

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

JACQUELINE GRAY, et al,
Plaintiff,

vs.

NO. 4:07-CV-881 ERW

CITY OF VALLEY PARK, MISSOURI,
et al,
Defendant.

PRESENT: The Honorable E. Richard Webber, Presiding
ATTORNEYS FOR PLAINTIFF: Fernando Bermudez, Daniel J. Hurtado
(appearing by telephone)
ATTORNEYS FOR DEFENDANT: Kris W. Kobach, Eric M. Martin

Status Conference
August 10, 2007

TERI HANOLD HOPWOOD
Registered Merit Reporter
Thomas F. Eagleton Courthouse
111 South Tenth Street
St. Louis, Missouri 63102

1 THE COURT: Jacqueline Gray and others versus the
2 City of Valley Park, Missouri, 4:07-CV-881 ERW. The matter
3 comes before the Court on a status conference request.

4 On June 14, 2007, plaintiff filed a motion to
5 consolidate plaintiff's motion for preliminary injunction with
6 the trial on the merits. The Court granted plaintiff's motion,
7 and further agreed that time was needed for limited discovery
8 prior to preliminary hearing and trial on the merits. The
9 plaintiff has suggested the hearing be set for October, 2007.
10 Defendant stated in its response that a trial date in August or
11 September would be appropriate. There was a timeline for
12 various deadlines, and I'll hear you whenever you're ready.
13 Plaintiff want to go first?

14 MR. BERMUDEZ: Thank you, Your Honor. Your Honor, I
15 think there is one thing that we can all agree on, and that is
16 that Ordinance 1721 is no longer an issue. That was the
17 ordinance dealing with the landlord, and both sides have signed
18 a stipulation of dismissal which should be, I think, pending in
19 the court right now.

20 The issue really then becomes Ordinance 1722, which is
21 the employer ordinance, and there were two kinds of competing
22 motions. One is a motion that we filed a few days ago, which
23 is a motion for declaratory judgment, which asks this Court to
24 decide basically which ordinance, which version of 1722 is in
25 effect, and whether 1722 is currently operational or not. We

1 don't believe it is, and that is the motion that's pending
2 before the Court.

3 Just last night, or maybe early this morning, very early
4 this morning, the defendants filed a motion for summary
5 judgment, and they make a number of arguments, but we think
6 that the first order of business should be our motion for
7 declaratory judgment, which identifies which ordinance we're
8 dealing with, which ordinance is at issue, and whether that
9 ordinance has any effect or not right now based on its
10 implementation language because the implementation language
11 says it's only in effect if the lawsuit -- if the injunction
12 that was issued in Reynolds I is dissolved, and that won't be
13 resolved until the Court of Appeals, or maybe the Missouri
14 Supreme Court afterwards, rules on the Reynolds I appeal. So
15 we think that this Court should address our motion for a
16 declaratory judgment, and based on the Court's ruling there,
17 we'll know where to go from there.

18 THE COURT: Okay, and is what you just said, does it
19 have to do with the pending state court action?

20 MR. BERMUDEZ: There is no pending state court
21 action. There was a pending state court action, but that was
22 dismissed by Judge Kranser I think Friday of last week, so
23 right now there is nothing pending in the state court other
24 than the appeal in Reynolds I, which is right now before the
25 Court of Appeals, but that has not yet been briefed, so we're

1 at the very kind of preliminary stages of the Reynolds I
2 appeal. This is the only other case that is in Missouri right
3 now.

4 THE COURT: Are you saying that -- first of all, I
5 understand you're asking me to rule on your declaratory
6 judgment action. I'll be hearing from defendants on their
7 motion for summary judgment, perhaps, but is it your view that
8 this -- that litigation here should not go forward until either
9 the Court of Appeals or the Supreme Court of Missouri rules on
10 what you call Reynolds I?

11 MR. BERMUDEZ: And the reason for that is because
12 the language that puts 1722 into effect requires a dissolution
13 of the injunction, and the injunction has never been dissolved,
14 and the injunction can only be dissolved by a ruling by the
15 Court of Appeals, or possibly by the Missouri Supreme Court,
16 and until something like that happens, 1722 is not in effect,
17 so there should be a stay on 1722 until the Court of Appeals or
18 the Missouri Supreme Court issues a final determination on the
19 merits of what we're calling Reynolds I.

20 THE COURT: Okay.

21 MR. KOBACH: Your Honor, Kris Kobach for the
22 defendant City of Valley Park. I apologize to the Court and to
23 plaintiffs opposite, but they are evidently not aware of
24 something that was discussed in our motion for summary judgment
25 early this morning, and I'm sure they probably have not had

1 time to read it, but there was a meeting of the City Council at
2 Valley Park -- of the Board of Aldermen last night on the
3 specific issue, and the language that plaintiffs refer to is
4 now gone.

5 The purpose of the meeting was to clarify any ambiguity
6 regarding the effective date of Ordinance 1722, and so what the
7 City Council did, what the Board of Aldermen did was pass
8 Ordinance 1736, which changes the effective date and should
9 remove any factual dispute or any confusion in this area, and
10 we agree that the effective date of the original version of
11 1722 could cause some ambiguity, and I'll explain why in a
12 minute, but that ambiguity is now gone.

13 The effective date of 1722 is now immediate upon
14 passage, so it became effective yesterday, and there's a
15 further provision in the effective date language that says no
16 enforcement shall occur until December 1, 2007, and that was
17 done to allow this Court adequate time to adjudicate any
18 matters before it, and hopefully to obviate the need for a
19 preliminary injunction because there would be no direct action
20 taken against any business entity in the City of Valley Park,
21 so it is effective in that the obligations imposed by the
22 ordinance upon business behavior and hiring are out there, but
23 there is no possibility of enforcement until December 1.

24 In so doing, the amendment last night, we drafted the
25 amendment in such a way as to eliminate another matter of

1 factual dispute, and hopefully streamline this procedure and
2 allow it to move forward.

3 As you may recall, Your Honor, plaintiffs alleged that
4 they had one version of Ordinance 1722, and defendants
5 presented a different version of the ordinance. There were
6 actually two copies that had been printed out for the Council
7 and the Mayor. The one that they presented was not the one
8 that the Council passed -- the Board passed, and so to obviate
9 the need for more fact finding on that question, we in the
10 amendment passed it in the form that -- the text of 1722 was
11 restated in the amendment, so there now is no dispute as to the
12 true and correct copy of the text of 1722, and that is before
13 you, with the certified seal of the City Clerk on it, so all
14 parties have the officially restated text of 1722 as of
15 yesterday.

16 THE COURT: All parties except plaintiffs.

17 MR. KOBACH: We gave them a copy as well.

18 MR. HURTADO: I'm sorry, Your Honor, but this is Dan
19 Hurtado on the phone for the plaintiffs. The copy of the
20 ordinance of 1736 that we received and is attached to the
21 filing is not signed, and there is no certification.

22 THE COURT: Wait a minute. I'll let you talk.

23 MR. KOBACH: I can answer Mr. Hurtado's question.
24 That was the one that was attached because we were putting it
25 together for the Court yesterday. The signed and certified

1 ones have been presented to counsel in chambers right now, and
2 have been presented to the Court, so there is a signature and
3 there is the certified seal of the City, so all parties now
4 have the official, most true and correct and verifiable version
5 of Ordinance 1722.

6 THE COURT: Let me ask you this. Because it seems
7 -- I realize there is -- apparently a lot of things happened
8 yesterday, but it seems only reasonable to me that surely
9 sometime between last night and this very moment all of this
10 could be made available to plaintiff's counsel. Plaintiff's
11 counsel came in here sort of flat footed and making arguments
12 apparently that may be mooted. Was there some effort made to
13 let plaintiffs know what was going on?

14 MR. KOBACH: The City didn't know until
15 approximately 7:00 last night whether there would be a quorum
16 available for the meeting. There was a quorum, and so I
17 suppose defense counsel could have called plaintiffs late last
18 night, and to the extent that we should have, we apologize for
19 that. We anticipated they would be flying in, as I did this
20 morning, hopefully check their e-mail in the morning and see
21 the actions taken last night, but the whole reason for doing so
22 is to clarify these two issues of factual dispute which
23 plaintiffs have raised.

24 They have raised the issue of when is the effective
25 date, which we concede the original effective date in Ordinance

1 1722 did give rise to some ambiguity, and the other matter
2 which we don't think was ambiguous was they're contesting the
3 actual text of the ordinance, and by restating it in this
4 amendment last night, we have eliminated that controversy and
5 allowed the Court to proceed in a streamlined fashion without
6 these issues being raised.

7 We believe that the City's action yesterday renders the
8 plaintiff's motion yesterday morning for a declaration that the
9 ordinance is inoperative completely moot. We now have the
10 immediate effective date, but with the proviso that enforcement
11 will not occur until December 1.

12 So with that in point, the posture -- I'd mention one
13 more thing about the posture of the appeal that was referred to
14 in state court, and I don't think there is really any direct
15 relevance of it now, but I would inform the Court of this. The
16 Reynolds I case, as the plaintiffs refer to it, the one that's
17 on appeal in state court, is an issue that was ordered by the
18 St. Louis County Court, and that order that was adjudicated by
19 the St. Louis County Court does not in any way concern
20 Ordinance 1722. It does not mention 1722.

21 The background to that is that the City had just
22 repealed an earlier version of the Ordinance 1715, and offered
23 to the plaintiffs and counsel, who are not the plaintiffs and
24 counsel in this case, an opportunity to amend their petition,
25 and have the Court adjudicate the amended version. They chose

1 not to, and they chose to go to the Judge and ask for a ruling
2 on the now repealed, and we thought moot, ordinance. The Judge
3 nevertheless agreed to rule on the repealed ordinance, and so
4 the appeal that's currently in the Missouri State Courts is an
5 appeal that focuses on the question of mootness and whether the
6 Judge properly ruled. It's not an appeal that focuses on the
7 substantive issues here, and I just would note four important
8 distinctions.

9 Nothing in the Judge's order in the state court refers
10 to 1722, as I mentioned, nor could it be construed to refer to
11 1722.

12 Secondly, there is no injunction that that Court issued
13 that extends to 1722. She specifically enjoined only prior
14 repealed, and we believe moot versions of the Ordinance 1708
15 and 1715.

16 Third, I would note that none of the substantive issues
17 that the Judge addressed in her order are substantive issues
18 that apply to 1722, and as I noted, fourthly, the appeal
19 centers on the mootness of the Trial Court's ruling, not about
20 any of the substantive issues before this Court, and the City,
21 as you can see, our actions have been designed to try to
22 clarify and simplify, so that this case can be resolved more
23 quickly and efficiently, and we understand that the plaintiffs
24 were caught flatfooted, and we apologize for that, but
25 hopefully they will find this advantageous and to their benefit

1 as well, so we can move forward and get to the substance of
2 this issue.

3 I just have -- would add one more suggestion. We
4 proposed -- we filed a motion for summary judgment because we
5 believed that if you look at the very few questions of any
6 factual dispute that remain, since we have removed the question
7 of what is the true text of Ordinance 1722, and we have removed
8 the factual question of whether it's in effect or not, they're
9 really quite narrow, and even if the facts are as -- where
10 there is any disagreement, the fact are as plaintiffs say they
11 are, we believe that even under those facts, their legal
12 arguments cannot withstand scrutiny because these are
13 essentially questions of law they have raised, and therefore,
14 we believe that it would be most appropriate to move forward
15 with the motion for summary judgment, and that motion was filed
16 today, August 10. The plaintiffs would have to respond by
17 August 30th, and the City would then have to reply by September
18 4th, and really that would conclude all of the substantive
19 briefing on the legal issues that really are the heart of this
20 case, and we would propose that the appropriate way to move
21 forward would be to have oral arguments on the motion for
22 summary judgment sometime in the second half of September,
23 Friday the 14th or Friday the 21st, whenever this Court
24 chooses, and if the Court agrees with defendants that under
25 even the facts plaintiff allege, no valid legal argument

1 remains, the Court could rule and dispose of it at this time,
2 or if the Court disagrees with defendants, the Court could deny
3 the motion for summary judgment, and it's in the Court's
4 discretion of whether to do so with the full decision or with a
5 very brief order and order further discovery to continue at
6 that point, but we feel that's the most streamlined and
7 efficient way of moving forward with this case.

8 THE COURT: Thank you. First of all, counsel, just
9 a moment, let me get my cheat sheet here. Mr. Hurtado was
10 speaking and I cut him off, and the reason for doing that, I
11 hope you understand, was not to be rude, but it's important for
12 someone reviewing the record to have all these arguments sort
13 of in order, and I was concerned that if you spoke up then,
14 whatever you intended to inject might get lost in the
15 transcript, so -- not that it wouldn't get covered, but that
16 someone might overlook it since it didn't appear in the right
17 order. Go ahead.

18 MR. HURTADO: I apologize for interrupting, and of
19 course I didn't know that a signed certified copy of the new
20 ordinance had been provided to counsel just a few minutes ago,
21 but we still -- we have an issue, we really do have an issue
22 still of which ordinance is in effect, if any, and we outlined
23 the history of this particular ordinance in our motion to
24 consolidate, and the fact that there are at least three, if not
25 four different versions of it that purport to have been signed

1 by the Mayor on the same day, but even here, apparently the
2 City Council was convened very hurriedly last night, and that
3 raised a question of whether that meeting enacting that
4 ordinance complies with the procedures and with the Open
5 Meetings Act, etcetera, so we think there is still an issue
6 over which, if any, employer ordinance is in place, and we
7 think it would be prudent to address that issue, even if it
8 requires limited discovery, before proceeding with the case.

9 Now in the event that the Court decides to go ahead with
10 the summary judgment motion, as you have noted, Your Honor, you
11 have already agreed that some discovery is in order before the
12 Judge -- before the Court issues a final ruling, and so we
13 think there still needs to be discovery regarding the ordinance
14 itself. We listed the issues in our prior motion to
15 consolidate, but some of them are what the status of the
16 federal verification databases are, the City of Valley Park's
17 capability of using that database, whether there was a
18 discriminatory motive in enacting these ordinances, and whether
19 there is a discriminatory effect, just to name a few, so if the
20 Court were inclined to go ahead with the summary judgment
21 motion now, we would in all likelihood file a Rule 56(f)
22 affidavit asking for discovery before we are required to
23 respond, which puts us right where we are with the order, with
24 the ruling that this Court issued with respect to discovery,
25 and then consolidating the hearings in the fall.

1 Once again, we believe the first order should be to
2 resolve which if any ordinance is in effect before moving ahead
3 and using up the Court's resources and the parties' resources.

4 MR. KOBACH: May I respond briefly?

5 THE COURT: Anything else?

6 MR. BERMUDEZ: Real briefly, to echo Mr. Hurtado's
7 point, there has to be an orderly way for the Court to
8 determine what is before it. We believe the orderly way to do
9 that is by proceeding with our motion for declaratory judgment.
10 If the City believes that no version of 1722 is in effect
11 because of what they did last night, then that should be their
12 response to our motion for declaratory judgment, and then we
13 would be allowed an opportunity to test that and see if we
14 agree or disagree, but there has to be an orderly way for this
15 Court to determine what is before it, and the only way to do
16 that is through our motion for declaratory judgment because
17 this Court can't assume, I don't think, can't assume that what
18 was done last night makes that ordinance -- puts that ordinance
19 at issue, and moots everything else, and in order for their
20 summary judgment motion to make any sense, you have to have
21 that assumption that what they did last night was proper. We
22 don't know that at this stage.

23 MR. KOBACH: Your Honor, with all due respect to the
24 plaintiffs, in my legal career, which I suppose you should
25 consider a mid-sized legal career, I've never seen so much

1 contention over whether a certified, signed, valid ordinance
2 that the City itself says is the law and is not holding out any
3 other version to be the law to anyone on this planet, so much
4 contention over whether it's really the ordinance or not.

5 Any discoverable facts are now in this courtroom. The
6 only thing that could be discovered would be the signed, sealed
7 statement of the clerk, which is on the cover letter to the
8 ordinance, the cover page, and the signature of the Mayor and
9 the ordinance text itself, so perhaps Mr. Hurtado, because he
10 hasn't had a chance to look at this isn't aware, the ordinance
11 -- there are different ways that an ordinance may be amended,
12 and one way is to simply say, "Section VII is hereby repealed
13 and replaced with the following language." Another way which
14 cities often use is to say, "Section VII is hereby repealed and
15 replaced with the following language so that the ordinance now
16 reads -- so that the new text of 1722 now reads," and that's
17 what the City did.

18 To clarify -- and there is no way of reading this -- no
19 way that I can imagine of reading the amending ordinance last
20 night as allowing any other ordinance to exist because the City
21 says, "The ordinance as previously amended by 1724 and 1732 is
22 effective immediately and reads as follows." I can't think of
23 a possible theory by which they could claim that the ordinance
24 is not really what it says it is on the signed, certified,
25 sealed copy that the Court has. I'm almost at a loss to think

1 of how we would have fact finding on such a strange question.

2 THE COURT: As I understand, Mr. Hurtado raised what
3 seemed to be a valid point, and that is whether there was
4 proper notice for the meeting, how it was presented and all
5 that, and it seems that there very well may be a factual
6 question.

7 MR. KOBACH: The City Council took great pains to
8 comply with all of the provisions of the Open Meetings Act that
9 apply to emergency meetings which are meetings which are held
10 with less than 24 hours notice. The newspapers which had any
11 arrangement with the City to be notified were contacted by the
12 City. The City -- the Board of Aldermen stated on the record
13 the basis for the emergency meeting and the reasons why less
14 than 24 hours notice was provided, so unless they are aware of
15 some provision of the Open Meetings Act that I've never seen,
16 I'm not quite sure how they are going to formulate that
17 argument, and they would be more than welcome to try to make an
18 argument, but I wish them luck.

19 THE COURT: Yeah, but it's been a long time since I
20 represented cities, but I do remember something about emergency
21 meetings, and it was called something else 30 years ago, but
22 only certain things could be taken up, and are you claiming
23 this is one of those? I don't know.

24 MR. KOBACH: Yeah. We believe it falls clearly
25 within the emergency meetings provisions of the Open Meetings

1 Act. The other point I'd like to answer that Mr. Hurtado
2 raised was his contention that extensive discovery is still
3 needed, and he basically said three areas, and I think we agree
4 that those are the three areas that the plaintiffs have
5 consistently said they would like discovery on, and if I could
6 explain why I believe we can proceed to a motion for summary
7 judgment in light of their -- in spite of their desire to have
8 more discovery, let me mention those three areas: He said
9 discriminatory motive of the City, discriminatory impact of the
10 City's ordinance, and thirdly, the City's use of federal data
11 bases.

12 With the regard to the first two, those two issues only,
13 as a legal matter, they only come into play in their Equal
14 Protection claim. In our motion for summary judgment, we state
15 why their Equal Protection claim is invalid even if they could
16 show the Mayor was the worst bigot in history, and even if they
17 could show the worst possible motives, which of course we
18 believe they cannot, their claim would still fail because they
19 do not have standing to raise the claim of a third party.
20 Their claim is based on discrimination suffered by employees,
21 not the employer, plaintiff. We also argue they don't have
22 state action.

23 If the Court would agree with either of our assertions
24 in our motion for summary judgment, those two areas of fact
25 would be irrelevant because they are irrelevant to the

1 remaining issues of fact.

2 The last remaining issue of fact is the use of federal
3 data bases, and we believe that could be -- that the preemption
4 challenge, which is what that goes to, could be resolved
5 without discovery, but if they insist, we can certainly enter
6 stipulations and agree to them with the other party and perhaps
7 by affidavit get some information, but again, that's a
8 relatively minor aspect of the larger preemption question.

9 THE COURT: Response?

10 MR. BERMUDEZ: Did you want a response from Dan or
11 from me?

12 THE COURT: I'm not necessarily calling for one. I
13 just want to give you a chance if you care to make a statement.

14 MR. HURTADO: I'd like to make a response, if that's
15 okay. With all due respect to Mr. Kobach, we're entitled not
16 to take his word for it that all of the Open Meetings Act and
17 other procedural requirements of enacting the ordinance were
18 complied with, and we certainly -- there is discovery we could
19 get in terms of the meeting minutes and perhaps even a
20 deposition or depositions if after something is actually
21 submitted by the City in response to our motion indicates that
22 that should be the case, so I think it's still an open question
23 of whether this 1736 is actually and properly enacted. That is
24 the question.

25 Then in terms of -- I guess we again, it's our position

1 that that issue needs to be resolved up front before we
2 continue to expend resources.

3 The other point is that the legal issues in this matter
4 have already been briefed in the preliminary injunction -- with
5 respect to our preliminary injunction motion, so, you know,
6 that can sit where it is. Whatever discovery we need can go
7 forward as the Court ruled in granting our motion to
8 consolidate, and then the Court can rule in an orderly fashion.

9 THE COURT: Okay.

10 MR. BERMUDEZ: I would like to add one small point,
11 and that is to remind the Court of the history of the
12 ordinance, and why the Court should look with maybe a little
13 bit of a suspicious eye on what was done last night. We
14 presented to the Court three, maybe four versions of the
15 previous ordinance that were enacted. They don't cross their
16 T's and dot their I's, so I think with that history, we are
17 entitled to some discovery to see whether what was done
18 yesterday was done properly or not.

19 THE COURT: All right. In terms of your reference
20 to some discovery, and brief discovery, and limited discovery,
21 what does that really mean?

22 MR. BERMUDEZ: In terms of time, Your Honor?

23 THE COURT: Yes, sir.

24 MR. BERMUDEZ: Well, it's kind of I think a
25 difficult question to answer right off the top because I think

1 what should come first should be the City's response to our
2 declaratory judgment motion, because at that point, they are
3 going to put forward all of the evidence that they have on why
4 our motion is moot and why it should be denied, and once we see
5 that, we can make a determination on what discovery would be
6 necessary, if any. Maybe we'll agree with them, maybe we
7 won't, I don't know, because we haven't seen that response, but
8 the case should progress in an orderly fashion, and the orderly
9 fashion would be, the next logical step is to require the
10 defendant to respond to our motion, and at that point, we would
11 have a much better idea.

12 THE COURT: But does your motion address a lot of
13 things that have now fallen away out of the case because of
14 what is claimed to be the recent action of the City?

15 MR. BERMUDEZ: We don't know that. If the recent
16 action of the City is indeed proper and the version that we
17 spoke about no longer exists, then yes, then everything has
18 flown out of the case, but if there are problems with the
19 enactment of the ordinance that they passed yesterday, then no,
20 then everything that we said is still valid because the old
21 version that we spoke about in our motion for declaratory
22 judgment is still in effect.

23 THE COURT: I don't see how I could make a ruling on
24 your motion without discovery because I don't know how you're
25 going to challenge the lawfulness of 1736. Let's assume that I

1 say okay, let's all go home and order defendant to respond
2 expeditiously to your motion, then you're still going to say we
3 still don't know if 1736 was validly enacted, so we're not
4 making any progress.

5 MR. BERMUDEZ: The best way maybe is to allow us,
6 and I'll defer to Dan, maybe 30 days to do discovery if we need
7 it, and if we don't need it, we will respond, or reply brief,
8 we will do that as soon as possible, but I think maybe 30 to 40
9 days would be enough time for any issue or effect that may
10 arise from their response. I'll ask the Court for maybe 30
11 days for discovery, and if we don't need it, we'll respond as
12 soon as possible.

13 THE COURT: Well, that sounds like quite a bit of
14 time, but let me hear from Mr. Kobach.

15 MR. KOBACH: Your Honor, in listening to this, I
16 can't help but wonder -- I hesitate to question what's going on
17 here, but it seems that in every one of the motions and every
18 statement that plaintiffs have been making, the end result that
19 they are seeking is to delay and keep pushing back further and
20 further the date of resolution of this matter.

21 He said, "We need to wait for the plaintiffs to
22 respond." I'll deliver our response orally right now. Our
23 response is, number one, the City, the plaintiffs' motion is
24 moot, and our one exhibit is the exhibit we have presented to
25 the Court this morning, which is a signed, certified, sealed

1 copy of the ordinance which was passed, and if the plaintiffs
2 continue to struggle to come up with some rationale as to why
3 this ordinance is not what it says it is, then we will -- I'll
4 indicate here that the Board of Aldermen will be advised to
5 consider passing the ordinance again at the regularly-scheduled
6 meeting on Monday, the 20th of August, if there is really any
7 question as to the veracity of this ordinance. I'm baffled by
8 their insistence on questioning.

9 And then the plaintiff's counsel said that there are --
10 the history of this ordinance indicates some sort of bad faith,
11 I can't remember what he said, but somehow there is something
12 amiss. Well, let me quickly run through the history. The
13 defendant City has been trying to streamline this in every
14 respect. The ordinance was passed on February 14. 1722
15 received a very minor amendment, which was almost simultaneous
16 on 1724. That First Amendment was done to defer to Judge
17 Wallace. The reason a deference was required is that the City
18 did not want to be seen to be somehow undermining her authority
19 by shifting the ordinances in place when there was an
20 injunction against the earlier ordinances, so the City said
21 this new ordinance will not go into effect until Judge
22 Wallace's decision is final, and everything is concluded in the
23 case, and then the City went to the plaintiffs and said, "Here
24 is the new ordinance. The language is different. If you wish
25 to amend your petition, fine." And the plaintiffs in that

1 case, which again are not the plaintiffs here, so they
2 shouldn't be confused, the plaintiffs in that and the attorneys
3 there said, "No, we want the Judge to rule on the repealed
4 ordinance, we don't want her to consider the new ordinance,"
5 and they expressly asked her to do that, and she agreed and did
6 not consider the new ordinance. That was the first amendment,
7 merely an attempt to defer to the Court.

8 The second was 1732, the second amendment was 1732, and
9 that was literally I believe maybe a one or two-word amendment
10 to correct a typo in Section IV, I believe it was, of the
11 ordinance, and then yesterday is the third amendment, and that
12 is simply to resolve this, we think, ethereal and kind of
13 strange question as to whether the ordinance is truly what it
14 purports to be, and so the City is trying in good faith to
15 clarify by having the Council restate, that the Board of
16 Aldermen restate exactly what the text of the ordinance is and
17 clarify the effective date, that it is immediate, but also
18 defer to this Court so we can avoid enforcement until the Court
19 has a chance to adjudicate, and I can tell you with all honesty
20 and sincerity we're trying to streamline this so the case can
21 be adjudicated and every response we hear seems to be, "We need
22 more time, we need more time, we're going to try to find an
23 Open Meetings Act violation."

24 I can say they are not going to find one. They are
25 entitled to look for one, although there is no Open Meetings

1 Act claim currently before this Court, and we will certainly,
2 if they persist, we'll go ahead and have the City reenact the
3 same words verbatim on Monday the 22nd in order to clarify that
4 we can actually resolve this case.

5 THE COURT: Here it is as I see it. This case is an
6 important case to both sides, I understand that. Having
7 previously been involved when it was here briefly once before,
8 I concluded at that time that this was an important case, and
9 is going to require a lot of effort on the part of this
10 chambers to try to make a decision that is either enforceable
11 or appealable, probably the latter, but in any respects, what
12 I'm concerned about is being able to proceed based upon what I
13 understand is a document that all parties agree is the
14 document.

15 What I don't want to do, to be honest with you, is spend
16 any of my time going through something only to find it's wasted
17 because I didn't have the right document or I didn't have -- I
18 wasn't proceeding on the right theory, and it has to be all
19 redone. I don't want to do that.

20 I do not want to delay this case. I understand
21 defendant's position, and agree with it, that there has been a
22 lot of briefing, and quite honestly, the reason for injecting
23 my first question when you started talking and it appeared that
24 plaintiff had no idea what was going on, it's my idea that a
25 whole lot of this stuff could be drastically streamlined if

1 there was good communication between counsel. It is sort of
2 the position as I see it that a lot of these problems that
3 we're talking about right now are the result of this quick
4 action, unbeknownst by the plaintiff, unprepared to address it,
5 and I can see why as a responsible, well-prepared advocate that
6 plaintiffs might not want to agree as to what is represented
7 until there is time to make that determination.

8 Here is what I -- first of all, I want to allow everyone
9 to say anything they want to say before I tell you what I'm
10 going to do. Anything else from plaintiff's side?

11 MR. BERMUDEZ: No from the me.

12 THE COURT: On the phone?

13 MR. HURTADO: I would add that I don't know where
14 Your Honor is going, but that if the defendant says that their
15 response to our motion is in fact their statements today, then
16 to the extent you would permit us some limited discovery on
17 that issue, we could make it a lot shorter than what was
18 suggested. We could try to get it completed by 14 days from
19 today, and at the end of that period file a reply.

20 THE COURT: Discovery on what issue?

21 MR. HURTADO: On the issue of whether the ordinance
22 that was purportedly enacted last night was properly enacted
23 under the law.

24 THE COURT: All right. Okay. When I say, "okay,"
25 I'm acknowledging your statement. I'll decide pretty soon.

1 Anything else from plaintiffs?

2 MR. KOBACH: Your Honor, if it is your inclination
3 to pursue discovery on this, I would ask one, two things. One,
4 that the discovery proceed and not delay. The plaintiffs have
5 20 days, and that's more than enough time. They just said that
6 they have already laid out the legal issues to respond to our
7 motion for summary judgment, and if they wish to merely use
8 their motion for preliminary injunction as their response on
9 the legal issues, that's certainly fine with us, and so I would
10 ask the discovery not delay the 20-day clock in any way,
11 because, frankly, I'm not sure why it would change their
12 analysis at all. The only words that have changed are the
13 effective date, and none of the content of the ordinance has
14 changed, so really it doesn't change much in their legal
15 analysis of the substantive issues.

16 I would ask that if any discovery occurs, it be truly
17 limited. I'm not sure what the plaintiff's intentions are, but
18 I think it would be absurd to have all eight members of the
19 Board of Aldermen questioned, and this is a simple matter of
20 did you meet, what did you decide on, and did you -- was the
21 meeting properly publicized within the constraints of the
22 emergency meetings clause of the Open Meetings Act. That's a
23 really narrow question, and I can't imagine why a lot of time
24 would be required to investigate that question.

25 THE COURT: I heard what Mr. Hurtado said, that he

1 would agree to 14 days for limited discovery. Am I correct
2 about that?

3 MR. HURTADO: That's right, Your Honor. I think
4 Mr. Kobach is referring to our time to respond to the summary
5 judgment motion, which is really a separate issue. It's a
6 42-page brief, Your Honor, that we received about two o'clock
7 last night, so in terms of how much time we would need or
8 whether we would to file a Rule 56(f) affidavit, we can't
9 assess that, but what I was talking about is with respect to
10 our motion for a declaration since the City's response to that
11 has already been tendered, if I could have 14 days for
12 discovery on that narrow issue.

13 THE COURT: I'm confused. On what narrow issue?

14 MR. HURTADO: Narrow issue of the ordinance and
15 whether it was properly enacted.

16 THE COURT: That's what I understood. 14 days will
17 be adequate, is that right?

18 MR. HURTADO: In terms of -- if all parties
19 cooperate, it will be.

20 MR. KOBACH: I just want to provide again for a
21 second time fair warning to both the Court and the party
22 opposite that if they do proceed in this manner, then we will
23 just go ahead and enact the same words verbatim at a regularly
24 scheduled meeting on Monday, the 20th.

25 THE COURT: All right. Well, 14 days will be

1 allowed for discovery on the limited issue of the efficacy of
2 1736.

3 Now, really hardly anything that I anticipated has been
4 accomplished in terms of what we were going to decide, but I'm
5 not sure we can decide anything else until that issue is
6 resolved.

7 It appears that the following will happen. Plaintiffs
8 will have 14 days to complete discovery on the issue of the
9 lawfulness of the passage of 1736.

10 Now tell me what it is the parties expect from me in
11 terms of allowing time for or ruling on the plaintiff's motion
12 for declaratory judgment and defendant's motion for summary
13 judgment? Are those to be held in abeyance and nothing happen
14 until after we decide this first issue?

15 MR. BERMUDEZ: I think that's right because the
16 efficacy of 1736 will dictate Your Honor's ruling on our motion
17 for declaratory judgment because if 1736 was properly enacted,
18 then our motion for declaratory judgment addresses an ordinance
19 that is no longer in effect, so I think the 14 days on the
20 discovery on 1736 will dictate what we do on the declaratory
21 judgment.

22 THE COURT: Okay. Mr. Hurtado was talking about a
23 responsive time to respond to defendant's motion for summary
24 judgment. Let me hear that again, did you say 20 days?

25 MR. HURTADO: I believe 20 days is the prescribed

1 time to respond to a dispositive motion, and unless the Judge
2 is willing to defer and continue the summary judgment motion,
3 which would be our preference --

4 THE COURT: To do what?

5 MR. HURTADO: It would be our preference that the
6 Court defer briefing on the summary judgment motion pending its
7 ruling with respect to our declaratory judgment motion.

8 THE COURT: Well, in the interest of proceeding
9 timely with this litigation, which has already been, and I'm
10 not being critical to anyone, has already been dragging a bit,
11 I'm not going to defer responses on either of the pending
12 motions. I'd like to get them before me as soon as possible so
13 we can get on to look at the merits of the case because I
14 understand that that's really the most important thing to the
15 citizens and to all parties involved.

16 MR. HURTADO: Then, Your Honor, I believe I'm
17 correct that the prescribed time under the local rules is 20
18 days.

19 THE COURT: You are correct.

20 MR. HURTADO: But until -- we may, Judge, file a
21 motion to extend the time after we have actually reviewed their
22 brief. We've just barely skimmed it, and we'll certainly make
23 every effort to be able to respond in the prescribed time, but
24 there is some chance we would ask your permission to take more
25 time after we have actually reviewed the filing.

1 THE COURT: All right. In saying, "all right," I'm
2 not going to indicate it would be granted, but I am also saying
3 I'm not going to arbitrarily deny it out of turn.

4 MR. KOBACH: Your Honor, we agree that your ruling
5 on plaintiff's motion for a declaration as to the effective --
6 declaration as to whether 1722 is effective certainly would
7 require waiting for their discovery to occur, if you believe
8 that there is an issue here.

9 THE COURT: You don't agree if it is lawfully
10 enacted then from what I understand of the motion, all or part
11 of it would be moot.

12 MR. KOBACH: That is our position. We don't
13 anticipate submitting a written answer unless we find that
14 there is more information that we need to submit, but I can't
15 imagine what that would be.

16 As far as the motion for summary judgment, assuming that
17 will proceed with their reply, or their response in 20 days,
18 which would be August 30th, perhaps we can try to calendar or
19 get a round about ball park idea of when we might actually have
20 a summary judgment oral argument, because again, potentially,
21 depending on how this Court rules, this case could be resolved
22 at that point, and if not, the Court can simply say we need to
23 proceed with the trial.

24 THE COURT: All right. Let's do this. I will tell
25 you this. I am interested, as I've already indicated, in

1 giving some preference in chambers to this case because what I
2 saw before, and the issues, as I understand, dictate the
3 soonest possible resolution. I will tell you, depending on the
4 response plaintiffs make to your motion, that I would hope that
5 in mid September we could schedule that oral argument that has
6 been requested on that motion, assuming that discovery goes
7 forward, and assuming that there is a timely response.

8 In any event, some of these times are a little bit -- I
9 don't want to say out of my control because I guess if I want
10 to be arbitrary enough, they are within my control, but that's
11 not my practice to punish anyone. I want to try to give both
12 sides a fair opportunity to get the matters before the Court,
13 so we all are arguing about the same issues, and until we can
14 do that, I think this case is going to drag and drag and drag.
15 So what I'm asking is that there be a maximum amount of
16 cooperative effort among counsel to get the issues, and I don't
17 care how many of them there are, that's my problem to deal
18 with, but to get issues you want me to resolve before me so
19 there is not something hanging out there that will keep this
20 case from getting the early resolution that it deserves.

21 MR. KOBACH: May I make one small request? If you
22 do, after reading the plaintiff's response to the motion for
23 summary judgment memo, if you do decide you want to schedule an
24 oral argument, and I'm just asking for what it's worth, because
25 I teach classes at UMKC School of Law, I have Mondays and

1 Fridays available, I will of course cancel and reschedule
2 classes, but any Monday or Friday is great with me.

3 THE COURT: There are certain things that a Judge
4 cannot do for attorneys, but to the extent there is anything I
5 can do to make your lives more comfortable, I promise you I'll
6 do it. That's not even a question. We will schedule hearings
7 on either side when they will be most convenient for counsel.
8 I assure you that's the case. Okay?

9 MR. HURTADO: Your Honor, may I ask one more
10 clarification? Are we deferring general discovery until after
11 there is a ruling on the summary judgment motion?

12 THE COURT: That's what I understand.

13 MR. HURTADO: Well, I think the plaintiff's
14 preference would be if we're going to go forward with the
15 summary judgment motion which addresses the merits of the case,
16 that discovery begin immediately as well, general discovery.

17 THE COURT: What kind of issues are -- because I
18 understood from what I heard somebody say that basically, I
19 would be allowed to proceed under the briefs that are already
20 before me, so from that I assumed that factual issues have
21 already been resolved. What kind of discovery when you say
22 general discovery are you anticipating?

23 MR. HURTADO: Well, as outlined, Your Honor, in our
24 motion to consolidate the trial date, but I don't have that in
25 front of me, but it's several issues that we talked about. Now

1 with respect to which ordinance is at issue, that is going to
2 be presumably addressed in the context of this limited
3 discovery in our motion for a declaration, but there is also
4 the other issues regarding the reliability of the federal
5 databases, the City's capability of implementing and using
6 those databases, the motivation behind the enactment of these
7 ordinances, as well as the discriminatory effect of the
8 ordinances, and certainly it will be our position that the
9 Court will need that discovery to make it full -- have a full
10 record before it, to issue a ruling.

11 MR. KOBACH: May I respond briefly? With regard to
12 the intent of the Board and the Mayor in the passage of the
13 ordinances, we agree that if the Court disagrees with
14 defendant's position on the Equal Protection Clause claim, then
15 yes, there would need to be discovery on there, but we believe
16 very strongly that the way their Equal Protection Clause claim
17 is formulated, even if they were correct in their wildest
18 dreams in all allegations, the claim would not move forward,
19 and that's why I believe it was appropriate to move for summary
20 judgment because that will short circuit the need for extensive
21 discovery, and to lots of people, and if the Court agrees with
22 how the Equal Protection claim is structured, and the lack of
23 state action, and the lack of standing, then it wouldn't be
24 necessary to do that, so I don't think it would make sense to
25 waste either party's resources in that issue of discovery until

1 after the Court can assess whether the Equal Protection Clause
2 claim is as flawed as defendants believe it is, and as far as
3 the only other point he mentions is the City's interaction with
4 federal databases, and that's actually a fairly narrow issue,
5 and I would hope that we can work together to resolve that with
6 stipulations that both parties agree to, perhaps some
7 affidavits, and there's lots of information that the Federal
8 Government provides about their databases and who can use them
9 and under what circumstances. That's a pretty narrow question.

10 THE COURT: All right. If we extend the discovery
11 period to 20 days to include the database issues, and provide
12 specifically by my words now that we will not get into intent
13 issues in that 20 days, will that allow plaintiffs what they
14 need to properly address the motion for summary judgment as it
15 is now before the Court?

16 MR. HURTADO: Well, unfortunately, Your Honor, I
17 haven't had an opportunity to analyze the motion, so I can't
18 definitively state what discovery we would need to address
19 their summary judgment motion, but thinking of the discovery of
20 what we need to resolve the issues in the case, if Mr. Kobach
21 is correct, if the Judge agrees with them on all of the legal
22 issues, then the case might be over, at least in the trial
23 court, but there is the possibility the Court will disagree,
24 and if we start our discovery in the case then from scratch
25 after that ruling denying summary judgment, that's obviously

1 going to delay the entire case for whatever time it takes to
2 brief and rule on the summary judgment motion. It's a question
3 of which course seems the more efficient, to start discovery
4 now in the event that the summary judgment is denied, or
5 partially denied, we can move quickly to trial, or whether
6 we'll wait, and if it turns out that the summary judgment
7 motion is denied, then we'll start discovery then, and get to
8 trial that much later.

9 THE COURT: Well, that's a good point. I haven't
10 seen the motion for summary judgment. I don't know what's
11 there. If it is simply an Equal Protection issue, and when I
12 say, "simply," I do not mean to indicate "simply" to mean
13 insignificant. If it is only an Equal Protection argument, and
14 if it's strictly a legal argument, and if the only other piece
15 of information that I may need is this matter concerning
16 database, then it would seem to me that defendant's position is
17 sound, that along with the legality of 1736 being the subject
18 of discovery in 20 days, and that the defendant really didn't
19 say that, and I'm adding on what defendant said, but if that
20 should occur, and if that then would allow me to decide the
21 motion for summary judgment one way or the other, it would seem
22 that that would eliminate the need for other general discovery
23 currently.

24 However, you are correct that if we proceed in that
25 fashion, and if I deny defendant's relief, then that will

1 substantially delay the case because of the need for general
2 discovery and a trial, setting the trial and so forth. So, I'm
3 going to do this. I'm going to stay with what I said earlier.
4 14 days, limited issue on only the legality of the passing of
5 Ordinance 1736, plaintiffs to respond to defendant's motion for
6 summary judgment. Then I want -- in fact, I'm not only
7 wanting, I'm strongly urging respective counsel to confer and
8 make recommendations to me no later than next Tuesday how you
9 want to proceed. If it can be agreed that you want more
10 discovery on general issues, fine. If you can't, then I will
11 look at it and probably extend the discovery a few days to get
12 the additional discovery that plaintiffs need on the database
13 issues. Then, we will have briefing completed and I'll rule
14 the motion for summary judgment, and do the general discovery
15 later.

16 However, after everyone leaves today and you start
17 thinking about how long that's going to take, maybe you want to
18 expedite general discovery, get everything before the Court,
19 and then rule the summary judgment, and then promptly go into
20 the trial.

21 So, those are some things I think that are of interest
22 on both sides of this case to manage it so that it works to
23 your mutual advantage, and if you conclude that by Tuesday you
24 just can't, just let me know what you have or have not decided
25 by noon on Tuesday, and then if any other orders are made or

1 needed, I'll make them.

2 MR. KOBACH: May I add one point? You mentioned
3 that perhaps in response to Mr. Hurtado, you mentioned that the
4 only issue, or you mentioned the issue being Equal Protection,
5 I wanted to clarify, essentially the plaintiffs have raised,
6 and there are still present on Ordinance 1722 more or less four
7 substantive claims, and Dan can correct me, they raise a
8 federal preemption claim, an equal protection claim, a
9 procedural due process claim, and an authorization under state
10 law claim, and our point is that the last two issues, the due
11 process claim, procedural due process and authorization under
12 state law, they don't make any factual allegations, nor do we
13 see how there really would be discovery issues since there
14 haven't been any adjudication or prosecution of anyone and
15 those don't require discovery.

16 The Equal Protection claim is the one that if you agree
17 with plaintiffs that their claim is not fatally flawed because
18 of lack of state action and lack of standing, then we agree
19 that would require some discovery on intent and motive, and
20 then the remaining issue, the preemption issue is one where,
21 again, it would only require a narrow bit about the federal
22 databases, so I don't think we would lose that much time if the
23 Court concluded that we were wrong on our Equal Protection
24 claim analysis, and that their claim does survive. We can
25 begin that portion as soon as you make that ruling, and maybe

1 in two weeks or so we would have it done.

2 THE COURT: All right, thank you all very much. I
3 know it's an important case, and I look forward to getting on
4 with it. I'm available any time. If it's more convenient to
5 take up these matters by telephone, I'm agreeable to that,
6 whatever works best for counsel. Thank you. This Court is in
7 recess.

8 (A recess was taken.)

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REPORTER'S CERTIFICATE

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I, TERI HANOLD HOPWOOD, RMR, Official Court Reporter for
the United States District Court for the Eastern District of
Missouri do hereby certify that the foregoing is a true and
correct transcript of the proceedings had in this cause as same
appears from my stenotype notes made personally during the
progress of said proceedings.

/S/ Teri Hanold Hopwood, RMR

TERI HANOLD HOPWOOD, RMR

Official Court Reporter