

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

QUINTON LUCAS,)
)
 Plaintiff,)
)
v.)
)
ERIC SCHMITT,)
Attorney General,)
(In his official capacity), and)
)
STATE OF MISSOURI, and)
)
KANSAS CITY, MISSOURI BOARD OF)
POLICE COMMISSIONERS,)
Comprised of its members as follows:)
)
MARK TOLBERT)
Member and President)
(In his official capacity))
)
CATHY DEAN)
Member and Vice President)
(In her official capacity))
)
DON WAGNER)
Member and Treasurer)
(In his official capacity))
)
DAWN CRAMER)
Member)
(In her official capacity))
)
QUINTON LUCAS)
Member)
(In his official capacity))

Case No.

Div.

PETITION FOR DECLARATORY RELIEF

Plaintiff, Quinton Lucas, hereby alleges for this Petition for declaratory relief:

INTRODUCTION

1. For over 80 years, the citizens of the City of Kansas City, Missouri (“City”) have been deprived of the ability to decide through their local elected representatives how their police force is run. They lack any say in the policies, the hiring, training, pay, oversight and discipline of employees, or any other aspect of the overall management of the Kansas City Police Department (“KCPD”). The City is the only municipality in the State that lacks control over the police force that patrols its limits. Instead, decisions concerning the KCPD are made by a five-member Board of Police Commissioners (the “Board”), four of whom are selected by the Governor of Missouri without regard to whether they represent the views of City residents.

2. The City’s sole role with respect to the KCPD is to fund the Board. And even in that regard, the City has no control: it must fund the Board in any amount the Board certifies to the City, subject to a statutory cap. Since 1980, when Missouri voters approved a constitutional amendment prohibiting State-compelled increases in municipal funding, the City’s funding obligation has been capped at one-fifth of its general revenue fund.

3. After decades of complying with its obligations—and, indeed, having often funded the Board at levels exceeding the statutory cap—the City attempted to do what every other municipality in the State does each year: exercise control, within the bounds of the law, over how its citizens’ money is spent. Specifically, in May 2021, the City Council passed an ordinance that placed any funds appropriated for the Board’s use that *exceeded* the statutory maximum into a Community Services and Prevention Fund for the exclusive benefit of the Board. A companion ordinance provided that the KCPD could request money from the Fund, subject to approval by the

City Manager and the Board. Far from an effort to “defund” the Board, the City actually proposed *increasing* the appropriation to the police by several million dollars, which was intended to fund a new class of recruits.

4. For some, even that small step toward increasing the Board’s accountability to the taxpayers was too much. On December 1, 2021, Missouri State Senator Tony Luetkemeyer of Parkville, Missouri pre-filed Senate Bill 678 (the “Bill”), which, as amended, proposed to increase the maximum appropriation the City must make to maintain the Board from one-fifth of the City’s general revenue fund to one-fourth of the general revenue fund, without any State appropriation to cover these increased costs. Senator Luetkemeyer made no effort to hide the retaliatory nature of the Bill, touting it as “a direct response” to the City’s alleged (and, as explained above, fictitious) “attempt . . . to slash” KCPD’s funding.¹ Following last-minute approval by the State House and Senate, Governor Mike Parson signed the Bill into law on June 27, 2022.

5. The purpose of the bill is clear: to mandate an increase in the City’s funding obligation. Senator Luetkemeyer explained that his explicit intention in proposing the Bill was to “raise[] the minimum funding requirement” for the Board.² And when Governor Parson signed the Bill, he emphasized the purported increase in statutorily mandated funding “from *at least* 20 percent of Kansas City’s general revenue per fiscal year to 25 percent per fiscal year.”³ According

¹ *Sen. Tony Luetkemeyer’s Bill to Increase KCPD Funding Advances Out of Committee*, Missouri Senate (January 18, 2022), <https://www.senate.mo.gov/senator-tony-luetkemeyers-bill-to-increase-kcpd-funding-advances-out-of-committee/>.

² Senator Tony Luetkemeyer, *KCPD Funding Bill Passes*, Missouri Senate (May 16, 2022), <https://www.senate.mo.gov/senator-tony-luetkemeyers-legislative-column-for-may-16-2022/>.

³ <https://governor.mo.gov/press-releases/archive/governor-parson-signs-sb-678-increasing-kansas-city-police-departments>.

to the Committee on Legislative Research, Oversight Division, the Bill is estimated to increase the City's yearly required expenditure by no less than \$64 million.⁴

6. Based upon the current budget year in which the City greatly exceeded the statutory mandate for police funding, if placed into effect, the Bill would impose an unfunded mandate upon the City's taxpayers to increase the Board's budget. In the current 2022-2023 fiscal year, the City appropriated 24.3% of its general revenues to the Board. If the City were required to appropriate 25% of general revenues to the Board, that would represent an increase not only from the level currently required (20%), but also an increase relative to the current budget year.

7. The Bill changes the formula that governs the City's obligation to fund the Board.

8. Between 1958 and the 2021, the City could not be required to appropriate an amount in excess of *one-fifth* of its general revenue fund in response to a budget prepared by the Board.

9. The Bill provides that the City cannot be required to appropriate an amount in excess of *one-fourth* of its general revenue fund in response to a budget prepared by the Board.

10. The Bill could therefore require the City to devote an additional 5% of its general revenues to fund the Board. At a minimum, it would require the City to provide increased funding relative to the current fiscal year.

11. Neither the Bill nor any other legislation provides for any increase in State funding to offset that increased expenditure.

12. Enforcement of the Bill would require the City to either receive increased revenues or raise taxes in order to provide consistent quality of City services.

⁴ Fiscal Note, Committee on Legislative Research, Oversight Division, p.3 (June 2, 2022), <https://www.senate.mo.gov/FiscalNotes/2022-1/3824S.04T.ORG.pdf>.

13. As a result, enforcement of the Bill would violate the Hancock Amendment to the Missouri Constitution.

14. The Bill's proponents have conceded its unconstitutionality. As Senator Luetkemeyer acknowledged, the Bill "won't take effect with the governor's signature alone."⁵ "Voters must also provide the authority for the Legislature to increase the [KCPD's] funding" by approving a proposed constitutional amendment sponsored by Senator Luetkemeyer that would exclude State-mandated increases in police funding from the Hancock Amendment's scope.⁶ And the Committee on Legislative Research, Oversight Division, states that the Bill "could be subject to the Hancock Amendment and could impact state revenues (dependent upon legal actions and court decisions)."⁷

15. Of course, voter approval in a subsequent election would have no effect on the constitutionality of a law passed *before* the election. Any enforcement of the Bill is flatly incompatible with the State's Constitution as written when the Bill was enacted and went into effect.

16. In addition to ignoring the Constitution, the State legislature has unquestionably ignored the best interests of the City's taxpayers who, having already been deprived of control over their own police force, will now also bear the burden of the State's unfunded mandate. This action seeks to vindicate their rights.

⁵ Luetkemeyer, *supra* n.2.

⁶ *Id.*

⁷ Fiscal Note, *supra* n.4.

JURISDICTION AND VENUE

17. This Court maintains original subject-matter jurisdiction over this action under Sections 526.030 and 527.010 of the Missouri Revised Statutes and Missouri Rule of Civil Procedure 87.01.

18. This Court has personal jurisdiction over the parties to this action because they are residents of the State of Missouri and the State itself as well as an agency of the State of Missouri.

19. Venue is proper in this Court because the Board maintains its offices in Jackson County, Missouri and transacted business in Jackson County.

PARTIES

20. Plaintiff Quinton Lucas is the Mayor of the City of Kansas City, Missouri. He resides in the City and pays sales, personal property, real property, and earnings taxes to the City. He brings this action in his individual capacity.

21. Defendant Eric Schmitt is the Attorney General of Missouri, named here in his official capacity. The Attorney General is Missouri's chief legal officer. Among the responsibilities of the Attorney General is defending challenges to the validity of state laws.⁸

22. Defendant the State of Missouri is a State of the United States. The State of Missouri includes all of its officers, employees, and agents.

23. Defendant the Kansas City Board of Police Commissioners is an agency of the State of Missouri established under RSMo. §§ 84.350, *et seq.*

24. The Board is comprised of Commissioners Mark Tolbert, Cathy Dean, Don Wagner, Dawn Cramer, and Mayor Quinton Lucas, named here in their official capacities.

⁸ See, e.g., <https://ago.mo.gov/about-us/about-the-office> (“The Attorney General’s Office ... defends challenges to the validity of state laws”).

FACTUAL AVERMENTS

I. State Control Over The KCPD

25. The KCPD is controlled by the five-member Board. RSMo. § 84.460. Four of the Board's Commissioners are appointed by the Governor, and only one—the City's Mayor—is elected by residents of the City. RSMo. §§ 84.350, 84.360.

26. The board of police commissioners model traces its origins back to the Civil War era. At that time, the City of St. Louis had a much higher population of African Americans and Unionists than the State at large, frequently putting St. Louis in tension with the State. At the outset of the Civil War in 1861, following fiercely contested debates and a vigorous campaign by Missouri's secessionist Governor, the Missouri General Assembly stripped St. Louis officials of control over the city's police force, placing it instead in the hands of a board of police commissioners. In 1874, the General Assembly did the same for the City's newly created police department.

27. For many years, state law afforded the Board a blank check: authority to certify a budget in any amount to the City, which was then required to “set apart and appropriate the amount so required.”⁹ Then, in 1932, the Missouri Supreme Court held in *State ex rel. Field v. Smith*, 49 S.W. 2d 74 (1932), that the Board's unfettered access to the City's coffers constituted an unconstitutional delegation of legislative authority.

28. The City's respite from State control was short-lived, however. In 1939, the General Assembly reconstituted the Board, again removing control over the KCPD from local officials. Notwithstanding that more than 80 years have passed—and both the City and State have

⁹ See, e.g., RSMo § 9778 (1909), RSMo § 8926 (1919).

undergone tremendous change—the Board remains in place. Unique among major American cities, the State retains control of the City’s police.

II. The Hancock Amendment

29. On November 4, 1980, the people of Missouri amended the State’s Constitution, adding several provisions that restrict the State’s ability to impose new taxes—either directly, by enacting new or raising existing state taxes, or indirectly, by compelling municipalities to expend funds without corresponding appropriations by the State. These protections, set forth in Sections 16 through 24 of Article X of the Missouri Constitution, are collectively known as the Hancock Amendment.

30. Section 16 provides that “[t]he state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions.”¹⁰ Section 21 further provides that “[a] new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.”¹¹ These provisions became effective December 4, 1980.

31. In short, the Hancock Amendment prohibits the State (or its agencies) from requiring local governments to increase funding for a previously mandated activity beyond the level authorized at the time of the Hancock Amendment’s enactment without appropriation of sufficient State funds to finance the cost of that increased spending. One way in which the State

¹⁰ Mo. Const. art X, § 16.

¹¹ Mo. Const. art X, § 21.

can run afoul of the Hancock Amendment is to alter a long-used funding formula in a manner that increases the level of funding a municipality must provide for a previously mandated activity, such as maintenance of the Board.

32. As the Missouri Supreme Court has recognized, the Hancock Amendment's prohibition on unfunded mandates "seeks to prohibit the state from avoiding the defined limit or limits" on its own taxing and spending powers by "the shifting of responsibility for payment for either existing or newly created governmental responsibilities" to municipalities.¹² Otherwise, the State could circumvent its duty not to raise taxes or spending above a certain level without voter approval simply by shifting the spending burden to its cities and towns. The Hancock Amendment closes that loophole, protecting the City's residents from State overreach.

III. Historical Funding Requirements And The City's Practices

33. Before the Hancock Amendment was enacted in 1980, the State could ratchet up the City's funding obligation to fund the Board without a vote of the local electorate—and, notably, without any commensurate increase in State funding. The State availed itself of the opportunity, requiring additional funding for the Board at the expense of the City's other critical funding obligations and priorities.

34. Until 1958, the City was obliged to fund the Board in any amount it certified up to one-sixth of its the City's general revenue fund in any given fiscal year. In that year, the State legislature increased the cap on the City's funding obligation to one-fifth of its general revenue fund.

35. That statutory maximum of one-fifth of the general revenue fund was in place in 1980, when it was effectively frozen by the Hancock Amendment.

¹² *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 13 (Mo. 1981).

36. Although the City is not obliged to provide the Board with more than one-fifth of the City's general revenue fund, in practice, the Board has consistently certified a budget exceeding that amount.

37. In response, the City has often appropriated amounts that exceeded the statutory maximum.

IV. The City's Push For Accountability

38. In May 2021, having voluntarily funded the Board at (and regularly above) the statutory requirement for decades, the City passed an ordinance redirecting appropriated funds in excess of the statutory maximum into a Community Services and Prevention Fund. The Fund permitted appropriations exclusively to the Board and was intended to support innovative ways to fight crime—such as community engagement, outreach, increased officer hiring, and violence prevention. In other words, the ordinance concerned *only* funds that the City had *no obligation* to appropriate, and sought to direct those funds in ways designed to enhance alternatives and additions to traditional practices to best serve the City's residents.

39. This was in no way an effort to “defund” the KCPD. A companion ordinance provided that the KCPD could request the reallocated funds—and an additional \$3 million dollars for a new recruiting class—through a contract with the City that would enable city officials to become involved (for the first time in more than eighty years) in conversations concerning how the funds it appropriated for the Board would be used. As Mayor Lucas explained at the time, the City's purpose was to make such “determinations here in Kansas City and not just defer to Jefferson City to come up with solutions to violent crime that have nothing to do with actually solving crime in Kansas City.”¹³

¹³ Peggy Lowe and Lynn Horsley, *Kansas City Mayor and City Council Push Through*

40. Not content with receiving just the funds to which it was entitled by law—or interested in allowing the City to have any say in how the excess funds it voluntarily provided would be used—the Board commenced litigation on May 28, 2021. On October 5, 2021, Jackson County Judge Patrick Campbell ruled against the City, finding that because both the Board and the City had already set their budgets for the fiscal year, the City was not permitted to change its allocation through a different process than the one mandated by Missouri law. The Court further found that any discretionary funds the City appropriated over the statutory ceiling ceased to be discretionary once appropriated to the Board, making it imperative that the City’s statutory funding obligations be clear to the City well before the formulation and adoption of future City budgets. The City did not appeal.

V. The State’s Retaliatory Response

41. The City’s attempt to assert even a sliver of control over its own funds did not go unnoticed.

42. On December 1, 2021, Senator Luetkemeyer filed the Bill, seeking for the first time since 1958 to increase the maximum amount the City would be required to appropriate to fund the Board.

43. The Bill proposed to amend RSMo. § 84.730 to require the City to appropriate to the Board any amount the Board certifies up to “one-fourth of the general revenue fund of such year”—*i.e.*, a 25 percent increase to the existing cap.

44. Senator Luetkemeyer’s original Bill also sought to include in the City’s calculations of “general revenue fund” “all revenue collected by the city regardless of whether the revenue is

Changes To Regain Some Control of Police Budget, KCUR 89.3 (May 21, 2021), <https://www.kcur.org/news/2021-05-20/kansas-city-mayor-and-council-seek-local-control-of-police-budget>.

from a tax, fee, or other source of funding,” which would have included restricted amounts in federally-regulated funds such as fees generated by the Kansas City Department of Aviation.¹⁴ Together, these changes could potentially have skyrocketed the maximum funding obligation of the City’s taxpayers.

45. Senator Luetkemeyer made no effort to hide his retaliatory motive. He baselessly accused the City of “attempt[ing] to usurp the police commissioners’ authority”—ignoring, of course, that one of the Commissioners is the City’s Mayor.¹⁵ And he has repeatedly invoked the City’s supposed (and imaginary) “defunding” of the Board as the basis for the Bill, claiming that the City’s effort allegedly to “defund the police” inspired him to make “increasing the KCPD budget [his] top priority for the 2022 session.”¹⁶ Unfortunately, he decided to do so in a manner that violates Missouri’s Constitution.

46. Senator Luetkemeyer was not blind to the Bill’s constitutionally dubious nature. Along with the Bill, Senator Luetkemeyer filed Senate Joint Resolution 38 (the “Joint Resolution”) to—in his words—“remove all concerns about the constitutionality of the bill.”¹⁷ The Joint Resolution would place on the ballot for Missouri voters’ approval a revision to the Hancock Amendment that carves out police funding from the prohibition on unfunded mandates.

47. Senator Luetkemeyer is not alone in recognizing that enforcing the Bill would be unconstitutional. Former Missouri Supreme Court Chief Justice Michael Wolff recently explained to local media that the Bill violates the Hancock Amendment: “When the legislature tells a local

¹⁴ S.B. 678, 101st Gen. Assembly, Reg. Sess. (Mo. 2022).

¹⁵ Luetkemeyer, *supra* n.2.

¹⁶ *Id.*

¹⁷ Kacen Bayless, *Here’s why Missouri needs to change its constitution to force KC to spend more on police*, KC Star (May 17, 2022), <https://www.kansascity.com/article261504777.html#storylink=cpy>.

government to do something, it has to give the local government the money to do it.... So they can't force Kansas City to pay for something . . . unless the legislature crops up the money to do it.”¹⁸

48. On May 13, 2022, the General Assembly passed amended versions of the Bill and the Joint Resolution, ostensibly increasing the City's funding obligation to one-fourth of its general revenue fund, while putting to the State's voters the question whether to alter the State constitution for the sole purpose of enacting legislation like the Bill.

49. Celebrating the passage of the Bill and Joint Resolution, Senator Luetkemeyer explained that the legislation would “thwart future efforts to defund the police in Kansas City.”¹⁹ After characterizing the Bill as “rais[ing] the minimum funding requirement for the KCPD to 25% of general revenue,” he asserted that the Joint Resolution was necessary “to allow the change.”²⁰ In other words, the legislator admitted that the Bill was unconstitutional, so sought to amend the constitution in order to sanction it.

50. The Bill's effect is plain. It fundamentally alters the decades-old formula used to determine the maximum that the City can be required to appropriate to fund the Board.

51. No State appropriation has been made—or even contemplated—to fund any additional costs the City would incur as result of that change.

52. In the Missouri General Assembly's zeal to assert absolute State control over City taxpayer choices in public safety, it has overlooked the interests of the very people its measure is

¹⁸ *Id.*

¹⁹ Luetkemeyer, *supra* n.2.

²⁰ Luetkemeyer, *supra* n.2 (“Although the measure passed the Legislature, the change won't take effect with the governor's signature alone. Voters must also provide the authority for the Legislature to increase the department's funding. SJR 38 will place a constitutional amendment on the November general election ballot to allow the change.”).

seemingly intended to help. A significant increase in the City's appropriations to the Board would necessarily require reductions in the other services the City provides to its residents, leading to a defunding of the Kansas City Fire Department, defunding of road repair and resurfacing in the City, and defunding of Parks and Recreations services for City taxpayers. Accordingly, the City informed the State Auditor that the Bill could increase the City's potential funding for the Board—and decrease its funding for other services—by more than \$38 million.

53. At the very least, the unfunded mandate under the Bill would have an immediate and negative fiscal impact on the City. It would increase next fiscal year's City taxpayer funding from the current 24.3 percent of general revenues—set by the City Council in its discretion—to a mandated 25 percent of the City's general revenues in future years. Because the State has not provided for an appropriation to offset this increase, the Bill violates the Hancock Amendment.

54. The Board has already begun to discuss the budget for the fiscal year set to begin on May 1, 2023. As part of the budget planning process, members of the KCPD have participated in meetings with City officials to discuss next year's budget. A vote on a budget request from the Board to the City is anticipated to occur during the Fall.

55. The City has also begun work to prepare its budget for the upcoming fiscal year, including by participating in meetings with members of the KCPD. With an anticipated budget of nearly \$2 billion, it is imperative that the City understand its funding obligations as soon as possible. This understanding is also important in light of the City's obligations under its charter to maintain and follow its five-year business plan.

56. The Court must act before the City's taxpayers are irreversibly harmed.

COUNT I

Request for Declaratory Relief

57. Article X, §§ 16 and 21 of the Missouri Constitution prohibit the state from requiring any new or expanded activities by the City without full state financing.

58. The Bill increases the level of previously required service and activity by increasing the maximum appropriation the City must make to the Board.

59. The Bill changes the formula used since before 1980 to calculate the maximum level of funding the City is obliged to appropriate for the Board.

60. The Bill increases the level of spending the City must provide to the Board without direct voter approval.

61. Neither the Bill nor any other legislation purports to appropriate or disburse to the City any State funds to cover the cost of any increased appropriation to the Board.

WHEREFORE, Plaintiff prays this Court:

1. Enter a declaratory judgment that any effort by the Board of Police Commissioners to enforce Senate Bill 678 is unconstitutional, violates the Hancock Amendment, Article X, §§ 16 and 21 of the Missouri Constitution, and that the City is relieved of the duty to fund the Board of Police Commissioners at any amount over one-fifth of its general revenue fund; and
2. Allowing such other and further relief as is proper under the circumstances, including attorneys' fees and costs.

Respectfully submitted,

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