

No. SC 95624

IN THE
MISSOURI SUPREME COURT

City of Normandy, et al.,
Plaintiffs–Respondents–Cross-Appellants

v.

Jeremiah Wilson Nixon, et al.,
Defendants–Appellants.

Appeal from the Circuit Court of Cole County, Missouri
Case No. 15AC-CC00531

Brief of American Civil Liberties Union of Missouri Foundation as *Amicus Curiae*
in Support of Appellants filed with the consent of all parties

ANTHONY E. ROTHERT, #44827
JESSIE STEFFAN, #64861
ACLU of Missouri Foundation
454 Whittier Street
St. Louis, Missouri 63108
(314) 652-3114 telephone
(314) 652-3112 facsimile

GILLIAN R. WILCOX, #61278
ACLU of Missouri Foundation
406 West 34th Street, Suite 420
Kansas City, Missouri 64111
(816) 470-9933 telephone
(816) 652-3112 facsimile

Attorneys for Amicus Curiae

Table of Contents

Table of Authorities.....	2
Jurisdictional Statement.....	6
Interests of Amicus Curiae	7
Statement of Facts	8
Background.....	9
Argument.....	10
I. Although SB 5 amended §§ 67.287 and 479.359.2 in a manner that currently limits their application to St. Louis County and the municipalities in that county, they are not special laws.	10
A. <i>The characteristic of a charter form of government is open-ended.</i>	13
B. <i>The characteristic of a county population greater than 950,000 is open-ended.</i>	14
II. Even if §§ 67.287 and 479.359.2 were special laws, they are constitutional because they are supported by substantial justification.	18
Conclusion.....	33
Certificate of Service and Compliance.....	34

Table of Authorities

Cases

Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1 (Mo. banc 2008) 12, 19,
 20

City of DeSoto v. Nixon, 476 S.W.3d 282 (Mo. banc 2016) 12, 14, 15, 16

City of Springfield v. Sprint Spectrum, L.P., 203 S.W.3d 177 (Mo. banc 2006) 12

City of St. Louis v. State, 382 S.W.3d 905 (Mo. banc 2012)..... 16

Harris v. Mo. Gaming Comm’n, 869 S.W.2d 58 (Mo. banc 1994)..... 13

Jackson County v. Missouri, 207 S.W.3d 608 (Mo. banc 2006)..... 16, 17, 18

Jefferson Cty. Fire Prot. Dists. Ass’n v. Blunt, 205 S.W.3d 866 (Mo. banc 2006) ... 12, 13,
 15, 16

Liddell by Liddell v. Bd. of Educ. of City of St. Louis, 126 F.3d 1049 (8th Cir. 1997)..... 20

Mo. Mun. League v. State, 465 S.W.3d 904 (Mo. banc 2015) (citing § 302.341.2) 11

Sch. Dist. of Riverview Gardens v. St. Louis Cty., 816 S.W.2d 219 (Mo. banc 1991) 19

Treadway v. State, 988 S.W.2d 508 (Mo. banc 1999) 14

Statutes

Section 302.341, RSMo..... 11

Section 479.359, RSMo..... passim

Section 67.287, RSMo..... passim

Other Authorities

“Overcoming the Challenges and Creating a Regional Approach to Policing in St. Louis City and County,” POLICE EXEC. RESEARCH FORUM (PERF), Apr. 30, 2015, <http://www.policeforum.org/assets/stlouis.pdf>..... 23, 24, 27, 28

“Public Safety Study: Police Officer Certification & Requirements,” BETTER TOGETHER, Apr. 15, 2015”), <http://www.bettertogetherstl.com/wp-content/uploads/2015/04/BT-Police-Report-2-Licensure-and-Accreditation-Full-Report-FINAL1.pdf> 23

After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri at xiv, COPS OFFICE, U.S. DEP’T OF JUSTICE (2015), <http://ric-zai-inc.com/ric.php?page=detail&id=COPS-P317> 22, 26, 27

B. Norton *et al.*, CMTY. ORIENTED POLICING SERVS. (COPS), U.S. DEP’T OF JUSTICE, *Collaborative Reform Initiative: An Assessment of the St. Louis County Police Department* 20 (2015), <http://ric-zai-inc.com/Publications/cops-p316-pub.pdf>..... 27

B. Piper, “Edmunson officers write more traffic tickets,” KSDK, May 7, 2014, <https://phxux.ksdk.com/story/news/local/2014/05/07/edmundson-ticket-surge/8835243/> 25

J. Wolff *et al.*, Letter to Bill Thompson, Clerk of the Supreme Court of Missouri, Sept. 3, 2014, <http://www.slu.edu/Documents/law/News/Scanned%20document.pdf>..... 25

Missourians Organizing for Reform and Empowerment, *Transforming St. Louis County’s Racist Municipal Courts*, <http://raceandpolicing.issuelab.org/resources/25206/25206.pdf>..... 24

Mo. Ass’n of Counties, *Missouri Counties by Classification*, Jan. 2016,
http://www.mocounties.com/images/1282/document/2016-classification_821.pdf,
 13.14, 17

Mo. Econ. Research & Info. Ctr., Missouri Department of Economic Development,
 Population Data Series, *2010 County Population*,
<https://www.missourieconomy.org/indicators/population/countypop-2000-010.stm>. 17

Municipal Courts White Paper, ARCHCITY DEFENDERS 2014,
<http://www.archcitydefenders.org/wp-content/uploads/2014/11/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf> 26

R. Goldman, *Importance of State Law in Police Reform*, 60 ST. LOUIS U. LAW J. 2016,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2817551 28

Radley Balko, *How municipalities in St. Louis County, Mo., profit from poverty*, WASH. POST, Sept. 3, 2014, https://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/?utm_term=.c4da3b11faa1 27

Radley Balko, *St. Louis County, a year later*, WASH. POST, Aug. 10, 2015,
https://www.washingtonpost.com/news/the-watch/wp/2015/08/10/st-louis-county-a-year-later/?utm_term=.1a97fe35b64d..... 23

Report of the Municipal Division Work Group to the Supreme Court of Missouri, March 1, 2016, at 79, 81, <http://www.courts.mo.gov/file.jsp?id=98093>..... passim

S. Weich, *Municipal court judges in St. Louis County are told to open doors*, ST. LOUIS POST-DISP., July 1, 2014, <http://www.stltoday.com/news/local/crime-and->

courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html 24

T. Howard & H. Radcliffe, *Bad cops bounce from city to city*, ST. LOUIS POST-DISP., Dec. 1, 2003, http://www.stltoday.com/news/local/crime-and-courts/part-ii-bad-cops-bounce-from-city-to-city/article_e9dd169a-2cba-5d17-8c29-395bf5716b64.html 28

U.S. Census Bureau, 2007, <https://www2.census.gov/govs/cog/2007/mo.pdf> 14

U.S. DEP’T OF JUSTICE, *Investigation of the St. Louis County Family Court*, July 31, 2015, https://www.justice.gov/sites/default/files/crt/legacy/2015/07/31/stlouis_findings_7-31-15.pdf 26

Constitutional Provisions

Missouri Constitution, Art. III, section 40 9, 12

Missouri Constitution, Art. X, section 21 9

Missouri Constitution, Art. X, sections 16 9

Jurisdictional Statement

Amicus adopts the jurisdictional statement as set forth in Appellants' brief.

Interests of Amicus Curiae

The American Civil Liberties Union (ACLU) is a nonprofit, nonpartisan membership organization founded in 1920 to protect and advance civil liberties throughout the United States. The ACLU has more than 500,000 members nationwide. The ACLU of Missouri Foundation, whose forerunner was also founded in 1920, is an affiliate of the national ACLU. The ACLU of Missouri has more than 4,500 members. In furtherance of its mission, the ACLU engages in litigation, by direct representation and as *amicus curiae*, to encourage the protection of all rights guaranteed by the federal and state constitutions.

Statement of Facts

Amicus adopts the statement of facts as set forth in Appellants' brief.

Background

In 2015, Senate Bill 5 (SB 5) was passed and signed into law, becoming effective on August 28, 2015. Among other things, SB 5 amended Mo. Rev. Stat. §§ 67.287 and 479.359, imposing reforms on Missouri's municipal court system and setting minimum standards for municipal police departments located in St. Louis County.¹ In November 2015, twelve municipalities and two taxpayers in St. Louis County filed a petition alleging that SB 5's amendments to §§ 67.287 and 479.359 violated the Missouri Constitution. After a hearing, in which the trial court heard argument on the Plaintiffs' Motion for Preliminary and Permanent Injunction and Defendants' Motion to Dismiss, the trial court permanently enjoined enforcement of §§ 67.287 and 479.359.3 in their entirety as well as § 479.359.2 to the extent it sets a lower limit on annual revenue municipalities in St. Louis County can derive from traffic violations than it sets for other municipalities in the state.² In this brief, *Amicus* addresses the trial court's finding that

¹ All statutory citations are to Missouri Revised Statutes 2000, as amended, unless otherwise noted.

² The trial court found § 67.287 (setting minimum police standards for municipalities in St. Louis County) to be a special law in violation of Missouri Constitution, Art. III, section 40 and an unfunded mandate in violation of Missouri Constitution, Art. X, sections 16 and 21. The trial court found § 479.359.2 (capping the revenue rate from traffic fines for St. Louis County at 12.5 percent) to be a special law in violation of Missouri Constitution, Art. III, section 40, and § 479.359.3 (requiring an

§§ 67.287 and 479.359.2 are unenforceable special laws pursuant to Missouri Constitution, Art. III, section 40.

Argument³

I. Although SB 5 amended §§ 67.287 and 479.359.2 in a manner that currently limits their application to St. Louis County and the municipalities in that county, they are not special laws.

Currently §§ 67.287 and 479.359.2 will apply in only St. Louis County. Section 67.287, which requires municipalities to meet specified minimum standards for their police departments, applies to “any city, town, or village in any county with a charter form of government and with more than nine hundred fifty thousand inhabitants.”

addendum to annual financial reports submitted to the state by counties, cities, towns, or villages under § 105.145) to be an unfunded mandate in violation of Missouri Constitution, Art. X, sections 16 and 21. Several of Plaintiffs additional claims (separation of powers, amendment of criminal laws, retention of fines, and single subject claims) were dismissed for failure to state a claim. Plaintiffs have cross-appealed.

³ Pursuant to the protocol of the Missouri Supreme Court, as confirmed by the Clerk’s Office, all hyperlinks in this brief are separated with the insertion of a []. This is done, pursuant to this Court’s protocol, so that the links do not automatically take a reader to the cited website when that link is clicked on. Thus, in order to find the internet source used in this brief, the reader will have to retype the link without the inserted []. Each bracket is inserted near the beginning of the link following “http” or “https.”

§ 67.287.1(1). Section 479.359.1 prohibits a municipality from taking more than thirty percent of its annual revenue from fines for traffic violations.⁴ Section 479.359.2, however, lowers that cap to twenty percent, generally, and 12.5 percent for “any county with a charter form of government and with more than nine hundred and fifty thousand inhabitants and any city, town, or village with boundaries found within such county shall

⁴ “In 1999, the General Assembly passed what is commonly referred to as the ‘Macks Creek Law.’” *Mo. Mun. League v. State*, 465 S.W.3d 904, 905 (Mo. banc 2015) (citing § 302.341.2). The Macks Creek Law “prohibited any municipality with a municipal court division from receiving more than 45 percent of its total annual revenue from fines for traffic violations.” *Id.* “Collections in excess of this cap were remitted to the director of the department of revenue for distribution to local schools.” *Id.* “In 2009, this revenue cap was reduced from 45 percent to 35 percent.” *Id.* (citing § 302.341.2). In 2013, House Bill 103 was passed further reducing the revenue cap from traffic fines to 30 percent. *See id.* at 905-06. A pending challenge to the 2013 bill, however, became moot after enactment of SB 5. *See id.* (noting that “no matter what declaration the Court might make about the validity of HB 103 or the version of section 302.341.2 enacted therein, that declaration would have no practical effect going forward” because the rights and obligations of the parties “will be governed by HB 5”). Here, the trial court made no findings specific to § 479.359.1, which requires any municipality in Missouri with annual revenue from traffic violations in excess of the 30 percent limit to remit all excess revenue to the department of revenue to be distributed to local schools.

be reduced from thirty percent to twelve and one-half percent.” § 479.359.2. Currently, St. Louis County is the only county in Missouri with both a charter form of government and a population of more than 950,000. Thus, the minimum police standards and the revenue cap of 12.5 percent currently apply only to St. Louis County and the cities, towns, and villages within St. Louis County.

This circumstance might make §§ 67.287 and 479.359.2, at first glance, mistakenly appear to be special laws. Article III, section 40(30), of the Missouri Constitution provides: “The general assembly shall not pass any local or special law . . . where a general law can be made applicable, and whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject.” “A general law is ‘a statute which relates to persons or things as a class,’ while a special law is ‘a statute which relates to *particular persons or things* of a class.’” *Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ.*, 271 S.W.3d 1, 9 (Mo. banc 2008) (quoting *City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177, 184 (Mo. banc 2006)). Special legislation, which “made up 87% of state legislation passed in Missouri before 1859,” has been constitutionally prohibited since 1875. *Jefferson Cty. Fire Prot. Dists. Ass’n v. Blunt*, 205 S.W.3d 866, 868-89 (Mo. banc 2006).

In this case, however, the statutes are not special laws because they could be applicable in other counties in the future or become inapplicable in St. Louis County. “A law is facially special if it is based on close-ended characteristics, such as historical facts, geography, or constitutional status.” *Jefferson Cty.*, 205 S.W.3d at 870; *see also City of DeSoto v. Nixon*, 476 S.W.3d 282, 287 (Mo. banc 2016) (noting that closed-ended

characteristics are those that are non-changing and laws based on these are special “because others cannot come into the group nor can its members leave the group”). A facially special law is presumed unconstitutional, but this presumption can be overcome by a “‘substantial justification’ for the special treatment.” *Jefferson Cty.*, 205 S.W.3d at 870 (quoting *Harris v. Mo. Gaming Comm’n*, 869 S.W.2d 58, 65 (Mo. banc 1994)).

In contrast, a statute “based on open-ended characteristics is not facially special and is presumed to be constitutional.” *Id.* Laws based on open-ended characteristics are upheld “if the classification is made on a reasonable basis.” *Id.* “The test for whether a statute with an open-ended classification is special legislation under article III, section 40 of the Missouri Constitution is similar to the rational basis test used in equal protection analyses.” *Id.* “The burden is on the party challenging the constitutionality of the statute to show that the statutory classification is arbitrary and without a rational relationship to a legislative purpose.” *Id.*

Sections 67.287 and 479.359.2 are not special laws because the characteristics they are based on—*i.e.*, form of government (charter) and population size (more than 950,000 inhabitants)—are open-ended.

A. The characteristic of a charter form of government is open-ended.

The statutes will apply in only those counties with a charter form of government.⁵ The characteristic of a charter form of government is open-ended because it is subject to

⁵ There are 114 counties in Missouri. See Mo. Ass’n of Counties, *Missouri Counties by Classification*, Jan. 2016,

change. *See Treadway v. State*, 988 S.W.2d 508, 510-11 (Mo. banc 1999) (holding that the challenged laws were general, not special, because they “identify the counties by factors that change such as by reference to county classification, population, charter status and nonattainment criteria”). Charter status is “not [an] immutable characteristic[.]” *Id.* at 510. A county could “in the future fall into one of the listed factors due to changes in county classification, population, charter status and nonattainment criteria.” *Id.* at 510-11.

B. The characteristic of a county population greater than 950,000 is open-ended.

As this Court recently recognized, “[n]ormally, population classifications are open-ended in that others may fall into the classification and members of the classification may leave it.” *DeSoto*, 476 S.W.3d at 287.

http://www.mocounties.com/images/1282/document/2016-classification_821.pdf. Of those, four currently have a charter form of government—Jackson County, St. Charles County, St. Louis County, and Jefferson County. *See* Mo. Ass’n of Counties, *Missouri Counties by Classification*, http://www.mocounties.com/images/1282/document/countyclass_768.pdf. “Missouri ranks sixth among the states in number of local governments, with 3,723 as of October 2007.” *See* U.S. Census Bureau, 2007, <https://www2.census.gov/govs/cog/2007/mo.pdf>.

There is narrow exception to the normal rule “where the classification is so narrow that as a practical matter others could not fall into the classification.” *Jefferson Cty.*, 205 S.W.3d at 870; *see also DeSoto*, 476 S.W.3d at 287. In *Jefferson County*, this Court devised a test to aid in determining whether a population classification can maintain its presumption of constitutionality as an open-ended characteristic:

The presumption that a population-based classification is constitutional is overcome if: (1) a statute contains a population classification that includes only one political subdivision, (2) other political subdivisions are similar in size to the targeted political subdivision, yet are not included, and (3) the population range is so narrow that the only apparent reason for the narrow range is to target a particular political subdivision and to exclude all others.

205 S.W.3d at 870-71; *see also DeSoto*, 476 S.W.3d at 284-86. Each of the three criteria must be established to overcome the presumption that a population classification is open-ended. If all three circumstances exist, those defending the challenged law must “show substantial justification for the classification.” *Jefferson Cty.*, 205 S.W.3d at 871.

This Court has found statutes were special laws in *DeSoto* and *Jefferson County*. In *DeSoto*, the challenged statute in *DeSoto* had six specific limiting criteria that had to be met, including two population ranges: 200,000-350,000 for a county population and 6,000-7,000 for a city population. 476 S.W.3d at 285. In *Jefferson County* the statute at issue “contain[ed] the narrowest population of any reported case of this Court.” 205 S.W.3d at 871 (noting a population range between 198,000 and 199,200).

The population classification in §§ 67.287 and 479.359.2 is more akin to the one found to be open-ended in *Jackson County v. Missouri*, 207 S.W.3d 608 (Mo. banc 2006). The population classification in that case was much narrower than the one in §§ 67.287 and 479.359.2. That statute applied to only “a county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants.” *Jackson County*, 207 S.W.3d at 610-12. Nevertheless, the classification did not satisfy the *Jefferson County* exception because “[t]he population range here is sufficiently broad to not invoke the exception.” 207 S.W.3d at 612. Thus, “the test for whether a statute is special is not whether another falls within its parameters at a particular time but whether ‘others may fall into the classification.’” *City of St. Louis v. State*, 382 S.W.3d 905, 915 (Mo. banc 2012) (quoting *Jefferson Cty.*, 205 S.W.3d at 870)).

Jackson County is the most applicable precedent. The exception did not apply even though “there are no counties similar in size to Jackson County.” *Jackson County*, 207 S.W.3d at 612; *cf. Desoto*, 476 S.W.3d at 288-89 (noting that, while DeSoto was the only town that fit within the narrow classification of the challenged statute, there are many other cities and towns in Missouri similar in size to DeSoto); *Jefferson Cty.*, 205 S.W.3d at 871 (noting that, while Jefferson County was “the only county with a population between 198,000 and 199,200[, t]here are other counties of about the same size as Jefferson County (e.g., Clay County, population 184,006)”). The difference was that towns the size of DeSoto and counties the size of Jefferson were excluded from the classification whereas there were no same-sized counties to excluded in *Jackson County*.

Thus, “the exception is inapplicable and the statute is presumed constitutional.” *Jackson County*, 207 S.W.3d at 612.

Based on 2010 census data, St. Louis County has a population of 998,954 residents, which is a decline of 1.7 percent between 2000 and 2010. *See* Mo. Ass’n of Counties, *Missouri Counties by Classification*, Jan. 2016, http://www.mocounties.com/images/1282/document/countyclass_768.pdf; Mo. Econ. Research & Info. Ctr., Missouri Department of Economic Development, Population Data Series, *2010 County Population*, <https://www.missourieconomy.org/indicators/population/countypop-2000-010.stm>. The next largest county in Missouri is Jackson County, with a 2010 population of 674,158, which was an increase of 2.9% between 2000 and 2010. *See* Mo. Ass’n of Counties, *Missouri Counties by Classification*, Jan. 2016, http://www.mocounties.com/images/1282/document/countyclass_768.pdf; Missouri Mo. Econ. Research & Info. Ctr., Missouri Department of Economic Development, Population Data Series, *2010 County Population*, <https://www.missourieconomy.org/indicators/population/countypop-2000-010.stm>.⁶

⁶ According to these same sources, only one other county and one city have populations over 300,000. St. Charles County has a population of 360,485 (a 27% increase between 2000 and 2010) and St. Louis City has a population of 319,294 (an 8.3% decline between 2000 and 2010). Three counties have populations over 200,000. Greene County has a population of 275,174 (a 14.5% increase between 2000 and 2010),

The population classification in §§ 67.287 and 479.359.2 satisfies neither the second nor third prong of the *Jefferson County* exception. Just as this Court found that there are no counties similar in size to Jackson County, there are also no counties similar in size to St. Louis County. *See Jackson County*, 207 S.W.3d at 612. St Louis County is the only county larger than Jackson County. If Jackson County were similar in size for *Jefferson County* analysis, then St. Louis County would have been deemed similar in size to Jackson County in *Jackson County*. And if any county other than Jackson is similar in size to St. Louis County, then it would have been even more similar to Jackson County. Moreover, the population range in *Jackson County* was sufficiently broad at a mere 100,000 persons, here it is broader, applying to a county that achieves a population of any size more than 950,000 inhabitants. *See id.*

Because §§ 67.287 and 479.359.2 apply, or not, based on only open-ended characteristics, they are not special laws.

II. Even if §§ 67.287 and 479.359.2 were special laws, they are constitutional because they are supported by substantial justification.

Should this Court depart from *Jackson County* and conclude that the statutes challenged here are special laws, it does not end the inquiry. Because of the abusive policing and municipal court practices inflicted upon Missourians by municipalities in St. Louis County, special laws would be supported by substantial justification.

Clay County has a population of 221,939 (a 20.6% increase between 2000 and 2010), and Jefferson County has a population of 218,733 (a 10.4% increase between 2000 and 2010).

To determine if a law is supported by substantial justification, a court must determine if “the vice that is sought to be corrected, the duty imposed, or the permission granted by the statute [is] so unique to the persons, places, or things classified by the law that a law of general applicability could not achieve the same result.” *Sch. Dist. of Riverview Gardens v. St. Louis Cty.*, 816 S.W.2d 219, 221 (Mo. banc 1991).

Just as in *Board of Education of St. Louis*, 271 S.W.3d at 11, “a substantial justification exists for the special treatment” here, including the minimum police standards and the revenue cap of 12.5 percent. In *Board of Education of St. Louis*, the city board challenged a law providing that, in the event a school district lost accreditation, “any powers granted to any *existing school board in a city not within a county* on or before August 28, 1998, shall be vested with the special administrative board of the transitional school district [TSD]” 271 S.W.3d at 10 (emphasis added). As this Court noted, “[t]here is only one entity that will ever meet the description of an “*existing school board in a city not within a county on or before August 28, 1998.*” *Id.* This Court concluded that “[b]ecause the statute applies only to existing school boards, it contains a closed-ended classification and is facially special.” *Id.* However, turning to the question of substantial justification, this Court found that the statute at issue (§ 162.1100), originally part of Senate Bill 781, “was a vital component of the settlement agreement disposing of federal desegregation litigation concerning St. Louis’ public schools.” *Id.* It was noted further that,

“[g]iven the long history of state-mandated, segregated schools [in Missouri], the complexity of the issues, and the difficulty of developing a plan that will

ensure that students of all races will have a continuing equal opportunity for a quality, integrated education” the state possessed a substantial justification and an important interest in reaching a settlement to dispute of the pending federal legislation.

Id. (quoting *Liddell by Liddell v. Bd. of Educ. of City of St. Louis*, 126 F.3d 1049, 1056 (8th Cir. 1997)). “The creation of the TSD was a component of SB 781, the bill that enabled a settlement to be reached and ended the ongoing federal litigation.” *Id.* at 11. “As a result, even though section 162.1100.3 is a facially special law, a substantial justification exists for the special treatment and creation of the TSD.” *Id.*

Repeatedly, investigations have shown that municipal courts and law enforcement in St. Louis County have a unique set of problems that justifies the enactment of a facially special law. For instance, following the Michael Brown shooting and the mass demonstrations that followed, the United States Department of Justice began an investigation into the practices of the Ferguson Police Department. *See Investigation of the Ferguson Police Department*, U.S. DEP’T OF JUSTICE, Civil Rights Division, March 4, 2015, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [hereinafter *Ferguson Report*]. That investigation “revealed a pattern or practice of unlawful conduct within the Ferguson Police Department that violates the First, Fourth, and Fourteenth Amendments to the United States Constitution, and federal statutory law.” *Id.* The investigation uncovered significant problems relating to the police department’s focus on generating revenue over public safety needs, an approach to law enforcement that

“reflects and reinforces racial bias, including stereotyping,” and a lack of trust between the police department and “a significant portion of Ferguson’s residents, especially African Americans.” *Id.* at 2-6. Although the Department of Justice focused on Ferguson, its conclusions implicated other municipal police departments in St. Louis County as well. *See id.* at 22-23 (describing the “wanted” system used by “FPD and other law enforcement agencies in St. Louis County” to purposefully circumvent the court system and finding evidence that the use of wanted “has resulted in numerous unconstitutional arrests in Ferguson”), 79 n.54 (“Although beyond the scope of this investigation, it appears clear that individuals’ experiences with other law enforcement agencies in St. Louis County, including with the police departments in surrounding municipalities and the County Police, in many instances have contributed to a general distrust of law enforcement.”).

Analysis of the aftermath of Ferguson demonstrated that reforms throughout St. Louis County are necessary and cannot be undertaken at the municipal level. When the U.S. Department of Justice’s Office of Community Oriented Policing Services (COPS) undertook an after-action review of the regional police response to the mass demonstrations in Ferguson, one of its six key findings was that “[c]omplicating factors were presented by the response of smaller municipal law enforcement agencies in the region, each with disparate missions, policies, training, equipment, and policing cultures.” Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri* at xiv, COPS

OFFICE, U.S. DEP'T OF JUSTICE, 2015, <http://ric-zai-inc.com/ric.php?page=detail&id=COPS-P317> [hereinafter COPS After-Action Review].

In fact, the report concludes that St. Louis County's chief mechanism for cooperation and deployment following large-scale situations, the Code 1000 plan, had "proved to be an ineffective response mechanism." *Id.* at *xvi*. Further, the researchers found, Code 1000 might not ever work because the disparities among "the many municipalities and small police departments in St. Louis County" lead to "tactical inconsistencies" and "organizational control issues." *Id.* at 32. The "lack of consistency in policy led to unclear arrest decisions, ambiguous authority on tactical orders, and a confusing citizen complaint process." *Id.* at 72.

The police on the ground, including officers from St. Louis County itself, recognized that the varying standards and policies of municipal departments had impeded their effectiveness: "Law enforcement personnel interviewed consistently stated that the number of police departments from small municipalities made the Ferguson response more difficult. Interviewees perceived that some officers from the small agencies did not appear to have the knowledge and skills generally developed through experience and training beyond the required minimum POST⁷ standards." *Id.* at 66.

One of the report's "lessons learned" was that "[l]aw enforcement agencies responding to a mutual aid situation must understand that they inherit the relationships established by the requesting agency." *Id.* at 129. This is a theme repeated over and over

⁷ Peace Officer Standards and Training (POST) Commission

in every investigation of municipal police and court practices within St. Louis County. See Radley Balko, *St. Louis County, a year later*, WASH. POST, Aug. 10, 2015, https://www.washingtonpost.com/news/the-watch/wp/2015/08/10/st-louis-county-a-year-later/?utm_term=.1a97fe35b64d (noting examples of why reform in the County was “necessary” by referencing issues in St. Ann, Edmundson, and Bellefontaine Neighbors, as well as Ferguson). Data-based research commissioned after the Michael Brown shooting shows that radically fragmented policing in St. Louis County has a direct, negative impact on the quality and cost of police services day to day. See *Public Safety Study: Police Officer Certification & Requirements*, BETTER TOGETHER, Apr. 15, 2015, <http://www.bettertogetherstl.com/wp-content/uploads/2015/04/BT-Police-Report-2-Licensure-and-Accreditation-Full-Report-FINAL1.pdf> (collecting data on how policing services are provided in St. Louis County, reporting that 75% of the police departments in St. Louis County are not accredited, and concluding that “[s]ignificant disparities exist” in the training requirements of “St. Louis County’s 60 police departments”); *Overcoming the Challenges and Creating a Regional Approach to Policing in St. Louis City and County*, POLICE EXEC. RESEARCH FORUM (PERF), Apr. 30, 2015, <http://www.policeforum.org/assets/stlouis.pdf> [hereinafter 2015 PERF Report] (summarizing its research and concluding, among other things, that “police standards vary dramatically from agency to agency,” that the St. Louis County policing structure “undermines police operations” and fosters “confusion and distrust among residents,” and recommending that a set of hiring and training standards be implemented in St. Louis County); *Report of the Municipal Division Work Group to the Supreme Court of*

Missouri, March 1, 2016, at 79, 81, <http://www.courts.mo.gov/file.jsp?id=98093> (noting that “St. Louis County presents unique circumstances,” that “these must be considered as problems of supervision and/or governance that should be addressed locally,” and that, though the work group focused on municipal court practices, “[m]any specific complaints have been made about police practices . . . particularly in St. Louis County”).

The problems in law enforcement in St. Louis County are directly reflected in the revenue-driven practices of the municipal courts. *See, e.g.*, 2015 PERF Report (concluding that many St. Louis County municipalities have a “grossly inappropriate mission” of “generating large portions of the operating revenue for the local government”); Missourians Organizing for Reform and Empowerment, *Transforming St. Louis County’s Racist Municipal Courts*, <http://raceandpolicing.issueab.org/resources/25206/25206.pdf> (compiling resources and noting that, “[i]n the wake of the Ferguson uprising, numerous media outlets, organizations, have pointed to the municipal courts as a prime example of entrenched structural racism in the St. Louis region”); U.S. DEP’T OF JUSTICE, *Ferguson Report* 49 (“Our investigation shows that other municipalities in the area have engaged in a number of practices that have the effect of discouraging people from attending court sessions.”); S. Weich, *Municipal court judges in St. Louis County are told to open doors*, ST. LOUIS POST-DISP., July 1, 2014, http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html (reporting that the presiding judge of the St. Louis County

Circuit Court had “sent a strongly worded letter” to County municipal courts for unconstitutionally prohibiting members of the public, including children of municipal defendants, from attending court, which causes defendants “to be saddled with additional charges for missing their court dates”); B. Piper, *Edmunson officers write more traffic tickets*, KSDK, May 7, 2014,

<https://phxux.ksdk.com/story/news/local/2014/05/07/edmundson-ticket-surge/8835243/> (reporting that, in April 2014, the mayor of Edmunson wrote to the police force reminding them that ticket revenues paid their salaries and, in May 2014, ticket issuances doubled); J. Wolff et al., Letter to Bill Thompson, Clerk of the Supreme Court of Missouri, Sept. 3, 2014,

<http://www.slu.edu/Documents/law/News/Scanned%20document.pdf> (requesting amendment to Supreme Court rule to “clarify the obligation of municipal courts to proportion fines to the resources of offenders”); *Report of the Municipal Division Work Group to the Supreme Court of Missouri*, March 1, 2016, at 15, 20,

<http://www.courts.mo.gov/file.jsp?id=98093> (noting in the introduction that, “[i]n the scrutiny of Ferguson’s municipal policing and municipal court system that followed, questions arose about the operation of municipal courts generally in St. Louis County”; “the most serious concerns, operational deficiencies, and resulting loss of public confidence” in the municipal courts is “largely limited” to municipalities within St. Louis County; and “abuses and poor practices” in the County had “been well-documented and thoroughly substantiated in many cases”).

The fact is that, in St. Louis County, “poor minorities are pulled-over more frequently, they are let go without a ticket less frequently, and they are in all likelihood the only group to see the inside of a jail cell for minor ordinance violations.” *Municipal Courts White Paper*, ARCHCITY DEFENDERS 2014, <http://www.archcitydefenders.org/wp-content/uploads/2014/11/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf>. Moreover, “the poor, particularly poor minorities, suffer significantly in their forced dealings with St. Louis’ municipal court system.” *Id.* at 3; *see also* U.S. DEP’T OF JUSTICE, *Investigation of the St. Louis County Family Court*, July 31, 2015, https://www.justice.gov/sites/default/files/crt/legacy/2015/07/31/stlouis_findings_7-31-15.pdf (concluding that the disparate outcomes for Black children and white children who encounter the juvenile justice system “cannot be explained by factors other than race”); COPS After-Action Review, at 116 (finding that the Ferguson protests were in part “a manifestation of the long-standing tension between the Ferguson PD and the African-American community” and recommending that officers receive training on “procedural justice, implicit bias, cultural diversity, and related topics”).

Even though SB 5 is not facially special, the unique Balkanization of the municipal courts and law enforcement agencies in St. Louis County would alone provide substantial justification for a facially special law, since effective corrective action cannot be taken city by city. Jackson County, for instance, “is geographically larger than St. Louis County and has about two-thirds the population.” R. Balko, *How municipalities in St. Louis County, Mo., profit from poverty*, WASH. POST, Sept. 3, 2014,

https://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/?utm_term=.c4da3b11faa1. “Yet Jackson County has just 19 municipalities, and just 15 municipal courts—less than a quarter of municipalities and courts in St. Louis County.” *Id.*; see also 2015 PERF Report, at 2, 41, 43–46 (noting that about one-third of St. Louis County municipalities with police departments “occupy less than one square mile”; different jurisdictions have different ordinances, enforcement strategies, fine and fee structures, and policies on use of force, de-escalation, and interactions with persons with mental health problems; jurisdictions inefficiently bear costs individually for equipment, vehicles, and training; and the departments have “dramatic variations in the quality and professionalism of police services”); B. Norton *et al.*, CMTY. ORIENTED POLICING SERVS. (COPS), U.S. DEP’T OF JUSTICE, *Collaborative Reform Initiative: An Assessment of the St. Louis County Police Department* 20 (2015), <http://ric-zai-inc.com/Publications/cops-p316-pub.pdf> (“The close proximity and fragmented nature of policing in the St. Louis region coupled with heavy enforcement by some municipalities in the region has created an environment of distrust and difficulty for the SLCPD [St. Louis County Police Department] and the community it serves.”); COPS After-Action Review at 136 (“Even though many of the municipal police departments are small, virtually all of the communities are contiguous; in many ways, there is a similar effect of policing a major city yet being part of a much-smaller governmental structure.”).

In fact, the radical fragmentation of St. Louis County has enabled a practice now popularly known as the “muni shuffle.” The Police Executive Research Forum described the practice this way:

“Muni shuffle” describes a two-step process in which 1) a police department separates a problem officer before completing a formal disciplinary proceeding that might cost the officer his or her state-issued police certificate; and then 2) another department, eager to find an already trained and certified officer at a low cost, hires the officer without fully investigating his or her background.

2015 PERF Report at 46. This practice has been universally condemned but—likely because of the obvious financial incentives—remains a “common occurrence.” *Id.*; see also T. Howard & H. Radcliffe, *Bad cops bounce from city to city*, ST. LOUIS POST-DISP., Dec. 1, 2003, http://www.stltoday.com/news/local/crime-and-courts/part-ii-bad-cops-bounce-from-city-to-city/article_e9dd169a-2cba-5d17-8c29-395bf5716b64.html (collecting a dozen case studies and reporting that “[o]fficials are broadly aware of the muni shuffle”); R. Goldman, *Importance of State Law in Police Reform*, 60 ST. LOUIS U. LAW J. 2016, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2817551 (“Although it is generally assumed that police departments will not knowingly hire officers who have been fired or resigned under fire from other departments, there are many reasons why such officers are, in fact, hired.”). The fact that the muni shuffle continues today demonstrates the substantial need for the General Assembly to step in.

By its order dated May 14, 2015, this Court established⁸ a work group to study municipal court practices and policies and to recommend changes to be implemented by

⁸ The report specifically states:

the Court or by other bodies. The Municipal Division Work Group concluded largely that the worst problems with municipal courts were occurring in St. Louis County and made many specific notations were made regarding St. Louis County, including the following notation in the section containing recommendations regarding warrants:

Concern has been expressed from many places that Missouri's municipal courts have not sufficiently protected the constitutional rights of defendants, and that the use of warrants by the municipal courts has been excessive, and extremely detrimental to many persons, particularly those of limited means. *Many of the concerns regarding municipal warrants relate to specific conditions in St. Louis County.*

Report of the Municipal Division Work Group to the Supreme Court of Missouri, March 1, 2016, at 79, 81, <https://www.courts.mo.gov/file.jsp?id=98093>, at 4 (emphasis added). Additionally, in a section titled "Other issues Regarding Municipal Courts" the work

The Work Group that submits this report might not exist but for tragic events in Ferguson, Missouri, surrounding the death of Michael Brown. In the scrutiny of Ferguson's municipal policing and municipal court system that followed, questions arose about the operation of municipal courts generally in St. Louis County. In an effort to consider the steps that were legally available to the Supreme Court of Missouri under current law to address the St. Louis County issues, the Court created the Work Group. *See* <https://www.courts.mo.gov/file.jsp?id=98093>, at 15.

group included a subsection titled “Providing for Adequate Supervision of Municipal Courts in St. Louis County.” *Id.* at 8. The specific recommendation for St. Louis County reads as follows:

That the Circuit Court Budget Committee of the Supreme Court of Missouri authorize, and the General Assembly appropriate funds for, at least two full-time professional staff positions in the Circuit Court of St. Louis County, for the purpose of providing sufficient staff to assist the Presiding Judge of the Twenty-First Judicial Circuit in supervising the municipal courts in that Circuit. These staff positions would be intended to provide personnel who would be able to make frequent scheduled and unannounced visits to the municipal courts, to review their records and practices with the municipal judges and clerks, to observe the courts in session, to evaluate whether the municipal courts are complying with Missouri statutes and supreme court rules, and to report any observed deficiencies to the Presiding Circuit Judge for individualized attention as required.

Id. at 8-9. No other county received a specific recommendation similar to that regarding St. Louis County.

The report also noted the following, which provides significant support for the special treatment of St. Louis County:

The Work Group conducted three public hearings across the state, to determine the level of concern with the operation of municipal courts. Neither in Springfield nor in Kansas City did these public hearings produce

any evidence of dissatisfaction with the municipal courts or evidence that the municipal courts operating outside St. Louis County had fallen into the revenue-producing mode previously described. Indeed, the lack of expressions of concern of the citizenry, as well as the 19 Work Group's independent inquiries, showed that most municipal courts in Missouri seek justice first and provide reasonable efficiency in their operations.

The public hearing conducted in St. Louis, however, stood in stark contrast. A much larger crowd included numerous citizens who took time from their daily lives to share their concerns and complaints regarding the functioning of the municipal court system, with a clear focus on problems in St. Louis County. The testimony from this hearing served to reinforce many of the observations and concerns noted in the various reports we have reviewed, cited below in the Reference Materials section. The evidence we have received to date suggests that the most serious concerns, operational deficiencies, and resulting loss of public confidence in Missouri's municipal court system, are largely limited to certain municipal courts in St. Louis County.

Id. at 18-19 (emphasis added).

The report also noted:

Many specific complaints have been made about police practices and the operation of the municipal courts, particularly in St. Louis County and the St. Louis metropolitan area. These have included the excessive numbers

of tickets, municipal cases, and outstanding warrants in relation to the actual population, as compared to the practice elsewhere in Missouri; writing excessive numbers of citations to a single defendant arising from a single incident; a single individual receiving citations in multiple municipalities for the same violation (e.g., vehicle equipment violations); fines set at amounts unreasonably high in relation to the charged conduct, resulting in higher bond amounts in cases of failure to appear; reluctance of some municipal courts to grant probation with community service in lieu of fines; and reluctance of some municipal courts to allow payment plans on fines and costs. The resulting burdens of all these practices fall most heavily on persons of limited income and limited means.

It is the belief of this Work Group that all of these concerns could be alleviated to a significant degree, if the economic incentives which encourage certain municipalities to engage in these practices would be eliminated.

Id. at 79. The work group opined further that, eliminating the economic incentives “may tend to reveal whether there are municipal governments which exist solely for the improper purposes of collecting such revenue, rather than because their residents truly desire to maintain a smaller local government entity that may be more responsive and accountable to local concerns and the desires of local citizens.” *Id.* at 79-80.

In all, St. Louis County is singled out in this report approximately forty-four times. *See generally id.* The only other counties specifically mentioned are Jackson County (two times) and Jefferson County (three times). *See id.* at 30, 59, 85. “The St. Louis region is

home to roughly one-third of our State's people, and the abuses and poor practices in some of the St. Louis area municipal courts have been well-documented and thoroughly substantiated in many cases." *Id.* at 19.

Conclusion

Sections 67.287 and 479.359.2 are not special laws. However, even if they were, they are supported by substantial justification. St. Louis County faces unique and serious issues with its municipal law enforcement and courts. Municipalities in St. Louis County are engaging in practices that harm Missourians. The legislature is not impotent to demand reforms necessary to protect these citizens from further abuse.

Respectfully submitted,

/s/ Anthony E. Rothert
 Anthony E. Rothert, #44827
 Jessie Steffan, #64861
 ACLU of Missouri Foundation
 454 Whittier Street
 St. Louis, Missouri 63108
 (314) 652-3114
 arothert@aclu-mo.org
 gdoty@aclu-mo.org
 amcnulty@aclu-mo.org

Gillian R. Wilcox, #61278
 ACLU of Missouri Foundation
 406 West 34th Street, Suite 420
 Kansas City, Missouri 64111
 (816) 470-9933
 gwilcox@aclu-mo.org

Attorneys for Amicus Curiae

Certificate of Service and Compliance

The undersigned hereby certifies that on September 5, 2016, the foregoing amicus brief was filed electronically and served automatically on counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06 and Local Rule XLI; (3) contains 6,176 words, as determined using the word-count feature of Microsoft Office Word. Finally, the undersigned certifies that electronically filed brief was scanned and found to be virus-free.

/s/ Anthony E. Rothert