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

REPLY BRIEF OF STATE APPELLANTS

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I. Municipal Respondents cannot overcome the presumption that §§ 67.287 and 479.359 are constitutional under the tri-part *Jefferson County Fire Prot. Districts Ass'n v. Blunt* test.

Statutes governing *more than 90* political subdivisions of the state can hardly be called "special laws." A "special law" is one that "include[s] *less than all* who are similarly situated." *Ambers-Phillips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901, 913 (Mo. 2015) (emphasis added). "A law is not special if it applies to *all of a given class alike* and the classification is made *on a reasonable basis*." *Glossip v. Missouri Dep't of Transp. and Highway Patrol Employees' Ret. Sys.*, 411 S.W.3d 796, 808 (Mo. 2013)(emphasis added). Municipal Respondents do not dispute that SB 5 applies to "all of a given class alike"; indeed, they affirmatively argue that "by their express terms, [§§ 67.287 and 479.359 RSMo[1]] apply to *every 'city, town or village' within St. Louis County*." Resp. Br. at 4 (emphasis added). Acknowledging that St. Louis County is currently the only county in Missouri with a charter form of government and more than 950,000 inhabitants, Resp. Br. at 3, and that there are 92 cities, towns or villages found within its borders, *id.* at 6, the

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

Municipal Respondents concede that SB 5's classification does not "include *less than all* who are similarly situated."

To overcome the presumption of constitutionality granted to laws that apply to an *entire class* based on open-ended population characteristics, such as SB 5, the challenging party must establish three elements:

> (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.

Jefferson Cnty. Fire Prot. Districts Ass'n v. Blunt, 205 S.W.3d 866, 870–71 (Mo. 2006) (emphasis added). Contrary to their assertion that "[t]he first part of the three-part test is clearly satisfied here," Resp. Br. at 18, the Municipal Respondents have conceded that SB 5 does not "include[] *only one* political subdivision" but *more than 90*. It is therefore patently impossible for Municipal Respondents to satisfy the first element of the *Jefferson Cnty. Fire* test.

Glossing over this fatal flaw in their argument, the Municipal Respondents assert that "[t]he State conceded th[e] obvious fact" that "[o]nly

one political subdivision satisfies both criteria in the present case—St. Louis County." Resp. Br. at 19. But the Municipal Respondents cannot pass the *Jefferson Cnty. Fire* test by comparing apples to oranges. If they satisfy the first element by showing that *St. Louis County* is the "only one political subdivision" with a charter form of government and more than 950,000 inhabitants, then Municipal Respondents cannot satisfy the second element because no "other political subdivisions are similar in size to [*St. Louis County*], yet are not included." Conversely, if the Municipal Respondents satisfy the second element by showing "that there are hundreds of other Third and Fourth Class Missouri *municipalities* similar in size," *id.* at 22, then they cannot satisfy the first element because SB 5's classification does not "include[] only one" *municipality* but 92.

This Court's opinion in *City of DeSoto v. Nixon*, 476 S.W.3d 282 (Mo. 2016) does not fix the fatal error in Municipal Respondents' special laws claims. While the Municipal Respondents argue that "the SB 5 hybrid class of St. Louis County and the municipalities located therein is no different conceptually than the *DeSoto* hybrid class of Jefferson County and the City of DeSoto located therein," Resp. Br. at 23, the two classifications could not be more different. Both laws apply to municipalities based (in part) on the population of the county in which they are located, but there the resemblance stops. The *DeSoto* statute applied to *only one* municipality within the

covered county. By contrast, SB 5 applies to *every* municipality with the covered county—*nearly a hundred separate political subdivisions*.

As Municipal Respondents cannot satisfy *all three* elements of the *Jefferson Cnty. Fire* test, SB 5 retains its presumption of constitutionality. And as they have not shown that SB 5's classification was not "made on a reasonable basis," Municipal Respondents' challenge under article X, section 40 of the Missouri Constitution fails as a matter of law. The circuit court's declaratory judgment to the contrary should be reversed and its injunctive relief vacated.

II. The Taxpayer Respondents' Hancock claims are moot.

In their opening brief, the State Appellants showed that the Taxpayer Respondents' Hancock claims have been mooted by the enactment of SB 572. As amended, § 67.287.2(6) (2016) does not *require* any municipality to have or contract with a police department at all, much less an accredited one, and § 479.359.3 does not *require* any municipality to submit an addendum to its annual financial reports showing the percentage of its revenue derived from traffic fines. *See* State Br. at 26-27. These obligations arise only if a municipality *chooses* to have or contract with a police force, and *chooses* to operate a municipal court.

Taxpayers argue that § 67.287.2(6) (2016) still violates the Hancock Amendment because a *different* statute—§ 70.800—requires (without providing state funding) that Normandy and Pagedale maintain or contract with a police department. Resp. Br. at 41. That argument fails for at least two reasons. First, the Taxpayers did not argue that § 70.800 violates the Hancock Amendment in the circuit court, so they cannot raise this argument for the first time on appeal. *State v. Carter*, 415 S.W.3d 685, 689 (Mo. 2013) ("reviewing courts generally will not consider arguments not presented to the trial court"). Second, § 70.800 was enacted in 1972, eight years before Missouri voters adopted the Hancock Amendment. To the extent that § 70.800 imposes a *mandate* on Normandy and Pagedale to do anything, such mandate precedes (and is therefore not affected by) the Hancock Amendment. *See Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 826 (Mo. 2013) ("The Hancock Amendment . . . protect[s] taxpayers from government's ability to increase the tax burden above that borne by the taxpayers *on November 4, 1980*.") (emphasis added).

Similarly, even though SB 572 expressly limited § 479.359.3's addendum requirement to only those municipalities that have "chosen to have a municipal court division," the Taxpayers argue that § 479.359 still *mandates* that all municipalities submit addenda to their annual financial reports because they cannot "opt out of maintaining their municipal courts to

determine whether their municipal ordinances have been violated." Resp. Br. at 42. This argument is defeated by the language of § 479.359 itself, which requires municipalities to calculate the percent of their revenue derived from traffic and municipal ordinance violations "whether the violation was prosecuted in municipal court, *associate circuit court, or circuit court*." § 479.359.1.

III. To the extent that SB 5 still *mandates* that Pagedale and Normandy submit an addendum to their annual financial report, the marginal cost increase of doing so is *de minimis*.

As the State Appellants showed in their opening brief, Taxpayer Respondents did not challenge—and the circuit court did not rule on—the constitutionality of § 479.359.1, which independently requires every municipality to "annually calculate the percentage of its annual general operating revenue received from fines, bond forfeitures, and court costs for municipal ordinance violations and minor traffic violations, including amended charges for any municipal ordinance violations and minor traffic violations," and to remit all fines and costs collected in excess of the applicable limit to the director of revenue. State's Br. at 21-22. As the municipalities are independently required to perform their Macks Creek

calculations under § 479.359.***1***, which Taxpayers *did not* challenge in this lawsuit, those calculation costs of $300 to $500 are not actually mandated by § 479.359.***3***, which Taxpayers *did* challenge. The calculation and remittance are required even if the *addendum requirement* of § 479.359.3 is held to be unconstitutional. The only *new* mandate § 479.359.3 could possibly have imposed on Pagedale and Normandy is the obligation to record and submit their Macks Creek calculations *on a separate sheet of paper*.

Taxpayers suggest that Pagedale and Normandy will incur costs to submit their addenda above and beyond the costs they incur simply to perform the calculations themselves because the addendum must be "certified and signed by a representative with knowledge of the subject matter as to the accuracy of the addendum contents, under oath and under penalty of perjury, and witnessed by a notary public." Resp. Br. at 37 (quoting § 479.359.3(4)). Taxpayers argue that "the addendum is a formal and meticulous document with potential criminal implications." *Id.* In other words, it costs more to submit the addendum than just the cost of doing the calculation itself because SB 5 requires the calculation reported on the addendum to be *accurate*.

Even assuming that the "formal and meticulous" nature of the addendum could conceivably impose costs on Pagedale or Normandy beyond the cost of doing the calculation itself, Taxpayer Respondents offered no

evidence at trial of what that additional cost might be. The affidavit Taxpayers submitted from Angela Dorn "estimated that the *cost for calculating* the 'annual general operating revenue,' and 'court costs' for 'minor traffic violations' in accordance with the new definitions in SB 5 would annually amount to $300 to $500." Resp. Br. at 8 (emphasis added). But Dorn's affidavit did not state how much more, if any, it costs Pagedale and Normandy to record and submit their $300 to $500 calculations on a separate sheet of paper. Indeed, it is hard to imagine what additional cost there could be other than the price of a couple of sheets of paper and the toner to print them—at most a *de minimis* expense.

CONCLUSION

For the reasons set forth above and in the State's opening brief, 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 1,901 words as calculated pursuant to the requirements of Rule 84.06(b)(2).

I further certify that on this 26th day of October 2016, the foregoing reply brief was served electronically via Missouri CaseNet to:

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