

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

STEPHANIE REYNOLDS, FLORENCE)
STREETER, JACQUELINE GRAY, and)
THE METROPOLITAN ST. LOUIS)
EQUAL HOUSING OPPORTUNITY)
COUNSEL, INC.,)

Plaintiffs,)

v.)

Cause No. 06-CC-3802

CITY OF VALLEY PARK, MO,)
JEFFERY WHITTEAKER, in his official)
capacity as Mayor of the City of)
Valley Park, MO, and JOHN BRUST,)
DANIEL ADAMS, RANDY HELTON,)
DON CARROLL, MICHAEL PENNISE,)
ED WALKER, STEVE DRAKE, and)
J. MICHAEL WHITE, in their official)
capacity as Aldermen of the City of)
Valley Park, MO)

Division No. 13

Defendants.)

**FIRST AMENDED PETITION FOR
DECLARATORY AND INJUNCTIVE RELIEF**

For their First Amended Petition, Plaintiffs Stephanie Reynolds, Florence Streeter, Jacqueline Gray, and The Metropolitan St. Louis Equal Housing Opportunity Commission, state as follows:

INTRODUCTION

1. This action is filed under MO.R.STAT. § 527.020, and pursuant to MO.R.CIV.P. 87.02, to seek a declaration that the following two Ordinances are void: (1) Ordinance No. 1708, enacted on July 17, 2006, entitled “An Ordinance Relating to Illegal Immigration Within the City of Valley Park, MO” (a copy of which is attached hereto as Exhibit A); and (2) Ordinance No. 1715, enacted on September 26, 2006, originally entitled “An

Ordinance Repealing Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof With The Same Subject,” and re-titled by oral motion on the day of enactment as “An Ordinance Repealing Sections 1, 2, 3, and 4 of Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment and Harboring of Illegal Aliens in the City of Valley Park, MO” (a copy of which is attached hereto as Exhibit B). The Petition also seeks a temporary, preliminary, and permanent injunction restraining enforcement of those Ordinances.

2. For the first time in Missouri history, a political subdivision of this State is attempting to regulate immigration into the United States by attacking it at the local level based on expressed concerns related “to the security and safety of the homeland.”

3. Ordinance No. 1708 and Ordinance No. 1715 are both directed at regulating immigration. The bolded heading of Ordinance No. 1708 states that it is an Ordinance “Relating to Illegal Immigration.” And, although Defendants attempted to avoid the obvious by a last minute change to the heading of Ordinance No. 1715, its “Title” as set forth in the body of the Ordinance expressly indicates that it is an “Illegal Immigration Relief Act Ordinance.” Ordinance No. 1715 also expressly states that it was implemented because of, *inter alia*, “concerns to the security and safety of the homeland.”

BACKGROUND

4. On Monday September 25, 2006, this Court granted Plaintiffs (and Intervenor) their requested Temporary Restraining Order (“TRO”), enjoining enforcement of Ordinance No. 1708. (A copy of the Temporary Restraining Order is attached hereto as Exhibit C).

5. The day after the TRO was issued, Defendants repealed Sections One, Two,

Three, and Four of the patently unconstitutional and unlawful Ordinance No. 1708, and passed the equally unlawful (though much more complex) replacement Ordinance No. 1715. Defendant Mayor Jeffery Whitteaker signed Ordinance No. 1715 on September 26, 2006, rendering it effective by its terms.

6. The passage of Ordinance No. 1715, which is a newly titled but factually and legally similar law, merely serves to circumvent and/or frustrate the temporary restraining order entered by this Court. Ordinance No. 1715, like Ordinance No. 1708, is constitutionally and statutorily infirm, rendering further immediate injunctive relief proper. Specifically, enforcement of Ordinance No. 1715 should be enjoined until the scheduled November 1 preliminary injunction hearing in this matter.

7. This Court has already found that enforcement of Ordinance No. 1708 will cause irreparable harm to Plaintiffs. Ordinance No. 1715—which is effectively aimed at the same conduct as Ordinance No. 1708, i.e., penalizing employers and landlords who employ, or provide housing to, “illegal aliens”—will likewise immediately and irreparably harm Plaintiffs who will continue to lose their tenants and their customer bases, as well as the goodwill they have developed with customers and tenants over long periods of time.

8. Plaintiffs herein have standing to challenge the validity of Ordinance No. 1708 and Ordinance No. 1715 under MO.R.STAT. 527.020 which provides, in relevant party, that “[a]ny person ... whose rights, status or other legal relations are affected by a ... municipal ordinance ... may have determined any question of construction or validity arising under the ... ordinance ... and obtain a declaration of rights, status or other legal relations thereunder.” The rights of the Plaintiffs herein have been affected by Ordinance No. 1708 and Ordinance No. 1715, and they thus seek a determination of their validity and a declaration of their rights, as

well as an injunction to preserve the same. Plaintiffs also have standing because they have suffered, and continue to suffer, irreparable injury-in-fact as a direct result of the enactment and attempted enforcement of Ordinance No. 1708 and Ordinance No. 1715.

9. The provisions of Ordinance No. 1708, and Ordinance No. 1715: infringe the constitutionally granted federal immigration power, which the United States Supreme Court has repeatedly held is reserved to the federal government; conflict with federal immigration law; were enacted in excess of Valley Park's delegated authority; promote discrimination in housing, thus violating the federal Fair Housing Act; are preempted by the federal Fair Housing Act; unconstitutionally impair existing contracts; and violate Missouri's landlord and tenant statute.

PARTIES

10. Stephanie Reynolds is a resident of Valley Park, Missouri, and the owner of multiple rental units in that City, as well as a local convenience store. She does not know the legal status of the tenants leasing her properties, and she does not have the necessary resources and legal expertise to determine whether a tenant or prospective tenant is lawfully present in the United States, and thus not an "illegal alien" under the terms of Ordinance No. 1708 or Ordinance No. 1715. She has lost business as a direct result of the enactment of Ordinance No. 1708, and she will continue to lose business due to the enactment of Ordinance No. 1715, in that Hispanic tenants have left her properties, and the departure of immigrant residents has resulted in a decrease of her business profits. Stephanie Reynolds has never based, and currently does not want to appear as though she is basing, her decision to lease a property to, or to do business with, an individual upon that individual's race, or national origin. Stephanie Reynolds does not want to lose the goodwill she has established with her tenants by sharing their identifying information with law enforcement officials as could be required under Ordinance

No. 1715. She is fearful that, as a business owner, she may lose her business license, temporarily or permanently, if one of her employees is deemed to be an “unlawful worker” by the City of Valley Park. Likewise, as a landlord, she is fearful of losing her tenants, her occupancy permits, the rent and fees she is legally entitled to collect, and that a fine of \$250 per day could be imposed on her if one of her tenants is deemed to be an “illegal alien.” Ordinance No. 1715 places Stephanie Reynolds in the untenable position of needing to verify the immigration status of potential tenants without the resources to do so, and at risk of violating the antidiscrimination provisions of the federal Fair Housing Act.

11. Florence Streeter is the owner of residential and commercial rental units within the City of Valley Park. She does not know the legal status of the tenants leasing her properties, and she does not have the necessary resources and legal expertise to determine whether a tenant or prospective tenant is lawfully present in the United States, and thus not an “illegal alien” under the terms of Ordinance No. 1708 or Ordinance No. 1715. Florence Streeter has lost tenants as a result of the enactment of Ordinance No. 1708, and she runs the risk of continuing to lose tenants as a result of the enactment of Ordinance No. 1715. Furthermore, since the time Defendants first attempted to regulate immigration through a local Valley Park Ordinance, Florence Streeter has noted, and continues to note, a decline in interest by Hispanics in renting her properties. Florence Streeter does not want to lose the goodwill she has established with her tenants by sharing their identifying information with law enforcement officials as could be required under Ordinance No. 1715. As a landlord, she is fearful of losing her tenants, her occupancy permits, the rent and fees she is legally entitled to collect, and that a fine of \$250 per day could be imposed on her if one of her tenants is deemed to be an “illegal alien.” Ordinance No. 1715 places Florence Streeter in the untenable position of needing to verify the immigration

status of potential tenants without the resources to do so, and at risk of violating the antidiscrimination provisions of the federal Fair Housing Act.

12. Jacqueline Gray is a resident of St. Louis County, and owns rental units in Valley Park, Missouri. She does not want to lose the goodwill she has established with her tenants by sharing their identifying information with law enforcement officials as could be required under Ordinance No. 1715. As a landlord, she is fearful of losing her tenants, her occupancy permits, the rent and fees she is legally entitled to collect, and that a fine of \$250 per day could be imposed on her if one of her tenants is deemed to be an “illegal alien.” Ordinance No. 1715 places Jacqueline Gray in the untenable position of needing to verify the immigration status of potential tenants without the resources to do so, and at risk of violating the antidiscrimination provisions of the federal Fair Housing Act.

13. The Metropolitan St. Louis Equal Housing Opportunity Council, Inc. (“EHOC”) is a Missouri nonprofit corporation. It is a fair housing agency funded by the United States Department of Housing and Urban Development, as well as other sources, to investigate and eliminate housing discrimination and to educate the public about fair housing matters. Because Ordinance No. 1708 and Ordinance No. 1715 promote discrimination in the provision of housing, it frustrates the organizational mission of the EHOC. Since the enactment of Ordinance No. 1708, and as will continue under Ordinance No. 1715, the EHOC has been forced to devote significant resources to conducting outreach activities in the Valley Park area, and in its immigrant communities, to ensure people are aware of their fair housing rights, to educate housing providers in Valley Park about their responsibilities under the Fair Housing Act, and to meet with local organizations and individuals concerned about the impact of the ordinance on

immigrant communities. These activities have interfered with the EHOC's mission of fair housing, counseling, and education by causing a diversion of its resources.

14. Defendant City of Valley Park, Missouri is a City of the fourth class located in St. Louis County, Missouri.

15. Defendant Jeffrey Whitteaker is the mayor of Valley Park, Missouri and was actively involved in, and gave final approval for, the enactment of Ordinance No. 1708 and Ordinance No. 1715.

16. Defendants, John Brust, Daniel Adams, Randy Helton, Don Carroll, Michael Pennise, Ed Walker, Steve Drake, and J. Michael White are alderpersons in Valley Park, Missouri, and were actively involved in, and voted in favor of, the passage of Ordinance No. 1708 and Ordinance No. 1715.

17. At all times alleged herein, Defendant City of Valley Park and the Defendant Mayor and Aldermen were acting under color of state law, and thus are sued only in their official capacities.

VENUE AND JURISDICTION

18. Jurisdiction in this Court is proper pursuant to MO.R.STAT. § 478.220.

19. Venue is proper in this Court pursuant to MO.R.STAT. § 508.010.

THE ENACTMENT OF ORDINANCE 1708 & ORDINANCE NO. 1715

20. On July 17, 2006, Defendants enacted Ordinance No. 1708. Defendants declared that Ordinance No. 1708 was necessary to address higher crime rates, overcrowded classrooms and failing schools, neighborhood destruction, and a diminishing overall quality of life. Prior to enactment of Ordinance No. 1708, Defendants had done no investigation or research to determine the effects of illegal immigration on crime rates, educational opportunities,

neighborhoods, or quality of life. Prior to such enactment, Defendants had no evidence in their possession which related to the effects of illegal immigration on crime rates, educational opportunities, neighborhoods, or quality of life.

21. After the enactment of Ordinance No. 1708, the Defendants admitted that the Ordinance had been enacted solely as a “preventative measure,” and that they had no knowledge as to whether any “illegal aliens” resided or lived in Valley Park.

22. On September 26, 2006, Defendants enacted Ordinance No. 1715. On information and belief, with few exceptions, Defendants copied Ordinance No. 1715 from proposed legislation pending in a different city in a different state; indeed, in listing the ills of “illegal immigration” Defendants referred to “fiscal hardship” on “our hospitals” even though Valley Park has none. Defendants declare in Ordinance No. 1715 that it is being enacted because “illegal aliens harm the health, safety and welfare of authorized US workers and legal residents in the City of Valley Park” and that “illegal immigration” leads to “higher crime rates,” “burdens public services,” “diminishes [] overall quality of life” and “provides concerns to the security and safety of the homeland.”

23. Defendants enacted Ordinance No. 1715 without having done any investigation or research to determine the effects of illegal immigration on crime rates, public services, quality of life, or homeland security. Prior to such enactment, Defendants had no evidence in their possession which related to the effects of illegal immigration on crime rates, public services, quality of life, or homeland security. On information and belief, defendants and other officials of the City of Valley Park have received no training and have no expertise in making determinations of immigration status or in interpreting immigration documentation.

WHY AN AWARD OF DECLARATORY AND INJUNCTIVE RELIEF IS PROPER

24. Ordinance No. 1708 (to the extent any of its provisions remain valid) and Ordinance No. 1715 should be declared void and unenforceable, and a modified temporary restraining order should be entered adding a provision to enjoin the enforcement of Ordinance No. 1715. In addition, a preliminary and permanent injunction should be entered restraining enforcement of both Ordinance No. 1708 and Ordinance No. 1715. Such relief is justified for the following reasons:

(a) Ordinance No. 1708 and Ordinance No. 1715 violate the Supremacy Clause of the United States Constitution, art. VI, cl. 2. The power to regulate immigration is vested exclusively in the federal government pursuant to the Constitution's grant to the Federal government of the power to "establish a uniform Rule of Naturalization," (U.S. Const. art. I, § 8, cl. 4), and "to regulate Commerce with foreign Nations" (U.S. Const. art. I, § 8, cl. 3). The Federal government has established a comprehensive system of laws, regulations, procedures, and administrative agencies that determine, subject to judicial review, whether and under what conditions a given individual may enter, stay in, and work in the United States. 8 U.S.C. § 1101, et seq. These Federal immigration laws also include provisions directed at other classes of individuals, such as those who employ or assist immigrants. The federal immigration scheme is comprehensive and includes sanctions, documentation, and anti-discrimination provisions directly applicable to employers, as well as a criminal and civil scheme applicable to those who assist individuals who are not lawfully in the United States. Ordinance No. 1708 and Ordinance No. 1715 encroach on the federal

government's exclusive power to regulate immigration, attempt to legislate in fields which are completely occupied by the federal government, and, additionally or alternatively, conflict with federal laws, regulations, policies and objectives. Both Ordinances are thus preempted;

(b) Ordinance No. 1708 and Ordinance No. 1715 were enacted in violation of the limited powers delegated to the City of Valley Park by the Missouri legislature. A city's authority to exercise police power must come from a specific delegation by the state. Pursuant to MO.R.STAT. § 79.110, the City of Valley Park has the power to enact only those ordinances "not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same." No authority has been delegated to the City of Valley Park to regulate immigration. Furthermore, Ordinance No. 1708 and Ordinance No. 1715 are repugnant to the Constitution of the State of Missouri, including those provisions set forth below and, in addition, Article I, § 2 which guarantees "*all* persons" in this State the "right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry" and that "*all* persons" will be given "equal rights and opportunity under the law." Ordinance No. 1715 is also repugnant to the laws of this State in that, in order to avoid penalties under its provisions, a landlord who is found renting to an "illegal alien" must evict such a person within five (5) days. This five day notice period

compels a violation of MO.R.STAT. § 441.060, which requires that a landlord give a tenant in possession of property on a month-to-month lease notice of at least thirty (30) days, and it compels a violation of general Missouri contract law which requires that a landlord fulfill his lease obligations. In addition, there is no basis to conclude that the Ordinance is expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce, or the health of the inhabitants of Valley Park;

(c) Ordinance No. 1708 and Ordinance No. 1715 violate MO.R.STAT. § 79.470 in that the contemplated penalties exceeds the maximum punishment which the board of aldermen in a class four city is authorized to impart. A fourth class city is limited to imposing penalties for violation of a municipal ordinance at an amount “not exceeding” \$500.00. Both Ordinances allow for penalties, the value of which clearly exceeds this limitation. For example, Ordinance No. 1715 allows for the indefinite suspension of business licenses, occupancy permits, and the collection of rent, the value of which could greatly exceed the limitation imposed by state law for violation of an ordinance enacted by a fourth class city. By doing so, Ordinance No. 1708 and Ordinance No. 1715 clearly violate the Eighth and Fourteenth Amendments to the United States Constitution and Article I Section 21 of the Constitution of the State of Missouri.

(d) Ordinance No. 1708 and Ordinance No. 1715 are void as arbitrary and unreasonable, because the conduct they seek to regulate bears no substantial or rational relationship to the health, safety, peace, comfort or general welfare of the residents of the City of Valley Park. There is no evidence that illegal

immigration impacts crime rates, public services, quality of life, or homeland security. Thus, Ordinance No. 1708 and Ordinance No. 1715 are not a legitimate exercise of the police power granted to the City of Valley Park;

(e) Ordinance No. 1708 and Ordinance No. 1715 violate Article I, § 10 of the Constitution of the State of Missouri, as well as the Fourteenth Amendment of the United States Constitution, which guarantee that no person shall be deprived of “life, liberty, or property without due process of law.” For example, Ordinance No. 1708 provides no notice of who is an “illegal alien” or what conduct might be deemed to be “aiding and abetting.” And, Ordinance No. 1715 is based on text found nowhere within the Ordinance itself, in that, for its main provisions, it merely references by citation to code provisions parts of the complex federal law governing immigration. The Ordinance, having incorporated federal law, cannot be understood by persons of common intelligence, and thus Ordinance No. 1715 gives no fair warning of what the law intends. Both Ordinance No. 1708 and Ordinance No. 1715 lack explicit standards necessary to avoid arbitrary and discriminatory application by those enforcing its provisions. As such, the Ordinance No. 1708 and Ordinance No. 1715 fail to afford due process by which individuals like Plaintiffs can ensure they are not subject to the loss of liberty or property for a violation;

(f) Ordinance No. 1708 and Ordinance No. 1715 are preempted by the Fair Housing Act, 42 U.S.C. §§ 3601–19, which expressly provides that “the law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice

under this subchapter shall to that extent be invalid.” 42 U.S.C. § 3615. Ordinance No. 1708 and Ordinance No. 1715 promote discriminatory housing practices. Because a landlord has no way to determine whether a potential tenant is an “illegal alien” “pursuant to United States Code Title 8, section 1373(c)” at the time of leasing a property, the Ordinances put landlords, like Plaintiffs, in a predicament, whereby they must choose between: leasing property to a person who looks like he may be an “illegal alien” and accepting the risk that he will not be able to fulfill his lease term upon enforcement of the Ordinances; and refusing to lease to someone who looks as though he may be an “illegal alien” based on his apparent heritage. Ordinance No. 1715 thus promotes the practice of refusing to lease property based on apparent national origin;

(g) Ordinance No. 1708 and Ordinance No. 1715 themselves violate the Fair Housing Act, which prohibits housing practices that discriminate on the basis of, *inter alia*, race, color, and national origin. The Ordinances have at least a disparate impact on people of Mexican or other Latino heritage as well as on those who, by virtue of their skin color or other features, are believed to be of Mexican or other Latino heritage, and are likely to have a similar disparate impact on members of other minority ethnic groups;

(h) Ordinance No. 1708 and Ordinance No. 1715 are repugnant to Article I, § 13 of the Constitution of the State of Missouri, and Article I, § 10 of the United States Constitution in that they impair obligations made under contracts. To avoid prosecution under Ordinance No. 1708 and Ordinance No. 1715, a property owner who has entered into a contract for the lease of rental

property with someone who is deemed to be an “illegal alien” must breach that lease or be subject to the penalties provided under the Ordinance;

25. By being subject to the imposition of invalid and unconstitutional Ordinances, Plaintiffs have been irreparably injured in their businesses and livelihoods, and will continue to be until such time as Ordinance No. 1708 and Ordinance No. 1715 are declared void and invalid, and an injunction is entered enjoining their enforcement.

PRAYER FOR RELIEF

FOR RELIEF Plaintiffs respectfully request that this Court declare Valley Park Ordinance No. 1708 and Ordinance No. 1715 void, and that it enter a modified temporary restraining order enjoining the provisions of Ordinance No. 1715, and, in addition, that it enter a preliminary and permanent injunction restraining enforcement of the provisions of the Ordinances, and that this Court award Plaintiffs their costs and attorneys’ fees incurred herein.

Respectfully submitted,

BRYAN CAVE LLP

By: _____
Linda Martinez, #30655
lmartinez@bryancave.com
Kathy A. Wisniewski, #38716
kawisniewski@bryancave.com
Elizabeth Ferrick, #52241
elizabeth.ferrick@bryancave.com
John Young, #50539
jfyoun@bryancave.com
Rhiana Sharp, #56539
rhiana.sharp@bryancave.com
One Metropolitan Square
St. Louis, MO 63102
(314) 259-2000
Facsimile: (314) 259-2020

SAINT LOUIS UNIVERSITY LEGAL CLINIC

John J. Ammann, #34308
ammannjj@SLU.edu
Susan McGraugh, #37430
mcgraugh@SLU.edu
321 North Spring
St. Louis, MO 63108
(314) 977-2778
Facsimile: (314) 977-3334

**WASHINGTON UNIVERSITY SCHOOL OF
LAW, CIVIL RIGHTS & COMMUNITY
JUSTICE CLINIC**

Samuel R. Bagenstos, #57058 (Mo.S.Ct.R. 13.06)

srbagenstos@wulaw.wustl.edu

Karen Tokarz, #27516

tokarz@wulaw.wustl.edu

Margo Schlanger (pro hac vice)

mschlanger@wulaw.wustl.edu

One Brookings Drive, CB 1120

St. Louis, MO 63130

(314) 935-9097

Facsimile: (314) 935-5356

**CATHOLIC LEGAL ASSISTANCE
MINISTRY**

Marie A. Kenyon, #36060

kenyonm@SLU.edu

321 N. Spring Avenue

St. Louis, MO 63108

(314) 977-3993

Facsimile: (314) 977-3334

ITUARTE AND SCHULTE LLC

Jesus Itauarte

ituarte_j@sbcglobal.net

2200 Pestalozzi Street

St. Louis, MO 63118

(314) 865-5400

ANTHONY B. RAMIREZ, P. C.

Anthony B. Ramirez, #20169

AnthonyRamirez@ramirezlawfirm.com

1015 Locust Street, Suite 735

St. Louis, MO 63101

(314) 621-5237

Facsimile: (314) 621-2778

GREEN JACOBSON & BUTSCH P.C.

Fernando Bermudez, #39943
Bermudez@stlouislaw.com
7733 Forsyth Blvd., Suite 700
St. Louis, MO 63105
(314) 862-6800
Facsimile: 314-862-1606

**AMERICAN CIVIL LIBERTIES UNION OF
EASTERN MISSOURI**

Anthony E. Rothert, #44827
tony@aclu-em.org
4557 Laclede Avenue
St. Louis, MO 63108
(314) 361-3635
Facsimile: (314) 361-3135

OF COUNSEL:

(Pro Hac Vice Applications Pending)

**MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND**

Ricardo Meza
rmeza@maldef.org7
Jennifer Nagda
jnagda@maldef.org
11 E. Adams; Suite 700
Chicago, IL 60603
(312) 427-0701
Facsimile: (312) 427-0691

**AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT**

Lee Gelernt
Omar C. Jadwat
OJadwat@aclu.org
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2620
Facsimile: (212) 549-2654

and

Jennifer C. Chang
39 Drumm Street
San Francisco, CA 94111
(415) 343-0770
Facsimile: (415) 395-0950

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the First Amended Petition was forwarded, via facsimile and hand-delivery, on this 27th day of September, 2006, to:

Eric M. Martin, Esq.
109 Chesterfield Business Parkway
Chesterfield, MO 63005-1233
