IN THE SUPREME COURT OF MISSOURI

No. SC95624

CITY OF NORMANDY, et.al.

Plaintiffs / Respondents / Cross-Appellants

v.

JEREMIAH WILSON NIXON, et. al.
Defendants / Appellants / Cross-Respondents

Appeal from the Circuit Court of Cole County
Honorable Jon Beetem, Circuit Judge
Cause No. 15AC-CC00531

REPLY BRIEF OF RESPONDENTS

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JURISDICTIONAL STATEMENT

In 2015, the General Assembly passed and the Governor signed into law Senate Bill No. 5, which purported to impose several reforms only on the municipalities located in St. Louis County. Twelve municipalities located in St. Louis County, as well as two of their taxpayers, filed a Petition against the State alleging SB 5 Sections 67.287, 479.359, 479.360 and 479.362 violated the Missouri Constitution and sought declaratory and injunctive relief. The State moved to dismiss all counts for failure to state a claim. Following a consolidated hearing on Plaintiffs' motion for preliminary and permanent injunction and Defendants' motion to dismiss, the Circuit Court granted both motions in part. [Legal File ("LF") 41-44].

The Circuit Court held that SB 5 Sections 67.287 and 479.359.2 were special laws in violation of Article III, Section 40 of the Missouri Constitution because they only applied to municipalities within a county with a charter form of government and with more than 950,000 inhabitants. [LF42-43 at ¶¶ 9.A and 9.B]. The Circuit Court also held that SB 5 Sections 67.287 and 479.359.3 constituted unfunded mandates in violation of Article X, Sections 16 and 21 of the Missouri Constitution. [LF43 at ¶¶ 9.C and 9.D]. The State has appealed both holdings. Accordingly, this Court has jurisdiction pursuant to Article V, Section 3 of the Missouri Constitution which provides "[t]he supreme court shall have exclusive appellate jurisdiction in all cases involving the validity . . . of a statute or provision of the constitution of this state."

STATEMENT OF FACTS[1]

A. Plaintiffs' Petition

On May 7, 2015, the Missouri General Assembly passed and, on July 9, 2015, the Governor of Missouri signed Senate Bill No. 5 ("SB 5").[2] On November 19, 2015, twelve municipalities located in St. Louis County and two taxpayers residing therein filed a Verified Petition for Declaratory Judgment and Preliminary and Permanent Injunction (the "Petition"). The Petition contained nine counts which alleged, on different grounds, that SB 5 violated the Missouri Constitution. [LF5-30]. The Petition and an accompanying motion sought a declaratory judgment and a preliminary and permanent injunction enjoining the enforcement of SB 5. [LF5-33].

B. SB 5

In a transparent effort to target only the municipalities located in St. Louis County with special legislation, SB 5 Sections 479.359.1 and 479.359.2 expressly

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1 Respondents believe that the State's statement of facts is incomplete and the introduction and background sections contained in the amicus brief improperly present alleged facts outside the record on appeal. Accordingly, respondents respectfully submit this alternative statement of facts for this Court's consideration.

2 A copy of SB 5, as passed by the General Assembly, is included in the Appendix ("App.") separately filed with this brief at A1-A15.

provide that, municipalities within "any county with a charter form of government and with more than nine hundred fifty thousand inhabitants" cannot retain their "fines, bond forfeitures, and court costs" arising out of "minor traffic violations" if they exceed **12.5%** of their "annual general operating revenue." [App. at A8]. At the time that SB 5 was passed and signed, both the General Assembly and the Governor knew that the only county in Missouri with a charter form of government and more than 950,000 inhabitants was St. Louis County. In contrast to the municipalities in St. Louis County, under the provisions of SB 5, all of the municipalities in Missouri's other 113 counties can retain their "fines, bond forfeitures, and court costs" arising out of "minor traffic violations" up to **20.0%** of their "annual general operating revenue." *Id.*

In addition to this special legislative constraint imposed solely on the municipalities located in St. Louis County, SB 5 Section 67.287 also burdens only the municipalities located in St. Louis County with new and expensive administrative activities without appropriating any funding to reimburse them for these new and onerous burdens. [App. at A1-A2]. Thus, pursuant to SB 5 Section 67.287.2, only the municipalities located in St. Louis County are required, *inter alia*, to have an accredited or certified police department, an annual audit by a certified public accountant and a comprehensive cash management and accounting system. [App. at A1-A2]. All of this was mandated by SB 5 without the legislature providing any funding to the St. Louis County municipalities to reimburse them for the costs incurred in fulfilling the legislature's mandates at the time SB 5 was enacted.

Significantly, Sections 479.359 and 67.287 do not apply to just St. Louis County. In fact, by their express terms, they apply to every "city, town, or village" **within** St. Louis County. *See* Section 67.287.1(2) defining "municipality" as "any **city, town, or village** located in any county with a charter form of government and with more than nine hundred fifty thousand inhabitants" [App. A1 (emphasis added)] and Section 479.359.2 excepting "any county with a charter form of government and with more than nine hundred fifty thousand inhabitants and any **city, town, or village** with boundaries found within such county shall be reduced from thirty percent to twelve and one-half percent" [App. 8 (emphasis added)].

Thus, it is undeniable that SB 5 singled out every city, town and village in St. Louis County, and only St. Louis County, in discriminatory and constraining contrast to all of the cities, towns and villages in Missouri's 113 other counties.

C. The proceedings in the Circuit Court

In the Circuit Court, plaintiffs moved for a preliminary and permanent injunction and for a hearing on their motion, and defendants moved to dismiss the Petition for failure to state a claim. [LF31-39]. The hearing was held on February 5, 2016.[3] Only two witnesses testified during the hearing, both of whom – Carl Wolf ("Mr. Wolf") and Mayor Patrick Green ("Mayor Green") – were called by plaintiffs and

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[3] A copy of the transcript of the hearing has been submitted to this Court apart from the Legal File, which was submitted to this Court by the agreement of the parties.

testified on their behalf. Three exhibits were introduced into evidence by plaintiffs during the hearing: (1) Mr. Wolf's curriculum vitae; (2) Mayor Green's budget for the City of Normandy; and (3) an affidavit of Angela Dorn ("Ms. Dorn"). Transcript of February 5, 2016 Hearing ("Tr.") at 5-41.

Mr. Wolf had received a B.S. degree and an M.S. degree in urban affairs and policy analysis from Southern Illinois University and, prior to retirement, had been the chief of police of Highland, Illinois from 1980 to 1985 and then of Hazelwood, Missouri in St. Louis County from 1985 to 2012. Tr. 6-8. While he was the police chief of Hazelwood, Mr. Wolf was in charge of obtaining accreditation for the Hazelwood police department. Tr. at 8-9. Mr. Wolf was also an executive and on the board of various police associations for several years. Tr. at 9-10. As a result of his expertise and experience, the Circuit Court accepted Mr. Wolf as "an expert in policing and police accreditation." Tr. at 11.

Mr. Wolf testified that the accreditation process is a "three year process" once it formally starts, but that "there is a lot of preparation that goes before that" because "you have to ensure before you get in the process that you're ready to do it." Tr. 11-12. Since the accreditation process requires that you complete it in three years once you commence it, it is imperative that you properly prepare for the process before you formally start it. Tr. at 11-12.

Mr. Wolf described the preparation process in great detail and testified it would take an additional "year to two or three years" to complete before starting the formal three year accreditation process. Tr. at 12-14. Then, the formal accreditation

process requires that the police department satisfy from 184 to 490 standards. Tr. at 15. Mr. Wolf also explained why the formal accreditation process takes three years. Tr. at 15-17. If a police department fails to successfully complete the formal accreditation process in three years, they will either be given an extension to complete it or directed to start over. Tr. at 17-18. Finally, once a police department receives accreditation, it must be re-accredited every three or four years. Tr. at 18-19.

Mr. Wolf testified that the fees for obtaining CALEA accreditation initially are $8,700 and thereafter $3,400 a year and the fees for obtaining Missouri Police Chiefs accreditation initially are $5,000 and every three years thereafter $5,000. Tr. at 14-15, 19. None of these accreditation fees included the costs incurred in preparing for the formal accreditation process or for employee time involved in the process. Tr. at 13-14.

On cross-examination, Mr. Wolf testified that there were 63 or 65 police departments in the 92 municipalities in St. Louis County, approximately 18 of which already have accreditation. Tr. at 20-21. The municipalities without a police department contract for one with those municipalities that have a police department. Tr. at 20. Mr. Wolf testified that the City of Pagedale had its own unaccredited police department. Tr. at 22-23. The City of Pagedale is a plaintiff herein and its Mayor Mary Louise Carter is suing as a taxpayer plaintiff herein. [LF9-10 at ¶¶ 15 and 22]. Nine other municipal plaintiffs do not have an accredited police department. Tr. at 22-23. Mr. Wolf concluded his cross-examination by testifying that, "from the time you begin the process to the time you get accreditation," you could be looking at six years. Tr. at 24.

Mayor Green – the Mayor of the City of Normandy – provided extensive testimony on Normandy's annual revenues for the year ended September 30, 2015. Tr. at 26-27. Mayor Green testified that Normandy's 2015 annual general operating revenue, as defined in SB 5, was $3,400,000 and that 7.5%, that is, 20% less 12.5%, of $3,400,000 was $255,000. Tr. at 26-27. Accordingly, $255,000 was the 2015 annual general operating revenue Normandy would not have been able to retain because of SB 5 had it taken effect as of that year. Tr. at 27.

Mayor Green then testified that, if he lost the $255,000 in revenues because of SB 5, he would have to lay off two or three police officers and reduce the personnel in the sanitation and streets department. Tr. at 27-29. He also testified that "all of the municipalities surrounding Normandy will be adversely affected in the same way in many capacities financially." Tr. at 29.

Significantly, because of its location adjacent to I-70, MoDot has requested that Normandy police and patrol that section of I-70 in order to improve its safety. Tr. at 29-31. Without the full complement of police, Normandy's I-70 policing efforts will be diminished. Tr. at 27-31. In conclusion, Mayor Green testified that laying off two or three police officers would adversely affect policing in Normandy. Tr. at 40.

In addition to the testimony adduced from Mr. Wolf and Mayor Green, the Affidavit of Angela Dorn – Ex. P-3 – was admitted into evidence.[4] Tr. at 41. Her

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[4] The Dorn Affidavit is included in the Appendix at A16.

affidavit established that she was a CPA who had performed accounting work for Normandy and who had been recently hired to do the same for Pagedale. Affidavit at ¶¶ 2, 4. Ms. Dorn estimated that the cost for calculating the "annual general operating revenue," and "court costs" for "minor traffic violations" in accordance with the definitions in SB 5 would annually amount to $300 to $500. Affidavit at ¶ 6. She also estimated the annual cost of preparing the annual audited financial statement for Pagedale, as required by SB 5, to be $8,500. Affidavit at ¶ 7.

Significantly, the State introduced no evidence in response to the instructive evidence introduced by plaintiffs through Mr. Wolf, Mayor Green and the Dorn Affidavit:

> THE COURT: All right. Mr. Hirth, any evidence for the State?
>
> MR. HIRTH: The State has no evidence.

Tr. at 41. Thus, the State introduced no evidence to justify any of the sections of SB 5 challenged on constitutional grounds by plaintiffs.

Following the hearing, each side submitted forms of judgment to Judge Beetem, who ultimately entered a Judgment and Permanent Injunction:

1. Declaring that SB 5 Sections 67.287 and 479.359.2 were special laws in violation of Article III, Section 40 of the Constitution [LF42-43 at ¶¶ 9.A and

9.B];[5]

2. Declaring that SB 5 Sections 67.287 and 479.359.3 were unfunded mandates in violation of Article X, Sections 16 and 21 of the Constitution [LF43 at ¶¶ 9.C and 9.D];[6]

3. Enjoining the State from enforcing the statutory provisions declared to be unconstitutional [LF43-44 at ¶¶ 10-12];[7] and

4. Denying all of the remaining claims for relief made by plaintiffs [LF44 at ¶ 13].[8]

D. SB 572

Senate Bill No. 572 ("SB 572") was passed by the Missouri General Assembly on May 12, 2016 and signed by the Governor on June 17, 2016.[9] The timing of the enactment of SB 572 was not coincidental. The Circuit Court entered its Judgment

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5 This declaration related to Counts I and II in the Petition.

6 This declaration related to Counts III and IV in the Petition.

7 This injunction related to the relief sought in Counts I through IV in the Petition.

8 This denial related to the State's motion to dismiss Counts V through IX in the Petition.

9 We have included in the Appendix at A17-A34 the version of SB 572 passed by the General Assembly which shows in boldface the additions and in brackets the deletions to SB 5.

and Permanent Injunction on March 28, 2016. Thus, less than two months later, SB 572 was passed by the General Assembly.

SB 572 did not cure the SB 5 provisions found unconstitutional by the Circuit Court. The restrictive application of SB 5 – targeting, as it does, solely the municipalities located within St. Louis County – remained unchanged. *See* Sections 67.287.1 and 479.359.2. The requirement that such municipalities obtain accreditation for their police departments was not eliminated. On the contrary, SB 572 only made express what was previously implied, namely, that it only applied to "a municipality [within St. Louis County that] has a police department or contracts with another police department for public safety services." *See* Section 67.287.2(6).

The remaining SB 572 amendments to SB 5 so far as relevant to the State's appeal simply: (1) modified the definition of "minor traffic violation" [Section 479.350(3)]; (2) added a definition of "municipal ordinance violation" [Section 479.350(4)]; (3) limited the amount of fines that could be imposed for minor traffic violations and municipal ordinance violations [Section 479.353(1)]; and (4) included municipal ordinance violations in the addendum each municipality was required to submit to the state auditor [Section 479.359.3]. None of these amendments cured the defects in the sections of SB 5 found unconstitutional by the Circuit Court. To the contrary, these changes on their face only increased the complexity of the addendum addressed by Ms. Dorn in her Affidavit.

E. The "facts" Amicus Curiae Better Together seeks to introduce on appeal for the first time.

Amicus curiae Better Together ("BT") has filed a brief which seeks to introduce on this appeal its version of facts which were never introduced at the plenary hearing before the Circuit Court and are not part of the record before this Court. BT's strategy is designed to taint and stigmatize the plaintiff municipalities and the other municipalities within St. Louis County with their views on what occurred in Ferguson. BT's attempt to do this should not be countenanced because its so-called facts were never subject to cross-examination, vetting or rebuttal at the hearing before the Circuit Court, because the State put on no case. Tr. at 41. Without the crucible of an evidentiary hearing, none of BT's so-called facts should be considered by this Court.

Furthermore, the special law issue presented herein concerns whether SB 5's targeting of the municipalities in St. Louis County by capping their retention of fines, bond forfeitures and court costs from minor traffic violations at 12.5%, when all other municipalities in Missouri's 113 other counties have a cap of 20%, is constitutional. Plaintiff municipalities do not object to a cap of 20%. They only object to being treated as second-class municipalities with a 12.5% cap in comparison to all other municipalities in Missouri's 113 other counties.

Moreover, many of the so-called facts advanced by BT are the result of its own studies to advance its own biased agenda. BT Brief at 9-10 and 10 n. 7, 28-30 and 28 n. 18. Given BT's biased agenda, it should not be surprising that its version of the facts is not accurate. For example, with respect to plaintiff Normandy, BT states that, for

the year 2014, Normandy collected 40.61% of its "general revenue funds" from "fees and fines." BT Brief at 28-29. But, BT's calculation is premised on BT's study using the terms "general revenue funds" and "fees and fines," which are not the equivalent of the "annual general operating revenue" and "fines, bond forfeitures and court costs" arising from "minor traffic violations" used in SB 5. Missouri municipal courts also receive "fees and fines" from noise ordinance violations, zoning violations, business license violations, disturbing the peace offenses and the like, all of which are unrelated to and excluded from "minor traffic violation[s]" as defined in SB 5.[10]

Nevertheless, using BT's own figures, many of the municipalities in St. Louis County retain less than 20% of their "general revenue funds" from municipal court "fees and fines." Better Together, Statewide Fines and Fees available at http://www[.]bettertogetherstl.com/wp-content/uploads/2014/10/Statewide-Fines-and-Fees.pdf. In fact, 56 of the 77 St. Louis County municipalities for which BT compiled figures had **less than 20%**. *Id.* In contrast, there were many municipalities outside St. Louis County which received more than 20% of their general revenue funds from

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[10] When SB 572 was enacted, the legislature brought non-traffic related offenses within the retention cap by including "municipal ordinance violations" in the addenda filed by municipalities. *See* SB 572 Sections 479.350(4) and 479.359.3(2) and (3). Nevertheless, BT's pre-SB 572 calculations were not tied to SB 5's nomenclature.

municipal court fees and fines. Thus, for example, three municipalities in each of Platte, Clay and Jackson Counties, two municipalities in each of St. Charles and Barry Counties, two of the five municipalities in each of Pemiscot, McDonald and Newton Counties and two of the six municipalities in Lincoln County all **exceeded 20%** according to BT's own figures. *Id.* In fact, the two municipalities in Lincoln County had 123.66% and 79.63%. according to BT. *Id.*

What these figures show is that there was no rhyme or reason for SB 5's targeting of the municipalities in St. Louis County. SB 5 was nothing more than an unconstitutional legislative compromise that allowed other regions of the state to escape the full effect of this response to the tragic events in Ferguson. BT's arguments miss the mark because there was no reason – at least no valid reason – why the St. Louis County municipalities should have been treated differently than all other Missouri municipalities.

POINTS RELIED ON

I. **The Circuit Court did not err in holding that SB 5 Sections 67.287 and 479.359.2 violated Article III, Section 40 of the Missouri Constitution because they are special laws.**

Article III, Section 40 of the Missouri Constitution

Jefferson County Fire Prot. Dist. Ass'n v. Blunt,

205 S.W.3d 866 (Mo. banc 2006)

City of De Soto v. Nixon,

476 S.W.3d 282 (Mo. banc 2016)

City of Springfield v. Sprint Spectrum, L.P.,

203 S.W.3d 177 (Mo. banc 2006)

II. The Circuit Court did not err in holding that SB 5 Sections 67.287 and 479.359.3 violated Article X, Sections 16 and 21 of the Missouri Constitution because they imposed unfunded mandates on Normandy and Pagedale.

Article X, Sections 16 and 21 of the Missouri Constitution

Brooks v. State,

128 S.W.3d 844 (Mo. banc 2004), as modified on denial of reh'g (March 30, 2004)

City of Jefferson v. Missouri Dept. of Natural Resources,

863 S.W.2d 844 (Mo. banc 1993)

STANDARD OF REVIEW

The standard of review for the judgment entered below was set forth in *American Eagle Waste Industries, LLC v. St. Louis County*, 379 S.W.3d 813, 823 (Mo. banc 2012), quoting *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976):

> The decree or judgment of the trial court will be sustained by the appellate court unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.

"Issues of law, however, are reviewed *de novo*." *American Eagle*, 379 S.W.3d at 823, quoting *Murrell v. State*, 215 S.W.3d 96, 102 (Mo. banc 2007).

ARGUMENT

I. The Circuit Court did not err in holding that SB 5 Sections 67.287 and 479.359.2 violated Article III, Section 40 of the Missouri Constitution because they are special laws.

A. Under this Court's controlling *Jefferson County* test and this Court's recent decision in *De Soto*, SB 5 Sections 67.287 and 479.359.2 are special laws in violation of Article III, Section 40 of the Missouri Constitution.

This Court's decision in *Jefferson County Fire Prot. Dist. Ass'n v. Blunt*, 205 S.W.3d 866, 870-871 (Mo. banc 2006) established the governing three-part test for determining if a legislative enactment is an unconstitutional special law. Moreover, earlier this year, this Court in *City of De Soto v. Nixon,* 476 S.W.3d 282, 287-288, 288 n. 4, 288 n. 5 (Mo. banc 2016), unanimously reaffirmed the *Jefferson County* three-part test.

Accordingly, this Court's determination as to whether the Circuit Court correctly concluded that Sections 67.287 and 479.359.2 are unconstitutional special laws should start with the *Jefferson County* three-part test: "(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." 205 S.W.3d at 870-871.

Although it is true that plaintiffs have the burden of satisfying the *Jefferson County* three-part test, once plaintiffs demonstrate that "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." 205 S.W.3d at 871. As this Court held in *De Soto*, when "the three *Jefferson County* elements are satisfied, a law is presumptively special and the burden shifts to the State to show a substantial justification for the special law." 476 S.W.3d at 290.

Moreover, "the mere existence of a rational or reasonable basis for the classification is insufficient" to satisfy the stringent "substantial justification" burden. *City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177, 186 (Mo. banc 2006). In fact, in seeking to carry this "substantial justification" burden, defendants "cannot rely on a legislative determination that a special law was necessary, for '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.**' " *Id.* at 186, quoting Article III Section 40 of the Missouri Constitution (emphasis added).

Significantly, here, the State introduced no evidence at the plenary hearing to demonstrate a substantial justification for singling out only the municipalities in St. Louis County for disparate treatment in Sections 67.287 and 479.359.2. Accordingly, where, as here, the three-part test has been satisfied, Sections 67.287 and 479.359.2 are definitively unconstitutional special laws.

The first part of the three-part test is clearly satisfied here. St. Louis County is the only county in Missouri with a charter form of government and more than

950,000 inhabitants. The State has conceded this obvious fact. State Brief at 15 ("Only one political subdivision satisfies both criteria in the present case – St. Louis County."). However, the State contends that, despite this indisputable fact, the possibility that other cities with a charter form of government might exceed 950,000 inhabitants is sufficient to demonstrate that the first part is not satisfied. *Id.* at 12-13, 15. The State seeks to support its argument by stating that "Plaintiffs conceded in their pleadings [that] Jackson County will likely reach 950,000 residents eventually," citing "Ver. Pet ¶ 3. [LF6]." *Id.* at 13. But, plaintiffs made no such concession. Paragraph 3 in their Verified Petition simply stated:

> [T]he second largest county in Missouri with a charter form of government was Jackson County with approximately 670,000 inhabitants. At its current rate of population growth, Jackson County will not exceed 950,000 inhabitants **if it ever does,** before the year **2090** – 75 years from now.

[LF6 (emphasis added)]. Jackson County is projected to have a population of 678,274 as of 2015.[11] Its population would have to increase by 272,000 or by 40% to be included in Sections 67.287 and 479.359.3 – a most unlikely proposition by any standard of measurement.

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11 http://archive[.]oa.mo.gov/bp/projections/CountyProjectionsMF.pdf.

For example, Jackson County's population in 1970 – 45 years ago – was 654,178. Missouri Census Data by County 1900-2000 available at http://mcdc[.] missouri.edu/trends/tables/historical_indicators/moco_totpop_1900_2000.pdf. Thus, its population increased by only 24,000 over 45 years. *Id.* Even if one compares its population to the 629,266 in 1980, Jackson County's population increased only by 49,000 over 35 years. *Id.* Finally, giving the State and BT the best possible comparison using its population of 654,880 in 2000, Jackson County's population increased by 24,000 in 15 years. *Id.* Under this best possible measure, it would take Jackson County **more than 150 years** to reach the 950,000 SB 5 threshold and that assumes its population continued to grow at that accelerated pace contrary to what it actually experienced over longer periods of time. *Id.*

The State has also posed the possibility that "St. Louis County voters may opt out of SB 5's classification at any time by replacing their charter form of government." State Brief at 14, 15-16. Given that St. Louis County has had a charter form of government since 1950 – a span of more than 65 years – the State's argument is simply baseless conjecture.

The theoretical possibilities posed by the State cannot rebut the satisfaction of the first part of the three-part test. For, this Court has made it clear that theoretical conjecture is constitutionally unacceptable. The true test is whether, "as a practical matter," it is "likely" that Jackson County will reach the 950,000 inhabitant threshold or St. Louis County will drop its charter form of government "in the foreseeable future." *De Soto*, 476 S.W.3d at 289; *see also Jefferson County*, 205 S.W.3d at 870 ("where the

classification is so narrow that as a practical matter others could not fall into that classification"). "Foreseeable" means "such as may reasonably be anticipated." Webster's Third New International Dictionary. Neither of the State's theoretical possibilities is foreseeable.

The second part of the three-part test – other political subdivisions are similar in size to the targeted political subdivision, yet are not included – is also satisfied here. The State myopically contends that "[t]here are no other counties in Missouri with populations similar to St. Louis County yet not included in the classification." State Brief at 14. The State's contention elides the fact that Sections 67.287 and 479.359.2 were expressly aimed at and intended to apply to not just St. Louis County, but also to any and all **municipalities located in St. Louis County** as the full definitions make indelibly clear:

> (2) 'municipality', any city, town, or village located in any county with a charter form of government and with more than nine hundred fifty thousand inhabitants.
>
> * * *
>
> 2. Beginning January 1, 2016, the percentage specified in subsection 1 of this section shall be reduced from thirty percent to twenty percent . . . except that any county with a charter form of government and with more than nine hundred fifty thousand inhabitants and any city, town or village with

> boundaries found within such county shall be reduced from thirty percent to twelve and one-half percent.

§ 67.287.1(2); § 479.359.2. Given this undeniable fact, it is obvious that there are hundreds of other Third and Fourth Class Missouri municipalities similar in size to those in St. Louis County: (i) that are not limited to 12.5% and remain authorized to retain from the defined set of offenses up to 20% of their annual general operating revenues; and (ii) that are not burdened with new cash management, audit and police accreditation requirements.

This kind of hybrid county and municipality class is no different than the hybrid county and municipality class found unconstitutional in *De Soto*. There, the class included cities and towns of a certain configuration in, *inter alia*, "any county with a charter form of government and with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants." 476 S.W.3d at 285. In *De Soto*, Jefferson County – like St. Louis County here – was the only charter county falling within the class. *Id.* at 289 ("Both the State and De Soto agree that only Jefferson County falls within the 200,000 to 350,000 county population range set out in the statute . . ."). Given the State's argument, this fact should have led this Court to find that De Soto did not satisfy the second part of the *Jefferson County* test, since to paraphrase the State "[t]here are no other counties in Missouri with populations similar to [Jefferson County] yet not included in the classification." State Brief at 14.

However, this Court in *De Soto* rejected the State's simplistic argument because it recognized that the statute there was aimed at De Soto itself, a city within Jefferson County, holding:

> It is uncontested that section 321.322.4 contains both a city and county population classification, and both De Soto and the State rely on 2010 census data showing that no city other than De Soto meets both population requirements as set out in the provision. This is so despite the fact, discussed further below, that these same statistics show that other cities and towns are similar in size to De Soto. The first two elements set out in Jefferson County, therefore, are satisfied.

476 S.W.3d at 288 (footnote omitted). Thus, in *De Soto*, this Court held that the "other cities and towns . . . similar in size to De Soto" were excluded from the hybrid class and, therefore, the second part of the *Jefferson County* test was satisfied. *Id.* Since the SB 5 hybrid class of St. Louis County and the municipalities located therein is no different conceptually than the *De Soto* hybrid class of Jefferson County and the City of De Soto located therein, the second part of the *Jefferson County* test is satisfied here.

This leaves only the third part of the test: is the population range so narrow that the only apparent reason for the narrow range is to target particular political subdivisions in St. Louis County and to exclude all others. At the outset, it is indisputable that St. Louis County and its municipalities are the only political subdivisions targeted by SB 5. The State argues that this category is not so "narrow"

because "it has no upper limit." State Brief at 14. But, the State again misconstrues SB 5. It is the use of a "floor" or lower limit of 950,000 inhabitants which creates the patently "narrow" class of one here.

The State places great reliance on this Court's decision in *City of St. Louis v. State*, 382 S.W.3d 905 (Mo. banc 2012). State Brief at 15. The State's reliance is misplaced. As the State points out, the classification in *City of St. Louis* was limited to "any city with a fire department with employees who have worked for that department for seven years if the only public school district in their geographic area of employment has been unaccredited or provisionally accredited in the last five years." State Brief at 15; *City of St. Louis*, 382 S.W.3d at 915.

However, unlike the facts in our case, this Court recognized in *City of St. Louis* that "[a]ny fire department could adopt a residency requirement, and any school district runs the risk of becoming unaccredited or provisionally accredited." 382 S.W.3d at 915. In fact, as this Court noted in *City of St. Louis*, "it is a matter of public record that numerous Missouri public school districts are not now or have not always been fully accredited during the pendency of this case." *Id.* at 915 (footnote omitted) and 915 n. 10. This is a far cry from the unique classification here.

Relevant here is this Court's instructive statement in *City of St. Louis* that:

> On the other hand, if the classification is drawn so narrowly that "the only apparent reason for the narrow range is to target a particular political subdivision and to exclude all others" even though there are others that theoretically could be

> similarly situated, then "the law is no longer presumed to be general, but is presumed to be a special law."

Id. at 914-915, quoting *Jefferson County*. This fundamental point was underscored by this Court in *De Soto*:

> But, the legislature may not defeat the purpose of the prohibition against special laws by adopting a provision that on its face appears general and open-ended, but which realistically applies only to a specific or narrow group of subjects. For that reason, "[t]he rationale for holding that population classifications are open-ended fails . . . where the classification is so narrow that as a practical matter others could not fall into that classification."

476 S.W.3d at 287, quoting *Jefferson County*. This is precisely what occurred when SB 5 was enacted.

The State also quotes from and cites to *School Dist. of Riverview Gardens v. St. Louis City*, 816 S.W.2d 219, 221 (Mo. banc 1991) in support of its position on appeal. State Brief at 13-14. But this Court's decision in *Riverview Gardens* actually supports plaintiffs' position. For, there, the statute provided that political subdivisions in St. Louis County and the City of St. Louis, like Riverview Gardens, were prohibited from revising their tax rates to allow for inflation in the consumer price index without voter approval, while all other political subdivisions in all other cities and counties were permitted to do so without voter approval. 816 S.W.2d at 220-221. This Court held that

the statute was "neither open-ended nor rationally related to a legitimate legislative purpose" and, therefore, was an unconstitutional special law. *Id.* at 222.

Moreover, *Riverview Gardens* was decided prior to this Court's 2006 adoption of the three-part test in *Jefferson County*. As this Court stated in *Jefferson County*, it was adopting its three-part test "to provide a guide by which the courts can determine whether a population classification will maintain its presumption of constitutionality" and would apply its test "only [to] statutes passed after the date of [its] opinion." 205 S.W.3d at 870-871. Thus, the *Riverview Gardens* analysis provides no precedential support for this case.

This dispute is not a mere academic abstraction. In the case of Normandy as Mayor Green testified, the reduction of its retention of its fines, bond forfeitures and court costs arising out of minor traffic violations from 20% to 12.5% would result in a loss of $255,000 in annual general operating revenue based on its 2015 figures. Tr. at 26-27. Mayor Green testified that such a loss would require him to lay off two or three police officers and additional personnel in the sanitation and streets department. Tr. at 27-29. He also testified that the other surrounding municipalities would experience similar financial consequences. Tr. at 29. None of this testimony was rebutted by the State. Tr. at 41. SB 5's targeting of the municipalities in St. Louis County for special law treatment, if permitted to stand, will thus have calamitous consequences for them.

To apply this Court's ringing reaffirmation of the importance of Article III, Section 40 in *Jefferson County* to this proceeding, "[i]t is the duty of this Court to be faithful to the constitution. '[I]t cannot ascribe to it a meaning that is contrary to that

clearly intended by the drafters. Rather, a court must undertake to ascribe to the words of a constitutional provision the meaning that the people understood them to have when the provision was adopted.' It is clear here that the drafters and voters adopted the provision to prohibit special legislation to prevent the General Assembly from doing what it did in [Sections 67.287 and 479.359.2]. If a statute conflicts with a constitutional provision or provisions, this Court must hold the statute invalid. The state did not show substantial justification for the narrow population range in [Sections 67.287 and 479.359.2]. It is this Court's duty to hold that [Sections 67.287 and 479.359.2 are] unconstitutional special law[s]." 205 S.W.3d at 872 (citations omitted).

B. This Court's 2006 unanimous decision in *Jefferson County* – not the prior decisions from 1880 to 1953 to 1975 – constitutes the controlling test for the decision in this case.

In its brief, amicus curiae BT repeatedly and erroneously contends that this Court's decision in *Jefferson County* does not provide the controlling test for this Court's review of the Circuit Court's Judgment. Thus, BT explicitly treats *Jefferson County* as nothing more than a one-off decision:

> Neither *Jefferson County* nor *De Soto* make any mention, much less purport to overrule, *Lionberger*, *Walters*, *Atkinson* or their progeny. That line of cases remains fully alive and applicable here.

* * *

> In fact, *Jefferson County* and *De Soto* merely represent a **rare exception** to the presumption that population-based standards are valid under Article III, Section 40 of the Missouri Constitution.

* * *

> *Jefferson County* and *De Soto* represent **extreme cases** in which this Court has refused to countenance gamesmanship in the statutory classification.

BT Brief at 14, 18 (emphasis added), 19 (emphasis added). Significantly, even the State recognizes that *Jefferson County* provides the controlling three-part test for this Court's decision on this appeal. State Brief at 11-12 and 7 (listing only three cases – *Jefferson County*, *De Soto* and *City of St. Louis* – under Points Relied On).

One need go no further than this Court's opinion in *Jefferson County* to find this Court's clearly expressed intention to create a future three-part test for deciding when open-ended statutory classifications fail to pass constitutional muster.[12] This Court in *Jefferson County* first cabined the constitutional question:

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[12] BT admits that the SB 5 classifications are open-ended. *See*, *e.g.*, BT Brief at 11. 17.

> 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.

205 S.W.3d at 870.

This Court then made it crystal clear it was providing a controlling test for future judicial determinations:

> 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.

Id. Then, after setting forth the three-part test, this Court concluded:

> 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 871.

Finally, to make it clear that "previous cases" were no longer the precedents for deciding when special laws violated the Missouri Constitution, this Court stated:

> Because of the General Assembly's possible reliance on **previous cases** not articulating this presumption, only statutes passed after the date of this opinion are subject to this analysis.

Id. (emphasis added). In other words, all future statutes – like SB 5 – are to be judged by the *Jefferson County* three-part test. Nothing could be clearer.

Moreover, any doubt – and there should be none – was removed by this Court's decision in *De Soto*. There, "[t]he State argue[d] that this Court modified or clarified *Jefferson County* in *City of St. Louis, 382 S.W.3d at 913-15* . . ." 476 S.W.3d at 288 n. 5. This Court rejected the State's argument, stating that "[t]he analysis in that case did not and did not purport to modify *Jefferson County*." *Id.*

Moreover in *De Soto*, this Court reaffirmed the singular importance of its decision in *Jefferson County*:

> The holding in *Jefferson County* provided an important clarification of the law regarding when population-based characteristics do not preclude a law being a special law even though nominally open-ended.

Id. at 288 n. 4. Thus, as this Court held in *De Soto*, "[w]hen a nominally open-ended law meets these three [*Jefferson County*] criteria it will be considered a special law because,

as a practical matter, no other political subdivision can meet those criteria. *Jefferson Cnty., 205 S.W.3d at 870.*" *Id.* at 287.

BT also argues that this Court's decision in "*Jackson County v. State*, 207 S.W.3d 608 (Mo. 2006) informs this case." BT Brief at 22. But, in deciding *Jackson County*, this Court applied the *Jefferson County* three-part test and held that "[t]he presumption of constitutionality would not be rebutted because two of the circumstances do not exist here." 207 S.W.3d at 612. Accordingly, *Jackson County* hardly helps BT in its self-serving dismissal of *Jefferson County*.

C. Once a statute is held to be presumptively a special law, it is the State which must defend it by showing a substantial justification for it.

BT misapprehends the nature of the *Jefferson County* test and which party bears the obligation to provide a rational or irrational reason for it. Thus, BT wrongly contends:

> The burden is on the party challenging the constitutionality of the statute to show that its classification is arbitrary and without a rational relationship to a legislative purpose.
>
> * * *
>
> Granted defendants offered no evidence of legislative purpose either. But because the burden was on the plaintiffs, they didn't need to do so.

BT Brief at 24, 26. Simply stated, BT has put the shoe on the wrong foot.

The *Jefferson County* three-part test does not require a party challenging the constitutionality of a statute as a special law to show that there is no rational legislative reason for its enactment. 205 S.W.3d at 870-871. Once a party demonstrates that the statute satisfies the three-part test, the statute "is presumed to be a special law, **requiring those defending it** to show substantial justification for the classification." *Id.* at 871 (emphasis added).

Here, as BT concedes (BT Brief at 26, 36), at a plenary hearing on the constitutionality of SB 5 before the Circuit Court, the State did not introduce any evidence, much less evidence to justify the challenged classifications in SB 5. Tr. at 41. To allow BT – a non-party participating as an amicus – to introduce its versions of the facts on appeal or to remand the case to give the State a second bite at the apple, as BT (but not the State) has requested (BT Brief at 36), would be unprecedented to say the least.

For starters, it is axiomatic that "[a]mici normally 'must accept the case as [they] find it.' " *Stanley v. City of Independence*, 995 S.W.2d 485, 488 n. 2 (Mo. banc 1999) (citation omitted); *Laret Inv. Co. v. Dickmann*, 134 S.W.2d 65, 70 (Mo. banc 1939). Since, as a general matter, "an appellate court cannot consider extra-record evidence," *Stanley*, 995 S.W.2d at 488 n. 2, citing *Pretti v. Herre*, 403 S.W.2d 568, 569 (Mo. 1966), the only exception is for those facts which are capable of judicial notice. *Stanley*, 995 S.W.2d at 488 n. 2. But, here, BT's studies, which were propagated to serve BT's biased agenda, hardly qualify as facts capable of judicial notice. In order to be judicially noticed, a fact must either be one of "common knowledge of people of ordinary

intelligence" or be one "which can be reliably determined by resort to a readily available, accurate and credible source." *State of Missouri v. Weber*, 814 S.W.2d 298, 303 (Mo. App. 1991). BT's studies satisfy neither test.

Moreover, BT's studies and the "facts" contained therein were not only irrelevant to the core issue – whether the municipalities in St. Louis County could constitutionally be singled out in SB 5 and treated differently from all other municipalities in Missouri's 113 other counties – but they were not subjected to cross-examination, vetting or rebuttal in the plenary hearing before the Circuit Court. This indisputable fact is particularly important here, since even facts capable of judicial notice "would still be subject to rebuttal" because "[t]he taking of judicial notice of a matter in the sense proposed is but a prima facie recognition of it and does not foreclose its rebuttal by the other party." *English v. Old American Ins. Co.,* 426 S.W.2d 33, 41 (Mo. 1968); *Morrison v. Thomas*, 481 S.W.2d 605, 607 (Mo. App. 1972). As this Court held in *Stanley*, BT, as an amicus, "must accept the case as [they] f[ou]nd it." 995 S.W.2d at 488 n. 2.

Furthermore, BT's speculation on the reasons for the enactment of SB 5 run afoul of its admission that "there are no records of legislative debate in Missouri" on SB 5 and BT's reliance on **public** statements by the sponsor of SB 5, Senator Eric Schmitt of St. Louis County, outside the crucible of legislative debate. BT Brief at 32-33. There is simply no legislative record to explain why the General Assembly passed SB 5 and created the challenged classification. Accordingly, BT's conjecture that "these reports in the public domain demonstrate that the General Assembly **could have justified**

the SB 5 population classification on the basis of heightened abuses by St. Louis County municipalities" (BT Brief at 32 (emphasis added)) is entitled to no credence.

In any event, under this Court's decision in *City of Springfield*, in order to demonstrate a "substantial justification" for the challenged classification, the State "cannot rely on a legislative determination that a special law was necessary, for '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**.' " 203 S.W.3d at 186, quoting Article III, Section 40 of the Missouri Constitution (emphasis added). So, what is required is an evidentiary presentation in court during a hearing so the "judicial question" can be "judicially determined." Here, the State was offered that opportunity and put on no case. Tr. at 41. That is the end of it, as this Court held in *De Soto*, 476 S.W.3d at 290-291 (when the State offered no evidence of justification, this Court reversed the entry of judgment for the State and entered judgment in favor of *De Soto*).

II. The Circuit Court did not err in holding that SB 5 Sections 67.287 and 479.359.3 violated Article X, Sections 16 and 21 of the Missouri Constitution because they imposed unfunded mandates on Normandy and Pagedale.

A. The Normandy and Pagedale claims are ripe for review.

It is undisputed that the General Assembly did not provide any funding for any municipality in connection with the passage of SB 5. Tr. at 61 (Mr. Hirth: "Mr. Pittinsky is correct, there has been no funding allocated by the legislature for any of these obligations as of the fiscal year 2015 budget passed last year, but that doesn't mean there won't be money allocated in the future."). For this reason, the State's main defense to these claims is that they are not ripe for review. State Brief at 17-20. According to the State, the taxpayers from Normandy (plaintiff Mayor Green) and Pagedale (plaintiff Mayor Carter) could not establish a Hancock violation "because they could not show either Normandy or Pagedale was certain to incur any expenses for which the legislature would not have had time to appropriate sufficient funding." *Id.* at 18.

The short answer to the State's contention is the one provided by this Court in *City of Jefferson v. Missouri Dept. of Natural Resources*, 863 S.W.2d 844 (Mo. banc 1993), where this Court stated:

> Instead, the statute establishes no more than a beneficent intention to grant funds to political subdivisions experiencing increased costs in meeting the State's requirements. **The road to compliance with Article X Section 21, cannot be paved with good intentions.** Rather, the constitution

> requires that the legislature pass a specific appropriation to cover the costs of the increased activity it demands of a political subdivision.

863 S.W.2d at 849 (emphasis added). It is enough to demonstrate, as the State concedes here, that no appropriation was made at the time the new mandates were legislatively imposed on Normandy and Pagedale.

The long and equally valid response is that plaintiffs adduced evidence at the plenary hearing to demonstrate that the new mandates required the Normandy and Pagedale municipalities to bear increased costs **now** in order to comply with them. The evidence adduced at the hearing refutes the State's contention. Since the State put on no case at the hearing (Tr. at 41), the Hancock Amendment issues were – and are – ripe for review.

1. Pagedale

Section 67.287.2(6) obligated each municipality in St. Louis County, and only those in St. Louis County, to obtain accreditation for its police department within six years. In the State's view, this obligation would not become an "actual 'mandate' until August 28, 2021" and, therefore, it was not yet unfunded. State Brief at 19-20.

However, the testimony of Mr. Wolf – an acknowledged expert on policing and police accreditation (Tr. at 11) – refuted the State's contention. Mr. Wolf testified that to obtain accreditation for a police department, it is necessary to start now before the formal accreditation process which itself takes three years. Tr. at 11-12. He also testified that, in order to properly prepare for the formal accreditation process, the preparation

could also take up to three years. Tr. at 12-14. As a result, Mr. Wolf testified that "from the time you begin the process to the time you get accreditation," a municipality could be looking at a six year process. Tr. at 24. The State offered no evidence to rebut Mr. Wolf's expert testimony. Tr. at 41.

Accordingly, as of today – less than five years from the State's August 28, 2021 deadline – Pagedale has no funding to start, as it must, the six year process to obtain accreditation for its police department.

In addition, Section 479.359.3 requires each municipality in the State to provide an addendum to its annual financial report containing an accounting beginning **January 1, 2016** (Section 479.359.2) of: (1) its "annual general operating revenue" as defined in SB 5 (Section 479.350(1)); (2) its "total revenues from fines, bond forfeitures, and court costs for minor traffic violations" as defined in SB 5 (Section 479.350(2) and (3)); and (3) the percent of (1) represented by (2). Moreover, by including the newly defined "municipal ordinance violations" in the addenda filed by municipalities, SB 572 has complicated and enlarged the calculation which must be made pursuant to Section 479.359.3. *See* SB 572 Sections 479.350(4) and 479.359.3(2) and (3). The devil is clearly in the details.

Moreover, the addendum must be "certified and signed by a representative with knowledge of the subject matter as to the accuracy of the addendum contents, under oath and under the penalty of perjury, and witnessed by a notary public." Section 479.359.3(4). In short, the addendum is a formal and meticulous document with potential criminal implications. It is not surprising, therefore, that Ms. Dorn estimated the cost of

preparing the addendum on an annual basis at $300 to $500. [A16 at ¶ 6]. Absent the injunction, this addendum must be submitted now. Again, the State submitted no evidence to rebut the Dorn Affidavit. Tr. at 41.

However, the State argues that the SB 5 addendum requirement is not materially different from the prior obligation to make the same calculation required by the Macks Creek Law and remit any excess to the state auditor. State Brief at 21-25. In the State's view, the only change in the Macks Creek Law effectuated by SB 5 is the obligation to **report** the calculation in the addendum. *Id.* at 23.

The State's argument myopically misapprehends the significance of the addendum requirement. Unlike the Macks Creek Law, SB 5 mandates that the addendum be "certified and signed by a representative with knowledge of the subject matter as to the accuracy of the addendum contents, under oath and under the penalty of perjury, and witnessed by a notary public." Section 479.359.3(4). As to accuracy, SB 5 requires application of the daunting definition of "annual general operation revenue" contained in Section 479.350(1). Moreover, what makes the addendum requirement so serious is the fact that it must be submitted "under oath and under the penalty of perjury." This alone will necessitate meticulous work by the representative signing and submitting the addendum. Whatever work took place before when there was no addendum reporting requirement will pale in significance to the work necessitated now by SB 5 to comply with the addendum reporting requirement. To suggest, as the State does, that "the only *new* activity mandated by SB 5 was the act of recording and submitting those calculations on a separate sheet of paper" (State Brief at 25 (emphasis in original)), is disingenuous

when the representative submitting the addendum can **go to jail** for submitting an **inaccurate** addendum.

Thus, both issues – the police accreditation and the addendum – are ripe for review for Pagedale.

2. Normandy

Normandy is subject to the same addendum requirement as Pagedale.[13] Accordingly, absent the injunction, it would incur the same annual costs as Pagedale in annually submitting the requisite addendum. Thus, this issue is ripe for review.

3. The Annual Auditing Costs

Section 67.287.2(2) requires each municipality in St. Louis County, and only those in St. Louis County, to have "an annual audit by a certified public accountant of the finances of the municipality that includes a report on the internal controls utilized by the municipality and prepared by a qualified financial consultant that are implemented to prevent misuse of public funds" within three years, *i.e.*, by August 28, 2018. Ms. Dorn estimated that the annual cost of preparing the annual audited financial statement for Pagedale required by SB 5 to be $8,500. [A16 at ¶ 7]. The State introduced no evidence to rebut the Dorn Affidavit. Tr. at 41.

As discussed below, despite the passage of SB 572, the General Assembly has still not appropriated any funds for the St. Louis municipalities to perform this

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13 Normandy's police department is already accredited. Tr. at 22.

legislative mandate, which confirms that it has no intention of providing any funding. It remains unfunded and is also ripe for review.

B. The Pagedale and Normandy costs are not speculative.

It is axiomatic that, "[u]nder Hancock, a case is not ripe without specific proof of new or increased duties and increased expenses, and these elements cannot be established by mere 'common sense,' or 'speculation and conjecture.' " *Brooks v. State*, 128 S.W.3d 844, 849 (Mo. banc 2004), as modified on denial of reh'g (March 30, 2004). However, what the State omits from its Brief (State Brief at 17-18) is this Court's holding only two sentences later: "On the other hand, plaintiffs need only show that the increased costs will be more than *de minimis*." 128 S.W.3d at 849. In *Brooks*, this Court held that a "few" fingerprint analyses performed at a cost of $38 per analysis by a county sheriff exceeded the *de minimis* threshold and resulted in the case being ripe in such county. *Id.*

As demonstrated above, the unrebutted – indeed unchallenged – testimony of Mr. Wolf and Ms. Dorn has clearly established that the increased costs resulting from the new duties imposed by SB 5 on Pagedale and Normandy are more than *de minimis*. What's more, Pagedale and Normandy are now facing a double setback: on the one hand, they are faced with a 60% reduction from 30% to 12.5% in their ability to retain specific municipal court revenues and, on the other hand, they are faced with paying for unfunded mandates.

C. SB 572 has not cured the unfunded mandates in SB 5 and plaintiffs' claims are not moot.

In reliance on SB 572, the State contends that the mandates imposed on Pagedale and Normandy by SB 5 Sections 67.287.2 and 479.359.3 are no longer "mandates." State Brief at 26-28. According to the State, since neither Pagedale nor Normandy "is *obligated* to maintain or contract with a municipal police department or operate a municipal court" (*id.* at 27-28 (emphasis in original)), "there is no state *mandate*." *Id.* at 27 (emphasis in original). The State's argument is erroneous.

Contrary to the State and SB 572, Pagedale and Normandy do not have an option to maintain or contract for a police department. Pursuant to Section 70.800 RSMo:[14]

> In any county of the first class having a charter form of government and having a population of at least nine hundred thousand inhabitants, each city, town, or village having a

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[14] Arguably, Section 70.800, on its face, potentially suffers from the same special law violation as the provisions of SB 5 held unconstitutional by the Circuit Court herein. Whether or not the statute could survive a similar challenge is not before this Court, but herein the State cannot ask this Court to ignore the mandate of Section 70.800 as it relates to respondents' arguments concerning the unfunded mandates of SB 5.

> population of four hundred or more shall operate and maintain a police department on a twenty-four hour per day basis so that at least one police officer will always be on duty and available to respond to any call for assistance. The governing body of the city, town or village may contract with another city, town, village or the county for twenty-four hour per day police service.

Accordingly, both Pagedale and Normandy[15] **are** obligated to provide for the safety of their residents with a police force. Nor can Pagedale and Normandy opt out of maintaining their municipal courts to determine whether their municipal ordinances have been violated. SB 572's provisions of the word "if" in Section 67.287.2(6) and the word "chosen" in Section 479.359.3 are simply illusory because Pagedale and Normandy have no choice but to provide police services as directed by Section 70.800. Moreover, the 12.5% revenue cap and related calculations apply regardless of whether matters are prosecuted in municipal, associate or circuit court as provided in Section 479.359.1. Finally, it is noteworthy that, when the General Assembly slightly amended SB 5 by

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[15] According to the 2010 census, Pagedale had a population of 3,304 and Normandy had a population of 5,008. Chapter 8 of Official Manual – State of Missouri 2013-2014 at pp. 858-859, available at http://www[.]sos.mo.gov/BlueBook/2013-2014.

passing SB 572 this year, it once again failed to provide any funding for SB 5's mandates. Simply put, the past is prologue.

CONCLUSION

For the foregoing reasons, the Circuit Court's Judgment declaring Sections 67.287, 479.359.2 and 479.359.3 unconstitutional and permanently enjoining their enforcement should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

1. Respondents' Reply Brief includes the information required by Rule 55.03.
2. Respondents' Reply Brief complies with the limitations contained in Rule 84.06.
3. Respondents' Reply Brief, excluding cover page, signature blocks, certificate of compliance, and certificate of service, contains 9,800 words, as determined by the word-count tool contained in the Microsoft Word 2010 software with which Respondents' Reply Brief was prepared.

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CERTIFICATE OF SERVICE

I hereby certify that, on October 11, 2016, the foregoing Reply Brief of Respondents/Cross-Appellants was electronically filed with the Clerk of the Court using the Missouri Courts Electronic Filing System and served by email which sent notification to the following:

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