23, or Article VI, Section 25 of the Missouri Constitution.

As recently as this year, the Missouri Supreme Court held that the expenditure of public money by way of municipalities representing and indemnifying individual police officers in civil lawsuits for actions taken off-duty does not violate Article VI, Section 23 because, in its view, and

even though it is “a grant of public funds to private persons,” “indemnification of law enforcement officers for actions taken under color of law, even if off-duty, serves a primarily public purpose...” *City of St. Louis v. State*, 682 S.W.3d 387, 407 (Mo. 2024). In that case, the public purpose articulated by the Court was to “prevent[s] current and prospective law enforcement officers from leaving or being deterred from a career in law enforcement for fear of shouldering the responsibility of potential litigation.” *Id.*

In sum, it is constitutional to expend public funds to wealthy private entities provided it serves a public purpose, constitutional to expend public money to indemnify individual police officers for off-duty actions provided it serves a public purpose, and, in this case, constitutional to expend public money to support the City’s vulnerable because it serves a public purpose.

Defendants could go on, but need not. The point is that controlling cases which fatally undermine Plaintiffs’ claims are legion.⁴ Here, as in *Americans United* and the many cases cited herein, the elected representatives of this City’s people have determined by law that direct financial support payments to vulnerable persons disproportionality affected by a global pandemic serve a public purpose and will benefit the people of our City as a whole in multiple, substantial ways – including stabilizing and stimulating the economy, by reducing housing instability, decreasing drug use and its undeniably detrimental public effects, reducing mortality rates, and aiding in the

⁴ Should the Court desire additional authority, it may see, e.g., *State ex rel. Dalton v. Land Clearance for Redevelopment Auth.*, 364 Mo. 974, 986, 270 S.W.2d 44, 50 (1954) (holding that granting of public property to developers did not violate constitution and noting that the concept of public purpose should never to be taken as static, but should be applied and construed as made necessary to the public welfare by changing conditions); *State ex. Rel. Wagner v. StL County Port Authority*, 604 S.W.2d 592 (Mo. 1980) (Port Authority expenditures constitutional where they benefit the public); *Menorah Med. Ctr. v. Health & Educ. Facilities Auth.*, 584 S.W.2d 73, 78 (Mo. 1979) (public financing of improvements to hospitals and universities constitutional because encouragement of higher education is a public purpose); *St. Louis Cnty. v. River Bend Ests. Homeowners’ Ass’n*, 408 S.W.3d 116, 138 (Mo. 2013) (payment of property “heritage value... “is legal, notwithstanding that it also involves as, an incident, an expense that, standing alone, would not be lawful.”) (citing *Curchin*, 722 S.W.2d at 934).

community's overall recovery from a public health emergency. So, the expenditures are constitutional.

Remarkably, Plaintiffs' belated bid to halt constitutional GBI payments fails to cite or acknowledge the above controlling body of law. Indeed, despite the fact that it is the applicable constitutional test, the public purpose and primary effect test is substantively absent from Plaintiffs' Petition and briefing. Instead, the Plaintiffs elected to cherry-pick distinguishable cases that, in any event, do not aid their cause. First, Plaintiffs rely heavily on *St. Louis Children's Hospital v. Conway*, 582 S.W.2d 687 (Mo. 1979). But, that case involved gifting a portion of a public right-of-way to a single private hospital on theory that the private hospital benefited to community through the private services it provided to patients. *Id.* Our Supreme Court observed that many private companies provide a beneficial service to customers, and this alone cannot render gifts made to private companies constitutional. *Id.* That situation is a far cry from the case at bar and the multiple controlling decisions set forth above, where public money is constitutionally expended for public purposes determined by the legislature to benefit the public as a whole. Second, Plaintiffs rely on *Salamun v. Camden County Clerk, et al.*, Case No. SC100076 (Mo. June 25, 2024). *Saluman*, like *St. Louis Children's hospital*, likewise involved granting public funds to a single private entity. *Id.* The issue in that case was simply whether the a Lake District was a public entity. *Id.* The Supreme Court did not address the well-established "public effect test" that it used mere months before in *City of St. Louis v. State*, 682 S.W.3d 387, 407 (Mo. 2024) (affirming the constitutionality of direct public payments to private citizens), and instead merely rejected the Respondents' argument that the Lake District at issue expended tax money and was therefore a public entity. *Id.* at 11. The scant cases relied upon by the Plaintiffs are plainly distinguishable, and they cannot serve to overturn decades of established and controlling Missouri law.

Again, the Court may disagree with the legislature's determination in this case that GBI serves a public purpose, but is not the Court's place to do so where, as here, it must defer to the judgment and discretion of the City's duly elected legislative body. *See State ex rel. Jardon*, 570 S.W.2d at 676. For these reasons and those set forth above, the Court should decline Plaintiffs' invitation to defy established law, grant Defendants' Motion for Judgment on the Pleadings, and enter judgment in favor of Defendants on all counts.

II. MADAMUS IS NOT THE APPROPRIATE REMEDY TO CHALLENGE THE CONSTITUTIONALITY OF THE ORDINANCE OR DEFENDANTS' DISCRETIONARY ACTS

A. Plaintiffs may not use mandamus to challenge and determine the validity or constitutionality of the Ordinance.

Plaintiffs' attempt to utilize the extraordinary writ of mandamus to directly challenge the constitutionality of the Ordinance is squarely foreclosed by well-established Missouri precedent. "Mandamus is not available 'to directly challenge and determine the validity or constitutionality of an ordinance or statute respecting the duty involved.'" *State ex rel. Mason v. Cnty. Legislature*, 75 S.W.3d 884, 888 (Mo. App. W.D. 2002) (quoting *State ex rel. Chiavola v. Vill. of Oakwood*, 931 S.W.2d 819, 825 (Mo. App. W.D. 1996)). "[T]he purpose of mandamus is to execute and not to adjudicate; it coerces performance of a duty already defined by law." *Beauchamp*, 471 S.W.3d at 810 (quoting *State ex rel. City of Crestwood v. Lohman*, 895 S.W.2d 22, 27 (Mo. App. W.D. 1994)). "Correlatively, the writ of mandamus compels a legal right already established, but does not establish a legal right." *State ex rel. Gladfelter v. Lewis*, 595 S.W.2d 788, 790 (Mo. App. W.D. 1980). Thus, a "petition in mandamus which requires the court to invalidate a statute as an antecedent to the definition of a legal duty, and thus to the enforcement of a clear right, does not plead a justiciable controversy for that remedy." *Id.*

[M]andamus lies only to enforce a plain ministerial duty, and . . . since a plain ministerial duty cannot exist which is made to appear only by declaring a statute unconstitutional, the writ will not issue if it is necessary in order to fix upon the respondent the duty sought to be enforced to declare a statute in conflict with such alleged duty unconstitutional.

Id. (quoting *State ex rel. Seigh v. McFarland*, 532 S.W.2d 206, 209 (Mo. banc 1976)).

Here, mandamus is improper because the Court would be required to adjudicate the constitutionality of the Ordinance to establish the alleged duty Plaintiffs seek to enforce. *See McFarland*, 532 S.W.2d at 209; *Gladfelter*, 595 S.W.2d at 790; *Mason*, 75 S.W.3d at 888; *Chiavola*, 931 S.W.2d at 825; *Lohman*, 895 S.W.2d at 27. Contrary to Plaintiffs' suggestions in support of mandamus, *Furlong* does not support their assertion that "[w]hen public officers . . . engage in conduct that violates the Missouri Constitution or local charter, . . . a writ of mandamus is appropriate to compel performance." *See Furlong Cos., Inc. v. City of Kansas City* 189 S.W.3d 157, 166 (Mo. banc 2006) (explaining that the "purpose of mandamus is to compel the performance of a ministerial duty that one charged with the duty has refused to perform" and that "[m]andamus does not issue except where the duty sought to be coerced is definite"). Instead, the appropriate mechanism to challenge the constitutionality of the Ordinance is to seek declaratory relief, and Plaintiffs' desire for expedited resolution is not reason to violate the well-established law of mandamus. *See Mason*, 75 S.W.3d at 888 (stating that "Relators' desire for expedited resolution, while understandable, is not reason to violate the well-established provisions of the law of mandamus and to embark on new and unwise precedent that would encourage expanded use of the extraordinary writ to adjudicate and decide issues of law"). Because mandamus will not lie to challenge the constitutionality of the Ordinance, Count I of the petition must be dismissed.

B. Plaintiffs fail to meet their burden of specifying which particular actions they wish to compel and proving that they have an unequivocal right to mandamus.

Plaintiffs fail to meet their burden of alleging and proving that they “have a clear, unequivocal, specific right” to mandamus and that Defendants “have a present, imperative, and unconditional duty to perform an action.” See *Beauchamp v. Monarch Fire Prot. Dist.*, 471 S.W.3d 805, 810 (Mo. App. E.D. 2015). “A mandamus proceeding cannot be used as a dragnet. The party asking relief by that proceeding must specify just what he wants, nothing more or less.” *State ex rel. Porter v. Hudson*, 126 S.W. 733, 740 (Mo. 1910) (explaining that a defendant is not required to look outside the writ to ascertain his duty). Because mandamus “is an unreasoning, inflexible, peremptory command to do a particular thing therein specified without condition, limitation, or terms of any kind,” the party seeking mandamus must “plead facts sufficient to show that the right falls clearly within the limits by which it is circumscribed.” *State ex rel. and to Use of Markwell v. Colt*, 199 S.W.2d 412, 414 (Mo. App. 1947); see also *State ex rel. Dick & Bros. Quincy Brewery Co. v. Quincy, O. & K.C.R. Co.*, 204 S.W. 584, 586 (1918) (“The rule in this state is that ‘the relief asked in the petition is the only relief that can be granted on a final hearing.’”). Mandamus “directs the doing of a clear, legal obligation,” and “[t]here must be no indefinite, nonspecific features about the thing to be done, or doubt about whether it should be done.” *Dick & Bros. Quincy Brewery Co.*, 204 S.W. at 586.

Here, Plaintiffs completely fail to specify which particular actions they seek to compel Defendants to perform, likely because they are, in fact, impermissibly attempting to challenge the constitutionality of the Ordinance. See *Hudson*, 126 S.W. at 740; *Colt*, 199 S.W.2d at 414; *Quincy Brewery Co.*, 204 S.W. at 586. Indeed, given that Plaintiffs’ requests for relief change from filing to filing, it appears that Plaintiffs themselves are unsure about which particular actions they wish to compel. Compare Verified Petition at 12-13, with Suggestions in Support of Writ of Mandamus at 6-7, with Reply Brief in Support of Mandamus at 10. As a result of this uncertainty, Plaintiffs’

requests for relief are vague, generalized, and nonspecific. *See, e.g.*, Verified Petition at 12 (asking the Court to direct Treasurer Layne to “refrain from making any further payments attributable to the implementation of the GBI Project” and direct Mayor Jones to “*ensure*” that public funding “is not *transferred or paid* to private individuals”); Reply Brief in Support of Mandamus at 10 (asking the Court to direct Defendants to reclaim funds from “*any bank*, including MoCaFi” and direct Treasurer Layne to refrain from making any expenditures “for *any and all services* by third parties intended to accomplish the unlawful payments to private persons”) (emphasis added). Rather than the specific, unequivocal requests for relief required to seek mandamus, all of Plaintiffs’ requests contain “indefinite, nonspecific features about the thing[s] to be done,” and none explain “how or in what manner” Defendants “shall ascertain” what their duties are or which actions they should take. *See Quincy Brewery Co.*, 204 S.W. at 586; *Colt*, 199 S.W.2d at 414. Like the relator in *Quincy Brewery*, Plaintiffs attempt to shift all of that burden on Defendants, but neither Defendants nor this Court are required to search outside of the petition for the specific relief Plaintiffs seek. *See Quincy Brewery Co.*, 204 S.W. at 586; *State ex rel. St. Louis Cnty. v. Kelly*, 377 S.W.2d 328, 332 (Mo. 1964) (“One who chooses to invoke the aid of this extraordinary writ should first know exactly what relief he is entitled to and ask for it alone, not leave it to the superintending court to cull out the whole bushel in order to search for one good apple.”).

Plaintiffs may not use the writ of mandamus as a dragnet. *See Hudson*, 126 S.W. at 740. If Plaintiffs wished to invoke the aid of this extraordinary writ, they should have first known exactly what relief they were entitled to and asked for it alone, rather than leaving it to Defendants and this Court to parse. *See Kelly*, 377 S.W.2d at 332; *Hudson*, 126 S.W. at 740. Because Plaintiffs have failed to meet their burden of alleging and proving that they have a clear, specific, and unequivocal right to mandamus, mandamus will not lie, and Count I should be dismissed.

WHEREFORE, Defendants respectfully request that the Court grant Defendants' Motion for Judgment on the Pleadings and enter judgment in favor of Defendants on all counts.

Respectfully submitted,

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Certificate of Service

I hereby certify that on Thursday, July 11, 2024, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on all counsel of record.

/s/ Andrew D. Wheaton