

**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**

CHARLES A. LANE, and)
JAMES CRAWFORD,)

Plaintiffs,)

v.)

Case No. 2122-CC00751

POLICE RETIREMENT SYSTEM)
OF THE CITY OF ST. LOUIS,)

THE CITY OF ST. LOUIS, and)

THE STATE OF MISSOURI,)

Defendants.)

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

COME NOW Plaintiffs James Crawford and Charles A. Lane, by and through undersigned counsel, pursuant to §§ 527.010, *et seq.* RSMO, and 526.010, *et seq.*, RSMo, and Rules 87.02(a) and 92.02(c), and for their Amended Petition for Declaratory Judgment and Injunctive Relief (“Amended Petition”) state:

ALLEGATIONS COMMON TO ALL COUNTS

Parties

1. Plaintiff Charles A. Lane is an individual who resides in the City of St. Louis, State of Missouri (“City”). He pays sales, personal property and real property taxes to it. He is also a retired member of the Police Retirement System of the City of St. Louis (“PRS”) who receives retirement benefits from the PRS pursuant to fully vested rights thereto.

2. Plaintiff James Crawford is an individual who resides in the City. He routinely pays sales taxes to Defendant City.

3. Defendant Police Retirement System of the City of St. Louis (“PRS”) is an agency of the State of Missouri governed by State statutes, and a quasi-artificial person existing pursuant to § 86.200, RSMo., et seq., that is capable of being sued as a legal entity.

4. Defendant City of St. Louis, Missouri (“City”) is a constitutional charter city of the State of Missouri. The City is sued as an interested party.

5. Defendant State of Missouri is, and has been since 1821, a sovereign state of the United States of America.

Venue and Jurisdiction

6. Venue is proper in this Circuit because the events and circumstances described here took, and are taking, place in the City of St. Louis, pursuant to § 508.050, RSMo.

7. This Court has subject matter jurisdiction over the claims in this pleading pursuant to § 527.010, *et seq.*, RSMo.

Factual Allegations

Count I

Declaratory Judgment And Injunctive Relief

8. Plaintiffs incorporate by reference ¶¶ 1 through 7, above.

9. The Hancock Amendment to the Missouri Constitution, Mo. Const. Art. X, §§ 16-24 became effective on November 4, 1980. Art. X, § 21 prohibits the State from imposing on a local government entity a new mandated activity, or to increase the level of a previously mandated activity beyond its 1980-81 level, without appropriation of sufficient state monies to finance the costs associated with the local government entity’s performance of the new or increased activity (“Hancock Unfunded Mandate Prohibition”).

10. The PRS is governed by statute and administered by a board of trustees.

11. The PRS board of trustees hires an actuary to conduct an annual valuation of the retirement systems' assets and to calculate the City's required annual contribution to fund the system.

12. Pursuant to § 86.344, RSMo, on or before the first day of March of each year the PRS board of trustees must certify to the City's Board of Estimate and Apportionment the amount due and payable to PRS for the following year. The City is then required to appropriate and pay those amounts to PRS. *Id.*

13. The City is required to make annual payments to PRS sufficient to assure the actuarial soundness of the PRS system. In general terms, the actuarial determination is a calculation based on the system's assets and liabilities.

14. Pension payment obligations to retirees are liabilities of the PRS.

15. After 1981, several Missouri statutes were enacted --- or amended --- requiring increased pension benefit payments to PRS retirees ("Post-Hancock Statutory Mandates").

These Post-Hancock Statutory Mandates include:

- A. a statutory provision requiring a refund of member contributions, § 86.253(4), RSMo;
- B. institution of the DROP program, §§ 86.320(4) and 86.251, RSMo;
- C. an increase in the maximum cost of living allowance to 30%, § 86.253(3), RSMo;
- D. an increase in the maximum service retirement allowance to 75%, § 86.253(1), RSMo; and

E. a reduction in the formula/calculation of the final average annual compensation to 2 years, § 86.200(3), RSMo.

16. Individually and collectively, the benefit increases required by the Post-Hancock Statutory Mandates increased the benefit payment liabilities of Defendant PRS.

17. The pension benefit increases required by the Post-Hancock Statutory Mandates created additional financial responsibilities and liabilities for Defendant PRS. These increased liabilities had the effect of increasing the City's required annual payments to fund Defendant PRS.

18. For example, the amount of the City's required annual payments to PRS rose from virtually zero in fiscal year 2003 to over \$37 million in fiscal year 2018, due in substantial part to the effects of the Post-Hancock Statutory Mandates.

19. Each Post-Hancock Statutory Mandate required Defendant City to increase its funding to Defendant PRS as compared to the funding obligations binding on the City as of the effective of the Hancock Amendment, yet the State provided no funding to the City to offset the City's cost of full compliance.

20. The costs incurred by the Defendant City caused by the Post-Hancock Statutory Mandates, as described above, shall be referenced hereinafter as the "Unfunded Costs."

21. Plaintiffs lack an adequate remedy at law to be relieved of the unlawful effects of the Post-Hancock Unfunded Mandates unless Defendant State is declared legally obligated to reimburse Defendant City for its Unfunded Costs, including such costs that it has incurred and will incur in the future.

22. Given the clear violations of the Missouri Constitution, and applicable Missouri law, presented by the Post-Hancock Statutory Mandates and the Unfunded Costs suffered by

Defendant City, Plaintiffs have demonstrated a probability of success on the merits. Plaintiffs will suffer irreparable harm if the Post-Hancock Statutory Mandates are not invalidated and declared null and void as a financial obligation of Defendant City.

23. The balance of harms in permitting the Post-Hancock Statutory Mandates to continue to impose unconstitutional financial burdens on Defendant City weighs in favor of a preliminary and permanent injunctions to enjoin enforcement of those statutory provisions.

24. In light of the subject matter of this controversy involving the statutory imposition of unconstitutional financial obligations on Defendant City, the public interest would be served by this Court's entry of preliminary and permanent injunction orders and judgments as requested in this pleading.

WHEREFORE, Plaintiffs request that this Court enter an Order and Judgment declaring the Post-Hancock Statutory Mandates to be unlawful, as well as null and void, and in violation of the constitutional provisions recited above, preliminarily and permanently enjoining enforcement and payment thereof; that the Court require only a nominal bond; that the Court award Plaintiffs their reasonable attorneys' fees and court costs incurred herein; and that the Court grant Plaintiffs such other and further relief as the Court deems just under the premises.

Count II

Declaratory Judgment And Injunctive Relief

25. Plaintiffs incorporate by reference ¶¶ 1 through 24, above.

26. On information and belief, Defendant State takes the legal position that §§ 86.364 and 86.810, RSMo ("Poison Pill Statutes") render the relief sought by Plaintiffs in Count I unavailable to them and/or create legal risks that could cause extinction of the increased or new Post-Hancock Statutory Mandates.

27. Plaintiffs contend, on the contrary, that the Poison Pill Statutes are wholly ineffectual or inapplicable here. With respect to § 86.810: (a) the statute, by its terms, is triggered only by lawsuits brought by a retirement system board of trustees, or an action brought by a political subdivision. Neither of the Plaintiffs herein is such a trustee, board or political subdivision, thus rendering said statute inapplicable.

28. Section 86.364 applies only if additional benefits or compensation are “approved or authorized by the appropriate body of the City.” No such approval has occurred and no such body of the City gives such approval or authorization to PRS, which is a State agency.

29. In the alternative, to the extent either or both of the Poison Pill Statutes are deemed to apply to either Plaintiff or this lawsuit, the statutes are unconstitutional, invalid, and void because they:

(1) violate PRS Members’ vested property interests in their accrued PRS pension benefits and due process rights protected by the U.S. Constitution, Amendment 14, and the Missouri Constitution, Art. I, § 10;

(2) constitute an unlawful impairment of the Plaintiffs’ contractual interests in their vested PRS pension rights in violation of the U.S. Constitution, Art. I, § 10, cl. 1, and the Missouri Constitution, Art. I, § 13; and, in the alternative,

(3) If applied to taxpayer claims under the Hancock Amendment, the Poison Pill Statutes would create an improper and unlawful State-imposed penalty for the plaintiffs’ exercise of their rights under the Missouri Constitution; and

(4) If applied to taxpayer claims under the Hancock Amendment, the Poison Pill Statutes would violate public policy as clearly articulated in Art. X, § 21 of the Missouri Constitution, which commands that the Defendant State must shoulder the cost associated with a

new mandated activity, or an increased mandated activity, that it has forced upon a political subdivision such as the City but instead this is statute flouts that command by directing the extinction of the benefits conferred by the mandated activity if and when the State is forced to comply with the Hancock Amendment.

WHEREFORE, Plaintiffs request that this Court enter a declaratory judgment providing that the Poison Pill Statutes are inapplicable to Plaintiffs' causes of action herein, or in the alternative, are invalid, unconstitutional and void for the reasons stated above, and that it provide Plaintiffs with such other relief as is just.

Count III

Declaratory Judgment As To Plaintiffs' Right To Pursue Taxpayer Derivative Claims

30. Plaintiffs incorporate by reference ¶¶ 1 through 29, above.

31. Plaintiffs have requested that Defendant City pursue Defendant State in a civil action to recover for itself, and its taxpayers and citizens, the Unfunded Costs it has incurred, but it has failed and refused to do so. By declining to pursue the monies owed to Defendant City by Defendant State, Defendant City has breached its fiduciary duty constitutes a breach of these officials' fiduciary responsibilities to Defendant City's taxpayers. Defendant City is named as a nominal Defendant in this Count due to its abiding and strong important interest in and obligation to protect and preserve public funds.

32. Given that Defendant City's officials have failed to fulfill such fiduciary duties, a failure of justice would result if Plaintiffs were not permitted to pursue those monies through this action for the benefit of Defendant City, its taxpayers and the public at large.

33. Pursuant to § 1.010, RSMo, Missouri has adopted "the common law of England and statutes and acts of parliament made prior to the fourth year of the reign of James the First,

of a general nature” Under that adopted law, Plaintiffs have the legal right to pursue this lawsuit, and the claims set forth herein, for the benefit of Defendant City, and to receive compensation for their efforts herein, and their litigation expenses, including their reasonable attorney’s fees incurred in bringing and prosecuting this action, which compensation should be made from the common fund this case produces.

34. Plaintiffs contend that they have the right to pursue their taxpayer derivative claim described herein and, on information and belief, Defendant State believes they have no such right. This controversy is, therefore, appropriate for resolution by this Court via its entry of a declaratory judgment.

WHEREFORE, Plaintiffs request that this Court declare that Plaintiffs have the right to pursue their taxpayer derivative claims for the benefit of Defendant City and its taxpayers, and that it provide Plaintiffs with such other relief as is just.

Count IV

Taxpayer Derivative Claim For Restitution Against Defendant State

35. Plaintiffs incorporate by reference ¶¶ 1 through 32, above.

36. Defendant State has been enriched by its repeated receipt of benefits in the form of Defendant City’s payment of the Unfunded Costs to PRS, which expenses were rightfully the obligation of Defendant State. Further, Defendant City suffered by virtue of such enrichment reaped by Defendant State. Finally, it would be unjust to permit Defendant State to retain that enrichment.

37. Therefore, Defendant State ought to be compelled to make restitution to Defendant City.

38. Plaintiffs pursue this claim derivatively for the benefit of Defendant City and its taxpayers, but Plaintiffs should receive compensation for their efforts and service --- including an award of their reasonable attorneys’ fees and litigation costs incurred herein --- from the common fund they have created by their prosecution of this claim.

WHEREFORE, Plaintiffs request that this Court enter a money judgment against Defendant State based on the proof of restitution damages proven at trial, and in favor of Plaintiffs derivatively on behalf of Defendant City, that it award Plaintiffs reasonable and appropriate compensation from the common fund, including an award of their reasonable attorneys’ fees and litigation costs, and that this Court grant them such other relief as is just.

KISTNER, HAMILTON, ELAM & MARTIN, LLC

By: /s/ Elkin L. Kistner
 Elkin L. Kistner #35287
 Sean M. Elam #56112
 William E. Kistner #70540
 1406 North Broadway
 St. Louis, MO 63102
 Telephone: (314) 783-9798
 Facsimile: (314) 944-0950
 E-mail: elkinkis@law-fort.com
 E-mail: smelam@law-fort.com
 E-mail: bill@law-fort.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of May, 2021, a copy of the foregoing document was served via the Court’s electronic filing system to all counsel of record.

/s/ Elkin L. Kistner