

## ***Faustino Lopez-Matias v. State of Missouri, SC95946***

Defendant was arrested and charged with a non-capital felony. He sought to be released on his own recognizance or for reasonable bail. The circuit court overruled his motion under Section 544.470.2, RSMo that provides a person who cannot prove his lawful presence in the United States “shall continue to be committed to the jail and remain until discharged by due course of law.” The Supreme Court held that because it plainly and unambiguously contravenes the right guaranteed by Article I, Section 20 of the Missouri Constitution, Section 544.070.2 is unconstitutional. Article I, Section 20 provides that “all persons,” unless charged with a capital offense, shall be entitled to bail subject to reasonable conditions, as set forth in Section 544.455, RSMo.

The Constitution gives circuit courts broad discretion to fashion conditions for release that, in the circumstances of each case, balance the constitutional right to pretrial release with the constitutional requirement of “sufficient sureties” that the defendant will appear in court. The process for

setting bail in Section 544.455 and Rule 33.01 requires the conditions for release to reflect the particular circumstances of each case. Section 544.070.2 violates Article I, Section 20 by purporting to deny pretrial release to an entire class of defendants not charged with capital offenses and not able to establish their lawful presence in the United States. Although Article I, Section 32 of the state constitution permits a circuit court to deny bail or impose special conditions upon a showing that a defendant poses a danger to the crime victim, witness or the public. This provision does not authorize the wholesale denial of pretrial release to an entire class of defendants. The circuit court was ordered to consider, based on all the circumstances of his case, reasonable conditions for defendant’s pretrial release using the individualized procedure set forth in Chapter 544 and Rule 33. 🍀

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## The Lamar Company, LLC, v. City of Columbia, Missouri, et al. No. WD79267

The Lamar Company appealed from summary judgment in favor of the city of Columbia in Lamar's lawsuit for declaratory judgment, breach of contract, and mandamus, premised on the enforceability of a 1998 settlement agreement. The 1998 settlement agreement was held void.

This case followed a 1994 lawsuit by Lamar that was settled in 1998. At that time, the company claimed that the denial of its application was arbitrary and capricious, and that the City's billboard ordinance was unlawful in light of the Missouri Billboard Act. The settlement agreement provided that the company would dismiss its lawsuit and waive claims for damages and that the City would agree to issue permits for three new billboards. With respect to 42 of the company's billboards, the company would be permitted to rebuild in the same location subject only to state statutes and the existing city requirements.

In 2014, the Lamar Company applied for permits to rebuild or relocate eight of the 42 billboards described in the settlement agreement. The City denied the application because the billboards did not meet the City's billboard requirements. The company appealed the ruling claiming that the agreement required the City to approve its application. The City defended the claim on the basis that the 1998 agreement was *ultra-vires* and *void ab initio* because it impermissibly contracted away the City's police powers. The trial court granted summary judgment in favor of the City. The court pointed out that Section 432.070 RSMo imposes three requirements for a contract. It must be within the scope of the governmental entity's powers for proper consideration and duly authorized in writing. These statutory requirements are mandatory.

The court held that the agreement exceeded the City's powers because it contracted away the City's police power and required the City to authorize replacement or relocation of billboards without regard to its current zoning ordinances. The court stated that the City's billboard ordinance was adopted pursuant to its delegated zoning police powers. Since the City had no authority to contract away future enforcement of its zoning ordinance, the agreement exceeded the City's powers in violation of Section 432.070 and is void. The court also pointed out that Section 71.288 RSMo, which took effect after the

agreement was entered, allows a City to adopt regulations on outdoor advertising that are more restrictive than the height, size, lighting and spacing provisions of the Missouri Billboard Act. The court held that the agreement did not "grandfather" signs already in place and that the agreement was invalid and did not impair the obligation of contracts. The court further held that the City was not equitably estopped from denying the validity and enforceability of the agreement. The court finally rejected the plaintiff's argument that the agreement hinders public health, welfare and safety, or that there was a significant variance between the City billboard ordinance and the billboards for which application was made.

This decision is lengthy but well worth reading, especially by municipal officials concerned with prior settlements that may have been affected by the passage of time. It is still subject to rehearing or transfer to the Supreme Court of Missouri. It does reinforce prior opinions upholding the statutory requirements of Section 432.070. 🍃

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