

To: Senator Michael Gibbons Cc via Fax: Governor Matt Blunt, Missouri Supreme Court, Judge Patricia Joyce, Office of the Attorney General, Office of the State Courts Administrator Bcc: Various Citizens of the State of Missouri.

As support for this contention, I present the following:

Re: R.L. v Department of Corrections (07AC-CC00269)

The May 30<sup>th</sup> ruling as to the constitutionality of Section 566.147 by Judge Patricia Joyce is in itself unconstitutional. The ruling is in violation of Article II, Section 1, and Article V, Sections 2 and 3.

I have contacted the Office of the State Courts Administrator, and was told that Article V, Section 14 of the Missouri Constitution is the controlling authority that would permit a Circuit Court Judge to rule on the constitutionality of a statute. I informed the Office of the State Courts Administrator that it did not, as the validity of a statute of this state is under the exclusive jurisdiction of the Missouri Supreme Court.

Section 478 of the Missouri Revised Statutes does not give a Circuit Court Judge the authority to rule on the validity of a statute.

**The Missouri Constitution Article II -THE DISTRIBUTION OF POWERS Section 1-Three departments of government--separation of powers.**

The powers of government shall be divided into three distinct departments--the legislative, executive and judicial--each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any *power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.*

*Commentary:*

The power to create and modify statutes falls upon the legislative branch of our government. The only noted exception provides that the Supreme Court shall have exclusive jurisdiction on matters of the validity of a statute or treaty of the United States or of this state.

**Only the Supreme Court** has the authority to examine the validity of a statute. (Const. V, 3) The supreme court shall be the highest court in the state. Its jurisdiction shall be coextensive with the state. Its decisions shall be controlling in all other courts. It shall be composed of seven judges, who shall hold their sessions in Jefferson City at times fixed by the court.

**Only the decisions of the Supreme Court** are considered to be controlling in all other courts. (Const. V, 2) The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States or of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office and in all cases where the punishment imposed is death. The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court.

The ruling by Judge Patricia Joyce clearly demonstrates the acts of an out-of-control judiciary. She has no authority to invalidate a properly legislated statute of this state. Further, the decisions of a Circuit Court Judge are not considered to be controlling in any other court.

It is well established that the decisions of a trial court are to be applied only to the case currently in front of that judge. The decisions of the Circuit Courts of Missouri are not published. If not for the media, a judge in another circuit would have no knowledge of the ruling issued by Judge Joyce.

Another Circuit Court Judge may, at the very same time; rule Section 566.147 is not unconstitutional. One judge must have gotten it wrong! Which ruling should the State follow? The correct answer is neither, as neither court's decision is controlling over any other court.

Missouri Revised Statutes, Chapter 3 gives direction for removal of a statute when that statute or any portion of a statute is ruled to be unconstitutional by the Missouri Supreme Court, or a federal court with competent jurisdiction.

What happens to a statute that is ruled unconstitutional by a Circuit Court Judge? There is no provision for removal. I presented this question to Susan (last name unknown, but she was identified to me to be counsel for the Missouri Senate). Susan attempted to tell me that the statute is annotated and not followed. She must have assumed that I was gullible.

For those that would like to insist that a Circuit Court Judge has the authority to determine a statute to be unconstitutional, I ask this. What happens to that statute? The Circuit Court's decision may be appealed, but it is not required to be appealed. If it is not appealed, as no law would require it to be appealed, what happens to the statute?

A Circuit Court Judge is a trier of fact. A statute is fact. A Circuit Court Judge can only render opinion as to the meaning of a statute when the statute lacks clarity. This opinion is to be in accordance with the intent of the legislators. Again, the judge's decision only affects the instant case.

While it is true that the issue of constitutionality of a statute is to be presented at the earliest opportunity, in order for it to be preserved for appellate review, this is only the process of planting the seed, for a Circuit Court Judge does not have the authority to cultivate its crop.

The purpose of presenting an issue to the trial court is to allow the trial court to have the opportunity to rule on it. If the trial court did not have the opportunity to consider the issue, how could the court have erred in its ruling?

The appellate courts have taken preservation to the point of the ridiculous. In doing so, they have forced litigants to present subject matter to courts that lack the jurisdiction to rule on them. The appellate court has become so interested in defending the ruling of the lower court, that it has forgotten its primary purpose.

The primary purpose of all courts is to provide justice. Contrary to the demonstrated actions of today's courts, justice is not a commodity which is a, more or less, adulterated condition the State sells to the citizen as a reward for his allegiance, taxes and personal service. Justice is judicial responsibility that has, unfortunately, given way to judicial economy. Justice is the maintenance or administration of what is just, especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments.

While it is true that a Circuit Court Judge may rule on the constitutionality of law, i.e. charging someone with the same crime twice would be double jeopardy, in violation of Article I, Section 19 of the Missouri Constitution. This would be a clear example of when a Circuit Court Judge may rule on constitutional grounds.

Let's look at what happens when the judge rules, in accordance with, the properly legislated statute, and the statute is later determined to be unconstitutional by a court with competent jurisdiction.

- 1 Litigant appears before the court for violation of a statute.
- 2 Litigant may assert a claim that the statute to be enforced by the court is unconstitutional.
- 3 Litigant may present evidence to the court to support this contention.
- 4 The court may agree that the statute is unconstitutional, and may even issue opinion to the parties as to why the court agrees, but the court rules in accordance with the statute.
- 5 The litigant may appeal the judgment directly to the Missouri Supreme Court.
- 6 The Supreme Court rules on the constitutionality of the statute.
- 7 If the statute is ruled to be unconstitutional, the matter is remanded to the trial court with instructions to disregard that statute or a portion thereof. The statute is then removed in accordance with RS.Mo. Chapter 3.

Any scenario, other than the one described above, puts the statute in "*law limbo*". The Missouri Constitution does not provide for a "*law limbo*". Additionally, the scenario above provides for continuity in the courts. The only court in the United States that is, at least legally, right all of the time, is the United States Supreme Court.

You promised to represent your constituents. Does your loyalty lie with the bar, or with those you have promised to represent? It is clear that either the Governor, the Chief Justice of the Supreme Court or Judge Patricia Joyce must *immediately* address and correct this ruling for lack of subject matter jurisdiction. The governor has a duty to ensure the laws are faithfully executed. (Const. IV, 2)

It cannot be doubted that judicial authority is not ultimate authority. It is certainly not the only repository of wisdom. When a democracy is in moral flux, courts may not have the best or the final answers. Judicial answers may be wrong. They may be counterproductive even if they are right. Courts do best by proceeding in a way that is catalytic rather than preclusive, and that is closely attuned to the fact that courts are participants in the system of democratic deliberation.

Some truths are so basic that, like the air around us, they are easily overlooked. Much of the Constitution is concerned with setting forth the form of our government, and the courts have traditionally invalidated measures deviating from that form. The result may appear "*formalistic*" in a given case to partisans of the measure at issue, because such measures are typically the product of the era's perceived necessity. But the Constitution protects us from our own best intentions: *It divides power among the braches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.*

I would appreciate your review of the information provided, and await your response.

Respectfully submitted,

James T. Byrne