

# **Exhibit A**

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

STATE OF MISSOURI ex rel. KANSAS	)	
CITY BOARD OF POLICE	)	
COMMISSIONERS, et al.,	)	
	)	
Plaintiffs-Relators,	)	Case No. 2116-CV11556
	)	
v.	)	Division 18
	)	
MAYOR QUINTON LUCAS, et al.,	)	
	)	
Defendants-Respondents,	)	
	)	
and	)	
	)	
GWENDOLYN GRANT,	)	
	)	
Defendant-Intervenor.	)	

**GWENDOLYN GRANT’S ANSWER AND COUNTERCLAIMS**

COMES NOW, Defendant-Intervenor Gwendolyn Grant, (“Ms. Grant” or “Intervenor”) by and though undersigned counsel, and pursuant Rule 52.12(c), for its Answer and Counterclaims, states as follows:

**ANSWER**

No allegations in Plaintiffs-Relators’ (hereinafter “Plaintiffs”) Petition are directed to Ms. Grant, and therefore no response is required. To the extent a response is required, Ms. Grant denies the same. To the extent that the Court desires that Ms. Grant provide specific responses to each paragraph of Plaintiffs’ Petition, Ms. Grant respectfully requests leave of the Court to submit an Amended Answer providing such specific responses.

**COUNTERCLAIMS**

1. This case is about taxation without representation. Ms. Grant brings this action to

enforce her rights under the Fourteenth Amendment to the United States Constitution and the Hancock Amendment to the Missouri Constitution. Ms. Grant brings these Counterclaims requesting declaratory and injunctive relief against Plaintiffs to prevent the allocation of an unconstitutional amount of Kansas City taxpayer money to the Kansas City Board of Police Commissioners, a state agency that Kansas Citizens have little to no control over. An examination of the totality of the facts and circumstances reveals that the Board of Police Commissioners system deprives Kansas Citizens of local control over its police officers, dilutes the voting strength of African-American voters, and was implemented and maintained for a discriminatory purpose. Moreover, Kansas City is the only city in Missouri, and the only major city in the United States, which lacks local control of its own police force, a singular distinction which is unconstitutionally arbitrary. Ms. Grant seeks a judicial declaration that Plaintiffs' requested 2021-22 budget violates the Hancock Amendment, and that the Board of Police Commissioners statutory scheme violates the Equal Protection Clause. Ms. Grant also seeks costs and attorneys' fees, in accordance with the Hancock Amendment.

#### **JURISDICTION, VENUE, AND PARTIES**

2. Ms. Grant incorporates by reference Plaintiffs' allegations regarding the identities of the parties to this action. This Court has personal jurisdiction over all parties to this action.

3. Ms. Grant incorporates by reference Plaintiffs' allegations regarding venue, and asserts that venue is proper in this Court.

4. Ms. Grant is an African-American woman who is a Kansas City, Missouri resident and taxpayer.

## FACTS COMMON TO ALL COUNTS

### a. *History of the Board of Police Commissioners system*

5. Kansas City is currently the only city in the State of Missouri, and the only major city in the United States, without local control of its own police department.

6. Instead, the Kansas City Police Department is controlled by a Board of five Police Commissioners. RSMo § 84.460.

7. Four of these Commissioners are appointed by the Governor, and one, the Mayor, is elected by residents of Kansas City. RSMo §§ 84.350, 84.360.

8. For this reason, the Kansas City Board of Police Commissioners is considered to be an agency of the State of Missouri, and not of the City of Kansas City. *State ex rel. Spink v. Kemp*, 283 S.W.2d 502, 514 (Mo. 1955).

9. Although a state agency controls Kansas City's police force, the City itself is obligated to provide for its funding.

10. Kansas City's current system, under which the Police Department is controlled by a state agency rather than by the local government, traces its roots to 1861, the year that the Civil War began.

11. In 1861, as today, St. Louis had a higher representation of African-Americans, and others sympathetic to African-American freedom and civil rights, than did Missouri as a whole.

12. During the Civil War, Missouri never seceded, but it was mostly sympathetic to the Confederacy.

13. St. Louis, however, was Union-leaning.

14. As a result of this ideological divide on the question of civil rights for African-Americans, Claiborne Jackson, Missouri's segregationist governor, didn't want St. Louis to control its own police department.

15. In 1861, Governor Jackson encouraged the state legislature to pass the “Metropolitan Police Bill” that gave the state control of St. Louis’s police department.

16. This move was hotly debated in the Missouri General Assembly, where one state representative called the bill “an effort to disenfranchise and oppress the people of St. Louis because they were not sound on the Negro question.”

17. One of Jackson’s appointees to the first police board confirmed that the Metropolitan Police Bill was “adopted to enable our people to control St. Louis.”

18. Kansas City, also has had, since the 19<sup>th</sup> Century, a higher representation of African-Americans, and an electorate more sympathetic to African-American civil rights than the rest of Missouri.

19. In 1874 it too had the state seize control of its newly-instituted police department.

20. From 1874 to 1932, the Kansas City “Board of Police” system was modified on several occasions, but at all times the Governor appointed the majority of the Board, and the Board requested its funding from the City of Kansas City, and the City had no choice but to provide that funding.

21. That all changed in 1932. That year, the City refused to provide the funding that the Board requested and the Board sued, seeking a writ of mandamus to compel the appropriation. The City argued that the Board’s unlimited discretion in setting the police budget (and forcing the City to pay for it) amounted to an unconstitutional delegation of legislative authority. The Missouri Supreme Court agreed:

From the analysis which has been made of sections of said article 23, it is manifest that certain of its provisions, taken collectively, purport to confer upon the board of police of Kansas City the power to appropriate from the annual revenues of the city, at its discretion, whatever sums it deems necessary for the maintenance of the police department. The power to determine the amounts to be so appropriated is essentially a power to tax—a legislative power, and, as such, nondelegable. The provisions of

the statute purporting to confer the power are therefore void, and, as they are inseparably interwoven with its other provisions, the statute as a whole must fall with them.

*See State ex rel. Field v. Smith*, 49 S.W.2d 74, 78 (1932).

22. Thus, the Kansas City Board of Police statutory scheme was declared unconstitutional by the Missouri Supreme Court in 1932.

23. However, the state re-asserted control over Kansas City's police in 1939 at the behest of Lloyd Crow Stark, another segregationist Governor.

24. The present form of the Board of Police Commissioner's statutory scheme was implemented in 1943. In an apparent effort to address the unlimited budgetary discretion held to be unconstitutional in *State ex rel. Field v. Smith*, the new Board of Police appropriations statute provided that "in no event shall the governing body of the cities be required to appropriate for the use of the police board in any fiscal year an amount in excess of one-fifth of the general revenue fund of such year." RSMo § 84.730.

25. St. Louis took back control of its police force in 2013, but for Kansas City the same system from the segregationist era persists.

26. Thus, Kansas City is currently the only city in the State of Missouri, and the only major city in the United States, without local control of its own police department.

**b. *Facts relating to race and electoral politics in Missouri***

27. Elections in Missouri are racially polarized, with African-Americans tending to vote as a group.

28. African Americans in Missouri generally, and in Kansas City specifically, are politically cohesive.

29. According to the U.S. Census website, as of 2019, African Americans made up only 11.8% of Missouri's population.

30. There has never been an African-American Governor of Missouri, and in fact no African-American has ever won a statewide election in Missouri.

31. Thus, the composition of 80% of the Board of Police Commissioners is dictated by a statewide gubernatorial election in which African-American Kansas Citizens have zero functional influence.

32. Given this fact, as well as Missouri's history, it should come as no surprise that Missouri Governors are insensitive and unresponsive to the needs of African-American Kansas Citizens.

33. This insensitivity and unresponsiveness is passed through to the Board of Police Commissioners.

34. By contrast, African-Americans make up 28.9% of the population of Kansas City, Missouri, and have substantial influence in many City Council districts, and even in citywide elections.

35. As a result, African-Americans are routinely elected to the offices of Mayor and City Council in Kansas City, and those institutions are sensitive and responsive to the interests of African-American Kansas Citizens.

36. This responsiveness is evidenced in part by the City Council's passage Ordinance Nos. 210466 and 210468, which restrict the funding of the Board of Police Commissioners to the statutory 20% cap.

## COUNT I: VIOLATION OF THE HANCOCK AMENDMENT

37. The allegations in all preceding paragraphs are hereby incorporated and realleged as if fully set forth herein.

38. Article X, Sections 16-24 of the Missouri Constitution are commonly known as the “Hancock Amendment.”

39. Article X, Section 21 of the Missouri Constitution provides that:

The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. 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.

40. Plaintiff Board of Police Commissioners is a “state agency” for the purposes of Article X, Section 21 of the Missouri Constitution.

41. The City of Kansas City is a “political subdivision” for the purposes of Article X, Section 21 of the Missouri Constitution.

42. In *State ex rel. Sayad v. Zych*, 642 S.W.2d 907, 910 (Mo. banc 1982), the Missouri Supreme Court held that “the Police Board, as a state agency, cannot require the City, a political subdivision, to increase its level of activity beyond that required by law when article X, section 21, became effective unless a state appropriation is made to fund the increase.”

43. Article X, Section 21 of the Missouri Constitution became effective on December 4, 1980.

44. On that date, RSMo § 84.730 made clear that the City could not be made to allocate to the Kansas City Board of Police Commissioners more than one-fifth of the City’s general revenue fund.

45. Plaintiffs’ requested relief would appropriate more than one-fifth of the City’s



general revenue fund to the Kansas City Board of Police Commissioners.

46. Plaintiff's requested appropriation exceeds that which is allowable under the previously-existing formula.

47. No state appropriation has been made to the City of Kansas City for the increased costs of Plaintiff's requested appropriation over and above one-fifth of the City's general revenue fund.

48. Plaintiff's requested appropriation violates Article X, Section 21 of the Missouri Constitution.

49. Intervenor is a taxpayer of Kansas City, Missouri.

50. Under Article X, Section 23 of the Missouri Constitution "any taxpayer" of the affected state, county or other political subdivision shall have standing to bring suit to enforce the Hancock Amendment.

51. Therefore, Ms. Grant has standing to bring the instant Counterclaim to enforce the Hancock Amendment.

52. Article X, Section 23 of the Missouri Constitution also provides that Ms. Grant may recover her attorneys' fees and costs if her suit is sustained.

WHEREFORE, for the foregoing reasons, Defendant-Intervenor respectfully requests that the Court enter judgment in her favor declaring that Plaintiffs' requested appropriation violates the Hancock Amendment, awarding Defendant-Intervenor her costs and attorneys' fees, and for such other relief as the Court deems just and adequate.

## **COUNT II – INTENTIONAL DISCRIMINATION**

### **(Violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution)**

53. The allegations in all preceding paragraphs are hereby incorporated and realleged

as if fully set forth herein.

54. Section 1 of the Fourteenth Amendment to the United States Constitution provides: "No State shall ... deny to any person within its jurisdiction the equal protection of the laws."

55. Electoral systems violate the Equal Protection Clause if they are conceived or operated as purposeful devices to further racial discrimination by minimizing, cancelling out, or diluting the voting strength of racial elements in the voting population.

56. The current Kansas City Board of Police Commissioners statutory scheme provides for one member of the Board (the Mayor) to be elected by Kansas City voters, and the other four members to be appointed by a Governor elected by the state of Missouri as a whole.

57. Thus, 80% of the Board's members are selected through a process which is essentially a modified statewide or "at-large" vote. The only difference being that instead of the Board members being elected directly, they are appointed by a Governor who is elected via statewide election.

58. Functionally, the result is the same: the composition of 80% of the Board is dictated by a statewide election.

59. The Supreme Court has repeatedly noted that at-large voting systems tend to "submerge" the votes of minorities and diminish their voting power. *Whitcomb v. Chavis*, 403 U.S. 124, 158–159 (1971).

60. This is particularly true where minorities are politically cohesive and/or vote as a group.

61. As illustrated by the fact that Kansas City routinely elects African-American Mayors and City Council Members, but that an African-American has never won a statewide election in Missouri, the implementation of a statewide scheme to select 80% of the Board of

Police Commissioners tends to minimize, dilute, and cancel out the voting strength of African-American Kansas Citizens, such as Defendant-Intervenor.

62. The state of Missouri has taken control of only two police departments in its history—those of Kansas City and St. Louis.

63. Kansas City and St. Louis are the two cities in Missouri with the highest African-American population.

64. Thus, the State of Missouri has disproportionately taken control of police departments serving African-American communities.

65. In addition, the State of Missouri has disproportionately deprived African-American communities of local control over their police.

66. Race was one factor in Missouri's initial motivation for implementing state-controlled police systems.

67. Specifically, the Missouri state government took a more restrictive view of African-American civil rights than did the governments of Kansas City and St. Louis, to put it delicately.

68. An examination of all the facts and circumstances shows that the State of Missouri has implemented a selection process for the Board of Police Commissioners that dilutes, minimizes, and cancels out the voting strength of African-American Kansas Citizens, and has done so due at least in part to discriminatory motive.

69. Thus, the selection process for the Board of Police Commissioners violates the Equal Protection Clause rights of Kansas City voters, such as Defendant-Intervenor.

WHEREEFORE, for the foregoing reasons, Defendant-Intervenor respectfully requests that the Court enter judgment in her favor declaring that the Board of Police Commissioners statutory scheme violates her rights under the 14<sup>th</sup> Amendment to the United States Constitution,

awarding Defendant-Intervenor her costs and attorneys' fees, and for such other relief as the Court deems just and adequate.

### **COUNT III – UNCONSTITUTIONAL ARBITRARINESS**

#### **(Violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution)**

70. The allegations in all preceding paragraphs are hereby incorporated and realleged as if fully set forth herein.

71. Kansas City is the only city in Missouri, and the only major city in the United States, that lacks local control over its own police force.

72. There is no legitimate governmental reason why Kansas City should be treated differently in this respect than other large cities nationwide, or than other Missouri cities.

73. The singling-out of Kansas City in this way “is so discontinuous with the reasons offered for it that the [legislation] seems inexplicable by anything but animus . . . .” *Romer v. Evans*, 517 U.S. 620, 632 (1996).

74. This arbitrary, irrational, disparate treatment of Kansas City relative to every other comparable city violates the Equal Protection Clause.

75. This arbitrary, irrational, disparate treatment violates the Equal Protection Clause rights of Kansas Citians, such as Defendant-Intervenor.

WHEREEFORE, for the foregoing reasons, Defendant-Intervenor respectfully requests that the Court enter judgment in her favor declaring that the Board of Police Commissioners statutory scheme violates her rights under the 14<sup>th</sup> Amendment to the United States Constitution, awarding Defendant-Intervenor her costs and attorneys' fees, and for such other relief as the Court deems just and adequate.

#### COUNT IV – VIOLATION OF THE NONDELEGATION DOCTRINE

76. The allegations in all preceding paragraphs are hereby incorporated and realleged as if fully set forth herein.

77. The Board of Police Commissioners exercises a number of legislative functions.

78. In the instant case, the Kansas City Board of Police Commissioners is requesting that the Court order its previous budget restored, despite the fact that that budget exceeded the statutory cap of 1/5 of the City's general revenue fund.

79. The Missouri Supreme Court has held that, if the Board has an unconstrained ability to request any amount it wishes from the City, then that is in effect a power to levy taxes on Kansas Citizens. *See State ex rel. Field v. Smith*, 49 S.W.2d 74, 78 (1932).

80. Such a power is legislative in nature.

81. The Nondelegation Doctrine from the Missouri Constitution prohibits the delegation of a legislative power to an appointed board.

82. The Board of Police Commissioners' requested appropriation would cause the Board to run afoul of the Nondelegation Doctrine.

WHEREEFORE, for the foregoing reasons, Defendant-Intervenor respectfully requests that the Court enter judgment in her favor declaring that the Board of Police Commissioners requested appropriation and the structure of the Board generally violate her rights under Missouri's Nondelegation Doctrine, awarding Defendant-Intervenor her costs and attorneys' fees, and for such other relief as the Court deems just and adequate.

Dated: June 13, 2021

Respectfully Submitted,

/s/ Braden Perry

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**ATTORNEYS FOR DEFENDANT-  
INTERVENOR**

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2021, the foregoing was filed using the Missouri electronic filing system, causing a true and correct copy to be served on all counsel of record. I further certify that I sent a copy of the foregoing by electronic mail to the following:

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Respectfully submitted,

/s/ Braden Perry  
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INTERVENOR**