SC95624

IN THE SUPREME COURT OF MISSOURI

CITY OF NORMANDY, et al.,

Respondents/Cross-Appellants

vs.

JEREMIAH NIXON, et al.,

Appellants/Cross-Respondents

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Circuit Judge

BRIEF OF STATE APPELLANTS

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This appeal involves a challenge to the validity of §§ 67.287, 479.359.2, and 479.359.3 RSMo[1] under the Missouri Constitution's prohibitions against special laws, art. III, sec. 40; and unfunded mandates, art. X, sec. 16 and 21. This Court has exclusive jurisdiction under art. V, sec. 3 of the Missouri Constitution.

[1] All references to the Missouri Revised Statutes in this brief are current through the 2015 Supplement unless otherwise noted.

STATEMENT OF FACTS

In 1999, the Missouri General Assembly passed what is commonly referred to as the "Macks Creek Law," which prohibited any municipality with a municipal court division from receiving more than 45 percent of its total annual revenue from traffic fines. *Missouri Mun. League v. State*, 465 S.W.3d 904, 905 (Mo. 2015). Fines collected in excess of this cap had to be remitted to the director of revenue for distribution to local schools. *Id*. The cap was lowered to 35 percent in 2009, and further lowered to 30 percent in 2013. *Id.* The 2013 version of the law also provided,

> An accounting of the percent of annual general operating revenue from fines and court costs for traffic violations . . . charged in the municipal court of that city, town, village, or county, shall be included in the comprehensive annual financial report submitted to the state auditor by the city, town, village, or county under section 105.145.

§ 302.341.2 RSMo. Cum. Supp. 2013.

During the 2015 Legislative Session, the General Assembly passed and Governor Nixon signed Senate Bill 5 ("SB 5"), which amended the Macks Creek Law in four respects relevant to this appeal.

First, it changed the types of revenue to be counted in each municipality's annual Macks Creek calculation to "fines, *bond forfeitures,* and court costs for *minor* traffic violations, . . . *whether the violation was prosecuted in municipal court, associate circuit court, or circuit court . . . .*" § 479.359.1 (emphasis added to show new language).

Second, SB 5 lowered the revenue cap from 30 percent to 20 percent starting January 1, 2016, "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." § 479.359.2.

Third, SB 5 required each municipality's annual accounting of its Macks Creek percentage to be submitted as "[a]n addendum to the annual financial report submitted to the state auditor by the county, city, town, or village under section 105.145," and "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." § 479.359.3.

Fourth, SB 5 provided that "[a]ny city, town, or village located in any county with a charter form of government and with more than nine hundred fifty thousand inhabitants" must meet certain "minimum standards" by a certain date. § 67.287.1-2. Within three years, such municipalities must have

a balanced budget, an annual audit by a CPA, a cash management system, adequate insurance, public access to city ordinances, and a number of written policies. § 67.287.2. Within six years, such municipalities must have a police department accredited or certified by the Commission on Accreditation for Law Enforcement Agencies ("CALEA") or the Missouri Police Chiefs Association or a contract for police service with a police department accredited or certified by such entities. § 67.287.2(6).

Twelve municipalities located in St. Louis County ("Municipal Plaintiffs") and taxpayers from two of those municipalities ("Taxpayer Plaintiffs") brought suit against Governor Jay Nixon, Attorney General Chris Koster, Auditor Nicole Galloway, and Director of Revenue Nia Ray (collectively, the "State") alleging that the foregoing statutes are special laws in violation of Mo. Const. art. III, § 40; unfunded mandates in violation of Mo. Const. art. X, §§ 16 and 21; and contrary to various other constitutional provisions.[2] At the evidentiary hearing on the Plaintiffs' Motion for

[2] Plaintiffs' other claims under Mo. Const. art. II, § 1 (separation of powers); art. V, § 5 (amending rules of procedure); art. V, § 27.16 (retention of municipal fees); and art. III, § 23 (single subject) were all dismissed for failure to state a claim. Those claims are the subject of the Respondents/Cross-Appellants' cross-appeal.

Preliminary and Permanent Injunction and the State's Motion to Dismiss, the Municipal and Taxpayer Plaintiffs offered into evidence an affidavit from Normandy's accountant and testimony from Normandy's mayor. No evidence was presented as to any of the other ten Municipal Plaintiffs. The circuit court subsequently declared unconstitutional and permanently enjoined enforcement of § 67.287 in its entirety as both a special law and an unfunded mandate; of § 479.359.2 "insofar as it provides '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," as a special law; and of § 479.359.3 as an unfunded mandate. The circuit court did not declare unconstitutional or enjoin enforcement of § 479.359.1 or any other statutory provision enacted by SB 5.

In response to the circuit court's ruling, the General Assembly enacted SB 572 to amend the Macks Creek Law in two respects material to this appeal. First, SB 572 no longer *mandates* that every municipality in St. Louis County have or contract with a police department *at all*. Effective August 28, 2016, the amended version of § 67.287.2(6) provides as follows: "***If*** a municipality has a police department or contracts with another police department for public safety services," ***then*** such police force must be "accredited or certified by the Commission on Accreditation for Law

Enforcement Agencies or the Missouri Police Chiefs Association" by August 28, 2021 (emphasis added).

Second, SB 572 no longer *mandates* that every county, city, town, or village submit an addendum to its annual financial report containing an accounting of its total revenues from minor traffic violations as a percentage of annual general operating revenue. Effective August 28, 2016, the amended version of § 479.359.3 provides as follows:

> An addendum to the annual financial report submitted to the state auditor under section 105.145 by the county, city, town, or village ***that has chosen to have a municipal court division*** shall contain an accounting of . . . [t]he percent of annual general operating revenue from fines, bond forfeitures, and court costs for municipal ordinance violations and minor traffic violations occurring within the county, city, town, or village.

(Emphasis added).

POINTS RELIED ON

I. The circuit court erred in holding that §§ 67.287 and 479.359.2 violate art. III, sec. 40 of the Missouri Constitution because those provisions are not "special laws" in that they are based on open-ended population characteristics.

City of DeSoto v. Nixon, 476 S.W.3d 282 (Mo. 2016)

City of St. Louis v. State, 382 S.W.3d 905 (Mo. 2012)

Jefferson Cnty. Fire Prot. Dist. Ass'n v. Blunt, 205 S.W.3d 866 (Mo. 2006)

II. The circuit court erred in holding that §§ 67.287 and 479.359.3 violate art. X, secs. 16 and 21 of the Missouri Constitution because SB 5 had not imposed—and was not certain to impose—any unfunded mandates on Normandy or Pagedale in that the General Assembly could still have appropriated any necessary funding before either city would have had to incur any new expenses.

Missouri Mun. League v. State, 465 S.W.3d 904 (Mo. 2015)

School District of Kansas City v. State, 317 S.W.3d 599 (Mo. 2010)

Brooks v. State, 128 S.W.3d 844 (Mo. 2004), as modified on denial of reh'g (Mar. 30, 2004)

ARGUMENT

Appellants/Cross-Respondents Governor, Attorney General, Auditor, and Director of Revenue (collectively, the "State") appeal from a Judgment and Permanent Injunction entered on March 28, 2016, which declared unconstitutional and enjoined enforcement of §§ 67.287, 479.359.2, and 479.359.3 RSMo. The challenged provisions were all part of Senate Bill 5 ("SB 5"), enacted during the 2015 legislative session to reduce the amount of revenue municipalities may generate from traffic-related fines and court costs. Following a half-day bench trial, the circuit court concluded, first, that §§ 67.287 and part of 479.359.2 were "special laws" in violation of art. III, sec. 40 of the Missouri Constitution; and second, that §§ 67.287 and 479.359.3 imposed "unfunded mandates" in violation of art. X, secs. 16 and 21 of the Missouri Constitution, also known as the "Hancock Amendment." The first ruling was erroneous because §§ 67.287 and 479.359.2 are not special laws in that their classifications are based on open-ended population characteristics. The second ruling was erroneous because the Taxpayer Plaintiffs' Hancock claims were not ripe at the time of trial and, in any event, have been mooted by subsequent legislative action. This Court should reverse.

Standard of Review

> "[T]he 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 Waste Industries, LLC v. St. Louis County, 379 S.W.3d 813, 823 (Mo. 2012), quoting *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976) (citations omitted).

I. The circuit court erred in holding that §§ 67.287 and 479.359.2 violate art. III, sec. 40 of the Missouri Constitution because those provisions are not "special laws" in that they are based on open-ended population characteristics.

Article III, section 40 of the Missouri Constitution prohibits the Legislature from enacting "special laws" when a general law can be made applicable. *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 334 (Mo. 2015). Special laws are "statutes that apply to localities rather than to the state as a whole and statutes that benefit individuals rather than the general public." *Glossip v. Missouri Dep't of Transp. and Highway Patrol Employees' Ret. Sys.*, 411 S.W.3d 796, 808 (Mo. 2013). However, "a law is not special if it applies to all of a given class alike and the classification is made on a reasonable basis." *Id.*

To distinguish between special and general laws, courts must first determine whether the law is based on open-ended or closed-ended characteristics. *City of St. Louis*, 382 S.W.3d at 914. "A law is facially special if it is based on close-ended characteristics, such as historical facts, geography or constitutional status." *Id.* (internal citations omitted). "A facially special law is presumed to be unconstitutional." *Id.* "When a law is based on open-ended characteristics, it is not facially special and is presumed

to be constitutional." *Labrayere*, 458 S.W.3d at 334. "Classifications are open-ended if it is possible that the status of members of the class could change." *Id.*

"[C]lassifications based on population normally are open-ended in that others may fall into the classification." *City of St. Louis*, 382 S.W.3d at 914. "This is true even if, at the time of the suit, only one or a few counties in fact are affected by the legislation." *Id.* "Such laws are not special if the classification is made on a reasonable basis," which "is similar to the rational basis test used in equal protection analyses." *Jefferson Cnty. Fire Prot. Dist.*, 205 S.W.3d at 870. The burden is on the party challenging the constitutionality of the statute to show that the statutory classification is arbitrary and without a rational relationship to a legislative purpose." *Id.*

While population-based classifications are presumed to be constitutional, the presumption may be overcome if the challenging party shows that "(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." *Id.* at 870-71 (emphasis added). "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 (emphasis added).

In this case, the challenged statutory provisions are presumptively constitutional because they are based on the county's choice of government structure and open-ended population characteristics: "any county with a charter form of government and with *more than nine hundred fifty thousand inhabitants*." § 67.287.1(2) (emphasis added); § 479.359.2 (same). The Municipal Plaintiffs argued to the court below that §§ 67.287 and 479.359.2 were not really opened-ended because they apply to only one political subdivision—St. Louis County. Yet, populations shift over time. St. Louis County may be the only charter county in Missouri that *currently* satisfies the population requirements of SB 5, but other counties will move into (or out of) a particular population range as they expand (or contract).[3] As the

[3] This Court recently accepted transfer of a case out of the Western District in which the court of appeals had ruled St. Louis County was no longer subject to a statute applicable only to "a county with a charter form of government and with more than one million inhabitants" because its population had declined to less than one million residents in the 2010 census. *Matter of Petition of Missouri-Am. Water Co. for Approval to Change Its Infrastructure Sys. Replacement Surcharge (ISRS) v. Office of Pub. Counsel*,

Municipal Plaintiffs conceded in their pleadings, Jackson County will likely reach 950,000 residents eventually, Ver. Pet. ¶3. [LF6], at which point it would be subject to the challenged provisions of SB 5.

Even if no other county ever reaches a population of 950,000, the fact that a statute applies to a single political subdivision is only one of the elements that must be shown to overcome the presumption that a population-based law is not special under *Jefferson Cnty. Fire Prot. Dist.*, 205 S.W.3d at 870. In *State ex rel. Lionberger v. Tolle*, the plaintiff challenged a statute requiring "the judges of the circuit courts in all cities having *over 100,000 inhabitants* to award to the newspaper therein being the lowest bidder and having a designated circulation the printing of all legal notices." 71 Mo. 645, 647 (Mo. 1880) (emphasis added). Though it decided the case on other grounds, this Court opined that a classification for cities having over 100,000 inhabitants was not a special law "even though only the City of St. Louis fit the category; *it was sufficient for the Court that other cities might reach that population level* and that the law would apply to those cities." *Sch. Dist. of*

WD 78792, 2016 WL 873409, at *2 (Mo. App. W.D. Mar. 8, 2016), transferred to Mo. Sup. Ct. on June 28, 2016. Although that case does not involve a "special law" challenge, it may provide this Court an occasion to decide whether a county's population-based classification is static or mutable.

Riverview Gardens v. St. Louis Cnty., 816 S.W.2d 219, 221 (Mo. 1991) (citing *Lionberger*, 71 Mo. at 48) (emphasis added); *see also Walters v. City of St. Louis*, 364 Mo. 56, 63 (Mo. banc 1953) (holding a tax levy was not a "special law [just] because it was operative only in the City of St. Louis, provided it was prospective in its terms so as to become operative in other cities as they come within the classification therein specified").

Statutes affecting only one political subdivision are still presumed to be constitutional unless the challenging party can establish the other two *Jefferson Cnty. Fire Prot. Dist.* elements as well. The Municipal Plaintiffs cannot do so here. There are no other counties in Missouri with populations similar to St. Louis County yet not included in the classification, and the applicable population range cannot be considered "narrow" because it has no upper limit. Moreover, St. Louis County voters may opt out of SB 5's classification at any time by replacing their charter form of government.

By contrast, the statute invalidated in *City of DeSoto v. Nixon*, 476 S.W.3d 282 (Mo. 2016) was far more limited in scope than SB 5; it applied only to cities that: (1) operate a city fire department, (2) are third-class, (3) have more than 6,000 but fewer than 7,000 inhabitants, (4) are located in any county with a charter form of government with (5) more than 200,000 but fewer than 350,000 inhabitants, and (6) are entirely surrounded by a single fire protection district. *Id.* at 288. As in the present case, only one county fell

within the population and charter government parameters. But unlike the present case, the *DeSoto* statute was further limited by *municipal* population within that county and other, largely immutable geographic characteristics. As this Court observed, "While there are many cities with 6,000 to 7,000 residents, those cities either are not in a nonqualifying county, or are not third-class cities, or are not in charter counties, or are not surrounded by a single fire protection district, and so forth." *Id.* at 289.

The present case bears greater resemblance to *City of St. Louis v. State*, in which this Court rejected a special law challenge to a statute that applied 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." 382 S.W.3d at 915. As in this case, only one political subdivision satisfied both criteria—the City of St. Louis. This Court upheld that law nonetheless, holding that "the test for whether a statute is special is not whether another falls within its parameters at a particular time but *whether others may fall into the classification*." *Id.* (emphasis added). Only one political subdivision satisfies both criteria in the present case—St. Louis County. But other counties with a charter form of government may have 950,000 residents at some point in the future, at which time they will fall into the classification as well—not to mention that the voters of St. Louis

County can exempt themselves from SB 5's application at any time by dissolving their charter form of government. Consequently, §§ 67.287 and 479.359.2 are not facially special.

Even if the challenged statutes were not based on open-ended characteristics, setting different revenue limits for municipalities in St. Louis County is substantially justified by the long history of municipalities in St. Louis County generating excessive revenue through onerous traffic fines and court costs—the very practices that prompted this Court to transfer all Ferguson Municipal Court cases to Judge Richter in March 2015. In any event, the Court need not decide whether SB 5 was substantially justified by the past abuses of St. Louis County municipalities to resolve this appeal because its classification is open-ended and presumptively constitutional. The circuit court's judgment declaring §§ 67.287 and 479.359.2 to be unconstitutional special laws should be reversed.

II. The circuit court erred in holding that §§ 67.287 and 479.359.3 violate art. X, secs. 16 and 21 of the Missouri Constitution because SB 5 had not imposed—and was not certain to impose—any unfunded mandates on Normandy or Pagedale in that the General Assembly could still have appropriated any necessary funding before either city would have had to incur any new expenses.

To establish a Hancock claim, a taxpayer must satisfy a two-pronged test. *Blue Springs R-IV Sch. Dist. v. Sch. Dist. of Kansas City*, 415 S.W.3d 110, 113 (Mo. 2013). "The first prong ... is established when the State requires local entities to begin a new mandated activity or to increase the level of an existing activity beyond the level required on November 4, 1980." *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 826 (Mo. 2013). "The second prong is established when political subdivisions *experience increased costs* in performing the new activity or service at issue because the State provides insufficient funding to offset the full costs of compliance." *Id.* at 826-27 (emphasis added). "Under Hancock, a case is not ripe without specific proof of ... 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. 2004), as modified on denial of reh'g (Mar. 30, 2004) (quoting *Miller v. Director of Revenue*, 719 S.W.2d 787, 789 (Mo. 1986)).

Courts "will not presume increased costs resulting from increased mandated activity." *Id.*

Although the Taxpayer Plaintiffs *alleged* in their pleadings that §§ 67.287 and 479.359.3 would impose more than a dozen new, unfunded mandates on the cities of Normandy and Pagedale, the only *evidence* of allegedly increased costs they presented at trial were those related to (a) the "minimum standard" in § 67.287.2(6) under which Pagedale's police department[4] had to obtain professional accreditation by August 28, 2021, Tr. 12:17-25:21; and (b) the reporting requirement under § 479.359.3 that Normandy and Pagedale submit addenda to their annual financial reports to the state auditor showing the percentage of their annual general operating revenues derived from traffic-related fines and court costs, Tr. 42:8-18; 49:16-50:18; Pl. Ex. 3 (Appendix "App." p. A10). Taxpayers were unable to establish a Hancock violation in either case, however, 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. In any event, both claims are now moot because the General Assembly has since eliminated the challenged "mandates" by enacting SB 572.

[4] Normandy Mayor Patrick Green testified at trial that the Normandy Police Department is already accredited with CALEA. Tr. 37:13-15.

A. Taxpayers' Hancock challenge to § 67.287 was not ripe for review because the legislature still had sufficient time to appropriate any necessary funding before Pagedale would have been forced to incur any expense to obtain police accreditation by August 28, 2021.

The only evidence Taxpayers presented in support of their Hancock challenge to § 67.287 was the testimony of former Hazelwood Police Chief Carl Wolf, who estimated it would cost Pagedale around $8,700 to apply for accreditation from the Commission on Accreditation for Law Enforcement Agencies, and as much as $3,700 per year to maintain that accreditation. Tr. 16:15:20-16:4. Obtaining accreditation from the Missouri Police Chiefs would cost Pagedale as much or more. Tr. 20:9-20. Wolf testified that the accreditation process takes "[a]nywhere *up to* three years[;] [y]ou have to finish your on site within three years" or apply for an extension." Tr. 18:19-19:5 (emphasis added). He speculated that a police department *may* have to make some changes or improvements in order to meet CALEA's accreditation criteria, but he did not testify as to what such changes or improvements might cost.

The Taxpayers' Hancock challenge to § 67.287 was not ripe for review at the time of trial because the new minimum standard for police department

accreditation would not become an actual "mandate" until August 28, 2021—*more than five years in the future*. *See* § 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 of subdivision (6) [which required police departments to be professionally certified or accredited] shall be completed *within six years*.") (emphasis added). Assuming it would take Pagedale a full three years and cost $12,000 to successfully complete the CALEA accreditation process by August 28, 2021, the city would not have had to begin the process *until 2018*. Admittedly, no state funds were appropriated for Pagedale to obtain accreditation in FY 2016, but the Missouri General Assembly had not yet perfected its budget for FY 2017 at the time of trial, much less for FY 2018. If it were to do so, Pagedale would never have incurred any increased costs to comply with SB 5. Because the Taxpayers could not show that the legislature would not appropriate sufficient funds at some point during the two years remaining before Pagedale would have to begin the accreditation process, their Hancock challenge was not ripe.

B. Taxpayers' Hancock challenge to § 479.359.3 was not ripe for review because Normandy and Pagedale could not establish that submitting the required addenda with their annual financial reports would impose more than *de minimis* costs, if any.

The Taxpayers failed to show that submitting an addendum to Normandy and Pagedale's annual financial reports that includes three calculations the municipalities are *required to perform anyway* would impose "increased costs." At all relevant times prior to the circuit court's judgment, Missouri's Macks Creek Law imposed the following obligation on municipalities:

> Every county, city, town, and village *shall annually calculate the percentage of its annual general operating revenue received from fines, bond forfeitures, and court costs for minor traffic violations*, including amended charges for any minor traffic violations, whether the violation was prosecuted in municipal court, associate circuit court, or circuit court, occurring within the county, city, town, or village. If the percentage is more than thirty percent, the excess amount shall be sent to the director of the

department of revenue.

§ 479.359.1 (emphasis added). Taxpayers *did not challenge*—and the circuit court *did not enjoin*—§ 479.359.**1**. Their Hancock claim was limited to § 479.359.**3**, which at that time provided:

> *An addendum to the annual financial report submitted to the state auditor* by the county, city, town, or village under section 105.145 *shall contain an accounting of: (1) Annual general operating revenue* as defined in section 479.350;
>
> (2) *The total revenues from fines, bond forfeitures, and court costs for minor traffic violations* occurring within the county, city, town, or village, including amended charges from any minor traffic violations;
>
> (3) *The percent of annual general operating revenue from fines, bond forfeitures, and court costs for minor traffic violations* occurring within the county, city, town, or village, including amended charges from any charged minor traffic violation, charged in the municipal court of that county, city, town, or village; and
>
> (4) Said addendum shall 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.

§ 479.359.3 (emphasis added).

In other words, Taxpayers did not challenge the pre-existing mandate *to calculate* the percentage of its annual general operating revenue received from fines, bond forfeitures, and court costs for minor traffic violations—calculations the cities already had to perform annually for more than a decade in order to determine whether any excess fines and costs had to be remitted to the director of revenue. Taxpayers only challenged the obligation *to report* that percentage in a separate addendum to their cities' annual financial reports to the state auditor. If SB 5 had never been enacted, Normandy would still have had to determine how much of its general operating revenue came from traffic-related fines and court costs; it would still have had to remit any traffic-related fines and court costs in excess of 35% (the limit before SB 5 was enacted) to the director of revenue. Indeed, the circuit court's permanent injunction—which the Taxpayers drafted—*does not* relieve Normandy or Pagedale of its ongoing obligation *to calculate* its Macks Creek percentage and remit any excess.

In their pleadings, Taxpayers alleged that their "Municipalities will

incur significantly increased costs ... by calculating the new financial figures, preparing the addendum to the annual financial report, and certifying the addendum." Ver. Pet. ¶75. LF19. But the only evidence of those "significantly increased costs" presented at trial was an affidavit from Angela Dorn, the CPA who prepares Normandy and Pagedale's annual financial reports to the state auditor (App. p. A10), and the testimony of Normandy Mayor Patrick Green. In paragraphs 5 and 6 of her affidavit, Dorn stated,

> In order to apply the definitions of "annual general operating revenue," "court costs" and "minor traffic violation" in Senate Bill No. 5 ("SB 5") *there could be* considerable extra cost involved to the cities.
>
> In order to calculate the SB 5 percentages . . . , our firm will incur time costs on the annual basis for the cities of Normandy and Pagedale, of approximately $300 to $500 each. Over time, these amounts should increase.

App. p. A10 (emphasis added). It is not clear from Dorn's affidavit why a change in the definition of the numerator and a denominator would make a division problem so much more expensive to perform. Mayor Green confirmed that Dorn has been Normandy's accountant for 20-25 years and that she normally prepares the city's annual financial report to the state

auditor. Tr. 33:8-23. He did not know how long it took or what it cost Normandy for Dorn to prepare the annual report, but he testified that Dorn has annually calculated the city's general operating revenue and the percentage of that revenue taken from its municipal courts since before SB 5 was ever enacted. Tr. 38:25-39:21. Thus, the only *new* activity mandated by SB 5 was the act of recording and submitting those calculations on a separate sheet of paper.

To be sure, SB 5 increased the number of court costs and fines to be included in a municipality's annual Macks Creek calculation, and it may take municipalities some time and effort to adjust their bookkeeping accordingly. But the duty to perform the calculation preexisted SB 5, was not challenged in this lawsuit, and remained in effect even after the challenged statutory provisions were enjoined by the circuit court. A statutory amendment that merely changes the way an existing calculation is performed imposes at most a *de mininis* expense. A Hancock challenge 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." *School District of Kansas City v. State*, 317 S.W.3d 599, 611 (Mo. 2010). Plaintiffs did not carry their burden.

C. Taxpayers' Hancock Claims are now moot.

Even if this Court were to conclude that the versions of §§ 67.287 and 479.359.3 in effect at the time of trial imposed *new* mandates on the cities of Normandy and Pagedale, Taxpayers' Hancock challenges are now moot because the challenged provisions have been amended by the General Assembly. *See Missouri Mun. League*, 465 S.W.3d at 907 (ruling Municipal League's challenge to prior version of Macks Creek Law was moot after the legislature amended the law). Senate Bill 572 ("SB 572"), which became effective August 28, 2016—after the circuit court entered its final judgment—*eliminates* the two mandates at issue in this case. The amended version of § 67.287.2(6) (2016) no longer *requires* that municipalities have or contract with a police department *at all*, much less an accredited one. Only if a municipality *chooses* to operate or contract with a police department going forward does SB 572 require that such department be accredited by CALEA or the Missouri Police Chiefs Association. § 67.287.2(6) (2016) (effective August 28, 2016) ("***If*** a municipality has a police department or contracts with another police department for public safety services, [***then*** it must operate] a police department accredited or certified by the Commission on Accreditation for Law Enforcement Agencies or the Missouri Police Chiefs Association or a contract for police service with a police department accredited or certified by such entities") (emphasis added).

Similarly, SB 572 no longer *requires* all municipalities to submit addenda to their annual financial reports showing the percentage of their revenue derived from traffic fines. Section 479.359.3 now provides,

> An addendum to the annual financial report submitted to the state auditor under section 105.145 by the county, city, town, or village ***that has chosen to have a municipal court division*** shall contain an accounting of: (1) Annual general operating revenue . . . (2) The total revenues from fines, bond forfeitures, and court costs for municipal ordinance violations and minor traffic violations . . . ; (3) The percent of annual general operating revenue from fines, bond forfeitures, and court costs for municipal ordinance violations and minor traffic violations occurring within the county, city, town, or village . . . .

§ 479.359.3 (2016) (effective August 28, 2016) (emphasis added).

Taxpayers cannot state a claim under art. X, secs. 16 or 21 of the Missouri Constitution where there is no state *mandate*. Under SB 572, neither Pagedale, Normandy, nor any other municipality is *obligated* to maintain or contract with a municipal police department or operate a

municipal court. They may *choose* to do so, but the existence of that choice is fatal to the Taxpayers' Hancock challenge.

CONCLUSION

For the foregoing reasons, the trial court's judgment declaring unconstitutional and permanently enjoining enforcement of §§ 67.287, 479.359.2 and 479.359.3 should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that this brief complies with the limitations set forth in Rule 84.06(b) and contains 6,022 words as calculated pursuant to the requirements of Rule 84.06(b)(2).

I further certify that on this 16th day of September, 2016, the foregoing brief and appendix of State Appellants was served electronically via Missouri CaseNet and/or electronic mail to:

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