

**IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
CIRCUIT JUDGE DIVISION**

JIM PEPPER, <i>et al.</i> ,)	
)	Cause No. 1411-CC01208
Plaintiffs/Contestants,)	
)	Div. 7
v.)	
)	
ST. CHARLES COUNTY, MISSOURI,)	
<i>et al.</i> ,)	
)	
Defendants/Contestees/Intervenors.)	

FILED
NOV 16 2015
JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO

FINAL JUDGMENT AND ORDER

This case comes before the Court on cross-motions for Summary Judgment submitted by all parties. Plaintiffs, Defendant, Contestee and Intervenors appeared by counsel and presented argument on Plaintiffs' Motion for Partial Summary Judgment on Counts I, III, and IV of Plaintiffs' Petition, Defendant St. Charles County's Motion for Partial Summary Judgment, Contestee's Cross Motion for Summary Judgment, and Intervenors' Motion for Summary Judgment. Count II has been dismissed by the Plaintiffs. The parties have agreed that the basic facts are not in dispute and have petitioned this Court to decide the merits of this case by summary judgment rather than a trial.

In briefing on the cross-motions for summary judgment, this Court granted leave to the Missouri Municipal League to submit a brief as *amicus* in support of Plaintiffs' motion for summary judgment.

This case involves the constitutionality of a Charter Amendment adopted by St. Charles County ("County") voters at the November 2014 election and the form of the Proposition under which it was submitted to the voters.

Plaintiffs consist of two registered voters and three municipalities. As relevant to Plaintiffs' claims, the Charter Amendment prohibits the use of "red light cameras or similar photograph devices or automated traffic enforcement systems" to enforce "traffic regulations" and further prohibits municipalities from "exercise[ing] the legislative power to use such cameras or devices or systems."

In May 2014, the County adopted an ordinance submitting the proposed Charter Amendment at the November 2014 election. At the election, 72% of voters approved the Charter Amendment.

After the election results were certified, two residents, both registered voters and taxpayers of the County, Jim Pepper and Pam Fogarty ("Taxpayers"), along with the cities of St. Peters, O'Fallon and Lake Saint Louis ("Cities") brought this suit against the County and the County's Election Authority ("Election Authority") challenging the constitutionality of the Charter Amendment and the wording of the proposition submitted to voters. Carl Bearden and Dan Rakers, two taxpayers, registered voters and residents of the County who supported the Charter Amendment, were permitted to intervene as defendants ("Intervenors"). The County, Election Authority and Intervenors are hereinafter jointly referred to as "Defendants."

Plaintiffs filed their Motion for Summary Judgment on Count I (for declaratory judgment that the Charter Amendment violates the Missouri Constitution), Count III (for injunctive relief to prohibit enforcement of the Charter Amendment), and Count IV (an election contest under Chapter 115, RSMo (2000), challenging the form of the ballot proposition submitting the Charter Amendment to the voters). After a hearing on the cross-motions for summary judgment, St. Peters dismissed, without prejudice, its claims in Count II of the Petition.

The County and Intervenors filed Cross-Motions for Summary Judgment on Counts I, II and III of the Petition. The Election Authority filed a Cross-Motion for Summary Judgment on Count IV.

The Court finds that there exist no genuine disputes of material fact on the claims of Count I, III and IV.

For the reasons more fully addressed herein, the Court concludes the Charter Amendment does not violate Article IV, § 18(a), 18(b) and 18(c) of the Missouri Constitution and is, therefore valid and enforceable.

Further, the Court finds that the Proposition submitted to the voters complies with Article VI, § 18(c) of the Missouri Constitution because it (1) complies with § 18(c)'s requirement that the ballot "shall contain a clear definition of the power, function or service to be performed," and (2) the Proposition language submitted to the voters adequately informs the voters of the specific activities prohibited.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiffs' Motion for Summary Judgment on Counts I, III and IV of the Petition, as amended, is denied. Defendants' respective Motions for Summary Judgment on Counts I, III and IV are granted.

FINDINGS OF FACT

1. Plaintiff Jim Pepper is a registered voter, resident and taxpayer of the State of Missouri, St. Charles County, and the City of O'Fallon.
2. Plaintiff Pamela Fogarty is a registered voter, resident and taxpayer of the State of Missouri, St. Charles County, and the City of Dardenne Prairie.
3. Plaintiff City of O'Fallon, Missouri, is a Constitutional Charter City located

within St. Charles County.

4. Plaintiff City of Lake St. Louis, Missouri, is a city of the fourth class located within St. Charles County.

5. Plaintiff City of St. Peters, Missouri, is a city of the fourth class located in St. Charles, Missouri.

6. Defendant St. Charles County, Missouri, is a charter county of the State of Missouri established pursuant to article VI, sections 18(a) et seq. of the Missouri Constitution.

7. Contestee, Rich Chrismer, is the Director of Elections of the St. Charles County Election Authority, which was responsible for conducting the general election held in St. Charles County, Missouri on November 4, 2014.

8. Intervenor Carl Bearden is a registered voter, resident and taxpayer of the State of Missouri and St. Charles County.

9. Intervenor Dan Rakers is a registered voter, resident and taxpayer of the State of Missouri, St. Charles County, and the City of St. Peters.

10. Plaintiff City of St. Peters regulated traffic on streets within the boundaries of St. Peters through, in part, its "Camera Ordinance," Section 335.095.G of the City Code, which provides, in relevant part:

A person commits an offense under this Section when such person fails to comply with the City Traffic Code and the violation is detected through the automated red light enforcement system, as herein provided. A conviction for a violation of the City Traffic Code detected through the automated red light enforcement system shall be deemed an infraction, and upon conviction thereof, shall be punishable by a fine no greater than two hundred (\$200.00) dollars. In no case shall points be

assessed against any person, pursuant to Section 302.302, RSMo., for a conviction of a violation of the City Traffic Code detected through the automated red light enforcement system.

11. In order to operate the Camera Ordinance systems, St. Peters entered an agreement dated July 5, 2006, with Redflex Traffic Systems, Inc. ("Redflex"), for Photo Red Light Enforcement Program.

12. St. Peters, by Resolution No. 1501 on September 1, 2014, suspended its agreement with Redflex for the Program, and additionally suspended the Program and Red Light Camera operations effective the same date.

13. St. Peters, by Ordinance No. 6342, enacted on and effective July 1, 2015, terminated its agreement with Redflex for the Program.

14. St. Peters does not currently operate cameras, video devices or photograph devices dedicated to capturing images of traffic and/or traffic violations and/or used for issuing citations.

15. Within the five (5) years prior to the current lawsuit, Plaintiff City of Lake Saint Louis did not issue any requests for proposals or bids or consultant services for the provision to Lake St. Louis of traffic enforcement services whereby cameras, video devices or photograph devices are dedicated to capturing images of traffic and/or traffic violations and/or used for issuing citations.

16. Within the same time frame, Lake St. Louis has not introduced any bill or proposed legislation or enacted into law any ordinance to use cameras, video devices or photograph devices dedicated to capturing images of traffic and/or traffic violations and/or used for issuing citations.

17. Plaintiff City of O'Fallon has not issued any requests for proposals or bids or consultant services for the provision to O'Fallon of traffic enforcement services whereby cameras, video devices or photograph devices are dedicated solely to the purpose of capturing images of traffic violations at traffic signals and used in issuing citations.

18. O'Fallon has not sought the introduction of any bill or proposed legislation, and is not aware of such bill or legislation, for the purpose of adopting an ordinance to use stationary cameras, video devices or photograph devices dedicated solely to the purpose of capturing images of traffic violations at traffic signals and to issue citations.

19. On May 12, 2014, the St. Charles County Council approved Ordinance No. 14-044, authorizing the submission to the voters of the County at the November 4, 2014 general election, the following proposition:

PROPOSITION RED LIGHT CAMERA

Shall the St. Charles County Charter be amended to add a Section 10.130 reading:

10.130. Automated Traffic Enforcement Systems. Notwithstanding any other provision of this St. Charles County Charter, red light cameras or similar photograph devices or automated traffic enforcement systems may not be used in enforcing traffic regulations adopted by St. Charles County or by any municipality within St. Charles County that prohibit drivers from entering intersections when controlled by red traffic lights, and no such municipality may exercise the legislative power to use such cameras or devices or systems. This prohibition is the only limit imposed by this Charter upon the County or any municipality within it in performing their functions of regulating traffic and imposes no additional costs that need to be financed?

(the "Proposition").

20. On November 18, 2014, the St. Charles County Election Authority certified the results of the election held on November 4, 2014, that the registered voters of the County voted and approved the Proposition with 72% of the votes cast in favor.

21. Pursuant to Ordinance 14-044, the passage of the Proposition automatically amended the Charter of St. Charles County (the "Charter") by the addition of Section 10.130, as follows:

10.130. Automated Traffic Enforcement Systems. Notwithstanding any other provision of this St. Charles County Charter, red light cameras or similar photograph devices or automated traffic enforcement systems may not be used in enforcing traffic regulations adopted by St. Charles County or by any municipality within St. Charles County that prohibit drivers from entering intersections when controlled by red traffic lights, and no such municipality may exercise the legislative power to use such cameras or devices or systems. This prohibition is the only limit imposed by this Charter upon the County or any municipality within it in performing their functions of regulating traffic and imposes no additional costs that need to be financed.

(the "Charter Amendment").

22. On November 18, 2014, the St. Charles County Election Authority certified the results of the election showing that on November 4, 2014, the registered voters of St. Charles County approved Proposition Red Light Camera by a vote of 69,469 (72.6%) for and 26,221 (27.4%) against.

23. The passage of Proposition Red Light Camera by the registered voters resulted in the amendment of the St. Charles County Charter by the addition of a new Section 10.130, which provides as follows:

10.130. Automated Traffic Enforcement Systems.

Notwithstanding any other provision of this St. Charles County Charter, red light cameras or similar photograph devices or automated traffic enforcement systems may not be used

in enforcing traffic regulations adopted by St. Charles County or by any municipality within St. Charles County that prohibit drivers from entering intersections when controlled by red traffic lights, and no such municipality may exercise the legislative power to use such cameras or devices or systems. This prohibition is the only limit imposed by this Charter upon the County or any municipality within it in performing their functions of regulating traffic and imposes no additional costs that need to be financed.

§ 10.130, St. Charles County, Mo., Charter

24. On December 17, 2014, Plaintiffs Jim Pepper, Pamela Fogarty, O'Fallon, Lake St. Louis, and St. Peters brought a four count Verified Petition for Declaratory Judgment and Injunctive Relief and Election Contest. All Plaintiffs join in Count I, which seeks a declaratory judgment that Section 10.130 of the St. Charles County Charter (the "Charter Amendment"), adopted by the registered voters of the County on November 4, 2014, is unconstitutional and void.

25. The Charter Amendment prohibits St. Charles County and municipalities within the County from using red light cameras or similar photograph devices or automated traffic enforcement systems to enforce traffic regulations that prohibit drivers from entering intersections when controlled by red traffic lights.

26. Plaintiffs allege that the Charter Amendment:

- (1) does not provide for the County's "own" government in violation of Article VI, Section 18(a) of the Missouri constitution;
- (2) invades the province of general legislation involving the public safety of the state as a whole, specifically various statutes purportedly granting Lake St. Louis,

St. Peters and O'Fallon "exclusive" authority over roadways within their limits, in violation of Article VI, Sections 18(b) and 18(c) of the Missouri constitution;

(3) fails to set forth the limits within which municipalities may exercise the same powers collaterally and coextensively, fails to contain a clear definition of the power, function or service to be performed, fails to contain the method by which it will be financed, and is unauthorized to usurp a municipality's state-designated authority to control streets within municipal boundaries, in violation of Article VI, Section 18(c) of the Missouri constitution;

(4) usurps the "exclusive" authority of O'Fallon, a charter city, over roadways within its limits, in violation of Article VI, Section 19(a) of the Missouri constitution;

(5) purports to fix the powers of the offices of charter city O'Fallon, in violation of Article VI, Section 22 of the Missouri constitution;

(6) invalidates a category of evidence, thereby invading the province of the judiciary in violation of the separation of powers under Article II, Section 1 of the Missouri constitution; and

(7) violates numerous other provisions of the St. Charles County Charter itself.

27. In Count III, all Plaintiffs seek injunctive relief against the operation of the Charter Amendment based on the same grounds alleged in Count I.

28. In Count IV, Plaintiffs Pepper and Fogarty bring an election contest against Rich Chrismer in his capacity as Director of Elections of St. Charles County to declare the election adopting the Charter Amendment null and void.

29. Plaintiffs Pepper and Fogarty present no evidence of any direct expenditure of funds through taxation by St. Charles County for policing, execution, or enforcement of the Charter Amendment, or of any pecuniary loss attributable thereto, or of any increased levy in taxes attributable to the Charter Amendment.

30. Contestants Pepper and Fogarty present no evidence of irregularities of sufficient magnitude to cast doubt on the validity of the election conducted on November 4, 2014.

CONCLUSIONS OF LAW

31. There are no genuine disputes about the material facts relating to the declaratory judgment claims and the election contest. Accordingly, summary judgment must be entered where, based on those undisputed material facts, the moving party is entitled to judgment as a matter of law. MO.R.CIV.P. 74.04(c). The burden is on the movant to establish the absence of a genuine issue of material fact and the entitlement to judgment as a matter of law. ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 378 (Mo. banc 1993).

32. The burden of proof in a declaratory judgment action depends on the type of claim presented in the pleadings. *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012). This case involves a challenge to the constitutionality of an amendment to the charter of the County. A charter has the “force and effect of a statute of the legislature and can only be declared invalid for the same reason, namely, if [it] violate[s] constitutional limitations or prohibitions.” *Kansas City v. J.I. Case Threshing Mach. Co.*, 87 S.W.2d 195, 202 (Mo. 1935).

33. A statute will be found unconstitutional if the act contravenes a constitutional provision or “affronts fundamental law embodied in the constitution.” *Board of Educ. of City of St. Louis v. State*, 47 S.W.3d 366, 368 (Mo. banc 2001). In this case, the burden of proof is on the party attacking the Charter Amendment. *Atkins v. Dept. of Building Regulations*, 596 S.W.2d 426, 434 (Mo. banc 1980).

34. Voter approved amendments are presumed valid and should be upheld if there is any possible construction to preserve their validity. “Since the amendment has already been adopted and the people have demonstrated their will, this Court's duty is not to seek to condemn the amendment, but to seek to uphold it if possible.” *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981).

35. The Court finds that the Plaintiffs have standing to bring the declaratory judgment and injunction action.

36. To maintain a declaratory judgment action, there must exist: (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law. *Mo. Soybean Ass'n. v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 25 (Mo. banc 2003).

37. The Court finds that this case presents a real, substantial, presently-existing controversy that is ripe for judicial determination. Defendants moved for summary judgment contending that no justiciable controversy exists because none of the Cities currently operate “red light cameras.” The Cities argue that the Charter Amendment removes all of their

legislative authority over the operation of “red light cameras” and “traffic control devices” and therefore, the Charter Amendment raises immediate and direct controversies, ripe for determination. St. Peters, in addition, argues the Charter Amendment renders void its existing traffic ordinances dealing with “red light cameras.” Furthermore, St. Peters has submitted the uncontroverted fact that it has 35 pending cases in which citations were issued under its “red light camera” ordinance, St. Peters Code § 335.097.

38. “A ripe controversy is a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Mo. Health Care Ass’n v. Attorney General*, 953 S.W.2d 617, 621 (Mo. banc 1997). The Charter Amendment regulates the Cities by prohibiting them from exercising their legislative authority over traffic on their streets and from utilizing “traffic control devices.” In the case of St. Peters, it effectively prohibits that City from enforcing its existing “red light camera” ordinances and to forego prosecution of pending citations.

39. Defendants also argue that no enforcement of the Charter Amendment is anticipated because its prohibition is directed at the Cities’ legislative authority and because no “red light cameras” are currently in operation. However, this Court finds that the Charter Amendment reaches beyond the simple prohibition of red light cameras and also prohibits the use of “traffic control devices.” The claims of the Cities are not moot.

40. Taxpayers have demonstrated an interest in this litigation sufficient to establish taxpayer standing. *Lebeau v. Comm’r of Franklin Cnty.*, 422 S.W.3d 284, 288–89 (Mo. banc 2014). In order to establish taxpayer standing, the taxpayer must demonstrate: (1) a direct expenditure of funds generated through taxation, (2) an increased levy in taxes, or (3) a pecuniary loss attributable to the challenged action. *Eastern Missouri Labors Dist. Council v. St.*

Louis County, 781 S.W.2d 43, 47 (Mo. banc 1989). “If the taxpayer alleges that any of these three circumstances exists as a result of the challenged action, the taxpayer has demonstrated a sufficient interest in the litigation.” *Lebeau v. Comm’r of Franklin Cnty.*, 422 S.W.3d 284, 288–89 (Mo. banc 2014) (emphasis added). A taxpayer need only show that his or her “taxes went or will go to public funds that have or will be expended due to the challenged action.” *O’Reilly v. City of Hazelwood*, 850 S.W.2d 96, 98 (Mo. banc 1993);

41. Taxpayers specifically allege in their Petition that “the Charter Amendment results in a direct expenditure of funds generated through taxation and results in a loss of revenue in that the Charter Amendment contemplates an increased expenditure of funds generated through taxation and/or a pecuniary loss to the County for policing, execution and enforcement of the Charter Amendment.” In addition, enforcement of the Charter Amendment against a municipality will necessarily result in the expenditure of County funds. Finally, County funds were expended in the election on the Charter Amendment and an election expense is an expenditure for purposes of taxpayer standing. *See* § 115.075 (“Except as otherwise provided in this subchapter, all costs and expenses relating to the conduct of elections and the registration of voters in each county shall be paid from the general revenue of the county.”); *O’Reilly v. City of Hazelwood*, 850 S.W.2d 96, 100 (Mo. banc 1993).

Counts I, III Constitutional Challenges

42. The Charter Amendment does not violate Art. VI, § 18(a)(b)(c) of the Missouri Constitution.

43. Article VI, § 18(a) provides, in relevant part, that a County “may frame and adopt and amend a charter for its own government as provided in this article [VI].” MO. CONST. art. VI, § 18(a). Plaintiffs contend that the Charter Amendment violates § 18(a) because it does not confine itself to the County’s “*own government*.” This Court disagrees. By its plain meaning Article VI, § 18(a) enables the County to form its own government by charter. It in no way applies to the enabling provision authorizing the charter amendment, Article VI, § 18(c). This provision goes beyond a mere enabling provision and permits the County to enact legislation pertaining to municipal functions.

44. Article VI, § 18(c) of the Missouri Constitution provides:

The charter may provide for the vesting and exercise of legislative power pertaining to any and all services and functions of any municipality or political subdivision, except school districts, in the part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county may contract with any municipality or political subdivision in the county and perform any of the services and functions of any such municipality or political subdivision.

The charter may provide for the vesting and exercise of legislative power pertaining to any and all services and functions of any municipality or political subdivision, except school districts, throughout the entire county within as well as outside incorporated municipalities; any such charter provision shall set forth the limits within which the municipalities may exercise the same power collaterally and coextensively. When such a proposition is submitted to the voters of the county the ballot shall contain a clear definition of the power, function or service to be performed and the method by which it will be financed.

MO. CONST., art. VI, § 18(c).

45. The beginning clauses of both paragraphs of § 18(c) state that “[t]he charter may provide for the vesting and exercise of legislative power *pertaining to any and all services and functions of any municipality* or political subdivision.” In its first paragraph, § 18(c) provides the charter may extend County power over municipal services and functions into incorporated

municipalities, but only through a “contract with any municipality” with regard to those municipal services and functions. In its second paragraph, § 18(c) provides the charter may extend County services and functions within incorporated municipalities, but requires that the charter “shall set forth the limits within which the municipalities may exercise the same power collaterally and coextensively.” The Charter Amendment’s regulation of traffic control devices is contemplated by and within the power granted by the legislature in Section 18(c). It has clearly set out the power and the limitation on the power to be shared with the municipality. Because the legislation acts as a prohibition does not render it null and void.

46. The Court concludes that the Charter Amendment is not in conflict with §§ 18(a) and 18(c). Rather, the Charter Amendment is expressly authorized by both sections.

47. The Court further concludes that the Charter Amendment is not in conflict with Article VI, § 18(b) of the Missouri Constitution. It provides, in relevant part: “The charter shall provide for its amendment, for the form of the county government, the number, kinds, manner of selection, terms of office and salaries of the county officers, and for the exercise of all powers and duties of counties and county officers prescribed by the constitution and laws of the state.” Mo. Const. art. VI, § 18(b).

48. Plaintiffs incorrectly contend the Charter Amendment invades the province of general legislation involving public policy of the State as a whole, contending the public policy of the State of Missouri delegates directly and exclusively to the Cities the authority to control traffic on municipal streets, including, as applicable here, the authority to use “red light cameras” and other “traffic control devices.”

49. Missouri has long recognized in its statutes and case law, that it is the public policy of the state that municipalities have exclusive control over ownership, construction and

maintenance of their municipal streets. *See* § 82.190 (constitutional charter cities “shall have exclusive control over its public highways, streets”); § 88.670 (“Cities of the fourth class shall have and exercise exclusive control over all streets, alleys, avenues and public highways within the limits of such city.”); § 304.120.2(1) (municipalities may, by ordinance “[m]ake additional rules of the road or traffic regulations to meet their needs and traffic conditions.”); *State ex rel. Audrain County v. City of Mexico*, 197 S.W.2d 301, 303-04 (Mo. 1946).

50. Missouri courts have consistently held that a city’s use of red light cameras is a proper exercise of municipal control over traffic on city streets and is authorized under § 304.120. *Unverferth v. City of Florissant*, 419 S.W.3d 76, 94 (Mo. App. E.D. 2013) (“red light camera” ordinance is valid exercise of state-delegated police power to municipality under § 304.120); *Damon v. City of Kansas City*, 419 S.W.3d 162, 183 (Mo. App. W.D. 2013) (“the legislature has granted municipalities the power to regulate traffic in § 304.120”).

51. Through §§ 82.190, 88.670 and 304.120, the State declares that municipal power over traffic regulation on municipal streets is Missouri’s public policy. *See In re Rahn’s Estate*, 291 S.W. 120, 123 (Mo. 1927). However, the public policy does not extend to grant exclusive control to the municipalities for traffic regulation. Section 304.120, which does give municipalities “broad authority to make by ordinance additional rules of the road or traffic regulations to meet their needs and traffic conditions,” does not purport to make such traffic regulation authority “exclusive.” See *Deutsch v. City of Ladue*, 728 S.W.2d 239, 241 (Mo.App. E.D. 1987). Rather, municipalities’ authority over roads via traffic regulations and enforcement emanates from the police power of the state granted to them through Section 304.120. A city’s power is “the power inherent in a government to enact laws, within constitutional limits, to promote order, safety, health, morals and general welfare of society.” *Unverferth v. City of*

Florissant, 419 S.W.3d 162 (Mo. App. W.D. 2013), *Engelage v. City of Warrenton*, 378 S.W.3D 410 (Mo. App. E.D. 2012). “A city has no inherent police power but rather enjoys only that police power conferred to it by a specific delegation from the state. **Id.** With regard to traffic control, the State of Missouri has granted municipalities the authority to exercise its police power in making ‘additional rules of the road or traffic regulations to meet their needs and traffic conditions’ as long as the ordinance’s provisions are consistent with and do not conflict with state law.” *Enverferth* at 21.

52. With respect to charter counties, the Missouri Supreme Court has stated: “It must perform state functions over the entire county and may perform functions of a local or municipal nature ... These are constitutional grants which are not subject to, but take precedence over, the legislative power.” *State on Info. of Dalton ex rel. Shepley v. Gamble*, 280 S.W.2d 656, 659-60 (Mo. banc 1955).

53. “A charter county is not required to exercise the powers and duties granted to it in precisely the same way as prescribed by the general laws of the state. *Hellman v. St. Louis County*, 302 S.W.2d 911, 916 (Mo. 1957). Charter counties can adopt reasonable means and methods of carrying out their governmental functions so as to meet the ‘peculiar needs of such counties.’” *Barber v. Jackson Cnty. Ethics Comm'n*, 935 S.W.2d 62, 67 (Mo.App. W.D. 1996).

54. The Missouri legislature extended the public policy of Missouri to charter counties participating in municipal services and functions as set out in Article VI, Section 18(c) of the Missouri Constitution. Thus, the Charter Amendment is not in conflict with the public policy of the State of Missouri whether or not the municipalities’ claims to exclusive control over traffic regulation are valid.

55. The Charter Amendment implicates no statewide or national concern, nor is it prohibited by any Missouri state statute or public policy. The County relies on its police power in conjunction with the police power of the municipalities to enact its Charter Amendment to serve the public good. Missouri Bankers Ass'n v. St. Louis County, 448 S.W.3d 267 (Mo. banc 2014). The acts contemplated by the Charter Amendment are squarely within the powers granted to the County and the municipalities and are therefore valid and enforceable.

56. The Charter Amendment complies with Article VI, § 18(c) of the Missouri Constitution because it sets forth the collateral and extensive power of the municipalities.

Article VI, § 18(c) of the Missouri Constitution provides:

The charter may provide for the vesting and exercise of legislative power pertaining to any and all services and functions of any municipality or political subdivision, except school districts, in the part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county may contract with any municipality or political subdivision in the county and perform any of the services and functions of any such municipality or political subdivision.

The charter may provide for the vesting and exercise of legislative power pertaining to any and all services and functions of any municipality or political subdivision, except school districts, throughout the entire county within as well as outside incorporated municipalities; any such charter provision shall set forth the limits within which the municipalities may exercise the same power collaterally and coextensively. When such a proposition is submitted to the voters of the county the ballot shall contain a clear definition of the power, function or service to be performed and the method by which it will be financed.

MO. CONST., art. VI, § 18(c).

57. Article VI, § 18(c) grants the County authority to exercise power over any and all services and functions of any municipality or political subdivision, including, but not limited to, setting limitations on that power, in the area of traffic regulation. When a county exercises this power by way of a prohibition the limitation as contemplated in the Constitution is inherent. This is the way the municipality exercises the power with the county collaterally and

coextensively. Nothing in the constitutional language bars this joint exercise of power from being a prohibition. The operative language is the “exercise of power.”

58. In *Chesterfield Fire Protection District of St. Louis County v. St. Louis County*, 645 S.W.2d 367 (Mo. banc 1983), St. Louis County adopted a charter amendment establishing a “fire standards commission” to create and regulate minimum training and educational standards for those acting as firefighters in the County. Fire protection districts (“political subdivisions” of the State) sued to invalidate the charter amendment under § 18(c). The Supreme Court held the charter amendment was a valid exercise of power under § 18(c). The Supreme Court further held the amendment’s failure to comply with the provision of § 18(c) requiring the charter to “set forth the limits within which the municipalities may exercise the same power collaterally and coextensively” did not invalidate the amendment because “[m]unicipalities have no power regarding the training and education of firefighters.” *Chesterfield*, 645 S.W.2d at 372.

59. Unlike in *Chesterfield Fire Protection*, municipalities have and exercise statutory and common law power over municipal streets. The Court finds that even if the power of municipalities over traffic regulation emanating from their police power is exclusive, the constitution permits the County to exercise power with the municipalities over traffic regulation. But the case does not address the issue of the exercise of that power collaterally and extensively when the regulation acts as a prohibition. The Court finds that the language of the Charter Amendment complies with constitution’s requirement to “set forth the limits within which the municipalities may exercise the same power collaterally and coextensively” under § 18(c).

Count IV Election Contest

60. The Court finds that the Charter Amendment Proposition to the voters was not irregular and sufficiently defined the power, function or service to be provided.

61. Section 115.593, RSMo, authorizes this Court to invalidate an election and order a new election where it determines “there were irregularities of sufficient magnitude to cast doubt on the validity of the initial election.” Moreover, Missouri courts have explained that “[t]he wording of the proposition on a ballot and the propriety of the notice of election provided are issues cognizable only in an election contest.” *Beatty v. Metro. St. Louis Sewer Dist.*, 700 S.W.2d 831, 838 (Mo. banc 1985); *McCollum v. Director of Revenue*, 906 S.W.2d 368, 369 (Mo. 1995). “The person challenging the statute's validity bears the burden of proving the act clearly and undoubtedly violates the constitution.” *Brown v. Carnahan*, 370 S.W.3d 637, 647 (Mo. banc 2012).


62. The Charter Amendment contains a clear definition of the power, function, or service to be performed and the method by which it will be financed, as required by Article VI, Section 18(c) of the Missouri Constitution.

63. The Defendants presented no persuasive evidence that there were any election irregularities of a magnitude that would cast doubt on the election. “Not every irregularity warrants a new election.” *Gerrard v. Board of Election Comm’rs*, 913 S.W.2d 88, 90 (Mo.App. E.D. 1995). It is only an “irregularity of a sufficient magnitude to cast doubt on the validity of the election” in which a court may order a new election. *Id.* To invalidate or “set aside” election results, a court must be “firmly convinced” that irregularities affected the outcome of the election. *Id.*

FINAL JUDGMENT

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Partial Summary Judgment on Counts I, III and IV is overruled; that Defendant St. Charles County's Motion for Partial Summary Judgment on Counts I and III is sustained; that Contestee Rich Chrismer's Cross-Motion for Summary Judgment on Count IV is sustained; and that Intervenors' Motion for Summary Judgment on Counts I, III, and IV is sustained. On Plaintiff's Verified Petition, as amended, the Court enters judgment in favor of Defendant St. Charles County on Counts I and III; the Court enters judgment in favor of Contestee Rich Chrismer on Count IV; the Court enters judgment in favor of Intervenors on Counts I, III and IV. Each party shall bear its own costs.

SO ORDERED:



Daniel G. Pelikan, Circuit Judge

DATED: November 16, 2015

FILED

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**JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO.**