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

RESPONSE BRIEF OF STATE CROSS-RESPONDENTS

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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).

Statutory Framework

The "Macks Creek Law" limits the amount of revenue municipalities may generate annually from traffic fines. *Missouri Mun. League v. State*, 465 S.W.3d 904, 905 (Mo. 2015). Fines collected in excess of the statutory cap must be remitted to the director of revenue for distribution to local schools. *Id*. In 2015, the General Assembly enacted Senate Bill 5 ("SB 5"), amending the Macks Creek Law in several respects. Among other changes, SB 5 required every municipality to submit an addendum to its annual financial reports to the state auditor, certified and signed under oath by a

representative with knowledge of the subject matter, identifying (1) the municipality's "annual general operating revenue," (2) its "total revenues from fines, bond forfeitures, and court costs for minor traffic violations," and (3) "the percent of [its] annual general operating revenue [derived] from fines, bond forfeitures, and court costs for minor traffic violations . . . ." § 479.359.3 RSMo[1]. SB 5 also required every municipality to adopt certain new municipal court procedures and "file with the state auditor ... its certification of its substantial compliance signed by its municipal judge with the municipal court procedures ... during the preceding fiscal year." § 479.360.1 RSMo.

Finally, SB 5 clarified the consequences of non-compliance and provided the following procedural framework for the State to enforce the Macks Creek Law:

> The auditor shall notify to the director of the department of revenue whether or not [a municipality] has timely filed the addendums required by sections 479.359 and 479.360 and transmit copies of all addendums filed in accordance

[1] Unless otherwise noted, all statutory citations refer to the Revised Statutes of Missouri as amended through the 2015 Supplement.

> with sections 479.359 and 479.360. The director of the department of revenue shall review the information filed in the addendums as required by sections 479.359 and 479.360 and shall determine if any [municipality]: (1) Failed to file an addendum; or (2) Failed to remit to the department of revenue the excess amount as set forth, certified, and signed in the addendum required by section 479.359.

§ 479.362.1 RSMo. If the director determines that a municipality failed to remit the excess fines it reported in its addendum or failed to submit its addendum altogether, the director must notify the municipality of its non-compliance and provide 60 days to cure the problem. § 479.362.2 RSMo. The municipality may seek judicial review of the director's determination "in the circuit court in which the municipal division is located by filing a petition under section 536.150." § 479.362.3 RSMo.

If the municipality fails to submit its addendum or remit the excess fines it reported within the 60-day curing period or after judicial review, SB 5 requires the director to "send a final notice to the clerk of the municipal court," providing five more days to come into compliance. § 479.362.5 RSMo. If the municipality *still* fails to submit its addendum or remit its excess fines within the next five days:

> the director of the department of revenue shall send a notice of the noncompliance to the presiding judge of the circuit court in which [the municipality] is located and the presiding judge of the circuit court shall immediately order the clerk of the municipal court to certify all pending matters in the municipal court until such [municipality] files an accurate addendum and sends excess revenue to the director of the department of revenue pursuant to sections 479.359 and 479.360.

§ 479.362.5 RSMo. During the period in which matters are reassigned from a municipal court of a non-compliant municipality to the circuit court, "[a]ll fines, bond forfeitures, and court costs ordered or collected . . . shall be paid to the director of the department of revenue to be distributed to the schools of the county . . . and the [municipality] shall not be entitled to such revenue." § 479.362.5 RSMo. If and when a noncompliant municipality files an accurate addendum and remits all the excess revenue owed, the director of revenue shall notify the presiding circuit judge that the municipality may resume hearing cases and receiving revenue from fines, bond forfeitures, and court costs. *Id.* The state auditor has the authority to audit any addendum and any supporting documents a municipality submits. § 479.362.6 RSMo.

I. Counts V and VI were properly dismissed because §§ 479.359, 479.360, and 479.362 do not grant the Director of Revenue any "supervisory authority" over municipal courts.

In Counts V and VI of their Verified Petition, the Cross-Appellant Municipalities asserted that SB 5 violates the Separation of Powers doctrine, Mo. Const. art. II, sec. 1, by shifting this Court's inherent authority to supervise municipal courts to the director of revenue. LF22, 24 (Ver. Pet. ¶¶92, 102). Both Counts failed to state a claim, however, because SB 5 does not grant the director of revenue any "supervisory authority" over any court, much less the authority to "*order[]* the Circuit Court to order the Municipal Court to certify all pending matters." LF22 (Ver. Pet. ¶91 (emphasis added)).

While SB 5 creates a ministerial duty on the part of the director of revenue to "send a notice of non-compliance" to the circuit court, it is *the circuit court itself* that orders the municipal court clerk to certify all pending matters, not the director of revenue. § 479.362.5 RSMo. The Municipalities argue that the duty imposed by SB 5 is not ministerial because the director "must confirm that the municipality accurately tallied the 'fines, bond forfeitures, and court costs' collected from 'minor traffic violations'" and "verify the annual general operating revenue of the municipality." Municipalities' Opening Br. at 17. But SB 5 mandates only that the director

"shall review the information filed in the addendums" to determine "if any [municipality]: (1) *Failed to file* an addendum; or (2) *Failed to remit* . . . the excess amount as set forth, certified, and signed in the addendum." § 479.362.1 RSMo (emphasis added). Whether or not a municipality submitted the necessary paperwork or paid any excess fines the *municipality itself* calculated as due does not require the exercise of discretionary judgment by the director. It is a yes or no question.

But even assuming the required notice were a discretionary rather than ministerial duty on the director's part, Counts V and VI are premised on the flawed assumption that it somehow violates the separation of powers for a statute to require a circuit court to exercise supervisory authority over municipal courts based on information it receives from another branch of government. The only case Plaintiffs cite in support of this theory—*State ex rel. City of St. Louis v. Mummert*, 875 S.W.2d 108 (Mo. 1994)—has no application to the present case. *Mummert* concerned a statute requiring "a majority of the judges of the circuit court" to approve the St. Louis Mayor and St. Louis County Supervisor's appointment of trustees to the board of the Metropolitan Sewer District. *Id.* at 108. In other words, that statute required the judicial branch to *approve* political decisions made by the executive branch. SB 5 does nothing of the sort. Rather, it requires (a) executive branch officers to *notify* judicial branch officers that other judicial branch

officials have not performed a ministerial task, and (b) judicial branch officials to exert supervisory control over other judicial branch officials.

Requiring the director of revenue to *notify* the judiciary that certain municipalities and municipal courts have failed to follow the Macks Creek Law does not violate the separation of powers any more than requiring the the director to notify the Supreme Court which members of the bar have failed to pay their taxes. *Cf.* § 484.053 RSMo. In both cases, the resulting sanction, if any, is imposed *by the judiciary itself*, not the executive branch. The circuit court correctly dismissed Counts V and VI because SB 5 does not violate the separation of powers. Its conclusion should be affirmed.

II. Count VII was properly dismissed for failure to state a claim on which relief can be granted because § 479.360.1 is not inconsistent with Rule 37.47(a).

In Count VII, the Municipalities alleged that SB 5 "purports to amend the Rules of Criminal Procedure as they apply to Municipal Court" without "expressly refer[ing] to or identify[ing] the rules it purports to amend." LF25 (Ver. Pet. ¶¶107-108). They further alleged that, "[b]y failing to identify the Criminal Rules SB 5 Section 479.360.1 purports to amend and by failing to limit SB 5 to the purpose of amending identified Criminal Rules, SB 5 Section 479.360.1 violates art. V, sec. 5 of the Missouri Constitution." LF26

(Ver. Pet. ¶111).

The Missouri Constitution provides: "The supreme court may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law.... Any rule may be annulled or amended in whole or in part by a law limited to the purpose." Mo. Const. art. V, sec. 5. This provision permits the Supreme Court to establish its own rules of procedure. "However, the constitution did not make its grant of rulemaking power to the judiciary exclusive." *State ex rel. Kinsky v. Pratte*, 994 S.W.2d 74, 75 (Mo. App. E.D. 1999). "The legislature continues to have the power to establish procedures." *Id.* at 76. "If no procedure is specially provided by rule, the court having jurisdiction is directed to proceed in a manner consistent with judicial precedent or applicable statutes." *Id.* at 76. "Where the legislature has enacted a statute pertaining to a procedural matter [that] is not addressed by or inconsistent with any supreme court rule, the statute must be enforced." *State v. Teer*, 275 S.W.3d 258, 264 (Mo. 2009).

If SB 5 attempted to amend or annul any existing Supreme Court Rules, *then* art. V, sec. 5 would have required the Legislature to identify the specific rule to be amended in a bill limited to that purpose. But the Municipalities have never identified any court rules with which the procedures mandated in SB 5 are actually *inconsistent*. On page 23 of their

opening brief, the Municipalities assert that there is a conflict between Rule 37.47(a)("A person arrested under a warrant . . . shall be brought *as soon as practicable* before a judge of the court from which the warrant was issued") and § 479.360.1(1) RSMo ("Defendants in custody pursuant to an initial arrest warrant [shall] have an opportunity to be heard by a judge . . . *as soon as practicable* ***and not later than forty-eight hours on minor traffic violations and not later than seventy-two hours on other violations***.") (emphasis added). *There is no conflict*, however, because it is possible for a municipal court to comply with both Rule 37.47(a) and § 479.360.1(1) at the same time. Both require that an arrested defendant be brought before a judge "as soon as practicable." Section 479.360.1(1) simply imposes an *additional* (but *not inconsistent*) limit of 48 or 72 hours, depending on the violation.[2]

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[2] *State ex rel. K.C. v. Gant*, 661 S.W.2d 483 (Mo. 1983), and *State v. Reese*, 920 S.W.2d 94 (Mo. 1996), cited in the Municipalities' opening brief, involved *direct* conflicts. In *Gant,* a court rule granted *a right to hearing* whereas the challenged statute purported to give the court *discretion to deny it*. In *Reese,* the challenged statute gave litigants nine months to substitute dead parties whereas court rules required dismissal if substitution was not made within 90 days.

Plaintiffs imply that the Legislature cannot impose *additional* procedural protections, even if they do not conflict with actual rules, because the Supreme Court has essentially *preempted* the Legislature's power to regulate in the field of municipal court rules. Plaintiffs cite no authority for this proposition, and the State is not aware of any case law permitting one branch of government to completely preempt the shared authority of another branch.[3] It would be an odd circumstance if silence in a Supreme Court Rule effectively precluded the General Assembly from ensuring that all criminal defendants are arraigned in a timely fashion.

As the Municipalities cannot identify any actual conflicts between the procedures required in SB 5 and Supreme Court Rules, SB 5 does not violate art. V, sec. 5. Dismissal should be affirmed.

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[3] The General Assembly can occupy a field of regulation such that *municipalities* and other political *subdivisions* may not regulate within that field even if they do so consistent with state law. *See*, e.g., § 427.041 RSMo ("the general assembly hereby occupies and preempts the entire field of legislation imposing liability on lenders-owners for precedent environmental conditions which result in contamination or pollution"). This is not such a case, however, as the General Assembly and the Supreme Court are co-equal branches of government.

III. Count VIII was properly dismissed because art. V, sec. 27.16 means nothing more than that municipal fines imposed by the associate circuit court still go to the municipality rather than county.

In Count VIII, the Municipalities alleged that SB 5 violates their "right to retain fines" under Mo. Const. art. V, sec. 27.16 by requiring all municipal fines imposed by the circuit court while the municipality is out of compliance with SB 5 to be remitted to the director of revenue rather than the municipality itself. LF27 (Ver. Pet. ¶121, citing § 479.362.5). Plaintiffs are unable to cite a single case supporting this novel argument.

Independent municipal courts (as well as probate courts, magistrate courts, and courts of common pleas) were abolished by the 1976 amendments to the Missouri Constitution, which provided in pertinent part:

> The jurisdiction of municipal courts shall be transferred to the circuit court of the circuit in which such municipality or major geographical area thereof shall be located and, such courts shall become divisions of the circuit court. When such courts cease to exist, all records, papers and files shall be transferred to the circuit court which may designate the place where such records may be maintained.

Mo. Const. art. V, sec. 27.2.d; *and see* 2 Mo. Prac., Methods of Prac. § 1.22 (4th ed.). Section 27 of the amended art. V, entitled "Schedule," established the dates and procedures for effecting the transition from the old independent courts (municipal, probate, etc.) into new divisions of the circuit court. For example, the Schedule provides:

> All *expenses* incidental to the functioning of municipal judges, including the cost of any staff, and their quarters *shall be paid and provided by the respective municipalities* as now provided for municipal courts *until otherwise provided by law*. In municipalities with a population of under four hundred thousand which do not have a municipal judge or for which no municipal judge is provided by law, associate circuit judges shall hear and determine violations of municipal ordinances.

Mo. Const. art. V, sec. 27.9.a (emphasis added). In other words, even though municipal courts are *now* divisions of the circuit court, the costs of operating the municipal courts are still borne by the municipalities—*even if the municipal code violations are heard by an associate circuit judge instead of a judge in the municipal division.*

Section 27.16—the provision the Municipalities misread as granting a

"right to retain fees" in Count VIII—is simply a corollary to sec. 27.9.a:

> A municipal corporation with a population of under four hundred thousand shall have the right to enforce its ordinances and to conduct prosecutions before an associate circuit judge in the absence of a municipal judge and in appellate courts under the process authorized or provided by this article and *shall receive and retain any fines to which it may be entitled*.

Mo. Const. art. V, sec. 27.16 (emphasis added). In other words, even if a municipality prosecutes ordinance violations in front of an associate circuit judge instead of a municipal division judge, the municipality still gets to keep any fines "*to which it may be entitled*."

What fines, if any, a municipality is *entitled* to collect for ordinance violations is a function of statute, not the Constitution. Cross-Appellants Normandy and Wellston, which are Third Class Cities,

> may enact and make all such ordinances and rules, *not inconsistent with the laws of the state*, as may be expedient for maintaining the peace ... ; and all ordinances may be enforced by prescribing ... such fine not exceeding five hundred dollars ... as may be

> just for any offense, recoverable with costs of suit.

§ 77.590 RSMo (emphasis added). As Fourth Class Cities, Cross-Appellants Cool Valley, Velda Village Hills, Bel Ridge, Pagedale, Moline Acres, Vinita Park, and Northwoods "may enact or make all ordinances, rules and regulations, *not inconsistent with the laws of the state*, expedient for maintaining the peace," § 79.450 RSMo (emphasis added), and "may impose penalties not exceeding a fine of five hundred dollars and costs," § 79.470. Finally, Cross-Appellant Villages of Glen Echo Park and Uplands Park "shall have power ... [t]o pass such other bylaws and ordinances ... *not repugnant to and contrary to the laws of the state*," and "[t]o impose and appropriate fines for forfeitures and penalties for breaking or violating their ordinances." § 80.090(40), 80.090(37)(emphasis added). For all three classes of Municipalities, the authority to collect fines *at all* was granted—and can be taken away—by the Legislature.

SB 5 requires the circuit court to order the circuit clerk to certify all pending matters in the municipal court if the municipality fails to comply with the statute's reporting requirements and revenue limits. § 479.362.5. It further provides that "[a]ll fines, bond forfeitures, and court costs ordered or collected while [such municipality] has its municipal court matters reassigned under this subsection shall be paid to the director of the department of revenue." *Id.* To the extent a municipal ordinance purports to

permit a municipality failing to comply with SB 5 to retain fines, bond forfeitures, and court costs assessed in cases certified to by the circuit clerk, such ordinance would be inconsistent with and repugnant to state law. Thus, the non-compliant municipality would not be "entitled" to collect such fines, and Mo. Const. art. V, sec. 27.16 is irrelevant. Count VIII was properly dismissed.

CONCLUSION

For the foregoing reasons, the trial court's judgment dismissing Counts V, VI, VII, and VIII should be affirmed.

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 3,404 words as calculated pursuant to the requirements of Rule 84.06(b)(2).

I further certify that on this 6th day of October, 2016, the foregoing response brief of State Appellants was served electronically via Missouri CaseNet and/or electronic to:

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