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CIRCUIT COURT OF
ST. LOUIS COUNTY

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STATE OF MISSOURI

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CIRCUIT CLERK

JAMES O. GRACE, DAVID J.)
BIRTLEY, LUCILLE DeGEARE and)
ANA McDONALD, individually and)
on behalf of all those similarly)
situated,)

Plaintiffs,)

v.)

ST. LOUIS COUNTY, MISSOURI)

Serve:)
Charlie A. Dooley)
St. Louis County Executive's Office)
41 S. Central, 9th Floor)
Clayton, MO 63105)

Defendant.)

Case No. 09SL-CC02502

20

CLASS-ACTION PETITION

Plaintiffs James O. Grace, David J. Birtley, Lucille DeGeare, and Ana McDonald, both individually and on behalf of those similarly situated, by their attorneys Butsch Simeri Fields LLC, state:

Parties, Jurisdiction and Venue

1. Defendant St. Louis County ("the County") is a Missouri constitutional-charter county and a body corporate and politic, organized under Mo. Const. art. VI § 18(a).

2. Plaintiff James O. Grace is an individual who resides in an unincorporated area of the County. The County requires Plaintiff Grace to pay for waste-collection services that include a mandatory charge for recycling, whether he requests or uses the service. He has paid for such service under protest.

3. Plaintiff David J. Birtley is an individual who resides in an unincorporated area of the County. The County requires Plaintiff Grace to pay for waste-collection services that include a mandatory charge for recycling, whether he requests or uses the service. He has paid for such service under protest.

4. Plaintiff Lucille DeGeare is an individual who resides in an unincorporated area of the County. The County requires Plaintiff McDonald to pay for waste-collection services that include a mandatory charge for recycling, whether she requests or uses the service. She has paid for such service under protest.

5. Plaintiff Ana McDonald is an individual who resides in an unincorporated area of the County. The County requires Plaintiff McDonald to pay for waste-collection services that include a mandatory charge for recycling, whether she requests or uses the service. She has paid for such service under protest.

6. This Court has subject-matter jurisdiction under both Mo. Const. art. V. § 14, and Mo. Rev. Stat. § 478.070, which grant the circuit courts original subject-matter jurisdiction over all civil cases. This Court also has subject-matter jurisdiction under Mo. Const. art. X § 23, which authorizes Plaintiffs to bring this action “in a circuit court of proper venue”

7. This Court may properly exercise personal jurisdiction over the County because it is located in the state of Missouri.

8. This Court is the proper venue because Mo. Rev. Stat. § 508.060 requires that all actions against any county be commenced in the circuit court of that county.

9. Plaintiffs James O. Grace, David J. Birtley, Lucille DeGeare, and Ana McDonald, both individually and on behalf of all those similarly situated, bring this action to enforce their rights under the Hancock Amendment, Mo. Const. art. X §§ 16—24.

Averments Common to All Claims

10. The Hancock Amendment requires voter approval before political subdivisions, such as the County, can levy any “tax, license, or fees” not authorized when the Hancock Amendment was adopted.

11. In December 2006, without voter approval, the County Council enacted an ordinance that for the first time imposed on all the residents of unincorporated areas of the County the obligation to pay for recycling. This violates the Hancock Amendment because the County may only impose a new tax following a vote of the people.

12. Chapter 607 of the Revised Ordinances of the County (also known as the County Code) is cited and known as the “Waste Management Code.”

13. Section 607.020 of the Waste Management Code states that it is effective, among other places, in the portions of the County outside of incorporated areas.

14. In December 2006, the County Council enacted Ordinance No. 23, 023, which made significant amendments to the Waste Management Code.

15. Ordinance No. 23, 023 authorized the establishment of trash hauling districts in the unincorporated portions of the County. The unincorporated portions of the County were divided into eight trash districts.

16. Pursuant to Ordinance No. 23, 023, following December of 2006, trash haulers were selected by the County through a competitive-bidding process. One hauler was selected and designated as the sole trash hauler in each trash district.

17. In 2008, the County selected and entered into contracts with three waste haulers, including Allied Services, LLC, IESI MO Corporation, and Veolia ES Solid Waste Midwest LLC to provide service in the eight trash districts.

18. County Ordinance No. 23, 023 requires that basic trash service in unincorporated areas of the County include a "minimum level of service." The minimum level of service includes once-weekly trash pickup service, one-weekly recycling collection and twice-yearly bulk pickup.

19. Before the enactment of Ordinance No. 23, 023, residents of unincorporated areas of the County were not required by law to pay for recycling.

20. As a result of the enactment of Ordinance No. 23, 023, residents of the County are now required to pay for once-weekly recycling pickup.

21. Residents are required to make regular quarterly payments to the designated trash hauler for the trash district in which they live. The

quarterly payments range from \$34.80 to \$40.50. These quarterly payments include charges for weekly recycling pickup.

22. In connection with the amendments to the Waste Management Code, the County published information about the changes on its website. Those materials include a section titled "Frequently Asked Questions about Recycling, Recycling Carts, and Basic Trash Service in St. Louis County." The questions and answers included the following:

Why Wasn't This Voted On?

Ordinance changes to the waste code do not require a vote of the people. However, a body of elected officials- the St. Louis County Council—did vote unanimously in December of 2006 to enact the new provisions.

Why Do I Have To Pay For Recycling If I Don't Recycle?

Recycling is one of the most effective ways to keep our trash hauling rates low in the long run by prolonging the lifespan of our existing landfill. People who recycle are helping to keep our trash rates low. Not recycling only hastens the arrival of the much higher trash rates that will occur when it becomes necessary to find a location for, and build, a new landfill. In short, everyone benefits from recycling—even those who don't recycle. It is only fair to ask everyone to share in the cost of providing a benefit that everyone will enjoy.

23. Under § 607.145 of the Waste Management Code, "the person responsible for generating the waste and/or the owner" ("responsible person")

must now provide for the collection of all waste from the property under a schedule that includes pick up of the recycled materials “[n]ot less often than once per week.”

24. If a responsible person fails to maintain containers for the storage of recovered materials or fails to contract for weekly pick-up of these recovered materials, this constitutes “a violation.” More particularly, under §607.050 of the Waste Management Code, it is a violation to do any act “[that] would make the premises fail to comply with such sections, whether or not the person charged resides on the premises or is in possession of the premises or is the agent or employee of a person in possession of the premises.”

25. If a responsible person fails to make payment for the weekly pickup of recycled materials, the designated waste hauler for that individual’s district will report such delinquency to the County. The County will in turn advise such resident by letter that unless his or her account with the waste hauler is made current, such resident will be subject to citation for ordinance violation.

26. Under § 607.940 of the Waste Management Code, a responsible person who commits a violation of these new ordinances is subject to a fine of

\$100 for the first violation in a 12-month period, and a fine of \$200 for the second violation in a 12-month period.

27. Under § 607.960 of the Waste Management Code, every responsible person convicted for violating “any of the provisions of this Chapter” is subject to a fine of up to \$1,000, imprisonment in the St. Louis County Justice Center for up to one year, or both.

28. As a result of the changes to the Waste Management Code enacted by the County Council in December of 2006, it is now mandatory, under the penalty of criminal sanction, for residents of unincorporated areas of the County not to pay for recycling service, regardless of whether they request or use the service.

29. By requiring the residents of unincorporated areas of the County to pay for recycling service, the County imposed a tax.

30. Under the Hancock Amendment, the imposition of a tax without voter approval is prohibited.

31. The voters of the unincorporated areas of the County never approved mandatory recycling and the attendant tax.

32. Since the County implemented mandatory recycling in 2006, Plaintiffs and thousands of other residents of the unincorporated areas of the

County have been required to pay for recycling under threat of criminal sanction, regardless of whether they requested or used the service.

33. Plaintiffs are bringing this action under the authority granted in Mo.Const. art. X § 23, the Hancock Amendment, on behalf of themselves and all others similarly situated. Plaintiffs seek to represent a class consisting of all residents of unincorporated areas of the County who have been required to pay for recycling under the revised Waste Management Code.

34. The proposed class satisfies each of the class-certification requirements set forth in Rule 52.08(a) of the Missouri Rules of Civil Procedure. First, the members of the proposed class exceed 70,000 individuals, and is therefore so numerous that joinder of all such members would be impracticable.

35. There are questions of law and fact common to the class. Common issues include:

- a. Whether residents of unincorporated areas of the County are required to pay for recycling;
- b. Whether the charge imposed by the County for recycling is a tax; and
- c. Whether the County violated the Hancock Amendment in implementing a recycling program without voter approval.

36. Third, the named Plaintiffs claims are typical of the proposed class members' claims. Both Plaintiffs and the proposed class members are entitled to, among other things, an adjudication of their entitlement to a refund of all recycling costs that they have been required to pay in violation of the Hancock Amendment.

37. Fourth, Plaintiffs will fairly and adequately protect the interests of the proposed class members. Plaintiffs have no interests that conflict with the proposed class members. Moreover, Plaintiffs have retained the law firm Butsch Simeri Fields LLC to serve as class counsel, and the lawyers are experienced and knowledgeable concerning this type of litigation, and will fairly and adequately represent the interests of the proposed class.

38. This action may be maintained as a class action under Rule 52.08(b)(1) of the Missouri Rules of Civil Procedure because the requirements of Rule 52.08(a) are satisfied and separate actions instituted by members would create a risk of (A) inconsistent or varying adjudication with respect to members of the class, which would establish incompatible standards of conduct for the party opposing the class, or (B) the prosecution of separate actions by members of the class would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

39. This action may be maintained as a class action under Rule 52.08(b)(2) because the requirements of 52.08(a) are satisfied and the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

40. This action may be maintained as a class action under Rule 52.08(b)(3) because the questions of law or fact common to members of the class predominate over questions affecting only members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

**Count I for Declaratory Relief based on
County's Violation of the Hancock Amendment**

41. Plaintiffs adopt by reference all other averments.

42. By requiring the residents of unincorporated areas of the County to pay for recycling service, the County imposed a tax.

43. The voters of the County never approved mandatory recycling.

44. Under the Hancock Amendment, the imposition of a tax, license or fee without voter approval is prohibited because they have been imposed without a vote of the people.

45. This claim is appropriate for entry of a declaratory judgment under Mo. Rev. Stat. § 527.010 and Rule 87 of the Missouri Rules of Civil Procedure.

46. The facts averred demonstrate that a justiciable controversy exists between the parties, that Plaintiffs and the proposed class members have a legally protectable interest at stake, and the issues brought before the Court are appropriate for declaratory relief.

WHEREFORE, Plaintiffs request that the Court enter a judgment that:

- a. Certifies this lawsuit as a class-action;
- b. Appoints Plaintiffs as class representatives of a class consisting of all persons in St. Louis County who have been required to pay for recycling under the revised Waste Management Code;
- c. Appoints Butsch Simeri Fields LLC as counsel for the class;
- d. Enters judgment in favor of Plaintiffs and the class and against the County that declares the County's requirement that residents pay for recycling unlawful in violation of the Missouri Constitution;
- e. Awards Plaintiffs' and the class costs, expenses, and reasonable attorney fees as provided for under Mo. Const. art. X § 23; and
- f. Provides all other relief to which Plaintiffs and the class may be entitled.

**Count II for Damages based on County's
Violation of the Hancock Amendment**

47. Plaintiffs adopt by reference all other averments.

48. As a result of the County's ordinance that requires residents of unincorporated areas of the County to pay for recycling, Plaintiffs and the proposed class members have been damaged in that they have been compelled to pay an illegal tax.

49. Mo. Const. art. X, § 22 permits any taxpayer of the County to bring suit to enforce the provisions of the Hancock, and to recover from the County costs and reasonable attorney fees incurred in maintaining such suit.

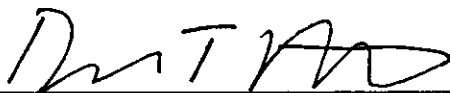
WHEREFORE, Plaintiffs request that the Court enter a judgment that:

- a. Certifies this lawsuit as a class-action;
- b. Appoints Plaintiffs as class representatives of a class consisting of all persons in St. Louis County who have paid for recycling under the revised Waste Management Code;
- c. Appoints Butsch Simeri Fields LLC as counsel for the class;
- d. Awards damages to Plaintiffs and the class, consisting of all charges for recycling that they have been required to pay;
- e. Awards Plaintiffs' and the class costs, expenses, and reasonable attorney fees as provided by Mo. Const. art. X § 23; and

- f. Provides all other relief to which Plaintiffs and the class may be entitled.

JURY TRIAL DEMANDED

BUTSCH SIMERI FIELDS LLC

By: 

David T. Butsch #37539

James J. Simeri #52506

231 South Bemiston Ave., Suite 260

Clayton, MO 63105

(314) 863-5700 (telephone)

(314) 863-5711 (fax)

butsch@bsflawfirm.com

simeri@bsflawfirm.com

Attorneys for Plaintiffs