



CIVIL PROCEDURE FORM NO. 8-A(2)

IN THE 19th JUDICIAL CIRCUIT, Cole COUNTY, MISSOURI

Form with fields for Judge or Division, Circuit Court Case Number, Plaintiff/Petitioner, Appellate Number, Date of Judgment/Decree/Order, Defendant/Respondent, Date Ruled Upon, etc.

Notice of Appeal to Missouri Court of Appeals - Civil

District: [X] Western [ ] Eastern [ ] Southern

Main notice form containing text: Notice is given that Intervenor St. Louis County appeals from the judgment/decree/order entered in this action on November 22, 2021 (Judgment) and on December 22, 2021 (Order) (date). Includes fields for Appellant's Name, Respondent's Name, Address, Attorney/Bar Number, E-mail Address, Telephone, and a Brief Description of Case.

with this opinion and inconsistent with the constitution's limitation on legislative delegations and the APA's limitations on rulemaking authority." The Court's Judgment declared that 19 CSR 20-20.010(26); 19 CSR 20-20.040(2)(G)-(I); 19 CSR 20-20.040(6); 19 CSR 20-20.050(3), "including references to discretionary control measures contained in 19 CSR 20-20.010 et seq." violate the Missouri Constitution and Missouri statutes and are invalid. The Court also declared "null and void" any "discretionary orders or rules" that were implemented by "all local health authorities" that would violate the Court's Judgment.

After the Missouri Attorney General publicly announced that he would not appeal the Judgment on behalf of DHSS (despite DHSS' apparent wish to appeal), Intervenor St. Louis County and Jackson County ("Intervenor") timely filed their Motion to Intervene and Stay on December 13, 2021, seeking to intervene for the purpose of appealing and staying the Judgment. Three local public health authorities also sought to intervene. On December 22, 2021, the Court entered the following docket Order: "All pending Motions to Intervene denied."

Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.)

Whether the Court erred in denying Intervenor's Motion to Intervene and Stay.

Whether the Court erred in holding the DHSS regulations at issue violate separation of powers principles when they do not constitute an improper delegation of authority but rather are consistent with Missouri's public health governance structure as set forth in Chapter 192 of the Missouri Revised Statutes and fall within Missouri's recognized exceptions allowing for the delegation certain functions.

Whether the Court erred in declaring 19 CSR 20-20.040(2)(G)-(I) invalid in their entirety, including that part which requires local health authorities to establish control measures, for which Chapter 192 of the Missouri Revised Statutes and 19 CSR 20-20 provide a sufficiently definite standard and for which no arbitrary discretion is involved.

Whether the Court erred in holding the DHSS regulations at issue violate Section 31 of Article I of the Missouri Constitution when they do not authorize local health authorities to "write a law" or otherwise make rules which fix a fine or imprisonment as punishment for their violation.

Whether the Court erred in holding the DHSS regulations at issue violate the Missouri Administrative Procedures Act ("MAPA") when the orders permitted by the DHSS regulations are not "rules" within the meaning of the MAPA and such an interpretation would lead to an absurd and impermissibly onerous result.

Whether the Court erred in holding the DHSS regulations at issue violate the equal protection clause of the Missouri Constitution because the Plaintiffs-Respondents failed to demonstrate that all of the citizens of the State's counties are similarly situated and because the regulations at issue have a rational basis.

Whether the Court erred in entering a Judgment on grounds that were not set forth in Plaintiffs' First Amended Petition or Motion for Summary Judgment.

Whether the Court erred in declaring rules and orders that were not before the Court "null and void."

Whether the Court erred in granting Plaintiffs their attorneys' fees and costs when the Judgment is incorrect in the first instance.

#### Docket Fee Information

The docket fee in the amount of \$70.00 is being tendered with this notice of appeal.

No docket fee is being tendered because:

- a docket fee is not required by law pursuant to \_\_\_\_\_ (cite specific statute or other authority).
- a motion to prosecute the appeal in forma pauperis has been or will be filed.
- a docket fee in the amount of \$70.00 cannot be tendered at this time but will be submitted at a later date or this appeal will be subject to dismissal pursuant to Rule 84.08(a).

Signature of Attorney or Appellant  
/s/ Neal F. Perryman

Date  
December 27, 2021

**Certificate of Service on Persons other than Registered Users of the Missouri eFiling System**

I certify that on \_\_\_\_\_ (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Appellant or Attorney for Appellant

**Directions to Clerk**

Transmit a copy of the notice of appeal and all attached documents to the clerk of the Court of Appeals and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(i). Forward the docket fee to the Department of Revenue as required by statute.

**Memorandum of the Clerk**

I have this day served a copy of this notice by  regular mail  registered mail  certified mail  facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have transmitted a copy of the notice of appeal to the clerk of the Court of Appeals, \_\_\_\_\_ District.

- Docket fee in the amount of \$70.00 was received by this clerk on \_\_\_\_\_ (date) which will be disbursed as required by statute.
- No docket fee was received.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk

Additional Parties and Attorneys

List every party involved in the case not listed on page 1, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional pages to identify all parties and attorneys if necessary.

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Party Name	Attorney Name

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