

**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 F. STELZER, Presiding)	
Judge, 22nd Judicial Circuit,)	
)	
Respondents.		

SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

Relator XXXX, hereinafter “Ms. XXXX”, a St. Louis, Missouri resident, petitions this Court pursuant to Rule 97 of the Missouri Rules of Civil Procedure to issue a writ of prohibition. A writ of prohibition is necessary in this matter to restrain Respondents from requiring Ms. XXXX to participate in extrajudicial proceedings to stop an eviction and to ensure that Respondents comply with her federal legal protections from eviction under the Centers for Disease Control and Prevention (“CDC”) Moratorium (“Moratorium”). In the alternative, Ms. XXXX petitions this Court to issue a writ of mandamus.

INTRODUCTION

In response to the public health danger of evictions during the COVID-19 pandemic, the CDC issued the nationwide moratorium on evictions for nonpayment of rent pursuant to its authority under Section 361 of the Public Health Service Act (42 U.S.C. § 264) and

its implementing regulations (42 C.F.R § 70.2). *See* Temporary Halt in Residential Evictions to Halt the Further Spread of COVID-19, 86 Fed. Reg. 34010 (June 28, 2021) [hereinafter Halt in Residential Evictions]. Despite several legal challenges across the country, the United States Supreme Court ruled last week that the Moratorium will remain in place through July 31, 2021. *See Alabama Association of Realtors v. Department of Health and Human Services*, 2021 WL 2667610 (2021) (J. Kavanaugh concurring).

The Moratorium’s primary focus is to protect covered tenants from being physically evicted from their homes during the pandemic. *See* HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 Frequently Asked Questions, p. 1, available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf>, last visited July 2, 2021. The Moratorium defines eviction as “any action by... [a] person with a legal right to pursue eviction or possession action to remove or cause the removal of a covered person from a residential property.” *Id.* at 34011. To be covered, a tenant must provide their landlord with an Eviction Protection Declaration (“Declaration”) signed under the penalty of perjury. *Halt in Residential Evictions*, 60 Fed. Reg. at 34011.

On December 4, 2020, Ms. XXXX’s landlord obtained a default eviction judgment against her. *Thadius Page v. XXXX*, XXXX (22nd Judicial Circuit Court of Missouri, XXX). Ms. XXXX is an individual covered by the Moratorium and opted-in to its protections by providing her landlord with a signed Declaration on June 14, 2021. Exhibit 3. Despite the protections afforded by the Moratorium, Ms. XXXX received notice from

the City of St. Louis Sheriff's Department that she will be physically evicted from her home on July 13, 2021.

On June 30, City of St. Louis Sheriff Vernon Betts ("Sheriff Betts") issued a new directive on executing writs of eviction that impacts Ms. XXXX's protections under the Moratorium. Sheriff Betts' Memorandum states:

The Centers for Disease Control and Prevention (CDC) has issued an Order to prevent evictions as to rent and possession cases only (not unlawful detainer cases) from occurring through July 31, 2021....

The eviction should proceed on a normal basis. Should the tenant indicate to the Sheriff at the time of the eviction that they have previously tendered this [CDC declaration] form and the tenant shows such form to the Sheriff, the Sheriff shall not go forward with the eviction. **At that time the Sheriff will inform the landlord of this fact and allow either party three (3) business days to seek relief in either Division 27 or 28 depending upon where the Judgment for Eviction was received.**

If neither party has sought relief from the court after three (3) business days, the execution will proceed in its normal course or fashion....

Sheriff Betts' June 30, 2021 Memorandum (portions omitted) (emphasis added).

Missouri's Rent and Possession statute, §§ 535 *et seq.* RSMo., outlines the steps a landlord and court must take to effectuate the eviction process. Sheriff Betts' Memorandum adds additional post-trial action and an extrajudicial hearing beyond what the statute allows in order for a tenant to avail themselves of the protections of the federal moratorium. The memo procedures are unclear about how notice will be communicated to the tenant that they need to appear in the 22nd Judicial Circuit in order to stop the eviction. The memo

also uses vague generalities to describe the relief a tenant like Ms. XXXX must seek when they arrive in court.

Sheriff Betts, a law enforcement officer, has as little right to create new judicial procedures as Ms. XXXX does herself, regardless of his status as an elected official. *See* §§ 57, *et seq.* RSMo. (statutes governing sheriffs in counties, townships, and political subdivisions of government). If Missouri’s lawmakers or the Missouri Supreme Court wish to add such additional guidance and procedural judicial hearings to an analysis of the Moratorium, they are empowered to do so. *Halt in Residential Evictions*, 60 Fed. Reg. at 34015. The CDC, as a federal administrative agency, is equally empowered to add such steps as the agency promulgating the law. However, neither state law nor federal regulation bestow similar powers to Sheriff Betts. For these reasons, Ms. XXXX—on behalf of herself and countless others affected by the new policies—requests a writ directing the Sheriff to abandon the unlawful extrajudicial procedures.

Upon information and belief, Sheriff Betts’ June 30 directive was made in consultation with the judges in the 22nd Judicial Circuit, including Presiding Judge Michael F. Stelzer. While presiding judges and trial courts do have the flexibility and authority to promulgate “rules governing the administration of judicial business” under Missouri Supreme Court Rule 50.01, those rules cannot be “inconsistent with the rules of this Court, the Constitution or statutory law in force.” The new eviction procedures are inconsistent with the separation of powers in the Missouri Constitution, with Missouri’s Rent and Possession eviction statutes, and with the federal CDC Moratorium. Thus, Ms. XXXX also seeks relief in prohibition against Judge Michael F. Stelzer, in his capacity as

Presiding Judge, to prevent the Circuit Court from employing the extrajudicial procedures and/or by compelling Sheriff Betts to institute such additional procedures.

STANDARD OF REVIEW

Under Article Five of the Missouri Constitution, appellate courts have authority to issue original remedial writs. Mo. Const. art. V, § 4.1. And, under § 530.010 RSMo., a “writ of prohibition shall be granted to prevent the usurpation of judicial power[.]” Writs of prohibition are appropriate “to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-judicial power.” *State ex. rel. Bugg v. Daniels*, 274 S.W.3d 502 (Mo. Ct. App. W.D. 2008). “The writ issues to restrain the commission of a future act and not to undo one that has already been committed.” *State ex rel. McDonnell Douglas Corp. v. Gaertner*, 601 S.W.2d 295, 296 (Mo. Ct. App. E.D. 1980) (citing *State ex rel. McCarter v. Craig*, 328 S.W.2d 589 (Mo. banc 1959)). Writs of prohibition are not limited to judicial actors and may be used to restrain actors like Sheriff Betts. *State ex rel. Mississippi Lime Co. v. Missouri Air Conservation Com'n*, 159 S.W.3d 376 (Mo. Ct. App. W.D. 2004).

ARGUMENT

Sheriff Betts’ actions, in instituting and requiring additional judicial procedures, go beyond the powers delegated to him under Missouri law. *See* § 57.100.1 RSMo. The abuse of power contradicts the fundamental separation of powers inherent in Missouri’s democracy as defined by the state Constitution. *See* Mo. Const. Art. II. § 1 (The Missouri Constitution divides the powers of government into three distinct departments, none of

which “shall exercise any power properly belonging to either of the other, except in the instances in this constitution expressly directed or permitted.”).

Second, the federal Moratorium language is supreme to any order of the Sheriff when a tenant, like Ms. XXXX, avails themselves of its protections. In order for a tenant to “opt-in” to the Moratorium’s protections, they only need to provide their landlord with a copy of a signed declaration under penalty of perjury stating that they are covered by the Moratorium. *Halt in Residential Evictions*, 60 Fed. Reg. at 34011. While these protections do not bar a landlord from moving forward with eviction proceedings, or even obtaining a judgment for eviction, they do protect a tenant from being forcibly removed from their home by a law enforcement officer. *KC Tenants v. Byrn*, 504 F.Supp. 3d 1026, 1028 (W.D. Mo. 2020).

Third, this Court is the appropriate court from which to seek a writ of prohibition. The writ is a proper remedy when a non-judicial officer seeks to usurp power from Missouri’s judiciary. § 530.010 RSMo. This Court is also proper because of the circuit court’s direct involvement in assisting Sheriff Betts in promulgating the new and unlawful policies challenged in Ms. XXXX’s Petition.

A. Sheriff Betts’ actions violate the Missouri Constitution and go beyond the bounds of his statutorily defined duties under Missouri law.

Sheriff Betts’ attempts to institute additional judicial policies of his own volition threaten to usurp the powers of the judiciary and the legislature as enumerated in the Missouri Constitution. Mo. Const. Art. II § 1 (“The powers of government shall be divided into three distinct departments—the legislative, executive, and judicial—each of which

shall be confided to a separate magistracy, and 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....”). A Missouri sheriff’s duties, generally, are to “quell and suppress assaults and batteries, riots, routs, affrays and instructions ... 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.” § 57.100.1 RSMo. Absent is the ability to promulgate new judicial hearings and to compel Missouri judges to participate in those hearings.

Instead, the statute makes clear that a sheriff’s duties are explicitly subservient to Missouri judges. Sheriff Betts may consult with the judges of the 22nd Judicial Circuit Court in the regular course of his work and, as alleged upon information and belief, he did consult with those judges. However, Sheriff Betts cannot create new procedures by which those same judges must act in the course of their own work in the state’s courts.

B. Sheriff Betts’ actions, made in conjunction with the 22nd Judicial Circuit, violate the Supremacy Clause of the U.S. Constitution and Missouri’s preemption laws.

The Moratorium’s federal protections are binding on Missouri courts, including the 22nd Judicial Circuit. To avail themselves of the Moratorium’s protections, a tenant must simply provide their landlord with a declaration stating they are a covered person for purposes of the Moratorium. *Halt in Residential Evictions*, 60 Fed. Reg. at 34011. The Moratorium does not require a tenant to present the Declaration to a Sheriff or anyone other than their landlord. *Id.* at 34015. The Moratorium certainly does not require a tenant to

reappear at the courthouse prior to their eviction to attest why they qualify as a covered individual, nor does it only give them three days to do so. *See Id.* It also does not empower a municipal official or a judicial officer, such as the Respondents here, to create those processes. *Id.*

The U.S. Constitution's Supremacy Clause states that "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. Even federal regulatory law, such as the Moratorium, is binding and applicable law in Missouri. Missouri courts have also held "[f]ederal law preempts state law in three situations: (1) express preemption, when a federal directive expressly declares that the federal law preempts state law, (2) implied field preemption, when 'the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' and (3) conflict preemption, when 'compliance with both federal and state regulations is a physical impossibility, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *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)).

The CDC's Moratorium explicitly states that it is intended to apply in all jurisdictions except "in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order[.]" *Halt in Residential Evictions*, 60 Fed. Reg. at

34,015. Because St. Louis City and Missouri do not have moratoria on residential evictions that provide the same or more protection than those in the federal Moratorium, the Moratorium's regulatory control applies to the 22nd Judicial Circuit Court.

While Ms. XXXX would certainly encourage Sheriff Betts to make an inquiry into the potential covered status of a tenant before he evicts them; he is subservient to federal law and cannot create an additional judicial process a tenant must follow if they want to enjoy the protections of the federal moratorium. Ms. XXXX should not be forced to jump through additional hoops after she has properly complied with all the requirements of the federal Moratorium. As such, this Court should prohibit Sheriff Betts from employing self-created extrajudicial processes against her and other similarly situated tenants.

C. This Court has legal authority to exercise its discretion in issuing a writ of prohibition against both Sheriff Betts and the 22nd Judicial Circuit Court.

This Court should issue a writ against Sheriff Betts regardless of the fact he is not a judicial officer. § 503.010 RSMo. The state statute explicitly states that, “[t]he remedy afforded by the writ of prohibition shall be granted to prevent usurpation of judicial power[.]” *Id.* It does not limit the prohibition solely to the actions of a judicial officer. Simple statutory construction is instructive here. “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). The plain and ordinary meaning of the relevant statute, § 530.010 RSMo, does not limit the use of writ of prohibition to prevent court actions. Because the meaning is concerned with the “usurpation of judicial power,” not who is

committing the usurpation, it should apply to non-judicial officials acting in a judicial capacity. Thus, Sheriff Betts' Memorandum, which creates and compels participation in additional judicial proceedings, demonstrates a non-judicial officer acting in a judicial capacity. Accordingly, a writ of prohibition against him for these actions is proper.

D. This Court has jurisdictional authority and should exercise its discretion in issuing a writ of prohibition against both Sheriff Betts and the 22nd Judicial Circuit Court.

Because the decision to implement the procedures outlined in Sheriff Betts' Memorandum was made, upon information and belief, in consultation and in concert with the judges of the 22nd Judicial Circuit, a writ should dually issue against the Circuit Court through the Presiding Judge, to prohibit the Court from requiring and/or allowing the Sheriff to institute policies that violate the laws described here. While "no original remedial writ shall be issued by an appellate court in any case wherein adequate relief can be afforded by an appeal or application for such writ to a lower court[,]" Mo. S. Ct. R. 84.22, no adequate remedy can be afforded by an application to a lower court in this case. The lower court here would be the 22nd Judicial Circuit Court, which is the same court that collaborated with Sheriff Betts to institute the additional steps to stop evictions covered by the Moratorium.

This is not to denigrate the capacity of the 22nd Judicial Circuit Court in resolving this dispute. Rather, because the Court worked in concert with Sheriff Betts to promulgate the challenged additional judicial processes, it should be disqualified as a forum or venue that could properly adjudicate a process it had a hand in making. For these reasons, this Court is not only proper in issuing a writ against a non-judicial actor, but is also the correct

court of jurisdiction for Ms. XXXX to seek a writ of prohibition against the 22nd Judicial Circuit's role in these unlawful practices as well.

E. Because Ms. XXXX has no adequate remedy at law other than to seek this extraordinary writ, a writ of prohibition should issue to address these exceptional circumstances.

Ms. XXXX faces physical eviction from her home on July 13, 2021 and has no adequate remedy at law other than to seek an extraordinary writ to prevent her from participating in extrajudicial procedures that violate federal and Missouri law. A statute or regulation may create a liberty interest where it contains “explicitly mandatory language, i.e., specific directives to the decision maker that if the regulations’ substantive predicates are present, a particular outcome must follow.” *Ky. Dept. of Corrs. V. Thompson*, 490 U.S. 454, 463 (1989) (internal quotation marks omitted). The CDC Moratorium recognizes the importance of maintaining tenants’ interests in their leaseholds and places substantive limitations on the exercise of state and local courts’ official discretion related to eviction actions for nonpayment of rent, using explicit, mandatory language in connection with the directive to protect against the removal of tenants from their homes. By its own language, the Moratorium has created a liberty interest for anyone who avails themselves of its protections.

In light of this directive, the Moratorium clearly states that a tenant must simply provide their landlord with a Declaration stating they are a covered person to receive the Moratorium’s protections. *Halt in Residential Evictions*, 60 Fed. Reg. at 34,011. The Moratorium facially does not require a tenant to present a declaration to a Sheriff or anyone other than who they rent from, it certainly does not require a tenant to reappear in court

prior to their eviction to attest why they qualify as a covered individual within any particular amount of time, and it does not empower a law enforcement or judicial officer, such as Respondents here, to create such processes. Ms. XXXX has a constitutional right to the protections of the federal Moratorium and Respondents, in concert, will infringe upon that right if she is forced to navigate these additional judicial proceedings.

Under the vague procedures outlined in Sheriff Betts' Memorandum, it is unclear what relief she even needs to seek from a division of the 22nd Judicial Circuit Court in order to ensure she remains protected by the federal Moratorium. This implicates due process concerns as Sheriff Betts' order does not ensure tenants will be afforded adequate notice as to the date of their appearance before the court, nor does it provide any guidance as to what tenants must prove while there. Sheriff Betts' procedures fail to provide Ms. XXXX and those similarly situated with adequate notice and opportunity to be heard during this post-hoc review of their protected status under the Declaration. Surely an elected law enforcement official legislating his own post-judicial processes into Missouri's existing eviction procedures under 535 *et seq.* RSMo, while simultaneously violating federal law, presents such an extraordinary circumstance where this Court's intervention is necessary.

CONCLUSION

By creating additional judicial policies outside of his statutorily authorized duties and in violation of the Missouri and U.S. Constitutions, Sheriff Betts has created an extraordinary situation mandating this Court's intervention. Compounding matters, upon information and belief, Sheriff Betts appears to have done this in conjunction with the judges of the 22nd Judicial Circuit Court. Ms. XXXX respectfully requests that this Court

issue a writ prohibiting Respondents Sheriff Vernon Betts and the judges of the 22nd Judicial Circuit Court through Presiding Judge Michael F. Stelzer from requiring her to participate in extrajudicial hearings prohibited by the protections afforded to her by the CDC Moratorium in order to avoid a physical eviction.

Date: July 6, 2021

Respectfully Submitted,

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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