

**MISSOURI COURT OF APPEALS
EASTERN DISTRICT**

STATE OF MISSOURI, ex rel.)	
XXXX,)	
)	
Relator,)	
)	Cause No.
v.)	
)	
SHERIFF VERNON BETTS,)	
City of St. Louis, Missouri)	
Sheriff, and HONORABLE)	
MICHAEL STELZER, Presiding)	
Judge, 22nd Judicial Circuit,)	
)	
Respondents.		

PETITION FOR WRIT OF PROHIBITION

RelatorXXXX, hereinafter “Ms. XXXX”, by and through her counsel Lee R. Camp, pursuant to Mo. S. Ct. R. 97.01 et seq., for her Petition for Writ of Prohibition states as follows:

PRELIMINARY STATEMENT

On June 28, 2021, the Centers for Disease Control and Prevention (“CDC”) extended a federal eviction moratorium (“Moratorium”) for families facing eviction for non-payment of rent as a result of the COVID-19 global pandemic. Temporary Halt in Residential Evictions to Halt the Further Spread of COVID-19, 86 Fed. Reg. 34,010 (June 28, 2021) [hereinafter Halt in Residential Evictions]. Exhibit A. The Moratorium does not automatically protect families. Rather, a tenant wishing to avail themselves of the protections of the Moratorium must elect to be covered by its protections by providing a

signed Eviction Protection Declaration (“Declaration”) to their landlord attesting that they qualify. *Id.* at 34,011. Once a tenant provides this Declaration, they have fulfilled all of the obligations under the federal law and removal from their home via an eviction for nonpayment of rent is unlawful.

On June 30, despite being aware of the Moratorium and its lawful parameters, Respondents, upon information and belief, worked in concert with one another to promulgate additional hoops Ms. XXXX and others like her must jump through before they can truly be protected by the Moratorium’s protections. These policies, which usurp judicial power, are extrajudicial in nature and violate Missouri and federal law.

STATEMENT OF FACTS

Ms. XXXX’s Financial Hardship Due to COVID-19

1. Ms. XXXX fell behind on rental payments during the COVID-19 pandemic. Exhibit B – Affidavit ofXXXX.
2. On July 29, 2020, she was involved in a car accident and was hospitalized for two weeks as a result of injuries that left her unconscious and severely injured. *Id.*
3. During the hospitalization, she was fired from her job at UPS. *Id.*
4. Despite a diligent search for new employment, with the COVID-19 pandemic still persisting, she was not able to find work after healing from her injuries. *Id.*
5. Because she was not working, she fell behind on rent and was sued in a rent and possession (eviction) action. *Id.*
6. On December 4, 2020, a default judgment for eviction was issued against Ms. XXXX for nonpayment of rent. XXX - *Thadius Page v.XXXX. Id.*

7. Concerned that she and her six children would be displaced from their home while she was experiencing financial hardship, on June 14, 2021, Ms. XXXX sent her landlord a copy of a CDC Declaration. Exhibit C.
8. She sent a copy of the document by text message to her landlord who did not respond. Ms. XXXX retained a copy of that text message. Exhibit D.
9. On that same day, she completed an application for rental assistance with the State of Missouri for its State Assistance for Housing Relief (“SAFHR”) program administered by the Missouri Housing Development Commission. Exhibit B.
10. Despite providing the CDC Declaration and continuing to seek rental assistance, on June 17, Ms. XXXX’s landlord requested a writ of eviction against her. The writ for execution of the eviction was issued on the same day. Exhibit E.
11. On June 25, the landlord completed a portion of the SAFHR rental assistance application allowing Ms. XXXX to access federal funds. Although she submitted the completed application on the next business day, June 28, Ms. XXXX has not yet received financial assistance. Exhibit B.
12. On July 1, Ms. XXXX secured new employment as a forklift operator in Edwardsville, Illinois. She completed a background check for that new position. *Id.*
13. On July 1, she also received a final notice from the City of St. Louis Sheriff’s Department that she would be evicted from her home by the Sheriff on July 13. *Id.*
14. Ms. XXXX believed that she was covered by the federal Moratorium and does not understand why the Sheriff is now attempting to evict her. *Id.*

15. She is concerned that despite securing new employment and attempting to access the federal rental assistance program through SAFHR, she will not be able to remain in her home or relocate before July 13. *Id.*

Sheriff Betts and the 22nd Judicial Circuit's Actions in Violation of the CDC Moratorium

16. The City of St. Louis has continued evictions throughout the pendency of the federal Moratorium. Undoubtedly, some of these evictions occurred lawfully.

17. However, the Sheriff's Office has seemingly been unable to devise an adequate policy to differentiate evictions covered by the federal Moratorium and those that are not.

18. Instead, the Sheriff's Office recently took a stated position that the federal Moratorium carried "no weight" with their office. Exhibit F- Affidavit of Kennard Williams.

19. After becoming aware of this issue, counsel for Relator engaged in substantive discussions with City of St. Louis Sheriff Vernon Betts ("Sheriff Betts"), via counsel, in an attempt to arrive at an amicable solution to ensure that families were not being erroneously evicted in violation of the protections afforded by the federal Moratorium.

20. On June 30, after consultation with and, upon information and belief,¹ at the direction of judges in the 22nd Judicial Circuit Court, Sheriff Betts erected extrajudicial roadblocks interfering with Ms. XXXX's protections under the federal CDC Moratorium.
21. In a June 30 memorandum circulated by Sheriff Betts throughout his department, he instituted a policy that tenants, like Ms. XXXX, who claimed to be covered by the Moratorium, must return to the 22nd Judicial Court within three days of their scheduled execution and seek judicial relief to prove that they are in fact covered by the Moratorium. Exhibit G.
22. Additionally, Sheriff Betts noted that he would be giving tenants' landlords notice that the tenant claimed these protections and would allow the landlord three days to also appear in court. *Id.*
23. Notably, there was no similar notice to be given to a tenant. *See id.*
24. If neither party acts within three days, Sheriff Betts has directed the eviction be executed regardless of the Moratorium protections. *Id.*

¹Counsel for Relator, as an officer of Missouri's Courts, attests that he engaged in extensive dialogue with counsel for Sheriff Betts prior to the enactment of Sheriff Betts' Memorandum. Throughout the course of these discussions, Counsel became aware that Sheriff Betts was consulting with at least three different individuals in the 22nd Judicial Circuit, Hon. Judge Roither, Hon. Judge Higgins, and Hon. Judge Stelzer, before enacting the policies at issue here.

25. Sheriff Betts' role in adding additional judicial processes before a tenant is protected by the Moratorium is unlawful.
26. Under Missouri Law, Sheriff Betts does not have unfettered power to add additional judicial proceedings when he sees fit. *See* § 57.100.1 RSMo.
27. Further, the extrajudicial nature of his actions have violated the federal law underlying the Moratorium. *See* Temporary Halt in Evictions, 60 Fed. Reg. at 34,010.
28. To be clear, Ms. XXXX does not contest the underlying judgment issued against her.
29. She only challenges the subsequent actions of the Sheriff's Department, made after consultation with judges of the 22nd Judicial Circuit, requiring that she take additional steps to enjoy the protections of this federal law and compelling her to participate in judicial proceedings which are not authorized by Missouri law or the federal Moratorium.
30. Because the 22nd Judicial Circuit Court was involved with the implementation of the challenged policies, its jurisdiction over this proceeding should be disqualified.
31. With the impending threat of Ms. XXXX being compelled to participate in these unlawful proceedings in order to retain her federal housing protections under the Moratorium, she seeks a writ of prohibition from this Court to prohibit the actions directed by Sheriff Betts' Memorandum.

PARTIES

32. Relator, XXXX, is a current St. Louis City resident who qualifies as a person covered under the CDC's federal eviction moratorium.

33. Respondent, the Honorable Judge Stelzer, is named here in his capacity as the current Presiding Judge of the 22nd Judicial Circuit of Missouri, City of St. Louis.

34. Respondent, Sheriff Vernon Betts, is the elected sheriff for the City of St. Louis, Missouri.

RELIEF IN PROHIBITION SOUGHT BY RELATOR

35. Ms. XXXX seeks a preliminary order and subsequent writ of prohibition directing Respondent Sheriff Betts to halt any employment of additional judicial procedures against tenants who have properly complied with the requirements of the federal Moratorium.

36. Ms. XXXX seeks a preliminary order and subsequent writ of prohibition against Respondent Hon. Judge Stelzer, in his capacity as Presiding Judge of the 22nd Judicial Circuit Court, to restrain the Court from compelling participation in the post-eviction judicial processes that Sheriff Betts has enacted regarding the federal Moratorium.

37. Ms. XXXX also requests that this Court expedite the hearing on this writ and issue preliminary relief to prohibit the policies outlined in the Sheriff Betts' Memorandum from being enacted and/or shorten the time for Respondents to file suggestions in opposition to this petition.

REASONS WHY THE WRIT SHOULD ISSUE

Standard of Review

38. This Court has jurisdiction and authority to issue a preliminary order and permanent writ pursuant to Mo. Const. Art. V, § 4.1.
39. A writ of prohibition may lie where “(1) the court exceeded its personal or subject matter jurisdiction; (2) the court lacked the power to act as it did; or (3) ‘absolute irreparable harm may come to a litigant if some spirit of justifiable relief is not made available[,]’ or there is an issue of law that will likely escape review on appeal and cause considerable hardship or expense to the aggrieved party.” *State ex rel. Bugg v. Daniels*, 274 S.W.3d 502, 504 (Mo. Ct. App. W.D. 2008); quoting *State ex rel. Rosenberg v. Jarrett*, 233 S.W.3d 757, 760 (Mo. Ct. App. W.D. 2007).
40. While applicable to court orders, a writ of prohibition can also be used to prevent other administrative agencies and officials from usurping the power of the judiciary. *State ex. Rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 489 (Mo. App. 1961); *State ex. Rel. U.S. Fidelity & Guaranty Co. v. Harty*, 208 S.W. 835, 838 (Mo. 1919); *State ex rel. Mississippi Lime Co. v. Missouri Air Conservation Com'n*, 159 S.W.3d 376 (Mo. Ct. App. W.D. 2004).
41. § 530.010 RSMo states that, “[t]he remedy afforded by the writ of prohibition shall be granted to prevent usurpation of judicial power[.]”
42. “The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language.” *Lumetta v. Sheriff of St. Charles Cty.*, 413 S.W.3d 718, 720 (Mo. Ct. App. E.D. 2013).

43. The plain meaning of the relevant statute, § 530.010 RSMo, does not limit the use of writ of prohibition to prevent court actions. Accordingly, the plain meaning is concerned with the “usurpation of judicial power,” which applies to non-judicial officials acting in a judicial capacity, outside the authority of their position.

44. Lastly, this Court is the proper venue to seek a writ of prohibition because several judges of the 22nd Judicial Circuit Court and Sheriff Betts coordinated on the new policies and procedures enacted in the Sheriff’s Memorandum.

Respondents’ Actions Violate Missouri and Federal Law

45. Ms. XXXX seeks to prevent an abuse of judicial discretion and to prevent the exercise of extrajudicial power.

46. As sheriff of the City of St. Louis County, Respondent Betts is an officer of the county, but not a judicial officer.

47. The Sheriff’s duties, defined generally in § 57.100.1 RSMo., state “[e]very sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and instructions; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by circuit and associate circuit judges.”

48. Absent from these duties is the authority to create new judicial proceedings of his own volition.

49. In mandating additional judicial proceedings for tenants to access their rights under the federal Moratorium, Respondent Betts has taken actions of a judicial nature,

outside the scope of his defined role and authority as sheriff of the City of St. Louis County.

50. Therefore, the actions of Respondent Betts in issuing the Memorandum on June 30 represent a usurpation of judicial power.

51. Further, the Missouri Constitution divides the powers of government into three distinct departments: the legislative, executive, and judicial. *See* Mo. Const. Art. II, § 1.

52. No department “shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.” *Id.*

53. By coordinating with Sheriff Betts to promulgate these new policies—which were essentially legislated into the rent and possession statute, §§ 535 *et seq.* RSMo—Respondent Stelzer, in his capacity as presiding judge and on behalf of the Circuit Court, acted outside his role and authority by acting as a legislator.

54. Further, no party has the right to create additional obligations that a tenant must adhere to before enjoying the protections of the federal Moratorium.

55. The federal Moratorium’s protections are binding on Missouri’s Circuit Courts. *See KC Tenants v. Byrn*, 504 F.Supp. 3d 1026 (W.D. Mo. 2020).

56. Pursuant to the U.S. Constitution’s Supremacy Clause, “the Laws of the United States...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.” Art. VI, cl. 2.

57. This includes federal regulatory law that explicitly preempts state and local law, such as the federal Moratorium. *In re Estate of Bruce*, 260 S.W.3d 398, 400 (Mo. Ct. App. W.D. 2008) (quoting *Jensen v. Missouri Department of Health and Senior Services*, 186 S.W.3d 857, 860 (Mo. Ct. App. W.D. 2006)).

58. Because the federal Moratorium simply requires a tenant, like Ms. XXXX, to provide their landlord with a signed CDC Declaration form to enjoy the protections of the Moratorium, any additional obligations beyond this are barred by the Supremacy Clause and preemption laws of this state.

Ms. XXXX Has No Adequate Remedy at Law to Prevent Respondents from Enacting Additional Procedures in Violation of Their Authority under Missouri and Federal Law

59. Ms. XXXX faces physical eviction from her home as soon as July 13 and has no adequate remedy at law other than to seek an extraordinary writ to ensure she is not subject to judicial proceedings that violate federal and Missouri law.

60. Unless this Court restrains and prohibits the Respondents' unlawful judicial proceedings, Ms. XXXX will have no adequate remedy at law for the harm of having her constitutionally protected liberty interest in the protections of the Moratorium infringed upon. *See Ky. Dept. of Corrs. V. Thompson*, 490 U.S. 454, 463 (1989) (a statute or regulation may create a liberty interest).

61. The Moratorium does not require a tenant to present anything to the Sheriff, does not require a tenant re-appear in court prior to being evicted to prove in a judicial hearing that they are covered by the Moratorium, and does not give extrajudicial officers the power to require these additional steps.

62. As it stands today, on July 13, Ms. XXXX will be forced to navigate vague and confusing additional judicial procedures created by Sheriff Betts, a county elected official.

63. If forced to navigate such procedures, Ms. XXXX will have already been deprived of her federal protections under the Moratorium and Missouri law will have already been violated.

64. There is no adequate remedy for her at that point and the only remedy available is prospective relief from this Court against Respondents.

The Circumstances before this Court Are Extraordinary and Issuance of a Writ is Appropriate

65. A writ of prohibition provides preventative rather than corrective relief. *Missouri Pac. R. Co. v. Missouri Commission on Human Rights*, 606 S.W.2d 496 (Mo. App. 1980).

66. Ms. XXXX has completed every obligation required by federal law to be covered by the federal Moratorium's protections.

67. In absence of a writ of prohibition, Ms. XXXX faces the imminent threat of having her rights under federal law violated. Additionally, absent a writ of prohibition, Ms. XXXX will be forced to endure additional judicial proceedings, not required by law, at the hands of an extrajudicial officer

68. It is certainly an extraordinary situation when a non-judicial officer, apparently at the direction of the judiciary, creates additional judicial hearings that a party must

comply with if they want to continue to avail themselves of protections provided by federal law to which they were already entitled.

69. Justice demands a remedy for this extraordinary situation.

70. Ms. XXXX's Suggestions in Support are filed herewith and incorporated by reference.

WHEREFORE, Relator, XXXX, respectfully requests this Court:

(1) enter a preliminary order and subsequent Writ of Prohibition, or, in the alternative Writ of Mandamus:

(a) Ordering Respondent Betts to refrain from acting as a judicial or legislative officer by creating additional judicial procedures in violation of Missouri law and the federal eviction Moratorium;

(b) Ordering Respondent Betts to stop requiring any additional judicial procedures before physically executing the eviction of Relator who is covered by the CDC's federal eviction moratorium;

(c) Ordering Respondent Stelzer and the 22nd Judicial Circuit Court to refrain from directing Respondent Betts to enforce the writ of execution against Relator unless she avails herself of additional judicial procedures not required by Missouri or federal law;

(d) Expedite the hearing in these proceedings and issue a preliminary relief to stay the requirement that Relator participate in the above-outlined additional judicial procedures; and

(2) grant such other and further relief as the Court deems just and proper.

Date: July 6, 2021

Respectfully Submitted,

ARCHCITY DEFENDERS, INC.

/s/ Lee R. Camp

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CERTIFICATE OF SERVICE

A copy of the foregoing pleading was sent to Respondent, Hon. Judge Michael Stelzer, via email to counsel, Robert Issacson at robert.issacson@ago.mo.gov, and to Respondent, Sheriff Vernon Betts, via email to counsel, Joe Neill at neill5300@aol.com, on July 6, 2021.

/s/ Lee R. Camp