

IN THE SUPREME COURT OF MISSOURI

NO. SC88647

CITY OF ARNOLD,
Plaintiff-Appellant,

v.

HOMER TOURKAKIS, ET AL.,
Respondents,

and

AMERENUE, ET AL.
Defendants.

APPEAL FROM THE CIRCUIT COURT OF JEFFERSON COUNTY

The Honorable M. Edward Williams

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INTRODUCTION

In their zeal to oppose the use of eminent domain, Respondents ask this Court to misread Article VI, Section 21 of the Missouri Constitution and to disregard the historic and accepted use of eminent domain power by Missouri municipalities. With the fatal flaws in their argument made manifest by decades of this Court's precedent, Respondents attempt to recast the rulings of the trial court in an effort to lessen the sweep of what is unquestionably an erroneous ruling. Rather than acknowledge the language of the opinion declaring that it was unconstitutional for the City of Arnold to exercise the power of eminent domain, Respondents attempt to persuade the Court that dismissal of this action was based upon a supposed lack of express statutory authority in the Missouri TIF Act authorizing third class cities to exercise that power.¹

This eleventh hour revision of the trial court's ruling disingenuously ignores the language of the order appealed from:

It is the judgment of the Court that the City of Arnold lacks constitutional authority to take the property of defendants under Chapter 99 and that to the extent Chapter 99 is inconsistent with Article 6, Section 21 of the Constitution of 1945, it is declared unconstitutional. L.F. 41.

¹ §§ 99.800–99.865. All statutory citations herein are to R.S.Mo. (2006) unless otherwise noted.

Respondents' position also ignores their own Motion to Dismiss, which made no suggestion that the TIF Act did not permit third class cities to acquire property by eminent domain. Rather, the basis of the Motion was the unconstitutionality of any such effort:

This Court does not have jurisdiction to enter an Order of Condemnation because 3rd Class cities do not have the power of eminent domain for purposes of redevelopment projects as such alleged grant of power would be unconstitutional under Missouri Constitution, Article I, Section 28 and specifically prohibited under Article VI, Section 21, which section permits only *constitutionally chartered first class cities and counties* to use the power of eminent domain to eliminate blight and effectuate redevelopment plans. L.F. 30 (emphasis in original).

The issue before this Court is a narrow one: does Article VI, Section 21 limit the exercise of the power of eminent domain in redevelopment areas to charter cities and counties? Respondents' brief and those of the *amici curiae* focus on the impropriety of the exercise of eminent domain and ask this Court to judicially re-write the Missouri Constitution.

Curiously, in an effort to bolster their argument that the issue is statutory, not constitutional, Respondents *concede* that the General Assembly can constitutionally allow third class cities to exercise eminent domain for redevelopment: "Article VI, section 21, creates a grant of power, limited to charter cities, to use eminent domain for

redevelopment. *It also may allow the Legislature, if it so chooses, to go beyond that limit by enacting laws to that effect.*” Respondents’ Brief at 20 (emphasis added). Thus, Respondents’ argument collapses under its own weight.

The issue before this Court is not whether the use of eminent domain is currently popular. Rather, the issue is whether, taking the allegations in the petition as true, there is a constitutional prohibition to the City of Arnold’s exercise of the power of eminent domain under the authority expressly granted in the TIF Act.

All the rhetoric about eminent domain should not compel this Court to turn constitutional and statutory interpretation on its head. The trial court’s order should be reversed and the case remanded for further proceedings.

I. The TIF Act Expressly Grants All Municipalities The Power Of Eminent Domain And Article VI, Section 21 Does Not Limit That Grant To Charter Cities.

As the City explained in its opening brief, the trial court erred in dismissing this condemnation action based upon Article VI, Section 21 of the Missouri Constitution because the TIF Act grants the City the power to condemn blighted property for redevelopment and Article VI, Section 21 does not limit that grant. Respondents now assert that this Court need not determine any constitutional issue because the TIF Act itself allegedly contains no grant of eminent domain power to third class cities. However, this conclusion turns upon Respondents’ circular arguments that the TIF Act grants eminent domain powers to municipalities “subject to constitutional limitations;” that

Article VI, Section 21 somehow limits the use of eminent domain for redevelopment purposes by non-charter entities; and thus, the legislature did not intend the TIF Act to grant the power of eminent domain to non-charter cities.² Respondents' Brief ("R. Br.") at 9-21.

The fundamental flaw in Respondents' argument is the conclusion that Article VI, Section 21 limits the General Assembly's power to enact laws for redevelopment purposes. The City recognizes that there are constitutional limitations on the exercise of the power of eminent domain. For instance, property cannot be taken without just compensation or for a private use. *See* Mo. Const. art. I, §§ 26, 28. But Article VI,

² Respondents suggest throughout their brief that the General Assembly limited eminent domain power to charter cities because they are larger than other municipalities and better able to provide "checks and balances." R. Br. at 32-38. This is yet another example of Respondents' fallacious reasoning, because charter cities come in all sizes. For example, the City of Arnold has 20,800 inhabitants and the City of Chesterfield has over 46,600; neither has chosen to become a charter city, and both are third-class cities. The smaller cities of Crestwood and Maplewood, with 11,500 and 8,700 inhabitants, respectively, have adopted charters. Municipal classifications in Missouri are based on size at time of incorporation. In general, third class cities have populations of 3,000 inhabitants at the time of incorporation, § 72.030, fourth-class cities 500-2,999 inhabitants, § 72.040, and villages less than 500 inhabitants. Any municipality having a population of 5,000 inhabitants can become a charter city. Mo. Const. art. VI, § 19.

Section 21 is not a limitation. Instead, the plain language of that provision simply affirms a right inherent in the Missouri legislature—the right to enact laws granting the power of eminent domain for redevelopment purposes.

A. The TIF Act Grants All Municipal Entities The Power To Condemn Property To Effectuate The Purposes Of That Act.

While Respondents’ argument turns upon limitations allegedly incorporated into the TIF Act, it completely ignores the express language of that Act. Section 99.820.1 contains a list of the various powers granted to a “municipality” to carry out the redevelopment objectives of the Act. That list includes the power to approve redevelopment plans, enter into redevelopment contracts, construct improvements, and issue bonds. § 99.820.1(1)(2)(6) and (10). Section 99.820.1(3) also authorizes a municipality to acquire property by eminent domain.³ For all these purposes, the TIF Act defines a municipality as “a city, village or incorporated town or any county of this state.” § 99.805(7).

³ Respondents sometimes suggest that non-charter cities are limited only in the use of eminent domain under the TIF Act, while at other times they indicate that non-charter entities cannot exercise any of the powers under the Act. *See* R. Br at 10, 33. Both statements are incorrect. Moreover, Respondents’ suggestion that the legislature granted non-charter cities the ability to approve TIF plans and adopt TIF financing, but deprived them of one of the essential tools necessary to effectuate that plan—eminent domain—is simply nonsensical.

1. **The TIF Act Contains No Limit Restricting Eminent Domain To Charter Cities.**

On its face, the statute does not limit the power of eminent domain to charter cities. To the contrary, it expressly authorizes all cities, towns, and villages to use eminent domain. Thus, the statute expressly grants the power to non-charter municipal entities. Villages, by definition, are not constitutional charter cities. *See* § 72.080. This Court and Missouri appellate courts have authorized the use of eminent domain by non-charter entities. In fact, the TIF Act goes even further in that it allows a tax increment financing commission to exercise the powers enumerated in the Act. § 99.820.3. On at least two occasions, this Court has addressed the validity of condemnations undertaken by tax increment financing commissions. On neither occasion did the parties or the Court question the condemnation on the grounds that these non-charter entities lacked the power to condemn. *Tax Increment Financing Com'n of Kansas City v. J.E. Dunn Const. Co., Inc.*, 781 S.W.2d 70 (Mo. banc 1989); *State ex rel. Broadway-Washington Associates, LTD. v. Manners*, 186 S.W.3d 272 (Mo. banc. 2006). On the contrary, Missouri courts have indicated that they read the TIF Act language as anyone would—it grants the designated powers to all municipalities:

A municipality may... (3) Pursuant to a redevelopment plan, subject to any constitutional limitations, acquire by ... eminent domain ... land and other property, real or personal, or rights or interests therein ... all in the manner and at such price the municipality or the commission determines is

reasonably necessary to achieve the objectives of the redevelopment plan.

§ 99.820.1.

The Eastern District Court of Appeals has upheld the use of tax increment financing by a fourth class municipality, the City of Des Peres, finding that the City’s designation of a redevelopment area was “within its powers as granted by section 99.820” *JG St. Louis West Limited Liability Co. v. City of Des Peres and West County Center, LLC*, 41 S.W.3d 513, 518 (Mo. App. E.D. 2001) (transfer denied, April 24, 2001). That court also relied upon the plain language of § 99.820.1(3) to uphold the dismissal of a referendum petition for a charter amendment that proposed, in part, to abrogate the City of Hazelwood’s powers of eminent domain with respect to TIF plans. *State ex rel. Hazelwood Yellow Ribbon Committee v. Klos*, 35 S.W.3d 457, 470-471 (Mo. App. E.D. 2000). Noting that “Section 99.820.1(3) of the TIF Act expressly grants *cities* the right to acquire property by eminent domain in connection with TIF projects,” the court determined that the proposed charter amendment would take away the right granted in the statute in violation of the Missouri Constitution. *Id.* (emphasis added).

2. Respondents’ Inferred Limitation Begs the Question as to Whether Article VI, Section 21 Limits the Use of Eminent Domain for Redevelopment to Charter Cities.

Despite the clear language of the TIF Act, Respondents assert that the Missouri General Assembly did not intend to confer the power of eminent domain on non-charter

entities because § 99.820.1(3) states that a municipality may only use it “subject to any constitutional limitations.” According to Respondents, this “constitutional limitation” language qualifies only the grant of eminent domain, but not any of the other powers listed. R. Br. at. 12. And according to Respondents, Article VI, Section 21 does not “grant” the power of eminent domain to non-charter cities. R. Br. at 12, 19-21.

Respondents’ argument is flawed on several levels. The power of eminent domain does not require an affirmative grant in the Missouri Constitution. The right to exercise that power is wholly a legislative function, subject only to clear constitutional limits upon this power. *State ex rel. State Highway Commission v. James*, 205 S.W.2d 534, 535 (Mo. banc 1947). Thus, Respondents’ argument that the phrase “subject to constitutional limitations” is synonymous with “where otherwise authorized,” R. Br. at 21, is a blatant misstatement of Missouri law. The Missouri legislature did not need any authority, in the constitution or elsewhere, to grant the power of eminent domain to all municipal entities in the TIF Act.

As explained in the City’s opening brief, Article VI, Section 21 does not purport to restrict who may condemn property. It simply establishes one of the public purposes for which private property may be condemned. Article VI, Section 21 expressly affirms that “laws may be enacted” and constitutional charter cities may also enact ordinances for the redevelopment of blighted areas and the use of eminent domain for that purpose. The TIF Act is such a law. The plain language of Article VI, Section 21 should end this Court’s analysis.

3. Respondents Concede That Article VI, Section 21 Permits The Legislature To Authorize Non-Charter Cities To Use Eminent Domain For Redevelopment.

Oddly, Respondents admit that Article VI, Section 21 does not limit the legislature from granting eminent domain for redevelopment purposes to non-charter entities by enacting laws to that effect. R. Br. at 20, 31. They simply conclude that this was not the legislative intent in the TIF Act. R. Br. at 20. That conclusion does not follow. If Respondents agree that the Missouri General Assembly could, without constitutional violation, grant the power of eminent domain to non-charter municipal entities, it is impossible to conclude that the General Assembly did not do so in the TIF Act given that Act's broad definition of "municipality" and grant of eminent domain authority to all such entities.

Respondents assert that if the City's argument is adopted, the phrase "subject to constitutional limitation" will be rendered mere surplusage. R. Br. at 12. Again, this statement reflects a basic misunderstanding or misstatement of Missouri law. As noted above, the constitutional limitations language modifies any number of acts municipalities are authorized to take with respect to real property under the TIF Act. Thus the referenced constitutional limitations could have nothing to do with eminent domain. For instance, Article VI, Section 25 forbids municipalities from granting public property for private uses, which is a limitation on the City's ability to "dispose" of property—one of the acts authorized in Section 99.820.1(3).

Even if construed to qualify only the power of eminent domain, the language is not rendered meaningless. Article I, Sections 26 and 28 provide limitations on the power of eminent domain. Section 26 provides that private property shall not be taken without the payment of just compensation. Section 28 provides that private property shall not be taken for private use. In *State ex rel. State Highway Com'n v. James*, 205 S.W.2d at 535, this Court acknowledged the distinction between these constitutional limitations in Article I and other constitutional provisions that do *not* so limit the legislative power, including Article VI, Section 21. See Appellant's Brief ("A. Br.") at 14-15. Any exercise of eminent domain under the TIF Act is subject to the limitations in Article I, and the legislature may well have thought that point worthy of express recognition.

4. Article VI, Section 21's Reference To Charter Cities Authorizes Them To Adopt Their Own Redevelopment Schemes By Ordinance In The Absence Of, Or In Addition To, Statewide Redevelopment Laws.

Respondents also assert that if the City's argument is adopted, the language in Article VI, Section 21 would render the portion of that provision authorizing charter cities to enact ordinances for the redevelopment of blighted areas and use of eminent domain to be surplusage. R. Br. at 22. Again, Respondents refuse to acknowledge that Article VI, Section 21 has two components: (1) it affirms that the Missouri legislature may enact laws for the redevelopment of blighted areas, and (2) it affirms that charter cities may, under their charter authority, enact ordinances for that purpose. In other

words, charter cities need no statutory authority for such actions. Hence, even if the legislature *can* authorize all municipalities to condemn property for this purpose, charter cities have this power even in the absence of statutory authority. Charter cities would certainly not view this language as mere redundancy.

5. **The TIF Act's Plain Language Expressly Grants Third Class Cities The Power Of Eminent Domain, So Respondents' Cases About Inferred Powers Are Not On Point.**

The City does not dispute the general rule, repeatedly cited by Respondents, that condemnation statutes should be construed narrowly. Indeed, virtually every case dealing with the power of eminent domain cites this standard. But statutory rules of construction cannot be used to defeat the plain language of the TIF Act. *State ex rel. Baumruk v. Belt*, 964 S.W.2d 443, 446 (Mo. banc 1998). Nor will the courts add words by implication to a statute that is clear and unambiguous. *Emery v. Wal-Mart Stores, Inc.*, 976 S.W.2d 439, 449 (Mo. banc 1998). None of the cases cited by Respondents contain an express grant of eminent domain to the condemnor for the purpose challenged in those cases. Rather, those cases turn upon whether a grant of eminent domain could be *inferred* where the grant of eminent domain was not explicit or necessarily implied in the statute. *See State ex rel. County of St. Charles v. Mehan*, 854 S.W.2d 531 (Mo. App. W.D. 1993). Here, this Court need not infer anything. The TIF Act contains a clear grant

of eminent domain for the exact purposes for which the City proposes to take Respondents' property.

Moreover, despite Respondents' vain attempt to turn this case into one of pure statutory construction, the crux of this case is the language of Article VI, Section 21. Rules of statutory construction must give way to the guiding principle that statutes are presumed constitutional and a constitutional provision potentially limiting the legislature should be strictly construed so as to favor the power of the legislature. *Consolidated School District No. 1 of Jackson County v. Jackson County*, 936 S.W.2d 102, 103 (Mo. banc 1996); *Brown v. Morris*, 290 S.W.2d 160, 166 (Mo. banc 1956). Thus, even Respondents would have to concede that all cities have the right to condemn under the TIF Act if Article VI, Section 21 does not expressly limit that grant.

Respondents' statutory construction argument fails for the additional reason that the General Assembly's determination not to limit its redevelopment acts to charter cities is not a legislative oversight. Had the Missouri legislature desired to limit the power of

eminent domain to charter cities, it could have clearly done so.⁴ For many decades, the legislature has recognized that blight may become an issue for any city, regardless of its form of government or its location. For example, the Land Clearance for Redevelopment Authority Law, §§ 99.300–99.715, was enacted in 1951 after the legislature found “that there exists in *municipalities* of the state insanitary, blighted, deteriorated and deteriorating areas which constitute a serious and growing menace injurious to the public health, safety, morals and welfare of the residents of the state.” § 99.310 (emphasis added).

It is through the definitions of “blight” and “conservation area” in the TIF Act that the legislature chose to limit the use of eminent domain by municipalities large and small. Respondents’ suggestion that the Missouri legislature chose to limit the entities that can exercise the power of eminent domain under the TIF Act through obscure

⁴ For example, the Missouri General Assembly modified the urban redevelopment statute to limit the entities that could avail themselves of the rights thereunder to cities and “any county of the first classification with a charter form of government” and a specified population. § 353.020(3). The LCRA Act distinguishes the manner in which municipal entities may form a land clearance authority based upon the population of the municipality. § 99.320(6). Chapter 88 contains numerous, different grants of the power of eminent domain to various municipalities based upon their size or classification. *See, e.g.*, §§ 88.497, 88.533, 88.667, 88.713, and 88.873.

reference to constitutional limitations requires a leap of faith that the statutory language simply does not support.

B. Chapter 523 And Missouri Supreme Court Rule 86 Provide The Procedures To Be Followed In All Condemnations Under The TIF Act.

Respondents also assert that the General Assembly did not intend to grant eminent domain power to non-charter cities under the TIF Act because § 99.820.1(3), authorizing a “municipality” to acquire property within a redevelopment area by eminent domain, does not contain a procedure for the condemnation or specifically cross-reference Missouri’s general condemnation statute, Chapter 523. Respondents do not cite a single Missouri case supporting this proposition. In fact, an explicit reference to a condemnation mechanism is not necessary in Missouri since both Missouri Supreme Court Rule 86 and Chapter 523 provide the procedure to be followed in **all** condemnation proceedings in this State absent contrary statutory or charter authority.

Chapter 523, entitled “Condemnation Proceedings,” outlines the procedure to be followed in a condemnation by one of various delineated entities “or other corporation created under the laws of this state for public use” § 523.010. Chapter 523 has long been recognized in Missouri as the general condemnation statute that provides the mechanism for the acquisition of property by eminent domain and the ascertainment of damages by a jury. *Conduit Industrial Redevelopment Corporation v. Luebke*, 397 S.W.2d 671, 673 (Mo. 1966). “Chapter 523, RSMo, V.A.M.S., provides for

condemnation proceedings and an examination of its provisions is persuasive that it is intended as a special statutory proceeding largely containing its own specific procedures for condemnation issues only.” *Id.*

In addition, in 1960, the Missouri Supreme Court adopted Rule 86, entitled “Condemnation Proceedings,” which largely mirrors various sections of Chapter 523 and provides a procedure for the filing of a condemnation petition, ascertainment of damages by a jury, and payment of just compensation. The first section of that Rule reads as follows:

86.01 Scope

In *all* condemnation proceedings, except those in instances where special provisions to the contrary are, or may hereafter be, provided for by charters or ordinances of those cities having constitutional charters, the procedures to be followed shall be that provided for by these rules.

Id. (emphasis added). The accompanying committee note expresses the intent to redraft the rules relating to condemnation “to provide for a single method of condemning property” and to “provide a fair procedure for all concerned.” Rule 86.01 Committee Note (1959).

Looking at the language of Rule 86 and the committee note, this Court has stated, “[I]t seems clear from the foregoing that the committee intended, in the interest of uniformity, that Rule 86 should apply to all condemnation cases, including suits by constitutional charter cities, unless such cities expressly provide to the contrary.” *Bueche*

v. Kansas City, 492 S.W.2d 835, 839 (Mo. banc 1973). Rule 86 provides the procedure to be followed in the exercise of the power of eminent domain, whether that power is granted under a special statutory authority or Chapter 523. *See also Union Electric Co. v. Jones*, 356 S.W.2d 857, 859-860 (Mo. 1962).

Rule 86 supplements the procedures in Chapter 523. *Conduit Industrial*, 397 S.W.2d at 673. This Court has broadly recognized that, “unless the city charter explicitly provides to the contrary, the city is required to follow the general condemnation requirements set forth in § 523.010, RSMo Cum.Supp. 1986 and Rule 86.” *City of Columbia v. Baurichter*, 713 S.W.2d 263, 266 (Mo. banc 1986) (constitutional charter city must comply with negotiation requirements of Chapter 523 and Rule 86); *see also North Kansas City School District v. J.A. Peterson-Renner, Inc.*, 369 S.W.2d 159 (Mo. 1963) (Rule 86 and Chapter 523 provide procedure to be followed when school district condemns under statutory grant authorizing condemnation for school purposes).

Respondents rely on a fifty year-old Washington state case, *State ex rel. Mower v. Superior Court*, 260 P.2d 355 (Wash. 1953). This case is not persuasive authority in Missouri and is distinguishable on the facts. In *Mower*, the Washington Supreme Court held that the conferral of the right of eminent domain in a Washington statute, without a procedure for the exercise of that power, was not an effective grant. Respondents failed to point out that the Washington legislature had previously repealed the state’s general condemnation statute. The Washington Supreme Court found that this repeal “indicated a legislative purpose to have a special procedural act applicable to each type of entity which had authority to exercise the right of eminent domain.” *Id.* at 359. On these

grounds, it distinguished cases decided prior to repeal of the general condemnation statute wherein the court upheld broad grants of condemnation power without a method for its exercise because those entities could use the procedure in the general condemnation act where a statute gave a right of condemnation without prescribing a method for its exercise. *Id.* (citing *Town of Redmond v. Perrigo*, 146 P. 838, 839 (Wash. 1915)).

In Missouri, it was not necessary for the legislature to provide a mechanism for condemnations under the TIF Act because Chapter 523 and Rule 86 provide that procedure. In construing statutes, this Court must assume that the “legislature acted with a full awareness and complete knowledge of the present state of the law.” *State v. Rumble*, 680 S.W.2d 939, 942 (Mo. banc 1984). The Missouri General Assembly is presumptively aware of both other statutes and judicial decisions interpreting other legislative actions. *Cook Tractor Co., Inc. v. Director of Revenue*, 187 S.W.3d 870, 873 (Mo. banc 2006); *Butler v. Mitchell-Hugeback, Inc.*, 895 S.W.2d 15, 19 (Mo. banc 1995).

Thus, when the Missouri General Assembly enacted the TIF Act in 1982, it presumptively had knowledge of the language of Rule 86 and Chapter 523, and this Court’s decisions holding that this rule and statute provide the procedure to be applied in all condemnation actions absent contrary legislative or charter direction. In light of this knowledge, the drafters of the TIF Act could reasonably have determined that a specific

reference to the mechanism for condemnation was simply unnecessary.⁵

The fact that other redevelopment statutes contain an express reference to Chapter 523 does not prove that the legislature intended to deny that power to non-charter cities in the TIF Act. In light of Chapter 523, Rule 86, and Missouri law, this discrepancy does not prove a legislative intent that is contrary to the plain language of that TIF Act.

II. Constitutional Interpretation Is Not Necessary Given The Clear Language Of Article VI, Section 21, But If Conducted, Appellant Prevails.

Although Respondents try to deflect attention from their flawed analysis of Article VI, Section 21, they cannot avoid it entirely. Therefore, they try to square their circular logic with cries of “first impression” and lengthy discussions of the constitutional debates regarding the 1945 Missouri Constitution. Such diversions, however, are unavailing.

⁵ A review of Missouri statutes indicates that the Missouri legislature reached a similar conclusion on various occasions. For instance, § 88.667 is the general condemnation statute for fourth class cities. It states that these cities can condemn for specified purposes, such as establishing streets, and for any other necessary public purposes, but has no statement of the procedures to be followed. *See also*, § 392.100 (authorizing telephone and telegraph companies to condemn lands “in the manner provided by law”); § 238.402 (authorizing transit authority to condemn property with no procedure provided). Under Respondents’ argument, none of these condemnation powers would be available.

This Court has analyzed the plain meaning of Article VI, Section 21 before, and its interpretation supports the City.

A. **Whether Article VI, Section 21 Limits The Power Of Eminent Domain To Charter Cities Is Not A Question Of First Impression Where This Court Has Previously Rejected Challenges To Statutes Giving Such Power To Non-Municipal Entities.**

Respondents and their *amici* attempt to characterize the issue of whether Article VI, Section 21 limits the power of eminent domain to charter cities as one of first impression. In reality, this Court, in a series of key decisions, has repeatedly sanctioned the use of eminent domain by entities other than charter cities. *See, e.g., State ex rel. Dalton v. Land Clearance for Redevelopment Authority*, 270 S.W.2d 44, 49-51 (Mo. banc 1954) (rejecting argument that use of eminent domain by non-charter entities such as land clearance authorities was an improper taking for private use); *Annbar Associates v. West Side Redevelopment Corp.*, 397 S.W.2d 635, 647 (Mo. banc 1965) (rejecting similar challenges to urban redevelopment corporations law under Chapter 353); *State ex rel. Atkinson v. Planned Industrial Expansion Authority of St. Louis*, 517 S.W.2d 36, 44-45 (Mo. banc 1975) (rejecting constitutional challenge to use of eminent domain by non-charter Planned Industrial Expansion Authority).

This Court's clearest expression of the principle that Article VI, Section 21 does not limit the power of eminent domain came in *Annbar Associates v. West Side Redevelopment Corp.*, where in the course of rejecting a challenge to the urban

redevelopment corporations law of Chapter 353, this Court definitively addressed the issue:

“If authority exists to empower a public body to acquire private property by eminent domain and sell it to private enterprise for redevelopment, then such authority exists to empower a private corporation to acquire property by such means for a public purpose. Article VI, § 21, empowering legislative bodies to enact laws and ordinances to provide for the acquisition of private property by eminent domain for the purposes therein stated, does not designate the entities and, of course, makes no distinction between entities, such legislative bodies may invest with that power.”

397 S.W.2d at 647. This clear holding eviscerates any argument that Article VI, Section 21 limits the power of eminent domain to charter cities. It defies logic to argue that Article VI, Section 21 limits condemnation power to charter cities when this Court’s jurisprudence for more than 40 years has been that a *private* redevelopment corporation may be given the power of eminent domain when it is advancing the public purpose of remediation of blight. Lest any doubt remain on this point, this Court in *Annbar* also added:

“We cannot say that public bodies are the only entities that may be invested with the power of eminent domain—the

authority to designate those entities with whom it may invest that power is solely that of the legislative branch.”

Id.

Equally clear from *Annbar* is this Court’s interpretation of Article VI, Section 21 as contemplating two forms of legislative enactments to combat blight: (1) “laws” enacted by the Missouri General Assembly, and (2) “ordinances” passed by charter cities. As the *Annbar* court noted about the constitutional provision at issue here, “Article VI, § 21, thereof provides: ‘Laws may be enacted [by the General Assembly], *and any city . . . operating under a constitutional charter may enact ordinances*’ to remediate blight. *Id.* at 640 (parenthetical and emphasis in original). This is not a matter of first impression.

B. Tools Of Constitutional Interpretation Are Not Necessary Given The Plain And Unambiguous Language Of Article VI, Section 21, But If Utilized, Favor Appellant’s Interpretation.

Although Respondents assert that their interpretation is the “plain meaning” of Article VI, Section 21, their brief contains a lengthy discussion of the history of the Missouri Constitution, including the 1945 constitutional debates. Any analysis of the constitutional debates is purely academic. This Court has long held that “[i]t is, of course, fundamental that where the language of a statute is plain and admits of but one meaning there is no room for construction.’ This rule applies with equal force to constitutional provisions.” *Rathjen v. Reorganized School District R-II of Shelby County*,

284 S.W.2d 516, 528 (Mo. banc 1955) (quoting *Cummins v. Kansas City Public Service Co.*, 66 S.W.2d 920, 931 (Mo. banc 1933)).

Even if there were some ambiguity in the constitutional language, the historical debates are of little utility. “This Court has recognized that in the construction of constitutional provisions it should undertake to ascribe to words the meaning which the people understood them to have when the provision was adopted.” *State ex rel. Danforth v. Cason*, 507 S.W.2d 405, 408 (Mo. banc 1974). “Even when they are relevant . . . , constitutional debates are not the most trustworthy aids” because they do not reflect the majority views of the convention nor the people who voted to adopt the constitution and who did not hear the debates. *State ex rel. Heimberger v. Bd. of Curators*, 188 S.W. 128, 132 (Mo. banc 1916); *see also Household Finance Corp v. Shaffner*, 203 S.W.2d 734, 737 (Mo. banc. 1947). Of course, this makes sense because:

“[constitutions] are instruments of a practical nature, founded on the common business of life, adapted to common wants, designed for common use, and fitted for common understandings. The people make them, the people adopt them, the people must be supposed to read them with the help of common sense”

State v. Adkins, 225 S.W. 981, 984 (Mo. 1920) (Williamson, J. concurring) (quoting 1 Story, Constitution, § 451).

Assuming, *arguendo*, that there is an ambiguity, an examination of the debates actually supports the plain reading of Article VI, Section 21. Noticeably absent is any

discussion among the delegates about limiting the power of eminent domain to cities of a certain size or to only Kansas City and St. Louis, which Respondents suggest were the only cities suffering from blight at the time. Certainly, if such limitations were important to the delegates, they could have been added. Moreover, the cities of Springfield and St. Joseph, neither of which was a charter city at the time, were also interested in the constitutional provision.⁶

Additionally, Respondents also conveniently ignore that this Court has previously recognized that the drafters of the constitution intended that the legislature have the fullest extent of its power in dealing with blight. *See Annbar*, 397 S.W.2d at 640 (Article VI, Section 21’s purpose was the “full and complete elimination of this cancerous attack upon our municipalities”). Ultimately, neither the constitutional history nor the constitutional debates change the plain and ordinary meaning of Article VI, Section 21.

Similarly, the doctrine of *in pari materia* is only used if the constitutional provision is ambiguous. *Staggs v. Director of Revenue*, 223 S.W. 3d 866, 869 (Mo. App.

⁶ Respondents’ implication that only “large cities” need the power of eminent domain to alleviate blight, R. Br. at 29-30, 32, is troubling on several levels. First, this evidences a disturbing hostility to urban areas and their residents. Second, it ignores the reality that many older suburbs have for years been facing the same problems that first necessitated urban redevelopment programs more than half a century ago. *See also, Centene Plaza Redevelopment Corp. v. Mint Properties*, 225 S.W.3d 431, 436 (Mo. banc 2007) (Stith, J., concurring) (“what constitutes blight may vary from community to community”).

W.D. 2007). This doctrine states that separate provisions involving related subject matters are construed together. *Investors Title Co., Inc. v. Hammonds*, 217 S.W.3d 288, 295-96 (Mo. banc 2007). For example, in *St. Louis Housing Authority v. City of St. Louis*, this Court upheld the constitutionality of § 70.220 concerning cooperation between municipalities by construing Article VI, Section 16 and Article VI, Section 21 together. 239 S.W.2d 289, 293-294 (Mo. banc 1951) (noting that Section 16 provides that “any municipality” may contract with state subdivision or any other municipality for the planning, development, construction, operation, or acquisitions of a public improvement or facility). Respondents misapply the doctrine when they urge that, because Article VI, Section 21 falls under the “Local Government” article, it only grants eminent domain powers to charter cities and counties. R. Br. at 28 This has nothing to do with the doctrine of *in pari materia*. Other provisions under Article VI also refer to laws that the General Assembly may enact. *See, e.g.*, Mo. Const. art. VI, §§ 8, 11, 15, and 18(e). Respondents’ argument is much ado about nothing.

III. Respondents’ Amici Briefs Misstate Missouri Law And Advance Irrelevant Policy Arguments On Issues Unrelated To The Narrow Constitutional Issue Before This Court.

Three *amici* have filed briefs in support of Respondents in this case: the Institute for Justice (“IJ”), the Show-Me Institute (“SMI”), and the National Federation of Independent Business Legal Foundation (“NFIB”). With the exception of the first point of NFIB’s *amicus* brief – which addresses the constitutional issue before this Court, but

actually takes a position fundamentally different from the Tourkakises⁷ – Respondents’ *amici* briefs simply criticize the use of eminent domain and skirt the issue of the trial court’s erroneous ruling that Article VI, Section 21 prohibits a third-class city’s use of eminent domain. All of Respondents’ *amici* briefs contain facts and arguments not in the record; the IJ’s *amicus* brief is signed by a state-employed attorney, whose statutorily-

⁷ As discussed earlier, Respondents eventually concede that Article VI, Section 21 allows the legislature to delegate eminent domain powers to non-charter cities for redevelopment purposes. NFIB, however, ignores this concession and continues to argue, inexplicably, that Article VI, Section 21 is a prohibition on granting condemnation power to non-charter cities. NFIB brief at 13-14. This dissonance between Respondents and their *amici* is simply another sign of the illogical gymnastics to which they have been forced resort to because their novel constitutional arguments lack precedential foundation.

created position is prohibited from providing legal advice.⁸ Even if this Court were to ignore the numerous infirmities in Respondents’ *amici curiae* briefs, these briefs do not support the conclusion that Article VI, Section 21 limits the power of eminent domain to charter cities.

The issue presented in this case is narrow—whether Article VI, Section 21 of the Missouri Constitution prohibits a non-charter city such as the City of Arnold from exercising the power of eminent domain for redevelopment. This appeal is not the appropriate time to address the policy issues best addressed through the political process. On review of a motion to dismiss, all factual allegations of the plaintiff’s petition are taken as true; the issue is whether, assuming that all of plaintiff’s allegations are true, plaintiff’s petition states a cause of action. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993).

The policy arguments advanced by *amici* are best left to the political branches of government, which, in fact, considered them as recently as 2006 when House Bill 1944 was enacted. These issues are not before the Court in this case.

⁸ Despite Mr. Martin’s self-styled characterization as Missouri’s “property czar,” § 523.277, the enabling statute creating his position, calls for the Ombudsman for Property Rights to provide “guidance, which shall not constitute legal advice...” about condemnation processes and procedures. Mr. Martin’s advocacy in litigation is improper.

CONCLUSION

Decades of this Court's clear precedent have established that Article VI, Section 21 of the Missouri Constitution does not limit the power of eminent domain to charter cities. This Court should reject Respondents' attempts to distort Missouri law, and should reverse the trial court's order granting Respondents' motion to dismiss.

Respectfully submitted,

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RULE 84.06(c) CERTIFICATION AND CERTIFICATE OF SERVICE

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 2000 and contains no more than 6,338 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure (less than the 31,000 limit in the rules). The font is Times New Roman, proportional spacing, 13-point type. A CD-ROM (which has been scanned for viruses and is virus free) containing the full text of this brief has been served on each party separately represented by counsel and is filed herewith with the clerk.

I hereby certify that one true and correct copy of the foregoing and a CD-ROM containing the same was mailed, postage prepaid, this 14th day of December, 2007, addressed to the following:

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