IN THE
SUPREME COURT OF MISSOURI

No. SC95624

CITY OF NORMANDY, CITY OF COOL VALLEY, CITY OF VELDA VILLAGE HILLS, VILLAGE OF GLEN ECHO PARK, CITY OF BEL-RIDGE, CITY OF BEL-NOR, CITY OF PAGEDALE, CITY OF MOLINE ACRES, VILLAGE OF UPLANDS PARK, CITY OF VINITA PARK, CITY OF NORTHWOODS, CITY OF WELLSTON, PATRICK GREEN, and MARY LOUISE CARTER,

Plaintiffs-Respondents,

v.

JEREMIAH W. NIXON, in his capacity as Governor of Missouri; CHRIS KOSTER, in his capacity as Attorney General of Missouri; NICOLE R. GALLOWAY, in her capacity as Missouri State Auditor; NIA RAY, in her capacity as Director of the Missouri Department of Revenue,

Defendants-Appellants.

Appeal from the Circuit Court of Cole County
No. 15AC-CC00531
Hon. Jon E. Beetem

BRIEF OF AMICUS CURIAE BETTER TOGETHER IN SUPPORT OF DEFENDANTS-APPELLANTS FILED WITH CONSENT OF THE PARTIES

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A. Interest of The Amicus

Better Together ("BT") is a grassroots project of the Missouri Council for a Better Economy ("MCBE"). BT was formed in November 2013 in response to growing public interest in addressing the fragmented nature of local government in the St. Louis region. BT develops and assembles information that other organizations can use to craft their own plans for the future of the St. Louis region and to judge plans put forth by such organizations. Its mission is to support the St. Louis area by acting as a catalyst for the removal of barriers — governmental, economic and racial — to the region's growth and prosperity for all of its citizens by promoting unity, trust, efficiency, and accountability.

This brief addresses the first four counts of Plaintiffs' Petition, all of which are tied into that issue. Count I alleges that SB 5 is a special law in violation of Mo. Const. Article III, Section 40 in that its limit of 12.5% on the retention of fines and fees as a percentage of general operating revenue applies only to municipalities located in St. Louis County and not to other Missouri municipalities. Count II alleges a special law violation based upon the imposition of certain statutory burdens only upon municipalities in St. Louis County and not upon others. Count III claims violations of Mo. Const. Article X, Sections 16 and 21 (the Hancock Amendment) because of "unfunded mandates" upon two St. Louis County municipalities in carrying out their statutory duties under SB 5. Count IV

alleges a Hancock violation arising from an unfunded mandate in connection with the SB 5 requirement for an "Addendum" to the annual report of financial transactions required of all municipalities. Plaintiffs prevailed on all four of these claims in the Circuit Court.

BT submits this brief in support of the position of defendants-appellants on these claims because the population classifications in SB 5 are justified and valid. Research done by BT and other organizations demonstrates that municipalities in St. Louis County frequently derive a disproportionate amount of their revenues through the imposition of traffic fines and fees, often upon those least able to pay.

Counsel representing the plaintiffs and defendants have each consented to the filing of this amicus brief.

B. Introduction[1/]

In early 2015, after months of widespread societal unrest sparked by the shooting of a black teenager in Ferguson—a series of events that brought sustained international attention on St. Louis County—Missouri's lawmakers adopted a set of reforms aimed at curbing some of the root causes of the crisis. A centerpiece of their efforts targeted a problem specifically identified by the U.S. Department of Justice as in need of reform: the tendency of municipalities, in St. Louis County, to rely on revenue from minor violations, such as parking infractions and traffic tickets, to fund a large share of the municipality's general operations, at the expense of public trust in law enforcement.[2/]

[1/] Pursuant to the protocol of the Missouri Supreme Court, as confirmed by the Clerk's Office, all hyperlinks in this brief are separated with the insertion of a []. This is done, pursuant to this Court's protocol, so that the links do not automatically take a reader to the cited website when that link is clicked on. Thus, in order to find the internet source used in this brief, the reader will have to retype the link without the inserted []. Each bracket is inserted around the "period" following "www" or around the first "period" following the "//".

[2/] *See* DOJ, *Investigation of the Ferguson Police Department*, at 2–4, 9–15, March 4, 2015, available at https://www[.]justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

The new law seeks to reduce this revenue reliance by imposing a two-tiered scheme. Any municipality in a county of more than 950,000 people may not collect more than 12.5 percent of its general-operating revenue from traffic tickets, while any municipality in a smaller county may not collect more than 20 percent of its general-operating revenue from traffic tickets. Mo. Rev. Stat. §479.359. If any county should rise above (or drop below) the population threshold while the law is in effect, the revenue cap for the municipalities within that county would change accordingly.

This Court has consistently upheld such open-ended population thresholds for nearly a century and a half. *State ex rel. Lionberger v. Tolle*, 71 Mo. 645, 650-51 (1880) (upholding threshold of 100,000); *Walters v. City of St. Louis*, 259 S.W.2d 377, 383 (Mo. banc 1953) (upholding threshold of 700,000), *aff'd*, 347 U.S. 231 (1954); *State ex rel. Atkinson v. Planned Indus. Expansion Auth.*, 517 S.W.2d 36, 43 (Mo. 1975) (upholding threshold of 400,000). It has done so even for laws like the one at issue here, which has the effect (for the time being) of treating St. Louis County differently than the rest of the state by virtue of its status as the largest county. *See, e.g.*, *Treadway v. State*, 988 S.W.2d 508, 511 (Mo. 1999) (upholding law even though it currently "applie[d] only to the St. Louis metropolitan region"). Indeed, this Court has long upheld open-ended population thresholds "even when it appear[ed] with reasonable certainty that no other

political subdivision [would] come within that population classification during the effective life of the law." *Id.*; *see Walters*, 259 S.W.2d at 383 (upholding law despite "practical certainty" that "no other city in this State will attain a population of more than 700,000 prior to the expiration date of the act").

Because of this unbroken line of precedent, defendants were entitled to prevail below. Yet the Circuit Judge declared the statute to be an unconstitutional "special law" lacking "substantial justification." That is wrong for two reasons. *First*, this Court's precedents demonstrate that the law is general, not special. As in *Walters*, the law covers *any* county that is above the population threshold, "whether there be one or many," and hence "does not offend" the prohibition on special legislation (meaning, legislation based on immutable characteristics, rather than open-ended classifications). 259 S.W.2d at 383. Although this Court has since created a narrow exception to the general rule that population-based laws "are open-ended in that others may fall into the classification," *Jefferson Cnty. Fire Prot. Dists. Ass'n v. Blunt*, 205 S.W.3d 866, 870 (Mo. 2006), that exception does not apply to laws with a single population threshold, like the one here. That is because, for a population-based law to constitute special legislation under the exception, it must have "a population classification that includes only one political subdivision" *and* there must be "other political subdivisions [that] are similar in size to the targeted political subdivision, yet are not included." *City of DeSoto v.*

Nixon, 476 S.W.3d 282, 287 (Mo. 2016). But a population threshold that has the effect of applying only to St. Louis County because of its *unique* size, suffice it to say, does not discriminate against counties that are *similar* in size.

Nor does it matter if other counties are unlikely to reach the population threshold in the near future. This Court has squarely rejected the argument that a law with an open-ended population threshold is unconstitutional based on the "improbability" that other counties will exceed the threshold anytime soon. *Atkinson*, 517 S.W.2d at 43. In fact, even were it a "practical certainty" that no other county would cross the threshold while the law is in effect, as in *Walters*, that would "not in the least affect the situation." 259 S.W.2d at 383. So too here.

Second, even if this Court were to overrule *Walters* and its progeny (as it would have to do to side with the plaintiffs), the law should still be upheld because it has both a rational purpose and a substantial justification. If there were ever a good reason for "address[ing] a particular regional problem," *Treadway*, 988 S.W.2d at 511, it is here. Municipalities in St. Louis County have been responsible for more than a third of all municipal fees and fines imposed in Missouri in recent years, despite having a much smaller share of the state's population. This disparity has contributed to profound distrust in local law enforcement in many of these municipalities, as illustrated in DOJ's 105 page special report on Ferguson. Confronted with such extraordinary circumstances,

Missouri's elected representatives did not overstep their bounds by focusing their attention on the particular problem in St. Louis County. *See Board of Educ. of City of St. Louis v. Missouri State Bd. of Educ.*, 271 S.W.3d 1, 10–11 (Mo. 2008) (upholding school-desegregation law).

Striking down a statute is, of course, "the gravest and most delicate duty that [a] Court is called on to perform." *Blodgett v. Holden*, 275 U.S. 142, 148 (1927) (Holmes, J., concurring). That is all the more true when invalidating the law would require the Court to overrule not only the considered judgment of the legislature, but also more than a half-century of its own settled case law. This Court should decline the invitation to do so here. Instead of nullifying a law enacted with broad popular support, this Court should uphold the law as plainly consistent with past precedent.

C. Background[3/]

St. Louis County includes 90 municipalities, ranging in population from 12 to over 50,000 inhabitants.[4/] St. Louis County has a staggering number of

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3/ This Court has broad discretion in taking judicial notice and may take judicial notice of public statistics and other matters of common knowledge. *See*, *e.g.*, *State v. Baldwin*, 484 S.W.3d 894, 900 n.8 (Mo. Ct. App. 2016) (noting that Missouri courts may take judicial notice of the status and population of Missouri cities and counties); *Kindred v. City of Smithville*, 292 S.W.3d 420, 424 n.2 (Mo. Ct. App. 2009) (referring to the Official Manual of the State of Missouri to take judicial notice of Smithville's status as a fourth-class city); *Sulls v. Director of Revenue*, 819 S.W.2d 782, 783 (Mo. Ct. App. 1991) (explaining that Missouri courts may take judicial notice of the population of a city as indicated in the Official Manual of the State of Missouri); *Carr v. Grimes*, 852 S.W.2d 345, 351 (Mo. Ct. App. 1993) (noting that Missouri courts have broad discretion in taking judicial notice and may take judicial notice of matters of common knowledge).

4/ *See* ArchCity Defenders: Municipal Courts White Paper at p. 6, available at http://03a5010[.]netsolhost.com/WordPress/wp-content/uploads/2014/11/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf.

municipal courts: 81 in total. By contrast, Jackson County has just 19 municipalities and 15 municipal courts.[5/]

The population of each of the 12 plaintiff municipalities in this case at the time of the 2010 census was as follows:[6/]

Plaintiff	**Population**
Bel-Nor	1,499
Bel-Ridge	2,737
Cool Valley	1,196
Glen Echo Park	160
Moline Acres	2,442
Normandy	5,008
Northwoods	4,227
Pagedale	3,304
Uplands Park	437
Velda Village Hills	1,034
Vinita Park	1,785
Wellston	2,314

While the combined populations of the 90 St. Louis County municipalities account for only 11% of Missouri's population, they bring in 34% of all municipal

5/ *See* https://www[.]16th circuit.org/links-to-other-courts

6/ *See* Chapter 8 of Official Manual — State of Missouri 2013-2014 at pp. 846-65, available at http://www[.]sos.mo.gov/BlueBook/2013-2014.

fines and fees statewide (a total of $45,136,416 in 2013).[7/] On average, these municipalities have brought in one-third of their general operating revenue from fines and fees. *Id.*

Out of its $3,991,270 budgeted revenue for the fiscal year ended September 30, 2016, lead plaintiff City of Normandy allocated $1,045,000 (or 26%) as revenue to be derived from its municipal court (Pls.' Exh. 2 at App. A1). A few of the other plaintiff municipalities publish their operating budgets as well (although not necessarily the most current ones). In 2015, Bel-Ridge expected that $397,100 out of its $1,541,250 in projected revenue would be derived from court fines and traffic fines (25.7%).[8/] Cool Valley's 2012-13 budget allocated $442,000 to "Court" out of total expected revenues of $1,087,800 (40.6%).[9/] Moline Acres

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[7/] *See* Better Together, Public Safety—Municipal Courts, October 2014, at p. 2 available at http://www[.]bettertogetherstl.com/wp-content/uploads/2014/10/BT-Municipal-Courts-Report-Full-Report1.pdf

[8/] *See* Village of Bel-Ridge Operating Budget January-December 2015, available at http://www[.]bettertogetherstl.com/files/better-together-stl/Bel-Ridge%202015%20Budget.pdf.

[9/] *See* City of Cool Valley—Budget Schedule 2012-2013 available at http://www[.]bettertogetherstl.com/files/better-together-stl/Cool%20Valley%202012%20-%202013%20Budget.pdf.

budgeted $450,000 to Court income (less bond forfeitures); this was equal to 34.6% of its $1,297,239 projected total income for 2016.[10/]

D. Argument

There are several basic principles concerning "special laws": Whether a law is special or general can most easily be determined by looking to whether the categories created under the law are open-ended or fixed. *City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177, 184 (Mo. 2006). Classifications based upon factors subject to change may be open-ended and do not implicate the special law prohibition in Article III, Section 40 of the Missouri Constitution. *Tillis v. City of Branson*, 945 S.W.2d 447, 449 (Mo. 1997). Normally, population classifications are open-ended because others may enter the classification and still others may leave it. *Id.* This presumption of constitutionality in favor of open-ended classifications is buttressed by the general presumption of constitutionality applicable to all statutes. *In re Brasch*, 332 S.W.3d 115, 119 (Mo. 2011); *Ocello v. Koster*, 354 S.W.3d 187, 197 (Mo. 2011).

There are also closed-ended classifications. They focus on immutable characteristics—historical facts, geography or constitutional status—and are

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[10/] See City of Moline Acres Budget General Fund January-December 2016 available at http://www[.]molineacres.org/uploads/Finance/2016%20Budget.pdf.

therefore facially special laws. *Tillis*, 945 S.W.2d at 449 (quoting *Harris v. Missouri Gaming Comm'n*, 869 S.W.2d 58, 65 (Mo. 1994)).

1. SB 5 Is Open-Ended And Is Thus Presumed To Be Constitutional.

(a) Statutes Such As SB 5 With No Upper Population Limit Have Consistently Been Upheld As Constitutional.[11/]

Plaintiffs' characterization of SB 5 as a "special" law because it uses a population threshold lacks any legal support. In fact, all the precedent is to the contrary. In 1880, in *State ex rel. Lionberger v. Tolle*, 71 Mo. 645 (1880), this Court upheld a statute requiring judges of the circuit courts in all cities having over

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[11/] What follows is directed to Count I but applies to Count II as well. In Count II, plaintiffs challenge SB 5's requirements for annual CPA audits, reports on internal controls, accounting for revenues and expenditures, insurance, police force accreditations and policies on safety/police procedures as new statutory burdens imposed upon St. Louis County municipalities alone. But plaintiffs do not contend, and certainly have not shown, that these "burdens" are in fact "new." For example, it would be shocking if these local governments did not already have annual audits, accounting for income and expenses, and insurance. In any event, because the claim is that these requirements are imposed only upon St. Louis County municipalities, the same "special law" analysis applies to Count II as to Count I.

100,000 inhabitants to award the printing of all legal notices to the newspaper that was the lowest bidder. The City of St. Louis alone fell within that population classification. This Court pointed out that, if the City of St. Louis had been designated by name in the statute, the classification would not have been based on numbers and would have been a special law. But, as written, it was not. *Lionberger*, 71 Mo. at 650-51.

Thereafter, in *Walters*, this Court upheld another statute having no upper population limit or population range in its classification. The law in question authorized any constitutional charter city having or thereafter acquiring a population in excess of 700,000 to levy and collect an earnings tax. The law became effective in 1952 and expired by its terms in 1954 and hence could only apply to the City of St. Louis, the only constitutional charter city in the state with a population of more than 700,000 under the preceding census. In upholding the statute, this Court could not have been more explicit: **"The conceded fact that it is a practical certainty no other city in this State will attain a population of more than 700,000 prior to the expiration date of the act, April 1, 1954, does not in the least affect the situation."** 259 S.W.2d at 383 (emphasis added). *Walters* expressly overruled *Reals v. Courson*, 164 S.W.2d 306 (Mo. 1942), which had invalidated a law applicable in population terms only to St. Louis County, "and it was, as in the instant case, a practical certainty that no other county would come

within that classification during the period in which the statute was to be effective." 259 S.W.2d at 382.

More recently, in *Atkinson*, this Court concluded that the planned industrial expansion statute, then applicable only to the cities of St. Louis and Kansas City, was not a special law because its terms applied to all cities then or later having 400,000 or more inhabitants. This Court relied upon *Walters* in deciding the "improbability" that any other city would come within the statutory classification was irrelevant. 517 S.W.2d at 43. *See Bopp v. Spainhower*, 519 S.W.2d 281, 283 (Mo. 1975) (also upholding threshold of 400,000); *Manchester Fire Prot. Dist. v. St. Louis Cnty. Bd. of Election Comm'rs*, 555 S.W.2d 297, 298 (Mo. 1977) (upholding threshold of 450,000).

Jefferson County Fire Protection Districts Association and *City of DeSoto*, upon which plaintiffs so heavily rely, involved special law challenges to statutes having narrow population ranges rather than laws having no range at all. Neither *Jefferson County* nor *DeSoto* make any mention, much less purport to overrule, *Lionberger*, *Walters*, *Atkinson*, or their progeny. That line of cases remains fully alive and applicable here.

(b) Statutes In Which St. Louis County (Or Some Other County) Was The Only Political Subdivision To Fit Within Its Classifications Have Been Upheld As Constitutional.

This is not the first case in which a special law challenge has been directed against a statute applicable, in population terms, only to St. Louis County. In *State ex rel. Fire District of Lemay v. Smith*, 184 S.W.2d 593 (Mo. banc 1945) and *Manchester Fire Protection District, supra*, this Court upheld such statutes.

In *Fire District of Lemay*, the statute provided for the incorporation of fire districts in counties having a population between 200,000 and 400,000. Only St. Louis County fell within those population limits at that time. Yet this fact "alone does not make the act a special law" because "the act will also apply to other counties which . . . attain the same population in the future." 184 S.W.2d at 595.

Manchester Fire Protection District dealt with a statute that provided fire protection services in a county of the first class not containing all or part of a city with a population of more than 450,000 inhabitants. Again, at the time of that enactment, only St. Louis County satisfied that provision. Relying on *Fire District of Lemay*, this Court upheld the statute against a special law challenge. 555 S.W.2d at 298-99.

By contrast, all decisions striking down a statutory classification that included only St. Louis County had a fixed or immutable characteristic that was

not open-ended. For example, in *School District of Riverview Gardens v. St. Louis County*, 816 S.W.2d 219, 222 (Mo. 1991), the ad valorem tax rate adjustment statute provided different treatment for political subdivisions "the greater part of which is located in first class charter counties *adjoining any city not within a county*" (emphasis added). This classification was based upon fixed, geographic considerations and could only cover St. Louis County. A second category consisting of "any city not within a county" was predicated upon "a unique, constitutionally-sanctioned form of government recognized for the City of St. Louis by Missouri Constitution Article VI, Section 31." *Id.* at 222. In invalidating the statute, this Court emphasized these fixed geographic and constitutional requirements as grounds for distinguishing *Lionberger*, *Fire District of Lemay*, and *Walters*, each of which only involved a population-based classification.

Likewise, in *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96, 99 (Mo. 1993), the statute authorizing a boundary commission for "any first class county with a charter form of government *which adjoins a city not within a county*" could only apply to St. Louis County (emphasis added). As in *School District of Riverview Gardens*, this law was invalidated because its classification was based upon an immutable characteristic: geographic proximity to the City of St. Louis.

Similarly, in *Tillis* the municipal tourism tax could be imposed only in a county (1) with a prescribed population range of 3,000 to 5,000 inhabitants, (2) more than 5,000 hotel and motel rooms, and (3) "which is located in a county that borders the State of Arkansas." 945 S.W.2d at 448. That description could only apply to the City of Branson. Again, because the geographical requirement in (3) was an immutable, closed-ended classification, this Court held the statute to be an unconstitutional special law.

Finally, *Sprint Spectrum, L.P.* held that a statutory classification for cities that enforced a wireless telephone service ordinance prior to January 15, 2005 could not be open-ended and was a special law because that classification "was fixed, based on an immutable, historical fact" and could never apply to any other political subdivision in the future. 203 S.W.3d at 184-85.

The statutory classification in this case contains none of the closed-ended characteristics that formed the basis for decision in *Riverview Gardens* (constitutional status and geographic proximity); *O'Reilly* (geographic proximity); *Tillis* (geographic proximity); or *Sprint Spectrum* (historical fact). SB 5 depends entirely upon the open-ended population standard of the type already validated in *Lionberger*, *Walters*, and *Atkinson*.

(c) SB 5 Is Not Rendered Unconstitutional By Virtue Of *Jefferson County* Or *DeSoto*.

(i) Those Decisions Are Based Upon Extreme Facts Not Present Here.

Plaintiffs' interpretation of *Jefferson County* and *DeSoto* is a radical departure from the law discussed above. In fact, *Jefferson County* and *DeSoto* merely represent a rare exception to the presumption that population-based standards are valid under Article III, Section 40 of the Missouri Constitution.

The statute in *Jefferson County* created an extraordinarily narrow population range of 1,200 persons. It applied to fire protection districts wholly within first class counties with more than 198,000 but fewer than 199,200 inhabitants. This range of 1,200 persons was a "tiny fraction" (.6%) of the 199,200 statutory upper population limit. 205 S.W.3d at 871. The chances of any county other than Jefferson County fitting within that standard were virtually zero.

The law at issue in *DeSoto* was even more restrictive. It was a statutory exemption with six cumulative criteria: (1) an annexing city or town that operates a city fire department; (2) a city of the third class; (3) with more than 6,000 but fewer than 7,000 inhabitants; (4) located in any county with a charter form of government; (5) and with more than 200,000 but fewer than 350,000 inhabitants; and (6) entirely surrounded by a single fire protection district. The odds of any

city other than DeSoto satisfying all six of those criteria would have been next to nil, and the passage of time could not improve those odds. There is no basis for comparing SB 5 to the statutes in *Jefferson County* and *DeSoto*. Indeed, it is nonsense to characterize any classification with a population floor but no population ceiling as "closed-ended." *Jefferson County* and *DeSoto* represent extreme cases in which this Court has refused to countenance gamesmanship in the statutory classification. SB 5's classification involves no such ploy.

Plaintiffs maintain it will take 75 years for Jackson County to reach the SB 5 threshold of 950,000 inhabitants. But what gives them the prescience to forecast future population growth? According to U.S. census figures, the population of the City of St. Louis fell by 234,560, or 27.3%, from 1950 (856,796) to 1970 (622,236).[12/] From 1950 to 1980, the City of St. Louis population fell by 403,992, or 47.15% (856,796 to 452,804). *Id.* In 1950, who would have predicted that?

Similarly, census figures show that, in the thirty years between 1980 and 2010, the population of St. Charles County increased from 144,107 (*id.* at p. 3) to 360,485, an increase of 216,378 or 250%.[13/] Benton County, Arkansas, borders

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12/ *See* Missouri Census Data by County 1900–2000, p. 4, available at http://mcdc[.]missouri.edu/trends/tables/historical_indicators/moco_totpop_1900_2000.pdf.

13/ *See* http://census[.]missouri.edu/census2010/report.php?g=05000US29183.

Missouri. According to census figures, its 1990 population was 97,499,[14/] but its population as of July 1, 2015 was 249,672.[15/] This growth by 152,193 inhabitants in twenty-five years amounts to an increase of 256%. Huge population swings like this were and are completely unpredictable.

Plaintiffs' invitation to this Court to prognosticate about the future population of Jackson County or, for that matter, any other political subdivision is dangerous business. Such forecasts are matters outside the traditional judicial expertise, cannot be a subject of judicial notice, and are beyond the scope of any trial testimony. Indeed, plaintiffs offered no demographic expert testimony at all. The recent growth of eastern Jackson County (*e.g.*, the Blue Springs area) makes plaintiffs' crystal-ball gazing even more speculative. For reasons like these, this Court's refusal to invalidate statutory population standards having no upper limit in cases like *Lionberger*, *Walters*, and *Atkinson*, and its refusal to criticize, distinguish or invalidate those decisions in *Jefferson County* and *DeSoto*, is not only understandable but also entirely correct.

14/ *See* https://www[.]census.gov/census2000/pdf/ar_tab_6.PDF.

15/ *See* http://www[.]census.gov/quickfacts/table/PST045215/05007.

(ii) Plaintiffs' Analysis Is A Perversion Of The *Jefferson County* Test.

To reiterate, the three-part *Jefferson County* test required in order to overcome the presumption that a population-based classification is constitutional includes three steps:

> "(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 870-71.

Plaintiffs corrupt the *Jefferson County* framework by switching the "political subdivisions" midstream. Even though the first two *Jefferson County* steps clearly refer to the same "political subdivision," plaintiffs use St. Louis County as the first-step "political subdivision" but substitute the St. Louis County municipalities as the second-step "political subdivision." They do so even though *Jefferson County* uses the singular rather than the plural in both steps. Plaintiffs thus attempt to re-write the second step of *Jefferson County* as follows:

political subdivisions within

"other political subdivisions are similar in size to ^ the targeted political subdivision, yet are not included."

In any event, plaintiffs' contention that no other Missouri county is likely to reach the size of St. Louis County is self-defeating. The second step of *Jefferson County* requires at least one county "similar in size" to St. Louis County. **By claiming there is no other county similar in size and that there is unlikely to be one for many years, plaintiffs have conceded that this second step is not and cannot be met!**

Things get even worse for plaintiffs in connection with the third *Jefferson County* step. First of all, there is no population "range" whatever in SB 5. There is only a population floor. Second, the population category, far from being "narrow," is infinitely broad. Any county that reaches the floor would come within it. Again, the "narrow range" involved in the statutes at issue in *Jefferson County* and *DeSoto* sets those cases apart from the *Lionberger-Walters-Atkinson* line of cases validating statutes with only a population floor.

(iii) Other Recent Case Law Is More Instructive.

Jackson County v. State, 207 S.W.3d 608 (Mo. 2006) informs this case. It involved a special law challenge to a statute that restricted counties with a charter form of government and a population between 600,000 and 700,000 from entering

into contracts over $5,000 in amount. Jackson County was the only county within the statutory population range.

In upholding the statute, this Court concluded that the *Jefferson County* test did not apply. The population range of 100,000 was sufficiently broad to defeat the third step. That differential was a significant portion (14.3%) of the upper population limit in the statute (700,000). Because a population range of 100,000 inhabitants falls outside the third step of *Jefferson County*, the absence of *any* population range at all in SB 5 *ipso facto* demands the same result.

2. The Population Classification In SB 5 Has A Rational Purpose And A Substantial Justification.

(a) Summary Of The Law

Whether a statutory classification is open-ended or closed-ended is not the end of the inquiry. The answer to that question merely results in a presumption – one way or the other. To reiterate, a law based on open-ended characteristics is not facially special and is presumed to be constitutional. *Jefferson Cnty.*, 205 S.W.3d at 870. But a statute with an open-ended classification may nevertheless violate Missouri Constitution Article III, Section 40 if it fails the rational basis test used in equal protection analyses. *Id*.

There are two steps to any equal protection analysis. *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 331 (Mo. 2015). The first requires the court to

identify the classification at issue in order to ascertain the appropriate level of scrutiny. *Id*. If the challenged law draws a distinction on the basis of a suspect classification or curtails the exercise of a fundamental right, then strict scrutiny applies. *Id*. If there is no suspect classification or fundamental right at issue, the court will apply rational basis review to determine whether the challenged law is rationally related to some legitimate end. *Id*.

There is no suspect classification here (*e.g.*, race, gender, national origin). Nor is there the denial of any fundamental right (*e.g.*, free speech, free exercise of religion). Thus, "the classification is rational under equal protection because there is, at a *minimum*, a conceivably legitimate basis for it." *Alderson v. State*, 273 S.W.3d 533, 538 (Mo. 2009). All that is necessary is that "[t]he legislature could well have concluded" there was a need to impose stricter revenue limits on fines and fees upon St. Louis County municipalities than upon other Missouri municipalities. *Atkinson*, 517 S.W.2d at 44. Under rational basis review of an equal protection challenge to a statute, this Court will not substitute its judgment for that of the legislature as to the wisdom, social desirability, or economic policy underlying a statute. *State v. Pike*, 162 S.W.3d 464, 471 (Mo. 2005).

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. *Jefferson Cnty.*, 205 S.W.3d at 870; *City of St. Louis v. State*,

382 S.W.3d 905, 915 (Mo. 2012). A judgment upholding the statute can be justified on the basis of failing to make this *prima facie* showing. *State ex rel. Pub. Defender Comm'n v. County Court of Greene Cnty.*, 667 S.W.2d 409, 413 (Mo. 1984). It is entirely consistent to say that the statutory classification is not limited to St. Louis County municipalities (in the context of the open-ended/closed-ended analysis) and to say that the General Assembly's purpose was to address particularized abuses within St. Louis County municipalities (in the context of the rational basis analysis). The first is a matter of objective statutory language, the second of subjective legislative intent. The "special law" jurisprudence requires consideration of both.

(b) Plaintiffs Failed To Sustain Their Burden Of Showing That The Statutory Classification Is Arbitrary.

At the hearing below, plaintiffs called two witnesses and offered three exhibits. The testimony of the first witness focused upon the City of Pagedale's requirement to have an accredited police force as a result of SB 5 (Tr. 17-20). The second witness primarily talked about Normandy's need to lay off personnel because of that statute (Tr. 28-30).

Plaintiffs offered no evidence to show that the statute's population classification is arbitrary. In opposing defendants' motion to dismiss and in their own dispositive motion for relief, plaintiffs merely offered an unsupported

assertion: "[T]he General Assembly and the Governor knew that it would be impossible from a legislative standpoint to muster the votes for a statewide reduction from 30% to 12.5% so, instead, they singled out St. Louis County and its municipalities for this discriminatory treatment." (Casenet, Circuit Court of Cole County, No. 15AC-CC00531, entry dated January 15, 2016 ("Pls.' Sugg."), at p. 9). That's it. No proof. Just lawyer's rhetoric.

Granted, defendants offered no evidence of legislative purpose either. But because the burden was on the plaintiffs, they didn't need to do so. Defendants properly concluded that, because plaintiffs had not met their burden, there was no reason for them to put on evidence. It was sufficient that there were studies and reports *in the public domain* that could provide a rational legislative basis for SB 5.

In *State v. Mitchell*, 563 S.W.2d 18, 26 (Mo. 1978), this Court considered numerous studies concerning the effect of marijuana, all apparently outside the record, to show the existence of a body of knowledge that the legislature could have rationally relied upon in deciding to classify that substance as a Class I drug. *Mitchell* relied upon *United States v. Carolene Products Co.*, 304 U.S. 144, 152 (1938), which firmly announced "the existence of facts supporting the legislative judgment is to be presumed." *Carolene Products* further stated:

> "Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of

> judicial notice, such facts may properly be made the subject of judicial inquiry. . . . But by their very nature such inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or *which could reasonably be assumed* affords support for it." 304 U.S. at 152-53 (emphasis added).[16/]

There are numerous publications that the General Assembly could have relied upon in formulating the SB 5 population classification. They began in the wake of the death of Michael Brown on August 9, 2014 and the civil unrest that followed. A September 3, 2014 publication pointed out that "[s]ome of the towns

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16/ The Supreme Court made new law in *Miranda v. Arizona*, 384 U.S. 436, 448 (1966), on the basis of facts that were not in the record but were "police practices" found in "manuals and texts." In *Ballew v. Georgia*, 435 U.S. 223 (1978), the Supreme Court held a five-person jury unconstitutional on the basis of nineteen studies cited in footnote 10 at pages 231-32. The Court explained: "Some of these studies have been pressed upon us by the parties," thereby acknowledging that others were produced by the Court's own research.

in St. Louis County can derive 40 percent or more of their annual revenue from the petty fines and fees collected by their municipal courts."[17/]

Arch City Defenders ("ACD") is a group that represents indigents in the St. Louis region on a pro bono basis in criminal and civil matters. In its white paper released in August 2014 and updated in December of that year, ACD confirmed that court costs represent a significant source of revenue for St. Louis County towns. *See* ArchCity Defenders: Municipal Courts White Paper, *supra*.

BT itself researched and analyzed the amount of fines and fees as a percentage of general revenue for each Missouri judicial circuit, county and municipality.[18/] Its report revealed that, on the whole, these percentages are considerably higher in St. Louis County (21st Judicial Circuit) than those in the rest of the state. *Id.* The fines and fees as a percentage of general revenue for each of the plaintiff municipalities are as follows:

[17/] *See* https://www[.]washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-mis?utm_term=.c41a28a18bf1.

[18/] *See* Statewide Fines and Fees available at http://www[.]bettertogetherstl.com/wp-content/uploads/2014/10/Statewide-Fines-and-Fees.pdf.

Plaintiff	**Fines And Fees As % Of General Revenue**
Bel-Nor	11.17%
Bel-Ridge	24.46%
Cool Valley	29.11%
Glen Echo Park	(unavailable)
Moline Acres	31.06%
Normandy	40.61%
Northwoods	26.35%
Pagedale	17.68%
Uplands Park	23.50%
Velda Village Hills	9.87%
Vinita Park	12.16%
Wellston	12.17%

BT's study "Public Safety — Municipal Courts" in October 2014, *supra*, reported that, on average, St. Louis County municipalities were deriving one-third of their general operating revenue from fines and fees (Study at p. 2). The study also reported that:

> "[S]ome municipalities . . . actually *budget* for increases in fines and fees. . . . [F]ines-and-fees revenue increased at a time when property-tax revenue declined. Desperate to maintain their income stream in the face of dwindling property values, many municipalities turned to the municipal courts for revenue. . . . [O]n average a municipal court in St. Louis County costs $223,149 to operate yet brings in an average

> of $711,506 in revenue from fines and fees each year, for an average net revenue of $488,357." *Id.*

The same study concluded that "[t]he reason for the high levels of revenue from . . . fines and fees is simple – survival of the municipality." *Id.* at 7.

An article entitled "Fleece Force: How Police And Courts Around Ferguson Bully Residents And Collect Millions" quoted St. Louis City Policy Chief Sam Dotson as stating some St. Louis County municipalities "victimize those whom they are designed to protect."[19/] St. Louis County Police Chief Jon Belmar remarked that "[i]f you think that taxation of our citizens through traffic enforcement in St. Louis County is bad, you have no idea how bad it is." *Id*.

The Police Executive Research Forum ("PERF") is a think tank run by police for police, seeking to establish best practices. On April 30, 2015, PERF issued its report titled "Overcoming the Challenges and Creating a Regional Approach to Policing in St. Louis City and County."[20/] PERF made the following finding:

> Many police departments have inappropriate goals: In many [St. Louis County] municipalities, policing priorities are driven not by the public

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19/ Available at http://www[.]huffingtonpost.com/2015/03/26/st-louis-county-municipal-courts_n_6896550.html.

20/ Available at http://www[.]policeforum.org/assets/stlouis.pdf.

> safety needs of the community, but rather by the goal of generating large portions of the operating revenue for the local government. This is a grossly inappropriate mission for the police, often carried out at the direction of local elected officials. *Id.* at 2.

PERF set forth the following conclusion regarding the policy in these municipalities:

> An inappropriate and misguided mission has been thrust upon the police in many communities: the need to generate large sums of revenue for their city governments. This is not the way policing is done in the United States. **PERF has never before encountered what we have seen in parts of St. Louis County.** The role of police is to protect the public and to work with local communities to solve problems of crime and disorder—not to harass residents with absurd systems of fines and penalties, mostly for extremely minor offenses. *Id.* at 7 (emphasis added).

PERF also commented upon the practice of creating monetary goals for fines and fees as a line item in St. Louis County municipal budgets:

> In many municipalities in St. Louis County, anticipated court revenues are included as line items in the overall operating budgets—in essence, setting a monetary "target" for the police and the courts to

> reach, regardless of the level of crime or violations occurring within their communities. As some municipalities have seen traditional sources of revenue such as sales taxes stagnate, it is not uncommon for them to increase court revenue targets each year. *Id.* at 36-37.

While there are no records of legislative debate in Missouri, 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. Indeed, there is every indication that the General Assembly had actual knowledge of those problems. SB 5 was sponsored by Senator Eric Schmitt of St. Louis County. On May 28, 2015, prior to the enactment of SB 5 into law, Senator Schmitt publicly stated:

> Government exists to serve our citizens not to extract more money from them with tricks and schemes. Unfortunately, the municipal court system in Missouri, *especially the St. Louis region*, has the wrong priorities. They are enforcing a broken system that allows local governments to treat Missourians like ATMs by incentivizing more traffic tickets and fines against our citizens to fund big government budgets.[21/] (emphasis added).

[21/] *See* http://www[.]stltoday.com/news/opinion/taxpayers-are-not-atms-for-municipalities/article_97dd1704-02db-5921-bc60-9db66944dba3.html.

Senator Schmitt went on:

> This abusive system has predominantly hurt the poor, who may not immediately have means to pay the cost of a ticket or fine. In communities like Ferguson, it has damaged the relationship between local citizens and law enforcement. *Id.*

Shortly after the enactment of SB 5, Senator Schmitt stated that the new law would help address a "breakdown of trust" between the people and the court system.[22/] He said there would no longer be a system of "taxation by citation." *Id.* Better Together stated that SB 5 would cut down on the "criminalization of poverty." *Id.*[23/]

22/ *See* http://www[.]stltoday.com/news/local/crime-and-courts/sweeping-court-reform-comes-as-nixon-signs-bill-to-cap/article_cafffb7e-b24d-5292-b7bb-84ef81c6e81d.html.

23/ This Court also has first-hand knowledge of the abuses taking place in St. Louis County municipal courts. The Missouri Supreme Court effectively took over the Ferguson municipal court after the Department of Justice found a pattern of civil rights violations there. In May 2015, Judge Roy L. Richter of the Missouri Court of Appeals, Eastern District, issued his report on the Ferguson municipal court to this Court. Judge Richter found, among other things, that because the judges and prosecutors in municipal courts are part-time employees who have

Any objection that these materials are hearsay or outside the record would miss the point. The materials are referenced here not in order to show the truth of the matter asserted or to supplement the trial record. They are included as a matter of rational purpose analysis, to show that the legislature had a "conceivably legitimate basis" for its statutory classification and that it "could well have concluded" that there was need for stricter revenue limits on fines and fees in St. Louis County municipalities than elsewhere in this State. *Alderson*, 273 S.W.3d at 538; *Atkinson*, 517 S.W.2d at 44.

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other jobs, the clerks do much of the legal work but on behalf of the wrong branch of government. Since the clerks work for the city, there is an inherent conflict: their job is helping the city raise money, not assisting in the administration of justice.

This Court also appointed a Municipal Division Working Group, which submitted its report on March 1, 2016. In addition, effective July 1, 2015, this Court enacted Rule 37.65, creating special procedures applicable when a fine is assessed and it appears to the judge that the defendant does not have the present means to pay the fine.

(c) In This Case, The Rational Purpose For The Legislation Also Constitutes Substantial Justification.

Plaintiffs will no doubt continue to argue that the SB 5 population classification is closed-ended and that there is thus a presumption of unconstitutionality that defendants could only overcome by showing "substantial justification" for the classification. *Jefferson Cnty.*, 205 S.W.3d at 871. Here, however, even if the classification were deemed to be closed-ended, the underlying rational purpose itself amounts to substantial justification. If curtailing the practices of "taxation by citation" and using the police as revenue agents for the municipality do not constitute "substantial justification," then that term has no meaning. The purpose of local government is to serve its citizens. It is not the function of citizens to feed the beast of local government. The legislature has the right, if not the duty, to impose greater regulation in areas of the state that need it the most. Doing so in this case constitutes substantial justification.

Defendants asserted in the court below that "[e]ven if the burden were shifted to the State to show that SB 5 is not a special law, the classification is substantially justified by the history of St. Louis County municipalities generating revenue through onerous municipal traffic fines and court costs in excess of the limits imposed by the prior version of the Macks Creek Law." (Casenet, Circuit Court of Cole County, No. 15AC-CC00531, entry dated December 18, 2015, at

p. 8). Defendants offered no evidence, however, based on its view that any issue of substantial justification need not be decided because the challenged SB 5 classification is open-ended and thus presumptively constitutional. But if this Court were to disagree and conclude that direct proof of substantial justification is required, the case should be remanded so that the trial court can consider such evidence.

Where all pertinent factual information was not presented upon trial, appellate courts have the power to remand for a new trial. *Arrow Fin. Servs., L.L.C. v. Bichsel*, 207 S.W.3d 203, 209 (Mo. Ct. App. 2006). If a plaintiff has by "mistake or inadvertence" failed to prove a claim in a situation where the proof seems to have been available, the reviewing court has no alternative but to reverse the judgment and remand the case for reception of additional evidence. *Chen v. Li*, 986 S.W.2d 927, 933 (Mo. Ct. App. 1999). See *In re Marriage of Moyers*, 272 S.W.3d 500, 503 (Mo. Ct. App. 2008) (also adopting "mistake or inadvertence" standard for remand). This Court has specifically concluded that "[w]here a possibility of proof exists which the plaintiff has not fully developed, a remand rather than reversal is permissible." *Bass v. Nooney Co.*, 646 S.W.2d 765, 774 (Mo. 1983). Because the plaintiff is entitled to remand based upon a failure of proof caused by mistake or inadvertence, the defendant must be entitled to do so as well.

3. SB 5 Does Not Violate The Hancock Amendment.

Under Missouri Constitution Article X, Section 23, only taxpayers, not political subdivisions, have standing to bring suit under the Hancock Amendment. *King-Willmann v. Webster Groves Sch. Dist.*, 361 S.W.3d 414, 416-17 (Mo. 2012). "The Hancock Amendment makes no pretense of protecting one level of government from another. By its clear language, Section 23 limits the class of persons who can bring suit to enforce the Hancock Amendment to 'any taxpayer.'" *Id.* (citation omitted). The only two taxpayers bringing Hancock claims in this case are the Mayors of Normandy and Pagedale, the named plaintiffs in Counts III and IV. No Hancock Amendment claim is made on behalf of any of the ten remaining plaintiff-municipalities.

In Count III, Mayors Green and Carter allege that certain duties arising under SB 5 (Section 67.287) impose unfunded mandates upon their municipalities. These are the same administrative "burdens" challenged in Count II: (i) annual audit by a CPA; (ii) report on compliance with internal control procedures; (iii) cash management and accounting system that accounts for all revenues and expenditures; (iv) insurance; (v) public access to a complete set of municipal ordinances; (vi) accreditation or certification for the municipal police force; (vii) written policies for the safe operation of emergency vehicles, state police

pursuits, use of force by police, general orders for police departments, and collecting and reporting municipal crime and police stop data.[24/]

Count IV presents a similar Hancock challenge to the provision in SB 5 (Section 479.359.3) that requires municipalities to set forth an "Addendum" to their financial report to the state auditor. The Addendum must provide annual general operating revenue, total revenue from fines, bond forfeitures and court costs for minor traffic violations, as well as the percent of general operating revenue derived therefrom.

(a) Plaintiffs Failed To Meet Their Burden On Increased Costs.

(i) Count III

Any Hancock Amendment claim requires "specific proof of increased costs." *Brooks v. State*, 128 S.W.3d 844, 849 (Mo. 2004). "This court will not presume increased costs resulting from increased mandated activity." *City of Jefferson v. Missouri Dep't of Nat. Res.*, 863 S.W.2d 844, 848 (Mo. 1993). As stated in *Miller v. Director of Revenue*, 719 S.W.2d 787, 789 (Mo. 1986):

[24/] While Count III alleges that these required activities are only imposed upon St. Louis County municipalities, that is irrelevant under Hancock, which deals with the imposition of costs upon any political subdivision rather than with different treatment among them.

> Even if one assumes, *arguendo*, that the reporting function of police officers . . . constitutes an increase in an activity or service for purposes of art. X, § 21, it does not necessarily follow that a political subdivision also experiences increased costs.

Plaintiffs Green and Carter failed to prove any increased costs associated with the administrative duties described in Count III. On their face, most of the duties alleged in Count III could be performed internally by a municipality's own employees without any additional cost. In any event, the two mayors adduced no evidence regarding any activity other than police accreditation. Even there, Mayor Green had to concede that the Normandy Police Department is *already* accredited (Tr. 23-24, 37). The Pagedale witness, Carl Wolf, volunteered that for a City of Pagedale's size, it costs "about" $3,400 a year to belong to the Commission on Accreditation for Law Enforcement Agencies ("CALEA") (Tr. 19-20), but he offered no testimony as to Pagedale's cost, if any, to obtain and maintain alternative accreditation through the Missouri Police Chief Association accreditation. Based upon his testimony, Pagedale is "left with only speculative evidence related to the costs of compliance with [the police accreditation] mandate[]." *Breitenfeld v. School Dist. of Clayton*, 399 S.W.3d 816, 834 (Mo.

2013).[25/] *See also Blue Springs R-IV Sch. Dist. v. School Dist. of Kansas City*, 415 S.W.3d 110, 113 (Mo. 2013) (arguments "based on speculation and conjecture will not overcome the presumption of constitutional validity").

Normandy took a different approach to this Hancock claim. Rather than provide evidence of any costs associated with the activities listed in Count III, Mayor Green talked about Normandy's cutback in services and lost revenue resulting from SB 5's 12.5% limitation on operating revenue from fines and fees (Tr. 26-30). But these matters have absolutely nothing to do with the Hancock Amendment.

Moreover, Mayor Green's testimony rested on false assumptions. He stated that, in order to make up for lost revenues from fines and fees, Normandy would have to cut-back on its 29-member police force by 2 or 3 officers (Tr. 28, 35-36,

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25/ Nor was there any evidence offered to show how much it would cost to contract with another municipality's already-accredited police department, which is another way to comply with the police accreditation requirement (Tr. 60:20-24). Indeed, Mayor Green could not even state the cost differential between contracting for police services with another municipality's already-accredited police department and operating one's own police department (Tr. 21:23-25). He did admit, however, that, in some situations, contracting out will cost *less* (Tr. 22:6-9).

38). But the equivalent of 5 or 6 of its police officers are contracted out to municipalities that have no police department of their own.

Furthermore, while the Normandy police patrol a stretch of I-70 at the behest of the Missouri Department of Transportation, it has no obligation to do so (Tr. 32). Normandy's gratuitous expenditure of its own resources in patrolling a local stretch of interstate is not activity mandated by the State or by *any* law (Tr. 72:5-10; 73:8-11). Accordingly, whether Normandy must cease policing activities that it is not required to undertake is irrelevant here. *Breitenfeld*, 399 S.W.3d at 831 n.27 ("While beneficial and commendable, *discretionary* education spending is not subject to Hancock analysis insofar as it is not mandated by the State."). By restricting its activities to its duties to its own community, Normandy could provide the same level of police protection to its citizens at a lower cost. Plaintiffs' pleas for a "common sense" conclusion about increased costs from the activities enumerated in Count III are no substitute for proof. *Miller*, 719 S.W.2d at 789 ("Appellant's 'common sense' is no more than mere speculation in the absence of supporting evidence"); *School Dist. of Kansas City v. State*, 317 S.W.3d 599, 611 (Mo. 2010) (proof of an unfunded mandate requires "specific proof of new or increased duties and increased expenses, and these elements cannot be established by mere common sense, or speculation and conjecture") (quoting *Brooks*, 128 S.W.3d at 849) (internal quotation marks omitted).

(ii) Count IV

Plaintiffs' Count IV claim attacking the SB 5 requirement for an "Addendum" to Normandy's and Pagedale's financial reports to the State Auditor, is equally infirm. Not only was Mayor Green unable to state the costs that Normandy charges for contracting out the services of its accredited police force, he also did not know how much it would cost to calculate the three amounts required by SB 5.[26/]

Tellingly, Mayor Green did not even know how much it costs Normandy to prepare the annual financial reports it is already required by law to file with the State Auditor (Tr. 38:23-39:9). Because SB 5 merely requires a one-page "Addendum" to an already required report, Plaintiffs "would continue to be

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[26/] Q: And do you know how much administrative burden it is to calculate the data that is required by SB 5?

A: It can be, depending on, like you said, an operation like ours, where we have to look at basically the overall general cost of the impact from department to department, and *I can't tell you exactly what the amount is*, but, again, it depends on someone with a background as a CPA or accountant to really crunch the numbers.

(Tr. 38:15-22).

engaged in its existing activities" – reporting to the State Auditor. *See Breitenfeld*, 399 S.W.3d at 831.

The "Addendum" requires three simple numbers—the municipality's annual general operating revenue, total revenue from traffic fines and fees and the percentage of general operating revenue from these fines and fees. The first two figures are readily available, and the third is a fourth grader's math calculation. Every political subdivision knows its annual general operating revenue. Every municipality knows or can easily figure out its revenue from fines-and-fees. Even if the 12.5% limitation were invalid, Normandy and Pagedale would still be subject to the 20% limitation imposed on municipalities elsewhere in the State and would have to make that calculation. The percentage is a matter of dividing the second number by the first. Plaintiffs offered the affidavit of a CPA stating that the annual cost to Normandy and Pagedale for the "Addendum" would be "approximately $300 to $500 each." (Pls.' Exh. 3 at App. A22). Plaintiffs' counsel said the cost would be $305 (Tr. 50). But "[a] Hancock Amendment violation requires both that a law mandate a new or increased level of activity and that it result in more than *de minimis* increased costs to the local entity." *Blue Springs R-IV Sch. Dist.*, 415 S.W.3d at 114. Finally, the Addendum provision does not require that this calculation be made by an outside CPA. It may be done by the municipality's financial officer—without any additional cost to the municipality.

(b) Plaintiffs' Hancock Amendment Claims Are Not Ripe For Determination.

"While there can be a ripe controversy before a statute is enforced, there must be an immediate, concrete dispute to render the case ripe for resolution by this Court." *Labrayere*, 458 S.W.3d at 329 (quoting *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 738-39 (Mo. 2007)) (internal quotations marks omitted). A declaratory judgment requires a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation. *Missouri Soybean Ass'n v. Missouri Clean Water Comm'n*, 102 S.W.3d 10, 25 (Mo. 2003). *See also Brooks*, 128 S.W.3d at 849 (explaining that ripeness "means . . . that 'the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing and to grant specific relief of a conclusive character'") (quoting *Missouri Health Care Ass'n v. Attorney General of Missouri*, 953 S.W.2d 617, 621 (Mo. banc 1997)).

This is not an instance where the statute at issue is scheduled to go into effect any time soon. None of the activities plaintiffs challenged under the Hancock Amendment take effect until August 28, 2018 or later. See Mo. Rev. Stat. §67.287.2 ("Every municipality shall meet the following minimum standards

within three years of [the effective date of this section] . . . except that the [provision requiring police departments to be professionally certified or accredited] shall be completed within six years").[27/] Plaintiffs conceded below "the six year deadline for the new police accreditation mandate and the three year deadline for the new financial mandates." (Pls.' Sugg. at p. 11).

Plaintiffs also failed to offer any evidence of "'a conflict that is presently existing,'" as required to show the matter is ripe for review. *Brooks*, 128 S.W.3d at 849 (quoting *Missouri Health Care Ass'n*, 953 S.W.2d at 621). For instance, Pagedale adduced no evidence to show that it *presently* faces increased expenses with respect to contracting for police force services from currently accredited departments. In view of the absence of specific proof of present increased expenses, Plaintiffs have failed to show this matter is ripe for review. *See Id.* (explaining that, under Hancock, where "specific proof of new or increased duties and increased expenses" is lacking, a case is not ripe) (citing *Miller*, 719 S.W.2d at 789).

[27/] For example, the professional accreditation requirement for police departments does not become a "mandate" until August 28, *2021* – more than five (5) years from the date of this filing. As a result, no conflict "*presently* exist[s]." *Brooks*, 128 S.W.3d at 849 (quoting *Missouri Health Care Ass'n*, 953 S.W.2d at 621).

Finally, while Plaintiffs argued that they would have to start now in order to comply with these mandates by their effective date, the Hancock Amendment does not cover cost increases in anticipation of compliance with a new law. Here, because it is too early to know whether the General Assembly will provide funds to Normandy and Pagedale in 2017, 2018, or in subsequent years, these Hancock unfunded mandate claims are rank speculation.

As a result, even if those plaintiffs had proved that they incurred actual increased expenses beyond a *de minimis* amount, this Court should reverse the judgment in favor of plaintiffs on Counts III and IV because they do not present a controversy ripe for adjudication.

E. Conclusion

The judgment of the Circuit Court in favor of plaintiffs on Counts I through IV of the Petition should be reversed, and the case should be remanded with directions that judgment on those counts be entered in favor of defendants.

Respectfully submitted,

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September 16, 2016

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Supreme Court Rule 84.06(c), that this Brief of Amicus Curiae Better Together complies with Rule 55.03, and with the limitations contained in Rule 84.06(b). I further certify that this brief contains 10,808 words, excluding the cover, this certificate, the Certificate of Service, the signature block, and the Appendix, as determined by the Microsoft Word 2010 Word-Counting system.

/s/ *Mark B. Leadlove*

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2016, I electronically filed the foregoing Brief of Amicus Curiae Better Together and Appendix with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to all counsel of record.

/s/ *Mark B. Leadlove*