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## Cost of a Tax Agenda: The Passage of Proposition A and Its Effect on Kansas City and St. Louis City, The

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## LAW SUMMARY

# The Cost of a Tax Agenda: The Passage of Proposition A and Its Effects on Kansas City and St. Louis City

MISSY MCCOY\*

### I. INTRODUCTION

Eight dollars and sixty-seven cents per vote is what one Missouri resident recently spent to promote a successful ballot initiative that threatens to destabilize municipal budgets in the state's two largest cities. Rex Sinquefield provided funding in the form of approximately \$11.2 million toward the passage of Proposition A.<sup>1</sup> On November 2, 2010, nearly 1.3 million Missouri residents voted in favor of the proposition,<sup>2</sup> which limits the ability of Missouri cities to tax their residents and generate revenue.<sup>3</sup> Yet, just five months later, the residents of Kansas City and St. Louis City<sup>4</sup> put their earnings tax to a vote, as required by Proposition A, and 78 and 87% of voters,

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1. Chad Garrison, *Rex Sinquefield: Victory for Prop A Costs Him \$8.67 per Vote*, RIVERFRONT TIMES BLOG (Nov. 3, 2010, 10:59 AM), [http://blogs.riverfronttimes.com/dailyrft/2010/11/how\\_much\\_sinquefield\\_paid\\_for\\_proposition\\_a.php](http://blogs.riverfronttimes.com/dailyrft/2010/11/how_much_sinquefield_paid_for_proposition_a.php); see *Contributions and Expenditures*, MO. ETHICS COMMISSION, available at [http://www.mec.mo.gov/EthicsWeb/CampaignFinance/CF\\_SearchResults.aspx?Year=2010&Report=0&Type=0&CD1Type=All&CD3Type=All&Name=Sinquefield&City=&EmpOcc=&AmtBeg=&AmtEnd=&MECID=&ComName=LET\\_VOTERS\\_DECIDE](http://www.mec.mo.gov/EthicsWeb/CampaignFinance/CF_SearchResults.aspx?Year=2010&Report=0&Type=0&CD1Type=All&CD3Type=All&Name=Sinquefield&City=&EmpOcc=&AmtBeg=&AmtEnd=&MECID=&ComName=LET_VOTERS_DECIDE) (last visited Sept. 29, 2011) (Amended figures shown on the website are not part of the \$11.2 million figure.).

2. Garrison, *supra* note 1.

3. See *infra* Part III.

4. It should be noted that St. Louis City is an independent city separate from St. Louis County. See *About St. Louis*, CITY OF ST. LOUIS, MO., <http://stlouis-mo.gov/government/departments/comptroller/investor-relations/city-information/About-St-Louis.cfm> (last visited Oct. 17, 2011). As an independent city, St. Louis is responsible for the revenue collection functions typically performed by a county. See *Local Officials*, BENTONPARK.COM, <http://bentonpark.com/content/local-officals> (last visited Oct. 21, 2011).

respectively, stated their desire to retain the tax.<sup>5</sup> Sinquefield's use of the legislature to input his tax policies was ineffective, so he found a way to bypass it. The irony, however, is that the April 2011 local votes prove that Proposition A was a response to a nonexistent crisis. Now, residents of Kansas City and St. Louis City are left with a bizarre form of forced ballot-box democracy.

Proposition A prohibits any city from enacting an earnings tax if it does not have one in place on December 31, 2011.<sup>6</sup> It also requires Kansas City and St. Louis City, the only cities with an earnings tax presently in place,<sup>7</sup> to put their earnings taxes to a citywide vote once every five years beginning in 2011.<sup>8</sup> If city voters ever decline to continue the earnings tax, Proposition A requires elimination of the tax over a ten-year period through gradual reductions of the tax amount in an attempt to give the affected cities time to locate other funding sources.<sup>9</sup>

This Law Summary begins with a discussion of the history of the earnings tax in Kansas City and St. Louis City starting with both cities' designations as home rule cities.<sup>10</sup> Being home rule cities allowed them independence in governing their populace and the eventual implementation of an earnings tax through city charters and state enabling statutes.<sup>11</sup> Next, this Law Summary discusses Proposition A's repeal of the previous enabling statutes, the institution of new statutes,<sup>12</sup> and the prohibition of any other city from passing an earnings tax.<sup>13</sup>

This Law Summary takes the position that Proposition A, funded largely by St. Louis-area businessman and fundraiser Rex Sinquefield,<sup>14</sup> unfairly put the earnings tax issue to a vote of the entire state even though it primarily affected only St. Louis City and Kansas City.<sup>15</sup> The earnings tax may have survived its first brush with death as residents voted overwhelmingly to retain

5. See *infra* notes 199-201 and accompanying text.

6. See MO. ANN. STAT. §§ 92.105-.125 (West Supp. 2011).

7. St. Joseph, Missouri, has had the authority to levy an earnings tax since the 1990s but had yet to put one in place prior to the passage of Proposition A. See Virginia Young, *Battle Over Proposition A Pits City Against Sinquefield*, ST. LOUIS POST-DISPATCH, Oct. 10, 2010, [http://www.stltoday.com/news/local/govt-and-politics/article\\_0c051bad-82fc-5ecc-bed8-58a4545c4122.html](http://www.stltoday.com/news/local/govt-and-politics/article_0c051bad-82fc-5ecc-bed8-58a4545c4122.html) [hereinafter Young, *Battle Over Proposition A*]; see also Editorial, *No on Prop A: Our View*, ST. LOUIS POST-DISPATCH, Oct. 21, 2010, at A16 [hereinafter Editorial, *No on Prop A*].

8. See MO. ANN. STAT. §§ 92.110-.112.

9. *Id.* § 92.125.

10. See *infra* Part II.

11. See *infra* Part II.B.

12. See *infra* Part III.

13. See *infra* note 132 and accompanying text.

14. See Garrison, *supra* note 1.

15. Op-Ed., *Vote No on Intrusive, Rigid Proposition A*, SPRINGFIELD NEWS-LEADER (Missouri), Oct. 3, 2010, at E1 [hereinafter Op-Ed., *Vote No*].

it in April 2011, but the worry is far from over.<sup>16</sup> Elimination of the earnings tax as a revenue source for St. Louis City and Kansas City would create a gaping hole in those cities' budgets and leave city officials scrambling to replace the revenue.<sup>17</sup>

Locating sources of revenue to replace the earnings tax in the event it is eliminated is of foremost importance to Kansas City and St. Louis City residents.<sup>18</sup> However there is no denying that accountability of spending at the municipal government level can be seen as a benefit of Proposition A.<sup>19</sup> Unfortunately, that accountability seems to be outweighed by Proposition A's creation of a tax policy for which the residents of Kansas City and St. Louis City clearly have no use.<sup>20</sup> This bizarre result leaves residents in the awkward and expensive situation of funding a vote every five years to retain an earnings tax that they want in place, as demonstrated by the results of the November 2010 and April 2011 votes. Through the use of a ballot initiative, Sinquefield has managed to bypass the legislature, forcing residents of Kansas City and St. Louis City to take action through the courts or legislature to rectify the unjust situation of putting a local issue to a statewide vote.<sup>21</sup>

## II. LEGAL BACKGROUND

More than fifty years have passed since St. Louis City implemented its current earnings tax,<sup>22</sup> and the tax has existed for nearly that long in Kansas City.<sup>23</sup> Over the course of that half-century there were relatively few challenges to those taxes.<sup>24</sup> Prior to the passage of Proposition A, the majority of

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16. See *infra* Part IV.C-D.

17. See Linda Rallo, *Missouri's Taxing Challenge*, ARCH CITY CHRON. (Mar. 22, 2010, 6:22 AM), <http://www.archcitychronicle.com/node/1150>.

18. See David Hunn, *Earnings Tax Survives Changes Ahead*, ST. LOUIS POST-DISPATCH, Apr. 6, 2011, at A1 [hereinafter Hunn, *Earnings Tax Survives*].

19. Kathryn Wall, *Focus on Area in Earnings Tax Battle*, SPRINGFIELD NEWS-LEADER (Missouri), Oct. 17, 2010, at A1 (noting that a spokesman from Let Voters Decide, the group behind Proposition A, "argued that government should have to be accountable for how it's spending money").

20. See *infra* notes 185-89 and accompanying text.

21. See *infra* Part IV.D.

22. See MO. ANN. STAT. § 92.110 (West Supp. 2011). The earnings tax is a 1% tax levied upon any wages earned within the cities of St. Louis and Kansas City as allowed through state statute and each city's charter. Rallo, *supra* note 17.

23. T. E. Laurer, *Municipal Law in Missouri*, 28 MO. L. REV. 555, 564-65 (1963).

24. See Kevin Horrigan, *Job-killing Pants*, ST. LOUIS POST-DISPATCH, Oct. 17, 2010, at A19.

challenges involving the tax related to the meaning of “income” and what types of payments would be subject to the tax.<sup>25</sup>

Although Proposition A was the first measure to substantially challenge the earnings tax, Missouri is no stranger to eliminating taxes, or to a government entity’s ability to impose them.<sup>26</sup> Perhaps the best example of the state’s history of anti-tax sentiment was its passage of the Hancock Amendment in 1980, which froze state tax rates and required that any new taxes be brought to a popular vote prior to institution.<sup>27</sup>

To understand the implications of the passage of Proposition A, it is essential to first appreciate Missouri’s constitutional grant of home rule powers to its municipalities.<sup>28</sup> This designation of “home rule municipalities” led to the eventual birth of the earnings tax in the two largest urban areas of the state, St. Louis City and Kansas City. Both cities are governed by charters as home rule cities and are also subject to the laws and constitution of the State of Missouri.

### *A. Missouri’s Allowance of Home Rule Cities*

The power granted to the charter cities of Kansas City and St. Louis City to govern themselves and impose earnings taxes is found in the Missouri Constitution and the charter of each respective city. Article VI, section 19 of the Missouri Constitution provides authorization for cities to adopt a charter form of government.<sup>29</sup> The taxing power of local governments originated in the Missouri Constitution of 1875.<sup>30</sup> That same provision remains in the current constitution at article X, section 1 and states: “The taxing power may be exercised by the general assembly for state purposes, and by counties and

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25. See, e.g., *Adams v. City of St. Louis*, 563 S.W.2d 771, 773 (Mo. 1978) (en banc), *overruled on other grounds by Alumax Foils, Inc. v. City of St. Louis*, 939 S.W.2d 907 (Mo. 1997); *Ralston Purina Co. v. Leggett*, 23 SW.3d 697, 699-701 (Mo. App. E.D. 2000).

26. For example, Missouri currently has the lowest cigarette tax in the nation. Mary Daly, *Columbia Legislators Examine Potential Increase of U.S.’s Lowest Cigarette Tax*, COLUMBIA MISSOURIAN, Nov. 15, 2010, <http://www.columbiamissourian.com/stories/2010/11/15/columbia-legislators-discuss-potential-cigarette-tax-increase/>. At the same time that Proposition A was passed, an additional constitutional amendment prohibiting real estate transfer taxes passed. See MO. CONST. art. X, § 25 (adopted by Initiative Petition, 2010-046, at general election Nov. 2, 2010).

27. See Elaine B. Sharp & David Elkins, *The Impact of Fiscal Limitation: A Tale of Seven Cities*, 47 PUB. ADMIN. REV. 385, 385-92 (1987).

28. See *infra* Part II.A.

29. MO. CONST. art. VI, § 19. Article VI, § 19 was part of the original 1875 Constitution at art. IX, § 16 (adopted Nov. 2, 1920).

30. MO. CONST. of 1875, art. X, § 1.

other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes.”<sup>31</sup>

The city charters of St. Louis City and Kansas City were adopted within just over a decade of each other,<sup>32</sup> and both contained language relating to taxation within the municipality. Article I, section 1, paragraph 1 of the St. Louis City Charter addresses the imposition of taxes and states that St. Louis City has the power “[t]o assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation.”<sup>33</sup> Kansas City’s special charter addresses the collection of earnings taxes and mirrors the enabling statutes in regard to the types of income taxed, limitation on the tax, calculation and collection of the tax, wage brackets, and the lack of a need to produce state or federal income tax returns.<sup>34</sup> Through the foundation of the state constitution, city charters, and enabling statutes, Kansas City and St. Louis City were able to lay the proper foundation for the earnings taxes.<sup>35</sup>

The history of home rule cities in Missouri presents a checkered past with disagreement between the legislature and the cities as to the power and responsibility of each entity.<sup>36</sup> In the adoption of its 1875 constitution, Missouri was seen as an innovator by establishing constitutional home rule,<sup>37</sup> considered to be “the privilege granted to local communities to frame, adopt, and amend their own charters.”<sup>38</sup> Missouri’s delegation of home rule powers was seen as a “daring originality of spirit” in the world of politics since the authority was granted directly by the constitution and not from the legislature.<sup>39</sup> In theory, home rule was to provide cities with populations of greater than 100,000 the freedom to govern without undue interference from state government.<sup>40</sup> Home rule is based on the idea that local communities are better equipped to deal with local problems.<sup>41</sup>

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31. MO. CONST. art. X, § 1.

32. *See* Carter Carburetor Corp. v. St. Louis, 203 S.W.2d 438, 439, 441 (Mo. 1947).

33. St. Louis City Charter, art. I, § 1, para. 1.

34. *See* Charter of Kansas City, Missouri, art. VIII, div. 2, § 813 (2006); *see also* MO. REV. STAT. §§ 92.210-300 (repealed 2010).

35. Horrigan, *supra* note 24.

36. *See, e.g.,* Henry J. Schmandt, *Municipal Home Rule in Missouri*, 1953 WASH. U. L. Q. 385 (1953) (detailing the history of home rule in Missouri from the 1875 constitution until 1953).

37. *Id.* at 385.

38. *Id.*

39. *Id.* (quoting HOWARD LEE MCBAIN, *THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE* 113 (1916)) (internal quotation marks omitted).

40. *Id.* Initially, the home rule provision only applied to St. Louis because of the population requirements, but the 1945 Constitution extended the reach of home rule to those cities with populations greater than 10,000. *Id.*

41. *Id.* at 385-86.

While a desire to ensure greater local autonomy may have been the basis for home rule in Missouri, the 1875 constitutional grant provided little support for the concept to stand. The language of the constitution required that city charters be “in harmony with and subject to the Constitution and laws of Missouri.”<sup>42</sup> The state could not seem to let go of its authority, determining that the General Assembly would have the same power over St. Louis City (the only city meeting the home rule requirements at the time) as any other city in the state.<sup>43</sup> These clauses ultimately left St. Louis City with minimal autonomy since any charter provision put into place could later be overruled by state legislative action.<sup>44</sup>

Through several court decisions,<sup>45</sup> it became clear that the state was unsure how to apply home rule when conflicts arose between the city charter and state constitution or statute.<sup>46</sup> Eventually, the Supreme Court of Missouri clarified that home rule charters were only required “to be in harmony with and subject to [general state laws] as distinguished from local concern.”<sup>47</sup> This state-local interest test gave hope that charter cities would be able to govern with little state interference.<sup>48</sup>

That hope proved to be short-lived as the courts continued to side with state statutes<sup>49</sup> over city charter in areas of conflict.<sup>50</sup> Finally, the Supreme Court of Missouri provided resolution in *Kansas City v. J. I. Case Threshing Machine Co.*, holding that home rule cities have the power to legislate municipal affairs and the legislature could not affect those powers in municipal matters.<sup>51</sup> This decision helped lay the foundation for the process of instituting an effective earnings tax in home rule cities.

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42. *Id.* at 387 (quoting MO. CONST. of 1875, art. IX, § 23) (internal quotation marks omitted).

43. *Id.*

44. *Id.* at 387-88.

45. *See, e.g., id.* at 387-90 (citing *Kansas City ex rel. N. Park Dist. v. Scarritt*, 29 S.W. 845, 848 (Mo. 1895) (declaring that the *Ewing v. Hoblitzelle* did not allow for the supremacy of the legislature over home rule charters in areas which were solely of local concern); *State ex rel. Kansas City v. Field*, 12 S.W. 802, 803 (Mo. 1889) (stating the Kansas City charter governed in a case involving street openings since that function clearly fell within the governance of the municipal government); *Ewing v. Hoblitzelle*, 85 Mo. 64, 74 (1885) (determining that in a conflict between a state statute regarding the appointment of election judges and the St. Louis City Charter, the statute governed)).

46. *See id.* at 387-90.

47. *Id.* at 390 (citing *City of St. Louis v. Meyer*, 84 S.W. 914 (Mo. 1904)).

48. *See id.*

49. *See id.* at 391 n.22.

50. *See id.* at 393.

51. *Id.* (quoting *Kansas City v. J. I. Case Threshing Mach. Co.*, 87 S.W.2d 195, 200 (Mo. 1935)).

*B. The History of the Earnings Tax in St. Louis City and Kansas City*

Revenue generation has long been “the most important single issue facing home rule municipalities.”<sup>52</sup> At the time the modern earnings tax was instituted, there was much concern among the residents of St. Louis City and Kansas City that a legislature comprised of mainly rural delegates who did not understand the needs of the urban centers could control statewide policy-making.<sup>53</sup> The demand for freedom to impose taxation as necessary has been hampered in the past by the failure of a rural-district dominated legislature to be willing or able to understand the financial needs of larger metropolitan areas.<sup>54</sup>

The earnings tax in St. Louis City can trace its roots as far back as 1946,<sup>55</sup> beginning with an attempt to tax salaries and corporate profits earned within its borders.<sup>56</sup> In 1952 the legislature provided a set of enabling statutes that gave St. Louis City the authority to levy taxes on income earned within its jurisdiction according to its charter.<sup>57</sup> A similar set of enabling statutes for Kansas City and St. Joseph followed in 1963.<sup>58</sup>

### 1. Early Developments

In 1946, St. Louis City attempted to adopt an earnings tax ordinance to supplement municipal revenue as residents continued to leave urban centers for the suburbs and reduce the already limited tax base of the city.<sup>59</sup> As the number of municipalities on the western border of St. Louis City began to increase,<sup>60</sup> the population residing in the city decreased.<sup>61</sup> This decrease in population further exacerbated the revenue problem in St. Louis City.<sup>62</sup>

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52. *Id.* at 394. Even in 1953, the importance of revenue generation was clear. *Id.*

53. *Id.*

54. *See id.*

55. *Id.* at 396. *See Carter Carburetor Corp. v. City of St. Louis*, 203 S.W.2d 438, 443 (Mo. 1947). The first earnings tax incorporated in 1946 attempted to impose a 0.25% tax upon the earnings of residents of St. Louis and non-residents who worked in the city. *Id.* at 440. The tax was enacted under the authority of the city charter and was challenged and struck down within one year of going into effect. *Id.* at 440, 445.

56. *Carter Carburetor Corp.*, 203 S.W.2d at 440, 445.

57. *See* MO. REV. STAT. § 92.110 (amended 2010).

58. *See* MO. REV. STAT. §§ 92.210-.300 (repealed 2010).

59. *See* Schmandt, *supra* note 36, at 396. The size of St. Louis City was limited to the boundaries adopted at the time of the 1875 constitution, which remain in place today. COLIN GORDON, MAPPING DECLINE 40 (2008). St. Louis City had also opted to formally separate from St. Louis County, resulting in St. Louis' existence as a city and also its own county and the inability to expand its borders. *Id.*

60. *See* GORDON, *supra* note 59, at 40-41.



St. Louis City had to defend the earnings tax against a court challenge in 1947.<sup>63</sup> In *Carter Carburetor Corp. v. City of St. Louis*, the city pointed out that it did not need statutory authority to institute the tax since it was a matter of purely local concern and it did not conflict with any state law.<sup>64</sup> However, the Supreme Court of Missouri held that the language of the St. Louis City Charter, which stated that the city had the power “[t]o assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation,” was not specific enough for the city to be able to levy an earnings tax.<sup>65</sup> The court saw home rule as a way for the population of a municipality to delegate to the local authority any power that was necessary to govern itself, including taxation at the local level.<sup>66</sup>

[T]he City’s power to impose taxes is *not* the uncontrolled power to impose *any* tax *except* as limited by its charter, or general law. On the contrary, it is only the power to impose such taxes as have been *authorized* by the General Assembly in a general law, or by the people in its charter – if not in conflict with the Constitution.<sup>67</sup>

According to the court, the power to tax could only be granted to the municipalities by the General Assembly.<sup>68</sup> Because the power to collect an earnings tax had not been delegated to St. Louis City, the court determined it could not enforce one.<sup>69</sup> In its interpretation of the city charter, the court noted that the charter gave power to tax in specific instances, but an earnings tax was not one of those instances.<sup>70</sup> The court considered the language of the city charter too vague to support the enactment of an earnings tax.<sup>71</sup> St. Louis City and Kansas City were now left to lobby for statutory authority to grant them the power to collect earnings taxes or amend their charters for a similar purpose.<sup>72</sup>

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61. See W. Gibson Harris & Randolph Rollins, *Taxation*, 56 VA. L. REV. 1376, 1377 (1970) (discussing “the exodus of middle- and upper-income taxpayers to the suburbs”).

62. *Carter Carburetor Corp. v. City of St. Louis*, 203 S.W.2d 438, 441 (Mo. 1947).

63. *Id.* at 438-39.

64. *Id.* at 439.

65. *Id.* (quoting St. Louis City Charter, art. I, § 1, para. 1).

66. See Schmandt *supra* note 36, at 397.

67. *Carter*, 203 S.W.2d at 442.

68. *Id.* at 445.

69. See *id.*

70. *Id.* at 444.

71. *Id.*

72. See Schmandt, *supra* note 36, at 398-99.

## 2. Enabling Statutes

Following the decision in *Carter*, St. Louis City did not have to wait long for the statutes it needed to effectively enforce an earnings tax on its residents and workforce. A 1953 letter from the Attorney General put forth the opinion that an enabling statute was unnecessary and all that was needed was an amendment to the city charter in order to impose an earnings tax on city residents and non-resident employees working in St. Louis City.<sup>73</sup> Prior to the issuance of that letter, the legislature and St. Louis City took the opposite approach by enacting the first set of enabling statutes in 1951.<sup>74</sup> Those statutes were set to expire on their own terms in 1954<sup>75</sup> but were permanently reenacted in 1953.<sup>76</sup>

The most relevant of these was entitled “Tax May Be Levied on Earnings and Profits (St. Louis),”<sup>77</sup> which laid out the requirements for a city that wished to levy an earnings tax. Under that section, the city must: (1) be a constitutional charter city, and (2) have or later acquire a population of greater than 700,000 inhabitants based on the last census.<sup>78</sup> The tax rate for St. Louis City was limited to “one percent per annum.”<sup>79</sup> The remainder of the statutes described the income exempt from the tax,<sup>80</sup> authorization for those exemptions,<sup>81</sup> how to calculate net profit,<sup>82</sup> application to non-residents,<sup>83</sup> collection of the tax by employers,<sup>84</sup> establishment of wage brackets,<sup>85</sup> and that copies of federal and state income tax returns did not have to be filed with St. Louis City.<sup>86</sup> The last of the enabling statutes required that none of the previously described statutes would be effective without authorization through a charter amendment of the city.<sup>87</sup>

Nearly identical statutes were put into effect for Kansas City and St. Joseph in 1963.<sup>88</sup> One difference in requirements for Kansas City was “a popu-

73. *Id.* at 398.

74. *Id.* at 399; see MO. REV. STAT. §§ 92.110-.200 (Supp. 1951) (reenacted L. 1953 2d Ex. Sess. p. 14).

75. See Schmandt, *supra* note 36, at 399.

76. See MO. REV. STAT. §§ 92.110-.115 (amended 2010) (with the exception of § 92.112 which was enacted in 1997); *id.* §§ 92.120-.200 (2000).

77. *Id.* § 92.110 (amended 2010).

78. *Id.*

79. *Id.* § 92.120 (2000).

80. *Id.* § 92.112 (amended 2010); *id.* § 92.130 (2000).

81. *Id.* § 92.140 (2000).

82. *Id.* § 92.150.

83. *Id.* § 92.160.

84. *Id.* § 92.170.

85. *Id.* § 92.180.

86. *Id.* § 92.190.

87. *Id.* § 92.200.

88. See *id.* §§ 92.210-.300 (repealed 2010).

lation of more than four hundred fifty thousand but less than seven hundred thousand” based on the last decennial census<sup>89</sup> whereas St. Louis City’s population requirement was “greater than seven hundred thousand.”<sup>90</sup> Section 92.300, which applies to Kansas City, is much more complex than its St. Louis City counterpart<sup>91</sup> as it requires approval from a majority of voters in order to amend the charter of the city in regards to the enabling statutes.<sup>92</sup>

### C. Challenges to the Earnings Tax

The St. Louis City and Kansas City earnings taxes had faced very little judicial opposition from the time that the enabling statutes were enacted until 2010 when supporters of Proposition A began gathering signatures.<sup>93</sup> In 1956, a challenge to the statutes was brought by a lawyer who claimed that the earnings tax was a tax on “the privilege of practicing the legal profession.”<sup>94</sup> The St. Louis Court of Appeals disagreed and held that the earnings tax did apply to the lawyers.<sup>95</sup> An Illinois resident who worked in St. Louis City brought a challenge in 1963.<sup>96</sup> He claimed that the earnings tax deprived him of property without due process of law and placed an undue burden on interstate commerce.<sup>97</sup> The Supreme Court of Missouri disagreed and held that the tax was not unconstitutional or invalid as to the party challenging it.<sup>98</sup> In 1968, the supreme court again upheld the earnings tax against a challenge that it was a violation of the constitutional prohibition of arbitrary and unreasonable taxes.<sup>99</sup>

More recent challenges have focused on what constitutes income for the purpose of calculating the earnings tax. In *Adams v. City of St. Louis*, a 1978 decision, the Supreme Court of Missouri held that supplemental benefits received pertaining to unemployment were not considered general revenue and

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89. *Id.* § 92.210 (repealed 2010).

90. *Id.* § 92.110 (amended 2010).

91. Compare *id.* § 92.200 (2000) with *id.* § 92.300 (repealed 2010).

92. *Id.* § 92.300 (repealed 2010).

93. See Virginia Young, *Kansas City Challenges Effort to Get Rid of City Earnings Tax*, ST. LOUIS POST-DISPATCH, Sept. 18, 2010, at A16 [hereinafter Young, *Kansas City Challenges*].

94. *Lawyers Ass’n of St. Louis v. City of St. Louis*, 294 S.W.2d 676, 681 (Mo. App. E.D. 1956).

95. *Id.* at 684.

96. *Arnold v. Berra*, 366 S.W.2d 321 (Mo. 1963) (en banc) (per curiam).

97. *Id.* at 323.

98. *Id.* at 324.

99. *Barhorst v. City of St. Louis*, 423 S.W.2d 843, 850-51 (Mo. 1968) (en banc) (per curiam).

were not subject to the tax.<sup>100</sup> However, in *Ralston Purina Co. v. Leggett*, decided in 2000, the Missouri Court of Appeals for the Eastern District held that income from stock options was subject to the 1% earnings tax and St. Louis City could impose the tax at the time the option was exercised.<sup>101</sup>

#### *D. Limiting Municipality Taxation Powers: The Hancock Amendment*

While the earnings taxes have remained relatively stable in recent years,<sup>102</sup> statewide opposition to other taxes seems to have only grown, as evidenced by the Hancock Amendment.<sup>103</sup> Named for Mel Hancock, the state legislator who sponsored it, Missouri voters approved the amendment in 1980.<sup>104</sup> It went into effect as article X, sections 16 to 24 of the Missouri Constitution.<sup>105</sup> The amendment limits the power of state and local legislators to institute new taxes or to raise tax rates without voter approval.<sup>106</sup> The most relevant restriction provided by the amendment “prohibits local governments from levying any new or increased ‘tax, license or fees’ without approval of a majority of the voters.”<sup>107</sup>

The Supreme Court of Missouri has upheld the Hancock Amendment,<sup>108</sup> which in essence provides a restriction similar to Proposition A, as it requires a vote in order to institute any new tax.<sup>109</sup> Also, the Hancock Amendment requires approval of any tax increase by a majority vote, limiting taxes to current rates unless voters approve.<sup>110</sup> When viewing the status of taxes in

100. *Adams v. City of St. Louis*, 563 S.W.2d 771, 776 (Mo. 1978) (en banc), *overruled on other grounds by Alumax Foils, Inc. v. City of St. Louis*, 939 S.W.2d 907 (Mo. 1997) (en banc).

101. *Ralston Purina Co. v. Leggett*, 23 SW.3d 697, 701-02 (Mo. App. E.D. 2000).

102. Prior to Sinquefield’s campaign to eliminate the 1% earnings tax in Kansas City and St. Louis City, few Missouri citizens gave any thought to the issue. Horri-gan, *supra* note 24. Most Kansas City and St. Louis City residents saw the tax as a required part of using the resources of the cities and a necessary way to widen the tax base to cover the costs of those resources. *Id.* Thanks to the anti-income tax agenda of a single individual, Kansas City and St. Louis City residents will now have to consider the earnings tax once every five years. *Id.* See also MO. ANN. STAT. § 92.105 (West Supp. 2011).

103. Rhonda C. Thomas, *Recent Developments in Missouri: Local Government Taxation*, 49 UMKC L. REV. 491, 492-93 (1980).

104. *Id.*

105. MO. CONST. art. X, §§ 16-24 (1980) (The 1980 amendment did not include section 18(e) which was adopted in 1996.).

106. See Thomas, *supra* note 103, at 492.

107. *Id.* at 493.

108. MO. CONST. art. X, §§ 16-24 (1980) (The 1980 amendment did not include section 18(e) which was adopted in 1996.).

109. See *Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.2d 301, 304 (Mo. 1991) (en banc).

110. See Thomas, *supra* note 103, at 493.

Missouri with respect to the Hancock Amendment, it is clear that state and local legislators cannot raise or add new taxes without a majority of voters approving.<sup>111</sup> Even prior to the passage of Proposition A, Kansas City and St. Louis City could never increase the rate of the earnings tax nor could any other city institute a new earnings tax without voter approval.<sup>112</sup> This Law Summary takes the position that existing protections in the Hancock Amendment demonstrate that Proposition A was and is unnecessary.

### III. RECENT DEVELOPMENTS

On November 2, 2010, Missouri voters headed to the polls, once again voicing their disdain for taxes through the passage of Proposition A.<sup>113</sup> Proposition A proposed the repeal of twelve Missouri statutes, all pertaining to the earnings tax imposed on residents and non-resident workers of the cities of Kansas City and St. Louis City.<sup>114</sup> Most funding for Proposition A came from Missouri-born millionaire Rex Sinquefeld and the group "Let Voters Decide."<sup>115</sup> Through the use of petitions, the group was able to add Proposition A to the November ballot.<sup>116</sup> Even though Proposition A's long-term effects will have the most substantial effect on the residents of Kansas City and St. Louis City, the choice of whether the earnings tax should be given a review every five years was put to the entire State of Missouri.<sup>117</sup>

The ballot language of Proposition A asked Missouri voters to consider several amendments to Missouri law.<sup>118</sup> The language first asked whether cities' authority to use earnings taxes to fund budgets should be repealed.<sup>119</sup> Because St. Louis City and Kansas City are the only cities currently using

111. See Sharp & Elkins, *supra* note 27, at 386.

112. See MO. CONST. art. X, §§ 16-24 (1980) (The 1980 amendment did not include section 18(e) which was adopted in 1996.).

113. David Hunn, *Earnings Tax Fight: Slay Now Jumps into Fray to Persuade St. Louisans to Keep City's Largest Income Source*, ST. LOUIS POST-DISPATCH, Nov. 4, 2010, at A1 [hereinafter Hunn, *Earnings Tax Fight*].

114. *Statutory Amendment to Chapter 92, Relating to Earnings Taxes, 2010-77, Version 3*, MO. SECRETARY ST., <http://www.sos.mo.gov/elections/2010petitions/2010-077.asp> (last visited Oct. 1, 2011) [hereinafter *Statutory Amendment to Chapter 92*]. Sections 92.110, 92.112, 92.210, 92.220, 92.230, 92.240, 92.250, 92.260, 92.270, 92.280, 92.290, and 92.300 were repealed by the passage of Proposition A. See *id.*

115. Young, *Battle Over Proposition A*, *supra* note 7.

116. *Id.*

117. Sydell Shayer, Editorial, *Voters Already Decide Taxes Proposition A: The November Ballot Measure to Reconsider City Earnings Taxes is a Wasted Pursuit*, ST. LOUIS POST-DISPATCH, Sept. 30, 2010, at A17.

118. *Statutory Amendment to Chapter 92*, *supra* note 114.

119. See *id.*

earnings taxes to fund budgets, the result affected only the two cities.<sup>120</sup> Next, the ballot asked if Missouri law should be amended to require the residents of cities with earnings taxes to vote on the continuation of those taxes every five years.<sup>121</sup> The ballot language then detailed the legal consequences of a decision by an earnings-tax city to discontinue the tax, essentially providing that it would be eliminated over a ten-year period.<sup>122</sup> A “yes” vote for Proposition A also forbade cities within the state from instituting new earnings taxes as budget supplements.<sup>123</sup> A “no” vote would not make any changes to current Missouri law.<sup>124</sup>

The official ballot title<sup>125</sup> advised voters that by voting yes for Proposition A they “could eliminate certain city earnings taxes.”<sup>126</sup> It stated that, for the year 2010, city earnings taxes collected in Kansas City amounted to

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120. At the time of the vote on Proposition A, the only other city in Missouri which had the authority to institute an earning tax was St. Joseph, which did not have the tax in place at the time of the vote and therefore could not ever institute the tax. See *Truth Watch: Proposition A, Measure Could Restrict, Subject Earnings Tax to Vote*, KMBC.COM (Oct. 28, 2010, 6:00 PM), <http://www.kmbc.com/print/25555105/detail.html>.

121. *2010 Ballot Measures*, MO. SECRETARY ST., <http://www.sos.mo.gov/elections/2010ballot/> (last visited Oct. 1, 2011) [hereinafter *2010 Ballot Measures*].

122. *Id.*

123. *Id.*

124. *Id.*

125. The full Official Ballot Title reads:

Shall Missouri Law be amended to:

repeal the authority of certain cities to use earnings taxes to fund their budgets;

require voters in cities that currently have an earnings tax to approve continuation of such tax at the next general municipal election and at an election held every 5 years thereafter;

require any current earnings tax that is not approved by the voters to be phased out over a period of 10 years; and

prohibit any city from adding a new earnings tax to fund their budget?

The proposal could eliminate certain city earnings taxes. For 2010, Kansas City and the City of St. Louis budgeted earnings tax revenue of \$199.2 million and \$141.2 million, respectively. Reduced earnings tax deductions could increase state revenues by \$4.8 million. The total cost or savings to state and local governmental entities is unknown.

*Id.*

126. *Id.*

\$199.2 million, and \$141.2 million in St. Louis City.<sup>127</sup> The language also advised that reducing the earnings tax could possibly result in an additional \$4.8 million in state revenues, while any cost or savings to local and state government was unknown.<sup>128</sup>

Five new statutes were enacted following the passage of Proposition A and the subsequent repeal of the earnings tax sections.<sup>129</sup> The first of these describes the intent of the new statutes to put the earnings tax to a vote by local election in the cities that impose it, Kansas City and St. Louis City.<sup>130</sup> If the voters' intent is to continue the tax, it will be retained for five years, after which another vote will be taken; however, if a majority of voters choose to eliminate the tax, it will be phased out at the rate of 10% per year over the following ten years.<sup>131</sup> All other Missouri cities that do not have an earnings tax in place are forbidden from instituting one,<sup>132</sup> effectively repeating the measures put into place by the Hancock Amendment.<sup>133</sup> "Earnings tax" is defined as including taxes from resident earned salaries, wage commissions and other compensation, work done or services performed in the city by non-residents, net profits of associations conducted by both residents and nonresi-

127. *Id.*

128. *Id.* The statement seems to be misleading since a reduction in earnings tax revenue taken in by Kansas City and St. Louis would clearly reduce the budget of each city by one-third based on the 2010 budget information of each city. See CITY OF KANSAS CITY, MO., ADOPTED ACTIVITY BUDGET FISCAL YEAR 2009-2010 (2009), available at [http://www.kcmo.org/idc/groups/citymanager/documents/city\\_manager-soffice/adoptedbudget09-10.pdf](http://www.kcmo.org/idc/groups/citymanager/documents/city_manager-soffice/adoptedbudget09-10.pdf); CITY OF ST. LOUIS, MO., FISCAL YEAR 2010 ANNUAL OPERATING PLAN (2009), available at <http://stlouis-mo.gov/government/departments/budget/documents/upload//FY10AOP-As-Adopted-6-14-09-FULL1.pdf>.

129. See *Statutory Amendment to Chapter 92, supra* note 114. The new sections are 92.105, 92.110, 92.112, 92.115, and 92.125. *Id.*

130. MO. ANN. STAT. § 92.105 (West Supp. 2011).

131. *Id.* § 92.105.

132. *Id.*

133. See *id.* Section 92.110.1 states:

After December 31, 2011, no city, including any constitutional charter city, shall impose or levy an earnings tax, except, a constitutional charter city that imposed or levied an earnings tax on the effective date of this section may continue to impose the earnings tax if it submits to the voters of such city pursuant to section 92.115, the question whether to continue such earnings tax for a period of five years and a majority of such qualified voters voting thereon approve such question, however, if no such election is held, or if in any election held to continue to impose or levy the earnings tax a majority of such qualified voters voting thereon fail to approve the continuation of the earnings tax, such city shall no longer be authorized to impose or levy such earnings tax except to reduce such tax in the manner provided by section 92.125.

*Id.* § 92.110.1.

dents, and net profits earned by corporations resulting from work done or services performed or rendered and business or other activities.<sup>134</sup>

Contributions to deferred compensation plans are excluded from the earnings tax requirement so long as they are “not subject to Missouri state income tax at the time [the] contribution is made.”<sup>135</sup> Next, section 92.115 gives the language to be used when the Kansas City and St. Louis City earnings taxes are put to a vote every five years.<sup>136</sup> Finally, section 92.125 includes the requirement that if voters do not approve the renewal of the tax, it is to be phased out at a rate of 10% per year over a ten-year period.<sup>137</sup>

#### IV. DISCUSSION

Proposition A was a manipulative bypass of the legislature, feeding on anti-tax sentiment within the entire population of the state to restrict revenue generation for Missouri’s two major cities. Through his near single-handed funding of the Proposition, Rex Sinquefield has succeeded in using deep pockets to put forth his vision of how revenue should be generated in Missouri, most specifically in Kansas City and St. Louis City, although he is technically not a resident of either city.<sup>138</sup> Both cities rely on the earnings tax for more than one-third of their annual budgets;<sup>139</sup> the passage of Proposition A results in significant portions of revenue in Kansas City and St. Louis City being put at stake every five years.<sup>140</sup>

While the cities may have survived the first of what is sure to be many five-year votes, they are still faced with the contingency issue of how to replace the tax in the event that voters eliminate it in the future. Both cities are currently facing budget problems even with the earnings tax revenue.<sup>141</sup> Proposition A could force both cities to find additional sources of revenue as populations dwindle, and those who would stay would be punished with significantly higher taxes in other areas.<sup>142</sup> It is undeniable that the passage of

134. *Id.* § 92.110.2.

135. *Id.* § 92.112.

136. *Id.* § 92.115.1-3.

137. *See id.* § 92.125.

138. Ray Hartmann, *Think Again: Billionaire Knows Best*, ST. LOUIS MAG., Oct. 2010, at 64, available at <http://www.stlmag.com/St-Louis-Magazine/October-2010/Billionaire-Knows-Best/>. Sinquefield owns a home located in St. Louis City, but is registered to vote in Osage County, Missouri. Matthew Hathaway, *Billionaire Pushed Earnings Tax Vote, Can't Cast One*, ST. LOUIS POST-DISPATCH, Mar. 17, 2011, at A15. According to the St. Louis City deputy collector of revenue, voter registration is used to establish residency leading to the conclusion that Sinquefield is actually a resident of Osage County. *Id.*

139. *See infra* note 208 and accompanying text.

140. *See supra* note 131 and accompanying text.

141. *See infra* Part IV.C.

142. *See infra* Part IV.C.



Proposition A has succeeded in forcing the leaders of St. Louis City and Kansas City to provide greater budget accountability to their citizens, but this demand for increased accountability raised by Proposition A is not without significant added costs.<sup>143</sup> Both cities must now bear the added burden of having to finance a vote on the earnings tax every five years even though residents have already made it clear that they prefer having the earnings tax in place.<sup>144</sup> Residents of the cities must now look to court challenges and the legislature to step in to correct what is a serious injustice to the urban populations.<sup>145</sup>

### A. *Rex Sinquefield: The Man Behind the Movement*

“What if some eccentric rich guy woke up one day and decided it would be a good idea if everyone in St. Louis and Kansas City removed his pants?”<sup>146</sup> This seemingly absurd comparison is just one of the ways that Rex Sinquefield’s mission to eliminate the Kansas City and St. Louis City earnings taxes has been described.<sup>147</sup> Residents of Kansas City and St. Louis City viewed Sinquefield as a man on a crusade.<sup>148</sup> Unfortunately, that crusade threatens to jeopardize the stable governance of those cities.<sup>149</sup>

To understand the passage of Proposition A’s impact on the residents of Kansas City and St. Louis City, as well as those who use the services of each city, it is necessary to explore both how and why Proposition A came into existence. Appreciating the movement behind Proposition A also requires consideration of the anti-tax/pro-accountability feelings of the Proposition’s supporters<sup>150</sup> and Missouri residents.<sup>151</sup> Sinquefield grew up in St. Louis

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143. See Editorial, *The Voters Decided Our View: Sinquefield’s Folly Should be Challenged in Court*, ST. LOUIS POST-DISPATCH, Nov. 22, 2010, at A12 [hereinafter Editorial, *The Voters Decided*] (discussing the need and additional cost for special elections for the five-year vote required by Proposition A, since municipal elections are not held in even numbered years).

144. See *infra* notes 232-35 and accompanying text.

145. See *infra* Part IV.D.

146. Horrigan, *supra* note 24.

147. *Id.*

148. See *id.*

149. See *id.*

150. Sinquefield’s feelings toward taxes by most accounts seem to be negative, yet in what appears to be an attempt to keep Missouri residents wondering what he really thinks, Sinquefield recently donated more than \$10,000 to St. Louis County Executive Charley Dooley who was backing a plan to raise property taxes in St. Louis County. Jake Wagman, *Dooley Gets 10,002 Reasons to Stay the Course on Taxes*, ST. LOUIS POST-DISPATCH, Aug. 31, 2011, [http://www.stltoday.com/news/local/govt-and-politics/political-fix/article\\_1c245a7c-d3e2-11e0-8700-0019bb30f31a.html](http://www.stltoday.com/news/local/govt-and-politics/political-fix/article_1c245a7c-d3e2-11e0-8700-0019bb30f31a.html). The initial \$5,001.00 donated on August 30, 2011 was just enough to require the Missouri Ethics Commission to quickly post the amount of the donation rather than waiting

City, earned an undergraduate degree from St. Louis University, and went on to earn an MBA in finance from the University of Chicago.<sup>152</sup> He made his fortune as a co-founder of Dimensional Fund Advisors, a money management firm that he began in 1981 in Santa Monica, California.<sup>153</sup>

After his retirement from the company in 2005, he and his wife returned to Missouri with time and money to spend.<sup>154</sup> They purchased and renovated a home in St. Louis City's Central West End and split their time between St. Louis City and their 1,000-acre Osage County, Missouri estate, which their staff refers to as "the farm."<sup>155</sup> In the last five years, Sinquefield has focused on an overhaul of the Missouri tax system and educational structure.<sup>156</sup> In addition to championing tax and education reform, he has funded a music composition program at the University of Missouri and opened the elaborate Chess Club and Scholastic Center of St. Louis.<sup>157</sup>

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until the end of the quarter. *Id.* Less than a day later, Sinquefield donated an additional \$5,001.00. *Id.*

151. *See* Hartmann, *supra* note 138.

152. Virginia Young, *Sinquefield Makes His Money Talk*, ST. LOUIS POST-DISPATCH, June 27, 2010, at A1 [hereinafter Young, *Sinquefield Makes His Money Talk*]. He spent a portion of his childhood from the ages of seven to thirteen in an orphanage after his father passed away and his mother was no longer able to afford to care for him. *Id.* Eventually Sinquefield moved back in with his mother and enrolled in high school at Bishop DuBourg in St. Louis City. *See id.*

153. *Id.* At Sinquefield's retirement in 2005, Dimensional Fund Advisors was one of the country's largest institutional money managers handling approximately \$70 billion in assets. *Id.* *See also* *Dimensional Fund Advisors Co-Founder Rex Sinquefield to Retire End of 2005 to Run Missouri Think Tank*, BNET (July 28, 2005), [http://findarticles.com/p/articles/mi\\_m0EIN/is\\_2005\\_July\\_28/ai\\_n14835208/](http://findarticles.com/p/articles/mi_m0EIN/is_2005_July_28/ai_n14835208/).

154. Young, *Sinquefield Makes His Money Talk*, *supra* note 152.

155. *Id.* Interestingly, Sinquefield's thirteen vehicles, including a 2008 Bentley Continental Flying Spur, are all registered as personal property under the Osage County address where the tax rate is less than 50% of that in St. Louis City. Chad Garrison, *Rex Sinquefield Registers His Bentley and His Vote in Osage County*, RIVERFRONT TIMES BLOGS, (Nov. 1, 2010, 2:52 PM) [http://blogs.riverfronttimes.com/dailyrft/2010/11/rex\\_sinquefield\\_registers\\_his\\_bentley\\_and\\_his\\_vote\\_in\\_osage\\_county.php](http://blogs.riverfronttimes.com/dailyrft/2010/11/rex_sinquefield_registers_his_bentley_and_his_vote_in_osage_county.php) [hereinafter Garrison, *Rex Sinquefield Registers His Bentley*].

156. Young, *Sinquefield Makes His Money Talk*, *supra* note 152. The themes of the movements he has chosen to support focus on the elimination of income taxes and letting parents choose which schools their children attend. *Id.* Few Missouri residents would disagree that changes in taxation and education are needed, but it seems as if there are better ways of achieving this change than through a single person's fortune. *Id.* The underlying theme of Sinquefield's many causes seems to be his belief in the individual's freedom from government regulation as expressed in his view that income taxes inhibit productivity by discouraging new business. *See id.* This view can also be seen in "his contention . . . that a monopolistic public school system spawns mediocrity – or worse." *Id.*

157. *Id.*

Like most people, Sinquefield does not like taxes, made evident in his choice to register his vehicles, including a 2008 Bentley, in Osage County.<sup>158</sup> The personal property tax rate in Osage County is less than half that of St. Louis City, resulting in less tax liability for Sinquefield.<sup>159</sup> A lower tax rate is strong motivation to register a vehicle in a different county, but it leaves one to wonder whether Sinquefield actually drives that Bentley on the roads of Osage County, or rather registers it there and parks it in the garage of his 8,320 square-foot home in the Central West End.<sup>160</sup>

Until the passage of Proposition A, Sinquefield had seen limited success in his efforts to influence Missouri politics.<sup>161</sup> He has donated to a wide range of state and local officials in recent years including St. Louis City Mayor Francis Slay, a Democrat, and Lieutenant Governor Peter Kinder, a Republican.<sup>162</sup> As of June 2010, Sinquefield had made approximately \$11.75 million in political contributions.<sup>163</sup> Finding little success in eliminating the state earnings tax through lobbying the legislature,<sup>164</sup> he was “pleased” when the bill received what he considered “serious debate” – a few hours discussion.<sup>165</sup>

Sinquefield has noted with surprise that getting his changes implemented by the legislature has taken more time than he expected.<sup>166</sup> One can only assume that this is why he chose to go directly to the Missouri population through a ballot initiative to change the earnings tax.<sup>167</sup> Proposition A’s bypass of the legislature seems to have made things move a little closer to Sinquefield’s desired timeline, considering that just a short time and \$11.2 million dollars<sup>168</sup> ago, the earnings tax seemed firmly in place.<sup>169</sup> After the

158. Garrison, *Rex Sinquefield Registers His Bentley*, *supra* note 155; Hathaway, *supra* note 138.

159. Garrison, *Rex Sinquefield Registers His Bentley*, *supra* note 155.

160. Hathaway, *supra* note 138.

161. Young, *Sinquefield Makes His Money Talk*, *supra* note 152.

162. *Id.*

163. *Id.*

164. *Id.* Sinquefield suggested levying “higher sales tax on a much broader base of goods and services – everything from child care to new homes,” to replace lost revenue, but at least one Missouri Senator believed “[t]he tax rate would have to be too high.” *Id.* (internal quotation marks omitted). The Senate shelved the debate after just a few hours of discussion. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* Sinquefield was able to obtain the 15,000 to 20,000 signatures per congressional district needed by May 2, 2010, in order to get Proposition A on the November ballot. See Editorial, *Can’t Buy Love - Our View: Sinquefield May Get More Than He Bargained for in Earnings Tax Drive*, ST. LOUIS POST-DISPATCH, Mar. 11, 2010 at A14.

168. The \$11.2 million was contributed by Sinquefield to the “Let Voters Decide” committee working in favor of the repeal of the earnings tax. See *Contributions and*

November 2, 2010, passage of Proposition A, it is clear that with enough money spent in the right places, the legislature can be bypassed.<sup>170</sup> This use of a ballot initiative to circumvent the legislature is both unfair and dangerous, as it promotes the idea that anyone with enough money can easily manipulate the legislative system.<sup>171</sup> While an argument may be made that Sinquefield's work with Proposition A is simply democracy in action, it seems clear that this form of democracy is only available to the highest bidder and may in fact be anti-democratic.<sup>172</sup> By putting Proposition A on the ballot to the entire state, all Missouri voters were essentially able to take the fate of urban voters in their hands,<sup>173</sup> quite the opposite of democracy.<sup>174</sup>

### B. The Passage of Proposition A

On November 2, 2010, Missouri voters resoundingly approved Proposition A with 68.4% of voters casting their ballot in favor of putting the Kansas City and St. Louis City earnings taxes to a vote every five years and prohibiting any other city from instituting an earnings tax.<sup>175</sup> While over two-thirds of voters statewide favored the Proposition, one of the most significant factors to be observed was that St. Louis City was the only portion of the state that voted against the Proposition, and the margin of victory in Kansas City was much smaller than in the majority of the rest of the state.<sup>176</sup> Nearly 61,000 residents of St. Louis City opposed the Proposition and only 28,389 voted in favor.<sup>177</sup> While Proposition A did pass in Kansas City, the vote was very close with 52% in favor of the Proposition and 48% against.<sup>178</sup> Those Kansas City residents who live in the southern portion of the city were clearly

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*Expenditures, supra* note 1 (Amended figures shown on the website are not part of the \$11.2 million figure.).

169. *See supra* Part II.C.

170. The funds contributed by Sinquefield were spent to hire two California firms to oversee the Proposition A campaign and signature-gathering process, employ several Missouri public relations firms, and compensate a University of Missouri professor for a report he provided. *See* Jake Wagman, *Consultants Cash in on Crusader Campaigns*, ST. LOUIS POST-DISPATCH, Feb. 6, 2011, at A1.

171. *See* Hartmann, *supra* note 138.

172. *See id.*

173. *Id.*

174. *Id.*

175. *Specify a Race*, MO. SECRETARY ST., <http://www.sos.mo.gov/enrweb/raceresults.asp?eid=300&oid=67794&arc=> (last visited Oct. 2, 2011).

176. *Id.*

177. *Id.*

178. Phillip O'Connor, *Earnings Tax Backers in KC Mobilize for Vote*, ST. LOUIS POST-DISPATCH, Mar. 22, 2010, at A1.

opposed to eliminating the earning tax, while the residents of the more affluent northern suburbs were in favor of elimination.<sup>179</sup>

After the impressive campaign put forth by Sinequefield, Kansas City and St. Louis City residents were left wondering how Proposition A was passed. The clear division between rural and city voters seen as far back as the original institution of the earnings tax seemed to be a contributing factor.<sup>180</sup> In choosing to circumvent the legislature and enact Proposition A through petition and vote, Sinequefield was able to tap the anti-tax sentiment of voters statewide and use it against Kansas City and St. Louis City.<sup>181</sup>

By signing a petition to put Proposition A on the Missouri ballot, proponents believed that they would be keeping their own taxes down since their cities could never institute an earnings tax if the measure eventually passed, as it did.<sup>182</sup> Also, nonresidents employed in Kansas City and St. Louis City could potentially eliminate their need to pay the city earnings taxes.<sup>183</sup> If the earnings taxes were eliminated, those nonresident employees would also not be subject to any resulting property or sales tax increases within the city, making it very appealing to them. The most frightening part of this exchange is that by choosing to use a petition to put Proposition A on the ballot, Sinequefield has attempted to hijack the budgets of Kansas City and St. Louis City by pitting the entire state against them. The passage of Proposition A requires the residents of Kansas City and St. Louis City to take on the additional expenses of a vote every five years<sup>184</sup> to keep a tax that they clearly want to maintain. In no way could it be fair for the disinterested masses to force a tax policy, and the additional costs associated with it, upon the few.

Even though the amount of the earnings tax paid by residents and workers had not changed in over 50 years, supporters of Proposition A alleged that “loopholes” in state tax law allowed the earnings tax to continue in Kansas City and St. Louis City “forever – without any voter approval and impose

179. *See id.*

180. *See* Horrigan, *supra* note 24; Schmandt, *supra* note 36, at 399. In the 1950s, the mayor of St. Louis was forced to travel the state to gain support from rural groups and legislators in order to pass the legislation needed to institute the earnings tax for his city. *Id.* The division between rural and city voters was again clear in the November 2, 2010, election as rural voters accused city voters of being uninformed about Proposition B, the Puppy Mill Animal Cruelty Prevention Act, while urban voters felt the same way about Proposition A. Barbara Lach-Smith, *Memo to Mo. Lawmakers, City Voters Aren't Stupid*, MIDWEST VOICES (Feb. 28, 2011), <http://voices.kansascity.com/entries/memo-mo-lawmakers-city-voters-arent-stupid/>.

181. *See* Hartmann, *supra* note 138; Horrigan, *supra* note 24.

182. *See* Horrigan, *supra* note 24.

183. *See* Jim Salter, *St. Louis, KC Face Crucial April Vote*, COLUMBIA MISSOURIAN, Mar. 6, 2011, <http://www.columbiamissourian.com/stories/2011/03/06/st-louis-kansas-city-face-april-votes-earnings-taxes/>.

184. *See* Wall, *supra* note 19.

earnings taxes in other communities.”<sup>185</sup> Because the supporters did not specify what they meant by “loopholes,” it is not easy to discern what they were actually referencing.<sup>186</sup> It is especially difficult to see any “loophole” in the tax policy since the Hancock Amendment, enacted in 1980, requires voter approval before any new tax can be implemented by a state or local government or an existing tax rate increased.<sup>187</sup> Because the earnings tax was in place at its current 1% rate at the time of the passage of the Hancock Amendment, it was essentially grandfathered in and not subject to vote unless increased.<sup>188</sup> The Hancock Amendment implies that local governments could not institute or increase an earnings tax without voter approval, making it unnecessary to have an additional statute outlawing the institution of an earnings tax.<sup>189</sup>

In creating Proposition A, Sinefield and the proposition’s supporters seem to have overlooked the power of the city populace to cast their vote in favor of representatives who better fit their needs.<sup>190</sup> The mayors of both Kansas City and St. Louis City saw early on that Proposition A presented an uphill battle for their cities. In August 2010, Kansas City Mayor Mark Funkhouser was already considering his options on how to fight Proposition A if it passed.<sup>191</sup> Just a month later, Kansas City took the fight to the courts, urging a judge to block the November vote on Proposition A, to no avail.<sup>192</sup>

Similarly, the day after the passage of Proposition A, St. Louis City Mayor Francis Slay began soliciting pledges to support the earnings tax in the April 2011 vote.<sup>193</sup> Other St. Louis City leaders saw these actions as too little too late.<sup>194</sup> Their frustrations stemmed from a perception that Slay stood by, relatively uninvolved, while Proposition A supporters worked to convince voters to change the law and start the process of eliminating the earnings tax.<sup>195</sup> Prior to November 2, 2010, Slay insisted that his lack of fight was not due to the fact that Sinefield had contributed more than \$245,000 to his political campaigns since 2008, but that he was holding out for the bigger fight in April 2011.<sup>196</sup> It seems less than coincidental that the people in

185. Editorial, *No on Prop A*, *supra* note 7.

186. *Id.*

187. Sharp & Elkins, *supra* note 27, at 386.

188. *See id.*

189. *See* MO. ANN. STAT. § 92.105 (West Supp. 2011) (prohibiting the institution of an earnings tax in any city that does not have one).

190. Editorial, *No on Prop A*, *supra* note 7.

191. Mike Hendricks, *This Earnings Tax Fight Faces Odd Twists*, THE KANSAS CITY STAR, Aug. 5, 2010, at A4.

192. Virginia Young, *Kansas City Challenges Effort to Get Rid of City Earnings Tax*, ST. LOUIS POST-DISPATCH, Sept. 18, 2010, at A16.

193. Hunn, *Earnings Tax Fight*, *supra* note 113.

194. *Id.*

195. *See id.*

196. *Id.*

charge of the Proposition A campaign, funded almost exclusively by Sinquefield, stepped away from the earnings tax issue after Proposition A's passage, stating that "[they were] not getting involved" and it was up to the city to "put together a good discussion of where the money goes, and justify spending it."<sup>197</sup> While Slay did manage to secure \$275,000 in pledges the day after the passage of Proposition A, St. Louis City residents were left to wonder how much he could have done in the months leading up to the November vote, and whether his decision to postpone action was related to Sinquefield's status as his largest campaign contributor.<sup>198</sup>

### C. *The First Renewal Vote*

On April 5, 2011, Kansas City and St. Louis City voters resoundingly approved the renewal of the earnings tax.<sup>199</sup> The substantial margin of victory in Kansas City<sup>200</sup> was only slightly lower than that demonstrated in St. Louis City amidst fears of low turnout.<sup>201</sup> Kansas City taxpayers tried to counter Proposition A's passage by filing suit to challenge the addition of the earnings tax referendum to the April ballot.<sup>202</sup> In St. Louis City, leaders opted for a different approach. They kept a low profile in an attempt to discourage Sinquefield from funding another massive campaign against the earnings tax just prior to the April 5th vote.<sup>203</sup> Luckily, Sinquefield and "Let Voters Decide" determined that their work was done following the November vote,<sup>204</sup> and Mayor Francis Slay proceeded in attending 87 of 104 community meetings to support the tax.<sup>205</sup> Perhaps one of the reasons Sinquefield's work was done after the November vote was that he could not vote in St. Louis City on April 5, 2011.<sup>206</sup> Like his personal property, Sinquefield's voter registration is in Osage County, about 100 miles from St. Louis City, which rendered him ineligible to vote in St. Louis City on April 5th.<sup>207</sup>

Although the earnings tax has survived its first five-year vote, leaders in both cities were rightfully concerned about the potential consequences of that

197. *Id.*

198. *Id.*; see Jake Wagman, *Effort Builds to Drop City's 1 Percent Earnings Tax*, ST. LOUIS POST-DISPATCH, Jan. 17, 2010, at A1.

199. Dave Helling & Lynn Horsley, *Kansas Citizens Give Earnings Tax a Resounding 'Yes' at Ballot Box*, THE KANSAS CITY STAR, Apr. 6, 2011, at A1.

200. Yael T. Abouhalkah, *Celebrate Earnings Tax Victory, but Challenges Remain*, THE KANSAS CITY STAR, Apr. 7, 2011, at A13 [hereinafter Abouhalkah, *Celebrate Earnings Tax Victory*].

201. Hunn, *Earnings Tax Survives*, *supra* note 18.

202. Helling & Horsley, *supra* note 199.

203. Hunn, *Earnings Tax Survives*, *supra* note 18.

204. See O'Connor, *supra* note 178.

205. Hunn, *Earnings Tax Survives*, *supra* note 18.

206. Hathaway, *supra* note 138.

207. *Id.*

vote as over one-third of each city's revenue hung in the balance.<sup>208</sup> While taxpayers voted to retain the earnings tax, each city must still begin considering what to do in the event that the tax is ever eliminated.<sup>209</sup> Finding additional funding will be a difficult task, considering that current budget deficiencies in St. Louis City have already resulted in firefighters being laid off<sup>210</sup> and the possibility of police layoffs.<sup>211</sup>

If any of the five-year votes result in elimination of the earnings tax in St. Louis City, the potential for a downgrade of the city's credit rating, similar to the situation faced by the United States in 2011, seems probable.<sup>212</sup> A downgrade would make it difficult for the city to obtain credit at reasonable rates.<sup>213</sup> The bond market will not be as patient as the law in allowing a ten-year phase out, and it will require a credible answer as to how the city will replace the revenue.<sup>214</sup>

While the effect of the elimination of the earnings tax could have a significant impact on the bond market, the greatest concern would be filling the enormous revenue gaps in both Kansas City and St. Louis City. Sinquefield is quick to point out the flaws of the earnings tax but initially offered no solution for its replacement, arguing city officials had "almost 11 years to figure this out."<sup>215</sup> Only after the April 5th vote,<sup>216</sup> most specifically on the morning of April 6th, was a Sinquefield-funded report released, detailing how St. Louis City might recoup the \$140 million in earnings tax revenue.<sup>217</sup>

In the event that the earnings tax was phased out, the study highlighted additional fees for business licenses and increased taxes on restaurants, ho-

208. See O'Connor, *supra* note 178; Salter, *supra* note 183.

209. Hunn, *Earnings Tax Survives*, *supra* note 18.

210. David Hunn, *City is Laying Off 30 Firefighters - 24 More Jobs Will be Eliminated Through Attrition*, ST. LOUIS POST-DISPATCH, Mar. 15, 2011, at A2.

211. See *id.*; see also Salter, *supra* note 183.

212. See Zachary A. Goldfarb, *U.S. Credit Rating Downgraded for First Time*, WASH. POST, Aug. 6, 2011, at A01; Zachary A. Goldfarb & Brady Dennis, *Worst Day for World Markets Since '08*, WASH. POST, Aug. 9, 2011, at A11; David Nicklaus, *Bond Markets Likely to Take Note of Vote on Earnings Tax*, ST. LOUIS POST-DISPATCH, Oct. 24, 2010, at E1.

213. See Nicklaus, *supra* note 212.

214. See *id.*

215. Young, *Sinquefield Makes His Money Talk*, *supra* note 152 (internal quotation marks omitted).

216. Tim Logan, *Vote Won't Settle Question of City Earnings Tax*, ST. LOUIS POST-DISPATCH, Apr. 6, 2011, at A1; see also Hunn, *Earnings Tax Survives*, *supra* note 18.

217. Logan, *supra* note 216. The Sinquefield-funded group that prepared the report, the Missouri Council for a Better Economy, provided it to the Post-Dispatch "under the condition that it not be released until after Election Day." *Id.* A spokesman for the group gave two reasons for not previously releasing the report: the study did not begin until November and there will eventually be another vote in 2016. *Id.*



tels, cigarettes, and beer,<sup>218</sup> which would potentially discourage non-residents of the city from venturing there for dinner or an overnight stay. The study also suggests a 10% real estate tax increase, a 1.63% sales tax increase, sales taxes on additional goods, and asking city workers to contribute more to pensions and wait longer to become eligible to receive them.<sup>219</sup> The study puts forth a regressive tax policy which shifts the major tax burden from companies and more affluent nonresident wage earners to the middle class and poor living in the city. Those city residents would be subject to the higher taxes on their daily expenditures.

While the study succeeds in suggesting options for making up the earnings tax revenue, it makes clear what many already knew: options for additional funding are tricky and scarce.<sup>220</sup> Possible means for making up the revenue include higher property or sales taxes, each of which would require drastic increases.<sup>221</sup> In Kansas City, the sales tax would have to be increased to 11.5%, property taxes would need to be more than doubled, or some combination of the two.<sup>222</sup> Because these would be increases to taxes implemented by a municipal government, they would also require popular approval under the Hancock Amendment.<sup>223</sup> Besides raising taxes, the only other alternative would be to require massive cuts to the funding of city services.<sup>224</sup> It seems natural to wonder how these changes would affect Sinquefield as Proposition A's main supporter. Because he splits his time between homes in St. Louis City and Osage County, a fair assessment could be made that he would only be subject to an increased sales tax half the time.<sup>225</sup> Quite the contrary is true for residents of St. Louis City and Kansas City who do not own second homes where vehicles can be registered, or where they can spend half their time.

If Kansas City and St. Louis City are forced to eliminate the earnings tax through a future vote, the challenge of finding new areas of revenue would be daunting and would have disastrous effects on their residents. By dramatically increasing property or sales taxes as a means of generating revenue, the cities could force more of their already dwindling populations to suburban municipalities that would likely have lower tax rates.<sup>226</sup> Increases in sales and property tax rates would put a larger burden on the urban poor who con-

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218. *Id.*

219. *Id.*

220. *See id.*

221. Editorial, *No on Prop A*, *supra* note 7.

222. *See* Yael T. Abouhalkah, *Future of Earnings Tax Will Be Up to Kansas City Voters*, KANSAS CITY STAR, Apr. 28, 2010, available at <http://www.kansascity.com/2010/04/28/v-print/1910534/future-of-earnings-tax-will-be.html> [hereinafter Abouhalkah, *Future of Earnings Tax*].

223. Editorial, *No on Prop A*, *supra* note 7.

224. *Id.*

225. *See* Garrison, *supra* note 155.

226. *See* Rallo, *supra* note 17.

tinue to live in Kansas City and St. Louis City.<sup>227</sup> It is obvious that there is no simple solution as to how earnings tax revenues could be replaced if the tax were eliminated, and the leadership of both Kansas City and St. Louis City are struggling to come up with feasible solutions to a serious problem they may soon face.<sup>228</sup>

#### D. Corrective Action

As discussed below, opponents of Proposition A may still have means of fighting its imposition. Concerns have been raised as to the costs of the five-year votes and whether they are an unfunded mandate, inviting potential for a court challenge.<sup>229</sup> Ironically, the unfunded mandate issue arises in the Hancock Amendment, which is generally seen as an anti-tax measure.<sup>230</sup> Kansas City and St. Louis City may also have the opportunity to get the last say in the legislature through a lengthening of the time period between votes or repeal or amendment of the new statutes.<sup>231</sup> Besides these potential avenues of corrective action, the cities should be concerned also with the federalism aspect of the state populace making a decision for the home rule cities, which clearly have the power to institute taxes.

Proposition A requires a vote every five years to keep the Kansas City and St. Louis City earnings taxes in place.<sup>232</sup> However, no part of the provision provides how that vote will be funded.<sup>233</sup> Clearly, the cost of a vote for the sole purpose of determining whether the earnings tax should continue would be expensive<sup>234</sup> and quite possibly a huge waste of money considering just how forcefully the Kansas City and St. Louis City populations approved the renewal on April 5, 2011.<sup>235</sup>

The November 2010 passage of Proposition A in Kansas City begs the question of whether those residents were looking for a way to hold their local government accountable for spending, as voters would have to re-approve the earnings tax every five years. It is also just as likely that Kansas City was simply out-spent by Sinquefeld, removing the significance of that slight vic-

227. *See id.*

228. *Id.*

229. Editorial, *The Voters Decided*, *supra* note 143.

230. Sharp & Elkins, *supra* note 27, at 386; *see also* Ronald K. Rowe, II, Note, *Beyond Equality and Adequacy: Equal Protection, Tax Assessments, and the Missouri Public School Funding Dilemma*, 75 MO. L. REV. 1037, 1047 (2010).

231. *See* Hendricks, *supra* note 191; *see also* H.R. 26, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011) (proposing a lengthening between voting time periods).

232. *See* MO. ANN. STAT. § 92.105 (West Supp. 2011).

233. Editorial, *The Voters Decided*, *supra* note 143.

234. The addition of the earnings tax issue to an already scheduled election requires a legal advisor to review ballot language as well as proofreading and publication in periodicals prior to the election. *Id.*

235. Abouhalkah, *Celebrate Earnings Tax Victory*, *supra* note 200.

tory. By any account, Proposition A provides a much more drastic solution than necessary to provide accountability in local government for at least two reasons. First, it essentially removes even the possibility of cities asking for a new earnings tax when citizens are pleased with their government.<sup>236</sup> Second, it ignores the ability of citizens to petition for a referendum or to elect new officials if a need for accountability arises.<sup>237</sup> Accountability for the spending of tax dollars is a concern to any voter, but the citizens of Kansas City and St. Louis City made it clear through the April 5th vote that the threat of elimination of the earnings tax is not the way that they prefer to hold their local governments accountable.

A question of validity also remains.<sup>238</sup> The Hancock Amendment does not allow the state to require a new or expanded activity of a county or political subdivision unless the state also provides full funding for that activity.<sup>239</sup> Thus far, no funding has been provided for the five-year votes.<sup>240</sup> In order to successfully challenge the vote, it would have to be considered an unfunded mandate.<sup>241</sup> The next vote will be held in 2016, an even year in which municipal elections are not held, requiring St. Louis City to pay for a special election, which certainly resembles an unfunded mandate and is prohibited by the Hancock Amendment.<sup>242</sup> The challenge of Proposition A as an unfunded mandate is just one of the ways that it could make its way to the judiciary for review. Another option is to employ the assistance of the legislature.

In the past, the legislature has chosen to ignore the wishes of the populace and take a different route.<sup>243</sup> This type of memorable action was taken after the 1999 state voter rejection of the concealed-carry proposition.<sup>244</sup> Just a few years later, the legislature enacted a concealed-carry law in spite of the previous vote.<sup>245</sup> While not trying to completely eliminate Proposition A, Representative Tishaura Jones, a Democrat from St. Louis City, is seeking to alter Proposition A by lengthening the voting term from five to twenty

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236. See Editorial, *No on Prop A*, *supra* note 7.

237. *Id.*

238. Editorial, *The Voters Decided*, *supra* note 143.

239. *Id.*

240. *Id.*

241. *Id.* Article X, section 16 of the Missouri Constitution states: "The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions." MO. CONST. art. X, § 16. If the state requires an activity, but neglects to provide funding for it, that activity would be considered an unfunded mandate and therefore unconstitutional. See, e.g., *Brooks v. State*, 128 S.W.3d 844, 851 (2004) (declaring the Concealed Carry Act as an unfunded mandate contrary to the requirements of the Hancock Amendment).

242. Editorial, *The Voters Decided*, *supra* note 143.

243. Hendricks, *supra* note 191.

244. *Id.*

245. *Id.*

years,<sup>246</sup> which would certainly help to relieve some of the concerns of the bond market and the election costs. Kansas City and St. Louis City residents must reiterate their disdain for Proposition A to their representatives and insist that the legislature choose to take matters into its own hands in an effort to avoid what could be a potential death sentence for its two largest urban centers.

An additional option for challenging the validity of Proposition A presents itself as an argument in favor of federalism. St. Louis City and Kansas City are home rule cities capable of establishing specific tax laws.<sup>247</sup> Allowing the entire state to vote on an issue having direct and specific impact on only St. Louis City and Kansas City seems to be a clear violation of each city's home rule powers.<sup>248</sup>

To minimize the impact of Proposition A, the citizens of Kansas City and St. Louis City need to take action to challenge its validity as an unfunded mandate, encourage the legislature to sever the statutes which prevent the institution of a new earnings tax, and repeal or amend the portion of the statute which requires a five-year vote to maintain the earnings tax.<sup>249</sup> Through amendment, the legislature could lengthen the time between votes,<sup>250</sup> and repeal would eliminate the need to vote on the earnings tax at all. Looking beyond the direct impact on Kansas City and St. Louis City, the legislature should also consider the statewide impact of Proposition A's earnings tax restriction as a reason to take action. Besides challenging or repealing Proposition A, the legislature could institute additional statutes that restrict voting on issues that solely affect specific municipalities to those municipalities alone and not the entire state.

## V. CONCLUSION

When considering the history of the 1% earnings tax in Kansas City and St. Louis City, it is mind-boggling to think that a solid, revenue-generating tool in use for more than fifty years can be placed in jeopardy by the efforts of one well-heeled citizen. As astounding as that scenario may be, it is the reality that Kansas City and St. Louis City are currently facing because of Proposition A.<sup>251</sup> Rex Sinquefield has used his money, coupled with anti-tax sentiment in the state, to successfully impose his agenda upon the populations of these two cities, forcing them to put huge portions of their city budgets on

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246. Tony Messenger, *Lawmakers Seek to Veto Voters' Will*, ST. LOUIS POST-DISPATCH, Dec. 3, 2010, at A1.

247. *See supra* Part II.A.

248. Hartmann, *supra* note 138.

249. *See supra* notes 231-47 and accompanying text.

250. Messenger, *supra* note 246.

251. *See* Editorial, *No on Prop A*, *supra* note 7.

the line every five years.<sup>252</sup> Yet the residents of Kansas City and St. Louis City have demonstrated through their April 2011 votes that they overwhelmingly want to maintain the earnings tax, and that Sinquefeld was unable to get everything he wanted by simply spending money.

Both cities are doing what they can to find alternate sources of revenue in the event that one of the future five-year votes results in the elimination of the earnings tax, but nothing feasible has been developed<sup>253</sup> and hope lives in the idea that the legislature may be able to amend the statutes, making them less painful.<sup>254</sup> Until a concrete solution is developed, Kansas City and St. Louis City would be wise to continue searching for the elusive way to replace 40% and one-third of their revenue, respectively, in the event that that earnings tax is eliminated in the future.

Proposition A and the potential elimination of the earnings tax is nothing more than a high-stakes game of musical chairs, which will ultimately leave the populations of Kansas City and St. Louis City without a seat. The threat of elimination forces the cities to increase taxes in other areas if they are no longer receiving earnings tax revenue. Currently, the cities are streamlining budgets and trying to reduce spending in the event that the earnings tax would ever be eliminated. This seems to be the single benefit of the passage of Proposition A. The question remains whether the threat of elimination of one-third of a city's revenue is worth the cost of a vote every five years to determine what has already been clearly established: Kansas City and St. Louis City want to maintain the earnings tax.

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252. Hartmann, *supra* note 138.

253. See Logan, *supra* note 216.

254. See Messenger, *supra* note 246.