

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI**

STEPHANIE REYNOLDS, et al.	)	
	)	
Plaintiffs,	)	
	)	
and	)	
	)	Cause No. 06-CC-3802
JAMES ZHANG,	)	
	)	Division No. 13
Intervenor,	)	
	)	
v.	)	
	)	
CITY OF VALLEY PARK, MO, et al.	)	
	)	
Defendants.	)	

**PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AND CONTEMPT**

Come now Plaintiffs Stephanie Reynolds, Kobasa, Inc., d/b/a Valley Deli, Florence Streeter, Cash Flo Properties, and Metropolitan St. Louis Equal Housing Opportunity Council, by and through Counsel, and for their Motion for Order to Show Cause and Contempt against Defendants, state as follows:

1. Plaintiffs filed a complaint for declaratory and injunctive relief in this action challenging Valley Park Ordinance No. 1708, and later Ordinance No. 1715 after the City repealed Ordinance 1708 and replaced it with Ordinance No. 1715. Both ordinances attempted to regulate the presence of "illegal aliens" in the City of Valley Park by imposing penalties on landlords and businesses.

2. While this litigation was pending, on February 5, 2007, the Board of Aldermen approved, and the Mayor later signed, Ordinances No. 1721 and No. 1722 which purported to

repeal Ordinance No. 1715. Ordinance No. 1721 (which was later amended to eliminate wording relating to illegal aliens) attempted to regulate landlords in renting to illegal aliens, and Ordinance No. 1722 attempts to regulate businesses in hiring of illegal aliens. When initially adopted, Ordinance No. 1721 and No. 1722 stated they would not be effective until the lifting of the injunction in this litigation, presumably so as not to be in conflict with the court's rulings regarding the earlier ordinances. There were several subsequent efforts to amend Ordinance No. 1721 and No. 1722 before August 9, 2007, including one ordinance adopted on February 11, 2007, (two weeks before the scheduled hearing in this litigation) designed to amend the effective date of Ordinance No. 1721 to purportedly put it into immediate effect. Thereafter, on August 9, 2007, in a meeting called with less than 24 hours' notice, Defendants adopted Ordinance No. 1736, amending the terms of Ordinance No. 1722 to provide that it too was effective immediately. See Ordinance No. 1736, which restates Ordinance 1722 in full, attached hereto as Exhibit A.

3. At the hearing on the Plaintiffs' Motion for Judgment on the Pleadings on March 1, 2007, Eric Martin, the Valley Park City Attorney, testified that the "substance" of Ordinance No. 1722 "is virtually identical" to the substance of Ordinance No. 1715. Transcript p. 48-49, March 1, 2007. An attorney for the City also admitted that: "The employment provisions have not been changed in any of the statutes and I would not represent to the Court that there is a substantial change in the employment provisions.: Transcript p. 12-14, March 1, 2007. Transcript Excerpts are attached hereto as Exhibit B.

4. After adopting Ordinance No. 1721 and No. 1722 on February 5, 2007 (three weeks before the scheduled hearing), Defendants argued that Ordinances No. 1708 and No. 1715 were moot because the City had adopted the new ordinances in place of No. 1708 and No. 1715 which

the new ordinances had purportedly repealed.

5. This Court entered its Findings of Facts, Conclusions of Law, Order and Judgment on March 12, 2007, declaring both Ordinances No. 1708 and No. 1715 void for violating Missouri law, and permanently enjoined the Defendants from enforcing either ordinance. The Court's judgment did not rule on the validity of Ordinance No. 1721 or No. 1722.

6. In pertinent part, this Court's Judgment, in addressing Defendants' mootness argument, stated that "the new ordinances are 'sufficiently similar' to the old ordinances in that they are directed at the same class of people and conduct and include some of the same penalties. Given that the substance of the new ordinances is the same, the Court concludes the challenged conduct will continue." Findings of Fact, Conclusions of Law, Order and Judgment, p. 5.

7. The Court specifically held that Ordinance No. 1715 conflicted with Section 79.470 of the Missouri Revised Statutes in that it penalizes a violation by suspending a business' permit to operate.

8. In adopting Ordinance No. 1736 on August 9, 2007, to make Ordinance No. 1722 immediately effective, Defendants have violated the Court's Judgment of March 12, 2007, in that the Court had enjoined the City from enforcing a "virtually identical" ordinance, No. 1715. Ordinance No. 1722 and No. 1736 bear the same fatal flaw as Ordinance No. 1715 in that they impose penalties far in excess of that allowed by Missouri law. With respect to the legal flaw that is the subject of the Court's March 12 Judgment, Defendants have effectively simply renumbered and reenacted the Ordinance already held unlawful.

9. Defendants had full knowledge of the contents of the Court's Judgment when they adopted Ordinance No. 1722 and Ordinance No. 1736, and acted willfully and in contempt of the Court's Judgment.

10. The Court's Findings of Fact, Conclusions of Law, Order and Judgment has been appealed by the Defendants, with a cross appeal by Plaintiffs of the issue of attorney fees. Briefs have not yet been filed in the appeal.

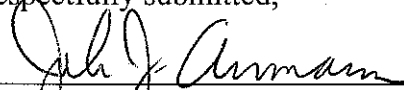
11. Defendants have not sought a stay of the Court's Judgment.

12. This Court retains jurisdiction to enforce its Judgment while the judgment is being appealed.

13. Plaintiffs have no adequate remedy at law.

Wherefore, Plaintiffs pray this Court issue an Order to Show Cause and to find Defendants in contempt for adopting and enforcing Ordinance No. 1722 and Ordinance No. 1736 which are virtually identical to the Ordinance enjoined by this Court, imposing appropriate punishment, enjoining enforcement of Ordinances No. 1722 and No. 1736, for attorney fees and for such other and further relief as may be deemed appropriate.

Respectfully submitted,



**SAINT LOUIS UNIVERSITY LEGAL CLINIC**

John J. Ammann, #34308

ammannjj@SLU.edu

Susan McGraugh, #37430

mcgraugh@SLU.edu

321 North Spring

St. Louis, MO 63108

(314) 977-2778 Facsimile: (314) 977-3334

**BRYAN CAVE LLP**

Linda Martinez, #30655  
lmartinez@bryancave.com  
Elizabeth Ferrick, #52241  
elizabeth.ferrick@bryancave.com  
Rhiana Sharp, #56539  
rhiana.sharp@bryancave.com  
One Metropolitan Square  
St. Louis, MO 63102  
(314) 259-2000  
Facsimile: (314) 259-2020

**SCHLICHTER, BOGARD & DENTON**

Kathy A. Wisniewski, #38716  
kwisniewski@uselaws.com  
100 South Fourth Street  
Suite 900  
St. Louis, MO 63102  
(314) 621-6115  
Facsimile: (314) 621-7151

**WASHINGTON UNIVERSITY SCHOOL OF  
LAW, CIVIL RIGHTS & COMMUNITY  
JUSTICE CLINIC**

Karen Tokarz, #27516  
tokarz@wulaw.wustl.edu  
Margo Schlanger (pro hac vice)  
mschlanger@wulaw.wustl.edu  
One Brookings Drive, CB 1120  
St. Louis, MO 63130  
(314) 935-9097  
Facsimile: (314) 935-5356

**CATHOLIC LEGAL ASSISTANCE  
MINISTRY**

Marie A. Kenyon, #36060  
kenyonm@SLU.edu  
321 N. Spring Avenue  
St. Louis, MO 63108  
(314) 977-3993  
Facsimile: (314) 977-3334

**ITUARTE AND SCHULTE LLC**

Jesus Itauarte  
ituarte\_j@sbcglobal.net  
2200 Pestalozzi Street  
St. Louis, MO 63118  
(314) 865-5400

**ANTHONY B. RAMIREZ, P. C.**

Anthony B. Ramirez, #20169  
AnthonyRamirez@ramirezlawfirm.com  
1015 Locust Street, Suite 735  
St. Louis, MO 63101  
(314) 621-5237  
Facsimile: (314) 621-2778

*Attorneys for Plaintiffs, Stephanie Reynolds,  
Kobasa, Inc., d/b/a Valley Deli, Florence Streeter,  
Cash Flo Properties, and Metropolitan St. Louis  
Equal Housing Opportunity Council.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served via U.S. mail, postage prepaid, on the 16th day of August on the following counsel of record:

**ERIC M. MARTIN, ESQ.**

109 Chesterfield Business Parkway  
Chesterfield, MO 63005-1233  
EMartin772@aol.com

**KRIS W. KOBACH**

University of Missouri-Kansas City School of Law  
5100 Roackhill Road  
Kansas City, MO 64110-2499  
[kobachk@umkc.edu](mailto:kobachk@umkc.edu)

**LOUIS LEONATTI**

123 East Jackson  
P.O. Box 758  
Mexico, Mo. 65265  
[lou@leonatti-baker.com](mailto:lou@leonatti-baker.com)

*Counsel for Defendants*

and

**ALAN BAKER**

Attorney at Law  
1620 South Hanley  
St. Louis, MO 63144  
(314) 647-2850  
Facsimile: (314) 647-5314

*Attorney for Intervenor James Zhang*

**ANTHONY E. ROTHERT**

American Civil Liberties Union Of Eastern Missouri  
454 Whittier Street  
St. Louis, MO 63108  
314-652-3114  
Fax: 314-652-3112  
Email: [tony@aclu-em.org](mailto:tony@aclu-em.org)

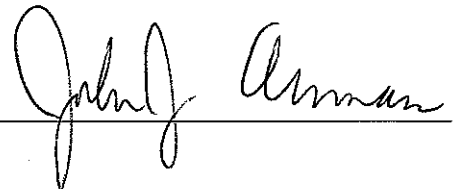
**DANIEL J. HURTADO**  
**GABRIEL A. FUENTES**  
Jenner & Block LLP  
330 North Wabash Avenue  
Chicago, IL 60611-7603  
312-923-2645  
Email: dhurtado@jenner.com

**FERNANDO BERMUDEZ**  
Green and Jacobson, P.C.  
7733 Forsyth Boulevard, Suite 700  
St. Louis, MO 63105  
314-862-6800  
Fax: 314-862-1606  
Email: bermudez@stlouislaw.com

**OMAR C. JADWAT**  
**JENNIFER C. CHANG**  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
39 Drumm Street  
San Francisco, CA 94111  
415-343-0770  
Fax: 415-395-0950  
Email: jchang@aclu.org

**Jennifer R. Nagda**  
**Ricardo Meza**  
MALDEF  
11 E. Adams Street, Suite 700  
Chicago, IL 60603  
312-427-0701  
Fax: 312-427-0691  
Email: jnagda@maldef.org

*Attorneys for Plaintiffs Windhover, Inc and  
Jacqueline Gray*



A handwritten signature in cursive script, appearing to read "John J. Arman", is written above a horizontal line.



## **EXHIBIT A**

BILL NO. 1885

ORDINANCE NO. 1736

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**AN ORDINANCE AMENDING ORDINANCE 1722  
AS AMENDED BY ORDINANCES 1724 AND 1732 BY  
MAKING THE ORDINANCE EFFECTIVE IMMEDIATELY  
BUT STAYING THE ENFORCEMENT OF  
SECTIONS 2, 3, 4, 5 AND 6 AND NOT ACCEPTING  
COMPLAINTS THEREUNDER UNTIL DECEMBER 1, 2007**

\*\*\*\*\*

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF VALLEY PARK, MISSOURI, AS FOLLOWS:

**Section One**

Ordinance 1722, as amended by Ordinance 1724 and Ordinance 1732, is hereby amended by deleting Section Seven therefrom and, in lieu thereof, inserting a new Section Seven so that Ordinance 1722, as amended by Ordinances 1724 and 1732, shall read as follows:

**"Section One**

Ordinance No. 1715 and sections one, two, three and four of Ordinance No. 1708 are hereby repealed and the following is enacted in lieu thereof:

**Section Two**

**FINDINGS AND DECLARATION OF PURPOSE.**

The people of the City of Valley Park find and declare:

- A. That state and federal law require that certain conditions be met before a person may be authorized to work in this country.
- B. That unlawful workers and illegal aliens, as defined by this Ordinance and state and federal law, do not normally meet such conditions as a matter of law when present in the City of Valley Park.
- C. That the unlawful employment of, harboring of, and crimes committed by, illegal aliens harm the health, safety, and welfare of residents of the City of Valley Park. Illegal immigration leads to higher crime rates, subjects our hospitals to fiscal hardship and our residents to substandard quality of care, contributes to other burdens on public services, increasing their costs and diminishing their availability, diminishes our overall quality of life, and

endangers the security and safety of the homeland. Employment of unauthorized aliens reduces the wages of, and may result in the unemployment of, U.S. citizens and aliens who are authorized to work in the United States.

- D. That the City of Valley Park is authorized to enact ordinances to promote the health, safety, and welfare of its residents and to abate public nuisances, including the nuisance of illegal immigration, by diligently prohibiting the acts and practices that facilitate illegal immigration, in a manner consistent with federal law and the objectives of Congress.
- E. This Ordinance seeks to secure to those lawfully present in the United States and this City, whether or not they are citizens of the United States, the right to live in peace free of the threat of crime, to enjoy the public services provided by this City without being burdened by the cost of providing goods, support and services to aliens unlawfully present in the United States, and to be free of the debilitating effects on their economic and social well being imposed by the influx of illegal aliens, to the fullest extent that these goals can be achieved consistent with the Constitution and Laws of the United States and the State of Missouri.
- F. The City shall not construe this Ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

### **Section Three**

#### **DEFINITIONS.**

When used in this chapter, the following words, terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

- A. "Business entity" means any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.
  - (1) The term business entity shall include, but not be limited to, self-employed individuals, partnerships, corporations, contractors, and subcontractors.
  - (2) The term business entity shall include any business entity that possesses a business license, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without such a business license.

- B. "City" means the City of Valley Park, Missouri.
- C. "Contractor" means a person, employer, subcontractor or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include, but not be limited to, a subcontractor, contract employee, or a recruiting or staffing entity.
- D. "Illegal Alien" means an alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, section 1101 et seq. The City shall not conclude that a person is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.
- E. "Unlawful worker" means a person who does not have the legal right or authorization to work due to an impediment in any provision of federal, state or local law, including, but not limited to, a minor disqualified by nonage, or an unauthorized alien as defined by United States Code Title 8, subsection 1324a(h)(3).
- F. "Work" means any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including, but not limited to, all activities conducted by business entities.
- G. "Basic Pilot Program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); United States Code Title 8, subsection 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government.)

#### **Section Four**

#### **BUSINESS PERMITS, CONTRACTS, OR GRANTS.**

- A. It is unlawful for any business entity to knowingly recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or part within the City. Every business entity that applies for a business license to engage in any type of work in the City shall sign an affidavit, prepared by the City Attorney, affirming that they do not knowingly utilize the services or hire any person who is an unlawful worker.

- B. Enforcement: The Valley Park Code Enforcement Office shall enforce the requirements of this section.
- (1) An enforcement action shall be initiated by means of a written signed complaint to the Valley Park Code Enforcement Office submitted by any City official, business entity, or City resident. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.
  - (2) A complaint which alleges a violation on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.
  - (3) Upon receipt of a valid complaint, the Valley Park Code Enforcement Office shall, within three (3) business days, request identify information from the business entity regarding any persons alleged to be unlawful workers. The Valley Park Code Enforcement Office shall suspend the business permit of any business entity which fails, within three (3) business days after receipt of the request, to provide such information.
  - (4) The Valley Park Code Enforcement Office shall suspend the business license of any business entity which fails to correct a violation of this section within three (3) business days after notification of the violation by the Valley Park Code Enforcement Office.
  - (5) In any case in which the alleged unlawful worker is alleged to be an unauthorized alien, the Valley Park Code Enforcement Office shall not suspend the business license of the business entity if prior to the date of the violation, the business entity had verified the work authorization of the alleged unlawful worker using the Basic Pilot Program.
  - (6) The suspension shall terminate one (1) business day after a legal representative of the business entity submits, at a City office designated by the City Attorney, a sworn affidavit stating that the business entity has corrected the violation, as described in Section 5.B.
    - (a) The affidavit shall include a description of the specific measures and actions taken by the business entity to correct the violation, and shall include the name, address and other adequate identifying information of the unlawful workers related to the complaint.

- (b) Where two or more of the unlawful workers are verified by the federal government to be unauthorized aliens, the legal representative of the business entity shall submit to the Valley Park Code Enforcement Office, in addition to the prescribed affidavit, documentation acceptable to the City Attorney which confirms that the business entity has enrolled in and will participate in the Basic Pilot Program for the duration of the validity of the business permit granted to the business entity.
- (7) For a second or subsequent violation, the Valley Park Code Enforcement Office shall suspend the business permit of a business entity for a period of twenty (20) days. After the end of the suspension period, and upon receipt of the prescribed affidavit, the Valley Park Code Enforcement Office shall reinstate the business permit. The Valley Park Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate federal enforcement agency, pursuant to United States Code Title 8, section 1373. In the case of an unlawful worker disqualified by state law not related to immigration, the Valley Park Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate state enforcement agency.
- C. All agencies of the City shall enroll and participate in the Basic Pilot Program.
- D. As a condition for the award of any City contract or grant to a business entity for which the value of employment, labor or, personal services shall exceed \$10,000, the business entity shall provide documentation confirming its enrollment and participation in the Basic Pilot Program.

### **Section Five**

#### **IMPLEMENTATION AND PROCESS**

- A. Prospective Application Only. The default presumption with respect to Ordinances of the City of Valley Park – that such Ordinances apply only prospectively – shall pertain to the provisions of this Ordinance, which shall apply only to employment contracts, agreements to perform service or work, and agreements to provide a certain product in exchange for valuable consideration that are entered into or renewed after the date that this Ordinance becomes effective and any judicial injunction prohibiting its implementation is removed.
- B. Correction of Violations–Employment of Unlawful Workers. The correction of a violation with respect to the employment of an unlawful worker shall include any of the following actions:

- (1) The business entity terminates the unlawful worker's employment.
  - (2) The business entity, after acquiring additional information from the worker, requests a secondary or additional verification by the federal government of the worker's authorization, pursuant to the procedures of the Basic Pilot Program. While this verification is pending, the three business day period described in Section 4.B.(4) shall be tolled.
  - (3) The business entity attempts to terminate the unlawful worker's employment and such termination is challenged in a Court of the State of Missouri. While the business entity pursues the termination of the unlawful worker's employment in such forum, the three business day period described in Section 4.B(4) shall be tolled.
- C. Procedure if Verification is Delayed. If the federal government notifies the City of Valley Park that it is unable to verify whether an individual is authorized to work in the United States, the City of Valley Park shall take no further action on the complaint until a verification from the federal government concerning the status of the individual is received. At no point shall any city official attempt to make an independent determination of any alien's legal status, without verification from the federal government, pursuant to United States Code Title 8, Subsection 1373(c).
- D. Venue for Judicial Process. Any business entity subject to a complaint and subsequent enforcement under this Ordinance, or any individual employed by or seeking employment with such a business entity who is alleged to be an unlawful worker, may challenge the enforcement of this Ordinance with respect to such entity or individual before the Board of Adjustment of the City of Valley Park, Missouri, subject to the right of appeal to the St. Louis County Circuit Court.
- E. Deference to Federal Determinations of Status. The determination of whether an individual is an unauthorized alien shall be made by the federal government, pursuant to United States Code Title 8, Subsection 1373(c). The Board of Adjustment of the City of Valley Park, Missouri, may take judicial notice of any verification of the individual previously provided by the federal government and may request the federal government to provide automated or testimonial verification pursuant to United States Code Title 8, Subsection 1373(c).

**Section Six**

**CONSTRUCTION AND SEVERABILITY**

- A. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.
- B. If any parts of or any provision of this Chapter is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or such provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.

**Section Seven**

This Ordinance shall become effective from and after its passage and approval by the Mayor in repealing Ordinances 1708 and 1715, provided that the enforcement of the provisions contained within Sections Two, Three, Four, Five and Six shall be stayed and no complaints thereunder shall be accepted by the City of Valley Park until December 1, 2007."

**Section Two**

This Ordinance shall become effective from and after its passage and approval by the Mayor.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
**JEFFERY J. WHITTEAKER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**MARGUERITE WILBURN**  
City Clerk



## **EXHIBIT B**

1 Honor, was that we were going to argue this mootness  
2 issue at ten minutes a side and then both sides would  
3 put their evidence into the record and then we would  
4 move on to argument on motion for judgment on the  
5 pleadings. I think that was what we outlined, and to  
6 me that seems to make the most sense.

7 We of course object to any testimonial  
8 evidence in this case in particular, because what  
9 it's being offered for, considering to what was said  
10 in the teleconference that we had, that it's going to  
11 be offered for -- to tell this court how it should  
12 interpret the statute, which is totally against the  
13 law. And it would also require at a minimum some  
14 expert if it was allowed, and this court had a  
15 deadline for designation of experts and that has  
16 passed, and my understanding is whoever they may call  
17 is not somebody they designated. We've had no chance  
18 to depose that person.

19 Again, this is another last minute attempt  
20 by the Defendants to pull a surprise on the  
21 Plaintiffs so that we're not prepared. This has been  
22 the history of this case. We strongly object to any  
23 testimonial evidence on the issues that they want to  
24 offer it for.

25 THE COURT: Okay, I'm going to overrule the

1 The Jacksonville case, the important part of  
2 that is the footnote, footnote 3, which I'm sure the  
3 Court has read. And, as you know, there was a  
4 various split decision in Jacksonville; it's a 5/4.  
5 Footnote 3 says, "*At bottom, the dissent differs only  
6 over the question of whether the new ordinance is  
7 sufficiently similar to the repealed ordinance that  
8 it is permissible to say that the challenged conduct  
9 continues, or, as the dissent puts it, whether the  
10 ordinance has been sufficiently altered to present a  
11 substantially different controversy.*" So that the  
12 real question on mootness is are you gonna have the  
13 same thing before you in the new ordinance or is it  
14 substantially different. And we're going to show to  
15 the Court and in our paragraph 6 of our proposed  
16 findings of fact there is a substantial difference in  
17 the landlord tenant provisions from new ordinance  
18 1721 and 1708 and 1715.

19 Counsel exchanged -- Ms. Ferrick asked me if  
20 I would provide her with the case we talked about  
21 yesterday, or Tuesday, I'm sorry, the Smithfield  
22 decision, and I gave her that cite, and I gave her  
23 the cite to two other cases and I have copies of  
24 those for everyone. Smithfield is Smithfield Foods,  
25 it's an 8th circuit decision that -- 367 F.3d 1061.

1 motion on the objection on the offering of  
2 testimonial evidence for this reason: To the extent  
3 that the Court needs to consider a judgment on the  
4 pleadings and needs to have other evidence with  
5 regard to the ability to make that judgment, the  
6 Court believes it has to take some evidence on this,  
7 and, therefore, the Court is not going to deny the  
8 Defendants the right to be in opposition and present  
9 evidence on their side. But it's a limited field.

10 MR. LEONATTI: We're not going to present  
11 legal opinion, we're going to present testimony about  
12 the difference between the two ordinances.

13 THE COURT: Right. So when the questions  
14 are asked I suggest you interpose your objections if  
15 you have them then to technical questions or legal  
16 grounds.

17 MS. WISNIEWSKI: We assume we'll have the  
18 right to cross-examine, Your Honor.

19 THE COURT: Of course.

20 All right. Now, so let's start with the  
21 argument on the U.S. Supreme Court decision.

22 MR. LEONATTI: Mootness. May it please the  
23 Court. I'm confident in what we're going to do today  
24 because there are good lawyers on both sides and the  
25 Court has been very attentive.

1 I have a copy of that for the Court.

2 THE COURT: Mr. Martin just handed me one.  
3 Thank you very much.

4 MR. LEONATTI: And Federation of Advertising  
5 Industry Representatives against the City of Chicago,  
6 which is at 326 F.3d 924, and Lamar Advertising vs  
7 the Town of Orchard Park, which is at 356 F.3d 365.

8 Now what those cases are doing, Your Honor,  
9 is they're interpreting that footnote in the City of  
10 Jacksonville. And that's where everybody focuses  
11 their attention.

12 THE COURT: Are you looking at Headnote 2  
13 there, *Mootness*?

14 MR. LEONATTI: Yes. And in Smithfield  
15 that's a case where the State of Iowa is trying to  
16 keep the largest hog producer in the world out of the  
17 State of Iowa, and they passed a law, then they  
18 repealed it, had a new law, and they determined that  
19 there was not a sufficient difference, but they  
20 looked to that footnote in the City of Jacksonville  
21 case. Page 3 of the opinion says you have to  
22 determine if it's sufficiently similar to the  
23 repealed statute and will the challenged conduct  
24 continue. That's the test: Is it sufficiently  
25 similar; will the challenged conduct continue. If it

13

is, it's not moot. If it's different then it is moot. The advertising case against the City of Chicago, both of these cases I find quite ironic 'cause they're billboard cases and they're similar to the City of Eureka case which we provided to the Court last week decided by Judge Price before the Missouri Supreme Court. But in the Federation of Advertising Industry case against the City of Chicago on page 5 of the opinion it notes: *As the Court has noted, that if there's a claim for damages that's pending you still have to consider the claim for damages, and that's in accord with the City of Sikeston case, and that's why we had this issue still about attorneys fees. But, it also says that there's a presumption; that you do not presume bad faith by the legislative body if there's a reasonable explanation as to why the ordinance was re-enacted. It, again, discusses this footnote from the Northeastern Florida case, talks about the majority opinion on page 7, and in this particular case concerning these billboards it held that there was a substantial difference and granted the argument on mootness. Now this concerned whether you could advertise alcohol and cigarettes on what I would call public billboards and metropolitan transit, that type*

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of thing. But it goes through all of this analysis, talks about deference to the legislative body have to give deference to the legislative body in 13, and then reaches that conclusion.

The Lamar Advertising case: Again, another billboard case; again, interpreting the City of Jacksonville case, and it reaches the same conclusion. In this particular case the statute had actually been repealed and they wanted to continue the lawsuit, and the Court again held, frankly, if you put it in layman's language, it really was nothing left to decide. There wasn't a claim for damages, and it noted on page 8 that challenges to statute are routinely found moot when a statute is amended. The exception is the City of Jacksonville case in that footnote.

So what we have to do is determine if there's a similarity between the new ordinance 1721 and the landlord tenant provisions in 1708 and 1715. The employment provisions have not been changed in any of the statutes and I would not represent to the Court that there is a substantial change in the employment provisions. The landlord tenant provision there is a substantial difference, and in paragraph 6 of our proposed findings we go through those for the

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1 Court. And without getting into a ratatat-tat, 1715  
2 has penalties for noncompliance; 1721 has no  
3 provision for a fine, no type of penalty. 1715  
4 requires a complaint; 1721 does not allow a  
5 complaint. 1715 required the landlord to make a  
6 judgment about the tenant, frankly; 1721 doesn't  
7 require decision-making. 1721 requires  
8 verification of all tenants - not just certain  
9 tenants but all tenants. That's a substantial  
10 difference.

11 THE COURT: Can I interrupt you Mr.  
12 Leonatti. The new one, if it does not contain  
13 penalties for noncompliance, what, so a person could  
14 just violate the ordinance and there's no harm, no  
15 foul?

16 MR. LEONATTI: I think, if I recall  
17 correctly, we'll have some testimony about that,  
18 Judge. There's not a filing of the complaint in  
19 municipal court, there's not a fine. You could lose  
20 the occupancy permit --

21 THE COURT: I see.

22 MR. LEONATTI: But you wouldn't be -- And  
23 the old ordinance did not have an appeal process.  
24 The new ordinance permits an appeal by the landlord  
25 to the city's Board of Adjustment.

16

1 THE COURT: Did the old ordinance also  
2 include the loss of the occupancy permit?

3 MR. LEONATTI: I believe so.

4 THE COURT: It did didn't it?

5 MR. LEONATTI: I believe so.

6 So we think those are big distinctions.

7 THE COURT: So the only penalty now under  
8 the landlord tenant provision is this loss of the  
9 occupancy permit?

10 MR. LEONATTI: Yes. And every tenant gets  
11 processed, and you don't get into this \$500 for every  
12 defense, \$250 remedy defense. That's all been  
13 eliminated. So I think that is a good -- Don't know  
14 if it was ten minutes, but that's a good nutshell of  
15 what we're presenting to you.

16 THE COURT: Thank you, sir. All right.  
17 Kathy.

18 MS. WISNIEWSKI: Your Honor, I'd like to  
19 speak from the podium if that's okay with the Court.

20 THE COURT: Sure.

21 MS. WISNIEWSKI: Judge, we've come a long  
22 way in four weeks on this mootness issue. In that  
23 short period of time the City of Valley Park has  
24 attempted to control these judicial proceedings  
25 through their legislative enactments. Only four

passed by the city council, correct?

A Yes, sir.

Q Now was there a question raised in this litigation as to when 1721 and 1722 would become effective?

A There was.

Q All right. Is that objection set forth in Defendant's Exhibit S?

A It is.

Q So as a result of that objection was, I call it the enabling clause or the effective clause for the ordinance, was that modified in Ordinance 1723 and 1724?

A It was, as a direct reaction to the correspondence, yes, sir.

Q All right. And then the city council has met this week, is that correct?

A Yes, sir.

Q And passed Ordinance No. 1725 which is Exhibit Q?

A Yes, sir.

Q And did that, again, amend the enabling clause on Ordinance No. 1721?

A It did.

Q All right. And --

1 for purposes of the record, did the City of Valley  
2 Park and the Defendants offer to substitute Ordinance  
3 1721 and 1722 in place of 1708 and 1715 and have the  
4 Court's preliminary injunction apply to it?

5 A Yes, sir.

6 MR. AMMANN: Your Honor, I object to that.  
7 They can't force us to litigation. Those ordinances  
8 and Mr. Martin's opinion about that is irrelevant.

9 THE COURT: How is it relevant?

10 MR. LEONATTI: It's relevant under Lamar  
11 Advertising vs. Town of Orchard Park. The last page  
12 of the opinion indicates that it would be a  
13 preferable procedure to have amended the complaint to  
14 certain new ordinances so that matter can be  
15 determined by the Court.

16 MR. AMMANN: Well Mr. Martin just said that,  
17 I mean, they're adopting things three days ago, so I  
18 don't know how we would have had time to amend and  
19 have those new ordinances when the effective date --  
20 You know, I mean it wasn't even effective until three  
21 nights ago.

22 THE COURT: Again, I'll take it for what  
23 it's worth. The Court's aware that to amend may have  
24 caused a continuance. There were lots of reasons  
25 that the Plaintiffs had that they didn't want that

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THE COURT: So Q amended T?

MR. LEONATTI: Yes.

THE COURT: No, I'm just trying to follow.

THE WITNESS: It made the ordinance effective immediately.

Q (By Mr. Leonatti) Prior to that the ordinances had indicated -- 1721, 1722, had indicated that they would not be enforced while there was litigation pending as to 1715 and 1708, right?

A That's correct.

Q And then there was a change made in that language as to 1721, 1722, and that was objected to by Plaintiffs' counsel?

A Yes, sir.

Q So 23 -- Ordinance 1723 and ordinance 1724 was an attempt to clean that up?

A Exactly.

Q And 1725 is a clear statement that it's to be effective when passed?

A Yes, sir.

Q And we got a lot of ordinances running around. That's referring to 1721, the landlord tenant?

A Yes, sir.

Q All right. Now as part of the litigation,

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1 amendment as well. But the Court does know that you  
2 all made that offer.

3 Q (By Mr. Leonatti) And as part of that offer  
4 did the Defendants offer to have remain open and have  
5 litigated the claim that Ordinance 1708 and 1715 were  
6 alleged to have violated the open meetings law?

7 A Yes, sir.

8 Q And that offer was not accepted?

9 A That's correct.

10 MR. LEONATTI: That's all the questions I  
11 have.

12 THE COURT: Who's going to do the cross?

13 MR. AMMANN: I am, Your Honor.

14 CROSS EXAMINATION

15 BY MR. AMMANN:

16 Q Mr. Martin, you were born on the 4th of  
17 July, is that what I heard?

18 A That's correct.

19 Q My objection went to you having to reveal  
20 your age, not your date of birth.

21 A I appreciate that.

22 Q Mr. Martin, you talked about Exhibit T being  
23 Ordinance 1721, correct?

24 A Yes, sir.

25 Q And just for the Court's benefit, 1721 deals

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1 with housing and rental properties, correct?  
2 A Yes, sir.  
3 Q And the new Ordinance 1722 deals with  
4 employment?  
5 A Yes, sir.  
6 Q And business and hiring workers?  
7 A Yes, sir.  
8 Q Mr. Leonatti has said, but I want to make  
9 sure you're in agreement, that 1722 dealing with  
10 employment is virtually identical to 1715 in terms of  
11 regarding employment?  
12 A There were some amendments made and the  
13 amendments included making it prospective only in its  
14 application, and I believe an appellate process was  
15 set forth.  
16 Q But the substance is virtually identical?  
17 A Yes, sir.  
18 Q You said you drafted 1721, is that correct?  
19 A Well, as an amalgamation, but principally,  
20 yes, sir.  
21 Q And other attorneys were helping, correct?  
22 A That's correct.  
23 Q Professor Kobach from UM Kansas City?  
24 A Yes, sir.  
25 Q Mr. Leonatti?

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1 A I'm not sure.  
2 Q Primarily Professor Kobach?  
3 A Yes.  
4 Q And were you sharing drafts with the Mayor  
5 as they were being redrafted?  
6 MR. LEONATTI: That might invade attorney  
7 privilege, so I object.  
8 MR. AMMANN: Your Honor, they opened the  
9 door to how the bill was drafted.  
10 THE COURT: Without revealing -- I'm going  
11 to overrule the objection, but I'm not going to -- no  
12 content of discussions.  
13 Q (By Mr. Ammann) Did you share the drafts  
14 with the Mayor?  
15 A No, sir.  
16 Q Did you share the drafts with the Board of  
17 Aldermen at all?  
18 A No, sir.  
19 Q Who then, Mr. Martin, was directing you to  
20 make changes or to suggest the language for 1721 and  
21 1722?  
22 A Counsel.  
23 Q So it was strictly a discussion among the  
24 attorneys?  
25 A It was.

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1 Q So the Mayor, nor the Board of Aldermen,  
2 directed you to draft 1721 or 1722?  
3 A That's correct.  
4 Q And was it Professor Kobach's idea to make  
5 the changes?  
6 A It was a combination of myself and Mr.  
7 Kobach.  
8 Q 1721 deals with rental property, as you  
9 said, correct?  
10 A Yes, sir.  
11 Q And it was designed to repeal 1715 insofar  
12 as it related to rental property?  
13 A Yes, sir.  
14 MR. AMMANN: And, Your Honor, 1715, I don't  
15 remember what letter it is. If Mr. Leonatti  
16 remembers.  
17 THE COURT: 1715 is Plaintiffs' Exhibit 6.  
18 MR. AMMANN: Plaintiffs' Exhibit 6. Okay.  
19 Q (By Mr. Ammann) So Plaintiffs' Exhibit 6,  
20 1715, is the prior ordinance, which do you believe  
21 that 1721 and 1722 repealed 1715?  
22 A I do.  
23 Q And 1721 in its housing aspects deals with  
24 illegal aliens, correct?  
25 A Yes, sir.

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1 Q And in 1721 the mechanism for checking the  
2 status of someone who's -- their legal status, the  
3 mechanism is to check with the federal immigration  
4 officials?  
5 A Yes, sir.  
6 Q Pardon me?  
7 A Yes, sir.  
8 Q And in 1721 a landlord faces the inability  
9 to rent his or her property out to someone found not  
10 to have legal status, is that correct?  
11 A That's correct.  
12 Q And the purpose of 1721 is to keep illegal  
13 aliens from renting dwellings in Valley Park, is that  
14 correct?  
15 A Yes, sir.  
16 Q And under 1721 it's up to the landlord to  
17 apply for occupancy permit, is that correct?  
18 A That's correct.  
19 Q And it's up to the landlord to provide the  
20 City with information about the citizenship status of  
21 people who are prospective renters, is that correct?  
22 A That's correct.  
23 Q And 1721 says the person enforcing that  
24 ordinance is the building commissioner, is that  
25 correct?