IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BILLIE JOE TYLER, et al.,)
)
Plaintiffs,)
)
v.) No. 74-40-C(4)
)
JAMES W. MURPHY, et al.,)
)
Defendants.)

STATE OF MISSOURI'S SUGGESTIONS IN OPPOSITION TO JOIN THE STATE OF MISSOURI AS A PARTY DEFENDANT

INTRODUCTION

The City has filed its extraordinary suggestions in support of joining the State of Missouri as a defendant. The essence of the City's argument is as follows:

> It is not a necessary precondition to the exercise of this jurisdiction that the State has caused the constitutional violations, or even that the State has a legal obligation to help remedy the violations; it is enough that the State has the ability to assist the Court in remedying the overcrowding problem.

(City's Memorandum at 12). This argument is, to say the least, without merit. Under this logic, William Gates or Microsoft Corporation, or any other person or corporation of economic means, can be made a party and ordered to spend its treasure to ease the overcrowding in the City's jails. No case, statute or constitutional provision supports this novel proposition. Nevertheless, the State of Missouri will address each of the City's

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jurisdictional arguments.[1] None of them addresses the Eleventh Amendment of the United States Constitution as it relates to federal constitutional claims against a state.[2]

ARGUMENT

1. Eleventh Amendment Immunity Bars The City's Proposed Claims

The underlying cause of action is brought under 42 U.S.C. § 1983 to remedy overcrowding in the City's jails. A state is not a person within the meaning of § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). A federal district court lacks jurisdiction to grant declaratory or injunctive relief against a state even if federal constitutional violations are alleged. *Papasan v. Allain*, 478 U.S. 265, 276, 106 S.Ct. 2932, 2939, 92 L.Ed.2d 209 (1986); *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 100-101, 104 S.Ct. 900, 908, 79 L.Ed.2d 67 (1984); *Kelley v. Metropolitan County Bd. of Educ. of*

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[1]By doing so, the State of Missouri does not intend to appear generally in this case, waive any defense or immunity it may have, or submit to the jurisdiction of this Court.

[2] The City of St. Louis has filed motions to join the State of Missouri as a party defendant in order to increase the number of assistant public defenders, assistant circuit attorneys, circuit and associate circuit judges, and probation and parole officers assigned to the Twenty-First Judicial Circuit of the State of Missouri, and to appoint a master to oversee their operation, with a view to increasing the disposition of criminal cases so that the number of pre-trial detainees confined in the City's Medium Security Institution and Jail will decrease. These motions have never been ruled upon. The City also has filed its "plan" for the construction of a new detention center, in which it suggests that the State of Missouri finance the City's debt to be incurred for the construction at a rate of $4.6 million per year for 20 years, for a total of $92 million. The City suggests that the State finance 70% of the City's total debt service.

Nashville and Davidson County, Tenn., 836 F.2d 986, 989 (6th Cir. 1987). If only violations of state law are alleged, federal supremacy is not implicated. *Papasan v. Allain*, 478 U.S. at 277, 106 S.Ct. at 2940. The references to "the State" throughout *Benjamin v. Malcolm*, 803 F.2d 46 (2d Cir. 1986), cited by the City, are actually references to the state officials sought to be joined as party defendants.[3] The City has set forth no argument whatsoever as to how the State's Eleventh Amendment immunity from federal constitutional claims can be overcome.

In a parenthetical clause in the ultimate sentence of its Memorandum, the City suggests that "appropriate State officials" should be joined, but that does not automatically mean that the Eleventh Amendment does not apply. "'[W]hen the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants.'" *Kelley*, 836 F.2d at 988-89, *quoting Ford Motor Co. v. Department of Treasury of Indiana*, 323 U.S. 459, 464, 65 S.Ct. 347, 350, 89 L.Ed. 389 (1945). In *Kelley*, the metropolitan Nashville, Tennessee, school board filed a third party complaint against state officials and sought that the State of Tennessee pay the full cost of implementing previously ordered desegregation remedies. The district court ordered that the State

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[3]The All Writs Act, 28 U.S.C. § 1651, relied upon by the City, does not operate as a waiver of a state's Eleventh Amendment immunity. *See Benvenuti v. Department of Defense*, 587 F. Supp. 348, 351-52 (D. D. C. 1984).

assume 60% of the full cost. Where the relief sought against state officials does not directly end an ongoing violation of federal law by those officials, but rather meets a third party's compensatory interest, either prospectively or retrospectively, the state is entitled to invoke its immunity. *Kelley*, 836 F.2d at 989-91. *See also Papasan v. Allain*, 478 U.S. at 276-79, 106 S.Ct. at 2939-41. In *Kelley*, the court of appeals, finding that the school district's third party complaint was essentially one for the recovery of money from the state, reversed the district court.

In this case, the City's plan for the construction of a new detention center is, on its face, one for the recovery of money from the State. The City seeks to have the State pay, over a period of twenty years, 70% of the City's debt service. The City does not specify how the State is violating federal law or how such an outlay of State monies would directly end whatever violation there may be. The City is merely attempting to shift the financial burden of complying with this Court's population cap orders. Such burden shifting essentially seeks to compensate the City for an obligation previously imposed upon it for <u>its</u> past unconstitutional conduct.

For these reasons, the State of Missouri and its officials have Eleventh Amendment immunity.

2. <u>Rule 19 Does Not Confer Jurisdiction Over The State</u>

Rule 19 of the Federal Rules of Civil Procedure does not confer federal jurisdiction over a party. *Finch v. Mississippi State Medical Ass'n, Inc.*, 585 F.2d 765, 780 (5th Cir. 1978).

"These rules shall not be construed to extend or limit the jurisdiction of the United States district courts . . . ." Fed. R. Civ. P. 82.

A motion to join additional parties is addressed to the sound discretion of the district court. *Janousek v. Wells*, 303 F.2d 118, 122 (8th Cir. 1962). The Court must determine whether in the absence of parties sought to be joined complete relief cannot be accorded among those already parties. *Rochester Methodist Hospital v. Travelers Ins. Co.*, 728 F.2d 1006, 1016 (8th Cir. 1984). In making this determination, the "focus" is on relief between the current parties. *LLC Corp. v. Pension Benefit Guaranty Corp.*, 703 F.2d 301, 305 (8th Cir. 1983). The late stage of this litigation is one factor weighing against joinder of an absent party. *Cabrera v. Municipality of Bayamon*, 622 F.2d 4, 5 (1st Cir. 1980).

The City asserts "this Court cannot remedy the constitutional violations at issue in this case without first joining the State as a party." (City's Memorandum at 5). This assertion is obviously incorrect. All this Court need do is order the City to submit a plan for the construction of a new detention center with an increased capacity and that the construction be financed without the involuntary participation of State funds. To join a new defendant now, twenty years or a generation after the filing of this lawsuit, will only further delay providing the plaintiffs complete relief.

For these reasons, joinder of the State of Missouri and its officials under Rule 19 should not be granted.

3. The Court Does Not Possess Inherent Equitable Power To Exercise Jurisdiction Over The State

The inherent equitable powers of a federal district court to remedy federal constitutional violations does not confer federal jurisdiction over a party. When considering the scope of the remedial powers of the federal courts, the United States Supreme Court stated:

> We read these earlier decisions as recognizing "fundamental limitations on the remedial powers of the federal courts." [Citation omitted.] Those powers could be exercised only on the basis of a violation of the law and could extend no farther than required by the nature and extent of that violation.

General Building Contractors Ass'n, Inc. v. Pennsylvania, 458 U. S. 375, 399, 102 S.Ct. 3141, 3154, 73 L.Ed.2d 835 (1982).

General Building Contractors was an action under 42 U.S.C. § 1981 to redress racial discrimination in the operation of an exclusive hiring hall and apprenticeship program. Contractors and trade associations against whom no discriminatory intent was found could not be ordered to share in the costs of a remedial program with a union local against whom discriminatory intent was found. The remedial program included meeting minority hiring goals (and if unmet, recruiting and training unskilled minority workers), filing quarterly reports, and sharing in the cost of the remedial program as a whole, which exceeded $200,000 in the first year of the five-year program. The Supreme Court characterized the issue as:

> [W]hether a party not subject to liability for violating the law may nonetheless be assessed a proportionate share of the costs of implementing a decree to assure nondiscriminatory practices on the part of

another party which *was* properly enjoined.

General Building Contractors, 458 U.S. at 398, 102 S.Ct. at 3154. The Court concluded that its earlier decisions offered "no support for the imposition of injunctive relief against a party found not to have violated any substantive right of the respondents." *General Building Contractors*, 458 U.S. at 399, 102 S.Ct. at 3154. There could be no proportionate sharing in the remedial program "[a]bsent a supportable finding of liability" or, in other words, no remedy could be imposed "without regard to a finding of liability." *General Building Contractors*, 458 U.S. at 400, 102 S.Ct. at 3155. The Court did not even consider the remedy imposed to be the type of "minor and ancillary" provisions of an injunctive order necessary to give complete relief to the respondents. *General Building Contractors*, 458 U.S. at 399-400, 102 S.Ct. at 3154-55.

Here, no defendant has filed or even sought leave to file a third party complaint,[4] alleging in what manner the State has violated the federal constitution with respect to the City's jails. The reason is simple -- the state is not liable for any such violation. No discovery has been conducted nor has an evidentiary hearing been held, providing an opportunity for a determination whether the State has violated the federal constitution. Most importantly, there has been no adjudication that the State has violated the federal constitution. Even assuming such liability

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[4]This procedural failure alone justifies denial of the City's motion. *Mainline Industries, Inc. v. Palco Linings, Inc.*, 113 F.R.D. 148, 150 (D. Nev. 1986).

could be demonstrated -- and it cannot -- no remedial hearing has been held, providing an opportunity to craft a remedy proportionate to the extent of each party's liability. The remedy sought by the City -- the appointment of a master to oversee the day-to-day operation of the City's criminal justice system and the payment of 70% of its debt over a period of twenty years, totaling $92 million -- is hardly "minor and ancillary."[5]

The City merely requests that the State be joined and ordered to participate in a remedy to relieve overcrowding. Joining the State and ordering it to participate in a remedy, without notice as to how it contributes to overcrowding and an opportunity to be heard on whether it contributes to overcrowding, surely violates due process of law. *See Armco Steel Corp. v. United States*, 490 F.2d 688, 691 (8th Cir. 1974).

The day-to-day monitoring of the criminal justice system in the City by the federal judiciary would also violate the principles of equity, comity, and federalism. *See O'Shea v. Littleton*, 414 U.S. 488, 499-502, 94 S.Ct. 669, 677-79, 38 L.Ed.2d 674 (1974); *Rizzo v. Goode*, 423 U.S. 367, 377-80, 96 S.Ct. 598, 607-08, 46 L.Ed.2d 561 (1976). Two Courts of Appeals have disapproved of

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[5]The City vastly overstates the holding of *Libby v. Marshall*, 653 F. Supp. 359 (D. Mass. 1986), upon which it heavily relies. *Libby* held only that a claim for violation of federal constitutional rights was stated there. The inmates of the Norfolk, Massachusetts, County Jail alleged that state officials failed to provide grant monies to construct a jail in Norfolk County and to issue and sell bonds of the Commonwealth for that purpose. State statutes specifically required that a jail be constructed in Norfolk County and grant monies and bonds be issued. The district court neither cited nor discussed *General Building Contractors*.

precisely this type of monitoring the number of judicial personnel, their caseloads, and disposition rates. In *Ad Hoc Committee on Judicial Administration v. Commonwealth of Massachusetts*, 488 F.2d 1241 (1st Cir. 1973), there was an attempt to require the Commonwealth of Massachusetts, the state legislature and the governor to provide sufficient court facilities, judges, clerical personnel, and other facilities to obviate delay in the disposition of both civil and criminal cases. In affirming the dismissal of the complaint for failure to state a justiciable cause of action, the First Circuit stated:

> Moreover, one might doubt the wisdom of casting a federal district court in the role of receiver for a state judicial branch. [Citation omitted.] While the state judiciary might appreciate additional resources, it would scarcely welcome the intermeddling with its administration which might follow. The dictates of a federal court might seem to promise easy relief; yet they would more likely frustrate and delay meaningful reform which, in a system so complex, cannot be dictated from outside but must develop democratically from within the state.

Ad Hoc Committee, 488 F.2d at 1246.

Similarly, in *Gardner v. Luckey*, 500 F.2d 712 (5th Cir. 1974), there was an attempt to impose upon public defender offices in certain Florida judicial circuits a maximum number of cases and to prohibit those offices from accepting cases above the maximum. In affirming the dismissal of the complaint for lack of an Article III case or controversy, the Fifth Circuit stated: "It is clear from the face of their complaint that our appellants contemplate exactly the sort of intrusive and unworkable supervision of state judicial

processes condemned in *O'Shea*." *Gardner v. Luckey*, 500 F.2d at 715.

The Eighth Circuit has approved of the principles of equity, comity, and federalism announced in *O'Shea* when there was an attempt to interfere in the disposition of criminal cases in the City of St. Louis upon the basis of an alleged conspiracy among the circuit judges, circuit attorneys, and public defenders to deprive black criminal defendants of their federal constitutional rights. *Bonner v. Circuit Court of City of St. Louis, Mo.*, 526 F.2d 1331, 1336-38 (1975).

For these reasons, the inherent equitable powers of a federal district court to remedy federal constitutional violations does not provide jurisdiction over the State of Missouri and its officials.

4. The All Writs Act Does Not Provide Jurisdiction Over The State Or Its Officials

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 1651 (a). The All Writs Act creates no authority to enjoin those who "could not properly be held liable to any sort of injunctive relief based on their own conduct." *Williams v. McKeithen*, 939 F.2d 1100, 1104 (5th Cir. 1991), *quoting General Building Contractors*, 451 U.S. at 402, 102 S.Ct. at 3156. In *General Building Contractors*, the Court held the All Writs Act did not provide a jurisdictional basis upon which to impose minority hiring goals, quarterly reports, and cost sharing upon the non-

liable defendants because those defendants did not violate federal law.

> The difficulty lies instead with the fact that on the record before the District Court the petitioners could not properly be held liable to any sort of injunctive relief based on their own conduct.

General Building Contractors, 451 U.S. at 402, 102 S.Ct. at 3156. In *Williams v. McKeithen*, the Court held Louisiana parish sheriffs whose parish jails had not been adjudicated overcrowded, but who voluntarily submitted to population caps, could not be enjoined under the All Writs Act from accepting other jurisdictions' detainees who did not place the jails over their caps. Rather, only reasonable, minimal, and unobtrusive burdens may be imposed under the Act. *United States v. New York Telephone Co.*, 434 U.S. 159, 172, 98 S.Ct. 364, 372, 54 L.Ed.2d 376 (1977); *General Buildings Contractors*, 458 U.S. at 401, 102 S.Ct. at 3155. Finally, because the Act is limited to circumstances where it is necessary to implement the limited jurisdictional grants of the federal courts, "if a court is able to effect a full and complete resolution of the issues before it without resorting to the extraordinary measure contemplated under the Act, then such measures cannot be employed." *ITT Community Development Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir 1978).

In this case, the City has not sought to have the State adjudicated liable for the overcrowding in the City's jails because of conduct upon the part of the State. The City merely requests that the State be joined and ordered to participate in a remedy

only because it "has the ability to assist" in remedying the City's constitutional violation. The remedy the City suggests -- the appointment of a master to oversee the day-to-day operation of the City's criminal justice system and the payment of 70% of its debt over a period of twenty years, totaling $92 million -- is unreasonable, extreme, and highly intrusive. This Court can accord complete relief among the parties already before it. Simply because the City asserts it may be in a better position to comply with this Court's population cap orders if the State were to be joined, that is not a reason to issue a writ.

> "The fact that a party may be better able to effectuate its rights or duties if a writ is issued never has been, and under the language of the statute cannot be, a sufficient basis for issuance of the writ."

ITT Commercial Development Corp. v. Barton, 569 F.2d at 1360, *quoting United State v. New York Telephone Co.*, 434 U.S. at 189, 98 S.Ct. at 364 (Stevens, J., dissenting).

The City heavily relies upon *Benjamin v. Malcolm*, 803 F.2d 46 (2d Cir. 1986) for its All Writs Act argument. That case is easily distinguished from the present situation. The state officials in that case were joined as parties upon the basis that their failure to accept into their custody "state-ready" inmates -- those detainees who had become inmates by being found guilty of state offenses and sentenced to the custody of state officials -- contributed to the overcrowding that violated the detainees' federal constitutional rights. Also, the remedy ordered -- to accept the "state-ready" inmates into state custody within 48 hours

after becoming "state-ready" -- was minimally intrusive and required no outlay of state funds.

In this case, there are no persons sentenced to the custody of State of Missouri officials who are confined in the City's jails. The persons held in the City's jails are in the legal custody of officials of the City, not the State. After state officials issue warrants for the arrest of persons charged with crimes, Mo. Rev. Stat. §§ 544.020, 544.060, 544.070, Mo. S. Ct. R. 22.04, those persons are committed to the custody of officials of the counties in which they are to be tried.

> **544.470. Commitment of prisoner, when.**--If the offense is not bailable, or if the person does not meet the conditions for release, as provided in section 544.455, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he is discharged by due course of law.

Mo. Rev. Stat. § 544.470. Only after those persons are sentenced to imprisonment are they committed to the custody of the State of Missouri Department of Corrections. Mo. Rev. Stat. § 558.011.2 and .3.

On March 15, 1994, in its Order Regarding Population Control of Jails of St. Louis, this Court restricted the number of "technical parole violators" who may be held in the City's jails to twenty and ordered that "[a]ll convicted persons must be transferred to Missouri state institutions by the Sheriff of the City of St. Louis within 32 hours of sentencing unless they are to be held for another scheduled trial to begin within 15 days."

(Order at 3).[6] In its August 26, 1994, Order, this Court ordered all parolees to be removed from the City's jails.

> All prisoners being held in the City Jail or MSI for parole violations must be removed by the State Parole Board as soon as possible, and no other parole violator may be admitted before September 16, 1994, unless by special order of this Court.

(Order at 1-2). On August 30, 1994, in its Interim Order of August 30, 1994, this Court again ordered all parolees to be removed from the City's jails, while acknowledging at the same time that their removal had been accomplished.

> **IT IS FURTHER ORDERED** that all persons now being held in the Jail or MSI for violation of parole are to be removed by the State of Missouri as soon as possible. It is the Court's understanding that all "technical" parole violators have been transferred to another facility per the prior Order of this Court issued on August 26, 1994.

(Order at 8). On September 14, 1994, this Court, in open court and on the record, acknowledged the State of Missouri Department of Corrections' and the Chairman of the State of Missouri Board of Probation and Parole's prompt compliance with its orders of removal. On September 29, 1994, in its Interim Order of September 29, 1994, Regarding Prisoners Detained in the St. Louis City Jail and Medium Security Institution, this Court entered the following order, contingent upon the population cap being reached:

> No persons charged <u>solely</u> with parole violations are to be admitted without special authorization of this Court. The Board of

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[6]The Court's Order was directed to the Sheriff because under Missouri law, Mo. Rev. Stat. § 546.610, it is the Sheriff who transports inmates to the Department of Corrections.

> Probation and Parole is to be notified if it is necessary to deny admittance to any parole violators.

(Order at 9). The population cap was reached a long time ago. Thus, no state prisoners are contributing to the overcrowding in the City's jails.

The other cases cited by the City are equally inapplicable here. In *Alberti v. Sheriff of Harris County, Texas*, 937 F.2d 984 (5th Cir. 1991), the State of Texas' "scheduled admissions policy" resulted in 45% of the county jail's population consisting of convicted felons, and state law authorized the confinement of convicted felons in the jail. *Alberti*, 937 F.2d at 987, 990, 996. In *Tate v. Frey*, 735 F.2d 996, 989 (6th Cir. 1984), the State of Kentucky's "controlled intake procedure" resulted in the State's refusal "to timely accept convicted felons as required by state law, which inaction the district court specifically determined contributed to the unconstitutional overcrowding of the Jefferson County Jail." As a remedy the court required the State to accept its felons within 30 days of conviction. In *Stewart v. Winter*, 669 F.2d 328, 332 (5th Cir. 1982), "thousands" of county jails' prisoners were committed to the custody of the State of Mississippi Board of Corrections. In *Albro v. County of Onondaga, N. Y.*, 627 F. Supp. 1280, 1289 (N.D. 1986), the State of New York possessed control over the number of "state-ready" inmates it accepted through a state-wide monitoring system of all county jail and prison population levels. Here, there are no persons sentenced to the custody of the State who are confined in the City's jails.

Rather than *Benjamin v. Malcolm* and the other inapplicable cases cited by the City, this case is more like *Badgley v. Varelas*, 729 F.2d 894 (2d Cir. 1984), in which there was no finding that state officials contributed to overcrowding. Therefore complete relief was available without joining state officials.

For these reasons, the All Writs Act does not provide jurisdiction over the State of Missouri and its officials.

5. The Eleventh Amendment Bars An Action For Contribution Brought By A Political Subdivision

The Eleventh Amendment to the United States Constitution prohibits an action for contribution by a political subdivision of a state, such as a county or municipality, against the creator of the political subdivision, the state itself. *Harris v. Angelina County, Texas*, 31 F.3d 331, 339-40 (5th Cir. 1994). The rationale for this rule is that *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908) represents an exception to the general rule, and absent an unequivocal expression of congressional intent to subject states to claims for contributions from their political subdivisions, *Young* should not be expanded to included contribution claims. *Id.* In *Harris*, a, Texas county brought a third party claim against the State of Texas and its officials and sought contribution to assist it in complying with any injunctive relief ordered in the event it was found liable on its detainees' claim of overcrowding. In rejecting the county's claim, the Fifth Circuit stated:

> [W]e can think of few greater intrusions on state sovereignty than requiring a state to

> respond, in federal court, to a claim for contribution brought by one of its own counties.

Harris, 31 F.3d at 340.

Just as in *Harris*, this Court should reject the City's unfounded motion to add the State or its officials as defendants here as violative of the Eleventh Amendment's prohibitions against such an action.

CONCLUSION

The City seeks to have this Court intrude upon the sensitive federalism interest of the State here simply because the "State can help" alleviate the City's purported financial pressures. The City has filed no proposed complaint, there has been no discovery as to the so-far unexplained bases for the State's supposed liability, nor has there been an evidentiary hearing on these issues. Moreover, the City's proposed to add the State flatly contradicts the State's Eleventh Amendment immunity and the principles of comity, equity and federalism. The City's contrived theories of jurisdiction are likewise unfounded. The simple fact is that the State is not liable for the City's failure to build adequate jail facilities. The City's motion, therefore, must be denied.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

JOHN R. MUNICH
Chief Counsel
Litigation Division

BRUCE FARMER
Deputy Chief Counsel
Litigation Division

GARY L. GARDNER
Assistant Attorney General
Missouri Bar No. 24779

P. O. Box 899
Jefferson City, MO 65102
Phone (314) 751-3321
Fax (314) 751-9456

ATTORNEYS FOR THE STATE OF MISSOURI

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 14th day of October, 1994, to:

James L. Matchefts
Assistant City Counselor
Room 314 City Hall
St. Louis, MO 63103

Frank Susman
7711 Carondelet
St. Louis, MO 63105

William Franz
720 Olive Street
Suite 2100
St. Louis, MO 63101

Barry A. Short
500 N. Broadway, Ste. 2000
St. Louis, MO 63102

Assistant Attorney General