



MISSOURI SENATE
SENATOR MICHAEL R. GIBBONS
President Pro Tem

COMMITTEES:
Administration—Chairman
Gubernatorial Appointments—Chairman
Rules, Joint Rules, Resolutions and Ethics
Health and Mental Health

STATE CAPITOL, ROOM 326
573-751-2853
DISTRICT PHONE: 314-966-2526

July 13, 2007

Mr. James T. Byrne

Dear Mr. Byrne:

Thank you for your letter sharing your views and concerns regarding circuit court judges having authority to rule on the constitutionality of a statute.

In a subsequent e-mail to one of my staff members, Donna, you had presented specific questions you wished to be answered regarding this topic.

You first asked what happens to a statute when it is ruled unconstitutional by a circuit court judge. When a statute, or a portion thereof, is declared unconstitutional by a circuit court, the law becomes invalid or void, and no longer has any legal force or effect upon the circuit court's final decision. The law will still show up within the Missouri Revised Statutes, however, a footnote will be printed to indicate that the law has been declared unconstitutional and that it is not valid. Unless the circuit court's decision is overturned on appeal, the law will remain without force or effect forever. It will remain within the code of state statutes unless it is repealed, or rescinded, by legislative act.

You then asked what authority is used in determining what happens to a statute when ruled unconstitutional. The U.S. Constitution expressly states that it is the supreme law of the land, and is the basis upon which our government is founded.¹ Therefore, it is inherent that any law that is in conflict with the constitution shall be voidable through a proper constitutional challenge against such law brought by a party whose rights have been or will be affected.² Similarly, our state constitution is the basis for our state government, and therefore any state law that is inconsistent therewith is also voidable by a party whose rights are affected. However, since the U.S. Constitution is the supreme law, any state law or state constitutional provision that is inconsistent with the federal constitution is also voidable by such a party.³ And, a law that has

¹ Article VI, clause 2, of the U.S. Constitution.

² See, for example, Bode v. Barrett, 344 U.S. 583, 588 (1953); and Article III, sections 1 and 2 of the U.S. Constitution.

³ Ryder v. St. Charles County, 552 S.W.2d 705, 707 (Mo. 1977).

been declared unconstitutional can have no effect by virtue of the fact that it has been declared such.⁴

You also asked what authority is used to give law-making power to a circuit court judge. Although a circuit court judge can strike down a law if it is deemed unconstitutional, judges do not create laws. The legislature, and the people through the initiative process, have the power to make laws.⁵ When a judge determines whether a law is unconstitutional, the judge is not making law; he or she is interpreting the law, which is one of the basic functions of the judicial department.

Additionally you asked why a circuit court judge has authority and subject matter jurisdiction that the Court of Appeals do not. As you are aware, Article V, section 14 of the Missouri Constitution states that the circuit courts shall have original jurisdiction over all cases and matters, civil and criminal. Article V, section 3 of the Missouri Constitution states that the Supreme Court shall have “exclusive appellate jurisdiction” in all cases involving the validity of a federal or state law. This means the Supreme Court, and not the court of appeals, has the sole (exclusive) authority (jurisdiction) to review the lower courts’ judgment (appellate).

You stated that logic demands that a tribunal has no authority to question the validity of a statute. However, aside from federal and state constitutional provisions and case law interpreting such provisions that make clear that this is emphatically the duty of courts, if a person were aggrieved by a statute that was enacted and felt that it was unconstitutional, if the courts had no authority to review the law and make a declaration of its validity then the aggrieved person would have no remedy whatsoever, and a very basic aspect of the checks and balances within our governmental system would be lost.

Finally, you have inquired about State v. Cox, and asked how a court’s order can be in excess of a court’s jurisdiction if a court has subject matter jurisdiction over all cases. In this case, the circuit court did have subject matter jurisdiction over the issue; however, the appellate court determined that the court’s order or remedy was incorrect. It was not that the circuit court lacked subject matter jurisdiction to hear and decide the case, but the court’s remedy was outside of the court’s authority because it attempted to order a party to pay money that had not been appropriated, in violation of statute. The legislature can statutorily determine available remedies in cases, but this does not alter the court’s authority to hear the case.

I hope this answers your questions.

Yours truly,

A handwritten signature in black ink on a light gray background. The signature is written in a cursive style and reads "Michael R. Gibbons".

MICHAEL R. GIBBONS

⁴ See, for example, State ex re. Miller v. O’Malley, 117 S.W.2d 319 (Mo. 1938). ⁵ Within the Missouri Constitution, please see Article II, section 1, and Article III, sections 1 and 49. ⁶ Please see Marbury v. Madison, 5 US. 137 (1803).