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**STATEMENT BY THE MOUND CITY BAR ASSOCIATION**

Three criminal bills filed during the Missouri legislative session warrant your attention in the City of St. Louis because they may become law in August 2020. Among other things, Senate Bills (S.B.) 602 and 889 as well as House Bill (H.B.) 1900 serve a dual purpose: 1) To take away the power of voters in the City of St. Louis to elect their own prosecutor who actually possesses the same discretionary prosecutorial power as now enjoyed by all other elected prosecutors in Missouri and 2) To relegate to second-class status the discretionary prosecutorial decisions made by the first elected African-American prosecutors in both St. Louis County and the City of St. Louis. The aforementioned criminal bills set up a peculiar political construct in which the African-American prosecutors' exercise of prosecutorial discretionary power is subject to agreement and approval of the Attorney General. These criminal bills each take away power from the local elected prosecutor and give an overriding power to prosecute to the Attorney General who is based some 135 miles away in Jefferson City. The mechanism by which they do so is an expression of raw political aggression. There is no legitimate reason why the elected African-American prosecutors in the City and County of St. Louis should have any less prosecutorial discretion and control over criminal prosecutions than any of the other 112 elected prosecutors in Missouri.

Specifically, S.B. 889, by its own express terms, is targeted solely at "a city not within a county", i.e., the City of St. Louis. Similarly, S.B. 602 targets the City of St. Louis and counties with a population of at least 600,000. Only St. Louis County and Jackson County (of which Kansas City is a part) satisfy that population criteria. Although H.B. 1900 apparently applies to the entire state, it also purports to allow the Attorney General to override prosecutorial decisions in every county. In either event, the Attorney General who (1) neither resides in the local community and (2) nor

was elected by the local voters to prosecute crime could second guess and override every locally elected prosecuting attorney in the state.

As a legal matter, the Missouri Supreme Court repeatedly ruled that the Missouri Constitution specifically prohibits “special laws” targeted at local jurisdictions. *School Dist. of Riverview Gardens, v. St. Louis County* 816 S.W. 2d 219, 220 (Mo. Banc 1991). Senate Bills 602 and 889, by their express terms, target solely the City of St. Louis (“a city not within a county”) and the population rich counties of St. Louis and Jackson. Therefore, S.B. 602 and 889 clearly violate the Missouri Constitution.

As a practical matter the Attorney General is not a prosecuting attorney. Under current law, the Attorney General can initiate a criminal prosecution only by order of the governor or a trial judge in an individual case. See Section 27.030 of the Revised Statutes of Missouri (RSMo). In contrast, Chapter 56 RSMo designates authority to elected county prosecutors and circuit attorneys—not the Attorney General—to pursue criminal prosecutions. Section 56.060 RSMo states “the prosecuting attorney shall commence and prosecute all criminal actions in the prosecuting attorney’s county.” Section 56.450 RSMo states “the circuit attorney of the City of St. Louis shall manage and conduct all criminal cases, business and proceedings of which the circuit court of the city of St. Louis shall have jurisdiction.”

The Missouri Association of Prosecuting Attorneys, which represents all 114 county prosecutors, testified in opposition to H.B. 1900 before the House Judiciary Committee in March of 2020. Prosecutors across the state view the idea of the Attorney General as some kind of super-prosecutor as an unprecedented attack on local prosecutorial discretion and control, amounting to a power grab, and just bad government.

The power vested in each elected county prosecutor is indeed immense; and reflects the trust of the local community who elected the prosecutor or circuit attorney. The Missouri Supreme Court has acknowledged that a prosecutor must “refrain from prosecuting a charge [she] knows is not supported by probable cause.” *State ex rel. Gardner v. Boyer* 561 S.W.3d 389, 398 (2018). Such an obligation “necessarily requires that [s]he investigate, i.e. inquire into the matter with care and accuracy, that in each case [s]he examines the available evidence, the law and the facts, and the applicability of each to the other.”

If a prosecutor loses the community’s trust, the solution is to elect a new prosecutor---not a legislative power grab. The Circuit Attorney of the City of St. Louis is the obvious target of some legislators in Jefferson City. Kimberly Gardner is up for re-election in the upcoming August primary election. If some are concerned about Ms. Gardner’s overall performance as the Circuit Attorney, then the voters of the City of St. Louis should voice those concerns at the ballot box. The power of the vote is the best solution.

Let the voters of the City of St. Louis decide in August how to address their own issues about local crime and punishment.

Mound City Bar Association

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## **ABOUT MOUND CITY BAR ASSOCIATION**

Mound City Bar Association is the oldest African-American bar association west of the Mississippi River. It was organized as the St. Louis Negro Bar Association on January 7, 1922, at a time when black lawyers were not allowed to join the all-white St. Louis Bar Association. Mound City Bar Association is a 501(c)(6) organization comprised of lawyers, judges, paralegals, and law students who advance the legal profession through active community participation, real mentoring, and offering professional development opportunities to our members. We are an affiliate, partner, and active participant of the National Bar Association.