SC92159

IN THE SUPREME COURT OF MISSOURI

CITY OF ST. LOUIS, et al.,

Respondents,

v.

STATE OF MISSOURI,

Appellant.

Appeal from the Cole County, Missouri Circuit Court
The Honorable Judge Jon Edward Beetem

APPELLANT'S BRIEF AND RESPONDENT'S BRIEF TO CROSS APPEAL

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JURISDICTIONAL STATEMENT

This case involves a challenge to the constitutionality of 2010 SB 739, which amended Section 320.097 RSMo., dealing with residency requirements for certain employees of fire departments that are served only by unaccredited or provisionally accredited school districts. The Circuit Court of Cole County determined that SB 739 violated Article VI, Section 22 (laws affecting officers and employees of charter cities) of the Missouri Constitution and enjoined the State from enforcing the statute. The circuit court further held that SB 739 violated the equal protection clause of the Missouri Constitution (Article I, Section 2) and the Fourteenth Amendment to the United States Constitution.

This Court has exclusive appellate jurisdiction because this appeal involves the constitutionality of a statute.

INTRODUCTION

Senate Bill 739, which took effect in August 2010, allows an eligible employee of a fire department to reside outside its geographical boundaries "if the only public school district available to the employee within such fire department's geographical area is a public school district that is or has been unaccredited or provisionally accredited in the last five years of such employee's employment." Vol. I LF 47. Employees who work for a fire department that does not contain a fully accredited school district may reside outside the department's geographical boundaries if they live within a one-hour response time. Charter schools are not deemed public schools for purposes of the statute. Vol. I LF 47.

The St. Louis City school district is unaccredited. *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 665 (Mo. banc 2010). A number of other Missouri school districts are currently provisionally accredited: Calhoun R-VIII, Caruthersville R 18, Swedeborg R-III, Gilliam C-4, Hayti R-II, Jennings, Malta Bend R-V, Morgan County R-I, Normandy, and Sheldon R-VIII. Missouri School Directory Online website, *available at*: http://www.dese.mo.gov/directory/ index.html (visited Jan. 10, 2012). Calhoun R-VIII and Swedeborg R-III lost full accreditation status in September 2011 and Charleston R-I has recently been reclassified as accredited. The remaining provisionally accredited Missouri school districts were less than fully accredited when the circuit court issued its judgments in this matter. The Kansas City school district became unaccredited on January 1, 2012. *State Board Reclassifies KCMSD to Unaccredited*, *available at*: http://dese.mo.gov/news/2011/kcmsdaccreditation.html (visited Jan. 10, 2012).

Statement of Facts

The City of St. Louis, Mayor Francis Slay, a member of the City Civil Service Commission, and a city employee filed an amended petition in four counts against the State of Missouri. Count I alleged that SB 739[1] violates Art. VI, Sec. 22 of the Missouri Constitution, reserving certain powers to constitutional charter cities, Count II, violates the prohibition against special legislation in Art. III, Sec. 40; and Count III violates the equal protection clauses of the Missouri Constitution, Art. II, Sec. 4, and the Fourteenth Amendment of the United States Constitution.[2] Vol. I LF 26-38. Count IV requested injunctive relief. Vol. I LF 23-24.

The circuit court found that SB 739 violated Article VI, Sec. 22, because it encroached on powers reserved for charter cities. Vol. VII LF 672. The circuit court further found that SB 739 violated the equal protection clause of the Missouri Constitution, Art. II, Sec. 4, and the Fourteenth Amendment of the United States Constitution because the statute's classification was not reasonably related to achieving goals of improving the quality of public education available to children or encouraging experienced firefighters to remain at their

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1. enacted in 2010

2. The court granted summary judgment in the State's favor on Count II, finding that SB 739 was not a special law. Vol. VII LF 655-56. It is the subject of the City's cross-appeal.

jobs. Vol. X LF 988-89. The State of Missouri appeals the circuit court's judgments on Counts I and III.

Article VIII, Section 2 of the St. Louis charter contains a residency requirement for employees in regular, full-time positions. Vol. I LF 34. The charter does not mandate residence within the City until 120 days have elapsed after (1) the employee's "appointment" or (2) the end of an initial working test period. Vol. I LF 34.

On November 20, 2010, the City of St. Louis employed 3,901 civil service employees, including 817 fire department employees. Vol. 1 LF 76. Plaintiff James Gaddell is a civil service employee of the City of St. Louis. Vol. IV LF 293. According to the City's Director of Personnel, 59 uniformed firefighters left their positions with the City of St. Louis for reasons other than retirement between 2005 and March 2011. Vol. X LF 931-32. Fourteen of those firefighters left during the first five years of employment. Vol. X LF 932.

The Civil Service Commission may grant requests for waivers of the residency requirement to employees in positions that require a high degree of specialized education or skill. Vol. I LF 34. Plaintiff John Clark is a member of the Civil Service Commission. Vol. IV LF 293-94.

The St. Louis Metropolitan Police Department allows its employees who have achieved seven years of residence in the City of St. Louis to move outside the City so long as they reside within a one-hour response time. Vol. X LF 967-69.

There are 36 fire stations in the City of St. Louis, of which eleven are within two to three miles of the City's borders with Missouri counties. Vol. VII LF 620-24. 35 fire houses

are staffed with a minimum of four firefighters per fire suppression apparatus. This staffing level allows the fire department to respond "to any block in the city within four minutes of being dispatched." Vol. VII LF 631. Three additional City of St. Louis fire department houses are located at Lambert Airport. Vol. VII LF 624.

The St. Louis City school district is unaccredited. *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 665 (Mo. banc 2010). Its boundaries are coextensive with the corporate limits of the City of St. Louis. Vol. IV LF 300-301.

Plaintiffs filed a motion for summary judgment on Count I (Vol. I LF 50-52) and a separate motion for summary judgment on Count III (Vol. VII LF 692-94). The State filed a cross motion for summary judgment. Vol. IV LF 324-25. On September 1, 2011, the circuit court issued its judgment granting summary judgment for Plaintiffs on Count I and granting summary judgment for the State on Count II. Vol. VII LF 668-73. Contrary to Plaintiffs' allegations in their statement of facts (Pls' Br. at 8-9), the State fully addressed Count II below. Vol. IV LF 313-14, Vol. VII LF 611-12. On November 10, 2011, the circuit court granted summary judgment in Plaintiffs' favor on Count III. Vol. X LF 988-89. The State filed its notice of appeal on November 18, 2011. Vol. X LF 1005-07.

POINTS RELIED ON

I. The circuit court erred in entering its judgment finding that SB 739 was unconstitutional under Article VI, Section 22 because the circuit court erroneously interpreted and misapplied the law in finding that SB 739

encroaches upon powers that Missouri's Constitution reserves for charter cities.

City of Springfield v. Goff, 918 S.W.2d 786 (Mo. banc 1996)

City of St. Louis v. Missouri Comm'n on Human Rights, 517 S.W.2d 65 (Mo. 1974)

City of Springfield v. Belt, 307 S.W.3d 649 (Mo. banc 2010)

II. **The circuit erred in entering its judgment finding SB 739 invalid under Article I, Section 2 of the Missouri Constitution and the Fourteenth Amendment because the circuit court misapplied the law and misinterpreted the rational basis test in finding that SB 739 was not reasonably related to the state's interests in fire protection services or the quality of public education available to children.**

Missouri Prosecuting Attorneys & Circuit Attorneys Retirement Sys. v. Pemiscot County, 256 S.W.3d 98 (Mo. banc 2008)

Alderson v. State, 273 S.W.3d 533 (Mo. banc 2009)

Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981)

United C.O.D. v. State, 150 S.W.3d 311 (Mo. banc 2004)

Section 452.375 RSMo (Supp. 2005)

III. **The circuit court properly granted summary judgment to the State on Count II.**

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

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

Coleman v. Kansas City, 182 S.W.2d 74 (Mo. banc 1944)

Section 321.300 RSMo (2000)

Section 321.460 RSMo (2000)

5 C.S.R. 50-345.100

STANDARD OF REVIEW

The circuit court's grant of summary judgment is reviewed de novo. *Adams Ford Belton, Inc. v. Missouri Motor Vehicle Comm'n*, 946 S.W.2d 199, 202 (Mo. banc 1997). Summary judgment is proper if the record, viewed in the light most favorable to the non-moving party, shows that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Mo. R. Civ. P. 74.04 (c)(3). This Court is not limited to consideration of the factual findings of the circuit court in reviewing the grant of summary judgment. *Adams Ford Belton, Inc.*, 946 S.W.2d at 202.

The constitutionality of a statute is reviewed de novo. *In re Brasch*, 332 S.W.3d 115, 119 (Mo. banc 2011). A statute is presumed valid and will be upheld unless it clearly contravenes a constitutional provision. *Rentschler v. Nixon*, 311 S.W.3d 783, 786 (Mo. banc 2010). This Court resolves all doubt in favor of the validity of a statute. *Reprod. Health Servs of Planned Parenthood v. Nixon*, 185 S.W.3d 685, 688 (Mo. banc 2006).

ARGUMENT

I. The circuit court erred in entering its judgment finding that SB 739 was unconstitutional under Article VI, Section 22 because the circuit court erroneously interpreted and misapplied the law in finding that SB 739 encroaches upon powers that Missouri's Constitution reserves for charter cities.

Article VI, Section 22 of the Missouri Constitution provides:

> No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents.

The scope of Article VI, Section 22 "is limited to prohibiting the General Assembly from enacting state laws prescribing the individual offices of a charter city and the duties and compensation of the officers holding those offices." *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. banc 1996). Charter cities do not have powers that are limited or denied by the constitution or by statute. *City of Springfield v. Belt*, 307 S.W.3d 649, 653 n. 10 (Mo. banc 2010); Article VI, Section 19(a). The circuit court incorrectly determined that SB 739 was unconstitutional because it read Article VI, Section 22 too broadly.

The circuit court deemed the statute's effect on the residency requirement incompatible with the concept of home rule. Vol. VII LF 671. But in the event of a conflict

between a statute or constitutional provision and the charter or ordinance of a charter city, the state law provision controls. *Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 211 (Mo. banc 1986). A charter provision that conflicts with a statute is void. *Goff*, 918 S.W.2d at 789.

Statutes that limit the powers a charter city may exercise through its officers do not violate Article VI, Section 22. *Goff* at 789. SB 739 merely limits the powers that the City of St. Louis may exercise through members of its Civil Service Commission by superseding the City's residency requirement for certain fire department employees. That statutory limitation is authorized by the Missouri Constitution. *Goff*, 918 S.W.2d at 789.

SB 739 does nothing prohibited by Article VI, Section 22. It does not create new positions of employment or appointed office, *cf. State ex rel. Sprague v. City of St. Joseph*, 549 S.W.2d 873, 875 (Mo. banc 1977) (statute establishing three member boards of plumbing examiners and plumbing inspector), *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791, 792 (statute requiring appointment of a five member Firemen's Arbitration Board) (Mo. 1968). It does not set the wages earned by City of St. Louis firefighters or fix the duties of any city official.

The circuit court held that the charter's residency requirement was a "qualification" for employment and that SB 739's impact on that "qualification" interfered with the manner of selection of City employees. Vol. VII LF 671-72. Article VI, Section 22 does not use the term qualification. Moreover, the residency requirement contained in Article VIII, section 2 of the City of St. Louis charter cannot properly be said to be a qualification or prerequisite

for employment. The charter does not mandate city residency from the first day of employment, nor does it apply to part-time or temporary employees. Vol. I LF 34. Article VIII, section 2 of the charter does not mandate residence within the City until 120 days have elapsed after (1) the employee's "appointment" or (2) the end of an initial working test period. Vol. I LF 34. If SB 739 "qualifies" anything it is the powers under the charter that conflict with state statutes.

The City's residency requirement remains in effect for fire department employees until they reach their seventh anniversary of employment. Thus, SB 739 does not interfere with hiring decisions.

Senate Bill 739 is a valid exercise of the legislature's police powers.

The legislature may, in the exercise of its police power, "adopt a policy of general state-wide application which applies to special charter cities," *City of St. Louis v. Missouri Comm'n on Human Rights*, 517 S.W.2d 65, 70 (Mo. 1974), including policies that may affect the working conditions of some employees of charter cities. This is consistent with the requirement that a charter "be in harmony with and subject to the Constitution of Missouri and its laws of general interest and statewide concern." *State ex rel. St. Louis Fire Fighters Ass'n Local No. 73 v. Stemmler*, 479 S.W.2d 456, 457 (Mo. banc 1972).

The City's charter does not restrict the legislature's exercise of its police powers in "matters pertaining to the general public interest." *City of St. Louis v. Sommers*, 266 S.W.2d 753, 755 (Mo. 1954). Senate Bill 739 addresses matters pertaining to the general public interests in (1) the quality of public education available to children and (2) fire protection

services.

The circuit court determined that SB 739 invalidly regulated local functions of the City of St. Louis. Vol. VII LF 670-71. The court erroneously declared and applied the law in so finding. In matters involving governmental functions "the state retains control" and the provisions of a city's charter are subject to statutes enacted by the legislature. *Grant v. Kansas City*, 431 S.W.2d 89, 92 (Mo. 1968); *see* Article VI, Section 19. The operation of a city fire department is a governmental function. *Richardson v. City of St. Louis*, 293 S.W.3d 133, 138 (Mo. App. E.D. 2009); *Donahew v. City of Kansas City*, 38 S.W. 571, 572 (Mo. 1897).

This case is another step in the City's longstanding attempts to remove itself from any restrictions of state law. In *City of St. Louis v. Missouri Commission on Human Rights,* 517 S.W.2d 65 (Mo. 1964) the City argued that it would be unconstitutional for the legislature to make it comply with Missouri's anti-discrimination laws. This Court rejected that challenge holding that the MHRA does not specify any powers or duties of city officials and that the charter of the city could not preclude application of the state policy based on Art. VI, Sec. 22. *Id*. at 70. Unfazed the City next argued that the Human Rights Commission would be in violation of its home rule rights by ordering reinstatement and back pay.[3]

Then in *Cohen v. Poelker,* 520 S.W.2d 50 (Mo. banc 1975) the City argued that the Missouri Constitution made it exempt from the state's open meetings and open records law (the Sunshine Law). Again that argument was rejected.

Never deterred St. Louis then argued in *City of St. Louis v. Grimes,* 630 S.W.2d 82 (Mo. banc 1982) that Art. VI, Sec. 22 made it unconstitutional for the state to require that it provide workers' compensation coverage to employees injured on the job. Again this Court soundly rejected that argument. In all these defeats this Court emphasized the statewide policy expressed in the challenged laws. This Court read the restrictions in Art. VI, Sec. 22 narrowly when they did not attempt to require a charter city to establish a particular public office or board or commission or place duties on city officials.

This Court has not previously read words into this constitutional provision such as "qualifications" or "working conditions" as urged by the City and accepted by the trial court. St. Louis cannot seriously argue that SB 739 does not address statewide interests or have statewide application, both factors in denying the City's contentions in prior cases. The trial court held that SB 739 was not a special law in violation of the Missouri Constitution. And public education is, in our state's constitution, the most important funding priority after payment of state debt.

SB 739 imposes a valid limitation on powers that the City of St. Louis may exercise through its Civil Service Commission. Adoption of the City's position would call into question the constitutional validity of many of the provisions of Chapter 82, RSMo. 2000. The circuit court should have concluded that SB 739 did not fall within the scope of Article VI, Section 22.

[3.] That argument was not preserved and therefore not reached.

II. The circuit erred in entering its judgment finding SB 739 invalid under Article I, Section 2 of the Missouri Constitution and the Fourteenth Amendment because the circuit court misapplied the law and misinterpreted the rational basis test in finding that SB 739 was not reasonably related to the state's interests in fire protection services or the quality of public education available to children.

SB 739 is rationally related to legitimate state interests in (1) the quality of public education available to children and (2) fire protection services. The rational basis test requires only that the challenged law "bear some rational relationship to a legitimate state interest." *Missouri Prosecuting Attorneys and Circuit Attorneys Retirement Sys. v. Pemiscot County*, 256 S.W.3d 98, 102 (Mo. banc 2008). Under the minimum rationality standard of the equal protection clause, *see Murphy v. State of Arkansas*, 852 F.2d 1039, 1044 (8th Cir. 1988), a classification is constitutional "if any state of facts can be reasonably conceived that would justify it." *Alderson v. State*, 273 S.W.3d 533, 537 (Mo. banc 2009); *Heller v. Doe*, 509 U.S. 312, 320 (1993) (emphasis added). *See also Gregory v. Ashcroft*, 501 U.S. 452, 473 (1991) (mandatory judicial retirement at age 70 due to "threat of deterioration" conceivably rational); *Shaw v. Oregon Pub. Employees' Retirement Bd.*, 887 F.2d 947, 949 (9th Cir. 1989) (statute awarding larger benefit to class of police and firefighters rational even if originally based on difference in mandatory retirement age that no longer existed). Plaintiffs have the burden of showing that SB 739 is wholly irrational. *Treadway v. State*, 988 S.W.2d 508, 511 (Mo. banc 1999).

In conducting its rational basis analysis the circuit court rejected the standard this Court set forth in *Alderson*: "The Defendant would suggest that because 'any' set of facts could justify this classification, it should be affirmed as not violating equal protection. This would make the rational basis test meaningless." Vol. X LF 988. The circuit court then concluded that the statutory classification was not reasonably related to achieving goals of improving the quality of education available to children or encouraging experienced fire department employees to remain at their jobs. Vol. X LF 988. The judgment, however, does not identify any facts that led the circuit court to reach those conclusions nor identify any principle of law that would lead to that conclusion.

The rational basis test affords the legislature "broad discretion in attacking societal problems." *Treadway v. State*, 988 S.W.2d 508, 511 (Mo. banc 1999). When applying the rational basis standard, Missouri courts do not question the social or economic policies underlying a statute. *In re Marriage of Woodson*, 92 S.W.3d 780, 784 (Mo. banc 2003). The "wisdom, social desirability or economic policy underlying a statute" are matters for the legislature. *Missouri Prosecuting Attorneys & Circuit Attorneys Retirement Sys.*, 256 S.W.3d at 102. Evidentiary findings are not required to identify a reasonably conceivable basis to uphold challenged legislation; the state "has no obligation to produce evidence to sustain the rationality of a statutory classification." *See Heller v. Doe*, 509 U.S. 312, 319 (1993). The circuit court was required to resolve all doubt in favor of the validity of the statute, *Reprod. Health Servs of Planned Parenthood v. Nixon*, 185 S.W.3d 685, 688 (Mo. banc 2006), but failed to do so.

SB 739 is rationally related to the state's interest in the quality of public education available to children.

The state asserted that SB 739 furthers the legitimate state interest in the quality of public education available to children by allowing employees of fire departments located in school districts that are less than fully accredited to live in accredited districts that provide better educational opportunities. See Vol. IV LF 307, 312-13; Vol. VII LF 607-10; Vol. X LF 961-65. The state did not argue that SB 739 would directly improve the quality of education available through any particular school district. The legislature could rationally conclude that children who reside in the district where they attend school will be better adjusted to school and to their community. *See* Section 452.375.2(5) RSMo (Supp. 2005). Residence within the boundaries of a child's school district facilitates parental involvement as well as the child's participation in extracurricular activities or sports.

The statutory classification includes fire departments located within unaccredited and provisionally accredited school districts throughout the state. The opportunity to reside within the district of attendance could especially benefit younger children, children involved in extracurricular activities, and others for whom transportation to an accredited school district would pose logistical problems or hardship. Two provisionally accredited districts, Caruthersville 18 and Hayti R-II, are in Pemiscot County. Children residing within Caruthersville 18 have the option of attending school in Cooter, Steele, Wardell, or an accredited district in an adjacent county, but face a lengthy commute to reach schools in any

accredited district. Allowing children and their parents to reside within the boundaries of an accredited school district rationally furthers the legitimate state interest in education.

SB 739 is rationally related to the state's interest in fire protection services.

SB 739 furthers the legitimate state interest in fire protection by encouraging experienced fire department employees to remain at their current jobs. Superseding municipal residency requirements that could force firefighters to choose between the community's interest in experienced firefighters and their children's educational needs allows eligible fire department employees to live within the boundaries of accredited school districts and still provide their training and experience to a fire department in an unaccredited school district. The circuit court misapplied the rational basis test in reaching its conclusion that SB 739 violated equal protection. The circuit court considered the relationship between the statutory classification and legitimate state interests in children's access to quality public education or education or fire protection services insufficient, but did not find the statutory classification wholly irrational. The circuit court should have resolved its doubts in favor of the statute's validity.

III. The circuit court properly granted summary judgment to the State on Count II.

A. SB 739 is not a special law. (Responds to Point I of Appellant's Brief)

Senate Bill 739 is a general law that uses open-ended criteria. *Treadway v. State*, 988 S.W.2d 508, 510 (Mo. banc 1999). A law based on open-ended characteristics is entitled to a

presumption of constitutionality, *Alderson v. State*, 273 S.W.3d 533, 538 (Mo. banc 2009), and is not a local or special law on its face. *Id.*; *Treadway* at 510. When a law is open-ended, a standard of reasonableness applies to the statutory classification. *Id.* The same general principles used to determine if a statute violates equal protection thus apply in determining whether legislation is special. *Id.*

A class is considered "open-ended" if it is possible that the status of members of the class could change. *Harris v. Missouri Gaming Comm'n*, 869 S.W.2d 58, 65 (Mo. banc 1994). Senate Bill 739 creates an open-ended class by using factors that change, including length of employment with a particular fire department, the accreditation classification of school districts (see 5 C.S.R. 50-345.100), and the geographical areas of fire departments, to determine which fire department employees are eligible class members. The accreditation status of several school districts has changed within the last twelve months. (See supra at 9). The geographical area of fire departments is also subject to change through annexation or consolidation. *See* Section 321.300 RSMo 2000 (annexation); Section 321.460 RSMo 2000 (consolidation of fire protection districts).

In their response to the State's motion for summary judgment, Plaintiffs conceded that SB 739's classification contains open-ended characteristics that are subject to change, such as the accreditation status of school districts. Vol. IV LF 372. Nevertheless, Plaintiffs now assert that a school district's unaccredited or provisionally accredited status should be deemed a closed-ended characteristic, i.e., a historical fact. (Pls' Br. at 15, 17). A school district's accreditation status is clearly not an immutable or closed-ended characteristic. A

statute that uses variables that can change, allowing additional members to satisfy its classification criteria in the future, is an open-ended, general law. *Treadway*, 988 S.W.2d at 510-11. This is true of statutory classifications that use factors less fluid or likely to change than the classification criteria of SB 739. *See Treadway* at 510-11 (county classification, charter status are open-ended criteria).

Plaintiffs rely on examples of characteristics that may be, but are not necessarily, fixed to support their argument that SB 739 is a special law. One such characteristic, geography, is identified in *Jefferson County Fire Protection Dists Ass'n v. Blunt*, 205 S.W.3d 866, 870 (Mo. banc 2006). This Court has acknowledged that references to geography do not constitute closed-ended criteria unless they create a class that is permanently "fixed according to location." *See City of Sullivan v. Sites*, 329 S.W.3d 691, 694 (Mo. banc 2010). Unlike the sewer ordinance in *City of Sullivan*, SB 739 does not implicate "a geographically fixed category," *cf.* 329 S.W.3d at 694, rather, it uses geographical factors that are subject to change, i.e., the boundaries of school districts and fire departments. The statute could potentially apply to employees of any fire department in Missouri. Accordingly, SB 739 does not implicate a closed-ended characteristic.

Similarly, *Murnane v. City of St. Louis*, 27 S.W. 711 (Mo. 1894), does not support Plaintiffs' contention that SB 739 is a facially special law. *Murnane* involved a legislative act that attempted to create an additional class of cities in violation of a constitutional provision limiting the number of classes of cities to four. 27 S.W. at 712-13. The language Plaintiffs have quoted from *Murnane* (Pls' Br. at 18-19) addressed whether a classification

based on population created a general law or a special law. *Murnane* at 713. That language does not reflect the current standard for determining whether a population-based classification is entitled to a presumption of constitutionality. *Jefferson County Fire Protection Dists Ass'n*, 205 S.W.3d at 870-71. Unlike the statutes challenged in *Murnane*, SB 739 does not use population as a criteria for class membership, nor does it treat any class of city or county differently from another.

The legislature's choice not to include every city employee or fire department employee within the statutory classification does not render SB 739 a special law. *Alderson v. State*, 273 S.W.3d 533, 538-39 (Mo. banc 2009). A statute need not currently apply to every person or every acre in Missouri to be valid. *Treadway*, 988 S.W.2d at 511. Even if SB 739 currently applies only to the City of St. Louis, that does not transform the statute into a special law. *Id.*

Plaintiffs also contend that SB 739 is a special law that does not benefit the state as a whole or the general public. (Pls' Br. at 15, 17). But everyone benefits when a child is given an opportunity to become a successful, contributing member of society through access to a quality public education.

A law "founded on open-ended criteria" will be found unconstitutional "only where the classification is arbitrary" and fails the rational basis test. *Treadway*, 988 S.W.2d at 511. Plaintiffs have failed to overcome the presumption that SB 739's open-ended class is constitutional. Thus the State need not show substantial justification for the statutory classification. *Harris*, 869 S.W.2d at 65. SB 739 is an open-ended, general law that is

rationally related to legitimate state interests.

B. Article III, Section 40 does not prohibit the legislature from enacting general laws otherwise permitted by Missouri's constitution.

Plaintiffs further assert that the State failed to address each clause of Article III, Section 40 allegedly violated by the statute. (Pls' Br. at 24). Plaintiffs are mistaken for two reasons. First, the State responded to this argument in its summary judgment reply. Vol. VII LF 611-12.

Second, the plain language of Article III, Section 40 does not bar the legislature from adopting legislation encompassed by subsections 1 through 29 unless the legislation constitutes a special or local, rather than a general, law. In keeping with the plain language of the Missouri Constitution, this Court has recently focused on whether statutes are general or special laws, not whether the subject matter of a challenged statute would otherwise fit within one or more subsections of Article III, Section 40. *Bd. of Educ. of City of St. Louis v. Missouri State Bd. of Educ.*, 271 S.W.3d 1, 9 n.5 (Mo. banc 2008) (challenge under Art. III, Section 40(21), (24), and (30)); *Harris v. Missouri Gaming Comm'n*, 869 S.W.2d 58, 64 (Mo. banc 1994) (challenge under Art. III, Section 40(28) and (30)). The legislature may enact general laws about any subject described in a subsection of Article III, Section 40, unless that legislation violates another section of Missouri's constitution. *See Coleman v. Kansas City*, 182 S.W.2d 74, 76 (Mo. banc 1944) (discussing predecessor of Article III, Section 40(21); affairs of cities could be regulated by general laws); *State ex rel. Zoological Bd. of Ctrl. v. City of St. Louis*, 1 S.W.2d 1021, 1027 (Mo. banc 1928).

The State also addressed Plaintiffs' contention that SB 739 is a local law prohibited by Article III, Section 40. See Vol. VII LF 611. Local laws are subsumed under the special law analysis. *Bd. of Educ. of City of St. Louis*, 271 S.W.3d at 9. Alleging that SB 739 is a local law does not alter the constitutional analysis. *See Treadway*, 988 S.W.2d at 510-11. The circuit court appropriately granted summary judgment to the State on Count II.

Conclusion

For these reasons SB 739 is constitutionally valid. The State respectfully requests that this Court reverse the circuit court's judgments on Counts I (Article VI, Section 22) and III (equal protection) and affirm the judgment in favor of the state on Count II.

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed electronically via Missouri CaseNet, and served, on April 30, 2012, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule 84.06 and that the brief contains 6,065 words.

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