

ANNUAL REPORT TO THE GENERAL ASSEMBLY
CALENDAR YEAR 2008

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The State of Missouri

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"The system of private property is the most important guaranty of freedom, not only for those who own property, but scarcely less for those who do not."

-Friedrich August von Hayek

The Missouri Office of the Ombudsman for Property Rights is responsible for documenting the use of eminent domain within the state and any issues associated with its use and is charged to submit a report to the general assembly on January 1, 2008, and on such date each year thereafter. This report is respectfully submitted to serve to fulfill the above described statutory duties for the year of 2009.

Respectfully,

Paul Anthony Martin
Ombudsman for Property Rights
The State of Missouri

Introduction

This report will document the use of eminent domain throughout the state of Missouri and any issues arising from the use of the power of eminent domain.

The exclusive reporting system concerning the use of eminent domain in Missouri is operated by the Missouri Office of the State Courts Administrator. The Office of the State Courts Administrator (Courts Administrator) compiles a database of court filings and produces an “annual report” that describes the types of cases filed in each circuit, and further broken down by county. While this database includes condemnation cases and exceptions filed, the only further breakdown of these cases concerns whether the particular condemning authority is either the “state” or “other.” At this time there is no further official database describing each specific use of eminent domain.

This report will also describe the efforts of the Office of the Ombudsman for Property Rights to reach as many Missourians as possible since the organization of the office in August of 2007. The report also includes the preliminary plans for the office for the next calendar year, including a description of the priorities that are important to improving the effectiveness of this office and steps that can be taken within the next calendar year to ensure the continuity of the effectiveness of this office regardless of who holds the office of Ombudsman for Property Rights.

Office of the Ombudsman for Property Rights

Governor Blunt signed House Bill 1944 creating the position of the Missouri Ombudsman for Property Rights on July 13, 2006. Anthony Martin was appointed as Missouri's first Ombudsman for Property Rights on August 20, 2007. It was on this date that the official organization of this office commenced. The Missouri Office of the Ombudsman for Property Rights consists of only the ombudsman, with no reporting staff or additional employees.

The Missouri Office of the Ombudsman for Property Rights is charged with assisting citizens by providing guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures. The ombudsman is also responsible for documenting the use of eminent domain within the state and any issues associated with its use and shall submit a report to the general assembly on January 1, 2008, and on such date each year thereafter.

The Missouri Office of the Ombudsman for Property Rights is one of only four similar state-level offices in the country. Currently, the only other formal offices are in the states of Utah, Connecticut, and Oregon. The state of Utah has no formal Ombudsman for Property Rights, but has the oldest office in the country, and is staffed with a team of lawyers and administrators. The state of Connecticut has a formally titled Property Rights Ombudsman and a support staff consisting of

one employee. This office has enjoyed the cooperation of the staffs of both of these organizations in establishing Missouri's own version of the office.

In less than seventeen months, the Office of the Ombudsman for Property Rights has made great strides in improving the assistance provided to Missourians facing issues regarding their property rights. These efforts will be discussed in more detail throughout this report.

The Office of Public Counsel

The Office of the Ombudsman for Property Rights was created by House Bill 1944 and, by statute, was placed in the Office of Public Counsel. The Office of the Public Counsel was established in 1975 to represent the public and the interests of utility customers in proceedings before the Missouri Public Service Commission (PSC) and in investor-owned electric, natural gas, telephone, water, sewer and steam heat utilities, including safety issues, adequate and quality service, complaints and disputes, connections and disconnections, and billing and collection practices. The Office of the Public Counsel is independent from the PSC and has a separate budget and staff. The Department of Economic Development director appoints the public counsel who must be a Missouri licensed attorney. While the Office of Public Counsel reviews all utility filings and issues considered by the PSC, the focus is utility rates and regulations proceedings that

affect residential and small business customers. The office takes an active role in cases that propose to increase rates and often makes its own proposal for rate reductions. The office also protects the customers' interests in other PSC cases that touch on such issues as rate design, new area codes, PSC investigations into general industry issues, and rules and regulations governing the rights and obligations of customers and utilities that affect service. Attorneys from the office attend local public hearings where customers comment on PSC cases.

At present, the office has 12 staff members. Five attorneys, including the public counsel, provide the legal representation while 2 public utility accountants and 2 economists provide the technical expertise. In some cases, the office contracts with experts and consultants for specialized expertise. The technical staff and consultants investigate and research regulatory issues and utility operations, prepare reports and exhibits and testify on technical issues in the evidentiary hearings.

Since the Office of the Public Counsel represents the public and ratepayers as a class, the office does not provide specific legal representation of individuals for individual problems. However, the office tries to help customers by contacting the utility or directing them to the appropriate PSC department or government agency. It also comments on utility issues that affect consumers and cooperates

with other state consumer advocates, public interest and consumer groups and organizations to educate the public about consumer rights and to protect the rights of ratepayers. The public counsel's authority to appeal PSC decisions is a significant right. Prior to the establishment of the Office of the Public Counsel, the general public did not have the ability to seek judicial review of adverse PSC decisions.

Use of Eminent Domain in Missouri, 2008

As described above, the Courts Administrator compiles a database of court filings and produces an “annual report” that describes the types of cases filed in each circuit, and further broken down by county. While this database includes condemnation cases and exceptions filed, the only further breakdown of these cases concerns whether the particular condemning authority is either the “state” or “other.” At this time there is no further official database describing each specific use of eminent domain.

The relevant table of the Missouri Judicial Report, Annual Report-Supplement for Fiscal Years 2007 and 2008 are included in this report as appendices. At this time, there is no other official database compiled by any state agency. It is a priority of this office to establish a more detailed method for documenting the use of eminent domain in Missouri, and to include such documentation in future reports.

Issues Regarding the Use of Eminent Domain

There is one issue that has dominated most discussions of condemnation law that this office has engaged in over the last seventeen months- the issue that property not found to be blighted may still be lawfully taken for the public purpose of eliminating blight. While House Bill 1944 did give some increased protection to parcels of land not found to be blighted, that protection was minimal at best and insufficient in practice. As the law stands today, an individual property can be free of any finding of blight, yet still be condemned as part of a “blighted area.” This is a serious deficiency in Missouri eminent domain reform that should be given significant attention in the 2009 legislative session.

After the recent Missouri eminent domain reform, House Bill 1944, the popular, but inaccurate, opinion was that eminent domain for redevelopment was no longer a threat to Missouri landowners. As described below, the use of eminent domain for redevelopment is still a serious threat to all property in Missouri, not just those properties that fall under one of the many broad definitions of “blight.”

Most eminent domain proponents deny the existence of any use of eminent domain for “economic development” in Missouri. This argument is usually evinced by §523.271RSMo, which states that “[n]o condemning authority shall acquire private property through the process of eminent domain for solely economic development purposes.” When viewed by itself, it is reasonable to

conclude that §523.271 gives strong protection to private property rights.

However, when read in conjunction with §523.274, it is clear that §523.271 does little to protect Missouri landowners.

Section 523.274 requires condemning authorities to consider each parcel of property in the defined area with regard to whether the property meets the relevant statutory definition of blight. If the condemning authority finds a preponderance of the defined redevelopment area is blighted, it may proceed with the condemnation of any parcels in such area, absent any other issues with the claim. In practical terms, entire neighborhoods may be free of any blighted property and still be considered in a blighted area and therefore subject to condemnation.

This insufficiency was brought to the forefront in 2007 when the Missouri Court of Appeals for the Western District issued its opinion in Allright Properties, Inc. v. Tax Increment Financing Commission of Kansas City, 240 SW 3d 777 (Mo.App. W.D. 2007). The court interpreted §523.274 as requiring the condemning authority to only consider each parcel without requiring the condemning authority to come to any conclusion regarding the blight status of each specific parcel. The court also explicitly sets out the formula for calculating whether a “preponderance” of the redevelopment area is blighted by measuring total square footage of blight in a redevelopment area and comparing it to the square footage of land that is not found to be blighted.

Many parcels of land that are deemed blighted are of significant square footage. Some examples are parking lots, industrial facilities, or wooded areas. After the court's opinion, the weight of these parcels will be determined in square footage, and not as individual parcels. Due to the potential discrepancy of square footage between the average neighborhood lot and the larger blighted lots in the area, the ratio of homes and small businesses not found to be blighted that can be taken for each larger parcel of blighted property may increase dramatically. The likely consequences of this opinion exacerbate the deficiency of Missouri condemnation law in protecting private property from being taken through eminent domain for redevelopment purposes.

In 2009, this office will present detailed recommendations to the general assembly for changes to Missouri statutes in order to provide more acceptable protection for property owners who may face the threat of eminent domain as a direct result of economic development projects thinly veiled as acts for the public good of eliminating blight. Specifically, this office will concentrate on recommending changes that will protect individual parcels of property not found to be blighted under any of the broad definitions of blight available to condemning authorities in Missouri.

Activity of the Office of the Ombudsman for Property Rights in 2008

Many of the activities listed below were also included in the 2007 Annual Report as initiatives for 2008. The activities are included again, often with updates, to show the progress the office has made within the last year to provide better service to Missourians facing the threat of eminent domain, and to stress the continuing importance of these activities in the future.

The quality of the information available to Missourians concerning their property rights will continue to be the factor given the most weight in any decision made concerning the efforts of this office.

The second most prevalent concern is raising the profile of the office in order to reach as many Missourians as possible. House Bill 1944 requires condemning authorities to provide the owners of record of the properties to be acquired by eminent domain with contact information for the Office of the Ombudsman for Property Rights. However, the use of eminent domain begins long before the official letter of intent to acquire property is sent to property owners. Property owners need to be cognizant of their rights before a condemnation notice is issued. This office must continue to work to be included in the public discourse anytime property rights are the topic of discussion. The actions taken in 2007 and 2008 to reach out to as many Missourians as possible, as quickly as possible, are described below.

A. Official Website

Missourians dealing with eminent domain are encouraged to contact this office as early in the eminent domain process as possible. In order to best provide information regarding the eminent domain process there has to be a resource that allows Missourians to easily access as much information as possible, as quickly as possible. This resource also has to be available without the constraints of normal business hours since most working Missourians can not take time out of their workdays to deal with personal matters. In the current internet age this is best accomplished through a website devoted entirely to the eminent domain process in Missouri.

In 2007, the Office of the Ombudsman for Property Rights, with the assistance Department of Economic Development, developed the website www.eminentdomain.mo.gov to provide Missourians with extensive information regarding Missouri eminent domain law. The website has received praise from Missourians and from property rights organizations across the country for its ease of use and breadth of information.

The website includes several links to information regarding condemnation and eminent domain, including: the full text of House Bill 1944 along with links to the codification of the law as Chapter 523 of the Registered Statutes of Missouri, the “Final Report and Recommendations of the Missouri Task Force on Eminent

Domain,” and a link to the 2007 Annual Report of this office. Missourians visiting the site can also find contact information for the office as well as a “legislator lookup” tool that allows them to easily access the contact information for their respective legislators.

There have been several recent additions to the website. These recent updates include a “frequently asked questions” portion of the site that is a compilation of the questions most often asked by Missourians facing the use of eminent domain, and a section titled “Blighted Missouri.” The “Blighted Missouri” section is comprised of several photos of homes across Missouri that have been targets of eminent domain abuse. The homes included in this section were selected to evince the absurdity of the breadth of the definition of a “blighted area” under Missouri condemnation law.

The website is designed to be easily updated in order to better serve the needs of Missourians as time goes on. In the next year, the site will be further developed in order to provide a more interactive experience to individuals facing specific issues within the purview of eminent domain law.

B. Toll-Free Contact Availability

Even in the internet age, the most frequent contact with this office is still via telephone. With this in mind, the Office of Public Counsel developed a toll-free contact number allowing Missourians to call one number to avail themselves to all

services offered by the Public Counsel. The Office of the Ombudsman for Property Rights is included within these services. Missourians can now call (866) 922-2959 to contact, free of charge, the Office of Public Counsel and, in turn, the Office of the Ombudsman for Property Rights.

C. Outreach: Town Hall Meetings and Community Involvement

In just seventeen months, the office has been able to meet with thousands of Missourians on a face to face level. For the most part, this has been accomplished by the use of town hall meetings and speaking engagements throughout the state. The office has worked with community groups to provide a forum for Missourians to voice their concerns about property rights issues in both their specific geographic areas and across the state. In 2008, attendance at each meeting ranged from 20 to 200 concerned citizens, totaling thousands of Missourians. Many of these meetings have included representatives from both the executive and legislative branches of government. The office has been represented at forums sponsored by organizations such as the League of Women Voters, the Federalist Society, the University of Missouri, the Sons of the American Revolution, and at several meetings of community action organizations across the state. Most importantly, the office has held many neighborhood meetings in the homes of Missourians facing the threat of condemnation. The reaction to these meetings has

been very positive and the meetings should significantly increase in frequency in the next year.

D. Outreach: Institutions of Higher Learning

Property rights should be an important aspect of the educational experience of undergraduate students as they prepare to be the future leaders of Missouri.

Today's undergraduate students will be tomorrow's property owners, small business owners, farmers, political leaders, or any combination of the three.

Undergraduate students need to achieve a basic level of competence of the eminent domain process and need to understand the effect that it may have on their communities. As the outreach activities of this office increase in the future, so will the efforts of this office to better collaborate with institutions of higher learning in educating young Missourians on the role that property rights have in the prosperity of their communities.

This office has met with a number of professors and other leaders of academic institutions across the state to discuss how to help facilitate a more thorough inclusion of property rights into the educational discourse on undergraduate campuses. Several debates, presentations, panel discussions, and round table discussions are in the planning process for 2009. If successful, these events have the potential to become annual staples of the academic calendar giving

this office a platform to reach young Missourians far into the future, regardless of who holds the office of Ombudsman.

E. Litigation

In 2008, for the first time since its organization, the Office of the Ombudsman acted as amicus curiae to the Missouri Supreme Court. The office joined as amicus curiae in two separate cases; collaborating with the Institute for Justice in City of Arnold v. Homer R. Tourkakis, et al., and joining the Pacific Legal Foundation and the Show-Me Institute in Cortex West Redevelopment Corporation v. Station Investments #10 Redevelopment Corporation, et. al.

The two briefs described above are included as appendices to this report.

Conclusion

Organizing a government office is a great task in the best of circumstances. The Missouri Office of the Ombudsman for Property Rights is one of only four similar statewide offices in the country. This afforded few successful templates on which to base the activities and services of this office. Even with such few examples on which to base the office, the remarkable combined efforts of the Office of Governor Matt Blunt, the Office of Public Counsel, and the Department of Economic Development have allowed this office, in less than seventeen months, to reach thousands of Missourians facing the use of eminent domain.

There is much work to be done in the coming year and I look forward to the challenge of providing more efficient service to Missourians facing eminent domain issues and to further assisting Missourians fighting the abuse of eminent domain. I also look forward to working with legislators from across the state to ensure increased property rights protection for all Missourians.

Appendices to the 2008 Report of the Ombudsman for Property Rights

Included below is the annual report compiled by the Office of State Courts Administrator. The specific table included, Table 36, is the relevant section of the report dealing with condemnation filings for Fiscal Years 2007, 2008. The official styling of the report is the Missouri Judiciary Report, Annual Report-Supplement; Table 36.

Also included below are maps detailing the use of eminent domain throughout the state, distinguished by individual county. These maps date back to fiscal year 2005, the year prior to the recent Missouri eminent domain reform.

Finally, the amicus curiae briefs joined by this office have been included in their entirety as a final appendix to the 2008 report.

APPENDIX A

Annual Report, Table 36

Office of the State Courts Administrator

Fiscal Years 2007, 2008

Table 36
Circuit Court, FY 2007
Real Estate Cases Filed by Case Type

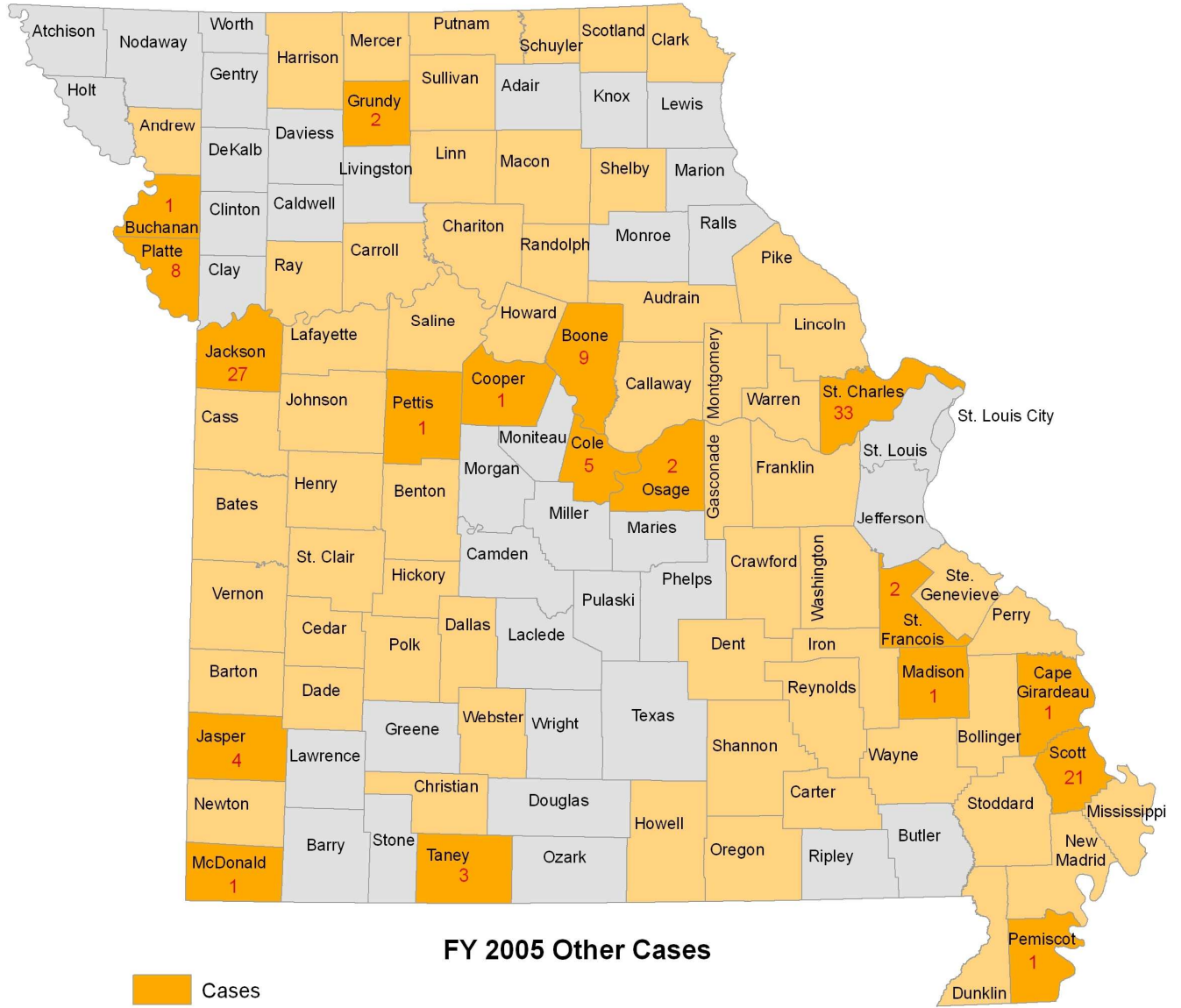
Cir. No.	County	Application-Enforce													Total Cases Filed
		Mechanic's Lien	Emin. Domain/Condemn./		Exception	Fore-Closure	Partition	Quiet Title	Rent and Possession	Unlawful Detainer	Landlord Complaint	JIS Other	SWJIS Other		
Exceptions	State	Other													
1	Clark	0	♦	0	0	0	0	1	0	0	0	0	1	♦	2
	Schulyer	0	♦	33	0	0	0	1	1	0	0	0	1	♦	36
	Scotland	0	♦	0	0	0	0	1	0	0	0	0	1	♦	2
	Circuit Total	0	♦	33	0	0	0	3	1	0	0	0	3	♦	40
2	Adair	0	♦	1	0	0	0	1	1	0	0	0	1	♦	4
	Knox	0	♦	0	0	0	0	0	1	1	1	0	2	♦	5
	Lewis	0	♦	0	0	0	0	1	0	0	0	0	2	♦	3
	Circuit Total	0	♦	1	0	0	0	2	2	1	1	0	5	♦	12
3	Grundy	2	♦	0	0	0	0	0	0	0	1	0	0	♦	3
	Harrison	0	♦	0	0	0	0	0	1	0	0	0	0	♦	1
	Mercer	0	♦	0	0	0	4	0	2	0	0	0	1	♦	7
	Putnam	0	♦	0	0	0	0	0	0	0	0	0	2	♦	2
	Circuit Total	2	♦	0	0	0	4	0	3	0	1	0	3	♦	13
4	Atchison	0	♦	0	0	0	0	1	1	0	0	0	1	♦	3
	Gentry	0	♦	0	0	0	0	1	1	0	0	0	0	♦	1
	Holt	0	♦	0	0	0	0	0	1	0	0	0	0	♦	1
	Nodaway	0	♦	0	0	0	0	0	2	0	0	0	1	♦	3
	Worth	0	♦	0	0	0	0	0	0	0	0	0	1	♦	1
	Circuit Total	0	♦	0	0	0	0	1	5	0	0	0	3	♦	9
5	Andrew	0	♦	0	0	0	0	0	4	0	0	0	0	♦	4
	Buchanan	0	♦	0	1	2	0	1	23	0	0	2	0	♦	29
	Circuit Total	0	♦	0	1	2	0	1	27	0	0	2	0	♦	33
6	Platte	8	♦	2	3	2	5	3	12	2	1	1	8	♦	47
	Circuit Total	8	♦	2	3	2	5	3	12	2	1	1	8	♦	47
7	Clay	18	♦	0	9	2	2	4	11	4	1	1	13	♦	65
	Circuit Total	18	♦	0	9	2	2	4	11	4	1	1	13	♦	65
8	Carroll	0	♦	0	0	0	0	1	0	0	0	0	0	♦	1
	Ray	3	♦	0	1	0	2	1	2	0	0	0	1	♦	10
	Circuit Total	3	♦	0	1	0	2	2	2	0	0	0	1	♦	11
9	Chariton	0	♦	1	1	0	0	2	5	0	0	0	0	♦	9
	Linn	0	♦	0	0	1	0	1	2	0	0	0	0	♦	4
	Sullivan	0	♦	0	0	0	0	2	0	0	0	0	3	♦	5
	Circuit Total	0	♦	1	1	1	0	5	7	0	0	0	3	♦	18
10	Marion	0	♦	2	2	5	0	2	1	0	1	0	2	♦	15
	Monroe	0	♦	0	0	7	1	1	3	0	0	0	1	♦	13
	Ralls	0	♦	0	0	0	0	2	3	0	1	0	2	♦	8
	Circuit Total	0	♦	2	2	12	1	5	7	0	2	0	5	♦	36
11	St. Charles	6	♦	6	10	25	18	9	20	1	1	1	16	♦	113
	Circuit Total	6	♦	6	10	25	18	9	20	1	1	1	16	♦	113
12	Audrain	0	♦	0	0	0	0	0	4	0	1	0	0	♦	5
	Montgomery	0	♦	0	0	0	0	1	3	0	0	0	1	♦	5
	Warren	3	♦	0	0	0	1	0	7	0	0	0	5	♦	16
	Circuit Total	3	♦	0	0	0	1	1	14	0	1	0	6	♦	26
13	Boone	7	♦	0	35	7	1	0	3	6	3	0	15	♦	77
	Callaway	1	♦	0	1	0	0	5	3	0	0	0	2	♦	12
	Circuit Total	8	♦	0	36	7	1	5	6	6	3	0	17	♦	89
14	Howard	0	♦	0	0	0	0	1	2	1	0	0	0	♦	4
	Randolph	0	♦	0	1	0	0	1	0	0	0	0	2	♦	4
	Circuit Total	0	♦	0	1	0	0	2	2	1	0	0	2	♦	8
15	Lafayette	3	♦	0	0	0	0	3	4	0	1	0	2	♦	13
	Saline	1	♦	0	0	0	0	4	4	0	0	0	1	♦	10
	Circuit Total	4	♦	0	0	0	0	7	8	0	1	0	3	♦	23
16	Jackson	40	♦	3	22	10	36	9	95	3	0	0	94	♦	312
	Circuit Total	40	♦	3	22	10	36	9	95	3	0	0	94	♦	312
17	Cass	15	♦	0	1	0	1	1	11	1	13	9	6	♦	58
	Johnson	3	♦	1	2	0	1	3	6	88	57	3	1	♦	165
	Circuit Total	18	♦	1	3	0	2	4	17	89	70	12	7	♦	223
18	Cooper	0	♦	0	0	0	0	1	0	0	0	0	0	♦	1
	Pettis	0	♦	1	0	0	0	2	3	0	1	0	3	♦	10
	Circuit Total	0	♦	1	0	0	0	3	3	0	1	0	3	♦	11
19	Cole	5	♦	2	3	2	1	3	3	1	0	0	7	♦	27
	Circuit Total	5	♦	2	3	2	1	3	3	1	0	0	7	♦	27
20	Franklin	8	♦	2	0	6	0	9	16	0	0	0	1	♦	42
	Gasconade	0	♦	0	0	0	1	2	7	0	0	0	2	♦	12
	Osage	0	♦	0	4	1	0	1	0	0	0	0	0	♦	6
	Circuit Total	8	♦	2	4	7	1	12	23	0	0	0	3	♦	60
21	St. Louis County	57	♦	11	26	61	64	24	*	178	*	*	63	♦	484
	Circuit Total	57	♦	11	26	61	64	24	*	178	*	*	63	♦	484
22	St. Louis City	47	♦	2	8	8	31	13	81	0	0	0	18	♦	208
	Circuit Total	47	♦	2	8	8	31	13	81	0	0	0	18	♦	208
23	Jefferson	11	♦	5	11	14	3	13	54	0	2	0	22	♦	135
	Circuit Total	11	♦	5	11	14	3	13	54	0	2	0	22	♦	135
24	Madison	1	♦	0	0	0	0	1	3	0	0	0	4	♦	9
	St. Francois	0	♦	0	0	0	0	8	22	1	1	0	1	♦	33
	Ste. Genevieve	0	♦	0	0	1	0	0	6	0	0	0	2	♦	9
	Washington	0	♦	0	0	0	0	0	17	0	4	0	11	♦	32
	Circuit Total	1	♦	0	0	1	0	9	48	1	5	0	18	♦	83

APPENDIX B

Missouri Condemnation by County

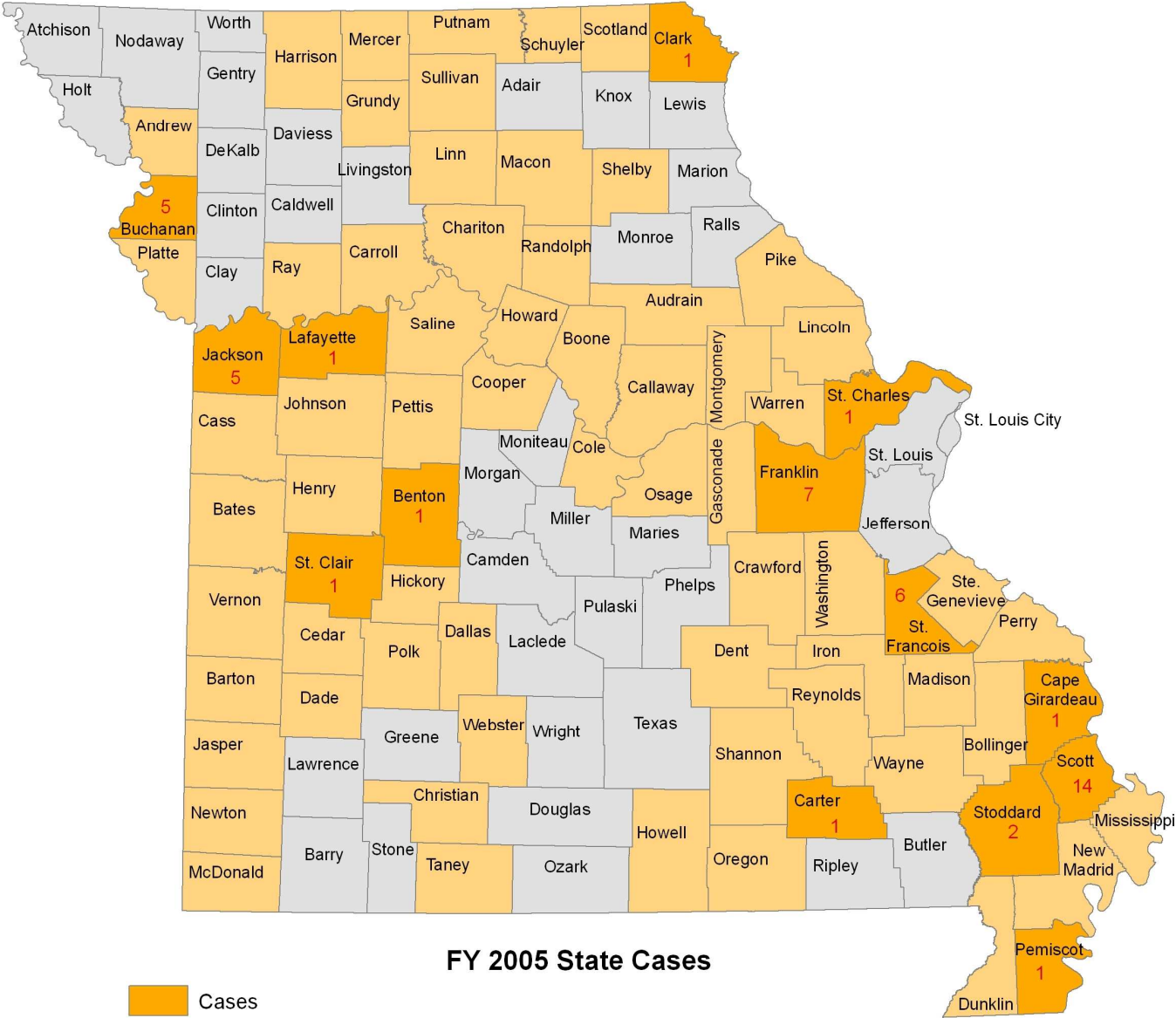
Fiscal Years 2005-2008

Real Estate Cases Filed by Case Type - Eminent Domain and Condemnation Cases Only



- Cases
- No Cases
- Case type is unique to the Justice Information System (JIS). This court does not use JIS.

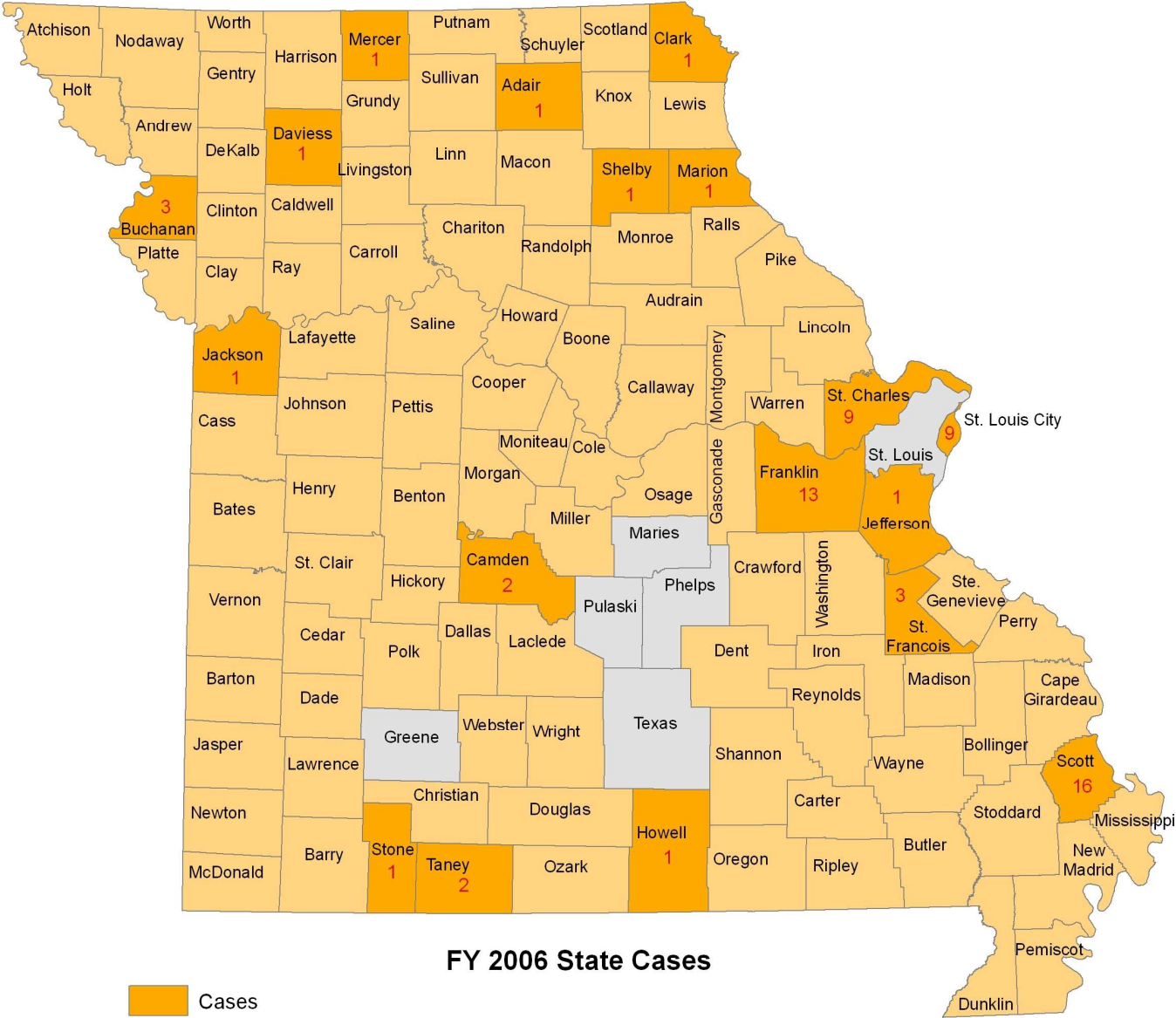
Real Estate Cases Filed by Case Type - Eminent Domain and Condemnation Cases Only



FY 2005 State Cases

- Cases
- No Cases
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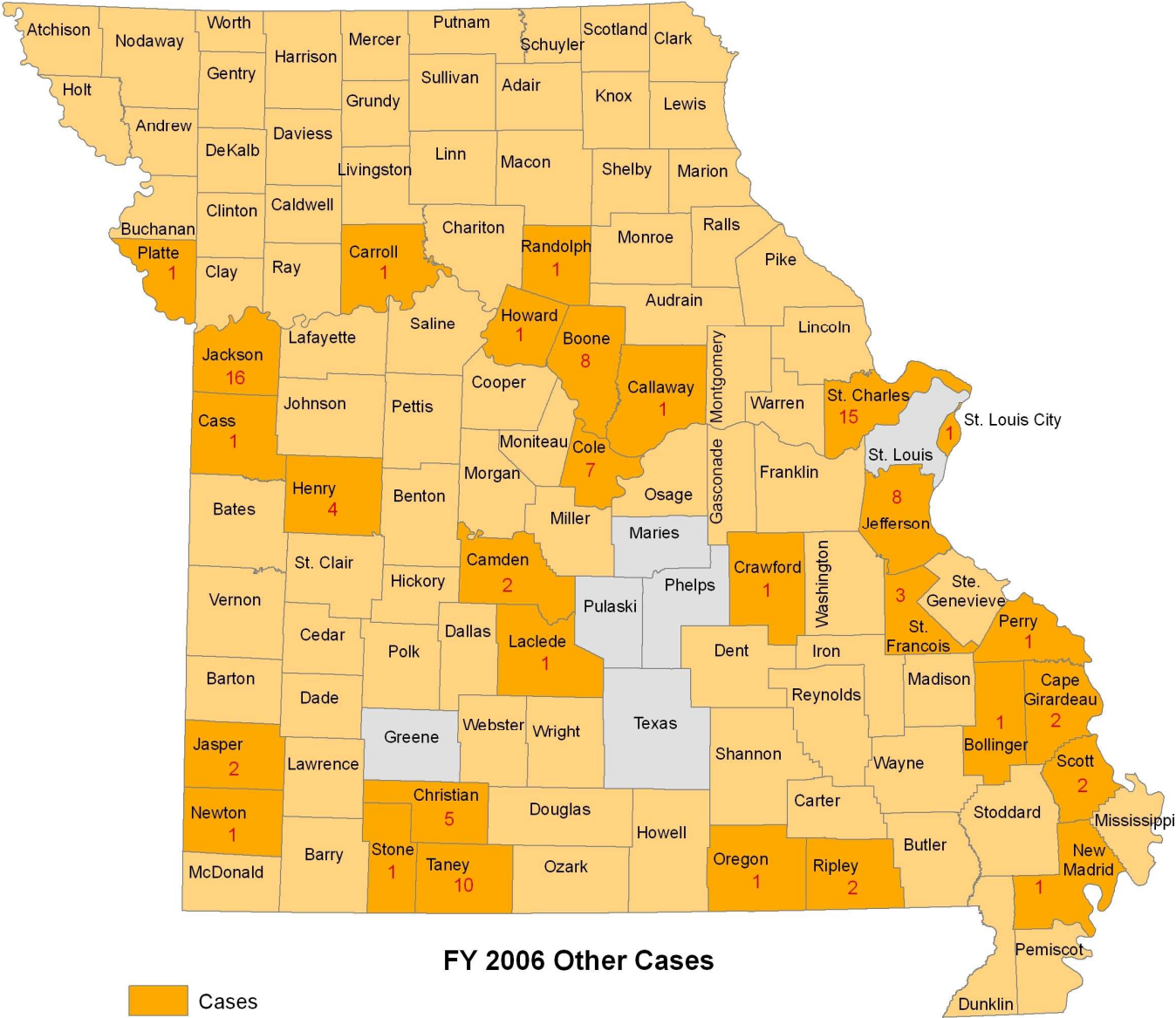
Real Estate Cases Filed by Case Type - Eminent Domain and Condemnation Cases Only



FY 2006 State Cases

- Cases
- No Cases
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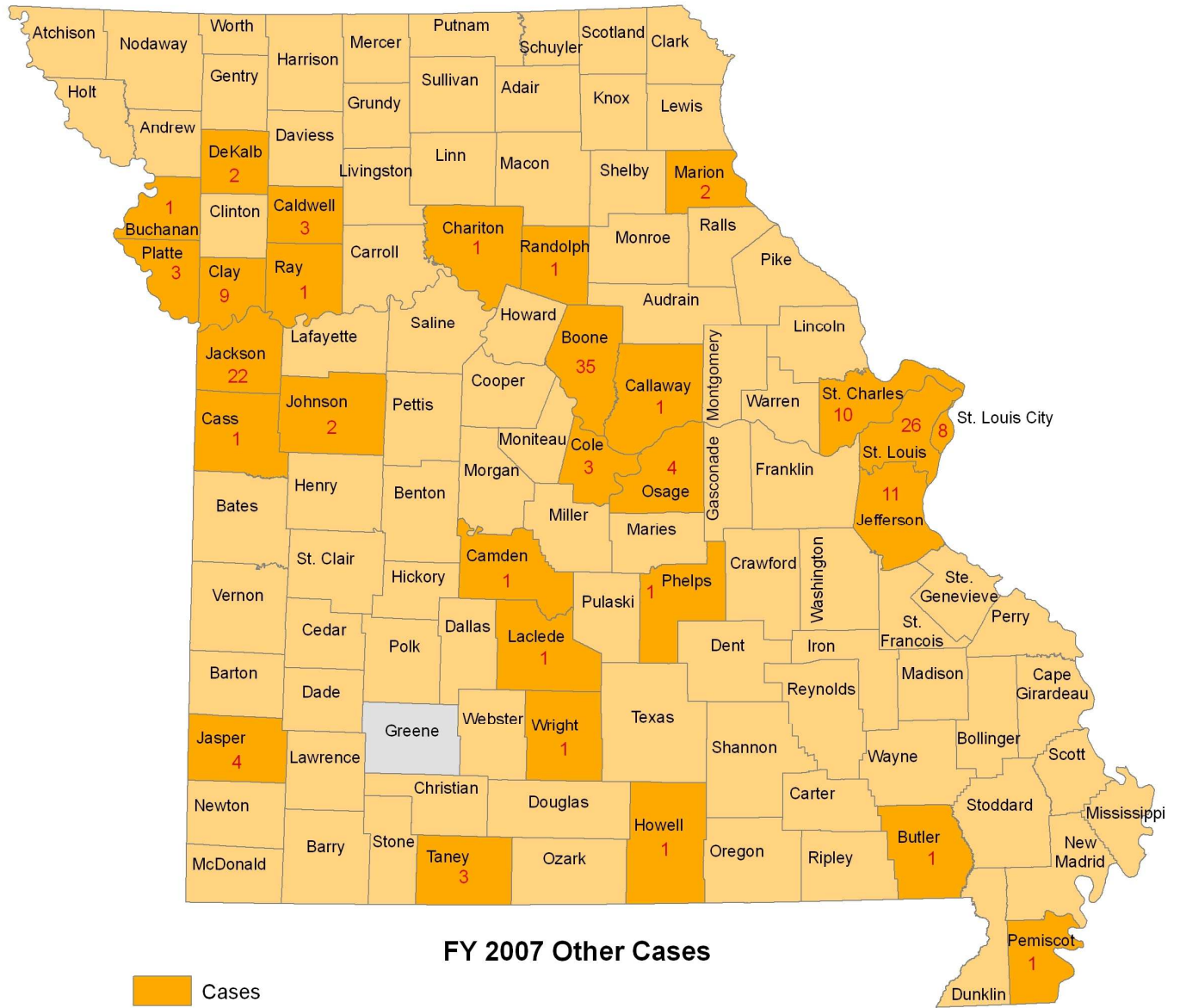
Real Estate Cases Filed by Case Type - Eminent Domain and Condemnation Cases Only



FY 2006 Other Cases

- Cases
- No Cases
- Case type is unique to the Justice Information System (JIS). This court does not use JIS.

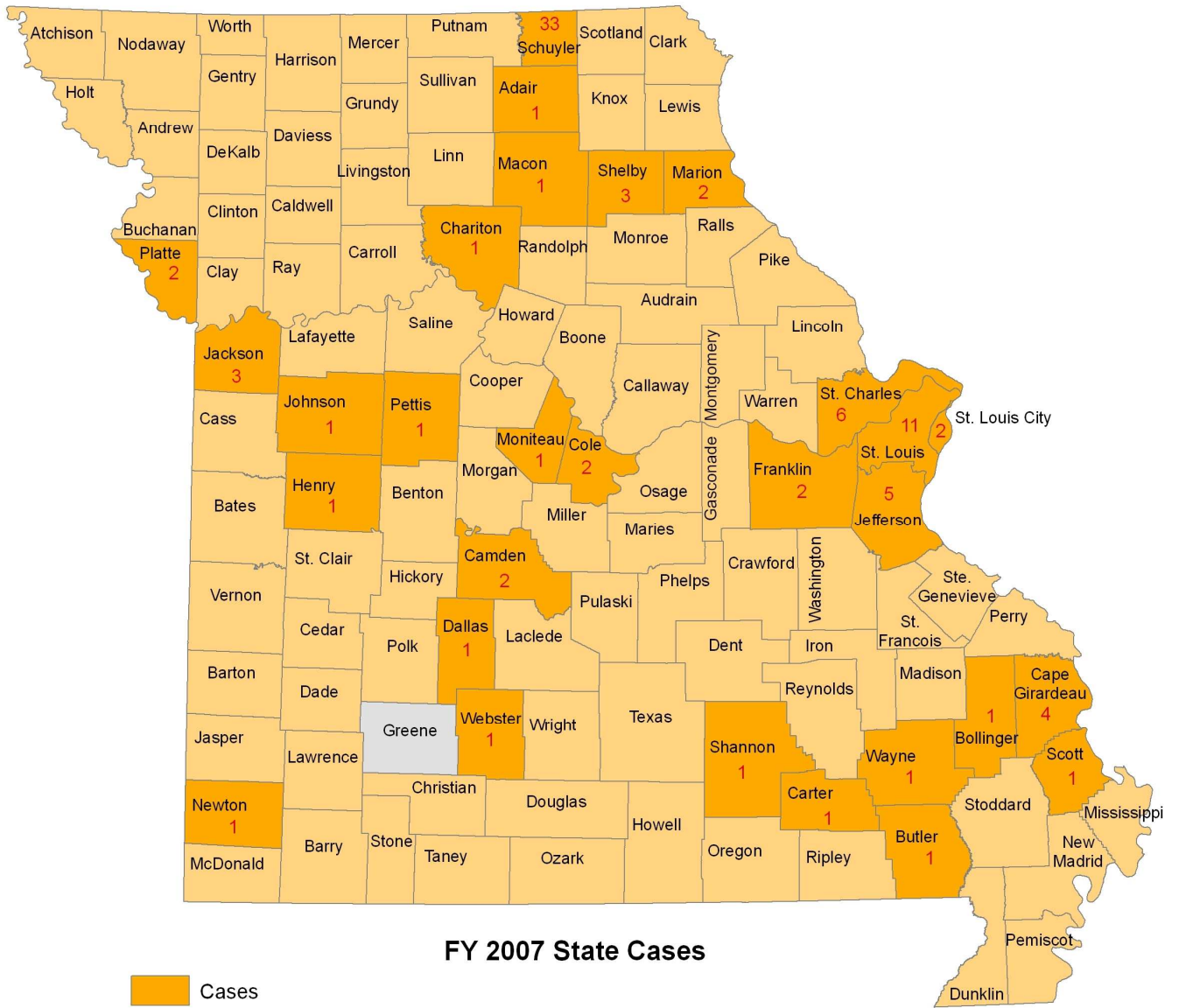
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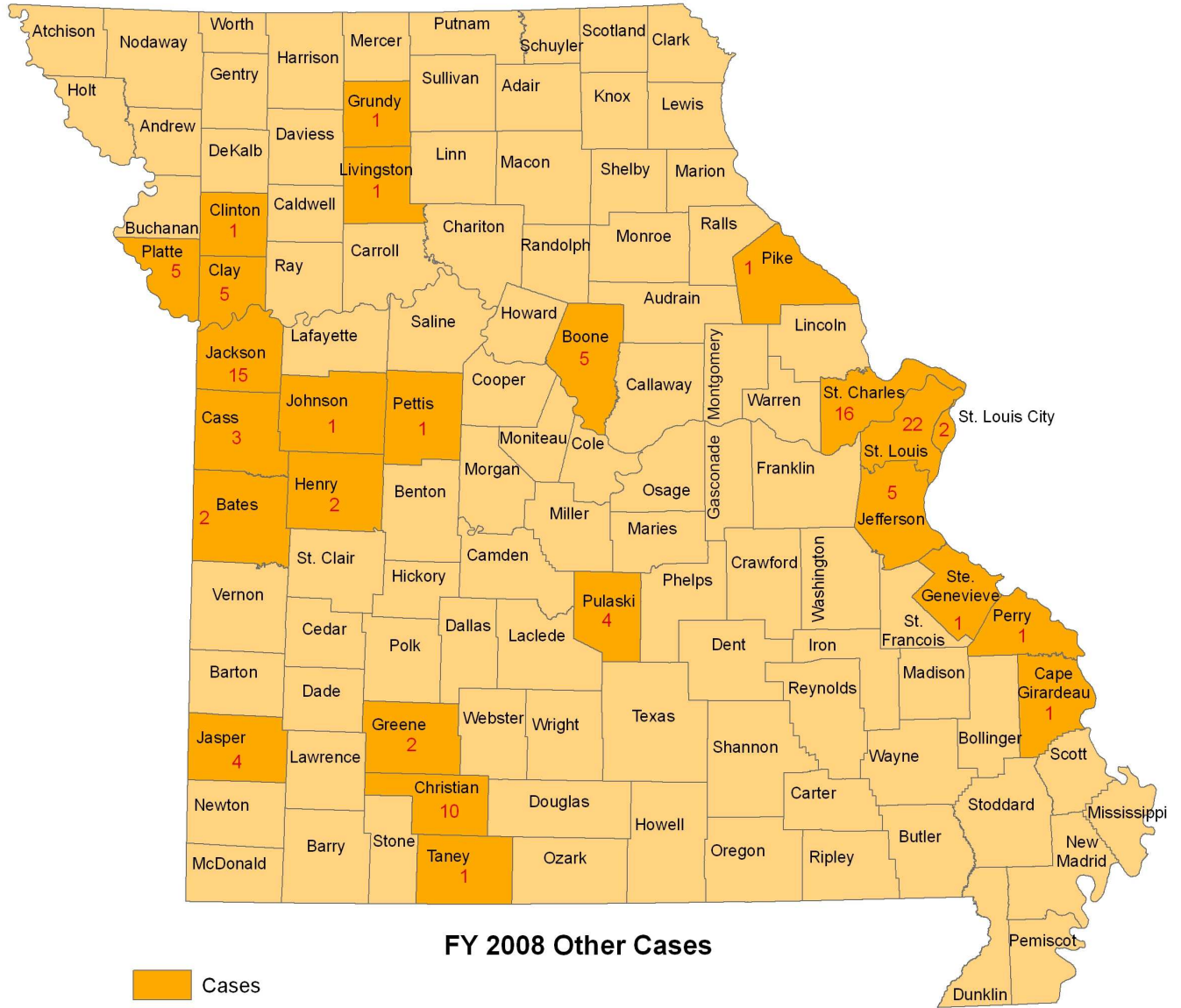
FY 2007 Other Cases

- Cases
- No Cases
- Case type is unique to the Justice Information System (JIS). This court does not use JIS.

Real Estate Cases Filed by Case Type - Eminent Domain and Condemnation Cases Only



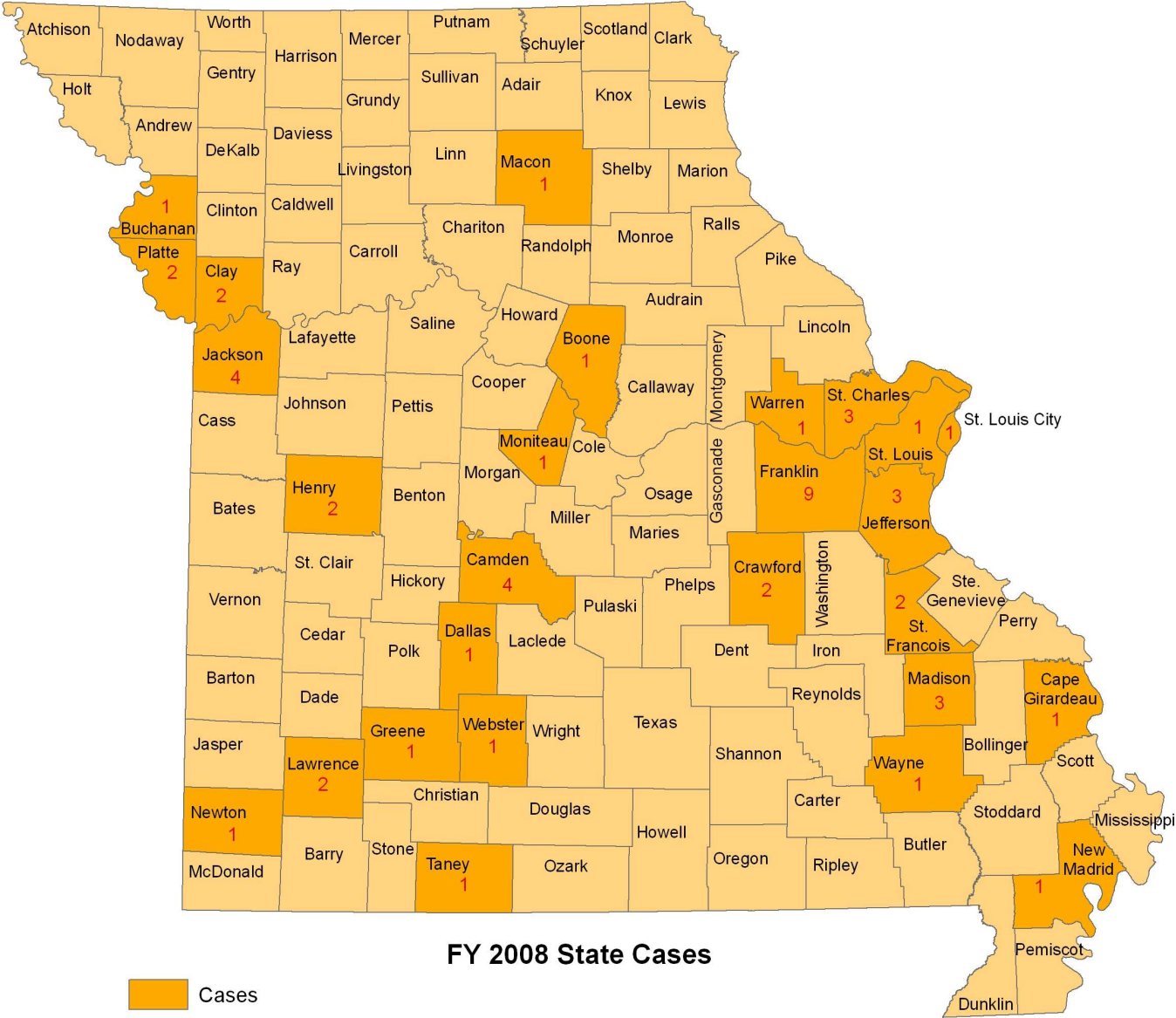
Real Estate Cases Filed by Case Type - Eminent Domain and Condemnation Cases Only



FY 2008 Other Cases

- Cases
- No Cases
- Case type is unique to the Justice Information System (JIS). This court does not use JIS.

Real Estate Cases Filed by Case Type - Eminent Domain and Condemnation Cases Only



- Cases
- No Cases
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APPENDIX C

Amicus Curiae Briefs