
SUPREME COURT OF MISSOURI

MISSOURI PROSECUTING)
ATTORNEYS AND CIRCUIT)
ATTORNEYS RETIREMENT)
SYSTEM, AN AGENCY OF)
THE STATE OF MISSOURI,)
)
Respondents,)
)
vs.) APPEAL NO. SC88956
)
PEMISCOT COUNTY, CHARLES)
MOSS, WENDELL HOSKINS, SR.,)
and DAVID WILKERSON,)
)
Appellants.)

Appeal from the Circuit Court of Pemiscot County
Thirty-Fourth Judicial Circuit
Honorable Fred W. Copeland, Presiding

REPLY BRIEF OF APPELLANTS

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ARGUMENT IN REPLY TO RESPONDENT'S BRIEF

There is no dispute as to the proper construction of Sections 56.363, 56.807 and 56.816, RSMo. Both the trial court and the Missouri Court of Appeals for the Southern District have concluded that the construction urged by Appellants Pemiscot County, Charles Moss, Wendell Hoskins, Sr. and David Wilkerson (hereinafter “Appellants” or “Pemiscot County”) is correct and that the construction advocated by Respondent Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System (hereinafter “Respondent” or “PACARS”) is wrong. *See* L.F. 3, 91, 96, 97, 98.

The only issue on appeal to this Court is whether the “disparate treatment” of prosecutors made full-time in third- and fourth-class counties making that election on or before August 28, 2001, those making that election after August 28, 2001, is an unconstitutional violation of the Equal Protection clauses of the Missouri Constitution and the United States Constitution. As the Respondents accurately concede in their Brief, “[t]he Missouri State legislature is presumed to have acted within its constitutional power in enacting laws despite that a law may result in some disparate treatment and inequality, so long as facts may be conceived to justify the action. . . . ‘[T]hose challenging the legislative judgment must convince the court the legislative facts upon which the classification is

apparently based could not reasonably be conceived to be true by the governmental decisionmaker.” Brief of Respondent at 31 (*quoting Mahoney v. Doerhoff Surgical Services, Inc.*, 807 S.W.2d 503, 512 (Mo. banc 1991)).

Although the legislative record is devoid of any express statement as to the Legislature’s reason for distinguishing between those counties making the full-time election before and after August 28, 2001, it is nevertheless clear that the date, August 28, 2001, was neither “arbitrary” nor “irrational” in that it coincides with the effective date of the increase in the third- and fourth-class county’s monthly financial obligation from \$375.00 to \$1,291.67. *See* Section 56.807, RSMo. (Supp. 2005); 2001 Mo. Legis. Serv. S.B. 290 (Vernon’s). Therefore, one can certainly “conceive” of the governmental decisionmaker’s motive in drawing the distinction between those counties making the full-time election before and after the effective date of this substantial increase – the avoidance of the imposition of an unfunded mandate (*i.e.*, the voters thought they were voting for one thing, but then were obligated by subsequent statutory authority to pay something more).

The Respondent makes the argument that the 2001 increase the monthly contribution of third- and fourth-class counties with full-time prosecutors does not violate the Hancock Amendment. However, this Court need never reach the issue of whether the 2001 statutory revisions, in absence of the provision for counties making the election on or before August 28, 2001, would have violated the

Hancock Amendment. It is enough that the Legislature’s purpose in making this provision, the avoidance of an unfunded mandate, is “legitimate,” and that the classifications set forth in Chapter 56 bear a rational relationship to that purpose. *Police Retirement System of St. Louis v. City of St. Louis*, 763 S.W.2d 298, 302 (Mo. 1989), *citing Langston v. Levitt*, 425 F.Supp. 642, 646 (S.D.N.Y. 1977), (“A state does not violate the Equal Protection Clause merely because the classifications made by its laws are *imperfect*.”); *Mullinex-St. Charles Properties v. St. Charles*, 983 S.W.2d 550 (Mo. App. E.D. 1999), *citing Casualty Reciprocal Exchange v. Missouri Employers Mutual Insurance Co.*, 956 S.W.2d 249, 256 (Mo. banc 1997) (“If the legislative judgment is *at least debatable*, the issue settles on the side of validity.”).

Finally, Respondent PACARS makes the argument that “Appellant presented no evidence before the trial court to support [its] argument [that Pemiscot County and all third and fourth class counties are financially burdened], and there is nothing in the record before this Court to support [that] statement.” Brief of Respondent at 35. According to PACARS, Pemiscot County’s statement that it is financially burdened is based on “irrational speculation and should not be considered” by this Court. *Id.* True, there is virtually no record at the trial court level, but that is because the trial court disposed of this case on summary judgment, first in favor of Pemiscot County, then in favor of PACARS. If this

Court deems necessary factual findings by the trial court that Pemiscot County (and other third and fourth class counties) is indeed financially burdened, such evidence is easily adduced. However, the fact that the trial court granted Pemiscot County's Motion for Summary Judgment before it deemed any such findings necessary should not be used as grounds for Respondent PACARS' equal protection challenge. After all, it is "the challenger [who] has the burden of showing that a legislatively created classification is not rationally related to a legitimate state interest." *Mullinex-St. Charles Properties v. St. Charles*, 983 S.W.2d at 559.

It is abundantly clear that, by distinguishing between those counties who made the full-time election on or before the effective date of the increased monthly contribution in Section 56.807, August 28, 2001, and those who made the election after, the Legislature sought to be fair with those who would bear the financial obligation of the increased monthly contribution – the voters of third- and fourth-class counties who made the position full-time. Furthermore, the Legislature obviously sought to be fair with the prosecutors whose positions were made full-time on or before August 28, 2001, by providing a means by which their PACARS contribution could be increased by the county commission. Section 56.363.3, RSMo. Perhaps the statutory scheme set forth in Chapter 56 is "imperfect," but it is not arbitrary or irrational as PACARS contends. Therefore, Respondent

PACARS' Equal Protection challenge to Sections 56.363, 56.807 and 56.816, RSMo., must fail.

CERTIFICATE OF COMPLIANCE

Comes now, Wendell L. Hoskins II, attorney for Appellants, and pursuant to Rule 84.06(c) certifies that the Appellants' Brief:

1. Includes the information required by Rule 55.03; and
2. Complies with the limitations contained in Rule 84.06(b) in that the brief does not exceed 31,000 words and otherwise complies in all other respects with the length requirements; and
3. The brief contains 1,380 words; and
4. The undersigned further certifies that a copy of the floppy disk in Microsoft Word is included herein and served on all counsel of record and that the undersigned further certifies that the disk has been scanned for viruses and that it is virus-free. The floppy disk complies with the requirements of Rule 84.06(g) governing size, labeling, format and virus scanning.

WENDELL L. HOSKINS II
Attorney for Appellants

CERTIFICATE OF SERVICE

I, WENDELL L. HOSKINS II, attorney for Appellants in the above styled and numbered cause, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing pleading to James E. Spain, Esquire, and Kristi J. Booker, Esquire, Spain, Merrell & Miller, L.L.C., 1912 Big Bend, Post Office Box 1248, Poplar Bluff, Missouri, 63902.

THIS, the _____ day of March, 2008.

WENDELL L. HOSKINS II