IN THE SUPREME COURT OF MISSOURI

CITY OF DESOTO, A POLITICAL SUBDIVISION OF THE STATE OF MISSOURI, AND JAMES ACRES,

Plaintiffs-Appellants,

v.

JEREMIAH W. NIXON, GOVERNOR OF THE STATE OF MISSOURI, AND CHRIS KOSTER, ATTORNEY GENERAL OF MISSOURI

Defendants-Respondents.

_____SC94746_____

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY
The Honorable Patricia Joyce, Judge

APPELLANTS' BRIEF

JAMES M. KREITLER, MBE #63531
P.O. BOX 740
Hillsboro, MO 63050
Phone: 636.797.2665
jkreitler@wegmannlaw.com

Attorney for Plaintiffs/ Appellants

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JURISDICTIONAL STATEMENT

This is an appeal by the CITY OF DESOTO, et. al., from the entry of Summary Judgment in favor of Defendants/Respondents JEREMIAH J. NIXON, et. al., and the denial of Plaintiffs'/Appellants' Motion for Summary Judgment on Plaintiffs' petition for declaratory judgment which sought a declaration that House Bill 307 (now, in part, R.S. Mo Section 321.322.4) constitutes "special legislation" in violation of the Missouri Constitution, Article III, Section 40.

As this appeal involves the constitutionality of a statute of this state, it is within the matters reserved for the exclusive jurisdiction of the Missouri Supreme Court under Article V, Section 3 of the Missouri Constitution.

STATEMENT OF FACTS

On May 16, 2013, the Missouri General Assembly passed HB 307, whose title was "An Act To repeal sections [of the Revised Missouri Statutes], and to enact in lieu thereof

twenty-two new sections relating to emergency service providers, with existing penalty provisions". Subsequently on June 25, 2013, Governor Jeremiah Nixon signed HB 307, and HB 307 became a part of the law of this state on August 28, 2013.

HB 307 amended several statutory schemes in the Missouri Revised Statutes, but, for the sake of this appeal, Appellants focus their appeal and briefing efforts on amendments and additions to Chapter 321 (fire protection districts).

In regard to Chapter 321 of the Missouri Revised Statutes, HB 307 specifically added Section 321.322.5 (now R.S.Mo. Section 321.322.4)[1] to allow for an exclusion to the post-annexation procedure outlined in Section 321.322.1, which describes how payment is to be made to a fire protection district by a city after a city annexes into the jurisdiction of the fire protection district. The statutes read in relevant portions as follows:

> If any property located within the boundaries of a fire protection district shall be included within a city having a population of at least two thousand five hundred but not more than sixty-five thousand which is not wholly within the fire protection district and which maintains a city fire department, then upon the date of actual inclusion of the property within the city, as determined by the annexation process, the city shall within sixty days

[1] Subsequent to suit being filed, the General Assembly amended R.S.Mo. Section 321.322 by removing Subsection 4, thereby Subsection 5 (the portion of the statute complained of in the trial court below) became Subsection 4. All citations of the Revised Missouri Statutes are to the 2014 statutes as supplemented.

assume by contract with the fire protection district all responsibility for payment in a lump sum or in installments an amount mutually agreed upon by the fire protection district and the city for the city to cover all obligations of the fire protection district to the area included within the city, and thereupon the fire protection district shall convey to the city the title, free and clear of all liens or encumbrances of any kind or nature, any such tangible real and personal property of the fire protection district as may be agreed upon, which is located within the part of the fire protection district located within the corporate limits of the city with full power in the city to use and dispose of such tangible real and personal property as the city deems best in the public interest, and the fire protection district shall no longer levy and collect any tax upon the property included within the corporate limits of the city . . .. R.S.Mo. Section 321.322.1.

* * *

The provisions of [Section 321.322.1] shall not apply where the annexing city or town operates a city fire department, is any city of the third classification with more than six thousand but fewer than seven thousand inhabitants and located in any county with a charter form of government and with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants, and is entirely surrounded by a single fire protection district. In such cases, the provision of fire and emergency medical services following annexation shall be governed by subsections 2 and 3 of section

72.418. R.S.Mo. Section 321.322.4.

The City of DeSoto, Missouri (hereinafter referred to as "DeSoto") is a Third Class City with an estimated population of 6,421, and said City is located in Jefferson County, Missouri. (LF 81, 96) DeSoto is completely surrounded by the DeSoto Rural Fire Protection District. (LF 41) DeSoto has formed a municipal fire department. (LF 185) Pursuant to the statutory powers vested in Desoto, DeSoto reserves the right to receive voluntary annexations from citizens in unincorporated Jefferson County, Missouri, and reserves the right to involuntarily annex property in unincorporated Jefferson County, Missouri in the future. (LF 185); R.S.Mo. Section 77.020; R.S.Mo. Chapter 71, *generally*.

Jefferson County, Missouri is a first class county with a population of 218,733. (LF 142) Jefferson County, Missouri has a charter form of government. (LF 187).

DeSoto and James Acres, a citizen of the City of DeSoto, brought suit against Defendants, seeking a declaratory judgment in regard to House Bill 307 as a whole and the resulting R.S.Mo. Section 321.322.4 on the grounds that said statute violated the Missouri Constitution's prohibition against special laws and that HB307 violated the Missouri Constitution's requirement that legislation have a clear title and a single subject.[2] (LF 5-10). The suit was brought before the Honorable Patricia Joyce. (LF 2) Appellants filed a

[2] Appellants expressly waive on appeal any grounds that House Bill 307 violates the clear title and single subject requirements under the Missouri Constitution, and, instead, focus their appeal on the violation of the Missouri Constitution with respect to special laws.

Motion for Summary Judgment, with all of the pleadings required by Missouri Rule of Civil Procedure, Rule 74 (hereinafter "Rule 74"). (LF 3, 36-68) A Response and Cross-Motion for Summary Judgment were filed by Respondents. (LF 3, 69-79) Appellants then filed a Reply Memorandum and Statement of Additional Material Facts. (LF 3-4, 80-206).

In Respondents' Response and Cross-Motion for Summary Judgment, Respondents did not submit any evidence to support their Response or Cross Motion for Summary Judgment. (LF 69-79). Respondents in their Response and Cross-Motion for Summary Judgment relied upon denials and their own pleadings, and no separate Statement of Undisputed Material Facts. (LF 69-79)

Appellants' in their Additional Statement of Material facts in Paragraphs 3-23, listed each third class city whose population was similar to that of DeSoto. (LF 80-83) In addition, for each of the aforementioned third class cities, the county that the respective cities were located in were likewise listed with corresponding information regarding the class and population of said counties. (LF 80-83) For the sake of brevity, Appellants refer the Court to the statistics and information cited by Appellants as contained in the Legal File at pages 80 to 84, and the corresponding exhibits at pages LF 86 to 184.[3]

[3] It is well within this Court's authority to consult public record. City of St. Louis v. State, 382 S.W.3d 905, 915 (Mo. banc 2012); *See, e.g.,* State ex rel. SLAH, LLC v. City of Woodson Terrace, 378 S.W.3d 357, *1 at n.2 (Mo. banc 2012) (relying on the federal census bureau's profile of general population and housing characteristics to support a

Appellants' Motion for Summary Judgment and Respondents' Cross Motion were then heard before the trial court. (LF 2, 207) The trial Court then entered judgment in favor of Respondents on their Cross Motion for Summary Judgement, and against Appellants by denying their Motion for Summary Judgment. (LF 2, 208, 215-219)

POINTS RELIED ON

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS AND DENYING APPELLANTS' MOTION FOR SUMMARY JUDGMENT BECAUSE RESPONDENTS, IN THEIR RESPONSE TO APPELLANTS' MOTION FOR SUMMARY JUDGMENT AND IN RESPONDENTS' CROSS MOTION FOR SUMMARY JUDGMENT, (1) FAILED TO APPROPRIATELY RESPOND TO APPELLANTS' STATEMENTS OF UNDISPUTED MATERIAL FACTS IN ACCORDANCE WITH RULE 74 BY CITING SPECIFIC EVIDENCE AS REQUIRED

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statistic); State ex rel. Mo. Pub. Defender Com'n v. Pratte, 298 S.W.3d 870, 873 n.1 (Mo. banc 2009) ("The historical and factual background information in this opinion is before the Court through the record in these writ proceedings, *as supplemented by matters of public record*") (emphasis added); State ex rel. Simmons v. Roper, 112 S.W.3d 397, 399 n.2 (Mo. banc 2003) (relying on the office of juvenile justice and delinquency prevention's statistical briefing to support a point).

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BY THE RULES SO AS TO PERMIT A DENIAL OF APPELLANTS' MOTION FOR SUMMARY JUDGMENT AND (2) FAILED TO CITE IN THEIR OWN STATEMENT OF UNDISPUTED FACTS SUFFICIENT EVIDENCE AS REQUIRED BY THE RULES TO ALLOW THE TRIAL COURT TO GRANT RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

- Missouri Rules of Civil Procedure, Rule 74.04(c)
- Strable v. Union Pacific R. Co., 396 S.W.3d 417 (Mo. Ct. App. 2013).
- Baldwin v. Jim Butler Chevrolet, Inc., 926 S.W.2d 555 (Mo. Ct. App. 1996)
- Birdsong v. Christians, 6 S.W.3d 218 (Mo. Ct. App. 1999)

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS BECAUSE THE PROVISIONS OF R.S.MO. SECTION 321.322.4 CONSTITUTE A SPECIAL LAW IN VIOLATION OF ARTICLE III, SECTION 40 OF THE MISSOURI CONSTITUTION FOR THE REASONS THAT (1) THE LEGISLATION 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; (3) THE POPULATION RANGE IS SO NARROW THAT THE ONLY APPARENT REASON FOR THE NARROW RANGE IS TO TARGET A PARTICULAR POLITICAL SUBDIVISION—DESOTO, MISSOURI—AND TO EXCLUDE ALL OTHERS FROM SUCH TARGETING; AND (4) THERE IS NO SUBSTANTIAL JUSTIFICATION FOR THE CLASSIFICATION AS IT IS NOT

NATURAL, REASONABLE OR RATIONALLY RELATED TO A LEGITIMATE GOVERNMENT INTEREST.

- Missouri Constitution, Article III, Section 40, subsections 21, 28, and 30
- Jefferson County Fire Protection Districts Association v. Blunt (205 S.W.3d 866) (Mo. banc 2006)

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS AND DENYING APPELLANTS' MOTION FOR SUMMARY JUDGMENT BECAUSE RESPONDENTS, IN THEIR RESPONSE TO APPELLANTS' MOTION FOR SUMMARY JUDGMENT AND IN RESPONDENTS' CROSS MOTION FOR SUMMARY JUDGMENT, (1) FAILED TO APPROPRIATELY RESPOND TO APPELLANTS' STATEMENTS OF UNDISPUTED MATERIAL FACTS IN ACCORDANCE WITH RULE 74 BY CITING SPECIFIC EVIDENCE AS REQUIRED BY THE RULES SO AS TO PERMIT A DENIAL OF APPELLANTS' MOTION FOR SUMMARY JUDGMENT AND (2) FAILED TO CITE IN THEIR OWN STATEMENT OF UNDISPUTED FACTS SUFFICIENT EVIDENCE AS REQUIRED BY THE RULES TO ALLOW THE TRIAL COURT TO GRANT RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

Standard of Review

The standard of review of a motion for summary judgment was well established in ITT Commercial Finance v. Mid-America Marine Supply Corp., 854 S.W.2d 371 (Mo. banc. 1993). On appeal from the grant of a motion for summary judgment, this Court reviews the motion essentially *de novo*. The record below is to be reviewed in the light most favorable to the party against whom summary judgment was entered, and that party is entitled to the benefit of all reasonable inferences from the record. Summary Judgment is appropriate only when the record demonstrates that there is a set of material facts as to which there are no genuine disputes, and that based on those undisputed facts the moving party is entitled to judgment as a matter of law. The movant bears the burden of establishing both a legal right to judgment and the absence of any genuine issue of material fact required to support the claimed right to judgment. *Id*. at 376-80.

Missouri Law Governing Summary Judgments and Responses to Same

Missouri Rule of Civil Procedure 74.04(c) governs motions for summary judgment and responses to motions for summary judgment. Rule 74.04(c)(1) governs a claimant's Motion for Summary Judgment. Rule 74.04(c)(1) states as follows in regard to a claimant in a Motion for Summary Judgment: "A statement of uncontroverted material facts shall be attached to the motion. The statement shall state with particularity in separately numbered paragraphs each material fact as to which movant claims there is no genuine issue, with specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts."

Missouri Rule of Civil Procedure 74.04(c)(2) governs responses to motions for summary judgment. The rule requires a response to "set forth each statement of fact in its original paragraph number and immediately thereunder admit or deny each of movant's factual statements." *Id.* The rule further notes that "[a] denial may not rest upon the mere allegations or denials of the party's pleading. Rather, the response shall support each denial with specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a ***genuine*** issue for trial." *Id.* (emphasis added) "A response that does not comply with this Rule 74.04(c)(2) with respect to any numbered paragraph in movant's statement is an admission of the truth of that numbered paragraph." Rule 74.04(c)(2). "The requirements of Rule 74.04(c)(2) are mandatory, [and] where a party's response to a motion for summary judgment fails to comport with such requirements, the facts asserted in the motion for summary judgment are to be taken as true." Strable v. Union Pacific R. Co., 396 S.W.3d 417, 425 (Mo. Ct. App. 2013); s*ee also* Baldwin v. Jim Butler Chevrolet, Inc., 926 S.W.2d 555, 557 (Mo. Ct. App. 1996) (affirming summary judgment for claimant where the responding party "presented no contrary facts, in evidentiary form . . . to preserve a genuine issue of material fact" to survive summary judgment). "[W]hen a moving party makes a prima facie showing that there are no genuine issues of material fact and that the movant is entitled to a judgment as a matter of law, the adverse party is not permitted to rest upon the mere allegations or denials of his pleadings." Birdsong v. Christians, 6 S.W.3d 218, 222 (Mo. Ct. App.1999) (quoting McAninch v. Robinson, 942 S.W.2d 452, 456 (Mo. Ct. App.1997)).

Respondents' failure to comply with Rule 74.04(c)

Respondents in both their Responses to Appellants' Statement of Uncontroverted Material Facts and Appellants' Additional Statement of Uncontroverted Material Facts failed to comply with the law of this State, as their denials rested on mere denials or on their own pleadings.[4] (LF 69-76, 70) As such, Respondents admitted the truth of each numbered paragraph of Appellants' Statements of Uncontroverted Material Facts—meaning there is no dispute of material fact, as Respondents filed no compliant answers to same. *See* Rule 74.04(c)(2).

In this case, Appellants filed a Motion for Summary Judgment with the required Statement of Undisputed Material Facts. As is evident from the Legal File at pages 69-76, Respondents merely denied the Statements of Fact; Respondents cited no "discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial" in their Response to Appellants' Statement of Facts. (LF 69-76) Furthermore, Respondents filed no separate Statement of Facts in support of Respondents' Motion for Summary Judgment, but rather merely stated that their response to Appellants' Statement of Facts would serve as Respondents' "Statement of Facts" for Respondents' Motion for

[4] Appellants recognize that Respondents did not file a Response to Appellants' Additional Statement of Material Facts. Respondents could not have genuinely disputed the matters of public record stated in Appellants' Additional Statement of Material Facts.

Summary Judgment. (LF 69-76, 70) There was no meaningful or logical way for Appellants to respond to Respondents so-named "Statement of Facts".

As will be discussed in further detail under Point Relied on II, in order to demonstrate that there was no undisputed fact as to R.S.Mo. Section 321.322.4's applicability to more than one political subdivision, Respondents were required to state same as it is a fact issue, and same would have to be supported by "pleadings, discovery, exhibits or affidavits." Respondents did not do so. Respondents did not (and cannot) cite one other political subdivision to which R.S.Mo. Section 321.322.4 applies.

Therefore, for the reasons stated herein, the trial court erred by granting Respondents' Motion for Summary Judgment. The trial court's judgment granting Respondents' Motion for Summary Judgment should be overruled, and the trial court's judgment denying Appellants' Motion for Summary Judgment should be overruled. Below, Appellants argue that, even if the Court finds and holds that the Respondents complied with Rule 74, the law at issue is nonetheless unconstitutional, as the record demonstrates that there is a set of material facts as to which there are no genuine disputes, and, based on those undisputable facts, Appellants are entitled to judgment as a matter of law.

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS BECAUSE THE PROVISIONS OF R.S.MO. SECTION 321.322.4 CONSTITUTE A SPECIAL LAW IN VIOLATION OF ARTICLE III, SECTION 40 OF THE MISSOURI CONSTITUTION FOR THE REASONS THAT (1) THE LEGISLATION 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; (3) THE POPULATION RANGE IS SO NARROW THAT THE ONLY APPARENT REASON FOR THE NARROW RANGE IS TO TARGET A PARTICULAR POLITICAL SUBDIVISION—DESOTO, MISSOURI—AND TO EXCLUDE ALL OTHERS FROM SUCH TARGETING; AND (4) THERE IS NO SUBSTANTIAL JUSTIFICATION FOR THE CLASSIFICATION AS IT IS NOT NATURAL, REASONABLE OR RATIONALLY RELATED TO A LEGITIMATE GOVERNMENT INTEREST.

SPECIAL LEGISLATION LAW

Both the Missouri Constitution and Missouri courts have set standards for what is Special Legislation. First, the Missouri Constitution states in Article III, Section 40, subsections 21, 28, and 30 that:

> "[t]he general assembly shall not pass any local or special law: . . . creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts; [or] incorporating cities, towns, or villages or changing their charters; [or] granting to any corporation, association or individual any special or exclusive right, privilege or immunity; [or] 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."

In 2006, this Court clarified and otherwise redefined its holdings in regard to special legislation that has as its basis population, a factor that the Court calls "open-ended". The case was Jefferson County Fire Protection Districts Association v. Blunt (205 S.W.3d 866) (hereinafter referred to as "Jefferson County"), and this case involved Jefferson County, Fire District legislation, and special legislation law—matters that are identical to this case before this Court now. At issue in Jefferson County was the same Chapter that is now at issue before this Court, Chapter 321, R.S.Mo. The statute at issue in Jefferson County had a narrow 1,200-person, county population range classification and was challenged as an unconstitutional special law. No city population range was stated in the statute. The statute, codified at R.S.Mo. Section 321.222 (2005), removed the power of certain fire protection districts to adopt fire protection codes related to home construction, and the statute applied to fire protection districts wholly within first class counties with more than 198,000 but fewer than 199,200 inhabitants. Jefferson County was the sole county to which the statute applied. 205 S.W.3d at 867.

The Jefferson County Fire Protection Districts Association and its member fire protection districts (hereinafter referred to as "fire districts") filed suit, seeking a declaration that R.S.Mo. Section 321.222 violated the prohibition against special legislation under article III, section 40(30) of the Missouri Constitution. The defendants in the suit included certain government officials and several others (hereinafter referred to as "state"). The circuit court granted summary judgment to the state, finding that the fire

districts did not show the statute was unconstitutional. The fire districts appealed directly to this Court, which had jurisdiction. Mo. Const. art. V, sec. 3. This Court held that R.S.Mo. Section 321.222 was an unconstitutional special law in that the state failed to show a substantial justification for the narrow, presumably unconstitutional population range. Id. at 867-68.

This Court made or recognized the following statements of law and fact in holding the statute as unconstitutional:

> Special legislation refers to statutes that apply to localities rather than to the state as a whole and statutes that benefit individuals rather than the general public. A law is facially special if it is based on close-ended characteristics, such as historical facts, geography, or constitutional status. A facially special law is presumed to be unconstitutional. The party defending the facially special statute must demonstrate a 'substantial justification' for the special treatment.
>
> A law based on open-ended characteristics is not facially special and is presumed to be constitutional. Population classifications are open-ended in that others may fall into the classification. Such laws are not special if the classification is made on a reasonable basis. 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.

The rationale for holding that population classifications are open-ended fails, however, where the classification is so narrow that as a practical matter others could not fall into that classification. Where a classification is this narrow, the presumption that a population-based classification is open-ended, and therefore a general law, would contravene the purpose behind the constitutional prohibition against special legislation.

To address this situation, and to provide a guide by which the courts can determine whether a population classification will maintain its presumption of constitutionality, this Court will apply a multi-faceted test. 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. If all three circumstances exist, the law is no longer presumed to be general, but is presumed to be a special law, requiring those defending it to show substantial justification for the classification. Id. at 870-71.

This Court in Jefferson County then analyzed the legislation and held as follows:

> Section 321.222 targeted only Jefferson County when other counties of similar size were excluded. The section's population range was so narrow that the only apparent reason for it was to target Jefferson County and exclude all other counties. Section 321.222's narrow population range is presumably unconstitutional, and the state did not meet its burden in showing substantial justification for it. Thus, section 321.222 is a special law. A broader population range would have been a more natural and reasonable classification. As the General Assembly passed a special law where a general law could be made applicable, section 321.222 violates article III, section 40(30) of the Missouri Constitution. Id. at 871.

1. **The legislation is unconstitutional under the first prong of the Jefferson County test for open-ended characteristic legislation because the legislation contains a population classification that includes only one political subdivision.**

This case before the Court now is eerily similar to Jefferson County, as the population spread is a mere 1,000 in regard to the City population criteria. The County population criteria in Jefferson County was a 1,200 person spread. As such, the reasoning in Jefferson County applies more closely, and the statement found therein rings truer than ever:

> **The rationale for holding that population classifications are open-ended fails, however, where the classification is so narrow that as a practical matter others could not fall into that classification.** Where a classification is this narrow, the presumption that a population-based classification is open-ended, and therefore a general law, would contravene the purpose behind the constitutional prohibition against special legislation. Jefferson County at 870. (emphasis added)

As such, the Court should find that the population classification is, on its face, not an open-ended classification, but rather "so narrow that as a practical matter others could not fall into that classification."

The city population classification is, in reality, a closed-ended classification, and the law should be presumed to be a special law on its face, with the burden falling on Respondents to prove that there is a substantial justification for the law. However, even if the Court is not willing to do so, the statute, as it now stands is still a special law for reasons detailed herein under the first prong of the Jefferson County test.

As readily depicted in the City and County population and classification statistics and information cited in Appellants' Statement of Additional Undisputed Material Facts (LF 81-84) and as supported in the Legal File at pages 86 to 184, R.S.Mo. Section 321.322.4 only applies to DeSoto, Missouri. Appellants in their Motion for Summary Judgment have cited all of the cities in the State of Missouri that are third class cities that are within the population range cited in the statute or even similar in size to DeSoto, along

with the corresponding County statistics and information necessary to determine whether the statute applies to any other third class city in the State of Missouri. As is evident from the information provided and the sources cited, the only third class city that is subject to the exception in the statute is DeSoto, Missouri. Indeed, "the classification [and criteria are] so narrow that ***as a practical matter*** others could not fall into that classification . . .." Jefferson County at 870 (emphasis added).

Also, because the prongs of the Jefferson County test relate closely with each other, Appellants address under this prong of the test, the trial court's order, which reads to assert that if other cities could one day fall within the ambit of the statute, then no special law exists. Such an assertion is not what the law of this Court calls for. The trial court below, in its judgment and order from which this appeal stems, erred in its citation of the law. The judgment and order, drafted by Respondents (LF 2) and digitally formatted herein, states as follows in regard to the holding on the issue of special legislation:

> Plaintiffs failed to show that "other political subdivisions are similar in size to the targeted political subdivision ... [but] are not included" in § 321.322.5—or at the least, could be included based on political decisions made not by the General Assembly, but by the people of particular Missouri cities and counties. Plaintiffs did not show that other cities of the many with populations in or near the 6,000-7,000 range could not qualify under the statute, merely that they do not qualify today. That is not enough to prove that a particular statutory classification is "special," as that term is used in the Missouri Constitution.

Such a statement of the law is inaccurate in light of Jefferson County, as detailed herein. (LF 227) The law does not call for the "merely-that-other-political-subdivisions-do-not-qualify-today" test; nor does the law place a burden on Appellants to show that political decisions could not qualify other political subdivisions to fall within the ambit of the statute. If such tests were the standard, then, to quote the reasoning asserted in Jefferson County, said tests "would contravene the purpose behind the constitutional prohibition against special legislation", as detailed below.

The proposed test stated by the trial court above or argument that there are others who may one day fall within the statute, thereby saving the statute from being unconstitutional, is overly and unreasonably speculative, and, most importantly, outside what the law of the State of Missouri required of the examining court, as noted above. While there are cities cited that have a ***close*** population to that of DeSoto's, such cities are in counties that, even if the subject County were to one day become a charter government

County (a "political decision"), have populations that are grossly below that of Jefferson County's population (or, in the case of the City of Blackjack, located in St. Louis County, grossly above Jefferson County's population (LF 94, 172)), or the city itself has a population that is grossly below the city population criteria.

For example, North Kansas City, Clay County, Missouri is similarly situated to Desoto. Even in the case of the First Class County of Clay County, whose population is close to that of Jefferson County's, North Kansas City's population is well-below that of the threshold stated in the statute. (LF 104) The population of North Kansas City has only grown by less than two percent (2%) or sixty-three (63) people within the last year. (LF 104) As the population now stands at 4,271 people (LF 104), the wishful waiting that Respondents may implore for the Court to entertain will result in a nearly 30 year wait, ***if*** the population continues to consistently grow, to allow for the population to be at such a level for the city to fall within the ambit of the statute. Nevermind, also, that Clay County is not a charter government county. Such an argument, therefore, would ask the Court to hold something that is beyond the bounds of reason. Therefore, not only does the statute explicitly not apply to North Kansas City, but an argument that other cities may "have or in the near future might have" the requisite population to fall within the ambit of the statute, fails because it asks this Court to speculate based on pure conjecture that another city or county may, one day, in the unknown future, fall within the parameters of the statute. But most importantly such an argument does not comport with this Court's precedent in Jefferson County—A population classification is not open-ended or presumed to be constitutional "where the classification is so narrow that as a practical matter others could

not fall into that classification." Jefferson County at 870. (*See* also Appellants' argument in Point 2, *infra*, regarding Crystal City, Missouri)

Indeed also, in regard to the path to becoming a charter county, while Missouri law spells out the requirements to begin the charter process, the roadway to such is fraught with political and legal pitfalls. R.S.Mo. Chapter 66, *generally*. Such a change in governance is not a mere "political decision."

Therefore, for the reasons stated herein, the population range given is not presumed to be open-ended, thereby creating the presumption that the statute is unconstitutional, and, in addition, the facts undeniably demonstrate, to which there is no genuine dispute, that the statute applies to only one city—DeSoto, Missouri.

2. The legislation is unconstitutional under the second prong of the Jefferson County test for open-ended characteristic legislation because other political subdivisions are similar in size to the targeted political subdivision, yet are not included.

As readily depicted in the City and County population and classification statistics and information cited in Appellants' Statement of Additional Undisputed Material Facts (LF 81-84) and as supported in the Legal File at pages 86 to 184, such cities are not included despite being similar in size.

The closest city to meet the requisite criteria is Crystal City, Missouri. Crystal City, Missouri is a third class city with a population of 4,870, located also in the first class county of Jefferson County whose population is approximately 220,000 and whose government is

a charter form of government. (LF 96, 142, 187) Crystal City likewise has its own fire department. (LF 194) However, Crystal City is not entirely surrounded by a fire protection district, and its population is just over 1,130 shy of the population criteria stated in the statute. (LF 96, 193) Crystal City will most likely never be entirely surrounded by a Fire Protection District, as its eastern border abuts the Mississippi River, and its western border is with the City of Festus, who also operates its own fire department. (LF 193, 197) Crystal City has only seen a growth of 25 people in the last year. (LF 96) As such, it will be a little over 45 years before Crystal City reaches the requisite population at such pace and such is only the case if Crystal City's population grows at a consistent rate. However, even if the requisite population is reached, Crystal City is not entirely surrounded by a fire protection district, as noted above. Therefore, the law at issue will never apply to Crystal City, Missouri.

An argument cannot be made with intellectual sincerity that certain "political steps" could be taken to allow for Crystal City to be brought within the ambit of the statute, as such an argument fails for the following reasons: First, such an argument does not comport with this Court's precedent in Jefferson County—A population classification is not open-ended or presumed to be constitutional "where the classification is so narrow that as a ***practical matter*** others could not fall into that classification." Jefferson County at 870. There is not a "political decision" test in the Jefferson County analysis, as hinging the constitutionality of a law on the "political decisions" of other government bodies is not practical because it requires this Court to be dependent on speculative and conjectural factors that are a legal fiction.

Second, for the physical or geographic reasons previously noted. Third, "political decisions" cannot reasonably be cited to bring in the required 1,130 people needed within a period of time that is reasonable or practical. Absent a massive annexation, such is beyond the bounds of reason, and any such argument asks the Court to consider an extreme hypothetical. Fourth, Crystal City is not surrounded by a single fire protection district; its jurisdiction abuts that of Festus, Missouri. An argument that the governing bodies of the cities of Crystal City, Festus, and any adjacent fire protection district would agree that Festus, for example, could yield its fire department jurisdiction over that area adjacent to Crystal City to the fire protection district for the fire protection district to provide services to that area adjacent to Crystal City is again an extreme hypothetical that would require the Court to ignore the practical realities of municipal government, specifically that a city would be hesitant to yield an area to a fire protection district as the city derives revenue for providing such services. Indeed, revenue is the issue in the statutory scheme at issue in this case.

In sum, taking together all of the criteria stated in the statute, it is abundantly clear that other third class cities and even third class cities with a similar population to that of DeSoto's are excluded. Therefore, for the reasons stated herein, the second prong of Jefferson County is met, and the statute is unconstitutional.

3. **The legislation is unconstitutional under the third prong of the Jefferson County test for open-ended characteristic legislation because the population range is so narrow that the only apparent reason for the narrow range is to**

target a particular political subdivision—DeSoto, Missouri—and to exclude all others from such targeting.

Under this prong, Appellants' argument is simple: based on the foregoing facts established by Appellants, the arguments made by Appellants, and the criteria stated by statute itself, the only apparent reason for the narrow range is to target a particular political subdivision—DeSoto, Missouri—and to exclude all others from such targeting. As one analyzes the statutory language against the backdrop of the facts presented, the only apparent reason for the narrow range is to target a particular political subdivision—DeSoto, Missouri—and to exclude all others from such targeting. The criteria, like a set of magnifying glasses, draws the Court's attention to only one political subdivision in the state—DeSoto, Missouri.

4. **As the law in question is a special law, and, therefore, unconstitutional, there is no substantial justification for the classification as it is not natural, reasonable or rationally related to a legitimate government interest.**

As this Court in Jefferson County held, "[i]f all three circumstances exist, the law is no longer presumed to be general, but is presumed to be a special law, requiring those defending it to show ***substantial*** justification for the classification." Jefferson County at 871 (emphasis added). As such, the Court requires a heightened form of the rational basis analysis, and Respondents bear the burden of showing a substantial justification for the classification. In addition, because the law has criteria stated that is more than just

population-based, the argument below will address the non-population based criteria in light of the law from Jefferson County.

What substantial justification could Respondents proffer for the classification scheme at issue which only applies to DeSoto, Missouri? Why is DeSoto singled out to be treated differently than any other third class city in this state? What is so unique about DeSoto that requires it to be singled out for treatment under the statutory scheme at issue? These questions must be answered by the Respondents, but, in reality and as a practical matter, the Respondents cannot put forward a reasonable and logically viable justification that gives reason for the singling out of DeSoto. No substantial justification exists.

Heightened Rational Basis Test

Under the rational basis test, 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) (emphasis added). ″The legislature is afforded broad discretion is (*sic*) attacking societal problems.″ Treadway v. State, 988 S.W.2d 508, 511 (Mo. banc 1999). A law that does not impinge on any suspect classification or constitutional right will be upheld if it is ***rationally*** related to a ***legitimate*** state interest. See, e.g., Mo. Prosecuting Attorneys and Circuit Attorneys Ret. Sys. v. Pemiscot Cnty., 256 S.W.3d 98, 102 (Mo. banc 2008); Kohring v. Snodgrass, 999 S.W.2d 228, 233 (Mo. banc 1999); Batek v. Curators of University of Missouri, 920 S.W.2d 895, 898 (Mo. banc 1996). The rational basis standard prevents the courts from over-riding the legislature's judgment with its own regarding ″the wisdom, social desirability or economic policy underlying a statute.″ Mo. Prosecuting Attorneys, 256 S.W.3d at 102.

However, as stated herein, the law must be rationally related to a legitimate state interest, and the legislature is not allowed to legislate unchecked by the Court. Furthermore, Appellants assert that the standard by which the legislation is to be assessed per this Court's opinion in Jefferson County in not just a rational basis analysis, but rather, a heightened rational basis analysis with the state having to show a **substantial justification** for the classification that is rationally related to a legitimate state interest, which is reflected in the legislation at issue. Appellants will now analyze the government interest of the statutory scheme at issue—R.S.Mo. Section 321.322.

The government interest

The statute is not well written. However, the overall purpose of the statutory scheme in R.S.Mo. Section 321.322 or, in other words, the state interest promoted therein, is to provide for a procedure for a Fire Protection District to continue to receive monetary support after a city has annexed into the jurisdiction of the Fire Protection District. Indeed, Fire Protection Districts do provide a very important service to areas throughout the state of Missouri by providing fire protection services to areas that do not have fire protection service coverage through an incorporated city.

Based on the language of the statute, a city with a population between two thousand five hundred (2,500) and sixty five thousand (65,000) must follow the procedure outlined in the statute. Once the city is annexed into the jurisdiction of the Fire Protection District, the city and Fire Protection District have 60 days to enter into an agreement for the city to cover all of the "obligations" of the Fire Protection District for the recently annexed property. The agreement is to be a mutually agreed upon between the city and the Fire

Protection District. The "obligations" referenced in the statute pertain to the monetary support for the obligations of the Fire Protection District, as the thrust of the statute pertains to the exchange of money for services performed by the Fire Protection District.

If an argument is made to frame the government interest in the statutory scheme as only one of fire protection services rendered by a fire protection district, then such is inaccurate as the statute discusses the payment obligation of the annexing city to the fire protection district for the continued service by the fire protection district. There is no doubt that when an annexation occurs, a party, whether that is the city or a fire protection district will be providing services. Afterall, it would be poor public policy to allow a structure, property, or land to burn for reason of various entities not being able to decide who should provide such services. However, even a cursory reading of the statutory scheme at issue reveals that the primary purpose of the statute is to determine how the Fire Protection District will be paid for its services.

Therefore, the interest to be protected in the statute is that of the Fire Protection District continuing to receive monetary support for its continuing obligations over the recently annexed property—The Fire Protection District is to not lose any additional coverage area property, nor is it to lose any of its monetary support.[5] As such, any proffered

[5] "Well-settled principles of statutory interpretation require us to ascertain the legislative intent from the language of the act, considering the words used in their plain and ordinary meaning, and to give effect to that intent whenever possible. If the statute is ambiguous, we attempt to construe it in a manner consistent with the legislative intent, giving meaning

justification for the classification and the exclusion by Respondents must be rationally related to this purpose, and the justification for the classification and exclusion must be substantial. With this purpose in mind, the court must ask Respondents the previously stated questions in regard to why DeSoto is now singled out and excluded from the overall statutory scheme at issue in this matter or why the classification is necessary and then judge their response to ascertain whether the justification is both substantial ***and*** rationally related to the purpose stated herein.

No substantial justification for the discrimination

However, there is no substantial justification for the discriminatory classification. Appellants first assert that there is no rational basis for the discriminatory classification, as the discriminatory classification is not rationally related to the purpose of R.S.Mo. Section 321.322. Whether a city is completely surrounded by a Fire Protection District or whether the city is a twin city whose borders are not completely surrounded by a single Fire Protection District, the statutory scheme at issue protects the Fire Protection District's ability to provide continued fire protection services to the newly annexed area and to likewise continue to receive monetary support for its obligations to the newly annexed area. The singling out of DeSoto from the standard post - annex procedure stated in R.S.Mo. Section 321.322 has no rational or reasonable basis and no **substantial** justification exists,

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to the words used within the broad context of the legislature's purpose in enacting the law." Connor v. Monkem Co., 898 S.W.2d 89, 90 (Mo. banc 1995) (quoting Sullivan v. Carlisle, 851 S.W.2d 510, 512 (Mo. banc 1993)) (citations omitted).

but rather, the law which states the discriminatory classification criteria is arbitrary and capricious and intended solely to discriminate against the city of DeSoto.

In regard to the continued monetary support of the Fire Protection District, there is nothing unique about a situation "where the annexing city or town operates a city fire department, is any city of the third classification with more than six thousand but fewer than seven thousand inhabitants and located in any county with a charter form of government [ ] with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants, and is entirely surrounded by a single fire protection district." There is nothing about any of the above criteria that warrants a differentiation in how the Fire Protection District so affected will obtain its monetary support. As readily depicted in the City and County population and classification statistics and information cited in Appellants' Statement of Additional Undisputed Material Facts (LF 81-84) and as supported in the Legal File at pages 86 to 184, there are numerous cities that are similar in size to Desoto, Missouri, but the law does not apply to them. All such cities have the power to annex into other areas, possibly fire protection districts. But the law does not apply to these cities. Respondents cannot prove otherwise as they failed to offer any such evidence to the trial court in the form required by Rule 74 and as argued herein in Point Relied on I, *supra*, and, notwithstanding that issue, Respondents cannot genuinely dispute the city and county statistics cited herein, which supported Appellants' Motion for Summary Judgment.

The effect of the discrimination

Because DeSoto is completely surrounded by a single fire protection district, DeSoto will annex into the jurisdiction of the fire protection district each time an

annexation occurs. R.S.Mo. Section 321.322 says that the city must pay money to cover all obligations of the fire protection district to the area included within the city. Therefore, the fire protection district surrounding DeSoto will not be financially harmed if the city were allowed to be treated like any other third class city under R.S.Mo. Section 321.322. Any argument proffered that claims a peculiar harm to the Fire Protection District in such a situation is unfounded, as the Fire Protection District still receives monetary support and still provides the service. The actual reason for the discriminatory classification is that the State (Respondents) chose to favor a private association—DeSoto Rural Fire Protection District—by stripping DeSoto of any negotiation power, thereby relegating DeSoto to a lesser status amongst all other third class cities in the State of Missouri.

The language of the statute in R.S.Mo. Section 321.322.1, when compared to the exclusionary, discriminatory language of R.S.Mo. Section 321.322.4, demonstrates an unjustifiable and unsubstantiated discriminatory classification. The statute at R.S.Mo. Section 321.322.1 reads that if a city annexes into the jurisdiction of the fire protection district, "then upon the date of actual inclusion of the property within the city, as determined by the annexation process, the city shall within sixty days assume by contract with the fire protection district all responsibility for ***payment*** in a lump sum or in installments an amount ***mutually agreed upon*** by the fire protection district and the city for the city to cover all obligations of the fire protection district to the area included within the city . . .." (emphasis added) However, this "mutually agreed upon" amount that the city is to pay is not applicable to DeSoto, as demonstrated herein.

Because the statutory exclusion applies exclusively to DeSoto, it alone is relegated to the provisions of R.S.Mo. Sections 72.418.2 and .3. In these provisions the discrimination against DeSoto is glaring: The City pays an amount **not** mutually agreed upon, but rather an amount that is based on the amount levied by the fire protection district; there is no negotiation. Furthermore, there is no negotiating the concept of the city providing services to the newly annexed area if the fire protection district ***unilaterally*** rejects such a proposal.

There is no substantial justification that can be propounded by the Respondents as to why DeSoto should have to pay a different amount or not have the same negotiating opportunities as other third class cities. Discriminating against one city and not others as to how much the city should have to pay cannot be justified; stripping a city of the negotiation opportunities available to other cities likewise cannot be justified.

CONCLUSION

The Appellants presented a two-pronged argument as to why this Court should overrule the trial Court's grant of Summary Judgment to Respondents and also overrule the trial court's denial of Appellants' Motion for Summary Judgment. First, the Appellants presented the procedural argument that the trial court erred in granting summary judgment to Respondents because Respondents in their response to Appellants' Motion for Summary Judgment and in Respondents' cross Motion for Summary Judgment (1) failed to appropriately respond to Appellants' statement of undisputed material facts in accordance with Rule 74 by citing specific evidence as required by the rules and (2) failed to cite in

their own statement of undisputed facts sufficient evidence as required by the rules to allow the trial court to grant Respondents' Summary Judgment and deny Appellants' Motion for Summary Judgment. For these reasons alone, the Court should overrule the trial court's sustaining Respondents' Motion for Summary Judgment and the trial court's denial of Appellants' Motion for Summary Judgment. However, even if the Court finds and holds otherwise, Appellants prevail on the merits and substance of this matter.

Next, Appellants presented both the constitutional law and case law applicable to this matter, and both provide that Appellants' Motion for Summary Judgment should have been sustained and Respondents' Motion for Summary Judgment should have been denied. The plain language of the Missouri Constitution prohibits the General Assembly from passing laws that "grant[ ] to any corporation, association or individual any special or exclusive right, privilege or immunity." As demonstrated by the material facts to which there can be no genuine dispute and based on the Missouri Constitution and, primarily, the Jefferson County case cited at length herein, R.S.Mo. Section 321.322.4 violates the Missouri Constitution by granting an exclusive privilege to the fire protection district surrounding DeSoto for the reasons that (1) the legislation 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; (3) the population range is so narrow that the only apparent reason for the narrow range is to target a particular political subdivision—DeSoto, Missouri—and to exclude all others from such

targeting; and (4) there is no substantial justification for the classification as it is not natural, reasonable or rationally related to a legitimate government interest.

WHEREFORE, Appellants have presented a set of material facts as to which there are no genuine dispute, and, based on those undisputed facts, Appellants are entitled to judgment as a matter of law. Appellants pray that the Court, for the reasons stated herein, overrule the trial court's sustaining Respondent's Motion for Summary Judgment and the trial court's denial of Appellants' Motion for Summary Judgment, that Appellant's Motion for Summary Judgment be granted thereby reversing the trial court's order and judgment denying same, that R.S.Mo. Section 321.322.4 be held as void and unconstitutional and that Respondents be enjoined from enforcing R.S.Mo. Section 321.322.4.

Respectfully submitted,

WEGMANN LAW FIRM
Attorneys for Appellants
P. O. Box 740 – 455 Maple St.
Hillsboro, MO 63050
Telephone: (636) 797-2665 or (636) 296-5769
Fax: (636) 797-3505
jkreitler@wegmannlaw.com

By: ___/s/ James M. Kreitler ____
James M. Kreitler #63531

ATTORNEY FOR APPELLANTS CITY OF DESOTO AND JAMES ACRES

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served by email, on June 12, 2015, addressed to:

James Layton
Attorney for Respondents
P.O. Box 899
Jefferson City, Missouri 65102
Phone: 573.751.1800
Facsimile: 573.751.0774
James.Layton@ago.mo.gov

/s/ James M. Kreitler_____
Attorney for Appellants

CERTIFICATE OF COMPLIANCE WITH RULE 84.06(C)

The undersigned hereby certifies that this Brief complies with the limitations contained in Rule 86.06 (b) and contains 8,834 words, and that any disk filed herewith pursuant to Rule 84.06(g) has been scanned for viruses and is virus free.

/s/ James M. Kreitler_____
Attorney for Appellants