

IN THE SUPREME COURT OF MISSOURI

No. SC95624

CITY OF NORMANDY, et.al.

Plaintiffs / Respondents / Cross-Appellants

v.

JEREMIAH WILSON NIXON, et. al.
Defendants / Appellants / Cross-Respondents

Appeal from the Circuit Court of Cole County
Honorable Jon Beetem, Circuit Judge
Cause No. 15AC-CC00531

Brief of Respondents / Cross-Appellants

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JURISDICTIONAL STATEMENT

In 2015, the General Assembly passed and the Governor signed into law Senate Bill No. 5, which purported to impose several reforms only on the municipalities located in St. Louis County. Twelve municipalities located in St. Louis County, as well as two of their taxpayers, filed a Petition against the State alleging SB 5 Sections 67.287, 479.359, 479.360 and 479.362 violated the Missouri Constitution and sought declaratory and injunctive relief. The State moved to dismiss all counts for failure to state a claim. Following a consolidated hearing on Plaintiffs' motion for preliminary and permanent injunction and Defendants' motion to dismiss, the Circuit Court granted both motions in part. [Legal File 41-44].

Plaintiffs have cross-appealed from the partial dismissal of their Petition. The dismissed counts challenge the constitutionality of certain sections of SB 5 under the Missouri Constitution. The cross-appeal will require this Court to determine whether a statute of this state violates the Missouri Constitution. Accordingly, this Court has jurisdiction pursuant to Article V, Section 3 of the Missouri Constitution which provides "[t]he supreme court shall have exclusive appellate jurisdiction in all cases involving the validity . . . of a statute or provision of the constitution of this state."

STATEMENT OF FACTS

A. Plaintiffs' Petition

On May 7, 2015, the Missouri General Assembly passed and, on July 9, 2015, the Governor of Missouri signed Senate Bill No. 5 ("SB 5").¹ On November 19, 2015, twelve municipalities located in St. Louis County and two taxpayers residing therein filed a Verified Petition for Declaratory Judgment and Preliminary and Permanent Injunction (the "Petition"). The Petition contained nine counts which alleged, on different grounds, that SB 5 violated the Missouri Constitution. [Legal File ("LF") 5-30]. The Petition and an accompanying motion sought a declaratory judgment and a preliminary and permanent injunction enjoining the enforcement of SB 5. [LF5-33].

B. SB 5

In a transparent effort to target only the municipalities located in St. Louis County with special legislation, SB 5 Sections 479.359.1 and 479.359.2 expressly provide that, municipalities within "any county with a charter form of government and with more than nine hundred fifty thousand inhabitants" cannot retain their "fines, bond forfeitures, and court costs" arising out of "minor traffic violations" if they exceed **12.5%** of their "annual general operating revenue." [App. at A8]. At the time that SB 5 was passed and signed, both the General Assembly and the Governor knew that the only county in Missouri with a charter form of government and more than 950,000 inhabitants

¹ A copy of SB 5 is included in the Appendix ("App.") filed separately with this brief at A1-A15.

was St. Louis County. In contrast to the municipalities in St. Louis County, all of the municipalities in Missouri's other 113 counties can retain their "fines, bond forfeitures, and court costs" arising out of "minor traffic violations" up to **20.0%** of their "annual general operating revenue." *Id.* In addition to this discrimination addressed solely to the municipalities located in St. Louis County, SB 5 Section 67.287 also burdens only the municipalities located in St. Louis County with new and expensive administrative activities without appropriating any funding to reimburse them for these new and onerous burdens. [App. at A1-A2]. Thus, pursuant to SB 5 Section 67.287.2, only the municipalities located in St. Louis County are required to have an accredited or certified police department, an annual audit by a certified public accountant and a comprehensive cash management and accounting system. [App. at 1-2]. All of this was mandated by SB 5 without the legislature providing any funding to the St. Louis County municipalities to reimburse them for the costs incurred in fulfilling the legislature's mandates.

In addition to these discriminatory and unfunded mandates, SB 5 contains other provisions warranting constitutional scrutiny. First, Section 479.359.3 of SB 5 requires all municipalities to submit an addendum to the state auditor containing (1) an accounting of its annual general operating revenue and (2) its total revenues from fines, bond forfeitures and court costs for minor traffic violations and (3) the percentage of (2) derived from (1). [App. at 8-9]. In addition, Section 479.359.3 requires that the addendum be certified as to its accuracy "under oath and under the penalty of perjury." [App. at A9]. If the percentage is more than 12.5% for the St. Louis County municipalities, and only the St. Louis County municipalities, the excess revenues must be

remitted to the director of the department of revenue pursuant to Sections 479.359.1 and 479.359.2. [App. at A8].

Then, pursuant to SB 5 Section 479.362.1, the auditor transmits the addendum to the director of the department of revenue, who is empowered to determine if the addendum was timely filed and if the county “remit[ted] to the department of revenue the excess amount as set forth, certified, and signed in the addendum required by section 479.359.” [App. at 10]. SB 5 Section 479.362.5 then requires that, in the event the director of the department of revenue determines that a municipality “has failed to file an accurate or timely addendum or send excess revenue to the director” and the municipality fails to rectify its omission, the director “shall send a notice of the noncompliance to the presiding judge of the circuit court” where the municipality is located and “the presiding judge of the circuit court shall immediately order the clerk of the municipal court to certify all pending matters in the municipal court” until the municipality complies with the director’s determination. [App. at 11].

In sum, the director’s determination requires the circuit court to close the municipal court and take charge of all of its pending matters. What’s more, the same power is granted to the director if he or she determines that the municipality’s “certification of its substantial compliance signed by its municipal judge with the [new] municipal court procedures” required by Section 479.360, as discussed in the following paragraph, is not accurate. [A9-11]. For, under Section 479.362.5, if the director determines that any addendum submitted pursuant to Sections 479.359 and 479.360 is not

“accurate,” he or she can direct the Circuit Court to assume jurisdiction of all pending matters in the Municipal Court where the municipality is located. [A11].

Second, SB 5 Section 479.360.1 purports to amend the Rules of Criminal Procedure as they apply in the Municipal Courts for all municipalities. [App. at A9]. Specifically, Section 479.360.1 changes Municipal Court criminal procedures in the following significant ways:

- (1) Defendants in custody must have an opportunity to be heard by a judge no later than 48 hours on minor traffic violations and no later than 72 hours on other violations and, if not given the requisite hearing, they must be released;
- (2) Defendants cannot be held in custody for more than 24 hours without a warrant after arrest;
- (3) Defendants cannot be detained in order to coerce payment of fines and costs;
- (4) Indigent defendants can present evidence of their financial condition, and the court must take that evidence into account when determining fines and costs;
- (5) Municipal Courts can only assess fines and costs as authorized by law;
- (6) No additional charge can be issued for the failure to appear for a minor traffic violation;
- (7) Municipal Courts must conduct proceedings in a courtroom that is open to the public;

- (8) Municipal Courts must make use of alternative payment plans and community service alternatives; and
- (9) Municipal Courts must adopt an electronic payment system or payment by mail for the payment of minor traffic violations.

[App. at A9–A10]. SB 5 does not expressly refer to or identify the criminal rules it purports to amend. Furthermore, by, *inter alia*, reducing the amount of fines a municipality may collect from minor traffic violations, SB 5 is not limited to the sole purpose of amending the criminal rules.

C. The Proceedings In The Lower Court

In the Circuit Court, plaintiffs moved for a preliminary and permanent injunction and for a hearing on their motion, and defendants moved to dismiss the Petition for failure to state a claim. [LF31-39]. The hearing was held on February 5, 2016.² Only two witnesses testified during the hearing, both of whom – Carl Wolf (“Mr. Wolf”) and Mayor Patrick Green (“Mayor Green”) – were called by plaintiffs and testified on their behalf. Three exhibits were introduced into evidence by plaintiffs during the hearing: (1) Mr. Wolf’s curriculum vitae; (2) Mayor Green’s budget for the City of Normandy; and (3) an affidavit of Angela Dorn. Transcript of February 5, 2016 Hearing (“Tr.”) at 5-41.

Significantly, the State introduced no evidence:

² A copy of the transcript of the hearing has been submitted to this Court apart from the Legal File, which was submitted to this Court by the agreement of the parties.

THE COURT: All right. Mr. Hirth, any evidence for the State?

MR. HIRTH: The State has no evidence.

Tr. at 41. Thus, the State introduced no evidence to justify any of the sections of SB 5 challenged on constitutional grounds by plaintiffs.

Following the hearing, each side submitted forms of judgment to Judge Beetem, who ultimately entered a Judgment and Permanent Injunction:

1. Declaring that SB 5 Sections 67.287 and 479.359.2 were special laws in violation of Article III, Section 40 of the Constitution [LF42-43 at ¶¶ 9.A and 9.B];³

2. Declaring that SB 5 Sections 67.287 and 479.359.3 were unfunded mandates in violation of Article X, Sections 16 and 21 of the Constitution [LF43 at ¶¶ 9.C and 9.D];⁴

3. Enjoining the State from enforcing the statutory provisions declared to be unconstitutional [LF43-44 at ¶¶ 10-12];⁵ and

³ This declaration related to Counts I and II in the Petition.

⁴ This declaration related to Counts III and IV in the Petition.

⁵ This injunction related to the relief sought in Counts I through IV in the Petition.

4. Denying all of the remaining claims for relief made by plaintiffs [LF44 at ¶ 13].⁶

D. Plaintiffs' Cross-Appeal

This cross-appeal challenges the lower court's dismissal of counts V, VI, VII and VIII in the Petition.⁷ In summary, the issues on this cross-appeal are: (i) whether SB 5 Sections 479.359, 479.360 and 479.362 violate the separation of powers guaranteed by Article II, Section 1 of the Missouri Constitution because they grant the director of the department of revenue discretionary authority to direct the Circuit Courts to compel the Municipal Courts to cede their jurisdiction to the Circuit Courts [Counts V and VI]; (ii) whether SB 5 Section 479.360 violates Article V, Section 5 of the Missouri Constitution because it purports to amend existing Supreme Court criminal rules without identifying the specific criminal rules being amended and without limiting the amendments to a single bill [Count VII]; and (iii) whether SB 5 Sections 479.359 and 479.362 violate Article V, Section 27(16) of the Missouri Constitution because they purport to limit the amount of fines a municipality can retain arising from minor traffic offenses [Count VIII].

⁶ This denial related to the State's motion to dismiss Counts V through IX in the Petition.

⁷ Plaintiffs are not appealing the dismissal of Count IX in the Petition.

POINTS RELIED ON

- I. **The Trial Court erred in sustaining defendants' motion to dismiss Counts V and VI of the Petition, because SB 5 violates the Separation of Powers guaranteed by Article II, Section 1 of the Missouri Constitution, in that the statute empowers the director of the department of revenue to direct the Circuit Courts to compel the Municipal Courts to cede their jurisdiction to the Circuit Courts.**

Article II, Section I of the Missouri Constitution

Davis v. Lambert-St. Louis Int'l Airport, 193 S.W.3d 760 (Mo. banc 2006)

State Auditor v. Joint Committee on Legislative Research, 956 S.W.2d 228

(Mo. banc 1997)

City of St. Louis v. Mummert III, 875 S.W.2d 108 (Mo. banc 1994)

II. The Trial Court erred in sustaining Defendants' motion to dismiss Count VII of the Petition, because SB 5 violates Article V, Section 5 of the Missouri Constitution, in that it purports to amend the existing Supreme Court criminal rules without identifying the specific criminal rules being amended and without limiting the amendments to a single bill.

Article V, Section 5 of the Missouri Constitution

State ex rel. Collector of Winchester v. Jamison, 357 S.W.3d 589 (Mo. banc 2012)

State ex rel. K.C. v. Gant, 661 S.W.2d 483 (Mo. banc 1983)

State v. Reese, Constitution 920 S.W.2d 94 (Mo. banc 1996)

Article V, Section 4.1 of the Missouri Constitution

III. The Trial Court erred in sustaining Defendants' motion to dismiss Count VIII of the Petition, because SB 5 violates Article V, Section 27(16) of the Missouri Constitution, in that it purports to limit the amount of fines a municipality can retain arising from minor traffic offenses.

Article V, Section 27(16) of the Missouri Constitution

ARGUMENT

I. The Trial Court erred in sustaining defendants' motion to dismiss Counts V and VI of the Petition, because SB 5 violates the Separation of Powers guaranteed by Article II, Section 1 of the Missouri Constitution, in that the statute empowers the director of the department of revenue to direct the Circuit Courts to compel the Municipal Courts to cede their jurisdiction to the Circuit Courts.

A. Standard of Review.

“[The Supreme Court] reviews the dismissal of the declaratory judgment petition for failure to state a claim de novo.” Bromwell v. Nixon, 361 S.W.3d 393, 398 (Mo. banc 2012) (citing Hess v. Chase Manhattan Bank, USA, N.A., 220 S.W.3d 758, 768 (Mo. banc 2007)). “A motion to dismiss for failure to state a claim on which relief can be granted is solely a test of the adequacy of the petition.” Id. (citing Nazeri v. Missouri Valley College, 860 S.W.2d 303, 306 (Mo. banc 1993)). “The petition is reviewed in an almost academic manner to determine if the plaintiff has alleged facts that meet the elements of a recognized cause of action or of a cause that might be adopted in that case.” Conway v. Citimortgage, Inc., 438 S.W.3d 410, 414 (Mo. banc 2014) (citing Nazeri, 860 S.W.2d at 306). “If the petition sets forth any set of facts that, if proven, would entitle the plaintiffs to relief, then the petition states a claim.” Ward v. W. Cty. Motor Co., 403 S.W.3d 82, 84 (Mo. banc 2013) (citing Lynch v. Lynch, 260 S.W.3d 834, 836 (Mo. banc 2008)).

- B. **SB 5 empowers the director of the department of revenue to mandate that the Circuit Courts assume the jurisdiction of the Municipal Courts, a power that is entrusted solely to the judicial branch of government.**

Article II, Section 1 of the Missouri Constitution provides for the separation of powers of the legislative, executive and judicial departments of government and prohibits any one department from “exercise[ing] any power properly belonging to either of the others, except in the instances in th[e] constitution expressly directed or permitted.” As the Supreme Court held in *State Auditor v. Joint Committee on Legislative Research*, 956 S.W.2d 228 (Mo. banc 1997):

The constitutional demand that the powers of the departments of government remain separate rests on history’s bitter assurance that persons or groups of persons are not to be trusted with unbridled power. For this reason, the separation of the powers of government into three distinct departments is, as oft stated, “vital to our form of government,” because it prevents the abuses of power that would surely flow if power accumulated in one department.

Id. at 231 (citations omitted). A violation of the separation of powers occurs when **either** one branch **impermissibly interferes** with the other branch’s performance of its constitutionally assigned powers **or** one branch **assumes** a power entrusted to another branch. *Id.*

SB 5 violates the separation of powers doctrine in both ways. Sections 479.359 and 479.362, taken together, empower the director of the department of revenue – an executive branch employee – to compel the Circuit Courts to take over all of the pending matters in the Municipal Courts and thereby close the Municipal Courts down if the director determines that a St. Louis municipality has failed to remit its fines from minor traffic violations in excess of 12.5% to the director or has failed to timely file the addendum certifying its numbers concerning its fines from minor traffic violations. The same penalty may be imposed on a municipality which fails to certify “substantial compliance” with the new criminal procedures required by Section 479.360. In sum, these provisions permit the director to supervise the judicial branch of government as well as assume powers entrusted to the judicial branch.

In *City of St. Louis v. Mummert III*, 875 S.W.2d 108 (Mo. banc 1994), the Supreme Court held that:

Article V vests the judicial power of the state in the Supreme Court and other courts. Specifically, this Court possesses “supervisory authority” and “general superintending control” **over all courts**. Circuit judges are state judges subject to this supervisory authority and superintending control. Article V clearly does not grant municipal corporations (like MSD) any authority to supervise or control circuit judges.

Id. at 109 (citations omitted and emphasis added). The same is true for the Municipal Courts and their judges. It is the Supreme Court – and only the Supreme Court – which

possesses “supervisory authority” and “general superintending control” over them. *See* Article V, Section 4.1 of the Constitution.

Accordingly, the executive branch – here the director of the department of revenue – has no authority to supervise the Municipal Courts and their judges for any reason. This case is even more compelling than the *City of St. Louis* case. There, the Supreme Court held that the MSD was a political subdivision of the state and its plan requiring circuit judges to approve trustees appointed to MSD’s board violated the judicial branch’s “authority to supervise and control judicial involvement in appointments.” *Id.* at 108-109. Here, the executive emasculation of the judicial branch is far greater. For, SB 5 Section 479.359 invests the director of the department of revenue – an executive branch employee – with the power to compel the Circuit Court to force the Municipal Court to cede its jurisdiction over all pending matters to the Circuit Court. It would be difficult to conceive of a more expansive encroachment on the authority of the judicial branch. Simply stated, SB 5 is a clear violation of Article II, Section I’s enshrinement of the separation of powers. The Trial Court’s dismissal of Counts V and VI should therefore be reversed.

C. The actions of the director of the department of revenue are discretionary and not ministerial.

In the court below, defendants maintained that the actions of the director of the department of revenue were ministerial and, therefore, could not violate the requisite separation of powers. Putting aside the dubious proposition that the ministerial act of an

executive agency can never violate the separation of powers,⁸ defendants cannot establish that the director acts without discretion under SB 5. “Whether an act is discretionary or ministerial depends on the degree of reason and judgment required to perform the act.” *Davis v. Lambert-St. Louis Int’l Airport*, 193 S.W.3d 760, 763 (Mo. banc 2006) (citations omitted). “An act is discretionary when it requires the ‘exercise of reason in the adaption of means to an end, and discretion in determining how or whether an act should be done or a course pursued.’ ” *Id.* (citation omitted). “[A] ministerial function is ‘of a clerical nature which a public officer is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, **without regard to his own judgment or opinion concerning the propriety of the act to be performed.**’ ” *Id.* (citation omitted and emphasis added).

⁸ Typically, whether or not an act is discretionary or ministerial is a key factor in a claim for sovereign immunity. *Davis*, 193 S.W.3d at 763 (“To discern whether an act is ministerial or discretionary, the court looks to three factors: (1) the nature of the duties; (2) how much policymaking or professional expertise and judgment the act involves; and (3) **the consequences of withholding immunity.**” (emphasis added)). While courts may order executive agencies to perform certain ministerial acts, *E. Missouri Coal. of Police v. City of Univ. City*, No. ED95564, 2011 WL 1661075, at *4 (Mo. Ct. App. May 3, 2011), Plaintiffs are unaware of any case applying the same rationale to allegations that an executive employee encroached on the powers of the judiciary.

Section 479.362.5 provides that, in the event a St. Louis County municipality “fail[s] to file an **accurate** or **timely** addendum [concerning its collections and compliance with the new criminal rules] or send excess revenue to the director of the department of revenue . . . the director of the department of revenue shall send a notice of the noncompliance to the presiding judge of the circuit court . . . and the presiding judge of the circuit court shall immediately order the clerk of the municipal court to certify all pending matters in the municipal court” until an accurate addendum is filed and any excess revenues are remitted to the director. [App. at 9] (emphasis added).

Here, the key fact which makes the actions of the director discretionary is the **accuracy** of the report. This is not a fact which the director will be able to determine from the face of the addendum. First, the director must confirm that the municipality accurately tallied the “fines, bond forfeitures and court costs” collected from minor traffic violations. Section 479.359.1 [App. at A8]. This includes an analysis of what constitutes a “court cost” and a “minor traffic violation” as defined in Section 479.350 [App. at A7]. Next, the director must verify the annual general operating revenue of the municipality. This is not a minor task since Section 479.350 defines “annual general operating revenue” as:

revenue that can be used to pay any bill or obligation of a county, city, town, or village, including general sales tax; general use tax; general property tax; fees from licenses and permits; unrestricted user fees; fines, court costs, bond forfeitures, and penalties. Annual general operating revenue does not include designated sales or use taxes; restricted user fees;

grant funds; funds expended by a political subdivision for technological assistance in collecting, storing, and disseminating criminal history record information and facilitating criminal identification activities for the purpose of sharing criminal justice-related information among political subdivisions; or other revenue designated for a specific purpose

[App. at A6-A7]. Reviewing the addendums will require a significant amount of judgment on the part of the director to determine what revenues and expenses are included and excluded in order to determine the accuracy of each municipality's submission. This is a complex task which manifestly does not constitute a ministerial act.

The same reasoning applies to the director's determination of the accuracy of the addendum certifying "substantial compliance" with the new criminal rules. The new criminal procedures mandated by Section 479.360.1 are expansive and affect all aspects of the criminal prosecutions in the Municipal Courts. [App. at 9]. In determining whether a municipality's certification that it has "substantially complied" with the new criminal rules is "accurate," the director is given unbridled discretion. The director's determination is far from ministerial.

D. Plaintiffs have standing to assert a Separation of Powers claim.

Defendants also asserted that plaintiffs lacked standing to assert a separation of powers claim in the lower court. Their contention does not withstand scrutiny. Standing only "requires that a party seeking relief has some legally protectable interest in the litigation so as to be affected directly and adversely by its outcome, 'even if that interest is attenuated, slight or remote.'" *Committee for Educ. Equal. v. State*, 294

S.W.3d 477, 484 (Mo. banc 2009) (citations omitted). Here, the plaintiff municipalities easily satisfy this minimal test for two independent reasons.

First, it is undeniable that the Municipal Courts perform an essential local judicial function for the plaintiff municipalities in adjudicating minor traffic violations and handling the related criminal proceedings. Depriving these municipalities of their local court system and replacing it with the geographically remote Circuit Courts will clearly directly and adversely impact the municipalities and the constituents they serve.

Second, Section 479.020.1 R.S. Mo. empowers any “city, town or village” to “provide by ordinance or charter for the selection, tenure and compensation of a municipal judge or judges consistent with the provisions of this chapter who shall have original jurisdiction to hear and determine all violations against the ordinances of the municipality.” Depriving the plaintiff municipalities of this statutory power also will directly and adversely impact the municipalities and the constituents they serve. Accordingly, the plaintiff municipalities had standing to assert their separation of powers claim in Counts V and VI of the Petition.

II. The Trial Court erred in sustaining Defendants' motion to dismiss Count VII of the Petition, because SB 5 violates Article V, Section 5 of the Missouri Constitution, in that it purports to amend the existing Supreme Court criminal rules without identifying the specific criminal rules being amended and without limiting the amendments to a single bill.

A. Standard of Review.

“[The Supreme Court] reviews the dismissal of the declaratory judgment petition for failure to state a claim de novo.” Bromwell v. Nixon, 361 S.W.3d 393, 398 (Mo. banc 2012) (citing Hess v. Chase Manhattan Bank, USA, N.A., 220 S.W.3d 758, 768 (Mo. banc 2007)). “A motion to dismiss for failure to state a claim on which relief can be granted is solely a test of the adequacy of the petition.” Id. (citing Nazeri v. Missouri Valley College, 860 S.W.2d 303, 306 (Mo. banc 1993)). “The petition is reviewed in an almost academic manner to determine if the plaintiff has alleged facts that meet the elements of a recognized cause of action or of a cause that might be adopted in that case.” Conway v. Citimortgage, Inc., 438 S.W.3d 410, 414 (Mo. banc 2014) (citing Nazeri, 860 S.W.2d at 306). “If the petition sets forth any set of facts that, if proven, would entitle the plaintiffs to relief, then the petition states a claim.” Ward v. W. Cty. Motor Co., 403 S.W.3d 82, 84 (Mo. banc 2013) (citing Lynch v. Lynch, 260 S.W.3d 834, 836 (Mo. banc 2008)).

B. SB 5 amends existing rules of criminal procedure without identifying the rules being amended and without being limited to that purpose.

Article V, Section 5 of the Missouri Constitution provides:

The Supreme Court may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law.... Any rule may be annulled or amended in whole or in part by a law limited to the purpose.

Under Article V, Section 5, “[t]he constitution, therefore, in no way ‘limit[s] or constrict[s] the power of the General Assembly. Its power is plenary, so long as it follows the constitutional procedure.’” *State ex rel. Collector of Winchester v. Jamison*, 357 S.W.3d 589, 592 (Mo. banc 2012) (citation omitted). And, “[w]here the legislature has enacted a statute pertaining to a procedural matter [that] is not addressed by or inconsistent with any Supreme Court rule, the statute must be enforced.” *State v. Teer*, 275 S.W.3d 258, 264 (Mo. banc 2009) (citing *State ex rel. Kinsky v. Pratte*, 994 S.W.2d 74, 76 (Mo.App.1999)).

However, in *Jamison*, this Court held that, in order to satisfy Article V, Section 5 of the Missouri Constitution, any legislation purporting to amend the procedural rules applicable to judicial proceedings was required to expressly refer to and identify the rules being amended and, in addition, be limited to the purpose of amending the identified rules. *Id.* at 592-594. The *Jamison* Court’s discussion of the two principal precedents – *State ex rel. K.C. v. Gant*, 661 S.W.3d 483 (Mo. banc 1983) and *State v. Reese*, 920 S.W.2d 94 (Mo. banc 1996) – is instructive and demonstrates the constitutional infirmity of SB 5 Section 479.360.

In *Gant*, the legislature enacted a bill purporting to give the juvenile court discretion whether to hold a hearing, whereas the existing rule entitled a minor or a minor's guardian to a hearing if certain requirements were met. *Jamison*, 357 S.W.3d at 593. The legislature's law "failed to comply with article V, section 5 because it was not contained in a bill limited to that purpose, nor did the bill expressly refer to the rule at all." *Id.*

Likewise, in *Reese*, the law enacted by the legislature violated Article V, Section 5 because it was not limited to annulling or amending the rule at issue, but was instead part of a "massive piece of legislation," and "made no mention of the conflicting rule." *Id.* Accordingly, since the legislation in *Jamison* – like that in *Gant* and *Reese* – neither expressly stated that it was amending a specific rule nor was limited to that purpose, but instead "contained some 18 provisions amending various other statutes and laws," this Court held that the legislation violated Article V, Section 5 of the Missouri Constitution. *Id.* at 594 (footnote omitted).

Prior to the enactment of SB 5, the Supreme Court had promulgated rules governing the proceedings for ordinance violations in Municipal Courts. Thus, Rule 37.01 states that "Rule 37 governs the procedure in all courts of this state having original jurisdiction of ordinance violations and the disposition of any such violation in a violation bureau." And, Rule 37.02 states that "Rule 37 is promulgated pursuant to authority granted this Court by Section 5 of Article V of the Constitution of Missouri and supersedes all statutes, ordinances and court rules inconsistent therewith."

Even a cursory examination of Rule 37 – from Rules 37.03 to 37.75 – demonstrates that it encompasses the entire field of criminal justice proceedings involving ordinance violations in the Municipal Courts. For example, Rule 37.47(a) provides in pertinent part that “a person arrested under a warrant for an ordinance violation who does not satisfy conditions for release shall be brought as soon as practicable before a judge of the court from which the warrant was issued.” Yet, pursuant to Section 479.360.1(1) of SB 5, and contrary to existing Rule 37.47(a), defendants in custody must have an opportunity to be heard by a judge not later than 48 hours on minor traffic violations and not later than 72 hours on other violations. There are no time limits in Rule 37.47(a). Likewise, pursuant to Section 479.360.1(2), defendants cannot be held in custody for more than 24 hours without a warrant after arrest. This new rule is clearly inconsistent with existing Rules 37.17, 37.18 and 37.19 which, again, contain no time limits.

Since SB 5 has therefore sought to amend existing Supreme Court Criminal Rules, the legislature was required by Article V, Section 5 of the Constitution to expressly refer to and identify the rules being amended in SB 5 and, in addition, to limit SB 5 to the purpose of amending the identified rules – notwithstanding the commendable nature of the new rules. *Jamison*, 357 S.W.3d at 592-594. It is undeniable that SB 5 does neither. It utterly fails to identify the Criminal Rules it is amending and contains a plethora of other unrelated provisions amending various other statutes and laws, including its regulation of the fines municipalities can retain from minor traffic offenses. Accordingly, since SB 5 Section 479.360.1 – like the legislation in *Gant*, *Reese* and

Jamison – did not expressly state what rules it was amending and was not limited to that purpose, Section 479.360.1 violated Article V, Section 5 of the Constitution.

III. The Trial Court erred in sustaining Defendants’ motion to dismiss Count VIII of the petition, because SB 5 violates Article V, Section 27(16) of the Missouri Constitution, in that it purports to limit the amount of fines a municipality can retain arising from minor traffic offenses.

A. Standard of Review.

“[The Supreme Court] reviews the dismissal of the declaratory judgment petition for failure to state a claim de novo.” Bromwell v. Nixon, 361 S.W.3d 393, 398 (Mo. banc 2012) (citing Hess v. Chase Manhattan Bank, USA, N.A., 220 S.W.3d 758, 768 (Mo. banc 2007)). “A motion to dismiss for failure to state a claim on which relief can be granted is solely a test of the adequacy of the petition.” Id. (citing Nazeri v. Missouri Valley College, 860 S.W.2d 303, 306 (Mo. banc 1993)). “The petition is reviewed in an almost academic manner to determine if the plaintiff has alleged facts that meet the elements of a recognized cause of action or of a cause that might be adopted in that case.” Conway v. Citimortgage, Inc., 438 S.W.3d 410, 414 (Mo. banc 2014) (citing Nazeri, 860 S.W.2d at 306). “If the petition sets forth any set of facts that, if proven, would entitle the plaintiffs to relief, then the petition states a claim.” Ward v. W. Cty. Motor Co., 403 S.W.3d 82, 84 (Mo. banc 2013) (citing Lynch v. Lynch, 260 S.W.3d 834, 836 (Mo. banc 2008)).

B. SB 5 violates the plaintiffs constitutional right to retain fines collected for violations of minor traffic ordinances.

Plaintiffs admittedly assert a novel claim under Article V, Section 27(16). To our knowledge, this is an issue of first impression for this Court. While we know of

no municipality which has previously asserted that Article V, Section 27(16) prevents the legislature from limiting its rights to enforce its ordinances and collect fines, plaintiffs' claim is based on the plain meaning of the Constitution.

Article V, Section 27(16) of the Missouri Constitution provides that municipal corporations with less than 400,000 inhabitants have the right to enforce their ordinances before a "circuit judge in the absence of a municipal judge" and to "retain any fines to which it may be entitled." Certainly, if the municipal judge is not absent, the municipal corporation has the same right to enforce ordinances and retain fines before a municipal judge. Moreover, the phrase "to which it may be entitled" does not authorize the General Assembly to deprive the municipal corporation of its constitutional right. The phrase "to which it may be entitled" merely refers to the proceedings in court and the judicial determination as to whether the ordinance has been violated and, if so, the amount of the fine.

Given the foregoing, by limiting the St. Louis County municipalities to retaining only 12.5% of the fines, bond forfeitures and court costs from minor traffic violations, SB 5 Sections 479.359 and 479.362 violate the constitutional rights of the St. Louis County municipalities to enforce their ordinances and retain the fines to which they are entitled without legislative restriction. The Trial Court's dismissal of Count VIII should be reversed.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Judgment of the Circuit Court of Cole County dismissing Counts V, VI, VII and VIII be reversed.

Respectfully submitted,

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Dated: September 8, 2016

Certificate of Compliance

The undersigned certifies under Rule 84.06(C) of the Missouri Rules of Civil Procedure that:

1. The Appellant's Brief includes the information required by Rule 55.03.
2. The Appellant's Brief complies with the limitations contained in Rule 84.06.
3. The Appellant's Brief, excluding cover page, signature blocks, certificate of compliance, and certificate of service, contains 6,208 words, as determined by the word-count tool contained in the Microsoft Word 2010 software with which this Appellant's Brief was prepared.

/s/ Sam J. Alton

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CERTIFICATE OF SERVICE

I hereby certify that, on September 8, 2016, the foregoing Brief of Respondents/Cross-Appellants was electronically filed with the Clerk of the Court using the Missouri Courts Electronic Filing System and served by email which sent notification to the following:

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