

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

REPLY BRIEF OF RESPONDENTS/CROSS-APPELLANTS

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REPLY ARGUMENT

A. Introduction

The State's Response Brief on the cross-appeal has crystallized the cross-appeal issues for this Court. Plaintiffs contend that the relevant provisions in Senate Bill No. 5 ("SB 5") confer discretionary power on the director of the department of revenue – an executive branch employee – to order the Circuit Court to divest the Municipal Court of its jurisdiction to hear and dispose of its cases. The State contends that the director only has a "ministerial" power and the Circuit Court itself is ordering the Municipal Court to certify all of its matters to the Circuit Court. State Response Brief ("Resp. Br.") at 5-7. Plaintiffs will demonstrate below that the provisions of SB 5 refute the State's contentions.

Likewise, Plaintiffs contend that SB 5's provisions imposing new rules on the municipal courts, which "addressed" and were "inconsistent" with the existing rules promulgated by this Court, were not constitutionally implemented. The State contends that the rules promulgated by SB 5 were not inconsistent with the existing criminal rules at the time SB 5 was enacted and, therefore, they were constitutionally implemented. Resp. Br. at 7-10. Plaintiffs will demonstrate below that SB 5's new rules were not constitutionally implemented.

Moreover, as discussed below, this Court's September 20, 2016 adoption of "Minimum Operating Standards for Missouri Courts: Municipal Divisions" has not superseded the new municipal court rules imposed by SB 5 and, therefore, this issue is still ripe for review and not moot.

Finally, the provisions of SB 5 that require transfer of municipal court fines to a state official for state use after lawful imposition and collection run counter to the Missouri Constitution which requires that all such fines be retained by the municipality.

B. SB 5 confers discretionary powers on the director of the department of revenue to order the Circuit Courts to divest the Municipal Courts of their jurisdiction.

As discussed in greater detail in Plaintiffs' opening brief, SB 5 Sections 479.359 and 479.362 authorize the director of the department of revenue to compel the Circuit Courts to certify all the pending matters in the Municipal Courts 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. In reaching this decision, the director is expressly empowered by SB 5 to determine if a municipality has filed an "accurate" addendum:

If any county, city, town, or village has failed to file an **accurate** or timely addendum 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 . . .

Section 479.362.5 (emphasis added).

In order to make this “accuracy” determination, the director must apply the complicated SB 5 definitions of “annual general operating revenue,” “court costs” and “minor traffic violations.” *See* Sections 479.350(1), 479.350(2) and 479.350(3). In addition, since the enactment of SB 572, the director’s “accuracy” determination has become even more complicated because of the inclusion of “municipal ordinance violations” in the addendum computation. *See* Section 479.350(4) and 479.359.3. All of the foregoing will indisputably include the exercise of judgment and discretion by the director.

Then, once the director decides the addendum is inaccurate and the municipality fails to rectify the inaccuracy **to the satisfaction of the director**, the director is required to send a “notice of the noncompliance to the presiding judge of the circuit court,” who is **required**, in turn, to “immediately order the clerk of the municipal court to certify all pending matters in the municipal court.” Section 479.362.5. The presiding judge has no discretion. Thus, it is the director’s “notice of the [municipality’s] noncompliance” which divests the Municipal Court of its jurisdiction.

In sum, by vesting such enormous judicial power in the director – an executive branch employee – SB 5, as amended by SB 572, has violated the separation of powers enshrined in the Constitution.¹

¹ The same reasoning applies to the director’s unbridled determination concerning whether a municipality’s certification that it has “substantially complied” with the

C. The General Assembly did not constitutionally implement the new rules promulgated by SB 5.

The State does not dispute Plaintiffs' contention that the legislature's enactment of new rules applying to the Municipal Courts did not comply with Article V, Section 5. Instead, the State claims that such constitutional compliance was not required because the new rules were not inconsistent with existing rules previously adopted by this Court:

If SB 5 attempted to amend or annul any existing Supreme Court rules, then art. V, sec. 5 would have required the legislature to identify the specific rule to be amended in a bill limited to that purpose. But the Municipalities have never identified any court rules with which the procedures mandated in SB 5 are actually inconsistent.

Resp. Br. at 8 (emphasis in original).

As demonstrated in Plaintiffs' opening brief, however, the new rules enacted by SB 5 were inconsistent with this Court's existing rules when SB 5 was enacted because, unlike this Court's rules, the new rules imposed specific time limits on the Municipal Courts where none were imposed before. Respondents' Opening Brief at 22-23. Therefore, this case is governed by this Court's decisions in *State ex rel. Collector of*

new criminal rules is "accurate." See Sections 479.360.1, 479.362.1 and 479.362.5.

Winchester v. Jamison, 357 S.W.3d 589 (Mo. banc 2012) (adding fifth requirement to class action prerequisites); *State v. Reese*, 920 S.W.2d 94 (Mo. banc 1996) (changing time period for substitution of parties); and *State ex rel. K.C. v. Gant*, 661 S.W.2d 483 (Mo. banc 1983) (making juvenile hearing mandatory instead of discretionary).

Moreover, the State would have the Court raise the constitutional bar to a new level that is far too high. As this Court held in *State v. Teer*, 275 S.W.3d 258 (Mo. banc 2009) (citing *State ex rel. Kinsky v. Pratte*, 994 S.W.2d 74, 76 (Mo. App. 1999), “[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.” 275 S.W.3d at 264 (emphasis added). It is therefore sufficient for purposes of showing a constitutional violation if the new rules simply “address” the existing rules. Nothing more is required. This is not surprising because the predicate for Article V, Section 5 is this Court’s transcendent authority over the Missouri courts. The legislature is free to impose its rules, but only if it complies with the constitutional requirement that it do so in a bill expressly limited to such a purpose which identified the rules being amended. *Jamison*, 357 S.W.3d at 592-594. Here, the State concedes, as it must, that this was not done.

D. This Court’s September 20, 2016 adoption of new rules for the Municipal Courts, effective July 1, 2017, has not superseded the provisions in SB 5 promulgating new rules for the Municipal Courts.

On September 20, 2016, this Court adopted “Minimum Operating Standards for Missouri Courts: Municipal Divisions” (the “Standards”). This Court made the Standards

effective July 1, 2017. Many of the Standards require compliance, *inter alia*, with the new rules implemented by SB 5 Section 479.360.1. *See* Standards Nos. 1, 4, 8 and 10. Accordingly, this Court's Standards have not replaced the new rules instituted by SB 5 with its own new judicially imposed rules and this issue is still ripe for review and not moot.² Plaintiffs respectfully submit that this Court cannot ratify an unconstitutional statute by referencing it in its own rules.

E. SB 5 violates Article V, Section 27.16 of the Missouri Constitution because it provides for the seizure of fines after collection thereof.

The State misreads Article V, Section 27.16, which provides that a city: (1) has the right to enforce its ordinances; (2) has the authority to conduct prosecutions in associate circuit courts and in appellate courts; and (3) has the sole authority to receive and retain any fines imposed in connection with enforcing its ordinances. And, contrary to the State's argument, SB 5 does not impose a limit on the collection of fines, but rather most plainly calls for the effective seizure of certain fines after imposition and collection thereof. While there may be other approaches the legislature could have taken, this diversion of authorized fines after collection is unconstitutional.

² In addition, this Court's Standards are not effective until July 1, 2017, but the new rules imposed by SB 5 are currently effective and govern the operations of the Municipal Courts. *See* 15 Mo. Code of State Regulations 40-3.180.

F. Conclusion

For the foregoing reasons and for the reasons set forth in Plaintiffs' opening brief on the cross-appeal, 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: October 19, 2016

CERTIFICATE OF COMPLIANCE

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

1. Respondents' Reply Brief includes the information required by Rule 55.03.
2. Respondents' Reply Brief complies with the limitations contained in Rule 84.06.
3. Respondents' Reply Brief, excluding cover page, signature blocks, certificate of compliance, and certificate of service, contains 1,519 words, as determined by the word-count tool contained in the Microsoft Word 2010 software with which Respondents' Reply Brief was prepared.

/s/ Sam J. Alton

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CERTIFICATE OF SERVICE

I hereby certify that, on October 19, 2016, the foregoing Reply 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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