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

STEPHANIE REYNOLDS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
JAMES ZHANG,	)	
	)	Cause No. 06-CC-3802
Intervenor,	)	
	)	Division 13
v.	)	
	)	
CITY OF VALLEY PARK, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AND CONTEMPT

INTRODUCTION

On September 20, 2007, this Court asked Plaintiffs to present analysis of the controlling precedent of *Missouri Hospital Association v. Air Conservation Commission of Missouri*, 900 S.W.2d 263 (Mo. App. 1995), and explain why the Court would not be bound by the *Missouri Hospital Association* holding that, "The trial court's pronouncement in an earlier proceeding may not be expanded by implication in a contempt proceeding." *Id*. at 266. Plaintiffs have failed to do so. They have offered no case law qualifying or limiting *Missouri Hospital Association*. Indeed, Plaintiffs "concede that under *Missouri Hospital*, as well as other Missouri precedent, the Court cannot, as a sanction for contempt, expand a previously issued injunction to encompass new conduct." Pl. Supp. Memo, 1, n.1. Having conceded that *Missouri Hospital Association* is controlling, Plaintiffs offer the implausible argument that they are not really asking this Court to

expand its initial injunction. Plaintiffs also attempt to misconstrue *Missouri Hospital Association*, suggesting without support that its holding might not apply in the case at bar. See Pl. Supp. Memo 5. As is explained below, Plaintiffs' desperate attempts to escape the shadow of *Missouri Hospital Association* fail for numerous reasons.

ARGUMENT

I. *Missouri Hospital Association* Prohibits a Court from Expanding the Scope of an Injunction to Include a Virtually Identical Ordinance, Either *Explicitly or Implicitly*

The core holding of *Missouri Hospital Association* makes quite clear that a court cannot through a contempt proceeding expand the scope of an initial injunction to include a subsequent, but "essentially identical," law. 900 S.W.2d at 265. The Court of Appeals in *Missouri Hospital Association* stated that the trial court's first injunction was final and non-modifiable, and that under any circumstances a civil contempt proceeding is an improper tool by which to seek an injunction against subsequent lawmaking. "Procedures for contempt and for injunction are distinctly different and involve different requirements for pleading, notice, and proof." *Id*. at 267. Therefore, the Court of Appeals struck down the trial court's expansion of its initial injunction against two specific rules to include subsequent rules that were "essentially identical." In so doing, the Court of Appeals stated that an earlier injunction may not be expanded either expressly *or by implication* in a contempt proceeding:

> The trial court's pronouncement in an earlier proceeding *may not be expanded by implication in a contempt proceeding*. *Carter County R-1 School Dist. v. Palmer*, 627 S.W.2d 664,665 (Mo. App. 1982).

Id. at 266 (emphasis added). As the Court of Appeals explained, a subsequent contempt order against the enforcement of "essentially identical" regulations is undeniably an expansion of the

original injunction, *even if the new rules were nearly identical to the originally enjoined regulations*:

> The restraint against proposing or promulgating essentially identical rules is broader than the restraint against *enforcing the voided rules*. The May 1994 injunction [arising from the contempt proceeding] expanded the restraints imposed by the March 1993 injunction, and therefore constituted a second injunction.

Id. at 266 (emphasis in original).

In the case at bar, Plaintiffs are requesting that this Court do exactly what was prohibited in *Missouri Hospital Association*—expand the scope of this Court's March 12, 2007, injunction to cover an ordinance that was not included in the original injunction. The terms of this Court's March 12, 2007, injunction were quite clear: "Ordinance No. 1708 and Ordinance No. 1715 are declared void. … [T]he temporary restraining orders enjoining enforcement of Ordinance No. 1708 and Ordinance No. 1715 are hereby made permanent." *Reynolds*, slip op. at 8. Importantly, in the very same order, this Court expressly declined to include Ordinance 1722 in the injunction, stating that ***the validity of Ordinance 1722 was not before the Court***:

> Defendant has represented to this court that it recently repealed Ordinance No. 1715, and admitted into evidence the new ordinances only for the purpose of its argument on mootness. *Plaintiffs have not amended their pleadings to put the issue of the validity of the new ordinances before the court*.

Reynolds, slip op. at 3 (¶10) (emphasis added). Plaintiffs now ask this Court to expand the scope of its March 12, 2007, injunction to also encompass Ordinance 1722. In their Motion, Plaintiffs pray for this Court to "impos[e] appropriate punishment, enjoining enforcement of Ordinances No. 1722 and No. 1736, for attorney fees and for such other and further relief as may be deemed appropriate." Plaintiffs' Motion for Order to Show Cause and Contempt, August 16, 2007. However, Plaintiffs have asked this Court to exceed its authority; because enjoining an ordinance that is enacted subsequently to the original ordinance constitutes impermissibly "using

the contempt power to enforce a future obligation." *Missouri Hospital Association*, 900 S.W.2d at 267.

Recognizing that the relief they prayed for in their Motion is prohibited by *Missouri Hospital Association*, Plaintiffs now attempt to change course in their supplementary memorandum. In a footnote, they state: "Plaintiffs thus withdraw their prayer seeking additional injunctive relief aimed at Ordinances No. 1722 and 1736." Pl. Supp. Memo, 1, n.1. However, Plaintiffs still demand that the Court "punish the City by ordering a payment of a fine of $100 per day so long as Ordinance No. 1722 (as made effective by Ordinance 1736) remains effective." Pl. Supp. Memo. 5-6. Plaintiffs are trying in vain to convince themselves (and this Court) that such an order would not expand the scope of the March 12, 2007, injunction to include Ordinance 1722.

Plaintiffs' change of course has two fatal flaws. The first problem with Plaintiffs' new request is that they are bound by their original prayer for relief, which plainly asks this Court to change the terms of its original injunction. "The prayer for relief in a motion for contempt delineates the scope of the contempt proceedings." 900 S.W.2d at 267. Therefore, as a procedural matter, they cannot now recharacterize their prayer for relief in their Motion for Order to Show Cause and Contempt.

However, even if they could alter their Motion at the last moment, they cannot escape the second problem: they are plainly asking for an *implicit* expansion of the March 12, 2007, injunction. If this Court were to issue an order punishing the City every day that Ordinance 1722 is in effect, this Court would undeniably be expanding the March 12, 2007, injunction to include Ordinance 1722. Although the expansion of the injunction might not be explicit, it would still be implicit. And *Missouri Hospital Association* makes clear that the *implicit* expansion of an

injunction in a contempt proceeding is just as impermissible as the explicit expansion of an injunction: "The trial court's pronouncement in an earlier proceeding may not be expanded *by implication* in a contempt proceeding." 900 S.W.2d at 266. Plaintiffs' contorted reasoning cannot escape that fact that, regardless of whether fines or a broader injunction are employed, this Court would be impermissibly expanding the reach of the March 12, 2007, Order by including Ordinance 1722.

II. Plaintiffs' Attempt to Mischaracterize the Holding of *Missouri Hospital Association* is Unavailing

Recognizing the absurdity of their argument that they are not really asking this Court to expand the terms of its March 12, 2007, injunction, Plaintiffs resort to misconstruing the holding of *Missouri Hospital Association*. Plaintiffs brazenly claim that *Missouri Hospital Association* did not really stand for principle that a court may not explicitly or implicitly expand the scope of an injunction through a contempt proceeding—despite the express statement of the Court to that effect, quoted above. Rather, Plaintiffs declare, *Missouri Hospital Association* merely stands for the proposition that a contempt motion is incomplete if it does not include fines or imprisonment. Pl. Supp. Memo. 5. This is a shocking misrepresentation of the case.

Plaintiffs ignore the fact that the *Missouri Hospital Association* decision contains *several holdings*. It is true that the *Missouri Hospital Association* Court found that the plaintiffs' contempt motion was incomplete because it did not include fines or imprisonment, and therefore "provided no means to coerce compliance." 900 S.W.2d at 267. However, that was only one of several holdings in the case. The Court of Appeals also held that, even if a request for appropriate sanctions had been included, a court's authority in a contempt proceeding does not extend to future conduct that is not specifically included in the court's original order:

> In issuing the second injunction in the contempt proceedings, the trial court exceeded its authority. The trial court may exercise its contempt power only to compel compliance with obligations arising from a pre-existing judgment or decree. *Meiners v. Meiners*, 858 S.W.2d 788,791 (Mo. App. 1993) *Using the contempt power to enforce a future obligation exceeds the trial court's authority*.

Id. at 267 (emphasis added). Tellingly, Plaintiffs fail to mention this part of the *Missouri Hospital Association* opinion.

Further underscoring the fact that there were two, independent holdings in *Missouri Hospital Association* is the Court of Appeals' statement at the end of the opinion. The Court of Appeals was considering the third issue of whether attorney fees were authorized by any statute applicable to the case. In restating the two distinct flaws in the trial court's contempt proceeding, the Court of Appeals explained:

> [T]he trial court abused its discretion in awarding attorney fees for the contempt proceeding that resulted in an advisory order [due to the motion's lack of sanctions] *and* in improper issuance of a second, expanded injunction.

Id. at 268 (emphasis added). There were two, separate abuses of the contempt proceeding that the trial court committed. And each constituted a separate holding of *Missouri Hospital Association*. Nowhere in the opinion does the Court of Appeals even suggest that expanding the scope of the original injunction was not an abuse of the trial court's discretion, in and of itself. Plaintiffs' implausible assertion that *Missouri Hospital Association* only applies where a party fails to ask for sanctions simply cannot stand.

Moreover, Plaintiffs do not offer a shred of case law supporting their mischaracterization of *Missouri Hospital Association*. That is because *there is no case law supporting their claim*. Indeed, *Missouri Hospital Association* is one opinion in a long line of case law standing for the same principle—that a contempt proceeding cannot penalize actions that are expressly included in the original injunction. None of the other cases even involved the question of whether

sanctions were included in the motion for order to show cause and contempt. The following cases also express this core holding of *Missouri Hospital Association.*

In *State ex rel City of Pacific v. Winston V. Buford*, 534 S.W.2d 819 (Mo. App E.D. 1976), a case already cited by Defendants in the Memorandum of September 20, 2007, the Court of Appeals declared that a court may not use a contempt citation to compel actions that are not expressly specified in the original judgment:

> As we have previously noted, the judgment of the trial court does not call for such affirmative acts by the City.... If in the contempt proceeding the court were to require such affirmative action, it would violate the established principle that "to support a charge of contempt for disobedience thereof, *an order will not be expanded by implication in the contempt proceeding but must be so specific and definite as to leave no reasonable basis for doubt as to its meaning*." *G v. Souder*, 305 S.W.2d 883, 885 (Mo.App. 1957). The court may not by implication include requirements not specified in the original judgment.... If an act is not required, there can be no contempt for failure to perform it.

534 S.W.2d at 821 (emphasis added). In the case at bar, this Court expressly declined to express any opinion on the validity of Ordinance 1722. Ordinance 1722 was not specifically enjoined, so under *Buford* the City cannot be held in contempt for allowing it to remain in effect. Importantly, in *Buford*, the party seeking a contempt citation *did* seek financial sanctions. *Id*. Thus Plaintiffs' assertion that the failure to seek sanctions was the *only* decisive flaw in *Missouri Hospital Association* is inconsistent with this long line of case law.

In 1996, shortly after the Missouri Court of Appeals handed down *Missouri Hospital Association*, the Court of Appeals cited the *Missouri Hospital Association* precedent and held: "An enlargement or extension of a permanent injunction, however, may not be made in a civil contempt proceeding." *C.L. Smith Indus. Co. v. Matecki*, 914 S.W.2d 873, 876 (Mo. Ct. App. 1996). Then, in 2000, the Missouri Court of Appeals once again stated the core holding of *Missouri Hospital Association* and *Buford*:

> Contempt is available only where a party has been ordered to perform or not to perform a specific act and yet refuses to do so. It is well established that a court may not, in a contempt proceeding, expand by implication an order of a trial court.

State ex rel. Mo. Land Reclamation Comm'n v. Calhoun, 34 S.W.3d 219, 220 (Mo. Ct. App. 2000) (*citing Buford*, 534 S.W.2d at 822). In *Calhoun*, the Court reiterated that a party cannot be held in contempt unless the conduct in question is *unambiguously and specifically enjoined* in the original injunction. In that case, the original order rescinded a mining company's permit, but did not *specifically* order a halt to mining operations. Therefore, the Court of Appeals held that the company could not be held in contempt for continuing to mine without a permit. *Id*. at 220. Accordingly, the trial court was held to have "exceeded its jurisdiction" by expanding the scope of the original order, even though the conduct in the original order was very similar to the conduct at issue in the contempt proceeding. *Id*. at 221.

In 2002, in the case of *State ex rel. Euclid Plaza Associates, L.L.C. v. Mason*, 81 S.W.3d 573, 577 (Mo. App. E.D. 2002), the Court of Appeals yet again reiterated the core holding of *Missouri Hospital Association* and *Buford*:

> Contempt is available only where a party has been ordered to perform or not to perform a specific act and yet refuses to do so. *State ex rel. Missouri Land Reclamation Com'n v. Calhoun*, 34 S.W.3d 219, 220 (Mo.App. E.D.2000). It is well established that a court may not, in a contempt proceeding, expand by implication an order of a trial court. *Id*. Before contempt may be found the conduct required by the court order must be "so specific and definite as to leave no reasonable basis for doubt as to its meaning." *Id*. (*quoting State ex rel. City of Pacific v. Buford*, 534 S.W.2d 819, 822 (Mo.App.1976)).

In the case at bar there was no "specific and definite" prohibition against the implementation of Ordinance 1722. For this Court to impose fines against the City would violate all of these precedents.[1]

In none of these cases did the Court of Appeals suggest that the *Missouri Hospital Association* holding was limited to instances in which the plaintiff failed to include sanctions in its prayer for relief in a contempt motion. Indeed, the Court of Appeals has applied the *Missouri Hospital Association* holding repeatedly in instances where sanctions *were* included in the contempt motion. See, e.g., *Matecki*, 914 S.W.2d at 876; *State ex rel. Euclid Plaza Associates, L.L.C.*, 81 S.W.3d at 577. Plaintiffs have either failed to do their research and are ignorant of this overwhelming body of case law, or they are aware of this case law but have chosen not to mention it in their supplementary memorandum. Either way, their failure to present these cases to the Court is inexcusable.

III. There Was no Subterfuge in the City's Actions; The City Asked the Plaintiffs to Include Ordinance 1722, but Plaintiffs Refused to do so

Plaintiffs cite a number of largely irrelevant cases in their supplementary memorandum—cases that stand for the unremarkable proposition that parties should not be allowed to disobey a court's injunction. Plaintiffs then describe the City's actions as "subterfuge." See Pl. Supp. Memo. 3-4. As this Court is well aware, nothing could be further from the truth. Defendants openly passed Ordinance 1722, informing both Defendants and this Court of the fact, and

[1] This long line of Missouri case law is also consistent with the case law of other states. See, e.g., *Cortland United Methodist Church v. Knowles*, 2007 WL 1883273 (Ohio App. 2007) ("Appellants are now attempting to use these contempt proceedings to expand the court's declaratory judgment. This they cannot do."); *King County v. Azpitarte*, 136 Wash. App. 1021 (2006) ("In contempt proceedings, a court must strictly construe its order and may not expand it by implication beyond the meaning of its terms."); *Garrett v. Garrett*, 1998 WL 164906 (Ark. App. 1998) ("In determining whether a party is in contempt of an order, the court cannot expand the order by implication beyond the meaning of its terms.").

Defendants repeatedly invited Plaintiffs to include Ordinance 1722 in their petition. There was no subterfuge or disobedience whatsoever.

During the period between the original passage of Ordinance 1722 by the Valley Park Board of Aldermen on February 5, 2007, and the hearing of March 1, 2007, counsel for Defendants repeatedly offered to consent to Plaintiffs amending their petition to address Ordinance 1722. But Plaintiffs would have none of it. Plaintiffs repeatedly declined this invitation and instead pushed forward to seek a ruling on the more vulnerable, repealed Ordinances 1708 and 1715. At the March 1, 2007, hearing the Court specifically acknowledged that the offer to include Ordinance 1722 had been made by Defendants: "But the court does know that you all made that offer." Transcript of Court Proceedings, Circuit Court of the County of Saint Louis, March 1, 2007, at 48.

Now Plaintiffs seek to have it both ways. Even though this Court *has never adjudicated the merits of Ordinance 1722 and Defendants have never had any opportunity to brief the merits of Ordinance 1722 before this Court*, Plaintiffs ask this Court to impose penalties on Defendants as long as Ordinance 1722 remains in effect. Such an order would not only be outside of this Court's authority under *Missouri Hospital Association*, it would be grossly unjust. Plaintiffs have an open avenue to challenge Ordinance 1722 on its merits in a separate petition for injunction, without asking a court to exceed its authority through a contempt proceeding. They declined the opportunity to do so in this Court in February and March of 2007. However, some of the Plaintiffs in this case have brought a challenge that will soon be decided in the Federal District Court for the Eastern District of Missouri, Case No. 4:07-cv-00881-ERW.[2] That forum (or this Court in March, 2007, had Plaintiffs amended their petition) offers the appropriate

procedures and requirements for pleading to evaluate the merits of Ordinance 1722; a contempt proceeding does not. *Missouri Hospital Association*, 900 S.W.2d at 267.

IV. Plaintiffs Ignore a Crucial Fact: Nothing Has Changed Since March 12, 2007

It is essential that this Court be aware of one crucial fact: *Ordinance 1722 was in effect on March 12, 2007, to the same extent that it is today. Nothing has changed.* Therefore, if this Court were to conclude that the City is in contempt of the Order of March 12, 2007, the Court would also have to conclude that the City was in contempt *the moment that the order was issued.* Plainly, an interpretation of an injunction that creates contempt by its very issuance is both illogical and improper.

What Plaintiffs have failed to mention (or perhaps have failed to notice) is that the express terms of Ordinance 1722's effectiveness have remained the same. On February 14, 2007, Valley Park Ordinance No. 1724 was enacted, amending the effective date of Ordinance No. 1722. That was the operative language when this Court issued its order on March 12, 2007. It read as follows:

> **Section Seven**
>
> *This Ordinance shall become effective from and after its passage and approval by the Mayor in repealing Ordinance 1708 and Ordinance 1715, provided that the enforcement of the provisions contained within Sections Two, Three, Four, Five and Six shall be* effective upon the termination of any restraining orders or injunctions now in force in Cause No. 06CC-3802 now pending in St. Louis County, Missouri, in Division 13.

The operative language today, as amended by Ordinance 1736 on August 9, 2007, is:

> **Section Seven**

[2] The briefing of the merits in that case was completed on September 27, 2007. Oral arguments will occur in late October or early November 2007.

> *This Ordinance shall become effective from and after its passage and approval by the Mayor in repealing Ordinance 1708 and Ordinance 1715, provided that the enforcement of the provisions contained within Sections Two, Three, Four, Five and Six shall be* stayed and no complaints thereunder shall be accepted by the City of Valley Park until December 1, 2007.

Ordinance 1722 § 7 (emphasis added). The italicized language is the same in both versions. What Plaintiffs have failed to bring to this Court's attention is that nothing has changed since February 14, 2007.

The effectiveness of the ordinance has two components: (1) legal obligations imposed upon business entities to constrain their behavior, and (2) the enforcement process described in the ordinance. *The legal obligations imposed on business entities to follow the terms of Ordinance 1722 began on February 14, 2007, and have been in place ever since*. Ordinance 1736 did not change anything. With respect to the second component—enforcement—the enforcement provisions have been suspended ever since February 14, 2007. The only difference now is that there is a future date certain on which enforcement may commence (December 1, 2007) rather than a future *uncertain* date as described in the original phrasing of Section 7.

Plaintiffs have never been clear as to what exactly the City has done to trigger their Motion for Order to Show Cause and Contempt. If it is the fact that the legal obligation to follow Ordinance 1722 is in effect, then that was true on March 12, 2007, when this Court issued its Order. Clearly that cannot be contemptible action by the City—because this Court would have declared that the obligations already in effect under Ordinance 1722 were void. On the other hand, if it is the fact that enforcement may begin on December 1, 2007, rather than an uncertain future date, then Plaintiffs' Motion for Order to Show Cause and Contempt is not ripe. Enforcement was voluntarily stayed by the City in February, and it is still voluntarily stayed

today. No enforcement has occurred to date, and no enforcement can possibly occur until December 1, 2007.

V. Plaintiffs Misconstrue the Statement of Defense Counsel; There are Numerous Significant Differences Between Ordinance 1715 and 1722

In their Supplementary Memorandum, Plaintiffs claim that Ordinance 1722 is virtually identical to Ordinance 1715 (hoping that this Court will ignore the black letter law in Missouri that a contempt proceeding cannot expand an injunction to include even a virtually identical ordinance). Pl. Supp. Memo. 2-3. The falsity of Plaintiffs' claim is evident on the face of the ordinances. However, Plaintiffs do not want this Court to actually scrutinize the ordinance texts. Rather, Plaintiffs hang their entire argument on two words by counsel for Defendant, Eric Martin ("Yes, sir."). As is explained below, Plaintiffs take that statement out of context and twist its meaning entirely.

But the greater flaw in Plaintiffs' tortured reasoning is that they treat the content of an ordinance as a *factual* question, rather than a legal question. Consequently, they insist that the content of Ordinance 1722 is found in the testimony of Eric Martin, not in the ordinance itself. Plaintiffs' approach is plainly absurd. The similarity of two laws is, by definition, a *legal question*. It is not a factual question that is dependent on witness testimony. The ordinances speak for themselves. This Court need not rely on anyone's testimony about what is in the ordinances.

That being said, for the sake of argument Defendants will now explain how Plaintiffs have distorted the statement of Eric Martin. In the hearing before this Court on March 1, 2007, Mr. Martin was pressed by Plaintiffs' counsel to agree that Ordinance 1715 and Ordinance 1722 were "virtually identical," in the words used by Plaintiffs' counsel. Mr. Martin objected to this

characterization and began to list some of the new provisions that were found in Ordinance 1722, but not in Ordinance 1715. He stated: "There were some amendments made and the amendments included making it prospective only in its application, and I believe an appellate process was set forth." At that point, Plaintiffs' counsel interrupted Mr. Martin's listing of new provisions, insisting: "But the substance is virtually identical." Mr. Martin responded, *referring only to the substance of the sections that were carried over from Ordinance 1715 to 1722*, "Yes, sir." Transcript of Court Proceedings, Circuit Court of the County of Saint Louis, March 1, 2007, at 49.

At the hearing of September 20, 2007, Plaintiffs' presented a graphic display showing that several whole sections of text were carried over from Ordinance 1715 into 1722. What Plaintiffs attempted to obscure with their display was that many of the repeated sections were of little importance regarding the legal issues in the case. For example, the "Findings and Declaration of Purpose" Section and the "Definitions" Section were extremely lengthy, comprising three entire pages of text, and representing the bulk of the repeated sections. But those three pages are of little importance in addressing the operation of the ordinances. Indeed, radically different ordinances can share the same "Findings and Declarations of Purpose" and "Definitions" sections.

In Plaintiffs' simplistic view, one need only look at the total number of words in common between two ordinances to determine how similar they are. That is of course incorrect. One word can change the meaning of an entire ordinance. In their display, Plaintiffs either intentionally or negligently failed to acknowledge the most important word that was added to Ordinance 1722: "knowingly." On June 4, 2007, the City amended Ordinance 1722 (via Ordinance 1732) by adding the word "knowingly" in Section 4.A: "It is unlawful for any

business entity to *knowingly* recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or in part within the City." Ordinance 1722 § 4.A. Clearly, the addition of a scienter requirement is a significant and far-reaching difference in the ordinances. Where Ordinance 1715 allowed the suspension of a business entity's license even if the employer had no actual knowledge that an unauthorized alien was on the payroll, Ordinance 1722 requires that knowledge be proven before any suspension can occur.

And even then, a suspension only lasts as long as the knowing violation occurs—which in most cases will result in no suspension at all, because Ordinance 1722 added a whole new section of options allowing a business entity to correct a violation before any suspension takes place. Ordinance 1722 §§ 5.B.1-3. These options were not included in Ordinance 1715. They radically alter the nature of the enforcement mechanism, eliminating any element that Plaintiffs might reasonably characterize as "punitive." Under Ordinance 1722, a business permit can only be suspended *after* the business entity has had the opportunity to pursue reverification of the work authorization of the employee in question, as well as any other options that the business entity chooses. These new sections also operate to reduce the duration of any suspension of a business permit that could occur.

Perhaps most importantly, the only employment provision that this Court found to violate state law in its Order of March 12, 2007—the five-year denial of business permits found in Ordinance 1708 § 2—is not included in Ordinance 1722. Indeed, there is not even a remotely similar provision to be found in Ordinance 1722. It is beyond any doubt that this Court did not rule on any specific provision in 1708 or 1715 that is *identical* to a provision found in Ordinance 1722. There are many other differences that Defendants will not repeat in this Memorandum,

differences described in detail in Defendants' Memorandum of September 20, 2007, at 17-19. Nevertheless, Plaintiffs gloss over these differences and now urge this Court to expand the scope of its injunction to include a different ordinance that has *never been briefed before this Court*, and *has never been the subject of this Court's adjudication.*

In summary, while Ordinance 1722 is similar in limited respects to Ordinance 1715, the enforcement of the two ordinances is radically different. Therefore, it is not accurate to describe them as "virtually identical," as Plaintiffs suggest. However, assuming *arguendo* that it were accurate to describe them in this way, *Missouri Hospital Association* makes quite clear that a court cannot through a contempt proceeding expand the scope of an initial injunction to cover even an "essentially identical" ordinance. 900 S.W.2d at 265. No such judicial authority exists under Missouri law.

CONCLUSION

Plaintiffs acknowledge that *Missouri Hospital Association* and its line of case law is controlling precedent. They have failed to explain why it should not be applied in this case. This Court would plainly exceed its authority if it penalized the City for the fact that Ordinance 1722 is in effect, because this Court expressly declined to rule on Ordinance 1722 on March 12, 2007, and excluded it from its injunction. Moreover, contempt is inappropriate where the City took every step possible to place Ordinance 1722 before the Court, but Plaintiffs refused. Plaintiffs cannot now attempt an end run around the judicial process.

Finally, Plaintiffs have failed to explain what exactly has happened to trigger their Motion. The legal obligation to follow Ordinance 1722 was in effect in Valley Park on February 14, 2007; and the legal obligation to follow Ordinance 1722 is in effect today. If Plaintiffs are

concerned about its enforcement, no enforcement can occur until December 1, 2007; and Plaintiffs motion is not ripe. So even if this Court had the authority to expand its injunction of March 12, 2007, beyond the Order's express terms (which it clearly does not), Plaintiffs have not established that anything has occurred in Valley Park that would warrant holding the City in contempt. For all of these reasons, Defendants respectfully request that this Court deny Plaintiffs' Motion for Order to Show Cause and Contempt.

Respectfully submitted,

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