

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

CITY OF DE SOTO and,)	
JAMES ACRES,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 18AC-CC00348
)	
MICHAEL L. PARSON, GOVERNOR)	
OF THE STATE OF MISSOURI, and,)	
JOSHUA D. HAWLEY, ATTORNEY)	
GENERAL OF THE STATE)	
OF MISSOURI)	
)	
Defendants.)	

ANSWER

COME NOW, Defendants, by and through counsel, Assistant Attorney General Scott Snipkie, and for their Answer state the following:

1. Admit.
2. Defendants are without sufficient information to confirm or deny;

therefore, Defendants deny.

3. Admit.
4. Defendants admit that Joshua D. Hawley is the Attorney General of the State of Missouri; however, Defendants deny that Attorney General Hawley is charged with enforcing the statute in question.

5. Plaintiffs' Paragraph 5 is a restatement of the law and requires no response because Chapter 77 of the Revised Statutes of Missouri speaks for itself.

6. Plaintiffs' Paragraph 6 is a restatement of the law and requires no response because Chapter 77 of the Revised Statutes of Missouri speaks for itself.

7. Plaintiffs' Paragraph 7 is a restatement of the law and requires no response because Chapter 77 of the Revised Statutes of Missouri speaks for itself.

8. Defendants admit that the City of De Soto formed a municipal fire department. As to the remainder of Plaintiffs' Paragraph 8, Defendants are without sufficient information to confirm or deny; therefore, Defendants deny.

9. Admit based on the data contained in The Missouri Roster 2017-2018.

10. Admit based on the data contained in The Missouri Roster 2017-2018.

11. Defendants are without sufficient information to confirm or deny; therefore, Defendants deny.

12. For the purposes of Plaintiffs' challenge of the provisions of HB 1446 under Mo. Const. Art. III, §40(30), the "applicable provisions" of House Bill 1446 are inapposite insofar as those provisions are now in effect; therefore, the Court can take notice of §321.320, RSMo, as published by the Revisor of Statutes, and Defendants includes it herein as Exhibit 1. For the purposes of Plaintiffs' challenge under Mo. Const. Art. III, §23, Defendants admit that Exhibit A is a representation of HB 1446.

COUNT 1: DECLARATORY JUDGMENT THAT HOUSE BILL 1446 IS

UNCONSTITUTIONAL

13. Defendants incorporate herein by reference their answers from Paragraphs 1 through 12 as if the same were set forth herein.

14. Defendants deny that the Legislature "purported to deprive Plaintiff City of De Soto of certain powers previously granted to them by Chapter 321[...]." Likewise, Defendants deny that any provision of §321.320, RSMo (Exhibit 1), deprives Plaintiff City of De Soto of powers previously granted them by Chapter 321. Further, Defendants deny that the Legislature purported to or caused harm to the City of De Soto and its citizens generally. Answering further as to Plaintiffs' specific allegations of harm, Defendants state the following:

- a. Plaintiffs nowhere alleged that an annexation occurred since the passage of the statute or that an annexation is planned to occur; therefore, Plaintiffs' allegation is purely speculative, and Defendants deny. Answering further, Plaintiffs' interpretation of the statute is incorrect so Defendants likewise deny on that basis;
 - b. Plaintiffs nowhere alleged that an annexation occurred since the passage of the statute or that an annexation is planned to occur; therefore, Plaintiffs' allegation is purely speculative, and Defendants deny. Answering further, Plaintiffs' interpretation of the statute is incorrect so Defendants likewise deny on that basis;
 - c. Plaintiffs nowhere alleged that an annexation occurred since the passage of the statute or that an annexation is planned to occur; therefore, Plaintiffs' allegation is purely speculative, and Defendants deny. Answering further, Plaintiffs' interpretation of the statute is incorrect so Defendants likewise deny on that basis;
15. Deny.

16. Because §321.320, RSMo, is not a “special law,” it requires no substantial justification; therefore, Defendants deny.

17. Plaintiffs nowhere alleged that an annexation occurred since the passage of the statute or that an annexation is planned to occur; therefore, Plaintiffs’ allegation is purely speculative, and Defendants deny. Answering further, Plaintiffs’ interpretation of the statute is incorrect so Defendants likewise deny on that basis.

18. Plaintiffs nowhere alleged that an annexation occurred since the passage of the statute or that an annexation is planned to occur; therefore, Plaintiffs’ allegation is purely speculative, and Defendants deny. Answering further, Plaintiffs’ interpretation of the statute is incorrect so Defendants likewise deny on that basis.

19. Defendants admit that the revised §321.320 is now in effect. Defendants deny that Defendant Attorney General is charged with the enforcement of the statute; therefore Defendants deny that the statute is “enforceable” by the Attorney General.

20. Defendants deny generally that §321.320, RSMo, as amended by HB 1446, was signed into law in violation of Mo. Const. Art. III, §40. Answering further as to the specific allegations in Plaintiffs’ subparagraphs, Defendants states as follows:

a. Deny;

b. Deny;

c. Deny;

21. Defendants deny generally that §321.320, RSMo, as amended by HB 1446, was signed into law in violation of Mo. Const. Art. III, §23. Answering further as to the specific allegations in Plaintiffs' subparagraphs, Defendants states as follows:

a. Defendants deny. Answering further, House Bill 1446 repeals and amends four sections of various chapters of the Revised Statutes of Missouri and adds an emergency clause for another, each of which address elections in some way (Exhibit A pp. 1-2, 4-6). As to §321.320, RSMo, House Bill 1446 added 4 subparts to §321.320, 3 of which, §321.320.2, .3, and .5, contain election provisions (Exhibit A, pp 5-6); and,

b. Deny.

22. Plaintiffs' Paragraph 22 consists of a legal conclusion and requires no response; however, to the degree that a response is required, Defendants deny.

23. Defendants deny. Answering further, Plaintiffs' pleadings contain no allegation that an annexation occurred since the enactment of the statute; therefore any harms complained of are hypothetical. Insofar as Plaintiffs cannot show any injury, they are without standing to urge the statute's unconstitutionality.

Defendants deny Plaintiffs' prayer for judgment generally, and, as to the specific prayers in the subparts of Plaintiffs' "WHEREFORE Statement" following their Paragraph 23, Defendants answers as follows:

- a. Deny;
- b. Deny;
- c. Deny; and,
- d. Deny.

**COUNT II: TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION AND PERMANENT INJUNCTION**

24. Defendants incorporate herein by reference his answers from Paragraphs 1 through 23 as if the same were set forth herein.

25. Deny.

26. Defendants deny. Answering further, as noted above, Plaintiffs' pleadings contain no allegation that an annexation occurred since the

enactment of the statute; therefore any harms complained of are hypothetical and by definition cannot be immediate or irreparable.

27. Deny.

28. Defendants deny. Answering further, as noted above, Plaintiffs' pleadings contain no allegation that an annexation occurred since the enactment of the statute; therefore any harms complained of are hypothetical. Insofar as hypothetical harm does not exist, it cannot outweigh any harm to other interested parties.

29. Deny.

Defendants deny Plaintiffs' prayer for judgment generally, and, as to the specific prayers in the subparts of Plaintiffs' "WHEREFORE Statement" following their Paragraph 29, Defendants answers as follows:

- a. Deny;
- b. Deny;
- c. Deny;
- d. Deny; and,
- e. Deny.

AFFIRMATIVE DEFENSE – LACK OF STANDING

1. Plaintiffs have no standing to challenge the constitutional validity of §321.320, RSMo.

2. In order to be subject to the strictures of revised §321.320, RSMo,

Plaintiffs must:

- a. First, be members of the group defined within the statute;
- b. Then, annex, either voluntarily or involuntarily, certain land as contemplated by the statute; and,
- c. Finally, lose an election regarding such annexation as contemplated and outlined by the revised §321.320, RSMo.

3. Plaintiffs' pleadings are insufficient to show that they necessarily fall within the group defined within the statute.

4. Assuming *arguendo* that Plaintiff City of De Soto does fall within the group defined within the statute, Plaintiffs still neither voluntarily nor involuntarily annexed any property since the enactment of the statute.

- a. Plaintiff City of De Soto alleges it "reserve[s] the right to receive voluntary annexations from citizens in unincorporated Jefferson County, Missouri," and it likewise reserves the right involuntarily to annex property in the same; however, it fails to allege that it annexed any property, voluntary or otherwise, since the effective date of revised §321.320, RSMo; and,

- b. As Plaintiff City of De Soto engaged in no annexations since the effective date of the revision, any harm either Plaintiff alleges is speculative.
5. As Plaintiff City of De Soto engaged in the annexation of no property, surely then it did not lose any election contemplated and outlined by the revised §321.320, RSMo.
6. As Plaintiff City of De Soto neither annexed property nor conducted and lost the election contemplated by the subject statute, any harm alleged is based upon a hypothetical application thereof.
7. The law as to standing to challenge the constitutionality of a statute is clear:
- a. “Generally, only those adversely affected by a statute have standing to challenge the constitutionality of the statute.” *State v. Young*, 362 S.W.3d 386, 396 (Mo. banc 2012).
- b. “This Court will not declare a statute unconstitutional when the party challenging the validity of the statute ‘is not harmfully affected by the particular feature of the statute alleged to be unconstitutional.’” *Stewart v. Partamian*, 465 S.W.3d 51, 60 (Mo. 2015) (quoting *State v. Brown*, 502 S.W. 2d 295, 305-6 (Mo. 1973)).

- c. Courts will not find a statute is unconstitutional based upon hypothetical circumstances in which the statute might apply. *Lester v. Sayles*, 850 S.W. 2d 858 (Mo. banc 1993).
8. As all of the damages contemplated by Plaintiffs' in their Petition are speculative in nature and based upon a hypothetical application thereof, Plaintiffs' have no standing to challenge its constitutionality.

WHEREFORE Defendants pray this Court dismiss Plaintiffs' Petition and grant such other relief as may be appropriate under the premises.

Respectfully submitted,
JOSHUA D. HAWLEY
Attorney General
/s/ Scott Snipkie
Scott Snipkie
Assistant Attorney General
Missouri Bar No. 65195
Supreme Court Building
207 West High Street
Post Office Box 899
Jefferson City, MO 65102
Telephone: 573-751-9199
Fax: 573-751-5660
Email: scott.snipkie@ago.mo.gov
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served by CaseNet efilng system this 5th day of October, 2018 to:

James M. Kreitler
Wegmann Law Firm
P.O. Box 740
455 Maple St.
Hillsboro, MO 63050
jkreitler@wegmannlaw.com

Attorneys for Plaintiffs

/s/ Scott Snipkie
Assistant Attorney General



State of Missouri

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**Effective 01 Jun 2018, see footnote**

Title XXI PUBLIC SAFETY AND MORALS

Chapter 321**321.320. Property in city of 40,000 inhabitants not wholly within district, to be excluded — requirements for certain annexed areas (Boone, Jackson, Jefferson, St. Charles, St. Louis counties) — exceptions (Crystal City, Festus, Herculaneum). —**

1. Except as otherwise provided in this section, if any property, located within the boundaries of a fire protection district, is included within a city having a population of forty thousand inhabitants or more, which city is not wholly within the fire protection district, and which city maintains a city fire department, the property is excluded from the fire protection district.

2. Notwithstanding any provision of law to the contrary, unless otherwise approved by a majority vote of the governing body of the municipality and a majority vote of the governing body of the fire protection district, or otherwise approved by a majority vote of the qualified voters in the municipality and a majority vote of the qualified voters in the fire protection district, a fire protection district serving an area included within any annexation by a municipality located in any county of the first classification with more than one hundred fifty thousand but fewer than two hundred thousand inhabitants, or an area included within any annexation by a municipality in a county having a charter form of government, approved by a vote after January 1, 2008, including simplified boundary changes, shall, following the annexation:

- (1) Continue to provide fire protection services, including emergency medical services to such area;
- (2) Levy and collect any tax upon all taxable property included within the annexed area authorized under [chapter 321](#);
- (3) Enforce any fire protection and fire prevention ordinances adopted and amended by the fire protection district in such area.

3. All costs associated with placing an annexation on the ballot within a municipality that involves an area that is served by a fire protection district shall be

EXHIBIT 1

borne by the municipality.

4. The provisions of subsections 2 and 3 of this section shall not apply to:

(1) Any city of the third classification with more than four thousand five hundred but fewer than five thousand inhabitants and located in any county with a charter form of government and with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants;

(2) Any city of the fourth classification with more than three thousand but fewer than three thousand seven hundred inhabitants and located in any county with a charter form of government and with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants; and

(3) Any city of the third classification with more than eleven thousand five hundred but fewer than thirteen thousand inhabitants and located in any county with a charter form of government and with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants.

5. Notwithstanding any other provision of law to the contrary, the residents of an area included within any annexation by a municipality located in any county of the first classification with more than one hundred fifty thousand but fewer than two hundred thousand inhabitants, or an area included within any annexation by a municipality in a county having a charter form of government, approved by a vote after January 1, 2008, may vote in all fire protection district elections and may be elected to the fire protection district board of directors.

(L. 1949 p. 540 § 32a, A.L. 1957 p. 723, A.L. 1961 p. 553, A.L. 1969 H.B. 322, A.L. 2018 H.B. 1446)

Effective 6-01-18

< end of effective 01 Jun 2018 > 

use this link to bookmark section 321.320

- All entries

	Effective	End
321.320	6/1/2018	
321.320	8/28/1969	6/1/2018



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