

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ELSIE BECK GLICKERT,)
an individual,)

JEN RIVENES JENSEN,)
an individual,)

IRENE FRANKLIN,)
an individual,)

and)

PETER SARANDOS,)
an individual,)

Plaintiffs,)

vs.)

Case No. 4:13-CV-1270

THE LOOP TROLLEY)
TRANSPORTATION DEVELOPMENT)
DISTRICT,)
a purported political subdivision of the)
State of Missouri,)

Serve: Joe Edwards,)
Chairman of the Board,)
6504 Delmar Boulevard,)
St. Louis, Missouri 63130,)

THE LOOP TROLLEY COMPANY,)
a Missouri non-profit corporation,)

Serve: Don C. Musick,)
Registered Agent,)
254 Hanley Industrial Court,)
St. Louis, Missouri 63144,)

THE BI-STATE DEVELOPMENT AGENCY)
OF THE MISSOURI-ILLINOIS)
METROPOLITAN DISTRICT)
d/b/a METRO,)

Serve: Dee Joyce-Hayes,)
General Counsel,)
707 North First Street,)
St. Louis, Missouri 63102,)

CB 5421/5975 TRANSPORTATION)
DEVELOPMENT DISTRICT,)
a political subdivision of the State of)
Missouri,)

Serve: Joe Edwards,)
Chairman,)
6504 Delmar Boulevard,)
St. Louis, Missouri 63130,)

THE CITY OF ST. LOUIS, MISSOURI,)
a political subdivision of the State of Missouri,)

Serve: The Honorable Francis G. Slay,)
Office of the Mayor,)
City Hall,)
1200 Market Street,)
St. Louis, Missouri 63103,)

THE CITY OF UNIVERSITY CITY, MISSOURI,)
a political subdivision of the State of Missouri,)

Serve: The Honorable Shelley Welsch,)
Office of the Mayor,)
City Hall,)
6801 Delmar Boulevard,)
St. Louis, Missouri 63130,)

THE COUNTY OF ST. LOUIS, MISSOURI,)
a political subdivision of the State of Missouri,)

Serve: Genevieve M. Frank,)
St. Louis County Clerk,)
41 South Central Avenue,)
First Floor,)
St. Louis, Missouri 63105,)

MISSOURI HIGHWAYS AND)
TRANSPORTATION COMMISSION,)

Serve: Pam Harlan,)
Secretary,)
105 West Capitol Avenue,)
Jefferson City, Missouri 65102,)

CHARLIE A. DOOLEY,)
in his official capacity as a member of the)
Board of Directors of the purported Loop)
Trolley Transportation Development District,)

Serve at: Office of the County Executive,)
Ninth Floor,)
Administration Building,)
41 South Central Avenue,)
St. Louis, Missouri, 63105,)

JOE EDWARDS,)
in his official capacity a member of the)
Board of Directors of the purported Loop)
Trolley Transportation Development District,)

Serve at: 6504 Delmar Boulevard,)
St. Louis, Missouri 63130,)

JOHN M. NATIONS,)
in his official capacity as a member of the)
Board of Directors of the purported Loop)
Trolley Transportation Development District,)

Serve at: Office of the President,)
Bi-State Development Agency,)
d/b/a Metro,)
707 North First Street,)
St. Louis, Missouri 63102,)

FRANCIS G. SLAY,)
in his official capacity as a member of the)
Board of Directors of the purported Loop)
Trolley Transportation Development District,)

Serve at: Office of the Mayor,)
City Hall,)
1200 Market Street,)
St. Louis, Missouri 63103,)

SHELLEY WELSCH,)
in her official capacity as a member of the)
Board of Directors of the purported Loop)
Trolley Transportation Development District,)

Serve at: Office of the Mayor,)
City Hall,)
6801 Delmar Boulevard,)
St. Louis, Missouri 63130,)

ANNE S. CARLSON,)
in her capacity as a purported Trustee of the)
Catlin Tract Subdivision of the City of St. Louis,)

Serve at: 5555 Lindell Boulevard,)
St. Louis, Missouri 63112,)

JOHN DANIEL,)
in his capacity as a Trustee of the Catlin Tract)
Subdivision of the City of St. Louis,)
))
Serve at: 6145 Lindell Boulevard,)
St. Louis, Missouri 63112,)
))
SEAN GANNON,)
in his capacity as a Trustee of the Catlin Tract)
Subdivision of the City of St. Louis,)
))
Serve at: 5763 Lindell Boulevard,)
St. Louis, Missouri 63112,)
))
and)
))
CATLIN TRACT BOARD OF TRUSTEES,)
a Missouri nonprofit corporation,)
))
Serve: Sean Gannon,)
Registered Agent)
5763 Lindell Boulevard,)
St. Louis, MO 63112)
))
Defendants.)

COMPLAINT

Come now Plaintiffs, and for their causes of action against Defendants, state as follows:

General Allegations

Introduction

1. This is a civil action for declaratory and injunctive relief against the organization and operation of the Loop Trolley Transportation Development District (“Loop Trolley District”), a purported political subdivision with the ostensible powers

to impose both real property taxes and sales taxes, and to construct a trolley-car rail transportation system, within portions of the City of St. Louis and County of St. Louis, Missouri. The Loop Trolley District was improperly authorized pursuant to Missouri statutes and a Missouri state court's order, which unlawfully permitted both registered voters and owners of real property within the proposed boundaries of the district to vote for its organization--regardless of whether those real property owners were also residents or registered voters within such boundaries--under a voting formula which violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and the Equal Protection Clause of the Constitution of the State of Missouri, Article I, Section 2. The election also violated constitutional and statutory requirements in several other ways, including the exclusion of voters who had timely registered to vote, failing to assure the secrecy of the ballots, and failing to allow voters to obtain a ballot and to vote in person on the day of the election. The organization and subsequent operation of the Loop Trolley District also have been contrary to Missouri state law, by violating statutory notice requirements and requirements of the charters of the City of St. Louis and the City of University City for legislative action by ordinance, by activity outside the legal boundaries of the district and in areas prohibited by an ordinance and subdivision indenture of the City of St. Louis, and by activity without all necessary municipal permits and approvals.

Parties

2. Plaintiff Elsie Beck Glickert ("Glickert") is a resident of the City of

University City in the County of St. Louis, State of Missouri, a citizen and taxpayer of said City, County, and State, a regular patron of businesses located within the boundaries of the purported Loop Trolley District in the City of St. Louis and County of St. Louis; and a regular pedestrian and motorist on the sidewalks and streets within that Loop Trolley District, including the intersections of Delmar Boulevard and Kingsland Avenue in the County of St. Louis and of Lindell Boulevard and DeBaliviere Avenue in the City of St. Louis, and along the proposed route for a trolley-car rail system within the Loop Trolley District.

3. Plaintiff Jen Rivenes Jensen (“Jensen”) is a resident of the City of University City in the County of St. Louis, State of Missouri, a citizen and taxpayer of said City, County, and State; a regular patron of businesses located within the boundaries of the purported Loop Trolley District; and a regular pedestrian and motorist on the sidewalks and streets within that Loop Trolley District, including the intersections of Delmar Boulevard and Kingsland Avenue in the County of St. Louis and of Lindell Boulevard and DeBaliviere Avenue in the City of St. Louis, and along the proposed route for a trolley-car rail system within the Loop Trolley District.

4. Plaintiff Irene Franklin (“Franklin”) is a resident of the City of St. Louis, State of Missouri, a citizen and taxpayer of said City, and State, the owner of a lot and residence at 5705 Lindell Boulevard, between Union Boulevard and Skinker Boulevard, in the subdivision of the City of St. Louis commonly known as the Catlin Tract; a regular patron of businesses located within the boundaries of the purported Loop Trolley

District; a regular pedestrian and motorist on the sidewalks and streets within that Loop Trolley District, including the intersections of Delmar Boulevard and Kingsland Avenue in the County of St. Louis and of Lindell Boulevard and DeBaliviere Avenue in the City of St. Louis, and along the proposed route for a trolley-car rail system within the Loop Trolley District; and a regular user of Forest Park in the City of St. Louis.

5. Plaintiff Peter Sarandos (“Sarandos”) is a resident of the County of St. Charles, State of Missouri, and is the owner of real property located within the boundaries of the purported Loop Trolley District and within the City of St. Louis; a regular patron of businesses located within the boundaries of the purported Loop Trolley District; and a regular pedestrian and motorist on the sidewalks and streets within that Loop Trolley District, including the intersections of Delmar Boulevard and Kingsland Avenue in the County of St. Louis and of Lindell Boulevard and DeBaliviere Avenue in the City of St. Louis, and along the proposed route for a trolley-car rail system within the Loop Trolley District. As such, Plaintiff Sarandos is a citizen of the State of Missouri, and a taxpayer in, among other jurisdictions, the purported Loop Trolley District and the City of St. Louis.

6. Defendant The Loop Trolley Transportation Development District is a purported transportation development district (“TDD”), and a political subdivision of the State of Missouri, with its principal place of business located in the County of St. Louis at 6504 Delmar Boulevard, within the City of University City, and with district boundaries including public and private properties within both the City of St. Louis and

the County of St. Louis.

7. Defendant The Loop Trolley Company (the “Trolley Company”) is a non-profit corporation organized and existing under the laws of the State of Missouri, with its principal place of business in the County of St. Louis, Missouri. On information and belief, the Trolley Company either already has a contractual or other relationship with the Loop Trolley District, the exact nature of which is unknown to Plaintiffs, or has plans and expectations for a future contractual or other relationship with the Loop Trolley District, and therefore is made a party herein.

8. Defendant Bi-State Development Agency of the Missouri-Illinois Metropolitan District d/b/a Metro (“Metro”) is an interstate compact agency duly organized and existing under the Constitution and laws of the United States and the State of Missouri and the State of Illinois, authorized by an Act of Congress, and is a local transportation authority as that term is defined in Section 238.202.1(4) of the Transportation Development District Act (“TDD Act”), Sections 238.200 *et seq.*, R.S.Mo.

9. Defendant CB 5421/5975 is a Transportation Development District, created to build parking or other transportation facilities in the vicinity of the Moonrise Hotel (“Moonrise TDD”) on Delmar Boulevard within the City of St. Louis; is a political subdivision duly organized and existing under the Constitution and laws of the State of Missouri; and is a local transportation authority as that term is defined in Section 238.202.1(4) of the TDD Act.

10. Defendant The City of St. Louis (“St. Louis City”) is a municipal corporation and a political subdivision of the State of Missouri, duly organized and existing under its charter and the Constitution and laws of the State of Missouri; is a city not within a county; is treated as a county under the laws of Missouri; and, is a local transportation authority as that term is defined in Section 238.202.1(4) of the TDD Act.

11. Defendant The City of University City (“University City”) is a municipal corporation and a political subdivision of the State of Missouri, duly organized and existing under its charter and the Constitution and laws of the State of Missouri and located within the County of St. Louis, and is a local transportation authority as that term is defined in Section 238.202.1(4) of the TDD Act.

12. Defendant The County of St. Louis, Missouri (“County”) is a municipal corporation and a political subdivision of the State of Missouri, duly organized and existing under its charter and the Constitution and the laws of the State of Missouri, and is a local transportation authority as that term is defined in Section 238.202.1(4) of the TDD Act.

13. Defendant Missouri Highways and Transportation Commission (“Highway Commission”) is the constitutional authority responsible for constructing and maintaining the Missouri highway system.

14. Defendant Charlie A. Dooley (“Dooley”), as the County Executive of St. Louis County, is a member of the Board of Directors of the purported Loop Trolley

District and is sued in that capacity.

15. Defendant Joe Edwards (“Edwards”), as a representative of Moonrise TDD, is a member of the Board of Directors of the purported Loop Trolley District and is sued in that capacity. Edwards is also an owner and operator, directly or indirectly, of commercial properties and commercial businesses within the boundaries of the purported Loop Trolley District, including the Moonrise Hotel, and was an incorporator of Defendant The Loop Trolley Company and served as its President from its inception in 2001 until 2011.

16. Defendant John M. Nations (“Nations”), as President and Chief Executive Officer and representative of Metro, is a member of the Board of Directors of the purported Loop Trolley District and is sued in that capacity.

17. Defendant Francis G. Slay (“Slay”), as the Mayor of the City of St. Louis, is a member of the Board of Directors of the purported Loop Trolley District and is sued in that capacity.

18. Defendant Shelley Welsch (“Welsch”), as the Mayor of University City, is a member of the Board of Directors of the purported Loop Trolley District and is sued in that capacity.

19. Defendant Anne S. Carlson (“Carlson”) is a purported Trustee of the Catlin Tract Subdivision in the City of St. Louis and is sued in that capacity.

20. Defendant John Daniel (“Daniel”) is a Trustee of the Catlin Tract Subdivision in the City of St. Louis and is sued in that capacity.

21. Defendant Sean Gannon (“Gannon”) is a Trustee of the Catlin Tract Subdivision in the City of St. Louis and is sued in that capacity.

22. Defendant Catlin Tract Board of Trustees (“Catlin Tract Corporation”) is a nonprofit corporation, organized and existing under the laws of the State of Missouri, with its principal place of business in the City of St. Louis.

Jurisdiction and Venue

23. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §2201 *et seq.*, as this is an action for declaratory judgment and injunction which arises under the Constitution of the United States, and this Court also has supplemental pendent jurisdiction of the portions of this action arising under Missouri state law which are related to and part of the same case and controversy, pursuant to 28 U.S.C. § 1367.

24. Venue is proper in the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1391 and 105(a)(1).

Service on the Attorney General of Missouri

25. Pursuant to Section 527.110, R.S.Mo. (2000), inasmuch as this Complaint contends that part of the Missouri TDD Act is unconstitutional, Plaintiffs have served a copy of this Complaint on Chris Koster, the Attorney General of Missouri. Such service has been effected, with the consent and agreement of Joseph Dandurand, Esq., Deputy Attorney General, by mailing a copy of the Complaint to Mr. Dandurand. A copy of the transmittal letter and the priority mail receipt for it are attached hereto,

marked as group “Exhibit 1,” and incorporated by reference.

The Loop Trolley District Formation Lawsuit Petition

26. In September, 2007, University City filed a petition (“Formation Lawsuit Petition”) in the Circuit Court of the County of St. Louis, the Twenty-First Judicial Circuit of the State of Missouri, seeking to create a TDD under the TDD Act, Sections 238.200 *et seq.*, R.S.Mo., in contemplation of the development of a trolley-car rail system along a route from the intersection of Delmar Boulevard and Kingsland Avenue at the western end of the “Delmar Loop” in the County of St. Louis to the intersection of Lindell Boulevard and DeBaliviere Avenue on the northern boundary of Forest Park in the City of St. Louis. A copy of that petition is attached as “Exhibit 2,” and incorporated by reference herein.

27. The action (“Formation Lawsuit”) was captioned “*In re the Creation of the Loop Trolley Transportation Development District, The City of University City, St. Louis, County, Missouri, Petitioner, vs. Missouri Highways and Transportation Commission, The City of St. Louis, Missouri, The County of St. Louis, Missouri, The Bi-State Development Agency of the Missouri-Illinois Metropolitan District d/b/a Metro, and Moonrise TDD Transportation Development District, Respondents,*” assigned to Division 20 of the Circuit Court, and given the Case No. 07CC-003451.

28. Paragraph 9 of the Formation Lawsuit Petition stated:

Petitioner University City is a local transportation authority acting in its official capacity, and its governing body duly passed and approved a resolution calling for the joint

establishment of the District and the filing of this petition .

...

29. Although the governing body of University City did adopt such a resolution, it did not enact an ordinance approving the filing of the Formation Lawsuit Petition.

30. Paragraph 10 of the Formation Lawsuit Petition stated:

Respondent St. Louis City is a local transportation authority acting in its official capacity, and its governing body duly passed and approved a resolution calling for the joint establishment of the District

31. Although the governing body of St. Louis City did adopt such a resolution, it did not enact an ordinance approving the filing of the Formation Lawsuit Petition.

The Participants in the Formation Lawsuit

32. Defendants Metro, Moonrise TDD, St. Louis City, University City, the County, and the Highway Commission were named as defendants in the Formation Lawsuit and bound by the judgment therein. As such they have or might have interests and stakes in this proceeding. For this reason, they are joined as parties in this action.

33. At all relevant times, including the period prior to and during the Formation Lawsuit, neither Franklin, Glickert, nor Jensen resided in or owned land within the boundaries of the purported Loop Trolley District.

34. Neither Franklin, Glickert, nor Jensen was joined as a party in the Formation Lawsuit.

35. The Formation Lawsuit file contains no affidavit or other proof that, in

accordance with the requirement of Section 238.212.1, R.S.Mo. (2000), the Circuit Clerk of St. Louis County gave notice to the public of the filing of the petition by publishing weekly notices, for four weeks, in a newspaper of general circulation.

36. For one or more of these reasons, neither Franklin, Glickert, nor Jensen had notice of nor was afforded any opportunity to “join in or to file a petition supporting or answer opposing the creation of the district and [to] seek[] a declaratory judgment respecting these same issues . . .,” in the Formation Lawsuit by which the Loop Trolley District was purportedly established, as was permitted to residents and taxpayers within such a contemplated district pursuant to Section 238.210.1, R.S.Mo. (2000).

**Changes in the Transportation Development
District Act’s Election Requirements**

37. When the Missouri TDD Act was originally adopted by the Missouri legislature in 1990, in Sections 35 to 65 of H.C.S.S.C.S.S.B. 479 and 649, it allowed the submission to voters at a regularly-scheduled election day of such questions as whether to establish a TDD, whether to approve a proposed transportation project, and whether to approve a tax on sales and/or property within the TDD.

38. In 1997, by approval of H.C.S.S.B. 303, the Missouri legislature amended the TDD Act’s election procedures in several respects, including these:

- a. it added to Section 238.202 a definition of those permitted to vote in TDD elections by providing that the voters are limited to those persons who reside within the TDD and are either registered voters or who are eligible to register to vote.

- b. it provided that, only if no such resident persons existed, the owners of real property within the district would be eligible to vote;
- c. as an alternative to placing the questions on the ballot at the next regularly-scheduled election, it provided that the election could be conducted by the Circuit Clerk, and be conducted by mail-in ballot sent only to those voters who, weeks earlier, had supplied the Clerk certain written documentation of their eligibility.

39. In 2007, the Missouri legislature passed Senate Bill Number 22, which purported, once again, to amend the voting provisions of the TDD Act. This amendment allowed the owners of property located within the boundaries of a proposed TDD to vote in elections pertaining to that TDD, even if such owners were not residents of it, and even if there were persons eligible to register to vote residing within the proposed district. In Section 238.202.2(2), it also provided that such owners of real property would be entitled to cast one vote per acre in the TDD's elections.

40. In 2008, the Missouri legislature again amended the TDD Act, returning to the voter eligibility rules which approximated those in place prior to the 2007 adoption of Senate Bill 22. By the approval of Senate Bill 930 in 2008, the TDD Act provided that the only eligible voters would be any registered voters who resided within the proposed or existing TDD. Only if there were no such resident persons would property owners be permitted to vote and allowed weighted votes based upon the acreage of their land.

41. As currently in force, the TDD Act’s election provisions remain as they were amended in 2008.

The Ballot Order

42. In the Formation Lawsuit, the Circuit Court of the County of St. Louis entered a Declaratory Judgment, Decree, and Order (the “Ballot Order”), pursuant to the requirements of the TDD Act, Sections 238.200 *et seq.*, R.S.Mo. (2000), as amended by Senate Bill 22 (2007), certifying the ballot question for the establishment of the Loop Trolley District for a mail-in election. A copy of the Ballot Order is attached as “Exhibit 3,” and incorporated by reference herein.

43. The Circuit Court of the County of St. Louis approved the ballot, which in pertinent part states:

Shall there be organized . . . along Delmar Boulevard from Kingsland Avenue . . . to DeBaliviere Avenue . . . then along DeBaliviere Avenue from Delmar Boulevard to Lindell Boulevard . . . a transportation development district . . . for the purpose of: funding, promoting, planning, designing, constructing, improving, maintaining and operating or assisting in (a) design, construction and installation of improvements along Delmar Boulevard and DeBaliviere Avenue necessary for a trolley-car rail system. . . [?].

44. At all times relevant for the determination of eligible voters in the election to create the Loop Trolley District and to approve the trolley-car rail system transportation project, there were persons residing within the proposed Loop Trolley District who had registered to vote.

45. In the Ballot Order, the Circuit Court of the County of St. Louis ruled that

both the persons residing within the proposed Loop Trolley District who were registered voters and those persons who owned property within the proposed Loop Trolley District were qualified voters in the election to create the Loop Trolley District, to approve the trolley-car rail system transportation project, and to authorize the imposition of a sales tax of up to one percent (1%).

**The Transportation Development
District Election for the Loop Trolley District**

46. Pursuant to the Ballot Order and to Sections 238.216 and 238.215, R.S. Mo. (2000), the Clerk of the Circuit Court of the County of St. Louis conducted an election.

47. The Circuit Clerk permitted both registered voters who resided within the boundaries of the proposed TDD and non-resident owners of land within the proposed TDD to vote.

48. The Circuit Clerk allowed the registered voters who resided within the proposed TDD one vote per person.

49. The Circuit Clerk allowed the owners of land within the proposed TDD, regardless of whether they were residents or registered voters within the boundaries of the proposed TDD, a vote that was weighted in accordance with the acreage owned by each owner.

50. In accordance with the Ballot Order, on January 18, 2008, the Circuit Clerk mailed applications for a ballot to those persons who, as of November 6, 2007,

had registered to vote in the St. Louis County portion of the proposed Loop Trolley District, to those persons who, as of November 9, 2007, had registered to vote in the St. Louis City portion of the Loop Trolley District, and to those persons who, as of December 19, 2007, owned land within the proposed Loop Trolley District.

51. To the registered voters, the Clerk supplied an application for a ballot which required the voter to return the application no later than February 19, 2008 along with “proof of registration from the election authority.” It suggested that such proof “may be in the form of a voter registration card or voter registration number.” A copy of the application form is attached hereto, marked as “Exhibit 4.” and incorporated by reference.

52. In addition to completing and returning the application for a ballot by February 19, 2007, the Circuit Clerk required property owners to furnish “a tax receipt, deed, or other document which evidences your ownership and identified the real property by location.” A copy of said application form is attached hereto, marked as “Exhibit 5,” and incorporated by reference.

53. On February 11, 2008, the Circuit Clerk mailed additional applications for a ballot to four additional persons who had registered to vote in St. Louis County as of January 28, 2008, to four persons who had registered in St. Louis City as of February 8, 2008, and to three additional property owners. Like other voters, they were instructed to submit their applications and evidence of their eligibility to vote by February 19, 2008.

54. On March 18, 2008, the Circuit Clerk mailed a ballot to those voters who had submitted an application for a ballot by February 19, 2008. Copies of the Circuit Clerk's memoranda, one to property owners and one to registered voters are attached hereto, marked as group "Exhibit 6," and incorporated by reference.

55. The Circuit Clerk did not furnish the voters with a separate envelope to place inside the return envelope in order to maintain the secrecy of each voter's vote.

56. The Circuit Clerk did not advise the voters that they could obtain another ballot and vote it in person at the office of the Circuit Clerk or at some other location on or before the deadline for submission of the ballots in case they did not receive or had lost their ballots.

57. The Circuit Clerk advised the voters that they were required to have their signatures on the ballot envelope notarized.

58. The ballots mailed to the property owners required the voters to provide their name on the face of the ballot. A copy of a sample ballot for property owners is attached hereto, marked as "Exhibit 7," and incorporated by reference.

59. The ballots mailed to the registered voters required the voters to provide their name on the face of the ballot. A copy of a sample ballot to the registered voters is attached hereto, marked as "Exhibit 8," and incorporated by reference.

60. Owners were allowed one vote for each acre and a fractional portion of one vote for each fractional portion of an acre of land that the owners held.

61. As directed by the Ballot Order, the Circuit Clerk appointed four election

judges to “verify the authenticity of the ballots, canvass the votes, certify the results, and . . . transmit the certification to the Court.”

62. No evidence was presented to the Court that, as required by Article 8, Section 3 of the Constitution of Missouri, all such election officers--including the Circuit Clerk, such of the Clerk’s employees who participated in the election and/or had and have access to the ballots, and the officers appointed by the Clerk as judges--were “sworn or [that they] affirmed not to disclose how any voter voted”

63. Without obtaining any order of the Court sealing the file or any portion of it, the Circuit Clerk deposited the actual voted ballots, which contain the identity of each voter and the manner in which each vote was cast, in an envelope in the official court file of the Formation Lawsuit maintained by the Circuit Clerk.

64. The court file was maintained in the Office of the Circuit Clerk, stored recently among that office’s closed files, not restricted in any way, and thus available for inspection by any person who so requested.

65. At some time before the summer of 2013, the envelope, lodged within the regular court file, in which the Circuit Clerk placed the ballots, was unsealed and open for the inspection of anyone who requested the file.

66. By these actions, the Circuit Clerk has allowed any member of the public to have access to the ballots themselves and to determine who voted and how.

The Judgment Creating the Loop Trolley District

67. Thereafter, relying on the results of the aforesaid balloting, the Circuit

Court of the County of St. Louis entered its Declaratory Judgment, Decree and Order (the “Judgment”) on July 16, 2008, organizing a TDD. A copy of the Judgment is attached as “Exhibit 9,” and incorporated by reference herein.

68. The Judgment approved the description of the Loop Trolley District’s Transportation Project (the “Project”), which stated in pertinent part:

The Transportation Project may include the financing, installation, and construction of a trolley car and track system to run east-west along Delmar Boulevard between Kingsland Avenue in the City of University City and DeBaliviere Avenue in the City of St. Louis, and north-south along DeBaliviere Avenue between Delmar Boulevard and Lindell Boulevard in the City of St. Louis, and within the boundaries of the District. . . .

The approximate location of the Transportation Project improvements will be along Delmar Boulevard between Kingsland Avenue and DeBaliviere Avenue and along DeBaliviere Avenue between Delmar Boulevard and Lindell Boulevard within the boundaries of the District.

69. Though the Judgment did not list the names of the property owners who had voted, it included information about how each property owner had voted: the acreage held by the owner and how that owner voted. This information was sufficient for those who viewed the judgment, with some knowledge of the size of the land holdings or with a modest amount of investigation, to determine how some, if not all, of the property owners who participated in the election had voted.

**The Subsequent Plan to Extend the Trolley
Line Outside the Loop Trolley District’s Boundaries**

70. Upon information and belief, the Loop Trolley District is now planning to

construct track, poles, electrical power lines and supporting wires, special traffic control devices, and other features of its trolley-car rail transportation system, not only within the boundaries of the Loop Trolley District and as described in the Ballot Order, the Ballot, and the Judgment, but also outside the boundaries of the Loop Trolley District and the boundaries and project description contained in the ballot and specified in the Judgment.

71. In particular, upon information and belief, the Loop Trolley District currently plans for a western terminus of the trolley line outside and beyond those boundaries, ending the track and other features of the system some distance west of the eastern line of Kingsland Avenue, not only crossing completely through the intersection of Delmar Boulevard and Kingsland Avenue, but also continuing approximately 150 feet or more beyond the intersection.

72. In addition, upon further information and belief, the Loop Trolley District plans for the southern terminus of the trolley line to pass beyond the Loop Trolley District, which ends at the north line of Lindell Boulevard, and to cross the full distance of the width of Lindell Boulevard and then to pass around the west side of the Missouri History Museum to the south side of the museum, a hundred feet or more south of Lindell Boulevard, and inside Forest Park.

**The Conditional Use Permit
For the Loop Trolley Company**

73. The City Council of University City, on March 11, 2013, granted a

conditional use permit to “The Loop Trolley Company,” but not to the Loop Trolley District, to build and operate a trolley within the University City portions of the Loop Trolley District.

**The Catlin Tract Subdivision Indenture
and the St. Louis City Ordinance
Prohibiting a Street Railway on Lindell Boulevard**

74. A private subdivision, commonly known as the Catlin Tract, is comprised of properties bordering Forest Park, on the north side of Lindell Boulevard between Union and Skinker Avenues, in the City of St. Louis.

75. The Catlin Tract subdivision was created and is governed by an indenture of trust, dated December 19, 1908 (“Indenture”). A copy of said Indenture, together with a typewritten transcription of the handwritten original, excluding only the legal description of the subdivision boundaries, is attached. The Indenture is marked as “Exhibit 10.” The transcription is marked as “Exhibit 11.” Both are incorporated herein by reference.

76. The Catlin Tract Subdivision, as created, included land described in the Indenture as the “South Strip.”

77. The South Strip is described as that fifty foot wide piece of land between the western line of Union Boulevard and the east line of Skinker Boulevard, bounded on the south by the north line of Forest Park, but excluding DeBaliviere Avenue.

78. The Indenture specifically authorized the Trustees of the Catlin Tract Subdivision (“Trustees”), at any time within twelve months of the adoption of the

Indenture, to “convey said south strip, or any part thereof, to the City of St. Louis, as part of Forest Park, upon such terms and with such conditions and limitations as they may think best”

79. On March 30, 1909, the City of St. Louis enacted an ordinance by which it agreed to accept the Trustees’ dedication of the South Strip to park purposes and agreed to the conditions and restrictions which the Trustees placed upon the land. A copy of the ordinance is attached hereto, marked as “Exhibit 12,” and incorporated by reference.

80. On December 6, 1909, the Trustees of the Catlin Tract Subdivision deeded the South Strip to the City of St. Louis to hold and use as part of Forest Park, but with certain conditions, limitations, and restrictions, including this:

Nor shall said City construct or operate or authorize, or permit to be constructed or operated any railroad or street railway in or upon said parcel of land. Nor shall said City . . . permit the erection of any telegraph, telephone or lighting poles in or upon said property.

A copy of this deed is attached hereto, marked as “Exhibit 13,” and incorporated by reference.

81. Section Three, Clause 1 of the Indenture requires the Trustees to keep records of their official acts and to keep minutes of any meeting of Catlin Tract owners.

82. Section Three, Clause 2 of the Indenture requires that any action taken by the Trustees be with the consent, approval, and participation of a majority of the three Trustees.

83. Section Six of the Indenture authorizes the owners of sixty percent (60%) of the total of front feet of Catlin Tract land to direct the Trustees to dedicate the South Strip to public use as a street.

84. The Indenture contains no provision which explicitly or implicitly authorizes the owners or the Trustees to alter, amend, or elect not to enforce the restrictions and conditions upon which the Trustees previously dedicated the South Strip to public use.

85. On August 26, 2009, Russell Lauer, who was at that time a Trustee of the Catlin Tract Subdivision, filed articles of incorporation with the Secretary of State of Missouri seeking to form a nonprofit corporation by the name of “Catlin Tract Board of Trustees”. The articles describe the corporation as a “Mutual Benefit Corporation” formed to “collect assessments and pay bills.” A copy of the articles are attached hereto, marked as “Exhibit 14,” and incorporated by reference.

86. That same day, the Secretary of State issued a certificate of incorporation establishing the Catlin Tract Corporation as a nonprofit corporation. A copy of the certificate is attached hereto, marked as “Exhibit 15,” and incorporated by reference.

87. At no time have the homeowners of the Catlin Tract Subdivision amended the Indenture. At no time have the homeowners deeded any common or other land to the Catlin Tract Corporation. At no time have the owners transferred any interests in land to the Catlin Tract Corporation. The owners have never taken any action whatsoever to empower the Catlin Tract Corporation to take the place of the Successor

Trustees elected by them under the Indenture.

88. The Catlin Tract Corporation has never owned any land or interest in any land.

89. Upon information and belief, the duly-elected Successor Trustees of the Catlin Tract Subdivision have employed the Catlin Tract Corporation merely as a vehicle to ease the banking transactions which they have undertaken in their capacities as the Trustees elected by the homeowners of the Catlin Tract and as their agent to collect, hold, and spend subdivision assessments and other funds.

90. Upon information and belief, the Loop Trolley District's planned route traverses part of the South Strip that the Trustees conveyed in 1909 to the City of St. Louis, subject to the restriction that it never be used for a street railway.

91. On January 7, 2013, the Trustees convened a meeting of the Catlin Tract Subdivision's homeowners.

92. In order to have a quorum to transact business at a meeting of the Catlin Tract Subdivision's homeowners, Section Three, Clause 6 of the Indenture requires the presence, in person or by proxy, of the owners of certain percentages of the front footage along Lindell Boulevard of all subdivision properties.

93. For such business as requires the approval of fifty percent (50%) of the total of the front footage, the owners of properties comprising fifty percent (50%) of the front footage must attend in person or by proxy.

94. For such business as requires the approval of sixty percent (60%) of the

total of the front footage, the owners of properties comprising sixty percent (60%) of the front footage must attend in person or by proxy.

95. Whether attending a meeting of the homeowners in person or by proxy, any owner who has an undivided interest with another person in a plot of subdivision land, such as one who holds title with a spouse, is permitted to vote only that portion of the front footage that he or she owns. Section One, Clause 6 of the Indenture states this provision as follows:

At any meeting of the plot owners . . . every owner, in person or by proxy, shall have one vote on every proposal coming before such meeting, for every front foot of land which he owns abutting on said South Strip [Lindell Boulevard], and if such owner have an undivided interest in any such land he shall have the same fraction of a vote for every abutting foot that he has fractional interest in the land.

96. At the meeting of homeowners on January 7, 2013, many of the properties that were jointly owned by husband and wife or by some other form of joint ownership were represented by person or by proxy by fewer than all such owners.

97. Even so, upon information and belief, Defendant Gannon accepted the attendance and the votes of such owners of undivided interests as the attendance and the votes of all owners of the properties which they represented and for which they purported to cast ballots.

98. In doing so, Defendant Gannon erroneously over-counted the attendance at the meeting and the subsequent votes.

99. Upon information and belief, fewer than fifty percent (50%) of the front

footage of the properties in the Catlin Tract Subdivision were represented by owners present in person or by proxy at the January 7, 2013 meeting.

100. At the January 7, 2013 meeting, Russell Lauer attempted to tender his resignation as a Trustee of the Catlin Tract Subdivision. The Trustees failed to formally accept his resignation, as required by Section Two of the Indenture.

101. Despite the lack of a quorum, Defendant Gannon then called for a vote of the homeowners to fill the purported vacancy created upon the resignation which Russell Lauer had tendered.

102. Upon information and belief, in counting the votes, Defendant Gannon miscounted the votes for the election of Defendant Carlson as a successor Trustee in these ways:

- a. he counted the votes of those who held their properties in joint names without reducing the number of their votes to reflect their percentage ownership in their parcels;
- b. he counted votes which he cast on behalf of homeowners who delivered their proxies to him hours and days after the meeting was concluded; and,
- c. without any such authority granted to him under the Indenture and/or without the approval of a majority of the Trustees, he purported to cast votes with respect to land that not he but the Trustees themselves owned and held in trust for all of the property owners.

103. At or after the meeting, Defendant Gannon declared that Defendant

Carlson was elected as one of the three Trustees.

104. Despite the lack of a quorum, Defendant Gannon called for a vote of the homeowners on the question of whether the Trustees should be authorized to waive the Indenture's restrictions to allow the Loop Trolley District to build and operate a streetcar across Lindell Boulevard.

105. Upon information and belief, in counting the votes, Defendant Gannon miscounted the votes for the waiving of the Indenture's restriction these ways:

- a. he counted the votes of those who held their properties in joint names without reducing the number of their votes to reflect their percentage ownership in their parcels;
- b. he counted votes which he cast on behalf of homeowners who delivered their proxies to him hours and days after the meeting was concluded; and,
- c. without any such authority granted to him under the Indenture and/or without the approval of a majority of the Trustees, he purported to cast votes on land that not he but the Trustees themselves owned and held in trust for all of the property owners.

106. Upon information and belief, sometime after the meeting of January 7, 2013, with the consent of Defendant Carlson purporting to act as a Trustee, but without the participation and apparently without the consent of Trustee Defendant Daniel, Defendant Gannon announced that the homeowners had authorized the Trustees to waive any deed restrictions so as to allow the Loop Trolley District to build and operate

a streetcar across Lindell Boulevard.

107. On January 29, 2013, the Recorder of Deeds of the City of St. Louis recorded at Book 012292013, Page 0444, *et seq.*, a group of documents entitled “Agreement for Limited Waiver of Deed Restrictions” (the “Catlin Tract Waiver”). A copy thereof is attached, marked as “Exhibit 16,” and incorporated by reference.

108. The Catlin Tract Waiver identifies the “Grantor” as “the Catlin Tract Board of Trustees, a Missouri non-profit corporation.”

109. The Catlin Tract Waiver was signed on January 25, 2013, by Defendant Carlson on behalf of “Grantor: Catlin Tract Board of Trustees, a Missouri non-profit corporation.”

110.. Neither Defendant Gannon nor Defendant Daniel signed the Catlin Tract Waiver.

111. The Catlin Tract Waiver purports to allow the Loop Trolley District to construct and operate a trolley across land which the Catlin Tract Trustees deeded to the City of St. Louis in 1909 and dedicated to public use as part of Forest Park, but subject to the restriction that it not be used for a street railroad.

Count I

***Declaratory Judgment
and
Permanent Injunction***

(Against Defendants Loop Trolley District, Trolley Company, Metro, Moonrise TDD, St. Louis City, University City, St. Louis County, the Highway Commission, Dooley, Edwards, Nations, Slay, and Welsch)

*Based Upon the Unconstitutionality of the Applicable Voting
Provisions of the Transportation Development District Act*

Come now Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin, and for Count I of their cause of action against Defendants The Loop Trolley Transportation Development District, The Loop Trolley Company, The Bi-State Development Agency of the Missouri-Illinois Metropolitan District d/b/a Metro, CB5421/5975 Transportation Development District, the City of St. Louis, Missouri, the City of University City, Missouri, the County of St. Louis, Missouri, the Missouri Highways and Transportation Commission, Charlie A. Dooley, Joe Edwards,, John M. Nations, Francis G. Slay, and Shelley Welsch, state as follows:

112. These Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 111 of this Complaint.

113. These Plaintiffs bring this action for declaratory judgment pursuant to 28 U.S.C. §2201 *et seq.*

114. These Plaintiffs and many or all of the Defendants disagree over whether The Loop Trolley Transportation District was properly organized and whether The Loop

Trolley Transportation District and The Loop Trolley Company have the right to build and operate the trolley-car rail transportation system as proposed. Those disagreements between and among the parties present a real, present, and justiciable controversy.

115. These Plaintiffs are in need of a judicial declaration of their rights and obligations and of the rights and obligations of Defendants.

116. On its face and/or as applied in the Ballot Order, the Missouri TDD Act, Section 238.200 *et seq.*, R.S.Mo. (2000), as amended by Senate Bill 22 (2007), and particularly §§ 238.202.2 and 238.220.2(1) of Senate Bill 22 (2007), violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and the Equal Protection Clause of the Constitution of the State of Missouri, Article I, Section 2, and is therefore unconstitutional, because it grants the right to vote in TDD elections based upon classifications which are invidiously discriminatory for one or more of these reasons:

- a. it allows non-resident owners of land to vote, along with those residents who are registered to vote;
- b. it allows an owner of land to have a vote that is weighted by the acreage owned, allowing one vote per acre;
- c. with respect to the question of whether those shopping within the proposed district should be required to pay a sales tax, it allows non-resident property owners, who would not pay such tax directly, to vote; and,

- d. by allowing such owners to vote, it allows artificial persons to participate in the elections, granting them rights along with natural persons who live within and are registered to vote in the proposed TDD.

117. On its face and/or as applied in the Ballot Order, the balloting, the election judging, the certification and/or submission of election results to the Court, the Judgment and the maintenance of election records by the Clerk in a file open to the public, the Missouri TDD Act, Section 238.200 *et seq.*, R.S.Mo. (2000), violates Article 8, Section 3 of the Constitution of the State of Missouri and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, and is therefore unconstitutional, because it fails to assure the secrecy of all voters' ballots.

118. The Missouri TDD Act, Section 238.200 *et seq.*, R.S.Mo. (2000), on its face and/or as applied in the Ballot Order, the application for ballot, the ballot, and the casting of the ballots, violates Article 8, Section 3 of the Constitution of the State of Missouri and the Due Process and the Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and of the Missouri Constitution, and is therefore unconstitutional, because it prevents those who have timely registered to vote in accordance with Missouri law from casting a vote, because it fails to assure ballot secrecy, because it unduly burdens the exercise of right to vote by requiring a written request for a ballot, by requiring the submission of such request more than two months before the election, by requiring onerous proof of voting eligibility even though

information of such eligibility was already in the hands of the voting officials, by requiring the voter to submit a notarized signature on the voting envelope, and by failing clearly to advise voters of their opportunity to appear in person on election day to obtain a ballot and to cast a vote.

119. Senate Bill Number 22 (2007) is an act which spans almost 146 pages in the Missouri Joint Committee on Legislative Research's volume entitled *Session Laws of Missouri Passed during the Ninety-Fourth General Assembly*, and which enacts "one hundred sixty-four new sections relating to political subdivisions."

120. Senate Bill Number 22 (2007) contains disparate provisions which have little or no connection with "political subdivisions" of the State of Missouri, including these:

- a. Section 87.006 – dealing with whether cancer is a service-related disability for firefighters;
- b. Section 451.040 – dealing with marriage licenses;
- c. Section 473.743 – dealing with the duties of a public administrator;
- d. Sections 644.597 through 644.599 - dealing with the Board of Fund Commissioners (which is comprised of the Governor and other state-wide elected officials and the state commissioner of administration, Section 33.300, R.S.Mo. (2000)).

121. The amendments to the Missouri TDD Act made in 2007, allowing non-resident property owners to vote, even if there were persons eligible to register to vote

residing within the proposed district, as contained in Senate Bill Number 22, also should be held void and of no effect, because Senate Bill Number 22 contains more than one subject and/or lacks a clear title, in violation of Article 3, Section 23 of the Constitution of Missouri.

122. As a consequence, the Judgment of the Circuit Court of the County of St. Louis creating the Loop Trolley District was and is void, contrary to law, erroneous, and/or without effect.

123. Should the Defendants' conduct continue, Plaintiffs will suffer irreparable harm.

124. Plaintiffs have no adequate remedy at law, in that:

- a. the Loop Trolley District has collected and continues to collect sales taxes from Plaintiffs on the purchase of goods and services within the Loop Trolley District by all of these Plaintiffs;
- b. the Loop Trolley District, the Trolley Company, University City, St. Louis City and/or other Defendants have undertaken plans and preparations to begin construction of permanent alterations to public streets, sidewalks, and other facilities within the Loop Trolley District;
- c. the Loop Trolley District, the Trolley Company, University City, St. Louis City, and/or other Defendants are undertaking plans and other preparations to begin the operation of a trolley-car rail transportation system both within and outside the boundaries of the purported Loop Trolley District;

- d. Defendants' actions and proposed actions are such that pecuniary compensation would not offer them adequate relief;
- e. it would be extremely difficult to ascertain the amount of monetary damages that would fully compensate these Plaintiffs for all the losses and damages they have sustained and will sustain in the future as a result of the actions of the Defendants; and/or,
- f. it would be necessary to maintain a multiplicity of judicial proceedings to protect these Plaintiffs' interests by reason of Defendants' repeated actions in collecting illegal taxes and trespassing upon public property.

WHEREFORE, Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin respectfully request this Court to:

- A. find, determine, and declare that the Loop Trolley Transportation Development District does not exist under the laws of the State of Missouri and has no authority to act;
- B. find, determine, and declare that Defendants Charlie A. Dooley, Joe Edwards, John M. Nations, Francis G. Slay, and Shelley Welsch do not lawfully hold any office, as members of the Board of Directors or otherwise, in the Loop Trolley Transportation Development District;
- C. set aside the Judgment as void;
- D. permanently enjoin Defendants The Loop Trolley Transportation Development District, the Loop Trolley Company, the City of University City, Missouri,

and the City of St. Louis, Missouri, and each of their agents, servants, employees, and all other persons acting under, in concert with, or for them, from constructing and operating a trolley-car rail transportation system and/or assisting or permitting others to do so and from accepting and using for that purpose any grant of funds from the Federal Transportation Administration;

E. pursuant to Article X, Section 23 of the Missouri Constitution and other applicable provisions of federal and state law, award them their reasonable attorneys' fees and expenses;

F. grant such other and further relief as this Court deems just and proper; and,

G. award them their costs herein expended.

Count II

Declaratory Judgment and Permanent Injunction

(Against Defendants Loop Trolley District, Trolley Company, Metro, Moonrise TDD, St. Louis City, University City, St. Louis County, the Highway Commission, Dooley, Edwards, Nations, Slay, and Welsch)

Based Upon the Invalidity of the Judgment Creating the Loop Trolley District, Due to the Failure to Enact Ordinances Authorizing the Filing of the Petition to Create the Loop Trolley District, Irregularities in the Balloting to Create the Loop Trolley District, and the Failure of the Circuit Clerk of St. Louis County to Publish Notice of the Filing of the Formation Lawsuit

Come now Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and

Irene Franklin, and for Count II of their cause of action against Defendants The Loop Trolley Transportation Development District, The Loop Trolley Company, The Bi-State Development Agency of the Missouri-Illinois Metropolitan District d/b/a Metro, CB5421/5975 Transportation Development District, the City of St. Louis, Missouri, the City of University City, Missouri, the County of St. Louis, Missouri, the Missouri Highways and Transportation Commission, Charlie A. Dooley, Joe Edwards,, John M. Nations, Francis G. Slay, and Shelley Welsch, state as follows:

125. These Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 124 of this Complaint.

126. These Plaintiffs bring this action for declaratory judgment pursuant to 28 U.S.C. §2201 *et seq.* and the Court's supplemental pendent jurisdiction under 28 U.S.C. §1367.

127. These Plaintiffs and many or all of the Defendants disagree over whether The Loop Trolley Transportation District and The Loop Trolley Company have the right to build and operate the trolley-car rail transportation system as proposed. That disagreement between and among the parties presents a real, present, and justiciable controversy.

128. These Plaintiffs are in need of a judicial declaration of their rights and obligations and of the rights and obligations of Defendants.

129. The actions of University City in filing the Formation Lawsuit Petition and in seeking the creation of the TDD were unauthorized and *ultra vires*, because:

- a. contrary to the University City Charter, it purported to take legislative action without enacting an ordinance; and/or,
- b. the resolution approved by the governing body of St. Louis City was insufficient under the City Charter of the City of St. Louis and under the law to confer authority on it to authorize University City to petition to create a TDD, as such legislative actions require the adoption of an ordinance.

130. The Trolley District election was invalid, because it was not conducted in compliance with the requirements of The Mail Ballot Election Act, Section 115, 630, *et seq.*, R.S.Mo. (2000) in several respects, including these:

- a. the Circuit Clerk failed to provide voters with a “secrecy envelope,” as mandated by Section 115.655.1(2);
- b. the Circuit Clerk failed to mail ballots to all registered voters; and,
- c. the Circuit Clerk failed to advise voters of their right and to allow them to obtain a ballot and to vote in person on election day.
- d. the Circuit Clerk, the Circuit Court, and/or the election judges failed to assure the secrecy of each voter’s ballot.

131. In the absence of proof that, in accordance with the requirement of Section 238.212.1, R.S.Mo. (2000), the Circuit Clerk of St. Louis County gave notice by publication to the public of the filing of the Formation Lawsuit Petition, the Circuit Court of St. Louis County did not acquire jurisdiction of the subject matter of the

Formation Lawsuit and/or all necessary parties thereto.

132. As a consequence, the Judgment was and is void, contrary to law, erroneous, and/or without effect.

133. Should the Defendants' conduct continue, Plaintiffs will suffer irreparable harm.

134. Plaintiffs have no adequate remedy at law, in that:

- a. the Loop Trolley District has collected and continues to collect sales taxes from Plaintiffs on the purchase of goods and services within the Loop Trolley District;
- b. the Loop Trolley District, the Trolley Company, University City, St. Louis City and/or other Defendants have undertaken plans and preparations to begin construction of permanent alterations to public streets, sidewalks, and other facilities within the Loop Trolley District, including encroachments upon Forest Park;
- c. the Loop Trolley District, the Trolley Company, University City, St. Louis City, and/or other Defendants are undertaking plans and other preparations to begin the operation of a trolley-car rail transportation system both within and outside the boundaries of the purported Loop Trolley District;
- d. Defendants' actions and proposed actions are such that pecuniary compensation would not offer them adequate relief;
- e. it would be extremely difficult to ascertain the amount of monetary damages that would fully compensate these Plaintiffs for all the losses

and damages they have sustained and will sustain in the future as a result of the actions of the Defendants; and/or,

- f. it would be necessary to maintain a multiplicity of judicial proceedings to protect these Plaintiffs' interests by reason of Defendants' repeated actions in collecting illegal taxes and trespassing upon public property.

WHEREFORE, Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin respectfully request this Court to:

- A. find, determine, and declare that the Loop Trolley Transportation Development District does not exist under the laws of the State of Missouri and has no authority to act;

- B. find, determine, and declare that Defendants Charlie A. Dooley, Joe Edwards, John M. Nations, Francis G. Slay, and Shelley Welsch do not lawfully hold any office, as members of the Board of Directors or otherwise, in the Loop Trolley Transportation Development District;

- C. set aside the Judgment as void;

- D. permanently enjoin Defendants The Loop Trolley Transportation Development District, the Loop Trolley Company, the City of University City, Missouri, and the City of St. Louis, Missouri, and each of their agents, servants, employees, and all other persons acting under, in concert with, or for them, from constructing and operating a trolley-car rail transportation system and/or assisting or permitting others to do so and from accepting and using for this purpose any grant of funds from the Federal

Transportation Administration;

E. pursuant to Article 10, Section 23 of the Missouri Constitution and other applicable provisions of federal and state law, award them their reasonable attorneys' fees and expenses;

F. grant such other and further relief as this Court deems just and proper; and,

G. award them their costs herein expended.

Count III

***Declaratory Judgment
and
Permanent Injunction***

(Against Defendants Loop Trolley District, Trolley Company, St. Louis City, University City, Dooley, Edwards, Nations, Slay, and Welsch)

*The Loop Trolley District Lacks the Right to Construct and Operate a Trolley System Outside the Boundaries of the Loop Trolley Development District, and Outside the Boundaries of the Project Description Approved by the
Circuit Court*

Come now Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin, and, for Count III of their cause of action against Defendants The Loop Trolley Transportation Development District, The Loop Trolley Company, the City of St. Louis, Missouri, the City of University City, Missouri, Charlie A. Dooley, Joe Edwards,, John M. Nations, Francis G. Slay, and Shelley Welsch, state as follows:

135. These Plaintiffs repeat, reallege, and incorporate by reference paragraphs

1 through 134 of their Complaint.

136. These Plaintiffs bring this action for declaratory judgment pursuant to 28 U.S.C. §2201 *et seq.* and the Court's supplemental pendent jurisdiction under 28 U.S.C. §1367.

137. These Plaintiffs and many or all of the Defendants disagree over whether The Loop Trolley Transportation District and The Loop Trolley Company have the right to build and operate the trolley-car rail transportation system as proposed. This disagreement between and among the parties presents a real, present, and justiciable controversy.

138. These Plaintiffs are in need of a judicial declaration of their rights and obligations and of the rights and obligations of Defendants.

139. The Loop Trolley District's proposed construction, operation, and maintenance of the trolley-car rail transportation system outside and beyond the boundaries of the Loop Trolley District and outside the areas described and approved by the voters and by the Circuit Court of St. Louis County is not authorized by the Missouri Transportation Development Act, Sections 238.200 to 238.275, R.S.Mo. (2000), and/or by the Judgment, and therefore is *ultra vires*.

140. Extension of the trolley-car rail transportation system to areas outside of the Loop Trolley District will cause harm to Plaintiffs and other similarly-situated citizens and taxpayers of the Loop Trolley District, of University City, and of St. Louis City, as well as customers who patronize the businesses located within the Loop Trolley

District, in many ways, including these:

- a. by collecting and expending tax revenues on planning, construction, operation, and maintenance of facilities not authorized by law;
- b. by creating obstacles to the flow of traffic through the intersection at Kingsland Avenue and Delmar Boulevard and on Delmar Boulevard west of Kingsland Avenue;
- c. by creating obstacles to the flow of traffic through the intersection of Lindell Boulevard and DeBaliviere Avenue;
- d. by causing visual clutter and pollution to such areas beyond the Loop Trolley District, including the non-commercial historic Civic Plaza area and adjoining areas of University City and the historic district in and around the Missouri History Museum in and near Forest Park.

141. Should the Defendants' conduct continue, Plaintiffs will suffer irreparable harm.

142. Plaintiffs have no adequate remedy at law, in that:

- a. the Loop Trolley District has collected and continues to collect sales taxes on the purchase of goods and services within the Loop Trolley District by all of these Plaintiffs;
- b. the Loop Trolley District, the Trolley Company, University City, and/or other Defendants have undertaken plans and preparations to begin construction of permanent alterations to public streets, sidewalks, and other facilities within the Loop Trolley District, including encroachments upon

Forest Park;

- c. the Loop Trolley District, the Trolley Company, University City, St. Louis City, and/or other Defendants are undertaking plans and other preparations to begin the operation of a trolley-car rail transportation system both within and outside the boundaries of the purported Loop Trolley District;
- d. Defendants' actions and proposed actions are such that pecuniary compensation would not offer them adequate relief;
- e. it would be extremely difficult to ascertain the amount of monetary damages that would fully compensate these Plaintiffs for all the losses and damages they have sustained and will sustain in the future as a result of the actions of the Defendants; and/or,
- f. it would be necessary to maintain a multiplicity of judicial proceedings to protect these Plaintiffs' interests by reason of Defendants' repeated actions in collecting illegal taxes and trespassing upon public property.

WHEREFORE, Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin respectfully request this Court to:

A. find, determine, and declare that the Loop Trolley Transportation Development District has no authority to build, maintain, and operate a trolley-car rail transportation system or any of its component parts in areas outside the Loop Trolley District's boundaries, and/or outside the boundaries established by the Circuit Court of St. Louis County in the Judgment;

B. pursuant to Article 10, Section 23 of the Missouri Constitution and other applicable provisions of federal and state law, award them their reasonable attorneys' fees and expenses;

C. permanently enjoin Defendants The Loop Trolley Transportation Development District, the Loop Trolley Company, the City of University City, Missouri, and the City of St. Louis, Missouri, and each of their agents, servants, employees, and all other persons acting under, in concert with, or for them, from constructing and operating a trolley-car rail transportation system and/or assisting or permitting others to do so and from accepting and using for this purpose any grant of funds from the Federal Transportation Administration;

D. pursuant to Article 10, Section 23 of the Missouri Constitution and other applicable provisions of federal and state law, award them their reasonable attorneys' fees and expenses;

E. grant such other and further relief as this Court deems just and proper; and,

F. award them their costs herein expended.

Count IV

*Declaratory Judgment
and
Permanent Injunction*

(Against Defendants Loop Trolley District,
Trolley Company, Dooley, Edwards,, Nations,
Slay, Welsch, the City of St. Louis, Catlin
Tract Corporation, Carlson, Daniel, and Gannon)

*The Loop Trolley District Lacks the Right to Construct
and Operate a Trolley-Car Rail System Across Lindell
Boulevard in Violation of St. Louis City Ordinance
and/or the Catlin Tract Subdivision Indenture*

Come now Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin, and, for Count IV of their cause of action against Defendants The Loop Trolley Transportation Development District, The Loop Trolley Company, Charlie A. Dooley, Joe Edwards,, John M. Nations, Francis G. Slay, Shelley Welsch, the City of St. Louis, Missouri, the Catlin Tract Corporation, Anne S. Carlson, John Daniel, and Sean Gannon, state as follows:

143. These Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 142 of their Complaint.

144. These Plaintiffs bring this action for declaratory judgment pursuant to 28 U.S.C. §2201 *et seq.* and the Court's supplemental pendent jurisdiction under 28 U.S.C. §1367.

145. These Plaintiffs and many or all of the Defendants disagree over whether The Loop Trolley Transportation District and The Loop Trolley Company have the right

to build and operate the trolley-car rail transportation system as proposed. This disagreement between and among the parties presents a real, present, and justiciable controversy.

146. These Plaintiffs are in need of a judicial declaration of their rights and obligations and of the rights and obligations of Defendants.

147. The Catlin Tract Waiver of January 25, 2013, is invalid, for one or more of these reasons:

- a. the grantor, the “Catlin Tract Board of Trustees, a Missouri non-profit corporation,” possessed no rights in the land, interests in land, and other rights held by the duly-elected successor Trustees of the Catlin Tract subdivision, as created and existing under the Indenture;
- b.. the Indenture does not authorize the Trustees to take such an action with or without the consent of all or some of the owners;
- c. there was no quorum at the January 7, 2013, meeting of owners, and, so, no business could have been conducted at that meeting;
- d. Russell Lauer’s tender of resignation as a Trustee was not formally accepted, and so there was no vacancy in the office of Trustee to allow the election of Defendant Carlson to such office;
- e. Defendant Carlson was not a duly-elected Trustee and, thus, had no authority or capacity to act as such and on behalf of the owners;

- f. the owners of the required percentage of land within the subdivision did not, in person or by proxy, at the time of the meeting, vote to authorize the Trustees to so act;
- g. Defendant Gannon's purported vote with respect to land held by the Trustees on behalf of all owners was not authorized by the Indenture and/or a majority of the Trustees;
- h. a majority of the Trustees did not agree and vote to enter into the Catlin Tract Waiver; and,
- i. the Catlin Tract Waiver was not signed by a majority of the Trustees.

148. For these reasons, the Loop Trolley District lacks authority and permission of the Catlin Tract to construct and operate a trolley-car rail transportation system, as proposed and planned, across Lindell Boulevard and those portions of subdivision land dedicated to the City of St. Louis in or near Lindell Boulevard in the vicinity of DeBaliviere Avenue.

149. An ordinance of the City of St. Louis prohibits the operation of commercial vehicles, including the trolley-car rail transportation system planned by the Loop Trolley District, and/or St. Louis City lacks authority to allow or consent to the construction and operation of the trolley-car rail system, across Lindell Boulevard at or near DeBaliviere Avenue.

150. Extension of the trolley-car rail system across Lindell Boulevard and/or across property within the Catlin Tract Subdivision or subject to the Catlin Tract restrictions will cause harm to Plaintiffs and other similarly-situated citizens and

taxpayers of the Loop Trolley District, of University City, and of St. Louis City, as well as customers who patronize the businesses located within the Loop Trolley District, in many ways, including these:

- a. by collecting and expending tax revenues on planning, construction, operation, and maintenance of facilities not authorized by law;
- b. by creating obstacles to the flow of traffic through the intersection of Lindell Boulevard and DeBaliviere Avenue;
- c. by causing improper and unsightly changes to the historic district in and around the Missouri History Museum in and near Forest Park.

151. Should the Defendants' conduct continue, Plaintiffs will suffer irreparable harm.

152. Plaintiffs have no adequate remedy at law, in that:

- a. the Loop Trolley District has collected and continues to collect sales taxes on the purchase of goods and services within the Loop Trolley District by all of these Plaintiffs;
- b. the Loop Trolley District, the Trolley Company, University City, St. Louis City and/or other Defendants have undertaken plans and preparations to begin construction of permanent alterations to public streets, sidewalks, and other facilities within the Loop Trolley District, including encroachments upon Forest Park;
- c. the Loop Trolley District, the Trolley Company, University City, St. Louis City, and/or other Defendants are undertaking plans

and other preparations to begin the operation of a trolley-car rail transportation system both within and outside the boundaries of the purported Loop Trolley District;

- d. Defendants' actions and proposed actions are such that pecuniary compensation would not offer them adequate relief;
- e. it would be extremely difficult to ascertain the amount of monetary damages that would fully compensate these Plaintiffs for all the losses and damages they have sustained and will sustain in the future as a result of the actions of the Defendants; and/or,
- f. it would be necessary to maintain a multiplicity of judicial proceedings to protect these Plaintiffs' interests by reason of Defendants' repeated actions in collecting illegal taxes and trespassing upon public property.

WHEREFORE, Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin respectfully request this Court to:

A. find, determine, and declare that the Loop Trolley Transportation Development District has no authority to build, maintain, and operate a trolley-car rail transportation system or any of its components across the land which the Catlin Tract Trustees dedicated public use in 1909;

B. pursuant to Article 10, Section 23 of the Missouri Constitution and other applicable provisions of federal and state law, award them their reasonable attorneys' fees and expenses;

C. permanently enjoin Defendant The Loop Trolley Transportation

Development District, and the City of St. Louis, Missouri, and each of their agents, servants, employees, and all other persons acting under, in concert with, or for them, from constructing and operating a trolley-car rail transportation system and/or assisting or permitting others to do so on and across the land which the Trustees of the Catlin Tract dedicated to the City of St. Louis;

- D. award them their reasonable attorneys' fees and expenses;
- E. grant such other and further relief as this Court deems just and proper; and,
- F. award them their costs herein expended.

Count V

***Declaratory Judgment
and
Permanent Injunction***

(Against Defendants Loop Trolley District,
Trolley Company, St. Louis City, University City,
Dooley, Edwards, Nations, Slay, and Welsch)

*The Loop Trolley District Lacks Conditional Use Permits
From University City and From the City of St. Louis
to Construct and Operate a Trolley-Car Rail Transportation System*

Come now Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin, and, for Count V of their cause of action against Defendants The Loop Trolley Transportation Development District, The Loop Trolley Company, Charlie A. Dooley, Joe Edwards, John M. Nations, Francis G. Slay, Shelley Welsch, the City of St. Louis, Missouri, and the City of University City, Missouri, state as follows:

153. These Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 152 of their Complaint.

154. These Plaintiffs bring this action for declaratory judgment pursuant to 28 U.S.C. §2201 *et seq.*

155. These Plaintiffs and many or all of the Defendants disagree over whether The Loop Trolley Transportation District and The Loop Trolley Company have the right to build and operate the trolley-car rail transportation system as proposed. This disagreement between and among the parties presents a real, present, and justiciable controversy.

156. These Plaintiffs are in need of a judicial declaration of their rights and obligations and of the rights and obligations of Defendants.

157. Upon information and belief, the Trolley Company has some unknown and undisclosed agreement, contract, or understanding with the Loop Trolley District to cooperate in some fashion in the construction or operation of the proposed trolley-car rail transportation system.

158. Though University City has granted a conditional use permit to the Trolley Company to build and operate the trolley-car rail transportation system within University City, it has not granted a conditional use permit to the Loop Trolley District.

159. Upon information and belief, the City of St. Louis has not granted a conditional use permit and/or other required permits, permissions, or approvals to the Loop Trolley District or to anyone to build and operate the trolley-car rail transportation

system within those portions of the proposed route which are within the City of St. Louis.

160. For these reasons, the Loop Trolley District lacks authority and permission of University City and/or the City of St. Louis to construct and operate a trolley-car rail transportation system, as proposed and planned.

161. Extension of the trolley-car rail transportation system without such permits and approvals will cause harm to Plaintiffs and other similarly-situated citizens and taxpayers of the Loop Trolley District, of University City, of St. Louis City, as well as customers who patronize the businesses located within the Loop Trolley District, in many ways, including these:

- a. by depriving them and other members of the public of the opportunity to express their concerns and to ask questions at public hearings and in private meetings and communications with city officials;
- b. by collecting and expending tax revenues on planning, construction, operation, and maintenance of facilities not authorized by law;
- c. by creating obstacles to the flow of traffic through the intersection at Kingsland Avenue and Delmar Boulevard and on Delmar Boulevard west of Kingsland Avenue;
- d. by creating obstacles to the flow of traffic through the intersection of Lindell Boulevard and DeBaliviere Avenue;
- e. by causing visual clutter and pollution to such areas beyond the Loop Trolley District,

including the non-commercial historic Civic Plaza area and adjoining areas of University City and the historic district in and around the Missouri History Museum in and near Forest Park.

162. Should the Defendants' conduct continue, Plaintiffs will suffer irreparable harm.

163. Plaintiffs have no adequate remedy at law, in that:

- a. the Loop Trolley District has collected and continues to collect sales taxes on the purchase of goods and services within the Loop Trolley District by all of these Plaintiffs;
- b. the Loop Trolley District, the Trolley Company, University City, St. Louis City and/or other Defendants have undertaken plans and preparations to begin construction of permanent alterations to public streets, sidewalks, and other facilities within the Loop Trolley District, including encroachments upon Forest Park;
- c. the Loop Trolley District, the Trolley Company, University City, St. Louis City, and/or other Defendants are undertaking plans and other preparations to begin the operation of a trolley-car rail transportation system both within and outside the boundaries of the purported Loop Trolley District;
- d. Defendants' actions and proposed actions are such that pecuniary compensation would not offer them adequate relief;
- e. it would be extremely difficult to ascertain the amount of monetary damages that would fully compensate these Plaintiffs for all the losses

and damages they have sustained and will sustain in the future as a result of the actions of the Defendants; and/or,

- f. it would be necessary to maintain a multiplicity of judicial proceedings to protect these Plaintiffs' interests by reason of Defendants' repeated actions in collecting illegal taxes and trespassing upon public property.

WHEREFORE, Plaintiffs Elsie Beck Glickert, Jen Rivenes Jensen, Peter Sarandos, and Irene Franklin respectfully request this Court to:

- A. find, determine, and declare that the Loop Trolley Transportation Development District has no authority to build, maintain, and operate a trolley-car rail transportation system or any of its component parts in areas outside the Loop Trolley District's boundaries, and/or outside the boundaries established by the Circuit Court of St. Louis County in the Judgment, and/or, across Catlin Tract land, and/or across Lindell Boulevard as proposed;

- B. award them their reasonable attorneys' fees and expenses;

- C. until and unless all required municipal permits and approvals are obtained, permanently enjoin Defendant The Loop Trolley Transportation Development District, the Loop Trolley Company, the City of University City, Missouri, and the City of St. Louis, Missouri, and each of their agents, servants, employees, and all other persons acting under, in concert with, or for them, from constructing and operating a trolley-car rail transportation system and/or assisting or permitting others to do so and from accepting and using for this purpose any grant of funds from the Federal

Transportation Administration;

D. pursuant to Article 10, Section 23 of the Missouri Constitution and other applicable provisions of federal and state law, award them their reasonable attorneys' fees and expenses;

E. grant such other and further relief as this Court deems just and proper; and,

F. award them their costs herein expended.

Respectfully submitted,

/s/ Canice Timothy Rice, Jr.

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