

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

QUINTON LUCAS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2216-CV18354
)	
ERIC SCHMITT <i>et al.</i> ,)	Division 14
)	
Defendants.)	

MOTION TO DISMISS

The Kansas City Board of Police Commissioners (the “Board”) moves to dismiss Plaintiff Quinton Lucas’s (“Plaintiff”)’s petition, which alleges Senate Bill 678 (“SB678”) violates Article X, Sections 18-24 of the Missouri Constitution (the “Hancock Amendment”), because the claim is not ripe for adjudication.

In less than two months, Missouri citizens will vote on a constitutional amendment that, if passed, will cure the constitutional infirmity Plaintiff alleges. And, under Missouri law, no enforcement of SB678 will occur until after that November vote. A ruling at this stage would be an impermissible advisory opinion. The Court should dismiss the petition accordingly.

Factual Background

The Board is a state-controlled entity composed of gubernatorially appointed Kansas City, Missouri (“the City”) residents and the Mayor of the City. *See Pet.* at ¶¶ 24 & 25. The Board controls the City’s Police Department. *Id.* at ¶ 25. The Board is funded through a statutory process set forth in Chapter 84, by which the Board requests funds from the City and the City, in turn, appropriates funds for the Board’s operations. *See id.* at ¶ 34-37. For many years, Chapter 84 required the City to fund the Board’s operations up to “one-fifth of the [City’s] general revenue fund[.]” *Id.* at ¶ 8.

Earlier this year, the state legislature passed SB678, which requires the City to fund the Board's operations up to "one-fourth of [the City's] general revenue fund[.]" *See Pet.* at ¶¶ 9 & 48. The legislature made no appropriation for the increase in funding from one-fifth to one-fourth of the City's general revenue. *Id.* at 11. This increase, Plaintiff alleges, violates the Hancock Amendment's prohibition on the state legislature requiring a city to fund a "new activity or service or an increase in the level of any active or service beyond that required by existing law . . . unless a state appropriation is made[.]" *Id.* at ¶¶ 30 & 57-61.

SB678 is not the end of the story, however, as Plaintiff acknowledges in his petition. In the same legislative session, the sponsor of SB678 also introduced Senate Joint Resolution 38 ("SJR38"), which contains ballot language that, if adopted by Missouri's citizens, would amend the Hancock Amendment as follows:

Notwithstanding the foregoing prohibitions, before December 31, 2026, the general assembly may by law increase minimum funding for a police force established by a state board of police commissioners to ensure such police force has additional resources to serve its communities.

See Pet. at ¶ 46.¹

SJR38 passed on May 18, 2022, and the amendment will take effect if Missouri citizens vote to adopt it "at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 2022." *Id.*; *see also* 2022 MO S.J.R. 38 (Westlaw). According to Plaintiff, the sponsor of SB678 and SJR38 made clear that, before there would be any attempt to enforce SB678, the "[v]oters must also provide the authority for the Legislature to increase the KCPD's funding" by approving this "constitutional amendment." *Pet.* at ¶ 14.

¹ SENATE JOINT RESOLUTION 38, <https://www.senate.mo.gov/22info/pdf-bill/tat/SJR38.pdf>, last accessed September 20, 2022 at 2:13 p.m. (also available on Westlaw at 2022 MO S.J.R. 38). Though Plaintiff omits the text of SJR38 from the petition, the language is publicly available and the law is cited in the petition, and therefore incorporated by reference. Rule 55.12.

Argument

I. A trial court may hear constitutional challenges only when they are ripe.

Before the Court may address “constitutional challenges,” it must determine whether the plaintiff “presents a justiciable controversy.” *S.C. v. Juv. Officer*, 474 S.W.3d 160, 162 (Mo. 2015). “A justiciable controversy exists where the plaintiff has a legally protectable interest at stake, a substantial controversy exists between parties with genuinely adverse interests, and that controversy is ripe for judicial determination.” *Id.* at 162-63 (quoting *Missouri Health Care Ass’n v. Attorney General of the State of Mo.*, 953 S.W.2d 617, 620 (Mo. banc 1997)). “Ripeness is determined by whether the parties’ dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character.” *Id.* at 163. “Ripeness does not exist when the question rests solely on a probability that an event will occur.” *Id.*

“In the context of a constitutional challenge to a statute, a ripe controversy generally exists when the state attempts to enforce the statute.” *Id.* (quoting *Missouri Alliance for Retired Americans v. Dep’t of Labor and Indus. Relations*, 277 S.W.3d 670, 677 (Mo. banc 2009)). A plaintiff can lodge a pre-enforcement challenge only if “the facts necessary to adjudicate the underlying claims [are] fully developed and the law at issue [is] affecting the plaintiff in a manner that [gives] rise to an immediate, concrete dispute.” *Id.*

Determining ripeness is necessary because a court is “not permitted” to render an “advisory opinion on some future set of circumstances.” *Schultz v. Warren Cnty.*, 249 S.W.3d 898, 901 (Mo. Ct. App. 2008). An opinion is advisory, for example, if it is “based on hypothetical facts.” *G.B. v. Crossroads Acad.-Cent. St.*, 618 S.W.3d 581, 592 (Mo. Ct. App. 2020), *reh’g and/or transfer denied* (Feb. 2, 2021), *transfer denied* (Apr. 6, 2021). A petition that presents a “difference of

opinion on a legal question” that merely requests “the court to issue an advisory opinion on a speculative and hypothetical situation which may never come to pass” is not ripe and should be dismissed. *See Commonwealth Ins. Agency, Inc. v. Arnold*, 389 S.W.2d 803, 805 (Mo. 1965) (affirming grant of motion to dismiss for lack of ripeness).

II. Plaintiff’s pre-enforcement challenge to SB678 is not ripe.

Plaintiff’s claim is a pre-enforcement challenge to SB678 with facts necessary to the Court’s decision still developing and without any immediate effect on Plaintiff or a concrete dispute.

First, Plaintiff does not allege that the Board attempted to enforce SB678’s increased funding requirement. Nor could he.² Under Chapter 84, the budget process begins “on the fifteenth day of January of each year,” when the Board must submit “a budget estimating the sum of money which will be necessary for the next fiscal year[.]” RSMo. § 84.730. So, under Missouri law, the earliest any “enforcement” can occur is January 15 of next year. *See id.* Plaintiff’s claim is therefore a pre-enforcement challenge.

Second, the facts here are not sufficiently developed to permit a pre-enforcement challenge and SB678 is not currently affecting Plaintiff in a way that creates an immediate, concrete dispute. *See S.C.*, 474 S.W.3d at 163. Plaintiff says SB678 violates the Hancock Amendment. But the ballot language in SJR38, which was introduced and passed in the same legislative session as SB678, would amend the Hancock Amendment to authorize the increase.

Plaintiff would have this Court issue a speculative and advisory opinion about the constitutionality of SB678 before the vote in November. And Plaintiff does not allege that the Board would seek to enforce SB678 if the November vote fails. Indeed, Plaintiff acknowledges

² Plaintiff alleges there were “discussions” about the budget for next year. *See Pet.* at ¶ 54. No law holds that mere discussions are statutory enforcement.

that the sponsor of both legislations said there would be no enforcement absent voter approval. A ruling at this stage would be purely advisory and have no effect on the parties' rights.

In sum, SB678 does not currently affect Plaintiff in a way that creates an "immediate" or "concrete" dispute. Neither the parties nor the Court know how the dispute might evolve after the November election—or if there will even be one. The Board has not—and may never—take steps to enforce SB678, and the election may moot the entire claim anyway. And even if there *might* be a dispute after the November election, ripeness "does not exist when the question rests solely on a probability that an event will occur." *See S.C.*, 474 S.W.3d 160 at 163.

Conclusion

Plaintiff's claim will not be ripe for months, if ever. It makes no sense to debate hypothetical legal questions before an immediate and concrete dispute arises, which will occur, if at all, after the November election. Until that time, the Court should dismiss Plaintiff's petition.

Dated: September 22, 2022.

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Certificate of Service

I certify that, on September 22, 2022, I filed a copy of this document with the Court's CM-ECF filing system, with notice of activity generated and sent to all counsel of record.

/s/ Michael W. Seitz

Attorney for the Police Board