

IN THE SUPREME COURT OF MISSOURI

SC94493

MISSOURI MUNICIPAL LEAGUE,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

Appeal from the Circuit Court of Cole County, Missouri
Division Number 1
The Honorable Jon E. Beetem, Presiding

REPLY BRIEF OF APPELLANT MISSOURI MUNICIPAL LEAGUE

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I. THE MISSOURI MUNICIPAL LEAGUE HAS ASSOCIATIONAL STANDING TO BRING THIS LAWSUIT.

A. MML Satisfies the Requirements for Associational Standing to Assert Violations of Missouri Constitution Article II, §1 (Separation of Powers), Article III, §21 (Original Purpose) and Article III, §23 (Clear Title).

"[S]tanding roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote." *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 622-623 (Mo. banc 2011) (quoting *Ste. Genevieve Sch. Dist. R-II v. Bd. of Alderman of the City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002)). "To assert standing successfully, a plaintiff must have a legally protectable interest," *i.e.*, the plaintiff must be "affected directly and adversely by the challenged action" *Id.* "An association that itself has not suffered a direct injury from a challenged activity nevertheless may assert 'associational standing' to protect the interests of its members if certain requirements are met." *Id.*

There are three requirements for associational standing: (1) the association's members would have standing to sue in their own right; (2) the interests being protected by the association are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires individual members' participation in the lawsuit. *Id.* See also *Missouri Health Care Ass'n v. Attorney Gen. of the State of Missouri*, 953 S.W.2d 617, 620 (Mo. banc 1997); *Bldg. Owners & Managers Ass'n of Metro. St. Louis*,

Inc. v. City of St. Louis, Missouri, 341 S.W.3d 143, 148 (Mo. Ct. App. 2011). MML satisfies each of these requirements. The trial court's finding that MML has associational standing to challenge amended §302.341.2's constitutionality under the separation of powers, original purpose and clear title provisions should be upheld.

1. MML's members would have standing to sue in their own right.

MML seeks a declaratory judgment that Missouri Revised Statute §302.341.2, as amended by House Bill 103 ("HB103"), is unconstitutional. (L.F.005-L.F.073.) Accordingly, whether MML's "members would have standing to bring this suit in their own right depends upon whether they are able to satisfy the requirements for bringing a declaratory judgment action." *Missouri Health Care Ass'n*, 953 S.W.2d at 620. "A declaratory judgment action requires a justiciable controversy." *Id.* A justiciable controversy exists where "the plaintiff has a legally protectable interest at stake, a substantial controversy exists between parties with genuinely adverse interests, and that controversy is ripe for judicial determination." *St. Louis Ass'n of Realtors*, 354 S.W.3d at 623.

a. MML's members have a legally protectable interest at stake.

A plaintiff that is "affected directly and adversely by [a] challenged action" possesses a legally protectable interest. *Id.* As the trial court recognized in its Judgment, there is "little doubt" that Missouri's municipalities will be directly and adversely impacted in multiple ways if HB103's amendments to §302.341.2 take effect. (L.F.147.) To briefly reiterate, amended §302.341.2 requires a municipality to:

(1) calculate whether it is receiving more than 30% of its "annual general operating revenue from fines and court costs for traffic violations, including amended charges from any traffic violation, occurring within the [municipality]"—without providing any statutory or regulatory definition of "annual general operating revenue," "traffic violations," or "amended charges" or guidance on how to perform this calculation—leaving a municipality unsure how to comply with the law;

(2) submit to an annual audit by the state auditor if the municipality wants to challenge a determination that excess traffic violation revenues are due to the state—without any statutory or regulatory explanation of how compliance will be calculated, how the audit will work or what its implications are—leaving a municipality unsure what to challenge and whether relief is available; and

(3) include an accurate "accounting" of traffic violation revenue with the municipality's comprehensive annual financial report to the state auditor in a "timely" fashion—without any statutory or regulatory description of how the accounting should be made or what constitutes a "timely" report—leaving a municipality unsure how to properly report its traffic violation revenue and when such a report is considered untimely.

(App. at p. A3-4, MO. REV. STAT. §302.341.2 (2014).) And, of course, the punishment for failing to comply with these requirements is the loss of municipal court jurisdiction

over traffic violations without any statutory or regulatory explanation of where, when, how and what municipal violations will be prosecuted. (Id. at p. A4.)

Taken as a whole, amended §302.341.2 imposes significant new obligations on municipalities without providing any guidance for compliance, then subjects non-compliant municipalities (whatever that means or however that is determined) to an unconstitutional punishment. To suggest that a law implicating a municipality's public safety, law enforcement, accounting, reporting and revenue functions does not directly and adversely affect each MML member borders on the absurd. Yet that is exactly what the State argues here.

First, the State asserts that municipalities lack standing to assert a separation of powers violation because they are not part of the judicial branch nor do they directly represent the courts. (Resp't Brief at p. 4.) But a legally protectable interest is not established because a party belongs to or represents a given branch of government. What matters is whether MML's members will be directly and adversely affected by amended §302.341.2. *St. Louis Ass'n of Realtors*, 354 S.W.3d at 623. If the State's position were accepted, only government entities or groups directly representing those entities would have standing to allege separation of powers violations. Missouri law is not so limited. Standing, after all, requires only that "the parties seeking relief must have some personal interest at stake in the dispute, *even if that interest is attenuated, slight or remote.*" *Id.* at

622-623 (emphasis added). Here, the interest of Missouri's municipalities is not "attenuated, slight or remote"—it is immediate, multi-faceted and significant. *Id.*¹

Next, the State argues that MML's members lack standing to allege a violation of the separation of powers doctrine or Missouri Constitution Article III, §§ 21 and 23 because associate circuit courts can hear municipal violations and collect fees for deposit into municipal treasuries. (Resp't Brief at pp. 4-5 & 5-6.) Specifically, the State contends that municipalities lack a legally protectable interest because "Mo. Const. Art. V, Sec. 23 and Sec. 479.080.2, RSMo 2000 requires that the associate division of any circuit court hear municipal ordinance violations upon request." (*Id.* at p. 4.) This blithe declaration about how amended §302.341.2 will operate is offered without any explanation of exactly *how* the cited provisions support the State's position. Not surprisingly, when such an analysis is performed, the State's argument crumbles.

Article V, §23 states, in pertinent part:

¹ The State cites *Lebeau v. Commissioners of Franklin County*, 422 S.W.3d 284, 288 (Mo. 2014), as support for the statement that MML "cannot show that it has a legally protected interest at stake." (Resp't Brief at p. 4.) *Lebeau* merely states that a plaintiff must have a legally protectable interest to have standing. *Lebeau*, 422 S.W.3d at 288. There is nothing in *Lebeau* that specifically pertains to municipalities or associational standing. Therefore *Lebeau* does not, as the citation implies, provide any specific support for the State's argument that MML cannot establish associational standing under the circumstances presented here.

Associate circuit judges shall hear and determine violations of municipal ordinances in any municipality with a population of under four hundred thousand within the circuit *for which a municipal judge is not provided, or upon request of the governing body of any municipality* with a population of under four hundred thousand within the circuit.

(App. at p. A31, MO. CONST. ART. V, § 23) (emphasis added.) Under this provision, an associate circuit judge is only empowered to hear violations in municipalities under 400,000 residents if there is no municipal judge or the municipality's governing body requests it. Stated conversely, if a municipality with fewer than 400,000 residents has a municipal judge or does not request associate circuit court involvement, then Article V, §23 supplies no authority for an associate circuit court to hear ordinance violations for that municipality.

Article V, §23 does not—as the State implies—provide for an automatic transfer of municipal traffic violations to an associate circuit court if a municipal court temporarily loses jurisdiction over such offenses, nor does it permit a transfer upon the request of anyone except the municipality. Importantly, amended §302.341.2 only provides for a loss of jurisdiction over "all *traffic-related* charges until all [statutory] requirements . . . are satisfied." (App. at p. A4, MO. REV. STAT. §302.341.2) (emphasis added.) Consequently, under the statute's plain language, a municipal court remains authorized to hear non-traffic ordinance violations even when it has lost jurisdiction over traffic matters. In other words, a municipality would continue to employ a municipal judge, so Article V, §23 would not be triggered. Similarly, if the governing body of a

municipality does not request associate court intervention, then §23 does not come into play. Of course, each municipality with a municipal court has a clear stake in preserving a local court responsive to and convenient for its residents.

The State's reliance on §479.080.2 is also misplaced. Section 479.080.2 merely provides that if municipal violations are heard by an associate circuit judge, "all fines shall be paid to and deposited not less frequently than monthly into the municipal treasury" MO. REV. STAT. §479.080.2 (2014). There is no mention of when an associate circuit judge is empowered to hear municipal ordinance violations. There is certainly no suggestion that prosecution of such violations transfers to an associate circuit under amended §302.341.2 absent either of the triggering events contained in Article V, §23 or §479.040.

Finally, the State's argument ignores Missouri statute §479.040, which provides in pertinent part:

Any [municipality] with a population of less than four hundred thousand may elect to have the violations of its municipal ordinances heard and determined by an associate circuit judge of the circuit in which the [municipality] is located; provided, however, if such election is made, *all violations* of that municipality's ordinances shall be heard and determined by an associate circuit judge or judges.

MO. REV. STAT. §479.040 (2014) (emphasis added).² This statute reinforces Article V, §23's pronouncement that associate circuit courts may hear municipal violations only in limited circumstances. It also reinforces the notion that jurisdiction over municipal violations should not—and cannot—be handled in the piecemeal fashion proposed by amended §302.341.2.

Simply stated, MML's members have a legally protectable interest. Nothing in the State's brief refutes that conclusion. The State's prediction that prosecution of traffic violations will smoothly transfer from municipal to associate courts is unwarranted speculation given existing constitutional and statutory provisions. Moreover, the State's unsupported declarations are a poor substitute for statutory and/or regulatory guidance that would protect municipalities' interests. Given these facts, the trial court was correct that "[t]here is little doubt that the members of MML would be directly and adversely affected by this litigation." (L.F.147.) Accordingly, MML has satisfied the first element necessary for a justiciable claim.

² This statute was recently amended to permit mental health matters to be separately designated and handled, a move that underscores the law's "all or nothing" approach to municipal violations. *See* Mo. Rev. Stat. §479.040.1(2) (2014).

b. A substantial controversy exists between MML and the State, who have genuinely adverse interests.

The second element of a justiciable controversy is "a substantial controversy . . . between the parties with genuine adverse interests." *St. Louis Ass'n of Realtors*, 354 S.W.3d at 623. When opposing parties disagree over the constitutionality of a law, this requirement is satisfied. *See Bldg. Owners & Managers Ass'n*, 341 S.W.3d at 148. Here, MML and the State clearly disagree over the constitutionality of amended §302.341.2. Consequently, this requirement is met.

c. This controversy is ripe for determination.

The final element of a justiciable controversy is whether the dispute is ripe for determination. *St. Louis Ass'n of Realtors*, 354 S.W.3d at 623. "[P]re-enforcement constitutional challenges to laws [are] ripe when the facts necessary to adjudicate the underlying claims [are] fully developed and the laws at issue [are] affecting the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute." *Missouri Health Care Ass'n*, 953 S.W.2d at 621. The present controversy satisfies this criteria because the law and facts required to fully adjudicate MML's claims are fully developed and municipalities stand to be immediately affected as described in Section I(A)(1)(a), *supra*.³

³ In fact, the State is now attempting to enforce amended §302.341.2 against several municipalities. (*See App. at pp. A70-A92, State of Missouri v. Vill. of Bellerive Acres, et al.*, Case No. 14SL-CC04310.) It is remarkable that the State maintains MML's members

In summary, all three criteria for a justiciable controversy are present here, and the first element of associational standing is satisfied.

2. The interests that MML seeks to protect in this lawsuit are germane to the League's purposes.

"In determining whether the germaneness prong is satisfied, the relevant question is whether the basis on which the individual association members were found to have standing . . . also is germane to the association's purpose." *St. Louis Ass'n of Realtors*, 354 S.W.3d at 625. Missouri considers "the germaneness requirement . . . undemanding. The issue an association is litigating does not, for instance, need to be *central* to the organization's purpose . . . mere pertinence between litigation subject and organizational purpose is sufficient." *Id.* (internal quotations omitted) (emphasis in original). The requirement of "mere pertinence" supports "the primary rationale of associational standing, which is that organizations are often more effective at vindicating their members' shared interests than would be any individual member." *Id.*

For the reasons described above, MML's member municipalities will be directly and adversely affected by amended §302.341.2. Municipalities across the state face significant new accounting and reporting obligations without clear compliance guidance, as well as uncertainty about the viability and continuous operation of their municipal courts. One of MML's primary purposes is advocating for the fair, reasonable and

will not be directly and adversely affected by amended §302.341.2 while simultaneously prosecuting those very municipalities under that very statute.

constitutional regulation of Missouri's municipalities. (L.F.006 & L.F.116.) There is, therefore, no dispute that the interests MML seeks to protect in this case are germane to the League's purpose.

3. Neither MML's claims nor its requested relief require the participation of individual members in this lawsuit.

The final requirement for associational standing is a showing that the participation of individual association members is not required by the claims asserted nor the relief requested. *St. Louis Ass'n of Realtors*, 354 S.W.3d at 623. "Where an association seeks only a prospective remedy, it is presumed that the relief to be gained from the litigation will inure to the benefit of those members of the association actually injured." *Id.* at 624 (internal quotations omitted). Thus, "requests made by an association for prospective relief generally do not require the individual participation of the organization's members." *Id.*

Here, MML seeks only prospective relief in the form of a declaratory judgment that amended §302.341.2 is unconstitutional and/or was unconstitutionally enacted. (L.F.005-L.F.073.) MML does not seek money damages. (*Id.*) If MML's challenge is successful, the relief gained will inure to the benefit of all League members statewide. Accordingly, the third requirement for associational standing is met because the individual participation of municipalities is not required.

Based on the foregoing, MML has associational standing to challenge the constitutionality of amended §302.341.2 under Article II, §1, Article III, §21 and Article III, §23 of the Missouri Constitution. All three requirements for standing are satisfied by

the facts presented here. Accordingly, MML's claims under the separation of powers, original purpose and clear title provisions of the constitution should proceed.

B. MML Has Associational Standing to Challenge Amended §302.341.2 Under Article I, §14 (Open Courts) of the Missouri Constitution.

In response to MML's open courts challenge, the State asserts that the League lacks standing to allege a violation of Article I, §14 because "neither MML nor any of its members is a person, natural or legal." (Resp't Brief at p. 5.) The State contends that an open courts challenge is no different than a due process challenge, which cannot be brought by a municipality. Yet none of the authorities cited by the State actually support this proposition.

For example, in *City of Chesterfield v. Director of Revenue*, 811 S.W.2d 375 (Mo. banc 1991), cited by the State, appellant City challenged the constitutionality of a statute governing the distribution of sales tax revenue. The City alleged that the statute violated the equal protection and due process clauses, in addition to Article VI, §15 of the Missouri Constitution. *Id.* at 377. The Court held that municipalities, as state-created political subdivisions, were not "persons" for purposes of asserting due process or equal protection violations and lacked standing to assert such claims. *Id.* Regarding Article VI, §15, the Court held that the City waived its constitutional challenge by failing to raise it prior to appeal. *Id.* at 377-378. This case is wholly inapplicable here because MML is not asserting a due process or equal protection violation and properly preserved all of its constitutional claims by raising them at the first opportunity. (*See* L.F.005-L.F.0073.) *City of Chesterfield* does not support the proposition that municipalities or associations

representing them cannot assert an open courts challenge. In fact, that case does not even discuss the open courts provision.

Missouri Alliance for Retired Americans v. Department of Labor and Industrial Relations, 277 S.W.3d 670 (Mo. banc 2009), is equally unpersuasive. There, in a plurality opinion, the Court held that labor unions lacked standing to challenge amendments to the workers' compensation law under the due process and open courts provisions of the Missouri Constitution. *Id.* at 673. The Court analyzed whether the unions had associational standing to assert these challenges under the same three part test described in Section I(A), *supra*. *Missouri Alliance*, 277 S.W.3d at 676-678. During that analysis, the Court concluded that a portion of the unions' open courts and due process claims were hypothetical and thus not ripe for review. *Id.*

The State cites *Missouri Alliance* for the proposition that the "'open courts' provision in Art. I, Sec. 14 is essentially a second due process clause in the Missouri Constitution." (*Id.*) By pulling a single line of dicta out of context, the State hopes this Court will conflate the standing requirements for Article I, §14 with those of a due process challenge and conclude that because municipalities cannot file due process claims, they also lack standing to assert an open courts violation. But the *Missouri Alliance* Court actually wrote this:

The open courts provision does not itself grant substantive rights but, rather, is a procedural safeguard that ensures a person has access to the courts when that person has a legitimate claim recognized by law. *The analysis employed to determine the constitutional validity of a statute on*

open courts grounds, then, is the same as the analysis used for procedural due process claims, as article I, section 14 is "a second due process clause to the state constitution."

Missouri Alliance, 277 S.W.3d at 675 (quoting *Goodrum v. Asplundh Tree Expert Co.*, 824 S.W.2d 6, 10 (Mo. banc 1992)) (emphasis added). There is no mention of standing in this discussion. There is certainly no statement that the standing requirements for an open courts claim are identical to those of a due process challenge. Rather, the Court's point was that because both open courts and procedural due process claims are designed to ensure parties have access to the courts, the analysis performed once standing is established—not the analysis performed to establish standing—is similar. *Missouri Alliance* does not, therefore, stand for the proposition that an association cannot assert an open courts violation.

MML members have a substantial interest in ensuring access to a local court for their residents and law enforcement personnel. By constitution and statute, preservation of a municipal court is a local choice exercised by locally elected officials. For these reasons, MML has associational standing to assert the claims presented on appeal. All three prongs of the test are satisfied, and the State fails to cite any persuasive authority to the contrary. The Court should, therefore, reject the State's claim that MML lacks standing to proceed.

II. AMENDED §302.341.2 VIOLATES THE SEPARATION OF POWERS DOCTRINE.

A. The Legislature's Attempt to Dictate When Municipal Courts Have Jurisdiction to Hear Traffic Offenses Violates the Separation of Powers Doctrine.

The State's argument against MML's separation of powers claim confuses the General Assembly's right to determine what constitutes a viable cause of action in Missouri's courts (which is a proper exercise of legislative authority) with its alleged right to dictate the jurisdiction of Missouri's courts (which is an improper separation of powers violation). The State argues that amended §302.341.2 does not violate Article II, §1 of Missouri's Constitution because the legislative branch has a proper constitutional role "in determining conditions for or limitations on the exercise of a court's subject matter jurisdiction." (Resp't Brief at p. 7.) This is true—to a point. MML does not dispute that the General Assembly is empowered to "provide a new cause of action for resolution in the court system and presumably could abolish an already existing cause of action as well." (Id. at p. 8.) But HB103 does not create a new cause of action nor abolish an existing one. Nor does it establish that a certain category of case—for instance, *all* traffic violations—must be heard by a certain court. Rather, amended §302.341.2 invades the jurisdiction of Missouri's circuit courts by attempting to dictate under what circumstances a municipal court may entertain a recognized cause of action.

The State tries to justify this legislative overreach by arguing that municipal courts are not "established and created by the Missouri Constitution." (Resp't Brief at p. 8.)

That statement is incorrect. Article V, §1 states that "judicial power of the state shall be vested in . . . circuit courts," and §14 of that same Article constitutionally empowers circuit courts with "original jurisdiction over all cases and matters, civil and criminal." (App. at p. A17, MO. CONST. ART. V, § 1 & p. A30, MO. CONST. ART. V §14.) Under Article V, §27(2)(d), municipal courts are "divisions of the circuit court." (Id. at p. A32, MO. CONST. ART. V, §27(2)(d).) A "municipal court counterpart to Art. V, Sec. 1" of the Constitution is not, therefore, necessary to trigger municipal courts' rights to the same protections enjoyed by the courts specifically mentioned in Article V, §1. (Resp't Brief at p. 8.) Municipal courts, as divisions of the circuit court, already enjoy that status.

Consequently, the legislature is not free to bestow and withdraw municipal traffic court jurisdiction as a statutory punishment. The General Assembly is free to decide whether a cause of action does or does not exist. The General Assembly is also free to decide whether or not a court may entertain an entire category of cases. But once those decisions are made, the legislature cannot then force the judicial branch to exercise its constitutionally-granted jurisdiction on a piecemeal basis that is dictated by legislative and executive conduct. *That* step violates the separation of powers doctrine, and this Court should reject the State's attempt to confuse proper legislative action with the statutory overreach embodied in amended §302.341.2.

B. Amended §302.341.2 Violates the Separation of Powers Doctrine Because the Boundaries of Municipal Court Jurisdiction Are Dependent Upon Executive and Legislative Conduct.

The State asserts that "MML's members are totally in control of whether HB 103 adversely affects a municipal court." (Resp't Brief at p. 9.) This statement, and the ones that follow, are astonishingly inaccurate. In reality, amended §302.341.2 violates the separation of powers doctrine because it conditions municipal court jurisdiction on executive and legislative actions. See *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 257 (Mo. banc 2009); *Kilmer v. Mun.*, 17 S.W.3d 545, 552-553 (Mo. banc 2000).

According to the State, the "potential impact of HB 103 upon any particular municipal court's jurisdiction is indirect at best." (Resp't Brief at p. 10.) But a municipal court stands to lose jurisdiction over traffic matters if: (a) a municipality fails to comply with amended §302.341.2; (b) a municipality attempts to comply with the statute but misinterprets its undefined terms; or (c) an undefined party determines a municipality has improperly calculated traffic revenue, improperly reported traffic revenue and/or otherwise failed to comply with the statute. It is difficult to envision a more direct effect on a municipal court than a loss of jurisdiction as punishment for non-judicial conduct.

Moreover, as described in Section I, *supra*, the State completely ignores the implications of §479.040, which dictates that an associate circuit judge may only hear municipal cases if there is no municipal judge or the municipality requests it and, more importantly, requires an associate circuit court to hear *all* municipal violations, *i.e.*, not just certain categories of cases like traffic violations. MO. REV. STAT. §479.040.

Municipalities, therefore, may face a Hobson's choice—they can retain control over all non-traffic municipal violations and risk losing the ability to prosecute traffic claims or they can completely shut down their municipal court so that all violations are heard in associate circuit court, just to ensure traffic violations may be prosecuted. Despite these significant impositions on municipal court operations, the State blithely claims that "[n]o municipal court is required to handle any individual case in any different manner." (Resp't Brief at p. 10.) This statement is contrary to the facts and law presented here.

The State next contends that the "only way that HB 103 can affect a municipal court's jurisdiction is if a separate branch of local government fails to perform its duties." (Resp't Brief at p. 10.) This is incorrect. Because there are no statutory or regulatory definitions for key terms, nor is there any explanation of who will interpret those terms to determine compliance with amended §302.341.2, nor is there any indication of what happens following the audit, municipal court jurisdiction is at the mercy of state executive agencies and officials, not just municipal government. A municipality could make every attempt to satisfy the statute and *still* find itself non-compliant if that municipality's definitions, calculations or interpretations differ from the State's. This is not a municipality's "failure to perform its duties," but rather a failure on the part of the legislative and executive branches to enact constitutionally sound laws that can be understood and applied without guesswork.

Ultimately, the State's argument that amended §302.341.2 is not an improper legislative encroachment upon the judicial branch is predicated on such a misleading and selective characterization of the record that it must be rejected. HB103 represents a

significant and unconstitutional infringement upon the jurisdiction of Missouri's constitutionally recognized municipal courts. The General Assembly undoubtedly may decide what constitutes a viable claim for the courts to hear. But the legislature overstepped when it decided that temporarily carving off court jurisdiction in a piecemeal fashion was an appropriate statutory punishment for municipal non-compliance with the law. For these reasons, in addition to the reasons provided in MML's opening brief, amended §302.341.2 violates the separation of powers doctrine.⁴

⁴ The State's brief indicated that one "section will address the argument that HB 103 violates the right of the Missouri Supreme Court to regulate practice and procedure in the courts." (Resp't Brief at p. 7.) Despite this assurance, the State's brief does not contain any response to MML's argument that amended §302.341.2 violates the separation of powers doctrine by impermissibly interfering with the Missouri Supreme Court's right to regulate practice and procedure in Missouri's courts. Having failed to refute MML's arguments on this point, the State has conceded their merit. For the reasons provided in Section II(C) of MML's Brief, this Court should declare amended §302.341.2 unconstitutional under Article V, §5 of the Missouri Constitution. (*See* Appellant's Brief at pp. 28-31.)

III. AMENDED §302.341.2 COULD DENY MUNICIPALITIES THE ABILITY TO PROSECUTE TRAFFIC VIOLATIONS AND THE STATE'S ARGUMENTS TO THE CONTRARY HAVE NO BASIS IN FACT OR LAW.

The State declares that amended §302.341.2 does not violate the Constitution's open courts provision because "[n]either defendants charged with violating municipal ordinances nor citizens of a municipality are denied any remedy by HB 103. . . . nor [is] the municipality itself . . . denied either enforcement of its municipal traffic violations or the fine revenue generated by those violations." (Resp't Brief at p. 11.) According to the State, although "the close proximity of a city courthouse hearing cases in the evenings may be convenient for a city's citizens, that convenience does not invoke any provision of the Missouri Constitution." (Id.) A more glib oversimplification of HB103's implications for Missouri's municipalities and citizens is difficult to imagine.

Not surprisingly, the State cites no authority for its assertion that defendants, citizens and municipalities will have a forum for their traffic claims. This is because there is no basis in law or fact for the State's presumptions about how amended §302.341.2 will operate. The State assumes—without statutory or regulatory basis—that traffic violations occurring in municipalities who are non-compliant with §302.341.2 will automatically transfer to associate circuit court. This assumption, of course, ignores Constitution Article V, §23, which expressly limits the circumstances in which associate courts can hear municipal violations, as well as §479.040.1, which expressly forbids such patchwork jurisdiction for municipalities.

The State further assumes—without statutory or regulatory authority—that all traffic violations will find a courthouse somewhere. But this assumption ignores the lack of guidance for violations occurring during statutory gray periods. For example, what happens to a violation cited when a municipal court has jurisdiction, but heard when jurisdiction is lost? What happens if one associate circuit judge determines that under those circumstances the violation is null and void and cannot be prosecuted, while another judge decides the opposite? In reality, there is no guidance for who handles such violations or when.

These and other unanswered questions could paralyze municipal courts, associate circuit courts and the litigants who find themselves caught in the middle. The problem is that no one—not the State, not municipalities, not citizens, not defendants and not the courts—can be sure *what* will happen. Consequently, there is a very real possibility that any of those groups may be left with no forum to prosecute or defend a claim. This is a clear violation of Article I, §14 of the Missouri Constitution. For these reasons, as well as the reasons provided in MML's opening brief, amended §302.341.2 should be held unconstitutional.

IV. HOUSE BILL 103'S ORIGINAL PURPOSE WAS MORE LIMITED THAN REGULATING THE USE OF STATE HIGHWAYS AND THE FINAL BILL VIOLATED MISSOURI CONSTITUTION ARTICLE III, §21.

The State contends that HB103 does not violate Article III, §21 of the Constitution because "the [bill's] original purpose, or desired objective of the statute, was to regulate the use of state-regulated highways." (Resp't Brief at p. 14.) Neither a citation to the

original bill, nor any other support for this characterization of HB103's purpose, is provided. And when the text of HB103 is examined, the State's characterization of the bill's purpose is revealed as far too broad.

The bill's original title stated its purpose was to repeal three statutes and enact three new sections "relating to all-terrain and utility vehicle use in municipalities, with penalty provisions." (L.F.070.) The original bill's text focused on the use of such vehicles, which involved but was not limited to their use on state highways. For example, the newly proposed §304.013.2 and §304.032.2 regulated the use of these vehicles in streams and waterways and empowered park rangers to enforce the law. (L.F.071.) Even if original HB103's purpose is construed as regulating the use of state highways, that purpose is a far cry from the bill's contents as truly and finally passed. Specifically, it strains credulity to argue that significant new accounting and reporting requirements for municipalities and the loss of municipal court jurisdiction for statutory non-compliance fall under the purpose of "using state highways."

A different conclusion is not required because severing the portions of HB103 governing municipal reporting obligations and municipal court jurisdiction might require additional legislation. (Resp't Brief at p. 14.) The State contends that if amended §302.341.2 is struck down as unconstitutional, the legislature would have to "pass a second bill detailing the requirements for collecting fines assessed from traffic violations and a third bill requiring a report to ensure compliance." (Id.) With due respect, a constitutional violation cannot be ignored because correctly applying the law might require a bill that actually tells municipalities what the law is, how to comply and how

the statute will be enforced. Responsible governance may be more time-consuming, but Missouri's municipalities and citizens deserve—and the law requires—no less.

For these reasons, as well as the reasons stated in MML's opening brief, the Court should hold that amended §302.341.2 violates Article III, §21 of the Missouri Constitution.⁵

V. RESPONSE TO THE BRIEF OF *AMICI CURIAE*

When considering the arguments raised by the *amicus* brief, it is important to remember what this case is *not* about. This case is not about the cap amended §302.341.2 imposes on municipal traffic violation revenue. This case is not about whether, as a policy matter, the municipality or municipal court system should be reformed. This case is not about whether the loss of municipal court jurisdiction is an effective way to curb alleged abuses of municipal power. This case is about whether §302.341.2, as amended by HB103, is constitutional—no more and no less. With those limitations in mind, MML offers its response to some of the arguments presented in the *amicus* brief.

A. No Other State Law Suspends Municipal Court Jurisdiction.

The *amicus* parties contend that "[t]he Macks Creek Law is . . . not unique in mandating a municipality's loss of jurisdiction." (*Amicus Curiae* Brief at p. 28.) Yet none

⁵ MML does not have any additional arguments to raise regarding HB103's violation of Missouri Constitution Article III, §23. Accordingly, that argument is not addressed here. For the reasons described in Appellant's Brief at pages 40-42, HB103 violates the single subject/clear title provision of Missouri's Constitution.

of the other state statutes discussed in the *amicus* brief provide for the termination or suspension of municipal court jurisdiction as a punishment for statutory noncompliance by a municipal government. On that point, Missouri appears to stand alone.

For example, in Oklahoma, the Commissioner of Public Safety may investigate whether a municipality is using traffic violations to raise more than 50% of its revenue. OKLA. STAT. TIT. 47, §2-117 (2014). The Commissioner then reports his findings to the Attorney General. (*Id.*) If the Attorney General agrees a violation is occurring, he notifies the Commissioner, who sets up a special traffic-related enforcement zone in which the Oklahoma Highway Patrol Division assumes responsibility for traffic enforcement. (*Id.*) There is absolutely no mention in the statute of municipal court jurisdiction. Stated differently, the Oklahoma statute prohibits an offending municipality's police officers from issuing traffic violations—it does *not*, like the Missouri statute, rob a constitutionally recognized court of jurisdiction to hear those violations and impose fines.

The Oklahoma statute does, however, highlight the deficiencies in Missouri's own law, namely the lack of implementing regulations. Oklahoma's law specifically provides that "[t]he Department of Public Safety shall adopt rules to uniformly implement the procedures for initiating, investigating and reporting to the Attorney General . . . and the criteria for determining the length of time the designation of special traffic-related enforcement shall be in force." (*Id.*) Thus, Oklahoma recognized that implementing laws and regulations are vital to the proper operation of a law like Macks Creek.

Arkansas is also singled out for "remov[ing] a municipality's jurisdiction to patrol highways under its state statute." (*Amicus Curiae* Brief at p. 29.) But an examination of the relevant Arkansas statute reveals that the punishment for a municipal abuse of power is either the loss of the right to patrol "any or all affected highways," or a requirement that "all or any part of future fines and court costs received from traffic law violations . . . be paid over to a county fund for the maintenance and operation of the public schools" ARK. CODE 12-8-404 (2014). There is absolutely no mention of stripping a court of its jurisdiction.

In short, the punishment selected by Missouri is extreme and unconstitutional. No other state discussed in the *amicus* brief has opted to interfere with court jurisdiction as a penalty for statutory noncompliance. The *amicus* parties' suggestion to the contrary is misleading and should be rejected by the Court.

B. Allowing Municipalities to Retain Revenue Generated By Ordinance Violations is Constitutionally Sound.

The *amici curiae* brief also argues that the existing municipal fine system, which permits municipalities to retain fines paid for ordinance violations, should be abolished. (*Amici Curiae* Brief at pp. 31-42.) In its place, the *amicus* parties argue for a system in which all municipal fines are immediately remitted to the school fund in alleged accordance with Missouri Constitution Article IX, §7. (*Id.*) This argument is not well-founded.

Article IX, §7 states, in pertinent part, that "the clear proceeds of all penalties, forfeitures and fines collected hereafter *for any breach of the penal laws of the state* . . .

shall be distributed annually to the schools of the several counties according to law." MO. CONST. ART. IX, §7 (2014) (emphasis added). This language is not applicable to revenue generated from municipal ordinance violations because under Missouri law, "[p]rosecutions for violation of a city ordinance are . . . regarded as a civil action with quasi criminal aspects." *City of Independence v. Peterson*, 550 S.W.2d 860, 862 (Mo. App. W.D. 1977). See also *Frech v. City of Columbia*, 693 S.W.2d 813, 814 (Mo. banc 1985); *State ex rel. Kansas City v. Meyers*, 513 S.W.2d 414, 416 (Mo. banc 1974); *City of Dexter v. McClain*, 345 S.W.3d 883, 885 (Mo. Ct. App. 2011). In other words, punishments for municipal ordinance violations are not imposed pursuant to a "penal law of the state." MO. CONST. ART. IX, §7.

Moreover, municipal ordinances are not, as the *amicus* parties assert, "statutory enactments." (*Amicus Curiae* Brief at p. 37.) The General Assembly can and has enacted statutes that establish traffic violations and their attendant penalties. See, e.g., MO. REV. STAT. CHAPTER 577 (2014). But municipal ordinances are not enacted by the legislature; they are adopted by municipalities. Ordinances are not, therefore, statutes, and they do not stand on the same constitutional footing as the Missouri Revised Statutes.

The *amicus* parties are also incorrect that §479.505 and/or §479.080 qualify as penal statutes that trigger Article IX, §7. (*Amicus Curiae* Brief at pp. 36-39.) The former merely dictates who may hear municipal violations, whereas the latter dictates where fines should be deposited. Neither of those laws creates a crime nor proscribes a punishment for violating the same. A law does not morph into a penal statute triggering

Article IX, §7 merely because it discusses where and how violations will be handled. The *amicus* parties' suggestion otherwise should be rejected.

Accordingly, the *amicus* brief fails to cite any persuasive authority for the argument that municipalities are not permitted to retain the revenue generated from ordinance violations. The *amicus* parties acknowledge the constitutional section that expressly calls for municipalities to retain such revenue, but try to evade that provision with a nonsensical argument that municipalities can keep such revenue only if municipal courts do not handle any ordinance violations. (Id. at p. 41.) In any event, those considerations are best left for another day. As the *amicus* brief freely admits, cases raising these very issues are already making their way through the courts. (Id. at p. 10.) As such, this Court should not conflate the limited questions presented by this appeal with the broader policy considerations currently surrounding municipal court reform.

CONCLUSION

For these reasons, as well as the reasons presented in MML's opening brief, this Court should overturn the trial court's judgment and hold that Missouri Revised Statute §302.341.2, as amended by House Bill 103, is unconstitutional.

Respectfully submitted,

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