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SD38838

IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

STATE EX REL. REBECCA VARNEY,

Relator/Respondent,

v.

WESLEY WILLIAMS, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF EDGAR SPRINGS, ET AL,

Respondents/Appellants.

Appeal from the Circuit Court of Phelps County,
The Honorable John Beger, Circuit Judge

RESPONDENT'S BRIEF

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ATTORNEY FOR RESPONDENT

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INTRODUCTION

This appeal revolves around one simple question:

Are Missouri municipalities immune from judicial enforcement of monetary judgments?

No, they are not.

The Appellants do not dispute that the City of Edgar Springs ("the City") violated Rebecca Varney's constitutional and statutory rights by banning her from City Hall in retaliation for her criticisms of City officials. Neither do they dispute that the trial court had the authority to order the City to pay $79,716.22 in damages, civil penalties, costs, and attorney fees as a consequence for violating Varney's rights. Nor have the Appellants challenged the trial court's holding that the City has an affirmative, present obligation to pay the debt using its general operating revenue. Instead, the Appellants argue that the Missouri Constitution entitles a municipality to indefinitely delay the payment of a money judgment until such time as the municipality—*in its sole discretion*—decides to do so.

This has never been the law in Missouri. This Court should emphatically reject the Appellants' contention.

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FACTS

The City Engaged in a Years-long Violation of Varney's Rights

The Relator/Respondent is Rebecca Varney, who has lived in the City of Edgar Springs almost her entire life. R.App. A27;[1] D498, p. 2. She became an activist in early 2018 and started going to City Hall to review public records for the purpose of investigating how the City government was operating. R.App. A27-A28; D498, pp. 2-3. When Varney believed that the City and its Police Department were not complying with the Sunshine Law, she submitted complaints to the Missouri Attorney General's Office. R.App. A28-A29; D498, pp. 3-4.

On March 29, 2018, a date for which Varney had made an appointment to come review public records, the City Clerk ordered her to stop reviewing records and leave City Hall, even though it was not near closing time and Varney was not being disruptive. R.App. A29-A30; D498, pp. 4-5. When Varney insisted that she had a right to continue, the City Clerk called the Phelps County Sheriff's Department; deputies were sent to the scene, but they took no action against Varney. R.App. A30; D498, p. 5. Late in the evening of April 12, 2018— after Varney and her granddaughter had gone to bed and just hours before Varney had an appointment to return to City Hall to review public records—two Edgar Springs police officers came to her house and started banging on her door. R.App. A32; D498, p. 7. They gave Varney a "No Trespass Notice" and warned her that if she attempted to enter or cross the property of City Hall at any time other than during a City Council meeting,

[1] To avoid confusion between references to the Appellants' Appendix and the Respondent's Appendix, Varney will cite to the former as "A.App." and the latter as "R.App."

she would be "arrested without warrant." R.App. A32; D498, p. 7. The City never presented Varney with an explanation of why it was banning her from City Hall, it did not identify any laws she was alleged to have broken or a set of facts upon which it had based its decision to impose the ban, and it afforded her neither a hearing at which she could dispute any such allegations nor any means through which she might appeal the ban. R.App. A14; D496, p. 12. The City Hall ban had no expiration date and remained in place for more than four years, including a year and a half after Varney sued the City for violating her rights under the U.S. Constitution and the Sunshine Law. R.App. A32; D498, p. 7.

Despite the City Hall ban, Varney continued to request public records from the City and to criticize City officials. R.App. A33-A34; D498, pp. 8-9. In the face of vocal, public, and ongoing hostility from City officials, she ultimately led a successful petition effort to have the City audited. R.App. A33-A34; D498, pp. 8-9. On November 9, 2019, after Varney spent less than two minutes at City Hall because she thought City officials were holding an un-noticed public meeting, the then-Mayor called the Phelps County Sheriff's Office and asked them to arrest Varney for trespassing. R.App. A35; D498, p. 10. Subsequently, the Edgar Springs Chief of Police delivered to Varney a second "No Trespass Notice" that banned her from coming to City Hall even during City Council meetings. R.App. A35; D498, p. 10. Even though, just prior to the next regularly scheduled City Council meeting, Varney's attorney explained to the Chief of Police that it would violate the U.S. Constitution, the Missouri Constitution, and the Sunshine Law to prevent Varney from attending the meeting,

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the Police Chief stated that if she attempted to attend the meeting she would be treated as a trespasser. R.App. A36; D498, p. 11.

Based on this record, the trial court concluded that City officials "imposed the City Hall ban on Varney and left that ban in place at least in part because they were angry about the criticisms that Varney had leveled (and continued to level) against the City, its officials, and its police department." R.App. A36; D498, p. 11. The trial court specifically noted that certain officials had demonstrated "personal hostility" in their actions against Varney. R.App. A36-A37; D498, pp. 11-12. The City continued to violate the Sunshine Law despite having been specifically notified that they were subject to its requirements and penalties and that Varney would sue the City if they denied her access to an open public meeting. R.App. A37; D498, p. 12. The trial court thus held that the City had committed multiple "knowing" and/or "purposeful" violations of the Sunshine Law. A.App. A1; D458, p. 1; R.App. A22-A23; D496, p. 20-21; R.App. A46; D498, p. 21. It held that the City had violated Varney's right to Due Process of Law "by depriving her of protected liberty interests without providing her notice of the legal and factual basis for doing so and without giving her an opportunity to dispute such a basis at a meaningful time and in a meaningful manner." R.App. A24; D496, p. 22. The trial court further held that the City had violated Varney's First Amendment rights by retaliating against her and "seeking to intimidate and silence Varney from exercising her rights to… examine and be knowledgeable about the workings of her city government[.]" R.App. A49; D498, p. 24. Finally, the trial court held that the City had violated Varney's right to Equal

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Protection of the Law by banning Varney from coming to City Hall at the same times and on the same terms as any other citizen. R.App. A50-A51; D498, pp. 25-26. On December 26, 2023, the trial court issued a final judgment ("the Final Judgment") ordering the City to pay Varney "$100 in nominal damages for its violation of her constitutional rights, $650 in civil penalties for its purposeful violations of her rights under the Sunshine Law, $2,071.22 in litigation costs, and $76,895.00 in attorney fees—a total of $79,716.22 for which execution may issue." A.App. A1-A2; D439, p. 2.; D458, pp. 1-2. Varney will refer to this amount (plus the interest that has accrued pursuant to § 408.040, RSMo.) as "the Judgment Debt."

The City filed its appeal on the merits on January 8, 2024. D499. On March 14, 2024, it voluntarily dismissed that appeal, which this Court acknowledged by issuing its Order and Mandate. A.App. A2; D458, p. 2; D501.

The City Paid Its Own Attorneys, But Balked at Paying the Judgment Debt

Over the course of this litigation and up until July 26, 2024, the firm representing the City billed $56,702.15 in legal fees.[2] A.App. A26. Between March 3, 2021, and December 27, 2023, the City paid at least $35,869.38 toward that debt. A.App. A26. For Fiscal Year 2024, the City budgeted $24,000.00 for "Legal Fees." A.App. A25. For Fiscal Year 2024, the $24,000.00 budgeted for "Legal Fees,"

[2] The record does not reveal how much, if any, the City's attorneys have billed the City following this date, including fees and costs associated with this appeal.

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including $12,000 for the firm representing the City in this case, was designated to come out of the City's Police Department account. T2,[3] p. 17:9-14; A.App. 19.

A few days after the City dismissed its appeal on the merits, Varney's counsel emailed the City's attorneys that the City needed to pay the Judgment Debt and asked if the City had a plan for doing so or if Varney needed to take steps to enforce the Final Judgment. D441, p. 2, ¶ 3; D446, p. 1, ¶ 3. The City did not pay any part of the Judgment Debt until after Varney filed her Writ Petition. D441, p. 3, ¶ 5; D446, p. 2, ¶ 5; A.App. A2; D458, p. 2. On April 10, 2024, Varney served post-judgment interrogatories on the City. D440, p. 2. One of the interrogatories asked the City to identify and provide information about the City's financial accounts. D440, p. 4. On May 10, 2024, the City objected to Varney's interrogatory, taking the position that "Property owned by a municipality is exempt from execution under Missouri law. …The information sought is therefore irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and unduly burdensome." A.App. A22; T2, p. 24:22-25:4; D440, p. 4. The City did not provide the requested financial information until after July 18, 2024, when as part of the writ proceedings the trial court ordered it to do so. D451, p. 1.

On May 13, 2024, Varney filed a Motion to Enforce Judgment. D440. One month later, having realized that under Missouri law a petition for a writ of mandamus is the proper mechanism to enforce a judgment against a municipality,

[3] In order to avoid confusion, Varney will follow the convention the Appellants adopted in their brief and use "T1" to refer to the Transcript of the July 18, 2024 hearing and "T2" to refer to the Transcript of the July 26, 2024 hearing.

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Varney dismissed her Motion to Enforce Judgment and filed her Petition for Writ of Mandamus ("the Writ Petition"). D441-443. As of the date that Varney filed the Writ Petition, the City had not paid any part of the Judgment Debt, nor had it offered any plan for doing so. A.App. A2; D441, p. 3; D458, p.2. The Writ Petition asked the trial court to order the City, via the named respondents, to use funds currently held in the City's financial accounts to pay Varney the full amount of the Judgment Debt or, in the alternative, to order the City to pay as much of the Judgment Debt as possible from the funds currently in the City's financial accounts and thereafter to take all steps necessary to extend a sufficient levy to provide any additional public funds required to satisfy the Final Judgment.[4] D441, pp. 4-5. Varney's suggestions in support of the Writ Petition specified that she was invoking the court's inherent authority to enforce its judgments and noted that a writ of mandamus was the only way for a judgment creditor to enforce a judgment against a political subdivision of the State. D442, pp. 1-2. The Appellants raised as an affirmative defense that Varney had not "identified a single lawful mechanism for the Court to order the City to utilize to raise additional funds," D446, p. 2, so Varney noted at the evidentiary hearing that § 513.410, RSMo., authorizes courts to order an increase in taxation within constitutional limits. T2, p. 4:23-5:3.

[4] The City did submit to its voters the question of whether to institute a temporary tax increase for the purpose of paying the Judgment Debt, but the voters rejected this proposal. As such, there is no active dispute concerning the trial court's authority to order such a vote to take place.

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The Trial Court Ordered the City to Use Its General Operating Revenue to Pay the Judgment Debt

The trial court entered its Preliminary Order in Mandamus on June 20, 2024, to which the Respondents-Appellants filed an Answer and Motion to Dismiss on July 8, 2024. A.App. A2; D458, p. 2. The trial court heard arguments on the Motion to Dismiss on July 18, 2024, then held an evidentiary hearing on July 26, 2024. A.App. A2; D458, p. 2; T1; T2. On September 4, 2024, the trial court expressly denied the Appellants' motion to dismiss[5] and entered its judgment making permanent the preliminary writ of mandamus ("the Writ Judgment"). A.App. A1-A13; D458.

The record shows that the City maintains six separate financial accounts, each of which the City controls and uses for specific purposes.[6] A.App. A6-A7, A23; T2, pp. 23:18-24:2; D458, pp. 6-7, 23. Those accounts include:

- A "general" account funded by property and sales taxes that the City uses to pay City officials and to pay some expenses related to the sewer and also certain maintenance costs.
- A "police" account funded by fine revenue that the City uses to pay for maintenance, fuel, and utilities related to the police department.
- A "streets" account funded by fuel taxes redistributed by the state Department of Revenue that the City uses to pay for maintenance and repairs to the City's streets. The use of these funds are restricted pursuant to Article IV, § 30(a).1(2) of the Missouri Constitution.

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[5] "Because Varney's allegations fully address each of the elements of a claim in mandamus, the Writ Petition was sufficient to state a claim and the City's Motion to Dismiss is overruled." App. 5; D458, p. 5. The Appellants incorrectly stated that the trial court "never expressly denied" their Motion to Dismiss. *See* App. Br., p. 16.

[6] In addition to the five accounts below, the City also maintains a "Sewer Replacement" account. *See* App. 15, 21, 23. This is a very small account and Varney does not contend that the funds in this account may be used to pay the Judgment Debt.

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- A "sewer" account funded by deposits and payments related to the City's provision of sewer services to residents that the City uses to pay for the operation and maintenance of the City's sewer system. The use of these funds are restricted pursuant to § 250.150, RSMo.

- A "grants" account funded by grant distributions that are tied to American Rescue Plan Act funds intended for the improvement of the City's sewer system. These funds may not be used for any purpose other than that for which they were distributed.

App. 6-7; D458, pp. 6-7. City officials and employees are frequently paid from the "general" account. T2, pp. 13:12-15, 20:16-18. But City employees—including the City Clerk, the City Treasurer, and the city's maintenance worker—are also sometimes paid from the "sewer" account.[7] A.App. A18; T2, p. 29:15-30:1. The City Attorney is paid from the "police" account. A.App. A19; T2, p. 21:8-21. The City's alleged 2024 budget[8] indicated a plan to spend $24,000 from the "police" account on "legal fees," including fees to be paid to the attorney representing the Appellants in this matter. A.App. A19; T2, p. 16:22-17:14.

The City's alleged 2024 budget anticipated slightly more than $58,000.00 in revenue for its "general" account during that fiscal year. A.App. A25. The City's alleged 2024 budget anticipated a total of $39,500.00 in revenue for its "police" account. A.App. A25. The City's alleged 2024 total anticipated budgeted revenue was $179,778.69. A.App. A25. Thus, the total anticipated revenue for these two accounts that include "general operating revenue" make up about 54 percent of the total

[7] This point was not acknowledged in the Appellants' Brief. *See* App. Br., p. 19 ("Without the funds the trial court ordered the City to pay Varney, the City cannot be expected to pay for its City Treasurer, City Clerk, and maintenance workers.").

[8] The Appellants introduced a budget into evidence, but did not include any evidence that the City had formally adopted that budget by ordinance.

revenue the City anticipated collecting in 2024—not including the grant money the City expected to receive for the purposes of improving its sewer system. A.App. A20; T2, pp. 14:9-15, 31:6-17. At the time the trial court issued its Writ Judgment, the available evidence showed that the City held $20,666.74 in its "general" account and $37,219.48 in its "police" account. A.App. A8; D458, p. 8.

The trial court held that Varney had established (1) a right to enforce the Final Judgment against the City and thereby to recover the Judgment Debt, (2) the City had an unconditional duty to pay the money awarded under the Final Judgment, and (3) the City had not fulfilled its obligation to pay the money awarded. A.App. A4-A5; D458, pp. 4-5. It noted that the City maintained several separate financial accounts, including a "general account" funded by property and sales taxes, and a "police account" funded by fine revenue. A6; D458, p. 6. The trial court held that the general account and the police account constituted "general operating revenue" that, under Missouri law, could be used to pay the Judgment Debt. A.App. A7-A8; D458, p. 7-8.

The trial court ruled that the City had "an affirmative, present obligation to pay the Final Judgment debt using funds collected from 'general sales tax; general use tax; general property tax; fees from licenses or permits; unrestricted user fees; fines, court costs, bond forfeitures, and penalties,'" which included "funds the City currently holds in financial accounts designated for general and police use." A.App. A12; D458, p. 12. Rather than requiring the Appellants immediately to pay Varney all of the money the City held in those accounts, the trial court authorized the City

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to retain up to $10,000 in its "general" account to be used exclusively for the purpose of paying the City's police officers and its City Attorney through December 2024. A.App. A12; D458, p. 12. Aside from the expressly-permitted withholdings, the trial court ordered the Appellants to pay Varney "all funds currently in its financial accounts designated for 'general' and 'police' use." A.App. A12; D458, p. 12. The court then further ordered that as the City continued to "levy, assess, and collect general revenue" from the specified sources, "it must pay to [Varney] any amount received over and above the first $2,500 the City collects for each month." A.App. A12-A13; D458, pp. 12-13. The Writ Judgment forbade the City to use its general operating revenue for anything other than approved purposes "until such time as the City fully satisfies the Final Judgment debt—including any statutory interest owed on that debt pursuant to § 408.020." A.App. A13; D458, p. 13. The Writ Judgment specifically noted that "funds held in the 'street,' 'sewer,' and 'grant' accounts are not available for the purpose of paying the Final Judgment debt." A.App. A6-A7; D458, pp. 6-7.

The Trial Court Did Not Grant the Appellants' Post-Judgment Motion to Supplement the Record

More than three months after the trial court entered the Writ Judgment, the Appellants filed a motion to supplement the record. D466. The trial court did not grant this motion, therefore the materials proffered by the Appellants are not a part of the record on appeal. The Appellants could have attempted to bring those materials into the record by presenting this Court with a motion to supplement the record, but they have not done so. If the Court is inclined to consider the materials the Appellants sought to include in the record, Varney notes that the City's alleged

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budget for Fiscal Year 2025 allocated $12,000.00 for "Legal Fees," and another $6,000.00 for "Litigation Cost." A.App. A25. For the "Litigation Cost" in the alleged 2025 Budget, half was to be drawn from the "City Operations" account and half was to be drawn from the "Police Department" account. A.App. A25.

STANDARD OF REVIEW

In reviewing a trial court's decision regarding a writ of mandamus, the Court of Appeals presumes a trial court's judgment to be correct and the appellant bears the burden of demonstrating reversible error. *State ex rel. Schmitt v. Schier Company, Inc.*, 594 S.W.3d 245, 249 (Mo. App. S.D. 2020). Appellate courts must affirm a judgment if *any* ground exists that would support that judgment, "regardless of whether the trial court relied on that ground."[9] *Curtis v. Mo. Democratic Party*, 548 S.W.3d 909, 918 (Mo. banc 2018); *see also Clarkson Construction Co. v. Warren*, 586 S.W.3d 297, 301 (Mo. App. W.D. 2019) (in review of mandamus proceeding, appellate court "is primarily concerned with the correctness of the result, not the route take by the circuit court to reach it."); *Modern Day Veterans Chapter No. 251 v. City of Miller*, 128 S.W.3d 176, 177-78 (Mo. App. S.D. 2004) ("The judgment will be affirmed unless the trial court commits an abuse of

[9] Although the Writ Judgment relied heavily on section 513.410, RSMo., the Appellants expressly acknowledged in their brief that "the general application of mandamus" was also a way that the trial court could have afforded Varney the relief she requested. App. Br., p. 46. Thus, this Court must affirm the Writ Judgment if the trial court could have granted the same relief on that or any other ground.

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discretion so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration.") (citation omitted).

There has been some confusion as to the appropriate standard of review to apply where an appellate court is considering the grant or denial of an extraordinary writ. The Court of Appeals, Eastern District, recently concluded that the proper standard of review depends on whether the trial court resolved the underlying controversy on its merits. *See Sweetgum Properties, LLC v. St. Louis Cnty. Bd. of Equalization*, 702 S.W.3d 283, 286 (Mo. App. E.D. 2024); *but see Lampley v. Mo. Comm'n on Human Rights*, 570 S.W.3d 16, 38 n7 (Mo. banc 2019) (Powell, J., dissenting) (suggesting that because standard of review when writ is denied is derived from discretionary nature of writs in general, appellate court should review only for abuse of discretion). The *Sweetgum Properties* court concluded that if the trial court ruled on the merits of the controversy, an appellate court should apply the same standard as in most other court-tried cases, affirming the ruling unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Id.* But Missouri courts have also long noted that even if the relator satisfies all the elements for mandamus the ultimate question of whether a trial court will grant or deny a writ of mandamus is left to the trial court's discretion; if an appellant challenges a grant or denial of mandamus under such circumstances, Missouri appellate courts should review the trial court's decision for abuse of discretion. *See State ex rel. Robison v. Lindley-Myers*, 551

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S.W.3d 468, 475-76 (Mo. banc 2018) (Wilson, J., concurring) (contemplating the proper standard of appellate review in such circumstances).

ARGUMENT

The Appellants have presented six Points Relied On, each of which begins by arguing that the trial court "erred in granting the Writ Judgment." App. Br., pp. 2-4, 21-24, 30, 35, 41, 44, 47. These Points Relied On preserve nothing for review because they do not comply with the Missouri Supreme Court Rule 84.04(d). A Point Relied On that challenges the entry of the judgment is defective because its error allegations address the ultimate results of the case rather than a particular ruling of the trial court. *Sprueill v. Lott*, 676 S.W.3d 472, 477 (Mo. App. S.D. 2023). The requirement that a Point Relied On must specify a particular ruling of the trial court is mandatory. *Moody v. Dynamic Fitness Mgt., Ltd.*, 707 S.W.3d 610, 616 (Mo. banc 2025). Failure to specify a particular ruling forces both Varney and the Court to guess at the true focus of the Appellants' argument. Because each of the Appellants' Points Relied On challenges the entry of the judgment rather than a particular ruling of the trial court, the Court should dismiss the appeal.

Although the appeal should be dismissed for the above reason, Varney will explain why the trial court's outcome was correct and will address each of the Appellants' Points Relied On in the following sections. Varney will begin by identifying important aspects of the Writ Judgment the Appellants have left unchallenged. She will then explain the inherent authority of Missouri courts to enforce their judgments as well as express statutory authority for judgments against

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municipalities that have violated a citizen's rights. Next she will explain why the trial court did not abuse its discretion in granting the writ of mandamus in this matter, and finally will address the specific arguments the Appellants made in their brief.

I. The Appellants have not challenged several crucial matters established in the trial court's merits judgments and the Writ Judgment below.

In this appeal the Appellants have left *unchallenged* the following aspects of the trial court's merits judgments and the Writ Judgment:

- The Appellants do not dispute the trial court's conclusion on the merits that the City and its Chief of Police committed numerous violations of Varney's rights under the U.S. Constitution, the Missouri Constitution, and Missouri's Sunshine Law. A.App. A1; App. Br., p. 11.
- The Appellants do not dispute that Varney has a legal right to receive the full amount of the Judgment Debt, including the statutory interest that has already accumulated (and continues to accumulate) on that debt. App. Br., p. 11.
- The Appellants do not dispute that the Judgment Debt is due and the City has a duty to pay it. App. Br., p. 11, 15.
- The Appellants do not dispute that the City took the position that its financial accounts were "exempt from execution under Missouri law." A.App. A4, A22.
- The Appellants do not dispute the trial court's finding that as of June 2024 the City had neither made any payments to Varney nor had it offered any specific plan for doing so. A.App. A2.

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- The Appellants do not dispute the trial court's statement that, although Varney received one $1,000 check from the City on August 14, 2024, as of the time the trial court entered the Writ Judgment the Appellants had not provided any specific plans to make future payments toward the Judgment Debt. A.App. A2.
- The Appellants do not dispute the trial court's holding that under Missouri law a municipality may use its "annual general operating revenue" to pay any bill or obligation. A.App. A7.
- The Appellants do not dispute the trial court's holding that "the City's 'general' account, funded by property and sales taxes, and its 'police' account, funded by fines and forfeitures, are available for the purpose of paying the Final Judgment debt." A.App. A7.
- The Appellants do not dispute the trial court's observation that "it was the City's own choices that led to the Final Judgment debt it now owes to the Plaintiff." A.App. A11.

Varney emphasizes that there is no way this appeal might reduce or otherwise limit the amount of money the City owes; to the contrary, the longer the City delays in satisfying the Judgment Debt, the more statutory interest will continue to accumulate. Thus, even "success" for the Appellants in this case merely means that the City will owe Varney even more money. This highlights the extraordinary nature of the Appellants' position—they are unconcerned about the Judgment Debt

continuing to increase because the logical outcome of their position is that *they will never be forced to pay it*.

II. Missouri courts have the authority to enter whatever orders are necessary to enforce judgments against municipalities, so long as the orders do not command an unconstitutional act.

Although the U.S. Constitution gives Congress significant control over federal courts and the way they exercise their authority, this state's courts derive their authority from the Missouri Constitution. *See J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253 (Mo. banc 2009). That authority is inherent and includes the power "to do all things that are reasonably necessary for the administration of justice[.]" *See Allsberry v. Ohmer*, 658 S.W.3d 541, 549 (Mo. App. W.D. 2022). Specifically, "[c]ourts have the inherent power to enforce their judgments and should see to it that such judgments are enforced when they are called upon to do so." *Malin v. Cole Cnty. Pros. Atty.*, 678 S.W.3d 661, 672 (Mo. App. W.D. 2023) ("*Malin III*"); *Emerald Pointe, LLC v. Taney Cnty. Planning Comm'n*, 660 S.W.3d 482, 487 (Mo. App. S.D. 2023). The courts' inherent power to take any actions necessary to ensure the administration of justice cannot be limited or denied by the legislature because that "would vest in the legislative department… the power to determine the extent to which the judicial department could perform its judicial functions." *Allsberry v. Ohmer*, 658 S.W.3d 541, 549 (Mo. App. W.D. 2022).

Although Missouri courts have recognized that the state legislature may impose *some* limits on the way courts in this state operate, the legislature's influence can only be exercised in a manner consistent with Missouri's Open Courts requirement, found in Article I, § 14 of the Missouri Constitution, including citizens'

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right to have a remedy for legal wrongs done to them. *Wyciskalla* at 255. Thus, if any Missouri statute would prevent a citizen from enforcing a judgment, courts may invalidate that barrier if it is arbitrary or unreasonable. *See Kilmer v. Mun*, 17 S.W.3d 545, 550 (Mo. banc 2000). A legislative restriction on a citizen's ability to enforce a judgment against a municipality would certainly be arbitrary and unreasonable if it would allow the municipality to evade any substantial financial consequences for brazenly violating its citizens' constitutional or statutory rights.

Both the United States Congress and the Missouri General Assembly have adopted statutes expressly empowering this state's courts to award money judgments against municipalities. Where a plaintiff has established that they were deprived of rights protected under the U.S. Constitution, section 1988(b) of the Civil Rights Attorney's Fee Awards Act authorizes this state's courts to order state government defendants to pay attorney fees associated with proving the deprivation. *Dixon v. Holden*, 963 S.W.2d 306, 308 (Mo. App. W.D. 1997). In passing this act, Congress intended that the plaintiff would be able to collect the attorney fees directly from the entity responsible for the injury.[10] *Id.* (citing *Hutto v. Finney*, 437 U.S. 678, 694 (1978)). Similarly, the Missouri General Assembly has provided that when a

[10] The Supremacy Clause of the U.S. Constitution states in relevant part that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof… shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Even if this Court were to interpret some part of Missouri law to inhibit a successful plaintiff from collecting attorney fees awarded pursuant to § 1988 directly from the entity responsible for violating her constitutional rights, the Supremacy Clause would render that provision of Missouri law unenforceable.

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public governmental body has committed a "knowing" or "purposeful" violation of the Sunshine Law the plaintiff may recover all costs and reasonable attorney fees associated with the case, "including attorney's fees necessary to obtain an award of such reasonable attorney's fees." § 610.027, RSMo.; *Integra Healthcare, Inc. v. Mo. State Bd. of Mediation*, 655 S.W.3d 604, 615 (Mo. App. W.D. 2022).

In this case Varney succeeded in proving that the City violated her rights under the U.S. Constitution and Missouri's Sunshine Law. Under the authority of the two statues cited above, the trial court included costs and attorney fees as part of the Judgment Debt it ordered the City to pay. Congress and the Missouri General Assembly manifestly intended for citizens to recover against government entities that had violated their rights, and this Court must not apply the law in any way that would thwart the legislatures' intent or otherwise to make the redress of the injuries municipalities have inflicted upon citizens subject to the "discretion" of the same entities that caused the injuries.

III. The trial court's entry of the Writ Judgment against the Appellants was a valid exercise of its discretion.

The Writ Judgment was proper because Varney satisfied every element required to justify the trial court's decision and the Appellants did not make any evidentiary showing that might have called into question the propriety of the trial court's judgment.

A. Mandamus is the proper mechanism through which a party may enforce a judgment against a municipal corporation.

Mandamus is an extraordinary, equitable remedy through which a court may compel the performance of a ministerial duty that the respondent otherwise would

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choose not to perform. *State ex rel. Peters v. Fitzpatrick*, 681 S.W.3d 566, 573 (Mo. App. W.D. 2023). Before a court may issue a writ of mandamus the relator must demonstrate (1) "an existing, clear, unconditional, legal right" to a form of relief, (2) "a corresponding present, imperative, unconditional duty upon the part of the respondent" to provide that relief, and (3) a failure on the part of the respondent to provide the relief. *Id.*

It is black-letter law that mandamus is the "proper remedy to enforce a judgment against a municipal or public corporation[.]" *State ex rel. Hentschel v. Cook*, 201 S.W. 361, 364 (Mo. App. 1918) (noting that "every lawyer knows" mandamus "has been generally used for this purpose in this state"). "[I]t is a means of enforcing collection of a judgment against a municipal corporation, *the legal equivalent of an execution upon a judgment against an individual*." *Id.* (emphasis added). "Since an execution may not run against the property of a… political subdivision of the state, the only other procedure available to a judgment creditor to enable him to collect his judgment is for a court of competent jurisdiction to issue its writ of mandamus… to provide funds for the payment of the judgment." *State ex rel. Hufft v. Knight*, 121 S.W.2d 762, 764 (Mo. App. 1938); *see also Burgess v. Kansas City*, 259 S.W.2d 702, 705 (Mo. App. 1953) (mandamus, not execution, is proper remedy where city will not satisfy judgment). Indeed, mandamus is "the preferred means to collect money clearly owed by" a government entity. *Fitzpatrick* at 574.

B. The City has a legal and moral duty to pay the Judgment Debt—doing so is mandatory, not discretionary. [Responding to the Appellants' First Point Relied On.]

On December 26, 2023, the trial court entered its Final Judgment ordering

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the City to pay Varney a total of $79,716.22. Since that date judgment interest has been accruing at a rate of "nine percent per annum," and will continue to accumulate until the City satisfies the Final Judgment. § 408.040, RSMo. At this statutory rate, interest on the judgment balance will amount to $7,174.46 per year. The City acknowledges that this debt is valid, that it is due, and the record only shows that the City has made one payment of $1,000 toward this debt.[11] App. Br., pp. 11, 15; D470; A.App. A2.

Where a court has entered a judgment against a government entity, that entity has "the plain moral as well as legal obligation" to pay the judgment debt "and its officers are required to take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment." *State ex rel. Hufft* at 764; *see also State ex rel. Hermitage R-IV School Dist. v. Hickory Cnty. R-I School Dist.*, 558 S.W.2d 667, 669 (Mo. banc 1977). Under such circumstances, "*no discretion* within the legal limitation of the performance of the duty can rightfully be claimed or exercised." *Id.* (emphasis added). Several other states' courts have also held that government defendants have a mandatory duty to pay judgments against them. *See, e.g., Bird Const. Co., Inc. v. Oklahoma City Housing Auth.*, 110 P.3d 560, 570 (Okla. Ct. App. 2004) (although government defendant's property is exempt from execution, it "cannot simply ignore a judgment against it, paying the judgment only at its

[11] Although it is not part of the record, Varney does not dispute the City's claim that it sent her a second $1,000 check in December 2024. $2,000 is less than one-third of the post-judgment interest that had already accrued on the judgment balance as of the time the City sent that second check.

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discretion."); *Zelenka v. Wayne County Corp. Counsel*, 372 N.W.2d 356, 573 (Mich. Ct. App. 1985) ("Municipal corporations have the same obligation as any person or body corporate to satisfy judgments rendered against them. …Once the judgment was entered, the obligation to satisfy the judgment became a mere ministerial duty."); *Hawthorne v. La-Man Constructors, Inc.*, 672 S.W.2d 255, 258 (Tex. Ct. App. 1984) ("a municipal corporation is… as much bound to pay a judgment which the law has authorized against it as is an individual or corporate defendant obligated to pay such a judgment."); *see also State ex rel. Hagemeyer v. Village of Pemberville*, 175 N.E. 890 (Ohio App. 1931) (municipality must pay lawful obligations such as a judgment debt even if other municipal affairs will suffer).

The City had an opportunity to dispute the merits of the case or the amount the trial court ordered it to pay, but that door closed when the City voluntarily dismissed its initial appeal and this Court entered its mandate. Since the City's liability and the amount due are firmly established, longstanding precedent confirms that the City has both a legal and a moral obligation to pay that debt and the City's officers—the Appellants in this case—are required to take all necessary steps for the *immediate* discharge of that liability. *State ex rel. Hufft* at 764. The Appellants cannot rightfully claim or exercise any discretion when it comes to performing that duty. *Id*. Consequently, this Court should deny the Appellants' First Point Relied On and affirm the Writ Judgment.

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C. The trial court correctly concluded that mandamus was appropriate because the Appellants had failed to perform their mandatory duty to pay the Judgment Debt. [Responding to the Appellants' Second Point Relied On.]

The third element of the traditional mandamus analysis asks whether the evidence shows that the respondent has failed to perform the ministerial duty that forms the basis of the relator's petition. Unlike the first two elements of the analysis, which present questions of law, this third element is a question of *fact*. If a court has already determined as a matter of law that the relator has a right to certain relief and the respondent has a duty to provide that relief, does the evidence show that the respondent has performed its duty? If so, the court has no authority to issue a writ of mandamus. If not, the question of whether to issue such a writ is left to the court's discretion.

As explained above, in this case Varney asserted a right to be paid the amount of money the trial court awarded in its Final Judgment, plus post-judgment interest. The trial court correctly determined, as a matter of law, that Varney had such a right. The trial court also concluded, as a matter of law, that the City has "an affirmative, present obligation" to pay this debt "and its officers are required to take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment." A.App. A3; D458, p. 3. The trial court properly concluded that mandamus was warranted because the Appellants had not fulfilled their duty to pay the Judgment Debt.

The record shows that shortly after the City abandoned its initial appeal in this case, Varney asked it to provide a plan for paying the judgment. Despite this

request, as of the date Varney filed her Writ Petition—more than eighteen months after the trial court issued the Final Judgment—the Appellants had neither provided any such plan nor paid any part of the Judgment Debt. A.App. A2; D441, pp. 2-3; D446, pp. 2-3; D458, p. 2. This non-payment alone would have satisfied the third element of the mandamus analysis, but the City also objected to Varney's post-judgment interrogatories seeking information about the City's financial accounts, arguing that the information was irrelevant because its finances were "exempt from execution under Missouri law." A.App. A4; D458, p. 4. These facts led the trial court to conclude that the City had taken "the unambiguous position that it would not voluntarily comply with [Varney's] efforts to recover the amount due under the Final Judgment." A.App. A4; D458, p. 4. Consequently, the trial court held "that the City has not fulfilled its obligation to pay the money awarded," and, thus, the third element of the mandamus analysis had been met. A.App. A5; D458, p. 5. This conclusion justified the trial court's decision to issue its writ of mandamus compelling the Appellants to take such action as was permitted by Missouri law to fulfill the City's obligation to pay the Judgment Debt.

In their Second Point Relied On, the Appellants try to undercut the third prong of the trial court's mandamus analysis by claiming that they have not "refused" to pay the Judgment Debt. App. Br., pp. 32-35. There are at least two reasons this argument is misguided.

First, the Appellants' argument cherry-picks the phrasing it uses to describe the applicable analysis. Although some courts have framed the third element of the

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analysis in terms of a respondent's "refusal" to perform a mandatory duty, the Missouri Supreme Court has held at various times that mandamus is appropriate where a public official has "*failed to perform* a ministerial duty imposed by law." *See, e.g., State ex rel. Fitz-James v. Bailey*, 670 S.W.3d 1, 11 (Mo. banc 2023) (quoting *Curtis v. Democratic Party*, 548 S.W.3d 909, 916 (Mo. banc 2018)) (emphasis added); *see also State ex rel. Casey's General Stores, Inc. v. City of West Plains*, 9 S.W.3d 712, 715 (Mo. App. S.D. 1999). Courts have also sometimes described the third element of the mandamus analysis as requiring the relator to show a "default" by the respondent in performing a mandatory duty. *See, e.g., BG Olive & Graeser, LLC v. City of Creve Coeur*, 658 S.W.3d 44, 47 (Mo. banc 2022); *State ex rel. Peters v. Fitzpatrick*, 681 S.W.3d 566, 573 (Mo. App. W.D. 2023). Regardless of the phrasing any given court might employ, the true focus of the required inquiry is whether or not the respondent has performed their mandatory duty. If the evidence shows it has not, the third element is satisfied.

The second problem with the Appellants' Second Point Relied On is that whether a public official has failed (or refused) to perform a duty is a *question of fact* which depends on the evidence that has been presented. A relator seeking a writ of mandamus must make "an unequivocal showing that a public official failed to perform a ministerial duty imposed by law." *State ex rel. Fitz-James* at 11; *Curtis* at 916. The trial court correctly held that Varney made such a showing. If the Appellants wanted to dispute this, they would have had to assert that the trial court's finding was against the weight of the evidence or that it was not supported

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by substantial evidence.

But the Appellants did not raise such a challenge and, indeed, they cannot because they obviously have not fulfilled their mandatory, non-discretionary duty to pay the Judgment Debt. Instead, their Second Point Relied On hinges entirely on the idea that the City has not "refused" to pay what it owes. After all, it does not dispute the validity of the debt. And since the trial court entered the Final Judgment more than eighteen months ago the City made two payments of $1,000! The Appellants hope these points will convince the Court that they are not *refusing* to pay the Judgment Debt—they are doing everything they reasonably could be expected to do.[12] In the meantime, they also hope the Court will not notice that between March 2021 and December 2023 the City paid its counsel in this case nearly $36,000 and it allegedly budgeted another $12,000 for that purpose in Fiscal Year 2024. A.App. A25-A26.

The trial court considered all of this evidence and concluded that mandamus was appropriate because the City "would not voluntarily comply with the Plaintiff's efforts to recover the amount due under the Final Judgment[.]" A.App. A4; D458, p. 4. This was a finding of fact, amply supported by the record, and the Appellants have not challenged it. As a consequence, this finding is binding on this Court.

Finally, insofar as the Appellants might argue that the third prong of the

[12] The Appellants have suggested they should get credit for allegedly budgeting $6,000 to pay toward the Judgment Debt in Fiscal Year 2025. App. Br., pp. 19, 34. Although it is not in the record, Varney respectfully suggests that at oral argument the Court might ask Appellants' counsel precisely how much (if any) of the allegedly budgeted $6,000 the City had *actually paid* as of the date this brief was filed.

mandamus analysis depends on their own subjective understandings about when and how the City must pay the Judgment Debt, the Missouri Supreme Court long ago clarified that public officials cannot escape mandamus by claiming that they did not believe they were required to perform a certain duty. In *State ex rel. Metcalf v. Garesche*, 65 Mo. 480 (1877), election officials argued that mandamus was improper because they were not certain as to what their duty was and, thus, they had not *refused* to perform a duty. *Id.* at 488. The Supreme Court held that "[t]o assert that the writ of mandamus cannot require the performance by a ministerial officer of any act which he does not, with the lights before him, conceive it his duty to perform, is to destroy the efficacy of the writ, and to substitute the convenience of the officer for the command of the law." *Id.* at 489.

Here, the Appellants argue that they have not "refused" to pay as much of the Judgment Debt as the City's general operating revenue will allow because they don't believe they are *required* to pay as much of the Judgment Debt as the City's general operating revenue will allow. As *State ex rel. Metcalf* pointed out, allowing the City to escape mandamus on this basis would "destroy the efficacy of the writ" and substitute the City's convenience for the command of the law. Payment of the Judgment Debt is mandatory, not discretionary. The Appellants have not performed this mandatory duty. Thus, the trial court did not abuse its discretion in ordering them to do so. This Court should deny the Appellant's Second Point Relied On and affirm the Writ Judgment.

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D. Mandamus was proper because the Appellants did not carry their evidentiary burden of showing that the general operating revenue in the City's accounts was not available for the payment of the Judgment Debt. [Responding to the Appellants' First, Second, and Sixth Points Relied On.]

As the trial court held, section 479.350(1), RSMo., defines "annual general operating revenue" for a municipality as "revenue that can be used to pay any bill or obligation of a county, city, town, or village, including general sales tax; general use tax; general property tax; fees from licenses and permits; unrestricted user fees; fines, court costs, bond forfeitures, and penalties." The definition excludes "designated sales or use taxes; restricted user fees; grant funds; …or other revenue designated for a specific purpose." § 479.350(1). Based on this statute, the trial court concluded that the revenue the City held in its "general" and "police" accounts was "general operating revenue" that could be used to pay the Judgment Debt. A.App. A7; D458, p. 7. The Appellants have not challenged this conclusion.[13]

The Missouri Court of Appeals has previously held that where a relator seeks a writ of mandamus to compel a municipal government to pay a judgment debt, the *municipality*—not the relator—bears the burden of showing why money in its financial accounts is not available to be paid toward that debt. In *State ex rel. Gourley v. Kansas City*, 58 Mo. App. 124, 128 (Mo. App. 1894), the record showed that the relator had secured a judgment against the respondent city in the amount of $300. The city claimed it did not have any available funds to pay the judgment because

[13] Although not in the record, the alleged budget for Fiscal Year 2025 indicates that the City planned to apply both "general" and "police" funds toward paying the Judgment Debt. D467, p. 3.

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"the money in the treasury was needed to defray the ordinary and current expenses of the city." *Id.* at 128-29. The Court of Appeals stated that the payment of judgment debts is one of the very purposes for which municipalities are given the power of taxation and "as long as any money which has been apportioned to any fund remains in the treasury unappropriated, it is within the reach of the appropriating power of the mayor and common council for legitimate purposes." *Id.* at 129-30. Once the relator showed that there was money in the city's financial accounts, the burden shifted to the city to show why the money was not available for the purpose of paying the judgment debt. *Id.*

The respondent in *State ex rel. Gourley* argued that mandamus was not proper because an order requiring the city to pay the judgment would represent the judiciary's interference with the city's "management and control" of its finances, which included "the power to appropriate money and provide for the payment of the debts and expenses of the city." *Id.* at 130. The Court of Appeals explained the difference between the power of "apportionment" and the power of "appropriation." "Apportionment" is the act of directing public revenue into dedicated funds, where the revenue will remain unless or until it is either reapportioned into a different fund or "appropriated."[14] But the court held that, by itself, apportionment is not final—to the contrary, "it may be revised or altered by ordinance as often during the

[14] Varney notes that the act of "apportionment" as described in *State ex rel. Gourley* is more than simply estimating likely revenues and planning for how those revenues will be spent. It is accomplished through the passage of an *ordinance* that formally sorts public money into funds dedicated to specified purposes. *Id.* at 131.

fiscal year as the mayor and council shall deem necessary for the best interest of the city," including the occurrence of unforeseen situations. *Id.* at 130-31. "Appropriation," on the other hand, is the act through which public money is definitively set aside for a specified purpose, at which point the money is "beyond the reach of mayor and council." *Id.* at 130. The court noted that it was "absurd" to contend that apportionment and appropriation are convertible terms. *Id.* at 131.

Moving to the question of what a city must do to meet its burden of showing that public funds are not available to pay a judgment debt, the *State ex rel. Gourley* court suggested that if the city could show that *by ordinance* it had apportioned "all the money actually in the treasury at the time of the apportionment, as well as that which it is estimated will be raised for that fiscal year," such a showing would serve as *prima facie* evidence that "such money will be needed for the purposes for which it is apportioned, namely, the ordinary current expenses of the city." *Id.* Even though the city had a witness testify that the city's normal practice was to prepare an ordinance apportioning the city's funds at the beginning of each fiscal year, no such ordinance was introduced into evidence. *Id.* at 132. The court held that because the city had not proven the contents or scope of any ordinance that the mayor and council might have passed for the fiscal year in question, "the revenue of the city in legal contemplation was unapportioned and subject to appropriation for any ordinary current expense of the city," including the payment of the relator's judgment. *Id.* at 133. Because the city had not met its burden of proving that all of the public funds that might be used for the purpose of paying the relator's judgment had already been

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appropriated or otherwise apportioned for the purpose of meeting "the ordinary current expenses of the city," the circuit court's decision to issue a writ of mandamus would be affirmed. *Id*.

State ex rel. Gourley resembles the instant case. The record shows that when the trial court entered the Writ Judgment the City had tens of thousands of dollars in "general operating revenue," which could be used for the purpose of paying a judgment debt. A.App. A9, D458, p. 9. The record also shows that the City's normal practice was to pay its legal fees—including paying its attorneys in this case—from the "police" account rather than the "general" account. A.App. A19; T2, pp. 16:22-17:14, 21:8-21.

The Appellants did not offer proof that the City had passed an ordinance for Fiscal Year 2024 appropriating or otherwise apportioning the funds in the "general" or "police" accounts in such a way that the funds were beyond the reach of the City's officials.[15] Consequently, according to the *State ex rel. Gourley* analysis, the City did not bear its burden of proving that its general operating revenues were unavailable for the purpose of paying at least part of the Judgment Debt owed to Varney. Any funds in those accounts that the City had not already *appropriated* (as opposed to merely apportioned) were available to be applied to paying the Judgment Debt. The City provided no evidence that it had already passed an ordinance apportioning or

[15] Similar to the respondent in *State ex rel. Gourley*, the City had a witness testify as to the general process of preparing a budget, but that witness never stated that the city council had passed an ordinance establishing a budget for Fiscal Year 2024. The exhibit the City represented as its 2024 Budget bore no indication that it had ever been adopted *by ordinance*.

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appropriating the general operating revenue funds in their "general" and "police" accounts, thus the trial court did not err in ordering the City to pay part of those funds toward the Judgment Debt.

E. The trial court had the inherent authority to enforce its judgment by granting the relief in the Writ Judgment and the relief granted was consistent with the prayer for relief in Varney's Writ Petition. [Responding to the Appellants' Third and Fifth Points Relied On.]

Varney's Writ Petition asked the trial court for a writ of mandamus that would order the Appellants "to use funds currently held in the City's financial accounts to pay Varney the full amount the City owes under the judgment; or, in the alternative," to order the Appellants "to pay as much of the judgment a possible from the funds currently in the City's financial accounts and thereafter to take all steps necessary to extend a sufficient levy to provide any additional public funds required to satisfy the December 26, 2023 Judgment against it." D441, pp. 4-5. Varney specified in her suggestions in support of her Writ Petition that she was invoking the court's inherent authority to enforce its judgments and noted that a writ of mandamus was the only way for a judgment creditor to enforce a judgment against a political subdivision of the State. D442, pp. 1-2. In relevant part the Writ Judgment ordered the City (1) to pay to Varney "all funds currently in its financial accounts designated for 'general' and 'police' use," other than an amount sufficient to pay the salaries for the City's police force and its City Attorney, (2) thereafter to pay Varney "any amount received over and above the first $2,500 the City collects each month" from specified sources of general operating revenue, and (3) to take all steps necessary to have the

City's voters decide whether to accept a temporary tax increase for the purpose of paying the Judgment Debt. A.App. A12-A13; D458, pp. 12-13.

The Appellants' Fifth Point Relied On accuses the trial court of error "because relief cannot be granted on an unpled issue," and because "Varney did not plead for relief under Section 513.410." App. Br. § V(C), pp. 44-45. The essence of the argument in this Point Relied On is that courts may not grant relief that a party did not request in their pleading. However, in this case the relief the trial court granted in the Writ Judgment is completely in line with what Varney requested in the Writ Petition's prayer for relief. The trial court gave her the relief she requested, and the Appellants *concede* that the relief Varney requested (which, again, is the relief the trial court gave) was available "through the general application of mandamus." App. Br., p. 46; *see also State ex rel. Emerson v. City of Mound City*, 73 S.W.2d 1017, 1019 (Mo. banc 1934) (mandamus available to collect judgments against municipalities independent of statute and unhampered by statute's limitations). In other words, the Appellants' real complaint in their Fifth Point Relied On is not that there is a mismatch between the relief Varney requested and the relief the trial court provided, nor is it that the relief the trial court provided was unavailable based on the theory Varney identified in her pleading. The Appellants' real complaint is that even though the trial court *could have* granted that relief based on the theory Varney identified in her pleading, the Writ Judgment instead identified § 513.410 as its source of authority. This complaint is *not* supported by the citations in Section V(C) of the Appellants' Brief and, to the best of Varney's knowledge, it is not supported by Missouri law.

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Assessing the Appellants' Fifth Point Relied On is complicated by the fact that it never specifies what it means by "relief under Section 513.410." Given the Appellants' acknowledgement that the relief Varney requested was available "through the general application of mandamus" and that this was, in fact, the basis for Varney's Writ Petition, she assumes that "relief under Section 513.410" is pointing to aspects of the relief granted that are clearly inspired by the statute. To be sure, there are parts of the relief the trial court granted in the Writ Judgment that were not specified in the Writ Petition and are drawn directly from § 513.410. For example, it is not clear that, absent the statute, Missouri courts could order a municipality to increase their tax levy. But even if the Appellants wished to dispute that particular issue, it is now moot because the City voluntarily submitted a ballot measure to its voters. D465, p. 3, n.2. The only other clear influence of § 513.410 on the relief granted in the Writ Petition is the permission given the City to retain general operating revenue funds sufficient to pay the City's police and City Attorney, which is found in the final sentence of the statute. Varney does not believe the Appellants really want this Court to revoke the part of the Writ Judgment that ensures they will be able to pay those officials, and she is certainly not suggesting that the Court should do so, but these are the only parts of the relief the Writ Judgment granted that are distinctly inspired by the statute as opposed to the court's inherent authority to enforce its judgments.

Whatever the Appellants were intending to argue, their Fifth Point Relied On must fail because the relief Varney requested in her Writ Petition is substantially

what the trial court ordered in the Writ Judgment and, as the Appellants conceded, that relief was available "through the general application of mandamus." App. Br., p. 46. This Court must affirm a judgment if *any* ground exists that would support that judgment, "regardless of whether the trial court relied on that ground." *Curtis*, 548 S.W.3d at 918. Thus, even though the reasoning the trial court employed in the Writ Judgment relied heavily on § 513.410, the result the trial court reached was correct and the relief it awarded was well within the authority Varney called upon in her Writ Petition. The Court should therefore deny the Appellants' Fifth Point Relied On because it fails to identify any reversible error.

The Court should similarly deny the Appellants' Third Point Relied On, which contends that if a court is relying on the authority conferred under § 513.410, the statute limits the sources of municipal revenue the court may order applied to a judgment debt. App. Br., pp. 35-40. The Writ Judgment ordered the Appellants to apply the City's general operating revenue toward paying the Judgment Debt. The Appellants argue that this would have been improper if the trial court was relying on § 513.410 as the authority for its order. But because this Court is required to affirm the Writ Judgment if any ground exists that would support it, *Curtis* at 918, the operative question is whether the trial court had the inherent authority to order the Appellants to pay the Judgment Debt out of the City's general operating

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revenue—and as this brief explains, it certainly did.[16] As a result, the Court does not even need to address whether § 513.410 would constrain the options of a court where a relator *only* invoked that statute as the basis for its writ petition. The Writ Judgment's order to apply the City's revenue toward paying the Judgment Debt is a valid exercise of its inherent authority to enforce its judgments. *See State ex rel. Gourley* at 129 (applying mandamus to require municipality to pay judgment debt out of its unapportioned, unappropriated funds). The Court should deny the Appellants' Third Point Relied On because it can affirm the Writ Judgment on other grounds.

F. Missouri law allows courts to order municipalities to use unapportioned, unappropriated general operating revenue to pay judgments. [Responding to the Appellants' Sixth Point Relied On.]

In their Sixth Point Relied On the Appellants contended that Missouri courts may only order municipalities to pay judgments out of funds specifically set aside for that purpose or from "surplus" funds. The four cases cited do not support the Appellants' position, and two of the cases the Appellants cited actually support Varney's position in this matter. The other two are either distinguishable or inapplicable because they do not address the question of whether a court may order a city to pay a judgment debt out of general operating revenue where the city has

[16] Varney reemphasizes that the Appellants *did not* challenge the trial court's holding that under §§ 479.350 and 479.359 the City's "general" and "police" funds were general operating revenue that could be applied for the purpose of paying the Judgment Debt.

not produced evidence that it has already passed an ordinance apportioning or appropriating that revenue for other purposes.

State ex rel. Hopper v. Cottengim, 72 S.W. 498 (Mo. 1903), involved a relator's effort to have Wright County pay a judgment debt out of a fund that had been created to support the issuance of bonds for the purpose of building a courthouse. The relator argued that the fund was illegal and, thus, that the revenue in that fund was available for the purpose of paying his judgment debt. *Id.* at 499. The Missouri Supreme Court firmly rejected this contention, emphasizing that the relator's "only right was to have funds belonging to the general revenue fund of the county, not otherwise appropriated, applied to the payment of his judgment." *Id.* This conclusion is perfectly consistent with the Writ Judgment below, which ordered the Appellants to apply part of the City's general operating revenue—which the Appellants had not shown to be "otherwise appropriated"—to paying the Judgment Debt.

In *State ex rel. Emerson v. City of Mound City*, 73 S.W.2d 1017 (Mo. banc 1934), a trial court entered a writ of mandamus compelling a fourth-class city to levy taxes at a rate of "one hundred cents on the one hundred dollars of the assessed valuation of all of the property" in the city for the purpose of paying a judgment debt. *Id*. at 1017-18. The municipality argued on appeal that the order was invalid because it exceeded taxation limits established by the Missouri Constitution. *Id*. at 1018. The Missouri Supreme Court held that although courts could order cities to increase taxes for the purpose of paying judgment debts, they could only do so within constitutional limits. Although the court noted in dicta that "[o]btaining a judgment

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and collecting it are two different things," *id.* at 1019, nothing in the majority opinion suggested that a court lacked authority to order a municipality to pay a judgment debt out of *existing* general operating revenue or such revenue as might be collected in the future.

Gill v. Buchanan County, 142 S.W.2d 665 (Mo. 1940), was not a mandamus case, but rather a case in which an appellant municipality was contesting the constitutional validity of the underlying judgment. The plaintiff in *Gill* was a judge entitled to a certain salary under state law, but the defendant county had failed to pay him the proper amount. The judge sued and the trial court awarded him $3,000; the county appealed. *Id.* at 602. In relevant part, the county argued that it had completely exhausted "the income and revenue" provided for 1934, and that requiring it to pay a judgment "based on a claim arising out of transactions and matters occurring during the year 1934" would violate a provision of the state constitution that forbade municipalities from becoming "indebted in any manner or for any purpose to an amount exceeding *in any year* the income and revenue *provided for such year*[.]" *Id.* at 604; Mo. Const. 1875, Art. X, § 12 (emphasis added). The Missouri Supreme Court engaged in a detailed analysis of the county's financial situation as of 1934 in order to determine whether the judge's salary—and importantly, *not* the judgment ordering the county to pay that salary—comprised an unconstitutional indebtedness; it concluded that the salary did not violate the constitution. *Id.* at 604-05. The court also held that the county's "failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the

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Legislature, does not affect the county's obligation to pay them." *Id.* at 606. The *Gill* court then turned to the county's argument that the plaintiff public official should have been estopped from enforcing his claim because he "failed to demand payment during the year 1934 'before the income and revenue provided for that year had been fully expended, incumbered, or exhausted'" and because the judge himself was partially responsible for the county's situation. *Id.* The court then stated three reasons that a public official's failure to claim a balance due to them at a particular time was not a proper basis for estoppel, with the third reason noting that counties could only be compelled to make payments out of tax revenue when there is a surplus in any year after all necessary charges have been met[.]" *Id.* at 607. It was in this exceptionally limited context—whether public officials could be estopped from belatedly pursuing claims for payment of their salaries—that the court observed that "judgments for valid obligations cannot curtail future essential governmental activities."[17] *Id.*

The Appellants cited *State ex rel. Hufft v. Knight*, 121 S.W.2d 762 (Mo. App. 1938), for the proposition that "there are discretionary powers entrusted to directors of political subdivisions that a court may not 'interfere with' that include determining the levy necessary to provide funds for governmental operations." App. Br., p. 48. But the very paragraph the Appellants cited emphasizes that a municipality

[17] In this context, the "essential governmental activities" were those *mandated by statute*. They did not encompass any and all expenditures a municipality might wish to make rather than paying a judgment debt.

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> owes the duty to pay an obligation established by a judgment against it, and its officers are required to take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment. Its duty to do so results from the plain moral as well as the legal obligation of a municipality or district to pay its debts and no discretion within the legal limitation of the performance of the duty can rightfully be claimed or exercised. …The duty of a [municipality is] to discharge its obligations, if it can do so by a levy within the legal limits, sufficient to retire the obligations of the [municipality] and ***mandamus does not interfere with any discretionary powers entrusted to the directors***.

Id. at 764 (emphasis added). In short, *State ex rel. Hufft* stands for the proposition that where a municipality owes a judgment debt, it has a moral and legal duty to pay that debt, which is precisely why mandamus is a proper mechanism to require the municipality to "take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment." *Id.* When employed to this end, "mandamus does not interfere with any discretionary powers entrusted to" the municipality's officials. *Id.*

The Court should deny the Appellants' Sixth Point Relied On and affirm the Writ Judgment.

IV. The Appellants' First Point Relied On failed to preserve anything for review and also is incorrect on the merits. [Further responding to Appellants' First Point Relied On.]

A. The First Point Relied On improperly asks the Court to review an action the trial court did not take.

The Appellants' First Point Relied On is not a model of clarity. It appears to assert that the trial court erred because it infringed on "the City's power to budget taxpayer funds." App. Br., p. 24. If this is indeed the argument, the Point Relied On fails to preserve anything for review because it asks the Court to review an action

that the trial court did not take. *See Malin v. Cole Cnty. Pros. Atty.*, 631 S.W.3d 638, 644 (Mo. App. W.D. 2021) ("*Malin II*").

"The purpose of the points relied on is to give notice to the opposing party of the precise matters which must be contended with and to inform the court of the issues presented for review." *Id.* (cleaned up). *Malin II* arose in the context of a plaintiff's efforts to enforce a judgment the Court of Appeals had previously affirmed. *Id.* at 641. In response to a motion for civil contempt, the trial court entered a "Final Judgment and Order Denying Plaintiff's Motion for Civil Contempt" that stated it would "dispose of all claims and issues remaining in the case." *Id.* at 645. The plaintiff appealed, arguing in one of his Points Relied On that the defendant still had not satisfied the judgment and, thus, the trial court's entry of the "Final Judgment and Order Denying Plaintiff's Motion for Civil Contempt" had improperly terminated the litigation. *Id.* The Court of Appeals held that because the judgment only purported to deny the motion for civil contempt and did not state a conclusion that the *Malin I* judgment had been satisfied, the plaintiff had improperly attempted to challenge an action the trial court did not take. *Id.*

In the instant case, the Appellants' First Point Relied on contends that the trial court erred because it compelled the Appellants to "budget taxpayer funds," allegedly in violation of Article II, section 1, and Article VI, section 24 of the Missouri Constitution. App. Br., p. 24, 26. But the Appellants' First Point Relied On does not point to any part of the Writ Judgment that supports its assertion and, so far as Varney can discern, there is none.

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The Appellants never explain the "budgeting" power that the Missouri Constitution allegedly confers. Article VI, Section 24 merely states in relevant part that "all counties, cities, other legal subdivisions of the state, and public utilities owned and operated by such subdivisions shall have an annual budget[.]" R.App. A60. Nothing in the plain terms of this provision explains what it means to "have an annual budget," nor what consequences (if any) might follow if one of these specified governmental entities does not "have an annual budget." The Appellants' brief offered no analysis of this provision, nor did they indicate why requiring the City to fulfill its mandatory duty to pay the Judgment Debt might prevent the City from "having an annual budget." Having failed to explain any part of the Writ Judgment that prevents the City from "having an annual budget," the Appellants' First Point Relied On asks the Court to review an action the trial court did not take.

The Appellants similarly failed to identify any part of Article II, Section 1 of the Missouri Constitution that the Writ Judgment violates. This provision says in relevant part that "no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others[.]" R.App. A59. The heart of a Separation of Powers challenge is an assertion that a specific governmental power belongs to one branch of the government, but that a person or group of persons belonging to another branch of government has impermissibly attempted to exercise that power. The Appellants made no effort to establish which branch of government might be responsible for "having an annual budget," nor did they describe how either the

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legislative or executive branch is supposed to exercise the alleged "budgeting power." Having failed to illustrate either the contours of the specific power the Appellants are claiming has been usurped or the branch of government to which the alleged power properly belongs, the Appellants have not identified any part of the Writ Judgment that exercised a "budgeting power" properly belonging to another branch of government.

B. The First Point Relied On is also incorrect on the merits.

The Appellants' First Point Relied On also fails on the merits. The Writ Judgment (1) declares that the City "has an affirmative, present obligation to pay the Final Judgment debt," then it (2) orders the Appellants to appropriate certain funds from the City's general operating revenue and to apply them to paying off the Judgment Debt, and (3) restricts the City's authority to appropriate future general operating revenue "until such time as the City fully satisfies the Final Judgment debt[.]" A.App. A12-A13; D458, pp. 12-13. As explained at length in Section III.B. above, Missouri law firmly establishes that whatever authority municipal officials might have over the expenditure of public funds, a municipality still has a moral and legal obligation to pay its debts "and no discretion within the legal limitation of the performance of the duty can rightfully be claimed or exercised." *State ex rel. Hufft* at 764. The City's officers "are required to take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment." *Id.* Mandamus has long been understood to be the "proper remedy to enforce a judgment against a municipal or public corporation," *State ex rel. Hentschel* at 364, so the trial

court committed no error in issuing the Writ Judgment requiring the City to perform its mandatory, non-discretionary duty of using its general operating revenue to pay the Judgment Debt.

Further, Missouri courts have never construed Article II, section 1, to prevent the judiciary from issuing writs of mandamus that require legislative or executive entities to budget for and expend public funds. To the contrary, there is a long history of Missouri courts directing municipalities to expend public funds in a manner consistent with the courts' orders. *See, e.g., State v. St. Louis County*, 603 S.W.2d 545 (Mo. banc 1980) (mandamus issued to require county council to approve budget estimates and to appropriate funds in accordance with judiciary's requirements); *State ex rel. Mennemeyer v. Lincoln Cnty.*, 553 S.W.3d 368 (Mo. App. E.D. 2018) (mandamus issued ordering county to pay attorney a specific amount of money for services provided); *State ex rel. Hunter v. Lippold*, 142 S.W.3d 241, 245-46 (Mo. App. W.D. 2004) (affirming use of mandamus to compel county commission to appropriate a specific amount of money for the operation of a University of Missouri Outreach and Extension Center); *see also Allen v. Butler Cnty.*, 743 S.W.2d 527, 528 (Mo. App. S.D. 1987) ("Mandamus is an appropriate remedy to compel a county commission to budget expenses within the requirements of the law."). Indeed, Varney has not been able to locate a single case in which a Missouri court held that Article II, § 1 of the Missouri Constitution prevents courts from ordering municipal governments to expend public funds where, as here, a court has identified a legal obligation to do so.

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Because the Appellants' First Point Relied On improperly asks the Court to review an action the trial court did not take, and also because its arguments are incorrect on the merits, the Court should deny the Point Relied On and affirm the Writ Judgment.

V. In light of the Appellants' express position below that the City's financial accounts were "exempt from execution under Missouri Law," this Court must reject the Appellants' Fourth Point Relied On. [Responding to Appellants' Fourth Point Relied On.]

The Appellants argue in their Fourth Point Relied On that Varney was required to apply for execution against the City and the execution had to have been returned unsatisfied before the trial court had authority to issue a writ of mandamus. App. Br., pp. 41-43. After the City failed to provide a plan for paying the Judgment Debt, Varney took steps toward applying for execution against the City. Specifically, she submitted a post-judgment interrogatory that asked the City to provide information about its financial assets that might be subject to execution. In its response, the City expressly claimed that its financial accounts were "exempt from execution under Missouri law." A.App. A4; D458, p. 4. The City either believed that this statement was true—in which case it would have been futile for Varney to seek execution against the City—or it took this position solely to force Varney to expend additional resources litigating the issue—in which case the City should be equitably estopped from arguing that Varney was required to seek execution against the City.

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A. If the City's financial accounts were exempt from execution, it would have been futile for Varney to seek execution before filing her Writ Petition.

"[T]he law will not require the doing of a useless and futile act." *Guelker v. Director of Revenue*, 28 S.W.3d 488, 491 (Mo. App. E.D. 2000). The Missouri Supreme Court has applied this principle even in situations where a statute establishes a clear prerequisite. *Mo. Real Estate Appraisers Comm'n v. Funk*, 492 S.W.3d 586 (Mo. banc 2016), addressed a situation in which a statute authorized an award of attorney fees, but required the party requesting fees to do so "in the forum in which the party first prevailed." The party requesting fees in that case had first prevailed before the Administrative Hearing Commission, but he had represented himself at that stage and, thus, had not accrued any attorney fees. *Id*. at 594. The opposing party argued that the fee request should be denied for failure to comply with the statute's plain requirement. *Id*. The Supreme Court acknowledged that the statute was clear on its face, but also held that the party was excused from complying with the requirement because it would have been futile. *Id*. The Court of Appeals, Eastern District, similarly held in *Van Den Berk v. Mo. Comm'n on Human Rights*, 26 S.W.3d 406, 412 (Mo. App. E.D. 2000), that although those claiming unlawful discriminatory housing practices are usually required to make an offer to rent a property before they can sue over a defendant's refusal to rent that property, where the circumstances made clear that an offer to rent would be futile, the Court would not hold the plaintiff to that requirement.

Varney contends that because a traditional mandamus action to require a municipality to pay a judgment debt is rooted in the understanding that execution

will not issue against municipalities, it is not necessary for the judgment debtor to prove anything more than that the respondent municipality has not performed their mandatory duty to pay the debt. Even if a relator in such a case would ordinarily be required to show that execution had been returned unsatisfied, here the City had not offered any plans for satisfying the Judgment Debt voluntarily and it had also objected to producing its financial information specifically because the City contended that Missouri law would not allow Varney to pursue execution. It would have been futile for Varney to pursue execution because the City had already telegraphed that it would not cooperate in the enforcement of the Judgment Debt. Missouri law does not require parties to engage in such futile acts. Thus, even if a judgment creditor in Varney's position would ordinarily be required to attempt execution of a judgment before pursuing a writ of mandamus (a question this Court does not need to decide), the City had clearly indicated that it would be futile, thus relieving Varney of any such obligation.

B. Even if the City's financial accounts were not exempt from execution, the Apellants must be estopped from taking a contrary position here than they did below.

In the alternative, the City should be equitably estopped from insisting that Varney was required to attempt execution of her judgment against the City. Equitable estoppel requires the party asserting it to establish the following elements: (1) a statement inconsistent with the claims afterward asserted; (2) action by the other party on the faith of the statement; and (3) injury to the other party from allowing the first party to contradict or repudiate the statement. *Banks v. Kansas City Area Transp. Auth.*, 637 S.W.3d 431, 445 (Mo. App. W.D. 2021). As to

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the first element, the City objected to producing financial information Varney requested in post-judgment discovery, stating: "Property owned by a municipality is exempt from execution under Missouri law. *See, e.g., Union Reddi-Mix Co. v. Specialty Concrete Contractor*, 467 [sic] S.W.2d 160, 162 (Mo. App. 1972); § 513.455, RSMo." A.App. A22. As to the second element, Varney trusted that this statement accurately reflected the City's position and that if she attempted execution against the City it would not voluntarily cooperate in the satisfaction of the Final Judgment. Consequently, the only way she could hope to enforce her judgment against the City was to seek a writ of mandamus, which she did. As to the third element, if the Court now allows the Appellants to argue that Varney *could* have successfully pursued execution against the City, it is possible that she will have wasted almost a year's worth of time and litigation expenses related to the writ proceedings and this appeal, only to find herself back at square one in terms of attempting to enforce the judgment against the City. Under these circumstances, the Court should equitably estop the Appellants from contending that Varney was required to attempt execution against the City.

For the above reasons, the Court should deny the Appellants' Fourth Point Relied On and affirm the Writ Judgment.

CONCLUSION

Amicus Missouri Municipal League warns that requiring municipalities pay their debts would "set a dangerous precedent." MML Br., p. 8. But it would be *far* more dangerous for the Court to conclude that municipalities—particularly smaller

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ones—could blatantly violate their citizens' constitutional and statutory rights, then spend years and tens of thousands of dollars vigorously defending themselves in court against the citizens' lawsuits… and never have to pay any monetary judgment the citizens might obtain. In this case the City was put on notice as early as November 25, 2019, that its treatment of Varney violated her rights under the U.S. Constitution, the Missouri Constitution, and the Sunshine Law. D488, pp. 1-2. Nevertheless, it continued to ban Varney from City Hall until July 11, 2022, more than a year and a half after Varney initiated this lawsuit. R.App. A8; D496, p. 6. The City continued to commit new, purposeful violations of the Sunshine Law even as the case was being litigated. R.App. A8-A12, A19-A24; D496, pp. 6-10, 17-22. During four years' worth of litigation the City exercised its "discretion" to pay its own attorneys tens of thousands of dollars in an effort to justify actions that the trial court went out of its way to describe as "disturbing." A.App. A26; R.App. A49; D498, p. 24. But when Varney ultimately succeeded on almost all of her claims and the trial court ordered the City to pay the Judgment Debt, the City suddenly took the position that it had no money to spare.

If the Court accepts the Appellants' position, the result would be catastrophic for Missourians' civil rights. People who live in sparsely populated areas are unlikely to have the financial resources necessary to hire attorneys experienced with the Sunshine Law and constitutional litigation. Their only hope of successfully fighting against City Hall may depend on a public interest law firm such as the one that represented Varney in this matter agreeing to represent them *pro bono*. Allowing

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municipalities to pay their own attorneys to put up a vigorous, years-long legal defense, secure in the knowledge that courts will not compel them to pay a successful plaintiff's attorney fees, would create a perverse set of incentives on the part of the municipalities while creating a near-impossible situation for those who would otherwise be inclined to fight on behalf of the wronged citizens.

For all of the reasons explained above, this Court should either dismiss the appeal for failure to comply with Rule 84.04(d) or it should affirm the Writ Judgment and remand this case to the trial court so Varney can collect the Judgment Debt the City owes her.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the page limits of and the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 365 and contains 15,496 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure (less than the 27,900 word limit in the rules). The font is Century Schoolbook, double-spacing, 12-point type, which is larger than Times New Roman 13-point type.

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