SC94746

IN THE SUPREME COURT OF MISSOURI

CITY OF DeSOTO, a Political Subdivision of the State of Missouri, and JAMES ACRES,

Appellants,

vs.

JEREMIAH W. NIXON, Governor of the State of Missouri and CHRIS KOSTER, Attorney General of the State of Missouri,

Respondents.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Circuit Judge

BRIEF OF RESPONDENTS

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ARGUMENT

I. This Court's analytical framework sets population out from other characteristics of an allegedly "special" law. (Responds to Appellant's Point II, in part.)

The City of DeSoto (and a taxpayer; we refer to them collectively as "the City") challenges § 321.322.4 as a "special law," allegedly violative of Art. III, § 40, of the Missouri Constitution. This Court reiterated the analytical method of evaluating such a claim in *Jefferson County Fire Protection Districts Association v. Blunt*, 205 S.W.3d 866 (Mo. 2006). The first question is whether the statute "is based on close-ended characteristics." *Id.* at 870. If so, the burden falls on the State to "demonstrate a 'substantial justification' for the special treatment." *Id.* If the criteria given in § 321.322.4 are open-ended, the provision is not "facially special," but is "presumed to be constitutional." *Id.*

In *Jefferson County Fire Protection*, this Court identified the type of characteristics that are "open" rather than "close-ended." In Part II, we discuss four of the six characteristics in § 321.322.4—ones that are well within the "open-ended" field. The Court separated out population characteristics, but it did not wholesale reject the longstanding doctrine that population ranges are generally "open-ended." In Part III, we address the two population characteristics of § 321.322.4, comparing them to the

characteristic at issue in *Jefferson County Fire Protection*, and discuss how they are open-ended.

But also in *Jefferson County Fire Protection,* when considering a statute with a very narrow population range, the Court made an exception to the general open/close-ended rule for population characteristics: it outlined a "multi-faceted test" to be used to decide when a population range that is on its face open-ended should nonetheless be treated as close-ended. In Part IV, we apply that test—which leaves the challenged statute on the open-ended side of the line, because even though it may have applied only to a single city at the time of its enactment, the population ranges, even when combined with the non-population characteristics in the statute, open the door to other cities, unincorporated areas, and counties to make changes that would bring them into—or exclude them from—coverage of the statute.

II. The non-population characteristics set out in § 321.322.4 are not "close-ended." (Responds to Appellant's Point II, in part.)

In *Jefferson County Fire Protection*, the Court listed "close-ended characteristics": "historical facts, geography, or constitutional status." *Id.* One commentator synthesizing the Court's precedents described these as factors that "defin[e] a class by some unalterably distinguishing feature."

Christopher L. Thompson, "Note, Special Legislation Analysis in Missouri and the Need for Constitutional Flexibility," 61 MO. L.REV. 185, 192 (1996), cited in *Jefferson County Fire Protection*, 205 S.W.3d at 868. That description is appropriate: these are things that in the real, physical world and under the current Missouri Constitution, cannot change. For example, a city cannot be relocated to "a county that borders the state of Arkansas." *Tillis v. City of Branson*, 945 S.W.2d 447, 448 (Mo. 1997). And neither the General Assembly nor any political subdivision can change the Constitution—or the past.

Section 321.322.4 sets out six "characteristics," all of which must be met for the provision to apply:

> 4. The provisions of this section 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.

None of the six characteristics are historical. None of them are geographic. None of them are constitutional. None of them are "unalterable." Each and every one apply or could apply across the State.

We discuss the two characteristics on population in Part III; here we address the other four.

One of the characteristics is based on the operation of the City:

- *"the annexing city or town operates a city fire department."*

There is no constitutional provision, state statute, or regulation that requires any city to operate a city fire department. A city chooses whether to fit within a statute that defines its terms according to whether a city has or does not have a fire department.

The other three non-population characteristics are also based on political choices, albeit on ones that may require a vote by citizens in a particular county, or by citizens in or near a particular city in a county:

- *"city of the third classification"*

There are statutory criteria for a town, village, fourth class city, or unincorporated area to become a third class city. *See* §§ 72.030, 72.070, 72.080. But if the criteria are met—and the record in this case does not show how many places in Missouri could meet those criteria—when and whether there is a third class city is a local option. And once a city achieves third class

status, whether it remains in that classification for some if not all purposes is often a local option.

- *"located in any county with a charter form of government"*

Like the choice to become a charter rather than a third class city, a county chooses whether to adopt and whether to retain a "charter form of government." That option is available to every first class county—and, if they opt to become first class counties, to some counties that are now second class. *See* Mo. Const. Art. VI, § 18(a).[1]

- *"entirely surrounded by a single fire protection district"*

The boundaries of fire protections districts are set not by the Constitution or statute, but by local option. Such districts can be created,

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[1] *See also* § 48.020: "Classification 1. All counties having an assessed valuation of nine hundred million dollars and over shall automatically be in the first classification after that county has maintained such valuation for the time period required by section 48.030; however, any county of the second classification which, on August 28, 2010, has had an assessed valuation of at least six hundred million dollars for at least one year may, by resolution of the governing body of the county, elect to be classified as a county of the first classification after it has maintained such valuation for the period of time required by the provisions of section 48.030."

dissolved, or have boundaries changed by public vote. *See* §§ 321.010-321.180, 321.300, 321.390, 321.490. Though a city and its residents cannot themselves change the boundaries of an adjacent fire protection district, the residents of the districts (which may include city residents) can.

* * *

Whether any city that meets the population requirements (again, addressed below) falls into the non-population characteristics is the result not of some "unalterably distinguishing feature," but of political choices made by citizens in the area. Those characteristics are "open-ended"; they are subject to change at any time.

III. The population characteristics are sufficiently broad as to be "open-ended." (Responds to Appellant's Point II, in part.)

As noted above, in *Jefferson County Fire Protection* this Court dealt separately with population-based characteristics. The Court implicitly confirmed that many such characteristics are "open-ended." But it nonetheless held that some such criteria are so narrow that they should be treated as to be "closed-ended." Before we turn in Part IV to the test the Court applied in *Jefferson County Fire Protection*, however, we contrast the population-based characteristics at issue in *Jefferson County Fire Protection*

with those presented here. In doing so, we discuss the county population characteristics in § 321.322.4 in (A), and the city ones in (B).

A. County population.

In *Jefferson County Fire Protection*, this Court dealt with a population range—"fire protection districts wholly within first class counties with more than 198,000 but fewer than 199,200 inhabitants"—that had two elements: county classification and population. The Court addressed the range is if neither element could be changed. In terms of Jefferson County, that was true to a degree.

The classification of a county is by statute. *See* § 48.020.1. It depends on the assessed valuation of property in the county. *Id.* Counties have little control over their total assessed valuation, though they can influence it with land use and other development policies. The General Assembly may change the bases for classification at any time. And it may grant flexibility: larger second class counties already have the option to move to first class. *Id.*

Counties have little control over their population—though, again, they can influence it with their development policies. But only the General Assembly has power to change county boundaries and thus to directly and immediately change the population.

As to *Jefferson County Fire Protection*, the area covered by Jefferson County is dictated by § 46.099. So although the County might have an impact

on people moving into or out of its boundaries, it cannot add to or subtract from its population by political change.

And it is already a first class county. It could leave that status only by reducing its total assessed valuation by more than 75%—something that is hardly feasible or desireable.

That the boundary—and thus the County's population, assessed valuation, and classification—of the County can be changed by the General Assembly means that the County's area and classification are not "unalterable," *i.e.*, fixed by history, geography, or the Missouri Constitution. To make something "open-ended," as a constitutional matter, it may be enough that the General Assembly can change it.

But assuming, as the Court does in *Jefferson County Fire Protection*, that although the requirement for statutory change does not make a criteria "unalterable," it may still place the population of a county on the "closed" rather than the "open-ended" side of the line, the population characteristics at issue here are still quite different from the one in that case.

First, we look at the county population range:

- *"located in a county … with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants"*

The statute at issue in *Jefferson County Fire Protection* applied to fire protection districts in "first class counties with more than 198,000 but fewer

than 199,200 inhabitants."[2] Because Missouri statutes are presumed to refer to the last decennial census (*see* § 1.100.1), until after the 2010 census the statute could apply only to Jefferson County. The "tiny" range excluded "other counties of about the same size as Jefferson County (e.g., Clay County, population 184,006)." *Jefferson County Fire Protection*, 205 S.W.3d at 871. It was so small that it was unlikely that any other county would fall within its range at the 2010 census—and, indeed, none did: Clay, the only county with a population close to the statutory range, grew from 184,006 to 221,939, bypassing the chosen range. Missouri 2010: Population and Housing Unit Counts (U.S. Census Bureau, Sept. 2012) ("Missouri 2010"), available at http://www.census.gov/prod/cen2010/cph-2-27.pdf, p. 6.[3]

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[2] Whether counties (like Jefferson) and cities (like DeSoto) retain their "class" status if they adopt charters, as Jefferson County has, may be an open-ended question.

[3] Coincidentally, the 2010 Census found that Jefferson County had 218,733 residents. Missouri 2010, p. 6. Although § 1.100.2 says that losing population will not remove a city or county from a statute defined by population, it does not state such a rule for counties or cities whose population increases. Absent such a rule, the statute at issue in *Jefferson County Fire Protection* would no longer apply even to that county.

The range chosen in § 321.322.4 is much, much larger—and there is a correspondingly greater possibility that counties do or will fit into it. Clay County, with a 2010 population of 221,939, and Greene County, with a 2010 population of 275,174, already do. Missouri 2010, p. 6. And St. Charles County, with a 2010 population of 360,485, could lose only 11,000 residents before falling into the range. The range here, then, is very different from the one at issue in *Jefferson County Fire Protection.*

B. City population.

The range given in § 321.322.4 for the city is much narrower:

- *"more than six thousand but fewer than seven thousand inhabitants"*

That 1,000 person range is the same as in *Jefferson County Fire Protection*. But applying that range to cities is very different from applying it to large counties, for at least two reasons.

First, though there were few counties even close to the population range at issue in *Jefferson County Fire Protection*, cities of or near the size set out in § 321.322.4 are common. As shown by Exhibit D to Plaintiffs' Statement of Additional Undisputed Facts, there were dozens of cities within or near a population of 6,000-,7000 according to the 2010 census.

But second, and perhaps more important, city populations are much more fluid—and much more dependent on the city's own choices—than are county populations. Some of those choices are development-related, such as

allowing the construction of more housing, allowing more dense use of housing, reducing allowable density, enforcing or loosening occupancy limits, and encouraging or discouraging construction and redevelopment. Those can affect a city's population—and over a relative brief time span, do so significantly.

But more certain is the impact of changes in city boundaries—which, unlike county boundary changes, do *not* require legislative approval.

In the Petition, the City confirmed that "Pursuant to Section 77.020, the City of DeSoto may alter its city limits by involuntary and voluntary annexations." Petition ¶ 7, L.F. 11. That statutory authority is vested in all third-class cities. §§ 71.011-71.012, 71.014-71.016.

And that authority is within reach of others, because the current list of third class cities can change at any time, in various ways, including:

- Fourth class cities with at least 3,000 inhabitants may elect to become third-class cities. §§ 72.030, 72.070.
- Unincorporated areas may incorporate as third-class cities. § 72.090.
- Cities may consolidate as (§§ 72.150, 72.210) or be absorbed into (§ 72.300) third-class cities.

Third-class cities may come into being or grow so as to qualify for—or "graduate" from—the 6,000-7,000 population range.

Of course, city populations may also shrink. Some of that comes as family sizes decrease, or as the number of suitable dwelling units decreases. But it can also happen as a result of political decisions available to third-class cities: § 77.020 gives third-class cities authority to de-annex—to "diminish the city limits."

Such boundary changes, and the resulting changes in population, are commonplace. Thus the U.S. Census Bureau used ten pages of its report on the Missouri 2010 census to list cities that had boundary changes that affected the census. *See* Missouri 2010, pages III-3 to III-12. The list includes not just annexations, but "detachments" and "disincorporations"—all decisions that immediately affect cities' populations, and all decisions that are available at the local option.

That cities with populations near the range set in § 321.322.4 are not uncommon, when added to the ability of cities to change their population, distinguishes that population range from the one at issue in *Jefferson County Fire Protection*.

IV. Section § 321.322.4 is "open-ended," not an impermissible "special law." (Responds to Appellant's Point II, in part.)

A. In *Jefferson County Fire Protection*, this Court has defined a "multi-faceted test" under which a plaintiff must prove three things before an allegedly "special" law loses its presumption of validity.

In *Jefferson County Fire Protection*, this Court did not simply compare the law at issue to others considered in prior cases. Rather, having implicitly concluded that the population of Jefferson County was not something the County could change, the Court moved on to articulate a "multi-faceted test" to be used in determining whether in such an instance the population range was so narrow that what appeared on its face to be an "open-ended" characteristic demanded treatment as a "close-ended" one—*i.e.*, whether the burden would be on the challenger or on the State to make its case:

> 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.

Jefferson County Fire Protection, 205 S.W.3d at 870-71.

As the Circuit Court emphasized (Appellant's Appendix at 3), the Court phrased the "multi-faceted test" in the conjunctive—*i.e.*, by using "and," it stated that the burden would shift only if the answer to all three questions was "yes."

And the test does impose the initial burden on plaintiff—the person challenging the statute. That is the only conclusion consistent with both *Jefferson County Fire Protection* and *City of St. Louis v. State*, 382 S.W.3d 905, 915 (Mo. 2012), where the Court asked the "multi-faceted test" questions *before* moving any burden to the State. That means that unless a plaintiff

shows that the answer to each of the three questions is "yes," the statute retains its presumption of constitutionality and plaintiff can prevail only if it shows that the statute "clearly and undoubtedly" violates the Constitution. *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 327 (Mo. 2015).

In *City of St. Louis v. State*, the Court indirectly provided some additional insight as to how to conduct "special law" analysis. There the Court expressly rejected an argument "that section 320.097 is a special law because only the city of St. Louis both ***has*** a residency requirement for its firefighters and ***has*** a school district that is not fully accredited." 382 S.W.3d at 915 (emphasis added). That argument was made, presumably, because in *Jefferson County Fire Protection* the court articulated each of the three parts of the test using present tense. The Court in *City of St. Louis* emphasized that current conditions alone do not decide the question: "But the test for whether a statute is special is not whether another falls within its parameters at a particular time but whether "'others may fall into the classification.'" *Id.*, quoting *Jefferson County Fire Protection,* 205 S.W.3d at 870. The Court emphasized that a statute is treated as open-ended "even if, at the time of the suit, only one or a few counties in fact are affected by the legislation." *City of St. Louis*, 382 S.W.3d at 914.

That suggests that the first two parts of the "multi-faceted test" are more appropriately stated: (1) a statute contains a population classification

that ***may*** include only one political subdivision, (2) other political subdivisions are ***or may in the future be*** similar in size to the targeted political subdivision, yet ***will not be*** included. In *Jefferson County Fire Protection* the question of the potential or near-future application did not need to be addressed because the range was so low that it was unlikely any county would fall into it at the precise point of a census in the foreseeable future. In *City of St. Louis*, the Court recognized, at least implicitly, that things change, *e.g.*, that school districts gain and lose accreditation, and that cities choose whether to impose residency requirements on employees. That a particular school district at a particular time is unaccredited, and a city has chosen to impose a residency requirement, are not "closed-ended" classifications.

B. DeSoto, using the "multi-faceted test," failed to prove—or even to create an issue of fact—that the statute lost the presumption of validity.

There are two ways to apply this "multi-faceted test": to pose the three questions as to the population range standing alone; and to pose them as to the combination of the population range and other characteristics specified in the statute. At issue in *Jefferson County Fire Protection* was a statute that included only the population range (plus a limitation to "first class" counties, but as a practical matter a county with a population in the defined range

would never have a lower classification). Thus the Court used the first approach. The Court did not overtly apply the "multi-facted test" in *City of St. Louis*, presumably because that case involved a statute that did not have a population range. We take up the two approaches in turn.

1. Population ranges standing alone.

First, considered alone, neither of the "population classifications" in § 321.322.4 (1) "includes only one political subdivision"—not even now, much less in the near future. Because the "multi-faceted test" requires "yes" answers as to all three questions, answering "no" to this first question is enough to defeat the application of the test and leave the burden on plaintiffs.

But the City also failed to prove (2) that "other political subdivisions are similar in size to the targeted political subdivision, yet are not included." That is because the ranges are broad, in their respective contexts.

Thus, as to the population ranges considered alone, the Court need not address, (3) whether 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." But the City's proof failed there, too—for the same reason: it did not include a comprehensive look at all cities that could fall into the defined range in the near future, and thus did not exclude the possibility that legislators were concerned not just about the dispute in DeSoto, but about other instances in which third-class cities and adjacent fire

protection districts would threaten each other's ability to economically provide services.

2. The formulas, including population ranges.

DeSoto's case fares no better when considering § 321.322.4 as a whole, *i.e.*, looking at the population ranges combined with the other factors.

We would have to ask, first, whether the statute "contains a population classification that," when combined with the non-population characteristics, now includes and in the near future could include "only one political subdivision." But the City has never tackled the task of identifying every city and unincorporated area that could become a city that could fit into the statute. Its argument has been limited to current conditions—and thus must be rejected just as the argument in *City of St. Louis* was rejected. And that means that the City, having failed to prove the answer to the first question is "yes," cannot shift the burden to the State.

The City's allegations and proof as to the second prong were similarly insufficient. The key to analysis of § 321.322.4 is the condition of being surrounded by a single fire protection district. Yet the City never addressed below and does not address here the possibility of other third-class cities becoming surrounded by a single district.

Though the City claims to have met its burden as to the third factor, its focus on current conditions, rather than potential and future ones subject to

local political choices, leaves a fatal hole in the City's analysis. It is possible to identify each city that falls within the population range of § 321.322.4 based on the 2010 census—and below and in this Court, DeSoto has done just that. But that is not enough. Legislators are not bound to restrict their thinking to current conditions; they can and must think ahead. And the City did not make below and makes no attempt here to address such thinking.

That may be because it is hard—if not impossible. It would be difficult, though possible, to determine whether any of the cities that were in the population range as of 2010 has changed its boundaries so as to add to or subtract from its 2010 population and thus no longer fall within the range. It might be a bit easier to determine whether any new city has been incorporated that falls within the range, and whether any city that was near but outside the range as of 2010 has annexed or de-annexed so as to add to or diminish its population and fit within the range now.

But ultimately, again, the omission from the record of such detail need not be dispositive, for the City makes no attempt to look to the future. And it is legislative purpose or intent, which includes future impacts, that is the key to every form of "special law" analysis. The intent of the members of the General Assembly is often difficult to ascertain. And here, many or most had some basis for concern that might have played a role in their votes. Many of them represent residents of first-class counties—some of which now have

charters; the rest of which do not but could, as could some second-class counties. Many represent areas with fire protection districts whose viability is threatened when cities take over territory and tax revenue. Many have in their districts third-class cities in the 4,000-8,000 population range. They may have had in mind not just cities that fit within the range under the 2010 census, but cities that might annex or de-annex or grow or shrink in population for other reasons in time to fit within the statutory range now or after the 2020 census. The City's failure to even attempt to address potential future concerns dooms their efforts to meet the last "face" of the *Jefferson County Fire Protection* test.

C. The City did not defeat the presumption that § 321.322.4 is constitutional.

Because the City did not make a case sufficient to shift the burden under the "multi-faceted test," it had the burden of showing that § 321.322.4 "clearly and undoubtedly" (*Glossip v. Mo. Dept. of Transp. & Hwy. Patrol Employees' Retirement Sys.*, 411 S.W.3d 796, 801 (Mo. 2013)) was unconstitutional. The City did not do so. Indeed, the trial Court correctly found that it is not a "special law." That is correct for the reasons addressed in Part II above. The population ranges are sufficient to cover other jurisdictions—perhaps, over time, many others. And none of the non-population characteristics are "unalterable." Rather, they are to a significant

degree a matter of choice—the county boundary, a legislative choice; others, a local choice. This Court should reject the idea that when the legislature defines the application of a statute based on such choices—particularly local ones—it is impermissibly enacting a "special law."

V. Summary judgment was appropriate based on the record below. (Responds to Appellant's Point I.)

The City does not, of course, begin by discussing the law and its application, which we address in Parts I-IV above. Instead the City begins by attacking the record on summary judgment, arguing in its Point I that deficiencies in defendants' submissions both barred a grant of summary judgment to defendants, and compelled a grant of summary judgment to plaintiffs.

As to the City's motion for summary judgment, we note first that "[a] trial court's overruling of a motion for summary judgment generally is not subject to appellate review." *Bob DeGeorge Assocs., Inc. v. Hawthorn Bank*, 377 S.W.3d 592, 596 (Mo. 2012). The City presumes that this is one of the "rare circumstances" in which "the overruling of a party's motion for summary judgment can be reviewed [because] its merits are intertwined completely with a grant of summary judgment in favor of an opposing party." *Id.* at 596-97.

The City focuses on alleged deficiencies in defendants' response to the City's motion for summary judgment. "Not all defects, however, necessitate reversal. The central question is whether the motion for summary judgment contains sufficient discussion of the relevant facts to apprise the non-movant and the trial court of the specific grounds upon which the movant claims to be entitled to judgment as a matter of law." *Transatlantic Ltd. v. Salva*, 71 S.W.3d 670, 674 (Mo. App. W.D. 2002). And the City makes no claim that it or the trial court was not apprised of the grounds for defendant's motion.

Both the City and defendants sought summary judgment based on official publications of the population of cities and counties per the 2010 Census, and a map of fire protection district boundaries that showed a portion of Jefferson County. There was no need, despite the City's argument here, for defendants to contradict those facts when presented with the City's motion and the City's response to defendants' motion.

Moreover, the City's principal claim, that defendants' denials to the City's statement of facts "rested on mere denials or on their own pleadings" (Appellant's Brief at 13) is at the very least misleading. As shown in the legal file the City references (L.F. 69-76), in response to the City's statement of material facts, defendants made a key point—repeatedly: that although specifics of the City's statements were correct (e.g., the population, according to official sources cited and attached, of various cities and counties), the

City's alleged "facts" were broader than the evidence it cited. Defendants were under no obligation to present evidence to contravene that portion of the City's "facts" for which the City did not provide evidentiary support. That left as "admitted" the "truth of each numbered paragraph" (Appellant's Brief at 13) only insofar as it was actually supported by the evidentiary presentation. And that left the City with just a list of cities and counties and their respective populations, as shown in The Missouri Roster (Plaintiff's Exhibit D, starting at L.F. 86), and a 2014 map of fire protection districts in a portion of Jefferson County (L.F. 193). Again, there is no dispute regarding the accuracy of the numbers on the list, nor the boundaries shown on the map.

Relying on their characterization of the motions and responses below, the City insists that defendants, to obtain summary judgment, "were required to state" "§ 321.322.4's applicability to more than one political subdivision," "supported by 'pleadings, discovery, exhibits or affidavits.'" Appellant's Brief at 14, quoting Rule 74.04(c)(2). But that assumes that defendants were arguing that when enacted, § 321.322.4 *did* apply to more than one city. And so far as we know, it did not. There were only a few third-class cities in Jefferson County (the only county with the requisite population according to the 2010 census that had at the time of enactment adopted a charter). But as discussed above, the question is broader than that.

The record created below by the parties' submissions of population data demonstrates that although § 321.322.4 may have only applied to one city and one fire protection district at the time it was enacted, by now it may apply to others—and certainly could apply to others in the future. The "special law" provision does not bar the General Assembly from acting while a perceived problem arises only in one location in the State, so long as in acting it uses open-ended criteria that could apply to other locations.

CONCLUSION

For the foregoing reasons, the trial court's judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was electronically via Missouri CaseNet on the 27th day of July, 2015, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 5,416 words.

/s/ *James R. Layton*
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