

**IN THE TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS
STATE OF MISSOURI**

**HON. YOLONDA FOUNTAIN
HENDERSON, MAYOR, CITY OF
JENNINGS, IN HER OFFICIAL AND
INDIVIDUAL CAPACITY,
Petitioner**

Cause No.

Division No.

vs.

**MAYOR, CITY OF JENNINGS, IN
HER OFFICIAL CAPACITY,**

**CITY COUNCILMEMBERS,
A/K/A CITY COUNCIL, CITY OF
JENNINGS, JOINTLY AND
SEVERALLYLY, IN THEIR
OFFICIAL CAPACITY,**

**CITY CLERK, CITY OF JENNINGS,
IN HER OFFICIAL AND
INDIVIDUAL CAPACITY,**

**CITY ATTORNEY, CITY OF
JENNINGS, IN HER OFFICIAL AND
INDIVIDUAL CAPACITY,**

**CITY COLLECTOR, CITY OF
JENNINGS, IN HER OFFICIAL AND
INDIVIDUDAL CAPACITY,**

**DIRECTOR OF HOUSING AND
ECONOMIC DEVELOPMENT,
CITY OF JENNINGS, IN HER
OFFICIAL AND INDIVIDUAL
CAPACITY,**

**DIRECTOR OF STREETS, CITY OF
JENNINGS, IN HIS OFFICIAL AND
INDIVIDUAL CAPACITY,**

**DIRECTOR OF PARKS, CITY OF
JENNINGS, IN HER OFFICIAL AND
INDIVIDUAL CAPACITY,**

**SPECIAL SERVICES
COORDINATOR, CITY OF
JENNINGS, IN HER OFFICIAL AND
INDIVIDUAL CAPACITY,**

**PUBLIC HEALTH OFFICER, CITY
OF JENNINGS, IN HER OFFICIAL
AND INDIVIDUAL CAPACITY,**

**DIRECTOR OF PUBLIC SAFETY,
CITY OF JENNINGS, IN HIS
OFFICIAL AND INDIVIDUAL
CAPACITY,**

**JUDGE OF THE MUNICIPAL
COURT, CITY OF JENNINGS, IN
HIS OFFICIAL AND INDIVIDUAL
CAPACITY,**

**MEMBERS,
YOUTH COMMISSION
JOINTLY AND SEVERALLY, CITY
OF JENNINGS, IN THEIR
OFFICIAL CAPACITY**

**MEMBERS,
SENIOR CITIZEN'S COMMISSION,
JOINTLY AND SEVERALLY, CITY
OF JENNINGS, IN THEIR
OFFICIAL CAPACITY**

**MEMBERS,
LANDMARKS COMMISSION
JOINTLY AND SEVERALLY, CITY
OF JENNINGS, IN THEIR
OFFICIAL CAPACITY**

**MEMBERS,
HUMAN RIGHTS COMMISSION
JOINTLY AND SEVERALLY, CITY
OF JENNINGS, IN THEIR
OFFICIAL CAPACITY**

**MEMBERS,
BOARD OF TRUSTEES OF THE
POLICE AND FIREMEN'S
RETIREMENT FUND
JOINTLY AND SEVERALLY, CITY
OF JENNINGS, IN THEIR
OFFICIAL CAPACITY**

**Summons to be delivered to
Petitioner's Counsel Under Rule
54.01(b)(2)**

**PETITION FOR DECLARATORY JUDGMENT
AS TO LEGALITY OR CONSTITUTIONALITY OF ORDINANCES
PROVIDING FOR FIXED TERMS OF APPOINTMENTS TO OFFICE OR
EMPLOYMENT OF OFFICERS AND CLERICAL AND PROFESSIONAL
PERSONNEL AND
AS TO LEGALITY OR CONSTITUTIONALITY OF APPOINTMENT OF
OFFICERS, CLERICAL AND PROFESSIONAL PERSONNEL OF THE
CITY OF JENNINGS**

Comes now the Petitioner and states:

1. Petitioner the Honorable Yolonda Fountain Henderson is a taxpayer, resident, voter and the Mayor of the City of Jennings, Missouri, and is bringing

this action both in her individual capacity as a voter, taxpayer and resident of Jennings and in her official capacity as Mayor of Jennings to address grievances and impediments she has as to her power to appoint and remove officers, clerical and professional personnel and members of boards and commissions of the city of Jennings, Missouri, under the constitution of Missouri and Chapter 77, RSMo.

2. Under Rule 52.13(d), when a public officer is sued in an official capacity, the officer may be described as a party by official title rather than by name, and therefore the Petitioners are so describing the defendants herein by official title rather than by name, but are also identifying the names of incumbent defendants where said names are known.

3. The Defendants, Mayor Yolonda Fountain Henderson and City Councilmembers Miranda Jones, Francine Duggar, Yolonda Forston, David Schmerber, Nicole Cook, Rodney Epps and Carol Epps, and one vacancy, of the City of Jennings, are being named by title and are being sued jointly and severally in their official capacities as the Mayor, City Councilmembers and City Council, respectively, of the city of Jennings, Missouri, to the extent that the city council of the city of Jennings, with the approval of the mayor or over the veto of the mayor of the city of Jennings, adopted or enacted or may have adopted or enacted the Municipal Code, Ordinances, Motions and Resolutions and made the appointments, set forth herein below, and at issue herein.

4. Art. VI, § 10 of the Missouri Constitution provides:

Terms of city and county offices.

Section 10. The **terms of city** or county **offices** shall not exceed four years.
(emphasis mine)

Source: Const. of 1875, Art. IX, § 14.

5. Article VII, § 12 of the Missouri Constitution provides:

Tenure of office.

Section 12. Except as provided in this constitution, and subject to the right of resignation, all **officers shall hold office for the term thereof**, and until their successors are duly elected or appointed and qualified. (Emphasis mine)

Source: Const. of 1875, Art. XIV, § 5.

6. Article VII, § 13 of the Missouri Constitution provides:

Limitation on increase of compensation and extension of terms of office.

Section 13. The compensation of state, county and municipal officers shall not be increased during the term of office; **nor shall the term of any officer be extended.**

Source: Const. of 1875, Art. XIV, § 8

7. Article III, § 40 of the Missouri Constitution provides:

Limitations on passage of local and special laws.

Section 40. The general assembly **shall not pass any local or special law:**

(21) **creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts;**

(30) where a general law can be made applicable, and whether a general law could have been made applicable **is a judicial question** to be judicially determined without regard to any legislative assertion on that subject.

Source: Const. of 1875, Art. IV, § 53.

8. The city of Jennings, Missouri is a mayor-council third class city organized and governed under Chapter 77, RSMo, as authorized under the constitution of the state of Missouri.

9. The following state statutes are relevant to the court's adjudication of this Petition for Declaratory Judgment (emphasis mine):

Ordinances to conform to state law.

71.010. Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, **shall confine and restrict** its jurisdiction and the passage **of its ordinances to and in conformity with the state law upon the same subject.**

(RSMo 1939 § 7442)

May appoint what officers.

77.330. **The mayor, with the consent and approval of a majority of the members elected to the city council, shall have power to appoint a street commissioner and such other officers as he may be authorized by ordinance to appoint.**

(RSMo 1939 § 6879)

May remove officer with consent of council.

77.340. The mayor may, with the consent of a majority of all the members elected to the city council, remove from office, for cause shown, any elective officer of the city, such officer being first given opportunity, together with his witnesses, to be heard before the council, sitting as a court

of impeachment. Any elective officer may, in like manner, for cause shown, be removed from office by a two-thirds vote of all the members elected to the city council, independently of the mayor's approval or recommendation. **The mayor may, with the consent of a majority of all the members elected to the council, remove from office any appointive officer of the city at will; and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the council, independently of the mayor's approval or recommendation.** The council may pass ordinances regulating the manner of impeachment and removals.

(RSMo 1939 § 6875)

Elective officers--option to appoint certain officers--terms.

77.370. 1. Except as hereinafter provided, the following **officers** shall be **elected** by the voters of the city: **mayor, police judge, attorney, assessor, collector, treasurer** and, except in cities which adopt the merit system police department, a **marshal**.

2. Notwithstanding the provisions of subsection 1 of this section, in cities which contract with another entity for police service, the city council may eliminate the office of marshal.

3. The attorney shall be a person licensed to practice law in Missouri, and the **council, by ordinance, may provide for the appointment of an attorney**, by the mayor with the approval of the council, in lieu of electing an attorney. **If so appointed he shall serve at the pleasure of the mayor and council.**

4. Whenever a city contracts for the assessment of property or the collection of taxes with either a public or private entity as authorized by section 70.220, the city council may by ordinance provide that at the expiration of the term of the then city assessor or collector, as the case may be, the office is abolished and thereafter no election shall be had to fill the office; except that in the event the contract expires and, for any reason, is not renewed, the council may by ordinance provide for the election of such officer at the next and succeeding regular elections for municipal officers.

5. The term of office for each of the officers is two years except the office of mayor and the marshal which are four-year terms. **All officers hold office until their successors are duly elected or appointed and qualified.**

6. The council, by ordinance, may provide that any officer of the city except the mayor and the councilmen shall be appointed instead of elected. Such ordinance shall set the manner of appointment, in accordance with section 77.330, and the **term of office for each appointive officer, which term shall not exceed four years.**

(RSMo 1939 § 6869, A.L. 1955 p. 290, A.L. 1957 p. 240, A.L. 1959 H.B. 166, A.L. 1978 H.B. 971, H.B. 1634, A.L. 1985 H.B. 817, A.L. 1989 H.B. 785, A.L. 2001 H.B. 491)

Term officer construed.

77.400. The term "officer", whenever used in this chapter, shall include any person holding any situation under the city government or any of its departments, with an annual salary, or for a definite term of office, **other than clerical or professional staff.**

(RSMo 1939 § 6891, A.L. 1990 H.B. 986)

Duties may be regulated by ordinance--bonds required.

77.480. The duties, powers and privileges of officers of every character in any way connected with the city government, not herein defined, shall be prescribed by ordinance; and bonds may be required of any such officers for faithfulness in office.

(RSMo 1939 § 6897)

10. Petitioner, Yolonda Fountain Henderson, was elected to a four year term of office as Mayor of the city of Jennings on April 7, 2015 and was sworn into office on April 27, 2015.

11. § 77.250 provides:

Mayor to be president of council--vote.

77.250. **The mayor** shall be president of the council and shall preside over same, but shall not vote except in case of a tie in said council, when he shall cast the deciding vote; but provided, however, that he shall have no such

power to vote in cases when he is an interested party. He **shall have the superintending control of all the officers and affairs of the city**, and shall take care that the ordinances of the city and the state laws relating to such city are complied with.

12. Having superintending control of all the officers and affairs of the city, Mayor Henderson, like all chief executives, prefers to have as members of her cabinet and those persons making policy decisions or implementing policy decisions of the mayor's office, individuals and appointees of her choice in order to assure their loyalty and competence and to assure that her policies, as Mayor of the city of Jennings, are implemented and executed effectively, efficiently and expeditiously during the full four years of her term of office.

13. Thus upon being sworn into office, Mayor Henderson expected and intended to appoint, with the advice and consent of the city council, the municipal judge, city collector, city attorney, directors and commissioners of various departments of the city, and members of boards and commissions of the city of Jennings, so that her policies would be implemented and executed effectively, efficiently and expeditiously during the full four years of her term of office, as provided under §§ 77.330, 77.340, 77.370 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri.

14. The city of Jennings was incorporated in 1947 and thus has been in existence for 68 years.

15. For almost 60 years after the incorporation of the city, appointed clerical and professional personnel served at the pleasure of the mayor and council of the city of Jennings.

16. Elections for mayor of the city of Jennings were scheduled for 2007 and every four years thereafter.

17. In 2006, Mayor Henderson announced her candidacy for the office of Mayor of the city of Jennings.

18. In 2006, in anticipation that he may leave office, after the elections of 2007, the incumbent Mayor determined to adopt ordinances that would grant tenure to some of his appointees to officer, clerical and professional positions and allow them to holdover for three years after the incumbent left office.

19. In 2006, the council, at the behest of the incumbent Mayor, adopted an ordinance unlawfully providing for a four year term of employment for the city clerk and special services coordinator that would end in 2010, or three years after the election of a Mayor in 2007.

20. In 2006, the council, at the behest of the incumbent Mayor, adopted an ordinance unlawfully providing for a four year term of appointment of the municipal judge that would end in 2010, or three years after the election of a Mayor in 2007.

21. Due to a stalking horse splitting the anti-incumbent vote, Mayor Henderson came in second and thus was unsuccessful in being elected in 2007; however, she again sought election to the office of Mayor in April, 2011.

22. In March, 2011, in anticipation that Mayor Henderson may be successful in being elected Mayor in April, 2011, the council adopted an ordinance unlawfully providing for a four year term of employment for the public safety director and appointed a public safety director who would hold his position for the full four years of the term of any successor to the incumbent mayor that may have been elected in April, 2011.

23. Once again due to a stalking horse splitting the anti-incumbent vote, Mayor Henderson again came in second and thus was once again unsuccessful in being elected in 2011; however, she again sought election to the office of Mayor in April, 2015.

24. In August, 2012, the council, at the behest of the incumbent Mayor, adopted an ordinance unlawfully providing for a fixed term of appointment of the city attorney that would first end in April, 2013 and would thereafter end every four years thereafter or in April, 2017 or two years after the election of a Mayor in 2015.

25. Furthermore, in July, 2012, the council, at the behest of the incumbent Mayor, adopted an ordinance unlawfully providing for a four year term

of appointment of the director of housing and economic development and the director of streets and parks that would end in August, 2016 or over a year after the election of a Mayor in April, 2015.

26. The setting of a fixed term of employment for clerical and professional employees and personnel under the Municipal Code and Ordinances of the city of Jennings as set forth above is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340, 77.370 and 77.400, RSMo, as well as violating Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri.

27. Moreover, said Ordinances unconstitutionally, in violation of Article VII, § 13 of the Missouri Constitution, extended the terms of incumbents, and unconstitutionally, in violation of Article III, § 40 was made specially applicable to incumbents and not generally applicable and open ended and thus applicable to non-incumbents. *McKaig v. Kansas City*, 256 SW 2d 815 (Mo S Ct, 1953)

28. Moreover, said Ordinances, fixing of four year terms for clerical and professional personnel, appointment of said clerical and professional personnel to four year terms under said Ordinances, extension of incumbents terms of office and making said Ordinances specially applicable to incumbents was deliberately done by the prior Mayor in order to inhibit Mayor Henderson upon succeeding him in office as Mayor to appoint key policy makers and members of her cabinet

until from one to three years subsequent to Mayor Henderson taking office or almost for the full term in which she has been elected to serve in the office of Mayor.

29. Such a delay in her appointive powers is not only unlawful and unconstitutional but detrimental to the public welfare and, in the case of the municipal court, the administration of justice in that the municipal courts of St. Louis County have been found to be plagued by many unjust practices and procedures in the administration of justice and it is the intent of Mayor Henderson, with the advice and consent of the city council, to commission an investigation of the administration and operation of the municipal courts of Jennings and take any action deemed appropriate or necessary as a result of said investigation to assure that justice is administered fairly and to assure that Jennings' municipal courts are not guilty of any of the miscarriages of justice found to be prevalent in Ferguson, Missouri or other municipal courts of St Louis County.

30. The only specific reference to a third class city clerk in the state statutes provides the following:

City clerk--duties.

77.410. The city clerk shall, among other duties, keep the journal of the proceedings of the council. He shall safely and properly keep all records and papers belonging to the city which may be entrusted to his care, and generally shall perform all the duties required of him by ordinance or orders

of the council. He is hereby empowered to administer official oaths, and also oaths to persons certifying to demands or claims against the city.

(RSMo 1939 § 6888, A.L. 1990 H.B. 986)

31. No where in § 77.410, RSMo or in any other sections within Chapter 77, RSMo does the state statutes authorize the appointment of a city clerk to a term of office or employment, nor is there any provision therein authorizing the city council to appoint a city clerk without the mayor first nominating that person for appointment.

32. On April 24, 2006, Ordinance No. 2075 was adopted by the city council and has been codified as follows:

Chapter 2, Article III, Division 3, Sec. 2-105. - Appointment, term; assistant.

The **city clerk** shall be appointed by a majority of the members elected to the city council and **shall hold office for a period of four (4) years** and until a successor has been appointed and qualified. The term of **the present city clerk** who was appointed in April 2002 **extends** through April 2006 and until a successor has been appointed and qualified. The next term shall end in April 2010 and until a successor has been appointed and qualified.

The city council shall also have authority to appoint a deputy to such city clerk and such deputy shall hold office at will. In the absence of the city clerk, or when so designated by the city clerk, the deputy city clerk shall have the duties and authorities of the city clerk.

(Ord. No. 2075, § 1, 4-24-06)

33. The Defendant Cheryl Balke, City Clerk of the City of Jennings, is being named by title and sued in her official capacity as an appointed clerical or

professional employee of the city of Jennings, Missouri, and in her individual capacity to the extent that she may claim property rights in her putative appointment to a four year fixed term of office or employment provided for under any motions, resolutions or ordinances that may have been adopted by the city council with the approval of the mayor of the city of Jennings, Missouri or over the mayor's veto.

34. The Defendant, Cheryl Balke, was appointed City Clerk in March, 2014 to a putative four year term ending April, 2018.

35. For the reasons set forth herein below, said four year term is unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

36. Said Municipal Code Sec. 2-105 (Ord. No. 2075, § 1, 4-24-06) providing that the city clerk shall be appointed by a majority of the members of the city council, without first being nominated by the mayor, is violative of §§ 77.330, 77.340 and 77.400, RSMo, mandating that any and all appointees in a third class city be first nominated by the mayor.

37. Said Municipal Code Sec. 2-105 (Ord. No. 2075, § 1, 4-24-06) providing that the city clerk hold office for a term of four (4) years is not authorized under Chapter 77, RSMo as held in *Henry v. City of Ellington*, 789 S.W.2d 205 (Mo. App. S.D. 1990) nor under Art. VI, § 10 and Art. VII, § 12 of the

Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952).

38. Said Municipal Code Sec. 2-105 (Ord. No. 2075, § 1, 4-24-06) providing that the incumbent city clerk's term of office extends through April, 2006 is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent city clerk and not open ended and generally applicable to anyone who is appointed to the position of city clerk, and it unconstitutionally extended the term of the incumbent city clerk, in violation of Article VII, § 13 of the Missouri Constitution.

39. On August 27, 2012, Ordinance No. 2261 was adopted by the city council and has been codified as follows:

Chapter 2, Article III, Division 4, Sec. 2-126. - Appointment, term.

The **city attorney shall be appointed** by the mayor with the consent of a majority of the members elected to the city council **for a term of four (4) years** in accordance with the state statute. The term of the present city attorney shall continue until the end of April of 2013 and until a successor has been appointed and qualified.

(Ord. No. 2261, § 1, 8-27-12)

40. The Defendant Jamis Kresyman, City Attorney of the City of Jennings, is being named by title and sued in her official capacity as an appointed professional employee of the city of Jennings, Missouri, and in her individual capacity to the extent that she may claim property rights in her putative appointment to a four year fixed term of office or employment provided for under any motions, resolutions or ordinances that may have been adopted by the city council with the approval of the mayor of the city of Jennings, Missouri or over the mayor's veto.

41. On August 27, 2012, Defendant Kresyman was (a) appointed city attorney for a putative term of office ending in April, 2013 and (b) upon the end of said term in April, 2013 re-appointed to a putative four year term ending in April, 2017.

42. For the reasons set forth herein below, said four year term was unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

43. Said Municipal Code Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) providing that the city attorney shall be appointed for a term of four (4) years is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of

Missouri; in that said position is professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952).

44. Said Municipal Code Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) providing that the city attorney shall be appointed for a term of four (4) years is in conflict with § 77.370.3, RSMo which provides that the city attorney shall serve at the pleasure of the mayor and city council.

45. Said Municipal Code Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) providing that the city attorney shall be appointed for a term of four (4) years is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent city attorney and not open ended and generally applicable to anyone who is appointed to the position of city attorney.

46. Said Municipal Code Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) providing that the city attorney shall be appointed for a term of four (4) years unconstitutionally extended the term of the incumbent city attorney, in violation of Article VII, § 13 of the Missouri Constitution.

47. The city attorney was appointed in violation of §§ 77.330 and 77.370.3, RSMo, and said Municipal Code Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) of the city of Jennings, in that she was not nominated by the mayor, but

instead the city council on its own volition appointed her to office without the nomination of the mayor, and thus said appointment is null and void.

48. Alternatively, the city attorney was appointed prior to the end of her term of office without any authority under the law and in violation of Art. VII, § 12 of the Missouri Constitution, resulting in an extension of her term of office in violation of Article VII, § 13 of the Missouri Constitution, and thus said extension is null and void and her term of employment has ended by operation of law and she now currently serves at the pleasure of the mayor and council.

49. The city attorney knowing and intentionally drafted said Municipal Code Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) with specific knowledge that § 77.370.3, RSMo provided that the city attorney serves at the pleasure of the council and thus may not be granted a four year term of office or employment.

50. At the time that the council voted to appoint and reappoint the city attorney to a four year term, the city attorney knowingly, intentionally, deliberately, willfully, negligently or recklessly failed to advise the council that § 77.370.3, RSMo, provided that the city attorney serves at the pleasure of the council and thus may not be granted a four year term of office.

51. On November 23, 1992, Ordinance No. 1657 was adopted by the city council and has been codified as follows:

Chapter 2, Article III, Division 5

Sec. 2-136. - Appointment, term.

The **city collector shall be appointed** by the mayor with the consent of a majority of the members elected to the city council **for a term of four (4) years** in accordance with the state statutes.

(Ord. No. 1657, §§ 1, 3, 5, 11-23-92)

Sec. 2-167. - Appointment, term.

(a) The **city collector** shall be appointed by the mayor with the consent of a majority of the members elected to the city council **for a term of four (4) years** in accordance with the state statutes.

(b) The office of city treasurer may be combined with that of a director of finance, the duties of which shall be prescribed by resolution or ordinance.

(Ord. No. 1657, §§ 1, 3, 4, 5, 11-23-92)

52. The Defendant Beverly Roche, City Collector of the City of Jennings, is being named by title and sued in her official capacity as an appointed employee of the city of Jennings, Missouri, and in her individual capacity to the extent that she may claim property rights in her putative appointment to a fixed term of employment provided for under any motions, resolutions or ordinances that may have been adopted by the city council with the approval of the mayor of the city of Jennings, Missouri or over the mayor's veto.

53. In April, 2012, the City Collector was unlawfully appointed to a putative four year term of employment ending in April, 2016; or alternatively, the City Collector's term of appointment or employment has expired and she

continues to serve in said position at will until her successor is appointed and qualified.

54. For the reasons set forth herein below, said four year term was unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

55. Said Municipal Code Sec. 2-136 and 2-167 (Ord. No. 16571, § 11-23-92) providing that the city collector shall be appointed for a term of four (4) years is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952).

56. The Defendants Irvetta Williams, Director of Housing and Economic Development; William Kaeshamer, Director of Streets; Cindy Tharp, Parks Director; Stacey Blake, Special Services Coordinator; Joseph Zlotopolski, Director of Public Safety; and the Public Health Officer of the City of Jennings, respectively, are being named by title and sued in their official capacities, respectively, as clerical and/or professional employees or personnel of the city of Jennings, Missouri, and in their individual capacities to the extent that they may

claim property rights in their putative respective appointments to a four year fixed term of employment with the city of Jennings, provided for under any motions, resolutions or ordinances that may have been adopted by the city council with the approval of the mayor of the city of Jennings, Missouri or over the mayor's veto.

57. On July 23, 2012, Ordinance No. 2259 was adopted by the city council and has been codified as follows:

Chapter 2, Article III, Division 6, Sec. 2-151. - Appointment, term.

The **director of housing and economic development and the director of streets and parks** shall each be appointed by the mayor with the consent of the majority of the members of the city council and each **shall hold office for a period of four (4) years** and until a successor is appointed and qualified. The term shall commence when appointed and shall continue until August 2016 and until a successor has been appointed and qualified.

(Ord. No. 2259, § 1, 7-23-12)

58. Defendant Irvetta Williams was appointed Director of Housing and Economic Development in July, 2012 to a putative four year term ending August, 2016.

59. For the reasons set forth herein below, said four year term is unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

60. Defendant William Kaeshamer was appointed Director of Streets in July, 2012 to a putative four year term ending August, 2016.

61. For the reasons set forth herein below, said four year term is unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

62. Defendant Cindy Tharp was appointed Parks Director in July, 2012 to a putative four year term ending August, 2016.

63. For the reasons set forth herein below, said four year term is unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

64. Said Municipal Code Sec. 2-151 (Ord. No. 2259, § 1, 7-23-12) providing that the director of housing and economic development and the director of streets and parks each shall hold office for a period of four (4) years is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said positions are clerical or professional in nature and not offices as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952).

65. On April 24, 2006, Ordinance No. 2075 was adopted by the city council and has been codified as follows:

Chapter 2, Article III, Division 8, Sec. 2-185. - Appointment, term.

The **special services coordinator** shall be appointed by the mayor with the consent of the members of the city council and shall **hold office for a period of four (4) years** and until a successor has been appointed and qualified. The term of the present special services coordinator who was appointed in April of 2002 shall continue through April of 2006 and until a successor has been appointed and qualified.

(Ord. No. 2075, § 1, 4-24-06)

66. Either Defendant Stacey Blake was appointed Special Services Coordinator in April, 2014 to a putative term ending April, 2018 or the term of her appointment has expired and thus she is now serving at the pleasure of the mayor and the council.

67. For the reasons set forth herein below, said four year term is unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

68. Said Municipal Code Sec. 2-185 (Ord. No. 2075, § 1, 4-24-06) providing that the special services coordinator shall hold office for a period of four (4) years:

a. is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or

professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952);

b. moreover, said section is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent special services coordinator and not open ended and generally applicable to anyone who is appointed to the position of special services coordinator and

c. it unconstitutionally extended the term of the incumbent special services coordinator, in violation of Article VII, § 13 of the Missouri Constitution.

69. On August 13, 1979, Ordinance No. 1297 was adopted by the city council and codified as follows:

Chapter 2, Article III, Division 9, Sec. 2-194. - Appointment; term of office.

The **public health officer shall be appointed** by the mayor with the consent of the majority of the members of the city council **and shall hold office until April of the following year** and until his successor has been appointed and qualified.

(Ord. No. 1297, § 2, 8-13-79)

70. Either Defendant Public Health Officer of the City of Jennings was appointed to a fixed term of employment or said term of office has ended so he/she serves at the pleasure of the mayor and city council.

71. For the reasons set forth herein below, said fixed term is unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

72. Said Municipal Code Sec. 2-194 (Ord. No. 1297, § 2, 8-13-79) providing that the public health officer shall hold office until April of the following year is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952).

73. On March 28, 2011, Ordinance No. 2212 was adopted by the city council and has been codified as follows:

Chapter 2, Article IX, Sec. 2-402. - Director, appointment.

The department of public safety shall be headed by a director. A **director of public safety shall be appointed** by the mayor with the consent of a majority of the members elected to the city council **for a term of four (4) years**. The term of the present director of public safety shall extend to April 2014 or until a successor has been appointed and qualified. The director of public safety may also be the fire chief.

(Ord. No. 1589, § 2, 8-27-90; Ord. No. 2212, § 2, 3-28-11)

74. Defendant Joseph Zlotopolski was appointed Director of Public Safety in March, 2014 to a putative four year term ending April, 2018.

75. For the reasons set forth herein below, said four year term is unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

76. Said Municipal Code Sec. 2-402 of the Municipal Code (Ord. No. 1589, § 2, 8-27-90; Ord. No. 2212, § 2, 3-28-11) providing that director of public safety shall be appointed for a term of four (4) years:

a. is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952)

b. moreover, said section is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent public safety director and not open ended and generally applicable to anyone who is appointed to the position of public safety director, and

c. it unconstitutionally extended the term of the incumbent public safety director, in violation of Article VII, § 13 of the Missouri Constitution.

77. Alternatively, the city council did on its own motion vote to appoint the Public Safety Director in March of 2014 without said Director first being nominated by the Mayor of the City of Jennings in violation of § 77.330, RSMo.

78. A state statute provides for the appointment of municipal judges as follows:

Municipal judges, selection, tenure, jurisdiction, qualifications, course of instruction.

479.020. 1. Any city, town or village, including those operating under a constitutional or special charter, may, and cities with a population of four hundred thousand or more shall, provide by ordinance or charter for the selection, tenure and compensation of a municipal judge or judges consistent with the provisions of this chapter who shall have original jurisdiction to hear and determine all violations against the ordinances of the municipality. The method of selection of municipal judges shall be provided by charter or ordinance. **Each municipal judge shall be selected for a term of not less than two years as provided by charter or ordinance.**

(L. 1978 H.B. 1634, A.L. 1993 S.B. 88, A.L. 1996 H.B. 1169 & 1271 merged with S.B. 722 merged with S.B. 869, A.L. 2001 S.B. 267, A.L. 2004 H.B. 795, et al. merged with S.B. 1211)

79. On April 24, 2006, Ordinance No. 2074 was adopted by the city council and has been codified as follows:

Chapter 9, Sec. 9-7. - Term of office.

The **municipal judge presently in office shall hold said office until April 2007**. However, in the event that the present judge would resign, the mayor with the consent of a majority of the members of the city council shall appoint a replacement and the **term shall be until April 2010**. Thereafter,

the **term of the judge shall be for a period of four (4) years** or until a successor shall be appointed and qualified.

(Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06)

80. The Defendant Judge John Duepner of the Municipal Court of the City of Jennings, is being named by title and sued in his official capacity as an appointed officer of the city of Jennings, Missouri, and in his individual capacity to the extent that he may claim property rights in his putative appointment to a four year fixed term of office provided for under any motions, resolutions or ordinances that may have been adopted by the city council with the approval of the mayor of the city of Jennings, Missouri or over the mayor's veto.

81. Judge Duepner was appointed to the position of Municipal Judge of the city of Jennings prior to the adoption of said Municipal Code Sec. 9-7 (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06), and thus under said Ordinance his special term of office was set to end on April 30, 2007; and any successor terms of office would thus end every four years thereafter or on April 30, 2011 and April 30, 2015.

82. In March, 2014, Judge Duepner was purportedly reappointed to a putative four year term as municipal judge ending on April 30, 2018.

83. For the reasons set forth herein below, said reappointment was unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

84. Said Municipal Code Sec. 9-7 of the Municipal Code (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06) providing that the municipal judge presently in office shall hold said office until April 2007; however, in the event that the present judge would resign, the mayor with the consent of a majority of the members of the city council shall appoint a replacement and the term shall be until April 2010; and thereafter, the term of the judge shall be for a period of four (4) years or until a successor shall be appointed and qualified:

a. is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo,

b. moreover, said section is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent municipal judge and not open ended and generally applicable to anyone who is appointed to the position of municipal judge, and

c. it unconstitutionally extended the term of the incumbent municipal judge, in violation of Article VII, § 13 of the Missouri Constitution.

85. Furthermore, the provision asserting, however, in the event that the present judge would resign, the mayor with the consent of a majority of the members of the city council shall appoint a replacement and the term shall be until April 2010 is unconstitutionally vague, indefinite and uncertain *Prokopf v. Whaley*, 592 SW 2d 819 (Mo S Ct, 1980) as to the length of the term of a successor judge and thus whether or not the length of the term complies with the mandate of a not less than a two year term set forth in § 479.020.1, and is further evidence that the provision is an unconstitutional local or special law in that special reference to the actions of the incumbent judge is necessary in order to determine how to execute the law, to wit, if the incumbent judge does not resign, under the special provisions of the ordinance, his term of office ends in 2007, with the successor judge's terms ending in 2011 and 2015; however, if the incumbent judge does resign, under the special provisions of the ordinance, the term of office of the successor judge ends in 2010, 2014 and 2018, respectively, and thus the law is not open ended and applicable to any and all persons appointed to the position of municipal judge of Jennings.

86. Moreover, the provision asserting that, thereafter, the term of the judge shall be for a period of four (4) years or until a successor shall be appointed and qualified, is unconstitutionally vague and indefinite as to whether or not the term ends on April, 2007 and every four years thereafter, or on April, 2010 and every four years thereafter, without specially identifying incumbent judges as opposed to being open ended and applicable to all judicial officers and thus is also evidence that said section is unconstitutional as a special law, to wit, if the incumbent judge serves out his term, any future judicial terms will end every four years after April, 2007, and thus, the Petitioner Mayor would have the right to appoint a municipal judge in April, 2015; however, if the incumbent judge did not serve out his term, but resigned, before the end of his term, then the successor judges term ended in April, 2010, and any successor to that judge's term ended in April, 2014, and the next successor's term would end in April, 2018, and thus the Petitioner Mayor would not have the right to appoint a municipal judge until April, 2018, such facts showing that said provision is a special law, incumbent specific and not open ended and thus applicable to any judicial officer appointed to serve in the city of Jennings.

87. Furthermore, the city council did on its own motion vote to appoint the Municipal Judge in March of 2014 without said municipal judge first being

nominated by the Mayor of the City of Jennings in violation of § 77.330, RSMo, and thus said appointment is null and void.

88. Moreover the term of said Municipal Judge, under Municipal Code Sec. 9-7 of the Municipal Code (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06) did not end until April, 2015 but the city council purported to re-appoint said Municipal Judge to a four year term commencing March, 2014 in violation of Municipal Code Sec. 9-7 of the Municipal Code (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06) and § 77.330, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of the State of Missouri.

89. Moreover, the re-appointment of said Municipal Judge in March, 2014 unconstitutionally extended the end of the term of said incumbent municipal judge from ending April 30, 2015 to ending April 30, 2018, during his term of office; or alternatively, fixed his term of office to commence in March, 2014 and to terminate as of April 30, 2018 and thus said term is in excess of four years in violation of the constitution of the state of Missouri.

90. The city attorney knowingly and intentionally drafted each and every one of the foregoing Ordinances in question with full knowledge that said Ordinances were not authorized neither by statute nor by constitution and moreover that said Ordinances were prohibited by statute and by the constitution.

91. The Defendants, members of Boards and Commissions of the City of Jennings, are being named by title and sued jointly and severally in their official capacities as members of boards and commissions of the city of Jennings, Missouri, and in their individual capacities to the extent that they may claim property rights in their putative appointments to a fixed term of membership on said boards and commissions under any motions, resolutions or ordinances that may have been adopted by the city council with the approval of the mayor of the city of Jennings, Missouri or over the mayor's veto.

92. Defendants members of boards and commissions of the City of Jennings have been appointed to memberships on said boards and commissions at various times to either one year or three year terms of service.

93. For the reasons set forth herein below, said fixed terms of service are unlawful in violation of the statutes and constitution of Missouri as well as the Ordinances of the city of Jennings.

94. On May 24, 1971, Ordinance No. 948 was adopted by the city council and has been codified as follows:

Chapter 2, Article V, Division 2, Sec. 2-224. - Terms.

The term of office of each member of the youth commission shall be for a three (3) year period; except, however, that the term of the first three (3) appointed shall expire on April 15, 1972; the term of the next three (3) appointed shall expire on April 15, 1973, and the remaining three (3) shall

expire on April 15, 1974, or until their successors shall have been appointed and taken office.

(Ord. No. 948, 5-24-71)

95. Said Municipal Code Sec. 2-224 (Ord. No. 948, 5-24-71) providing that the term of office of each member of the youth commission shall be for a three (3) year period is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952..

96. On August 11, 1975, Ordinance No. 1103 was adopted by the city council and has been codified as follows:

Chapter 2, Article V, Division 3, Sec. 2-238. - Terms.

The term of office of each member of the senior citizens' commission shall be for a three (3) year period; except, however, that the term for the first three (3) appointed shall expire on April 15, 1976; the term of the next three (3) appointed shall expire on April 15, 1977, and the remaining three (3) shall expire on April 15, 1978, or until his successor shall have been appointed and taken office.

(Ord. No. 1103, § 3, 8-11-75)

97. Said Municipal Code Sec. 2-238 (Ord. No. 1103, § 3, 8-11-75) providing that the term of office of each member of the senior citizens'

commission shall be for a three (3) year period is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952..

98. On April 27, 1981, Ordinance No. 1374 was adopted by the city council and has been codified as follows:

Chapter 2, Article V, Division 4

Sec. 2-242. - Terms.

There shall be and is hereby established a commission to be known as the **landmarks commission** of the City of Jennings. The commission shall consist of five (5) members appointed by the mayor with the approval of the city council. All members shall be residents of the city.

(Ord. No. 1374, § 1, 4-27-81)

Sec. 2-242. - Terms.

Each member shall serve for a term of three (3) years, provided that the initial appointments to the commission shall be as follows: Two (2) members shall be appointed for a term of one (1) year; two (2) members shall be appointed for a term of two (2) years and one (1) member for a term of three (3) years; thereafter, each successor shall be appointed for a term of three (3) years.

99. Said Municipal Code Sec. 2-242 (Ord. No. 1374, § 1, 4-27-81)

providing that each member of the landmarks commission shall serve for a term of

three (3) years, is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952..

100. On February 28, 1983, Ordinance No. 1425 was adopted by the city council and has been codified as follows:

Chapter 2, Article VIII, Division 2, Sec. 2-342. - Terms.

The mayor, treasurer, chief of police and the chief of fire department shall hold the office of trustee as long as each retains his respective office or until his successor shall take office. The **three (3) citizen members shall be appointed for a period of three (3) years**, except that the first appointments shall be, one (1) for three (3) years, one (1) for two (2) years and one (1) for one (1) year. The mayor making the first appointment shall designate which citizen member is to serve three (3) years, which two (2) years and which shall serve the one-year term. The **representative selected to represent the police department and the fire department shall serve for a period of one (1) year** ending in April of each year except that the representative appointed for the first term shall be for a period to terminate at the end of April 1983.

(Ord. No. 881, 8-11-69; Ord. No. 1425, § 1, 2-28-83)

101. Said Municipal Code Sec. 2-342 (Ord. No. 881, 8-11-69; Ord. No. 1425, § 1, 2-28-83) providing that the three (3) citizen members of the "Board of Trustees of the Police and Firemen's Retirement Fund" shall be appointed for a period of three (3) years and that the representative selected to represent the police

department and the fire department shall serve for a period of one (1) year is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952..

102. On May 12, 1980, Ordinance No. 1334 was adopted by the city council and has been codified as follows:

Chapter 17.5, Sec. 17.5-12. - Membership; terms; chairman.

The commission on human rights shall consist of three (3) members who shall be appointed by the mayor with the approval of the city council. Each member shall serve for three (3) years; provided, however, that the first appointment shall be for one (1), two (2) and three (3) years for each member respectively. The members shall be residents of the City of Jennings, registered voters in said city and at least twenty-one (21) years of age. The chairman shall be elected by the members of the commission.

(Ord. No. 1334, § 2, 5-12-80)

103. Said Municipal Code Chapter 17.5, Sec. 17.5-12 (Ord. No. 1334, § 2, 5-12-80) providing that each member of the commission on human rights shall serve for a term of three (3) years, is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or

professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952..

104. The fixing or setting of a fixed term of appointment for membership on boards and commissions under the Municipal Code and Ordinances of the city of Jennings as set forth above is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo.

105. Municipal corporations owe their origins to, and derive their powers and rights wholly from the state, and where the Legislature has authorized a municipality to exercise a power and prescribed the manner of its exercise, the right to exercise the power given in any other manner is necessarily denied.

106. In the exercise of the legislative powers granted to it by the Legislature, a municipal corporation can enact no ordinance which violates the Constitution of this state or the United States, or which contravenes the statutes of this state. *Pearson v. City of Washington*, 439 S.W.2d 756 (Mo. S. Ct., 1969)

107. A city has no power, in the absence of statutory provision conferring it, to grant by ordinance a fixed term of appointment to employment of any clerical and professional employees of the city. *Henry v. City of Ellington*, 789 S.W.2d 205 (Mo. App. S.D. 1990) *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952

108. Moreover, a municipal corporation cannot surrender, legislate or contract away its powers to appoint and/or remove a clerical and/or professional employee at will.

109. The power to appoint and remove clerical and professional employees and members of boards and commissions, at will, or upon the termination of an officers regular or established fixed term of office, are placed in the mayor and the council, under §§ 77.330, 77.340, 77.370 and 77.400; and the council and the mayor, or the council over the veto of the mayor, cannot by ordinance grant a term of office to clerical and professional employees and members of boards, nor can the council and mayor or the council over the veto of the mayor usurp the right of the mayor and particularly a successor mayor to remove and appoint, at will, with the approval of a majority of the council clerical and professional personnel or employees, and members of boards and commissions, as well as appoint successors to officers at the end of their regularly scheduled term of office.

110. Therefore, as set forth above, said Sections of the Municipal Code are in conflict with the statutes of the state of Missouri insofar as they purports to grant the city clerk, city attorney, city collector, directors, commissioners, clerical and professional personnel and members of boards and commissions of the city of Jennings, Missouri, a fixed term of office, employment or membership on said boards and commissions, respectively, instead of said city clerk, city attorney, city

collector, directors, commissioners, clerical and professional personnel and members of boards and commissions of the city of Jennings upon being appointed shall serve at the will of the mayor and city council as provided by statute.

WHEREFORE, Petitioners pray:

1. That the court declare,

a. The fixing or setting of a fixed term of employment for clerical and professional employees and personnel under the Municipal Code and Ordinances of the city of Jennings as set forth above is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri.

b. The fixing or setting of a fixed term of appointment for membership on boards and commissions under the Municipal Code and Ordinances of the city of Jennings as set forth above is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo.

c. Specifying that said Ordinances are applicable to incumbents is unconstitutional in violation of Article III, § 40(21)&(30) of the

Constitution of Missouri in that it is a special law made specifically applicable to the incumbent and not open ended and generally applicable to anyone who is appointed to the position.

d. Said incumbent specific Ordinances unconstitutionally extended the term of the incumbent, in violation of Article VII, § 13 of the Missouri Constitution.

e. Municipal Code Chapter 2, Article III, Division 3, Sec. 2-105 (Ord. No. 2075, § 1, 4-24-06) providing that the city clerk shall hold office for a term of four (4) years is not authorized under Chapter 77, RSMo as held in *Henry v. City of Ellington*, 789 S.W.2d 205 (Mo. App. S.D. 1990) nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952)

f. Municipal Code Chapter 2, Article III, Division 3, Sec. 2-105 (Ord. No. 2075, § 1, 4-24-06) providing for appointment of the city clerk without first being nominated by the mayor violates §§ 77.330, 77.340 and 77.400, RSMo, which mandate that all appointees in third class cities first

be nominated by the mayor before being appointed to a position with the third class city.

g. Municipal Code Chapter 2, Article III, Division 3, Sec. 2-105 (Ord. No. 2075, § 1, 4-24-06) is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent city clerk and not open ended and generally applicable to anyone who is appointed to the position of city clerk.

h. Municipal Code Chapter 2, Article III, Division 3, Sec. 2-105 (Ord. No. 2075, § 1, 4-24-06) unconstitutionally extended the term of the incumbent city clerk, in violation of Article VII, § 13 of the Missouri Constitution, and thus said four year term provision in said ordinance is null and void.

i. Municipal Code Chapter 2, Article III, Division 4, Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) providing that the city attorney shall be appointed for a term of four (4) years is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri; in that said position is professional in nature and not an office as defined by §

77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952).

j. Municipal Code Chapter 2, Article III, Division 4, Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) is in conflict with § 77.370.3, RSMo which provides that the city attorney shall serve at the pleasure of the mayor and city council.

k. Municipal Code Chapter 2, Article III, Division 4, Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent city attorney and not open ended and generally applicable to anyone who is appointed to the position of city attorney.

l. Municipal Code Chapter 2, Article III, Division 4, Sec. 2-126 (Ord. No. 2261, § 1, 8-27-12) unconstitutionally extended the term of the incumbent city attorney, in violation of Article VII, § 13 of the Missouri Constitution, and thus said four year term provision in said ordinance is null and void.

m. The city attorney was appointed in violation of §§ 77.330 and 77.370.3, RSMo, and the Municipal Code Sec. 2-136 (Ord. No. 1657, §§ 1, 3, 5, 11-23-92) of the city of Jennings, in that she was not nominated by the

mayor, but instead the city council on its own volition appointed her to office without the nomination of the mayor, and thus said appointment is null and void.

n. The city attorney was appointed prior to the end of her term of office without any authority under the law and in violation of Art. VII, § 12 of the Missouri Constitution, resulting in an extension of her term of office in violation of Article VII, § 13 of the Missouri Constitution, and thus said appointment is null and void.

o. Municipal Code Chapter 2, Article III, Division 5, Sec. 2-136 and 2-167 (Ord. No. 16571, § 11-23-92) providing that the city collector shall be appointed for a term of four (4) years is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri; in that said position is professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952) , and thus said four year term provision in said ordinance is null and void.

p. Municipal Code Chapter 2, Article III, Division 6, Sec. 2-151 (Ord. No. 2259, § 1, 7-23-12) providing that the director of housing and

economic development and the director of streets and parks each shall hold office for a period of four (4) years is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said positions are clerical or professional in nature and not offices as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952) , and thus said four year term provision in said ordinance is null and void.

q. Municipal Code Chapter 2, Article III, Division 8, Sec. 2-185 (Ord. No. 2075, § 1, 4-24-06) providing that the special services coordinator shall hold office for a period of four (4) years is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952)

r. Municipal Code Chapter 2, Article III, Division 8, Sec. 2-185 (Ord. No. 2075, § 1, 4-24-06) is unconstitutional in violation of Article III,

§ 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent special services coordinator and not open ended and generally applicable to anyone who is appointed to the position of special services coordinator.

s. Municipal Code Chapter 2, Article III, Division 8, Sec. 2-185 (Ord. No. 2075, § 1, 4-24-06) unconstitutionally extended the term of the incumbent special services coordinator, in violation of Article VII, § 13 of the Missouri Constitution, and thus said four year term provision in said ordinance is null and void.

t. Municipal Code Chapter 2, Article III, Division 9, Sec. 2-194 (Ord. No. 1297, § 2, 8-13-79) providing that the public health officer shall hold office until April of the following year is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952) , and thus said fixed term provision in said ordinance is null and void.

u. Municipal Code Chapter 2, Article V, Division 2, Sec. 2-224 (Ord. No. 948, 5-24-71) providing that the term of office of each member of the youth commission shall be for a three (3) year period is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952), and thus said three year term provision in said ordinance is null and void.

v. Municipal Code Chapter 2, Article V, Division 3, Sec. 2-238 (Ord. No. 1103, § 3, 8-11-75) providing that the term of office of each member of the senior citizens' commission shall be for a three (3) year period is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952) , and thus said three year term provision in said ordinance is null and void.

w. Municipal Code Chapter 2, Article V, Division 4, Sec. 2-242 (Ord. No. 1374, § 1, 4-27-81) providing that each member of the landmarks commission shall serve for a term of three (3) years, is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952), and thus said three year term provision in said ordinance is null and void.

x. Municipal Code Chapter 2, Article VIII, Division 2, Sec. 2-342 (Ord. No. 881, 8-11-69; Ord. No. 1425, § 1, 2-28-83) providing that the three (3) citizen members of the "Board of Trustees of the Police and Firemen's Retirement Fund" shall be appointed for a period of three (3) years and that the representative selected to represent the police department and the fire department shall serve for a period of one (1) year is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional

in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952), and thus said one and three year term, respectively, provisions in said ordinance is null and void.

y. Municipal Code Chapter 2, Article IX, Sec. 2-402 of the Municipal Code (Ord. No. 1589, § 2, 8-27-90; Ord. No. 2212, § 2, 3-28-11) providing that director of public safety shall be appointed for a term of four (4) years is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952)

z. Municipal Code Chapter 2, Article IX, Sec. 2-402 of the Municipal Code (Ord. No. 1589, § 2, 8-27-90; Ord. No. 2212, § 2, 3-28-11) is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent public safety director and not open ended and generally applicable to anyone who is appointed to the position of public safety director.

aa. Municipal Code Chapter 2, Article IX, Sec. 2-402 of the Municipal Code (Ord. No. 1589, § 2, 8-27-90; Ord. No. 2212, § 2, 3-28-11) unconstitutionally extended the term of the incumbent public safety director, in violation of Article VII, § 13 of the Missouri Constitution, and thus said four year term provision in said ordinance is null and void.

bb. The city council did on its own motion vote to appoint the Public Safety Director in March of 2014 without said Director first being nominated by the Mayor of the City of Jennings in violation of § 77.330, RSMo, and thus said appointment is null and void.

cc. Municipal Code Chapter 9, Sec. 9-7 of the Municipal Code (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06) providing that the municipal judge presently in office shall hold said office until April 2007; however, in the event that the present judge would resign, the mayor with the consent of a majority of the members of the city council shall appoint a replacement and the term shall be until April 2010; and thereafter, the term of the judge shall be for a period of four (4) years or until a successor shall be appointed and qualified, is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo.

dd. Municipal Code Chapter 9, Sec. 9-7 of the Municipal Code (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06) is unconstitutional in violation of Article III, § 40(21)&(30) of the Constitution of Missouri in that it is a special law made specifically applicable to the incumbent municipal judge and not open ended and generally applicable to anyone who is appointed to the position of municipal judge.

ee. Municipal Code Chapter 9, Sec. 9-7 of the Municipal Code (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06) unconstitutionally extended the term of the incumbent municipal judge, in violation of Article VII, § 13 of the Missouri Constitution, and thus said four year term provision in said ordinance is null and void.

ff. The provision asserting, however, in the event that the present judge would resign, the mayor with the consent of a majority of the members of the city council shall appoint a replacement and the term shall be until April 2010 is unconstitutionally vague, indefinite and uncertain as to the length of the term of a successor judge and thus whether or not the length of the term complies with the mandate of a not less than a two year term set forth in § 479.020.1, and is further evidence that the provision is a special law in that special reference to the actions of the incumbent judge is

necessary in order to determine how to execute the law, to wit, if the incumbent judge resigns the law is applied in one manner, if the incumbent judge does not resign, the law is executed in another manner, and thus the law is not open ended and applicable to any and all persons appointed to the position of municipal judge of Jennings, and thus said four year term provision in said ordinance is null and void.

gg. The provision asserting that, thereafter, the term of the judge shall be for a period of four (4) years or until a successor shall be appointed and qualified, is unconstitutionally vague and indefinite as to whether or not the term ends on April, 2007 and every four years thereafter, or on April, 2010 and every four years thereafter, without specially identifying incumbent judges as opposed to being open ended and applicable to all judicial officers and thus is also evidence that said section is unconstitutional as a special law, to wit, if the incumbent judge serves out his term, any future judicial terms will end every four years after April, 2007, and thus, the Petitioner Mayor would have the right to appoint a municipal judge in April, 2015; however, if the incumbent judge did not serve out his term, but resigned, before the end of his term, then the successor judges term ended in April, 2010, and any successor to that judge's term ended in April, 2014, and the next successor's term would end

in April, 2018, and thus the Petitioner Mayor would not have the right to appoint a municipal judge until April, 2018, such facts showing that said provision is a special law, incumbent specific and not open ended and thus applicable to any judicial officer appointed to serve in the city of Jennings, and thus said four year term provision in said ordinance is null and void.

hh. The city council did on its own motion vote to appoint the Municipal Judge in March of 2014 without said municipal judge first being nominated by the Mayor of the City of Jennings in violation of § 77.330, RSMo, and thus said appointment is null and void.

ii. The term of said Municipal Judge, under Municipal Code Chapter 9, Sec. 9-7 of the Municipal Code (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06) did not end until April, 2015 but the city council purported to re-appoint said Municipal Judge to a four year term commencing April, 2014 in violation of Municipal Code Sec. 9-7 of the Municipal Code (Ord. No. 1268, § 1, 11-27-78; Ord. No. 2074, § 1, 4-24-06) and § 77.330, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of the State of Missouri, and thus said appointment is null and void.

jj. Municipal Code Chapter 17.5, Sec. 17.5-12 (Ord. No. 1334, § 2, 5-12-80) providing that each member of the commission on human rights

shall serve for a term of three (3) years, is not authorized under Chapter 77, RSMo nor under Art. VI, § 10 and Art. VII, § 12 of the Constitution of the state of Missouri and is in violation of §§ 77.330, 77.340 and 77.400, RSMo and Art. VI, § 10 and Art. VII, § 12 of the Constitution of Missouri, in that said position is clerical or professional in nature and not an office as defined by § 77.400 and under the holdings of *State v. Pigg*, 249 SW 2d 435 (Mo S Ct 1952), and thus said three year term provision in said ordinance is null and void.

2. That the court award the Petitioners their attorneys fees, expenses and costs herein expended, and
3. For such other relief as may be appropriate under the circumstances.

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