

**MISSOURI CIRCUIT COURT
 TWENTY-SECOND JUDICIAL CIRCUIT
 (CITY OF ST. LOUIS)**

JAMES CRAWFORD,)	
)	
Plaintiff,)	Case No. 2122-CC00751
)	
v.)	Division No. 6
)	
POLICE RETIREMENT SYSTEM)	
OF THE CITY OF ST. LOUIS, et al.,)	
)	
Defendant.)	

**PLAINTIFF JAMES CRAWFORD’S MEMORANDUM OF LAW IN SUPPORT OF HIS
 MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. Introduction

Plaintiff Crawford filed an Amended Petition on May 19, 2021 (“Amended Petition”). In it, he alleges, among other things, that §§ 86.364, 86.810, RSMo (“Poison Pill I” and “Poison Pill II”, respectively; collectively, “Poison Pill Statutes”) are inapplicable to the Hancock Amendment claims asserted in this lawsuit and, in any event, both of them are unconstitutional and, consequently, void. Amended Petition, Count II. Plaintiff Crawford also asserts that he has taxpayer standing to bring his claims in this case. Amended Petition, ¶ 2.¹ Defendant City admits paragraphs 10 through 19 of Count II of the Amended Petition. See Answer of Defendant City filed August 13, 2021.² The State and PRS essentially deny the allegations in Count I.

¹ See also SUMF, ¶ 1 and Exhibit 1 to SUMF, ¶ 2.

² Although Defendant City does not admit all the allegations in Count I, it seeks a declaration via its cross-claim against Defendant State that aligns with Count II in the Amended Petition: “The City ... seeks a declaration from this Court that the penalty provisions in the poison pill statutes are inapplicable” September 13, 2022 Memorandum of Law in Support of Defendant City’s Motion for Summary Judgment, pp. 1-2.

State’s Answer, filed June 9, 2022, ¶¶ 8-24; PRS’ August 28, 2022 Answer, ¶¶ 8-24. None of the Defendants admits that Crawford has taxpayer standing.

A general background description is appropriate before Plaintiff Crawford explains why the Poison Pill statutes are both inapplicable here and unconstitutional if triggered. PRS is an agency of the State created pursuant to §§ 86.200 – 86.366, RSMo. It is a pension system that affords benefits to retired City police officers. However, Defendant State provides no subsidy whatsoever to PRS. The City alone funds PRS.

On November 4, 1980, the electorate of the State authorized a significant addition to the Missouri Constitution that popularly is known as the Hancock Amendment. *Heller v. Morion Co. Ambulance Dist.*, 820 S.W. 2d 301, 301-302 (Mo. banc 1991). After the effective date of the Hancock Amendment, the state serially enacted several statutes mandating benefit increases for City police retirees (“Unfunded Mandate Statutes”) thereby increasing substantially the City’s obligations to fund PRS.³

This motion does not seek adjudication of the core Hancock challenge in this case. Rather, this motion joins City’s September 13, 2022 Motion for Summary Judgment in attempting to clear the obstructive legal brush the Poison Pill Statutes effectively create and thereby ease this Court’s later resolution of Plaintiff Crawford’s Hancock Amendment challenge.

II. Argument

The Poison Pill Statutes are nothing less than a gobsmacking effort by the State to chill people and organizations from suing to challenge the Unfunded Mandate Statutes. These loathsome laws should be invalidated (or repealed voluntarily by the State) because they are unconstitutional. However, because neither of these offensive enactments is applicable here, this

³ The core purpose of Plaintiff Crawford’s lawsuit is to force the State, pursuant to the unfunded mandate prong of the Hancock Amendment, to assume all costs that the City of St. Louis has incurred because of the Unfunded Mandate Statutes.

Court should, in an exercise of judicial restraint, decline to adjudicate their invalidity inasmuch as it can simply declare that they have no bearing on Plaintiff Crawford's core Hancock Amendment – grounded claims.

Certainly, the Poison Pill Statutes would penalize retired police officers, current police officers and the City by terminating already-earned pension benefits of St. Louis police officers, including officers who retired 20 or more years ago. However, the language of the two Poison Pill Statutes reveals clearly that neither applies to Plaintiff Crawford's claims.

(A) Poison Pill II Is Inapplicable To This Lawsuit

Section 86.810, RSMo, provides:

The provisions of any other law notwithstanding, the board of trustees of any retirement system, the provisions of which are governed by this chapter, or any political subdivision which funds such retirement system, shall have standing to seek a declaratory judgment concerning the application of article X, section 21 of the Missouri Constitution [the Hancock Amendment] to the provisions of this chapter. In the event a final judgment is rendered by a court which judgment determines that any provision of this chapter constitutes a new activity or service or increase in the level of an activity or service beyond that required by existing law under article X, section 21 of the Missouri Constitution, or any successor to that section, that provision of this chapter **shall be void ab initio** and any new benefit or feature required by such provision of this chapter shall be deemed not to have accrued and shall not be payable to members. (Emphasis added).

This Poison Pill Statute obviously could never be implicated by any judgment in this case given that it involves unfunded mandate claims brought by an individual taxpayer, and not by “board of trustees of any retirement system, the provisions of which are governed by this chapter, or any political subdivision which funds such retirement system,” as specified in the statute. Therefore, the text of § 86.810 plainly establishes that its penalty provisions could never be activated by anything wrought by this case.

(B) Poison Pill I Also Does Not Apply

Poison Pill I, § 86.364. RSMo, likewise does not apply because the Unfunded Mandate Statutes benefits were never approved by the City. The language of this Poison Pill unambiguously limits its reach to situations in which the State becomes obligated to pay for benefits or compensation “even though such additional benefits or compensation is formally approved or authorized by the appropriate body of the city.” But here, the City has not approved or authorized any of the benefit increases caused by the Unfunded Mandate Statutes. See Affidavit of Amber Boykins Simms, ¶¶ 6-10 (Defendant City’s Summary Judgment, Exhibit A). That affidavit establishes for the purpose of this summary judgment record that no City ordinance has been adopted authorizing the additional benefits or compensation that the Unfunded Mandate Statutes required.

(C) Count II of the Amended Petition Asserts Fully Justiciable, Ripe Claims

Count II of the Amended Petition that presents a real, substantial and presently existing controversy as to the proper application of the Poison Pill. Defendant City’s Cross-Claim and Motion For Partial Summary Judgment there take clear that the City believes the Poison Pill Statutes have no possible bearing on this case. Thus, Defendant City and Plaintiff Crawford on the one hand, and Defendant State, on the other, have sharply divergent views as to the applicability of, and threat posed by, the Poison Pill Statutes. This dispute about the construction and applicability of statutes is appropriately resolved via this declaratory judgment action. *State Tax Comm’n v. AHC*, 641 S.W. 2d 69, 75 (Mo. banc 1982). This is true even if no enforcement or triggering of the Poison Pill Statutes has materialized. *Planned Parenthood v. Nixon*, 220 S.W. 3d 732, 739 (Mo. banc 2007) (legal issue intensive case is appropriate for pre-enforcement

determination); *Isemon v. Mo.*, 660 S.W. 3d 684, 689 (Mo. App. W.D. 2023) (a declaratory judgment lies to resolve conflicts before a loss occurs).⁴

Therefore, Plaintiff is entitled to a judgment declaring that the Poison Pill Statutes have no application here at bar because individual taxpayers, not the City, assert the Hancock claims and the subject pension benefits were not approved by the City.

(D) Constitutional issues would be generally presented if this Court determines one or both, of the Poison Pill Statutes applies here

Should this Court determine that either, or both, of the Poison Pill Statutes applies to Count II of the Amended Petition and Plaintiff Crawford then prevails on his core Hancock Amendment claims, the State would revoke benefits that some retired police officers have received for as long as 20 or 25 years. That result would undoubtedly produce more litigation presenting valid claims by PRS members challenging the wholesale elimination of retirement benefits they had accrued.

However, if this Court rules that neither of the Poison Pill Statutes is applicable, it will avoid[s] a constitutional “dilemma presented by those provisions entirely by its exercise of appropriate judicial restraint. *Committee v. Carnahan*, 201 S.W. 3d 503, 506 n. 1. It would also prevent a flood of litigation that would implicate “serious constitutional concerns,” an adverse consequence that can be eliminated by this Court’s rational determination that neither of the Poison Pill Statutes applies here. *Clark v. Martinez*, 543 U.S. 371, 381 (2005). The constitutional claims that would raise serious concerns include the following:

⁴ Notably, a law that is unconstitutional is void *ab intio*. *St. Louis Police v. St. Louis Co.*, 2023 WL 2761995, * 3 (Mo. App. E.D. 4/14/23).

(i) The Poison Pill Statutes cannot be applied to chill taxpayers from, or penalize them for, the exercise of their constitutional rights

The Hancock Amendment to the Missouri Constitution serves as a protection for taxpayers. *King-Willman v. Webster Groves School Dist.*, 361 S.W.3d 414, 416-417 (Mo. 2012). Penalizing taxpayers for exercising and/or chilling taxpayers for invoking their constitutional rights is perniciously unlawful. *Gomillion v. Lightfoot*, 364 U.S. 339, 345 (1960); *Harman v. Forssenius*, 380 U.S. 528, 540 (1965). Were the Poison Pill Statutes applied to penalize retired police officers by terminating their pension benefits as a consequence of the taxpayers' exercise of their constitutional rights, it would constitute the an unlawful indirect denial" of the taxpayers' constitutional rights as described in *Smith v. Allwright*, 322 U.S. 649, 664 (1944).

(ii) Terminating already-earned pension benefits of retired and active police officers would unconstitutionally deprive them of their property rights and impair their contractual rights.

Undoubtedly the constitutional rights of retired police officers would be violated if the State were to summarily terminate their accrued retirement benefits. *U.S. Const.*, Art. I, § 13, *Mo. Const.*, Art. I, § 13 (impairment of contract); *U.S. Const.*, Amend. XIV; *Mo. Const.*, Art. X (property deprivation). The same unconstitutional consequences would also impact active, vested police officers whose pension benefits have already accrued. Vested members of a public pension plan have contractual and property rights to their pension benefits under the contract clauses of the state and federal constitutions. See *The Firemen's Retirement System, et al. v. City of St. Louis*, Case no. 1222-CC02916 consolidated with Case no. 1322-CC00006, *Findings of Fact, Conclusions of Law, Order and Judgment* dated June 3, 2013, aff'd pursuant to Rule 84.16(b), 451 S.W.3d 714 (Mo. App. E.D. 2014). That ruling applies here.

(iii) Retroactive statutes are unconstitutional.

Retroactive statutes are "those which take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past." *F.R. v. St. Charles County Sheriff's Dept.*, 301 S.W.3d 56, 62 (Mo. banc 2010). *Mo. Const.*, Art. I, Section 13 provides the constitutional foundation for this bedrock principle of Missouri law.

The Deferred Retirement Option Plan ("DROP"), one of the benefits targeted by plaintiffs, was adopted in 1995. §§ 86.320(4), 86.251, RSMo. *Amended Petition*, ¶ 15.B. Two years later, the general assembly enacted the penalty provisions in § 86.810 RSMo. If the subsequent enactment of a termination penalty is found applicable here, Section 86.810 would necessarily be an *ex post facto* law, retrospective in its operation, that impairs contractual obligations.

In 1981, the general assembly amended § 86.253 RSMo, so as to provide that police officers, upon retirement, must be repaid the total amount of their contributions made to the retirement system during the term of their employment. Police officers contribute 7 percent of their wages to the pension system operated by PRS. § 86.320.1 RSMo. The 1981 amendment requiring PRS to refund those contributions to police officers created a substantial additional financial burden on PRS and, therefore, the City. And, two years later, the State enacted the penalty provisions in Poison Pill I, purporting to "terminate" any "additional benefits or compensation" to retired police officers if the State were forced by a judgment to subsidize those benefits.

Thus, Poison Pill I would, if triggered, constitute an unconstitutional retroactive law that impairs vested rights. *La-Z-Boy Chair Co. v. Dir. of Econ. Dev.*, 983 S.W.2d 523, 525 (Mo. banc 1999).

However, because no approval or authorization by the City occurred, Poison Pill I is inapplicable; if this Court were to determine otherwise, Poison Pill I would act as an unconstitutional retroactive, law.

Conclusion

Neither of the Poison Pill Statutes applies to the Hancock Amendment claims asserted in this lawsuit. There is no genuine issue as to any material fact and Plaintiff Crawford is entitled to judgment as a matter of law on Count II of the Amended Petition and an appropriate, conforming declaratory judgment should accordingly be entered in favor of Plaintiff Crawford and against Defendants Police Retirement System, State of Missouri and City of St. Louis.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served this 3rd day of May, 2023 via the Court’s electronic filing system to all counsel of record.

/s/ Elkin L. Kistner