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No. SC96862

IN THE MISSOURI SUPREME COURT

CITY OF CHESTERFIELD, et al.,

Appellant,

v.

STATE OF MISSOURI, et al.,

Respondent.

CIRCUIT COURT OF COLE COUNTY, MISSOURI
CASE NUMBER 14AC-CC00643
THE HONORABLE JON E. BEETEM

BRIEF OF INTERVENOR-DEFENDANTS / RESPONDENTS ST. LOUIS COUNTY, MISSOURI AND THE CITIES OF FLORISSANT, UNIVERSITY CITY, BALLWIN, WEBSTER GROVES, MANCHESTER, AND WILDWOOD, MISSOURI

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STATEMENT OF FACTS

Pursuant to Missouri Supreme Court Rule 84.04(f), because Intervenor-Defendants / Respondents are dissatisfied with the completeness of Appellants' Statement of Facts, Intervenor-Defendants / Respondents offer their Statement of Facts:

A. Background Regarding the Parties

1. Plaintiffs-Appellants

The City of Chesterfield ("Chesterfield") is located in St. Louis County and was incorporated in 1988, eleven years after the "County Sales Tax Law," Sections 66.600 through 66.630 R.S.Mo., was passed. (LF Doc. 100, ¶¶ 1-2.) Bob Nation ("Mayor Nation"), Chesterfield's current Mayor, alleges he has lived in Chesterfield proper since before its incorporation. (*Id.*, ¶¶ 3-4.) Chesterfield occupies approximately 32 square miles of land in St. Louis County and has nearly 50,000 residents. (LF Doc. 106, ¶¶ 53-54.) Chesterfield now has a robust retail environment, drawing shoppers from many miles outside of its boundaries. (*Id.*, ¶¶ 55-60.)

2. Intervenors

St. Louis County was founded in 1812 and, up until 1876, encompassed the City of St. Louis, which served as the County seat. Since that time, St. Louis County has existed without a central city within its boundaries. (*Id.*, ¶ 9.) In the early 1900s, St. Louis County had approximately 100,000 residents and 14 municipalities. (*Id.*, ¶ 11.) By 1950, the County population had grown to approximately 400,000 and the number of municipalities had increased to 81. (*Id.*) It was in 1950 that St. Louis County adopted a new charter. (*Id.*, ¶ 13.) Today, the population is approximately one million and there are 90 (now, actually,

88) municipalities. (*Id.*, ¶ 10.) Of the total population, approximately two-thirds live in municipalities and one-third live in unincorporated St. Louis County. (*Id.*, ¶ 9.) The unincorporated population of close to 350,000 would make that area one of the largest "cities" in the State of Missouri. (*Id.*, ¶ 10.)

As the only government serving the entire unincorporated area, St. Louis County provides basic municipal-type services to those areas, such as police, planning and zoning, public works, and animal control, among others. (*Id.*) In addition, St. Louis County provides countywide services that benefit the entire population of St. Louis County, including those areas that fall within municipal boundaries. These services include a court system, jail, elections, prosecutor's office, public health, regional parks and arterial roads. (*Id.*)

The six intervening cities are located within St. Louis County. Five of the cities were incorporated prior to enactment of the County Sales Tax Law (Florissant – 1857; Webster Groves – 1896; Ballwin and Manchester – 1950; and University City – 1960). One city (Wildwood – 1995) was incorporated after the County Sales Tax Law was enacted.

B. The County Sales Tax Law

1. 1969 to 1977: The City Sales Tax Act of 1969, the Lack of Tax Revenues to St. Louis County, and the Birth of the County Sales Tax Law

The history of the County Sales Tax Law traces back to 1969 with the enactment of the "City Sales Tax Act" which, for the first time, introduced a sales tax in the State of Missouri. Specifically, the City Sales Tax Act authorized the voters in any incorporated

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city in the state with more than five hundred residents to approve a one cent tax on retail sales within its boundaries. *See* §§ 94.500 – 94.570, R.S.Mo., 1969. Between 1969 and February 1, 1978, when the countywide sales tax went into effect in St. Louis County, 54 St. Louis County municipalities adopted a city sales tax. (LF Doc. 106, ¶ 23.) This tax provided new and significant revenues to these cities, particularly those with major retail centers. (*Id.*, ¶ 16.) The City Sales Tax Act did not, however, apply to counties and thus, St. Louis County did not benefit from the new sales tax, despite St. Louis County providing municipal-type services to its large unincorporated areas. (*Id.*, ¶ 18.) Additionally, cities with less retail activity felt the tax disproportionately benefited those cities with large retail areas because residents throughout the region shopped at those retail centers and paid the tax, yet the revenue stayed with the "point of sale" city. (*Id.*, ¶¶ 16-17, 20.) The cities with retail centers countered that shopping areas generated additional costs which justified retaining all of the taxes. (*Id.*)

In 1977, the General Assembly addressed the issue and ultimately passed the County Sales Tax Law, which authorized the "governing body of any county of the first class having a charter form of government and not containing a city with a population of four hundred thousand or more" to adopt an ordinance imposing a countywide sales tax of one cent to benefit both the incorporated and unincorporated areas of the county. (*Id.*, ¶¶ 21-22.) The tax had to be approved by the voters of the county. (*Id.*, ¶ 21.) Once approved by the voters, and so long as a countywide tax remained in place, any city sales tax previously adopted would be null and void. (*Id.*, ¶ 23.)

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Following passage of the County Sales Tax Law, St. Louis County submitted the proposed tax to the voters on October 4, 1977. (*Id.*, ¶ 22.) The measure passed and the tax went into effect on February 1, 1978. (*Id.*) The sales tax has been in place in St. Louis County for 41 years. Following adoption of the sales tax, St. Louis County reduced its property tax levy by thirty cents. (*Id.*, ¶ 89.)

For the purpose of distributing the countywide sales tax proceeds, the County Sales Tax Law divides a county into two groups: "Group A" ("point of sale") and "Group B" (the "pool"). Group A consisted of those municipalities that had enacted a city sales tax prior to adoption of the countywide tax. Group B consisted of those municipalities that had not passed a city sales tax, plus the entire unincorporated area of the county. (*Id.*, ¶¶ 24-25.)

The countywide sales taxes are collected by the Director of Revenue and deposited into the "County Sales Tax Trust Fund." Section § 66.620.1, R.S.Mo. Under the original distribution formula, the Group A cities received all taxes generated from sales within their boundaries. The remaining taxes, *i.e.,* those collected in Group B cities and the unincorporated areas of the county, were distributed to the Group B cities and the county on a per capita basis. (LF Doc. 106, ¶ 25.)[1]

[1] For example, if the total taxes from the B cities and the unincorporated county total $100,000,000, and the total population of the B cities and unincorporated areas of the county is 100,000, a B city with a population of 5,000 would receive $5,000,000. ($100,000,000 ÷ 100,000 x 5,000).

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St. Louis County and its municipalities operated under this system without major change from 1977 until 1984.

2. 1984-1993: Amendments to Curtail Targeted Annexations and Incorporations Directed Solely at High-Retail Areas

In 1983, this Court reversed its ruling in *City of Olivette v. Graeler*, 338 S.W.2d 827 (Mo. 1960), which opened the door for annexations of unincorporated areas of St. Louis County without the need for St. Louis County's approval. *City of Town & Country v. St. Louis Cty.*, 657 S.W.2d 598 (Mo. banc 1983). As annexation activity picked up post-*Town & Country*, St. Louis County leaders and mayors of many Group B cities became concerned that Group A cities were targeting strong retail areas for annexation. (LF Doc. 106, ¶¶ 33-34.) There were also groups targeting large areas of unincorporated St. Louis County for incorporation. (*Id.*, ¶ 33.) In both scenarios, the effect would be to shrink the population in Group B and reduce the amount of revenue from the countywide sales tax that goes to St. Louis County and the Group B cities. (*Id.*, ¶¶ 33-34, 39.)

In response, the St. Louis County Municipal League, after much debate and discussion, supported a legislative plan that would protect the Group B cities and St. Louis County from losing revenues in the event of annexations and incorporations. (*Id.*, ¶¶ 35-38.)[2] The Municipal League plan was approved by the General Assembly. (*Id.*, ¶ 37.) The 1984 amendments to the County Sales Tax Law addressed annexations by creating two

[2] The support of the St. Louis County Municipal League is expressed in a League Resolution dated November 17, 1983. (LF Doc. 106, ¶ 36.)

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streams of sales tax revenue in any Group A city that annexes an unincorporated area. Taxes generated in the annexed Group B area would continue to be distributed within the pool while the pre-annexation Group A area would continue as point of sale. (*Id.*, ¶ 36.) The amendments also addressed the incorporation of areas within St. Louis County by requiring that all newly incorporated cities be part of Group B with no option to move to Group A. (*Id.*)

Later, in 1991, the General Assembly amended Section 66.600 such that the County Sales Tax Law now applies to "any county of the first class having a charter form of government and having a population of nine hundred thousand or more." (LF Doc. 100, ¶ 22.) The General Assembly has not amended this population-based classification since, *i.e.*, in the succeeding 27 years.

3. 1993-94: Amendments to the Formula for Greater Pool Sharing and to Address Consolidations

In 1993, the legislature again amended the County Sales Tax Law, this time by revising the formula for distributing the tax proceeds so that some of the revenues generated in Group A cities would be shared with Group B. (LF Doc. 106, ¶¶ 45-46, 76.) The 1993 changes were once again the result of compromise among the stakeholders and supported by most municipalities, as well as St. Louis County. (*Id.*, ¶¶ 45-46.) Under the new formula, a Group A city whose sales taxes exceed the "adjusted county average" by a certain amount, shares a portion of the excess with Group B on a sliding scale basis. (*Id.*, ¶ 45.) This new sharing system was phased-in over a three-year period. (*Id.*, ¶ 46.) Over the years, this new system has resulted in additional revenues for Group B cities and St.

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Louis County, while setting limits on the amount of tax revenue from Group A cities that is shared; typically less than twenty percent as a group. (*Id.*) For example, the City of Chesterfield (a Group B city, incorporated in 1988), has received more than $16 million in added revenue from the countywide sales tax from 1994 to 2016, due to the 1993 changes in the distribution formula. (*Id.*, ¶ 52.)[3] The 1993 amendment also removed the provision that previously permitted a Group A city that had chosen to become a Group B city to, one time only, return back to Group A. (*Id.*, ¶ 47.)

In 1994, the legislature amended the County Sales Tax Law so that if a Group A city consolidated with a Group B city or area, the consolidated area that had been part of Group B, would remain in Group B; not too unlike the annexation scenario enacted in 1984.

[3] The Chesterfield City Council adopted a Resolution in January of 1993 urging the Missouri General Assembly to enact the new distribution system. (LF Doc. 106, ¶ 45.) In the Resolution, the Chesterfield City Council recognized that sales tax receipts in St. Louis County are derived from all area residents, not just those living in the community imposing the tax and, further, that the allocation of these scarce tax resources on a **shared** basis would be more equitable than the existing system. (*Id.*, ¶ 45.) Likewise, in a 2016 article for the Chesterfield Chamber of Commerce, Mayor Nation stated that "Chesterfield benefits from a significant influx of shoppers, tourists and diners, not everyone who shops, eats or boards here is a Chesterfield resident, so it's only reasonable to expect that we **share** some of the tax revenue around the region." (*Id.*, Exhibit CC) (emphasis added).

(*Id.*) Likewise, if a Group A city consolidated with another Group A city, the consolidated cities would remain in Group A. (*Id.*)

4. 2016: Amendment to the Distribution Formula to Ensure that Group B Cities Retain a Certain Minimum from Taxes Generated Within Their Borders

In 2016, the legislature made changes to the distribution formula contained in Section R.S.Mo. § 66.620, but did not otherwise change the County Sales Tax Law. (*Id.*, ¶ 51.) Specifically, HB 1561 of 2016 amended Section 66.620 by adding a subsection to the distribution calculation for years beginning in 2017. The amended formula provides "that municipalities in Group B must receive at least 50% of the amount of taxes generated within the municipalities based on the location where the sales were deemed consummated." (Bill Summary, HB 1561 Truly Agreed and Finally Passed.) In other words, B cities with significant retail activity (such as Chesterfield) are now guaranteed at least 50% of the countywide sales tax generated within their boundaries.

C. Chesterfield Today: Spike in Retail Activity Following the Major 1993 Flood

Today, Chesterfield is a city of almost 50,000 residents occupying 32 square miles of land on the western edge of St. Louis County. (Doc. 106, ¶¶ 53-54.) Following a major flood in 1993 (and the creation of a stronger levee to prevent future floods), the Chesterfield Valley retail area in Chesterfield has grown significantly. (*Id.*, ¶ 55.) Chesterfield Valley now includes Chesterfield Commons, which runs parallel to Interstate I-64 for approximately two miles and contains two million square feet of retail. (*Id.*, ¶ 57.) Chesterfield Valley also includes two outlet malls providing an additional 700,000 square feet of retail giving shoppers (traveling from 100 miles away or more) an additional 150

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stores to choose from. (*Id.*, ¶¶ 58-59.) Shoppers coming from throughout St. Louis County and beyond are connected to the Chesterfield retail centers in many instances by roads and bridges maintained by St. Louis County. (*Id.*, ¶ 62.)

D. Previous Litigation Involving the County Sales Tax Law

1. *City of Chesterfield v. Director of Revenue*, 811 S.W.2d 375 (Mo. banc 1991) ("*Chesterfield I*")

In 1990, two years after its incorporation, Chesterfield initiated a proceeding seeking to be treated as a Group A (point of sale) city under the County Sales Tax Law, despite the law's mandate that any municipality incorporated after 1984 would be a Group B (pool) city. (*Id.*, ¶ 63.) Chesterfield commenced the action by requesting the Director of Revenue to begin distributing its portion of the countywide sales tax as if it were a Group A city, rather than a Group B city. When that request was denied, Chesterfield appealed to the State's Administrative Hearing Commission. The Commission decided in favor of the Director of Revenue, and Chesterfield sought review of the Commission's decision in this Court. (*Id.*, ¶¶ 63-65, 72-73.) Chesterfield claimed that the amendment to the County Sales Tax Law that classified newly incorporated cities as Group B cities violated Equal Protection and Due Process principles and arbitrarily created a subclass of municipalities within the same class in violation of Article VI, Section 15 of the Missouri Constitution. (*Id.*, ¶¶ 67-71.)

In affirming the decision of the Commission, this Court held that Chesterfield did not have standing to bring the constitutional Due Process or Equal Protection claims that it

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chose to bring, and that Chesterfield failed to properly preserve its claim based on Article VI, Section 15 of the Missouri Constitution.

2. *Berry v. State of Missouri,* 908 S.W.2d 682 (Mo. banc 1995) ("*Berry*")

In 1994, a number of Group A cities (and individual taxpayer residents) filed a declaratory judgment action seeking a declaration that the 1993 amendments to the County Sales Tax Law, which established the new distribution formula, were unconstitutional. Specifically, the plaintiffs argued that the County Sales Tax Law violated several Missouri constitutional provisions, including Article VI, Sections 8 and 15, and Article X, Sections 1, 2, 3, 16, 21 and 22(a). Chesterfield, a Group B city, joined with other Group B cities and St. Louis County as intervenors in order to defend the constitutionality of the County Sales Tax Law. (*Id.*, ¶¶ 77, 81.)

The Circuit Court of Cole County granted summary judgment in favor of the intervenor-defendants, including Chesterfield, including in its holding that:

> [The 1993 amendments to the County Sales Tax Law are] constitutional and valid as against all of the challenges raised by Plaintiffs and more particularly: [The County Sales Tax Law] is constitutional and valid under Article VI, §§ 8, 15, 16 and 23 and under Article X, §§ 1, 2, 3 and 16-22 of the Missouri Constitution;
>
> [The County Sales Tax Law] is consistent with the voter approval of 1977;
>
> The St. Louis County sales tax ordinance and the sales tax are valid and in full force and effect throughout St. Louis County.

(*Id.*, ¶ 82.)

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On appeal, this Court rejected all of the claims of the Group A cities and affirmed the judgment of the Circuit Court. (*Id.*, ¶ 83.) In connection with the Article VI, Section 15 claims (that cities of the same class shall possess the same powers and be subject to the same restrictions whether within the same county or other counties), the Court ruled that the General Assembly, by allowing the division of sales taxes among municipalities and St. Louis County in the manner set forth in the County Sales Tax Law, was not granting powers or placing restrictions on any class of cities. Instead, the General Assembly was exercising its authority granted by Missouri Constitution Article X, Sections 1 and 11(f) to designate, by general law, the distribution of a countywide sales tax for local government purposes. Furthermore, cities of the same class can be treated differently than the same class of cities in another county by virtue of county-specific legislation.

In the *Berry* case, Chesterfield and the other intervenors made several assertions and advanced several arguments in defense of the County Sales Tax Law, including the following:

> The original statute, section 66.600 et seq., was enacted in 1977 to address the **special needs** of St. Louis County, which unlike any other first-class county in the state, had (and still does have) an extremely large unincorporated area for which the County must deliver services of a municipal nature. Indeed, it is undisputed that St. Louis County delivers urban services to an unincorporated area of greater size and density of population than the unincorporated area of any other Missouri county. The

unincorporated portions of St. Louis County, in fact, represent the third most populous 'municipality' in the state.

* * *

One purpose of [the 1993 amendments] is to reduce the large 'windfall' of revenue that had been going to group A cities fortunate enough to have major shopping areas and stores within their jurisdictions. Prior to the enactment of [the 1993 amendments], many group A cities enjoyed revenue from commercial development which far exceeded any additional costs borne by such cities and their citizens as a result of accommodating such development. In fact, municipalities in St. Louis County typically do not even provide most of the services that contribute to make retail activity possible.

* * *

In the 'integrated' economy of St. Louis, the group A cities that have revenues substantially above the Countywide average do so largely because of shoppers from outside their boundaries. Appellant cities could not support the level of retail sale activity within their borders (with the possible exception of Ladue) based on their population. Prior to [the 1993 amendments], group A cities were able to use their high sales tax revenues to lower municipal taxes to their residents. Group A residents received lower property tax rates, low or no utility tax rates, exemption for personal property, free trash and recycling services, and Appellant Fenton even paid residents' sewer bill[s] out of city tax revenues. Conversely, group B cities

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were sometimes required to charge higher municipal taxes for fewer municipal services. In effect, residents from group B cities and the unincorporated areas of the county which patronized group A cities retail establishments subsidized, through the payment of sales tax, the municipal tax burdens of group A residents.

* * *

Although St. Louis County is the only county presently within the class defined by [the County Sales Tax Law], this does not make [the County Sales Tax Law] a 'special law'.

* * *

By affidavits filed in the trial court and referred to in the County's Motion for Summary Judgment, the **County demonstrated that St. Louis County differs from all other first class counties and charter counties in Missouri by virtue of its very large urbanized unincorporated area**. Indeed, it was the necessity of funding the provision of urban services to this unincorporated area – without reliance on traditional countywide tax levies placing their burden equally on residents of incorporated areas – that led to the formulation of the countywide tax for the benefit of the incorporated and unincorporated area.

* * *

Since sections 66.600 et seq. are 'general' laws, the sales tax is expressly authorized by Article X, section 11(f) and '[n]othing in this constitution'

prevented the general assembly from enacting it.

* * *

> Appellants' contention that [the 1993 amendment] is unconstitutional under the last sentence of Article VI, Section 8 is moot because of voter approval of Constitutional Amendment Number 1. Amendment No. 1 deletes the requirement that "A law applicable to any county shall apply to all counties in a class to which such county belongs."

(*Id.*, ¶ 85) (emphasis added).

Through their efforts in *Berry*, St. Louis County, Chesterfield, and the other intervenor-cities successfully defended the constitutionality of the County Sales Tax Law in both the trial court and in this Court.

E. <u>The Economics Involving the County Sales Tax Law</u>

In response to the voters of St. Louis County approving the County Sales Tax Law in 1977, the St. Louis County Council lowered property taxes on residents throughout St. Louis County by almost one-third ($1.06 to $0.76). (*Id.*, ¶ 89.) Subsequent changes in the property tax laws, as well as the adoption of the Hancock Amendment in 1980, have essentially made the property tax reduction permanent and restricted St. Louis County's ability to add revenues through property taxes. (*Id.*, ¶¶ 92-94.) At the same time, the countywide sales tax has become an essential source of revenue for St. Louis County and its municipalities. (*Id.*, ¶ 95.) In St. Louis County alone, the tax accounts for approximately 25% of the general purposes revenues of St. Louis County's General Fund. (*Id.*, ¶ 95.) Many of the expenditures from the General Fund, such as judicial

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administration (court systems), police, justice services (jail), prosecuting attorney, and elections, benefit **all** residents of St. Louis County, not just those living in the unincorporated areas. (*Id.*, ¶ 95.) Loss of revenue from the countywide sales tax would have a wide-ranging impact on the operations of St. Louis County government and would lead to reductions or eliminations of services, employee lay-offs, and facility closures. (*Id.*, ¶ 96.)

Similar impact would be felt by the municipalities in St. Louis County. For instance, in Wildwood, the countywide sales tax accounts for 53.5% of the General Fund revenues; in Florissant it is 32.7%; and in Webster Groves, the percentage is 20.3%. (*Id.*, ¶¶ 99-101.) Loss of this significant revenue would necessarily impact the operations of these cities and result in a reduction in services.

Finally, if newly incorporated cities were free to choose Group A status, the annual financial impact to St. Louis County's General Fund would be approximately $5 million while the Group B cities would collectively lose approximately $8.7 million. (*Id.*, ¶¶ 97-98.) These revenue losses would likely result in cuts in services. (*Id.*, ¶ 98.)

F. The Trial Court's Judgment

Upon considering the parties' motions for summary judgment, on November 29, 2017, the trial court entered its final Judgment granting Intervenor-Defendants / Respondents' motion for summary judgment, granting Defendant / Appellees the State of Missouri and Director of Revenue's motion for summary judgment, and denying Plaintiffs / Appellants' partial motion for summary judgment. (LF Doc. 176.)

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1. Section 66.600

As to Appellants' challenge to Section 66.600, the trial court held that because the statute was enacted in 1977 and the one amendment to the population-based classification therein occurred in 1991, the three-factor test set forth in *Jefferson County Fire Protection District Association v. Blunt*, 205 S.W.3d 866 (Mo. banc 2006), did not apply to Appellants' special law challenge. (LF Doc. 176, 1-2.) In addition, the trial court rejected Appellants' contention that the 2016 amendment to the tax revenue distribution formula contained in Section 66.620 somehow triggered application of the *Jefferson County* test. (*Id.*, 2.) The trial court further noted that even if Section 66.600 had been first enacted in 2016 (it was not), *Jefferson County* would still not apply because of this Court's May 16, 2017 decision in *City of Normandy v. Greitens*, 518 S.W.3d 183 (Mo. banc 2017), extending *Jefferson County* for the first time to statutes with a population minimum or maximum, such as Section 66.600. (LF Doc. 176, 2.) This Court ruled that its holding in *City of Normandy* is to be applied only prospectively. 518 S.W.3d at 195-96.

Having concluded that Section 66.600 was a general law, the trial court held that it was supported by a rational basis and was therefore constitutional. (*Id.*, 2-4.) In this regard, the trial court observed:

> The undisputed facts establish that, unlike any other county in Missouri, St. Louis County lacks a central city, it has 90 [now, 88] separate municipalities within its borders, and it has a large 'unincorporated' area with a population approaching 350,000 (which would make that area one of the largest 'cities' in the State of Missouri). Moreover, St. Louis County is responsible for

providing municipal-type services, such as police, street maintenance, and zoning, to the unincorporated areas within its borders, while at the same time providing services that benefit all residents of St. Louis County, including those living within municipalities (such as a court system, jail, and roads). Prior to the enactment of the [County Sales Tax] Law in 1977, St. Louis County lacked the authority to collect a sales tax on sales in the unincorporated area. That authority belonged only to certain cities within St. Louis County pursuant to the City Sales tax Act (1969). Under the City Sales Tax Act, cities with less retail activity received substantially less tax revenues than cities with high retail activity, as all sales tax revenues stayed with the 'point of sale' city. This tax revenue scheme disproportionately benefited those cities with large retail centers, to the detriment of high-population, low-retail cities.

The [County Sales Tax] Law addressed these issues by authorizing certain counties to adopt an ordinance imposing a countywide sales tax of one percent to benefit both the incorporated and the unincorporated areas of the county. The voters of St. Louis County subsequently approved the sales tax. With the new countywide sales tax in place, those cities that had enacted a City Sales Tax continued to receive the taxes generated within their boundaries, while those cities that had not, along with the unincorporated areas of St. Louis County, would share taxes on a per-capita basis. This system provided necessary resources for St. Louis County to fund services

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> provided to the uniquely large unincorporated areas, as well as those services provided countywide. This system also provided revenue to those cities that did not previously have a City Sales Tax.

(*Id.*)

2. Section 66.620

The trial court held that the Group A/Group B tax revenue distribution system of Section 66.620 "does not implicate (or violate) Article III, Section 40(21) or (30) of the Missouri Constitution." (*Id.*, 4.) As to Article III, Section 40(30) of the Missouri Constitution, the trial court recognized that "[u]nder Section 66.620, the countywide sales tax is distributed to every city in St. Louis County and the unincorporated area"; that "[n]ew incorporations and annexations in St. Louis County would receive tax revenues in accordance with Section 66.620"; and that "[i]f another county falls within the open-ended population classification of Section 66.600 and its voters elect to authorize the countywide tax, the cities and areas within that county would similarly receive tax revenues in accordance with Section 66.620." (*Id.*, 4-5.) The trial court explained: "In other words, Section 66.620 does not 'include less than all who are similarly situated' and could not 'be made more applicable.' " (*Id.* at 5) (alteration omitted). As to Article III, Section 40(21) of the Missouri Constitution, the trial court held that Section 66.620's tax revenue distribution mechanism does not "regulate the affairs of counties cities, townships, election or school districts." (*Id.*) (alteration omitted).

The trial court went on to hold that, even if Section 66.620 were subject to a special law challenge for which substantial justification was required, such substantial justification

existed. (*Id.*) In addition to its above-quoted analysis, the trial court added, as to the 1984, 1993, and 1994 amendments to Section 66.620:

> Following the Missouri Supreme Court's 1983 ruling in *City of Town & Country v. St. Louis County*, 657 S.W.2d 598 (Mo. banc 1983), the door opened for annexations of unincorporated areas of St. Louis County without the need for St. Louis County's approval. As annexation activity picked-up post-*Town & Country*, St. Louis County leaders and mayors of many Group B cities became concerned that Group A cities were targeting strong retail areas for annexation. There were also groups targeting large areas of the unincorporated County for incorporation. In both scenarios, the effect would be to shrink the population in Group B and reduce the amount of revenue from the County Sales Tax that goes to St. Louis County and the Group B cities. The 1984 amendment to Section 66.620 was the product of the recommendation of the St. Louis County Municipal League and, later, approved by the General Assembly. The 1984 amendment halted annexations aimed solely at acquiring increased sales tax revenues (at the expense of Group B) by providing that taxes generated in an annexed Group B area would continue to be distributed within the pool (Group B) while the pre-annexation Group A area would continue as point of sale. The 1984 amendment also addressed the incorporation of unincorporated areas within St. Louis County by requiring that all newly incorporated cities be part of

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> Group B, with no option to move to Group A. This amendment has stood for 32 years.

(*Id.*, 5-6.) The trial court also observed that Appellants "offer[ed] no evidence disputing these facts" and that Appellants' "evidence of other counties sharing some (but not all) of the traits of St. Louis County [did] not undermine the substantial justification" found by the trial court. (*Id.*, 6.)

3. *Res Judicata* and Estoppel Principles

In addition to rejecting Appellants' constitutional challenges on the merits, the trial court further concluded that Appellants' challenges were "foreclosed by *res judicata*, judicial estoppel, equitable estoppel, and laches" based on Chesterfield's previous litigation in *Chesterfield I* and *Berry*. (*Id.*, 6-7.)

As to *res judicata*, the trial court held that each of the four required "identities" were satisfied:

> *Chesterfield I* involved a challenge to the [County Sales Tax] Law, including the Group A / Group B classification scheme of Section 66.620. Chesterfield requested that it be treated as a Group A city. That request was denied by the Administrative Hearing Commission, whose decision was ultimately affirmed by the Missouri Supreme Court. Though Chesterfield's challenges in *Chesterfield I* were based on different legal theories (constitutional Due Process and Equal Protection claims, which the Court held Chesterfield lacked standing to bring, and a challenge based on Article VI, Section 15 of the Missouri Constitution, which the Court held Chesterfield had failed to

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> properly preserve), Chesterfield could have raised the same challenges then, as it does now. Although Chesterfield contends that its economic injury has changed over the years as its retail centers have expanded, the 'ultimate facts' upon which Chesterfield's challenge rests—Section 66.600's population-based classification and Chesterfield's inability to join Group A per Section 66.620—have remained the same since Chesterfield incorporated in 1988, with the latter being the basis of Chesterfield's challenge in *Chesterfield I*. The parties in *Chesterfield I* (the City of Chesterfield and the Director o[f] Revenue) were the same in this case, and in *Chesterfield I*, the City of Chesterfield brought suit against the Director of Revenue. For all these reasons, all four identities are met, and res judicata bars Chesterfield's claims.

(*Id.*, 7-8.)

The trial court further held that judicial estoppel and equitable estoppel barred Appellants' claims, in that these claims were inconsistent with Chesterfield's position in *Berry*. (*Id.*, 8-9.) The trial court explained:

> In *Berry*, Chesterfield successfully argued for a ruling that the [County Sales Tax] Law is valid and constitutional based in part upon the unique nature of St. Louis County. Since the implementation of the 1993 amendment to the tax revenue distribution formula, which Chesterfield successfully fought to preserve in *Berry*, Chesterfield has received more than $16 million in additional sales tax revenue than it would have received without the 1993

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> amendment. Moreover, voiding the County Sales Tax Law, or parts of it, would cause a major disruption in the fiscal affairs of St. Louis County and the political subdivisions that rely on the sales tax distribution formula when promoting commercial development within their boundaries, issuing revenue bonds, and making other financial commitments and fiscal decisions. Chesterfield was incorporated in 1988 and could have raised a special law challenge upon incorporation. Chesterfield later challenged the constitutionality of the [County Sales Tax] Law in *Chesterfield I* before successfully defending the [County Sales Tax] Law in *Berry* over two decades ago. For all these reasons, Chesterfield's current challenges to the [County Sales Tax] Law are barred by judicial estoppel and equitable estoppel.

(*Id.*, 9.)

The trial court also held that Appellants' claims were barred by laches. (*Id.*, 10.) In this regard, the trial court reasoned:

> Chesterfield could have raised these claims in 1988 but did not, and has instead accepted millions of dollars under the statute it now challenges. This works to the disadvantage and prejudice of St. Louis County and the Group B cities that relied on the County Sales Tax Law when they promoted commercial development within their boundaries, issued revenue bonds, and made other financial commitments and fiscal decisions.

(*Id.*)

On December 26, 2017, Appellants timely filed their notice of appeal. (LF Doc. 177.)

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INTRODUCTION

In this third installment of litigation brought to this Court involving Chesterfield and the County Sales Tax Law, Chesterfield once again challenges the same law that it previously challenged in 1991, in *Chesterfield I*, but later defended in 1995, in *Berry*. Now that the economic pendulum has swung back in its favor, Chesterfield seeks to capitalize by once again challenging the County Sales Tax Law, regardless of the potential consequences to the nearly 1 million other residents of St. Louis County.

Substantively, Appellants' special law arguments are without merit. Appellants first attempt to challenge the open-ended population-based classification of Section 66.600. This classification was enacted in 1977 and amended once, in 1991. For decades before and after the County Sales Tax Law was enacted and amended, this Court held that population-based classifications such as that found in Section 66.600 were open-ended and thus a general law. While this Court identified a new standard for evaluating population-based classifications in 2006, in *Jefferson County*, which this Court expanded in 2017, in *City of Normandy*, the Court was explicit in both cases that these holdings apply only prospectively. Based on this Court's longstanding precedent, Section 66.600 is a general law, supported by a rational basis. Appellants' argument fails.

Appellants also challenge the tax revenue distribution mechanism found in Section 66.620. To state the obvious, the tax revenue distribution mechanism is just that: a formula for distributing revenues to the various cities in St. Louis County and the County itself. It is not a special law. Every city as well as St. Louis County receives tax revenues pursuant to the formula, which has been tweaked over the years. Section 66.620 could not be made

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"more general," nor does it "regulate the affairs of" St. Louis County. It is a tax revenue distribution formula, nothing more. To the extent Section 66.620 could be construed as a special law, it is nonetheless constitutional because it is supported by substantial justification. As Chesterfield itself recognized in *Berry*, the uniqueness of St. Louis County, with its 88 municipalities and large unincorporated area, cannot be overstated. Importantly, before the County Sales Tax Law, St. Louis County lacked the ability to collect a sales tax, and cities with high retail activity disproportionately benefited from a purely point of sale tax revenue distribution mechanism that existed under the City Sales Tax Act. Through the County Sales Tax Law and various amendments thereto, each of these concerns was addressed. To this day, the metrics of the tax revenue distribution formula are continually revisited—most recently, in 2016—to ensure a more balanced sharing of tax revenues between cities (including those with high and low retail sales) and St. Louis County.

Appellants, however, are not in a position to raise any of these challenges. Chesterfield has previously sought what it undoubtedly now desires: to be a Group A city. Chesterfield ultimately raised a variety of constitutional challenges to its inclusion in Group B, each of which this Court rejected in 1991, in *Chesterfield I*. That prior adjudication is *res judicata* on Appellants' instant constitutional claims. Moreover, Appellants are judicially and equitably stopped from raising their instant challenges based on the successful arguments Chesterfield made to this Court in 1995, in *Berry*. Appellants cannot change their legal position – challenging or defending the constitutionality of a law – based on whether or not the finances of the law favor them during a particular economic

trend, and after having received tens of millions of dollars of tax revenues. This is all the more egregious considering the stakes in this case: Appellants, a municipality and its Mayor, attempting to dismantle the entire County Sales Tax Law, leaving municipalities throughout St. Louis County, as well as the County itself, without critical tax revenues to ensure the operation of basic services (somewhat ironically, including the St. Louis County Courts, which service all of St. Louis County) to the approximately 1 million residents of St. Louis County.

To this end, Appellants propose that this Court not only strike down the County Sales Tax Law, but also stay such a decision in abeyance for some indeterminate time so that the General Assembly can convene and attempt to enact a new law, which would require another countywide vote and potentially numerous city elections. On the one hand, Appellants' request is a tacit acknowledgment of the gravity of the relief requested (and potentially disastrous consequences), though Appellants remain unflappable in their efforts. On the other hand, Appellants' request reveals the true nature of this litigation: a chip in the political bargaining process for negotiating a more favorable tax revenue distribution formula (via amendment) for Chesterfield, as it successfully obtained in 2016. Respectfully, while such tactics may have a place in the General Assembly, they have no place in this Court.

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ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT THE COUNTY SALES TAX LAW DOES NOT VIOLATE MO. CONST. ART. III, SECTION 40(30) BECAUSE SECTION 66.600 IS A GENERAL LAW SUPPORTED BY A RATIONAL BASIS. (RESPONDS TO APPELLANTS' POINT V)

A. Standard of Review.

This Court reviews the grant of a motion for summary judgment *de novo*. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Summary judgment must be granted for a party when it demonstrates it is entitled to judgment as a matter of law on material facts that are not disputed. *Id.* Once the moving party establishes its right to judgment as a matter of law, the non-moving party must demonstrate by affidavits, depositions, answers to interrogatories or admissions that a material fact is actually in genuine dispute. *Id.* at 381.

B. Section 66.600 Is a General Law because its Population-Based Classification Is Open-Ended.

"The issue of whether a statute is, on its face, a special law or local law depends on whether the classification is open-ended." *Treadway v. State*, 988 S.W.2d 508, 510 (Mo. banc 1999). "An open-ended law is not a special law." *Zimmerman v. State Tax Comm'n of Mo.*, 916 S.W.2d 208, 209 (Mo. banc 1996) (per curiam). "Classifications based upon factors, such as population, that are subject to change may be considered open-ended." *Treadway*, 988 S.W.2d at 510. "[S]tatutes establishing classifications based on population

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are general laws, even when it appears with reasonable certainty that no other political subdivision will come within that population classification during the effective life of the law." *Id.* at 511 (quoting *Sch. Dist. of Riverview Gardens v. St. Louis Cty.*, 816 S.W.2d 219, 222 (Mo. banc 1991)). "When a law is based on open-ended characteristics, it is not facially special and is presumed to be constitutional." *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 334 (Mo. banc 2015); *accord Jackson Cty. v. State*, 207 S.W.3d 608, 611 (Mo. banc 2006) ("A law based on open-ended characteristics is not facially special and is presumed to be constitutional."). "The burden is on the party challenging the constitutionality of the statute to show that the law has an arbitrary classification that lacks a rational relationship to a legislative purpose." *Jackson Cty.*, 207 S.W.3d at 611.

There can be no dispute that Section 66.600 is a facially open-ended law: Section 66.600 applies to "any county of the first class having a charter form of government and having a population of nine hundred thousand or more. . . ." Appellants do not contest this. (App. Br., *passim*.) Instead, Appellants argue that the General Assembly's 1991 amendment of Section 66.600 is "proof" that the open-ended population-based classification of Section 66.600 is "but a subterfuge for special legislation." (*Id.*, 83.) In this vein, Appellants propose a "suggested new standard" for assessing whether or not a statute enacted (or amended) before 2006 (population range) or 2017 (population minimum or maximum) that contains an open-ended, population-based classification is a special law for which substantial justification is required. (*Id.*, 89.) Alternatively, Appellants argue that the *Jefferson County* three-factor test should apply to Section 66.600 because the tax

revenue distribution mechanism contained in Section 66.620 was amended in 2016. (*Id.*, 89-91.) Neither argument has merit.

1. *Appellants' "Suggested New Standard"*

Appellants' argument, it appears, is that because the General Assembly amended the population-based classification of Section 66.600 once, in 1991, to apply to "any county of the first class having a charter form of government and having a population of nine hundred thousand or more" (as opposed to any "county of the first class having a charter form of government and not containing a city with a population of four hundred thousand or more," as it had previously), the General Assembly always meant it to apply only to St. Louis County, thus making it a special law. (App. Br. 84-85.) Appellants cite no authority in support of their "suggested new standard." None exists.

On the contrary, Appellants' "suggested new standard" is belied directly by, among other things, this Court's decisions in *Jefferson County Fire Protection Dist. Ass'n v. Blunt*, 205 S.W.3d 866 (Mo. banc 2006) and *City of Normandy v. Greitens*, 518 S.W.3d 183 (Mo. banc 2017).

In *Jefferson County*, this Court articulated a new, three-factor test to analyze whether a population-based classification is entitled to the presumption of constitutionality:

> (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.

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205 S.W.3d at 870-71. "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. However, as this Court recognized: "Because of the General Assembly's possible reliance on previous cases not articulating this presumption, only statutes passed after the date of [the] opinion are subject to this analysis." *Id.* at 871 (emphasis added). In *City of Normandy*, this Court expanded *Jefferson County* to apply not only to statutes containing population ranges, but also to statutes containing population minimums and maximums. 518 S.W.3d at 190-95. Again, the Court limited its holding to apply only "prospectively to statutes passed after the date of this opinion because of the General Assembly's possible reliance on previous cases not addressing challenges to statutes with a population minimum or maximum." *Id.* at 195-96 (emphasis added).

Setting aside the absence of any authority supporting the proposition that pre-2006 and/or pre-2017 amendments of an open-ended, population-based classification could give rise to a special law challenge, such a proposition is directly refuted by the rationale of *Jefferson County*'s and *City of Normandy*'s prospective-only holdings: The General Assembly's reliance on previous cases holding that population-based classifications similar to (and in some cases, identical to) that found in Section 66.600 are open-ended and presumed constitutional. Phrased differently, just as the General Assembly could not have anticipated the new, three-factor test announced in *Jefferson County* in enacting a law before 2006 (or before 2017, in the case of a population minimum), the General Assembly could not have anticipated application of a special law analysis when amending Section

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66.600 in 1991—fifteen years before *Jefferson County* and twenty-six years before *City of Normandy*.

Indeed, both before and after the General Assembly amended Section 66.600 in 1991, this Court repeatedly held that population-based classifications such as that in Section 66.600 (both pre- and post-1991 amendment), including those with exactly the same classification as Section 66.600, were open-ended and thus entitled to a presumption of constitutionality. For example, in *Treadway*, decided by this Court in 1999, a citizen-taxpayer contended that two Missouri laws, the first providing the authority for Missouri to establish a basic vehicle inspection and maintenance program, *see* Section 307.366, R.S.Mo., the second providing the authority for the air conservation commission to establish an enhanced vehicle inspection and maintenance program, *see* Section 643.305, R.S.Mo., were special laws. 988 S.W.2d at 509-10. Each of the laws set forth minimum population thresholds for applicability (*e.g.*, "any county of the first classification having a population of over nine hundred thousand inhabitants"); the end result was that only the metropolitan area of St. Louis fell within the ambit of the enhanced inspection program. *Id.* at 511. Citing to prior authority spanning over a century, this Court rejected the citizen-taxpayer's special law argument, explaining that "[t]he fact that currently the statute applies only to the St. Louis metropolitan region does not necessarily make the act a special law because the act can apply to other counties that attain the same statutory criteria in the future." *Id.* The Court upheld the constitutionality of the laws, explaining that they were "general laws because they [were] open-ended and [were] rationally related to legitimate purposes." *Id.*

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Treadway is but one example. This Court has long held, both before and after 1991, that open-ended, population-based classifications are general laws, even when the result is that only one county meets the population requirement and even when it is a "practical certainty" that no other counties will meet the population requirement in the foreseeable future. *See, e.g.*, *State v. Gilley*, 785 S.W.2d 538, 540 (Mo. banc 1990) ("Section 508.355 applies to all non-inmate defendants within Cole County. *Although presently only Cole County meets the requirements of this statute, there remains the possibility that other counties may eventually do so*." (emphasis added)); *Walters v. City of St. Louis*, 259 S.W.2d 377, 383 (Mo. banc 1953) ("[T]he enabling act . . . is operative upon any constitutional charter city in this State that now has or may hereafter acquire a population of more than 700,000 prior to its expiration date of April 1, 1954. *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*. The act still does not exclude any city that may come within the classification therein made during its effective existence. . . . It therefore applies to all cities of more than 700,000 population whether there be one or many, so long as it is effective, and does not offend against the [open-endedness] rule." (emphasis added)); *State ex rel. Lionberger v. Tolle*, 71 Mo. 645, 650 (1880) (statute applying only to judges of circuit courts in cities having over 100,000 inhabitants was not a special law, even though only St. Louis City fit in the category because other cities might reach that population level at some point and thus be subject to the law).

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This Court has logically held that a statute containing a population-based classification that was amended after enactment was a general law, notwithstanding the amendment. In *Hull v. Baumann*, a St. Louis resident challenged the constitutionality of House Bill 677 (1939) (authorizing the collection of delinquent taxes), which applied "only to counties or cities not in a county which now have or may hereafter have in excess of 700,000 inhabitants, and to counties which now have or may hereafter have not less than 200,000 and not more than 400,000 residents." 131 S.W.2d 721, 723 (Mo. 1939). House Bill 677 amended the Jones-Munger Law, which previously applied only to "each city in this state which now has or which may hereafter have three hundred thousand (300,000) inhabitants or more, and in each county having therein or which may hereafter have therein a city having three hundred thousand (300,000) inhabitants or more[.]" *Id.*; *see also* Laws of Missouri, p. 428 (Section 9951) (1933). This Court held that HB 677 was a general law, even though it then applied only to the City of St. Louis and St. Louis County, because "[t]he classification of counties or cities according to population so that other counties and cities may come within the terms of the law in the future does not make the act a special law in violation of our Constitution." 131 S.W.2d at 723. Thus, it made no difference that the population-based classification previously contained in the Jones-Munger Act was amended by virtue of HB 677.

In short, Appellants' theory is that because the General Assembly amended the population-based classification in Section 66.600 once in 40 years, no other county will ever fall within the ambit of Section 66.600. This is a *non-sequitur*. As with every statute presented to this Court containing a population-based classification that this Court held to

be open-ended and thus a general law, it remains undeniably possible—notwithstanding the single amendment in 1991—that another county could meet the population threshold of Section 66.600. *See, e.g.*, *Walters*, 259 S.W.2d at 383 (holding that the statute was a general law because it "[did] not exclude any city that may come within the classification therein made during its effective existence. . . . It therefore applies to all cities of more than 700,000 population whether there be one or many, so long as it is effective, and does not offend against the [open-endedness] rule."); *State ex rel. Fire Dist. of Lemay v. Smith*, 184 S.W.2d 593, 595 (Mo. banc 1945) ("St. Louis County is the only county now within the population bracket stated in the act. Such fact alone does not make the act a special law for the reason *the act will also apply to other counties which will attain the same population in the future*. Where an act is potentially applicable to other counties which may come into the same class it is not a local law." (emphasis added)).

The General Assembly, in each legislative session, is guided by and relies on the law as it then exists. The population-based classification enacted as part of Section 66.600 in 1977 was open-ended and thus a general law. The same is true with regard to the 1991 amendment. Appellants' argument—that the enactment and later amendment of a general law somehow morphs that general law into a special law—is not logical.

2. *The Three-Factor Test Articulated in Jefferson County Does Not Apply to Section 66.600 because Section 66.600 Was Enacted Before 2006 (and before 2017).*

As noted, in *Jefferson County* and *City of Normandy*, this Court expressly limited application of its new, three-factor analysis to "only statutes passed after the date of [the]

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opinion[.]" 205 S.W.3d at 871 (emphasis added); *accord* 518 S.W.3d at 195-96. Because the County Sales Tax Law and all relevant amendments thereto were enacted before this Court's decision in *Jefferson County*, *i.e.*, before November 21, 2006, and before this Court's decision in *City of Normandy*, *i.e.*, before May 16, 2017, the *Jefferson County* three-factor test for overcoming the presumption of constitutionality does not apply. *See id.*

In an effort to avoid this Court's explicit restriction on the application of its holdings in *Jefferson County* and *City of Normandy*, Appellants contend that "[b]ecause [Sections] 66.600 and 66.620 both relate to the same subject matter – the County Sales Tax [Law] – they must be interpreted *in pari materia*." (App. Br. 90.) To this end, Appellants argue that Section 66.600 and 66.620 must be "construed together" and "read harmoniously," such that the *Jefferson County* three-factor test should apply to both Section 66.600 and Section 66.620 (because, according to Appellants, Section 66.620 is a special law, though it contains no population-based classification). (*Id.*) *In pari materia* has no applicability in this context.

The doctrine of *in pari materia* provides that statutes addressing the same subject matter "are intended to be read consistently and harmoniously . . . as though constituting one act[.]" *Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27, 39 n.4 (Mo. banc 2015) (Fischer, J., dissenting) (internal quotation marks and citation omitted). This doctrine is a rule of statutory construction used to ascertain legislative intent as may be required to resolve statutory ambiguities. *See, e.g.*, *801 Skinker Blvd. Corp. v. Dir. of Revenue,* 395 S.W.3d 1, 4 (Mo. banc 2013), *as modified* (Feb. 26, 2013); *BASF Corp. v. Dir. of Revenue,*

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392 S.W.3d 438, 444 (Mo. banc 2012) (per curiam). It has no applicability to any argument or issue in this case—including the application of the *Jefferson County* three-factor test regarding the constitutionality of a population-based classification. Appellants identify no support for their proposed application of this statutory construction device to their special law challenge. None exists.

C. Section 66.600 Is Supported by a Rational Basis.

Because the population-based classification in Section 66.600 is open-ended and thus a general law, it is presumed constitutional and need only be supported by a rational basis to survive a special law challenge. *See, e.g.*, *Treadway*, 988 S.W.2d at 511 ("Treadway has not carried his burden to prove that the statutes are arbitrary and without a rational relationship to a legislative purpose."); *Zimmerman*, 916 S.W.2d at 209 ("Section 138.060.1 is therefore a general law and needs only a rational relation to a legitimate legislative purpose." (internal quotation marks omitted)). Although Appellants do not appear to challenge whether Section 66.600 is supported by a rational basis (*but see* App. Br. 76 (not conceding that Section 66.600 is supported by a rational basis))—Appellants challenge the existence of substantial justification (*see* App. Br., 86-88)—in any event, as the trial court held, Section 66.600 is supported by a rational basis.

Under the rational basis test, Appellants, as the parties challenging the constitutionality of the statute, must "show that the statutory classification is arbitrary and without a rational relationship to a legislative purpose." *City of St. Louis v. State*, 382 S.W.3d 905, 915 (Mo. banc 2012). In other words, under the rational basis analysis, "the legislature is afforded *broad discretion* in attacking societal problems, and the challenger

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bears the burden to show that the law is *wholly irrational*." *Treadway*, 988 S.W.2d at 511 (emphasis added). "The question of classification is for the legislative body and the courts will not interfere *if any state of facts reasonably may be conceived to justify the classification*." *Mid-State Distrib. Co. v. City of Columbia*, 617 S.W.2d 419, 427 (Mo. App. W.D. 1981) (emphasis added) (internal quotation marks and citation omitted).

This Court has found a rational basis under similar—and, even, less compelling—circumstances than those presented by Section 66.600. For example, in *Collector of Revenue of City of St. Louis v. Parcels of Land with Delinquent Tax Liens Serial Numbers 1-047 and 1-048*, the Court found a rational basis for the open-ended population-based classification (cities not within a county which have over 500,000 inhabitants, *i.e.*, the City of St. Louis) in the Municipal Land Reutilization Law, Section § 92.700, *et seq.*, R.S.Mo. 517 S.W.2d 49, 54 (Mo. 1974). The Court reasoned that, unlike a city within a county, "[a] city not within a county occupies a peculiar status as it performs not only municipal functions, but also county functions" and that "[i]n such a city, the delinquent taxes . . . include state taxes and city taxes levied and collected for carrying out of the county functions of the city." *Id.*

Similarly, in *Jackson County v. State*, this Court found that a rational basis existed for Section § 67.2555 R.S.Mo., which provides that any expenditure exceeding $5,000 "made by the county executive of a county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants must be competitively bid." 207 S.W.3d 608, 610-12 (Mo. banc 2006). A rational basis existed, this Court explained, because "only three counties currently ha[d] a constitutional form of

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government, and there [were] already checks on executive spending in the other two counties." *Id.* at 612.

Further, in *Zimmerman*, this Court found a rational basis supporting Section § 138.060.1 R.S.Mo., which provides that "[a]t any hearing before the state tax commission or a court of competent jurisdiction of an appeal of assessment from a first class charter county or a city not within a county, the assessor shall not advocate nor present evidence advocating a valuation higher than that value finally determined by the assessor or the value determined by the board of equalization, whichever is higher, for that assessment period." 916 S.W.2d at 209. This Court explained that "charter counties and St. Louis City may appoint the assessor, while other counties must elect the assessor" and that "[t]he General Assembly could rationally relate the method of choosing the assessor *to* the valuation advocated or the evidence presented in tax appeals, and draft [Section] 138.060.1 accordingly." *Id.*

As the trial court recognized, and as Chesterfield itself argued previously, the uniqueness of the County Sales Tax Law is reflective of the uniqueness of St. Louis County as a whole.[4] Unlike any other county in Missouri, St. Louis County lacks a central city, has 90 (now, 88) separate municipalities throughout its borders, and has a large "unincorporated" area with a population approaching 350,000 today (which would make

[4] The uniqueness of St. Louis County is succinctly described by the Intervenor-Cities (including Chesterfield) in their appeal brief in *Berry*, as quoted above. (LF Doc. 106, ¶ 85.)

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that area one of the largest "cities" in the State of Missouri). (LF Doc. 106, ¶¶ 9-10.) Moreover, St. Louis County is responsible for providing municipal-type services, such as police, street maintenance and zoning, to the unincorporated areas within its borders, while at the same time providing services that benefit all residents of St. Louis County, including those living within municipalities (court system, jail, roads, etc.). (*Id.*, ¶ 10.)

One of the principal purposes of the County Sales Tax Law was to fund more St. Louis County services directly from the unincorporated area. Prior to the enactment of the County Sales Tax Law in 1977, St. Louis County lacked the authority to collect a sales tax on sales in the unincorporated area. That authority belonged only to certain cities within St. Louis County pursuant to the City Sales Tax Act (1969). (*Id.*, ¶ 18.)

Additionally, under the City Sales Tax Act, cities with less retail activity received substantially less tax revenues than cities with high retail activity, as all sales tax revenues stayed with the "point of sale" city.[5] (*Id.*, ¶¶ 16-17.) This tax revenue allocation arguably disproportionately benefited those cities with large retail centers, to the detriment of high-population, low-retail cities. (*Id.*, ¶¶ 16-17, 20.) The County Sales Tax Law addressed these issues by authorizing St. Louis County to adopt an ordinance imposing a countywide sales tax of one cent to benefit both the incorporated and the unincorporated areas of the

[5] The necessity of *some* form of compromise between "point of sale" and "pool" distribution methods is evidenced by the subsequent amendments to the County Sales Tax Law, which over time created more of a balance between these the two groups. (LF Doc. 106, ¶¶ 37, 46).

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county. (*Id.*, ¶ 21.) With the new countywide tax in place, those cities that had enacted a City Sales Tax continued to receive the taxes generated within their boundaries, while those cities that had not, along with the unincorporated areas of St. Louis County, would share on a per-capita basis the taxes being collected for the first time in those areas. (*Id.*, ¶¶ 21, 24-25.) In other words, the County Sales Tax Law reflects a legislative compromise, whereby those cities already collecting taxes pursuant to the City Sales Tax Law were given the option to receive tax revenues generated within their borders, while all other cities and the unincorporated areas of St. Louis County received revenues, for the first time, on a per capita basis from the pool. (*Id.*, ¶ 25.) This system provided necessary resources for St. Louis County to fund services provided to the uniquely large unincorporated areas, as well as those services provided countywide. This system also provided revenue to those cities (Group B) that did not previously have a City Sales Tax. (*Id.*)

In short, the County Sales Tax Law—and specifically, the open-ended, population-based classification found in Section 66.600—is the product of necessity, in light of the unique nature of St. Louis County. It is *unquestionably* rationally related to legislative purposes.

As such, Section 66.600, which contains an open-ended, population-based classification, is a general law supported by a rational basis. The Circuit Court's Final Judgment in favor of Intervenor-Defendants / Respondents and Defendants / Respondents on Appellants' Counts I and II should be affirmed.

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II. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT THE COUNTY SALES TAX LAW DOES NOT VIOLATE MO. CONST. ART. III, SECTION 40(30) BECAUSE SECTION 66.620 IS NOT A SPECIAL LAW AND, EVEN IF IT WERE, IT IS SUPPORTED BY SUBSTANTIAL JUSTIFICATION. (RESPONDS TO APPELLANTS' POINT IV)

A. Standard of Review.

This Court reviews the grant of a motion for summary judgment *de novo*. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Summary judgment must be granted for a party when it demonstrates it is entitled to judgment as a matter of law on material facts that are not disputed. *Id.* Once the moving party establishes its right to judgment as a matter of law, the non-moving party must demonstrate by affidavits, depositions, answers to interrogatories or admissions that a material fact is actually in genuine dispute. *Id.* at 381.

B. Section 66.620 Is Not an Unconstitutional "Special Law" Within the Meaning of Mo. Const. Art. III, Section 40(30).

Article III, Section 40(30) of the Missouri Constitution prohibits the enactment of a special law "where a general law [could] be made applicable[.]" Thus, for Article III, Section 40(30) to apply, the challenged law must, as a predicate matter, be "special law."

1. *The Tax Revenue Distribution Formula Is Not a Special Law.*

"A 'special law' is a law that 'includes less than all who are similarly situated[.]'" *Fust v. Attorney Gen. for the State of Mo.,* 947 S.W.2d 424, 432 (Mo. banc 1997) (quoting *Batek v. Curators of the Univ. of Mo.,* 920 S.W.2d 895, 899 (Mo. banc 1996)). "[B]ut 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.* (quoting *Batek*, 920 S.W.2d at 899). "In essence, the test for 'special legislation' under article III, sec. 40, of the Missouri Constitution, involves the same principles and considerations that are involved in determining whether the statute violates equal protection in a situation where neither a fundamental right nor suspect class is involved, i.e., where a rational basis test applies." *Id.* (quoting *Blaske v. Smith & Entzeroth, Inc.,* 821 S.W.2d 822, 832 (Mo. banc 1991)).

Here, the County Sales Tax Law is not a "special law" by virtue of its inclusion of a tax-revenue distribution mechanism, including the Group A and Group B system. As discussed above, the County Sales Tax Law applies to any "county of the first class having a charter form of government and having a population of nine hundred thousand or more." *See* Section 66.600.1 R.S.Mo. This open-ended, population-based classification makes the County Sales Tax Law a general law. The County Sales Tax Law enables a *countywide* sales tax. While the County Sales Tax Law contains within it a formula by which countywide sales tax revenues are allocated to various municipalities, *see* Section 66.620 R.S.Mo., this distribution calculation does not somehow render the County Sales Tax Law a special law; the only conceivable challenge under Article III, Section 40(30) would relate to the classifications of *counties*, not *municipalities within the counties* (and this argument is addressed above). Indeed, if that argument—that the County Sales Tax Law could be a special law by virtue of the distribution calculation—were taken to its logical conclusion, ***any*** tax revenue distribution system within the County Sales Tax Law would be a special law.

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As this Court has explained, "The vice in special laws is that they do not embrace all of the class to which they are naturally related." *City of Sullivan v. Sites*, 329 S.W.3d 691, 694 (Mo. banc 2010) (quoting *Springfield v. Spirit Spectrum, L.P.*, 203 S.W.3d 177, 184 (Mo. banc 2006)). The County Sales Tax Law embraces all of the class to which it is naturally related and all who are similarly situated (and, to the extent relevant, every municipality and the unincorporated area is accounted for and receives sales tax revenues based on one of two uniformly applied formulas, and every taxpayer in the county pays the same tax). The County Sales Tax Law is not, and cannot be, a special law merely by the inclusion of the A/B system as the way revenues are allocated. The distribution system deals with how much; not who. *See Berry*, 908 S.W.2d at 684 ("The legislature thus has authority to designate, ***by general law***, the distribution of a county sales tax for local government purposes." (emphasis added)). As this Court explained in *Berry*:

> **By the constitution, the General Assembly decides the sales tax authority of local governments.** MO. CONST. ART. X, §§ 1 and 11(f). "Cities and like municipal corporations have no inherent power to levy and collect taxes, but derive their powers in that respect from lawmaking power." *Holland Furnace Co. v. City of Chaffee,* 279 S.W.2d 63, 69 (Mo. App. 1955). Moreover, the general assembly may withdraw from a city, any previous delegation of taxing authority. *Whipple v. City of Kansas City,* 779 S.W.2d 610, 613–614 (Mo. App. 1989). With the enactment of a county sales tax, city sales taxes were made "void and of no effect." § 66.600.1 R.S.Mo. (revoking authority under §§ 94.500–94.570). **The General Assembly has**

the constitutional authority to void sales taxes and to redistribute the revenue of a county sales tax. MO. CONST. ART. X, §§ 1 and 11(f).

908 S.W.2d at 687 (emphasis added).

2. *The Tax Revenue Distribution Formula Could Not Be Made "More General."*

Further, even if the tax revenue distribution methodology in Section 66.620 were a special law, it is not *unconstitutional*. The tax revenue distribution methodology in Section 66.620, if it were a special law, would not present a situation "where a general law [could] be made applicable[.]" *See* MO. CONST. ART. III, § 40(30). The County Sales Tax Law already applies *countywide* and provides tax revenues to *every* city, and all taxpayers in the county pay the same tax; the only distinction among cities is the amount of tax revenues they receive. This amount depends on the classification as either a Group A or a Group B city and the distribution formula. No cities are excluded from receiving tax revenues, and application of the formula is uniform throughout—either a city is a Group A city or a Group B city. Section 66.620 could not be re-written to be "more general" than it already is; it is already a general law. In other words, even if the tax revenue distribution mechanism set forth in Section 66.620 somehow is a special law, the circumstances presented (*e.g.*, a formula by which to distribute countywide sales tax proceeds to the various cities and unincorporated areas within St. Louis County) would not lend themselves to the enactment

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of a general law.[6] *See generally Ryder v. St. Charles Cty.,* 552 S.W.2d 705, 708 (Mo. banc 1977) ("The demands of the constitutional provision prohibiting a local or special law where a general law can be made applicable are satisfied if the statute in question includes all who are similarly situated and omits none whose relationship to the subject matter cannot reasonably be distinguished from those included." (quoting *Gem Stores, Inc. v. O'Brien*, 374 S.W.2d 109, 118 (Mo. banc 1963)).

In short, the sales tax revenue distribution methodology set forth in Section 66.620 is not a special law; it does not "include less than all who are similarly situated" and does not fail to "embrace all of the class to which [it is] naturally related." Further, even if the

[6] Appellants suggest that, in lieu of enacting a formula by which tax revenues would be distributed (*i.e.*, Section 66.620), "the General Assembly could simply have passed the County Sales Tax Law without § 66.620" and then St. Louis County "could then appropriate funds to cities, even doing so with an ordinance that followed § 66.620" (though it is difficult to imagine that Appellants would have preferred this method) or, alternatively, the General Assembly could have authorized a county sales tax while allowing cities to maintain their own sales taxes. (App. Br. 76-77.) Neither alternative would have achieved the goals sought by the General Assembly in enacting the County Sales Tax Law: creating new revenue for St. Louis County; creating revenue for cities who—for whatever reason—had not enacted a City Sales Tax; and, recognizing the increased financial burden of higher retail activity by preserving the sales tax revenues in cities that had enacted a City Sales Tax.

sales tax revenue distribution mechanism somehow was a special law, it does not run afoul of Article III, Section 40(30) of the Missouri Constitution, in that it does not present a situation where a general law could be made applicable.

C. Regardless, Section 66.620 Is Supported by Substantial Justification.

Even if Section 66.620 could be considered a special law and even if a general law could have been made applicable, Section 66.620 is nonetheless constitutional because it is supported by substantial justification.

Missouri courts have found substantial justification for special laws relating to taxation. In *Union Electric Co. v. Mexico Plastic Co.*, Mexico Plastic Co. challenged the constitutionality of, among other things, a new exemption contained in the City of Mexico's business license tax ordinance. 973 S.W.2d 170, 171-74 (Mo. App. E.D. 1998). The exemption precluded any manufacturer who had previously enjoyed an exemption from benefitting under the new exemption; because Mexico Plastic Co. had previously enjoyed an exemption, it was precluded from benefiting under the newly enacted exemption. *Id.* The Court of Appeals held that, even assuming the ordinance was a special law, the ordinance was nonetheless constitutional because it was supported by a substantial justification. *Id.* The Court of Appeals explained:

> [T]he purpose of the ordinance granting exemptions from the business license tax was both to encourage manufacturers to locate in [the City of Mexico] and to generally benefit the community at large. It was, therefore, important to balance the economic enticements offered to prospective business with sound municipal revenue.

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> Revenue from the business license tax constituted nearly fifty percent of [the City of Mexico's] general fund budget and about fourteen percent of [the City of Mexico's] overall budget at the time the 1990 ordinance was passed. [The City of Mexico] had to make reasonable limitations like the one lifetime exemption rule to adequately serve the purposes of its ordinance.

Id.

Similarly, this Court has found substantial justification exists to support a variety of special laws, including a special law imposing fees for municipal services upon those who benefit from those services. In *City of Sullivan*, the City of Sullivan enacted an ordinance which improved and expanded its sewer system. 329 S.W.3d at 692. To fund the project, the ordinance provided for higher sewer connection fees for areas that did not previously have access to the sewer system. *Id.* Although the ordinance was a special law, the Court held that it was supported by substantial justification and thus was constitutional. *Id.* at 694-95. The Court reasoned that the higher fees "were imposed in a way that embraced all of the class to which the higher fees naturally related" in that "the properties subjected to the higher connection fees derived a direct benefit from the City's . . . sewer improvements." *Id.* The Court added: "[S]pecial laws prohibitions should not prevent necessary geographic classifications premised on legitimate distinguishing characteristics. . . . [A] law relating to things as a class is a valid general law if the classification is based upon proper differences which are inherent in or peculiar to the class." *Id.* (internal citations, alterations, and emphasis omitted).

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Similarly, in *Board of Education of the City of St. Louis v. Missouri State Board of Education*, the Board of Education of the City of St. Louis (the "City Board") and others challenged the constitutionality of Section 162.1000, R.S.Mo., which created a Transitional School District ("TSD") as part of settling a long-standing federal desegregation lawsuit regarding the City of St. Louis public schools. 271 S.W.3d 1, 5 (Mo. banc 2008). The TSD handled the transition of control of the schools from the federal court orders to the City of St. Louis. *Id.* The statute also provided that in the event the public school district were to lose its accreditation after control was returned to the City of St. Louis, control of the public schools would revert back to the TSD. *Id.* at 5-6. In 2007, the state board stripped the public school district of its accreditation (thus transferring control to the TSD), and the City Board filed a lawsuit contending, among other things, that Section 162.1000 was an unconstitutional special law. *Id.* at 7, 9.

This Court held that although Section 162.1000 was a special law, it was nonetheless constitutional because "there was substantial justification for the special treatment." *Id.* at 10. The Court explained that "Section 162.1000 originally was passed as a component of SB 781, the passage of which was a vital component of the settlement agreement disposing of federal desegregation litigation concerning St. Louis' public schools." *Id.* (footnote omitted). The Court further explained,

> "Given the long history of state-mandated, segregated schools in Missouri, the complexity of the issues, and the difficulty of developing a plan that will ensure that students of all races will have a continuing equal opportunity for a quality, integrated education" the state possessed a substantial justification

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and an important interest in reaching a settlement to dispose of the pending federal litigation.

Id. (quoting *Lindell by Lindell v. Bd. of Educ. of City of St. Louis*, 126 F.3d 1049, 1056 (8th Cir. 1997)).

Here, substantial justification supports Section 66.620, as well as each of the 1984, 1993, and 1994 amendments.[7] As noted above, prior to the enactment of the County Sales Tax Law in 1977, St. Louis County lacked the authority to collect a sales tax on sales in the unincorporated area; that authority belonged only to cities within St. Louis County that had enacted a sales tax pursuant to the City Sales Tax Act. (LF Doc. 106, ¶ 18.) Beyond that, under the City Sales Tax Act, cities with less retail activity received substantially less tax revenues than cities with high retail activity, as all sales tax revenues stayed with the "point of sale" city. (*Id.*, ¶¶ 16-17.) It was reasonable for the General Assembly to conclude that this taxing system arguably disproportionately benefited those cities with large retail centers, to the detriment of high-population, low-retail cities. (*Id.*, ¶¶ 16-17, 20.) Under the County Sales Tax Law, following a vote by St. Louis County residents, those cities that had enacted a City Sales Tax continued to receive the taxes generated within their boundaries, while those cities that had not, along with the unincorporated areas of St. Louis County, began sharing on a per-capita basis the taxes being collected for the

[7] Appellants do not appear to challenge the 1984, 1993, and 1994 amendments specifically, but rather, appear to challenge Section 66.620 as a whole, at least inasmuch as Chesterfield receives tax revenues as a Group B city.

first time in those areas. (*Id.*, ¶¶ 21, 24-25.) Subsequent amendments required the sharing of tax revenues generated in Group A cities with the "pool," in recognition of the Group A cities' disproportionate retail activity and incidental benefit from county-provided services.[8] As Chesterfield succinctly explained in its brief in *Berry*:

> One purpose of [the 1993 amendments] is to reduce the large 'windfall' of revenue that had been going to group A cities fortunate enough to have major shopping areas and stores within their jurisdictions. Prior to the enactment of [the 1993 amendments], many group A cities enjoyed revenue from commercial development which far exceeded any additional costs borne by such cities and their citizens as a result of accommodating such development. In fact, municipalities in St. Louis County typically do not even provide most of the services that contribute to make retail activity possible.
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> In the 'integrated' economy of St. Louis, the group A cities that have revenues substantially above the Countywide average do so largely because of shoppers from outside their boundaries. Appellant cities could not support the level of retail sale activity within their borders (with the possible

[8] To this end, Appellants attempt to undermine this aspect of substantial justification by asserting that Group A cities "got to keep all of the sales tax generated within their boundaries." (App. Br. 74). This is, and has been for decades, incorrect. Group A cities, since 1993, do share with the pool, which includes St. Louis County. (LF Doc. 106, ¶ 46.)

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> exception of Ladue) based on their population. Prior to [the 1993 amendments], group A cities were able to use their high sales tax revenues to lower municipal taxes to their residents. Group A residents received lower property tax rates, low or no utility tax rates, exemption for personal property, free trash and recycling services, and Appellant Fenton even paid residents' sewer bill[s] out of city tax revenues. Conversely, group B cities were sometimes required to charge higher municipal taxes for fewer municipal services. In effect, residents from group B cities and the unincorporated areas of the county which patronized group A cities retail establishments subsidized, through the payment of sales tax, the municipal tax burdens of group A residents.

(*Id.*, ¶ 85.)

Substantial justification also supports the 1984 amendment to Section 66.620.7, which provides that unincorporated, Group B areas annexed by Group A cities shall remain (proportionally) Group B and that any unincorporated Group B area that elects to incorporate shall remain part of Group B. Following this Court's 1983 ruling in *City of Town & Country v. St. Louis County*, the door opened for annexations of unincorporated areas of St. Louis County without the need for St. Louis County's approval. (LF Doc. 106, ¶¶ 32-33.) As annexation activity picked-up post-*Town & Country*, St. Louis County leaders and mayors of many Group B cities became concerned that Group A cities were targeting strong retail areas for annexation. (*Id.*) There were also groups targeting large areas of the unincorporated County for incorporation. In both scenarios, the effect would

be to shrink the population (and, likely, retail base) in Group B and reduce the amount of revenue from the County Sales Tax that goes to St. Louis County and the Group B cities. (*Id.*, ¶¶ 33-34.) The 1984 amendment to Section 66.620.7 was the product of the recommendation of the St. Louis County Municipal League and, later, approved by the General Assembly. (*Id.*, ¶¶ 35-38.) The 1984 amendment stymied annexations aimed solely at generating increased sales tax revenues (at the expense of Group B) by providing that taxes generated in an annexed Group B area would continue to be distributed within the pool (Group B) while the pre-annexation Group A area would continue as point of sale. (*Id.*, ¶ 36.) The 1984 amendment also addressed the incorporation of unincorporated areas within St. Louis County by requiring that all newly incorporated cities be part of Group B with no option to move to Group A. (*Id.*, ¶ 37.) This amendment has stood for 34 years.

Substantial justification likewise supports the 1993 and 1994 amendments to Section 66.620.6, though the provisions of these amendments have no impact on Appellants specifically. In other words, even if a Group A city that had switched to Group B continued to enjoy the one-time ability to return to Group A, and even if the consolidation provision added in the 1994 amendment were repealed, Chesterfield would remain in Group B.

Regardless, both of these amendments were minor, but integral, adjustments to the County Sales Tax Law, and are thus supported by substantial justification. The challenged portion of the 1993 amendment was enacted along with a revised tax revenue distribution formula; a former Group A (but now Group B) city's one-time ability to transfer back to Group A was removed so as not to disrupt the delicately balanced formula crafted after

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substantial negotiations. (*Id.*, ¶ 47.) Similarly, the 1994 amendment's requirement that if a Group A city and a Group B city merge, they retain their proportional classifications, was the necessary counterpart to the 1993 amendment regarding annexations (*i.e.*, that an annexed area maintained its distinct classification). (*Id.*) The inclusion of this counterpart plainly furthered the objectives of the 1984 amendment, discussed above. Removal of a former Group A's one-time ability to return back to Group A, and requiring that merged cities maintain their proportional classifications, were small changes that ensured the consistency and predictability of tax proceeds and precluded any tax-based gerrymandering efforts by Group A and Group B cities. The necessity of these amendments is evidenced by the potential implications in the absence of their enactments, *i.e.*, the potential of Group A cities moving to Group B, only to later return to Group A when the tax treatment was more favorable, and the potential for disruption of the delicate Group A/Group B balance.

Appellants suggest that the Group A/Group B tax revenue distribution system was the product of "politic[s.]" (App. Br. 64.) Appellants cite no *evidence* in the record to support this blanket assertion.[9] On the contrary, and as discussed above, the evidence

[9] To that end, that the compromise reached between the various interest groups may not have been achievable in today's political climate is irrelevant. *Politics* drove the creation of the County Sales Tax Law only inasmuch as there was give-and-take between the differing groups to reach a mutually beneficial result: Group A cities maintaining point of sale status (though, as noted, this changed over time in recognition of the benefits to

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offered to the trial court revealed that the Group A/Group B tax revenue distribution system was forged in an effort to balance the needs and rights of those cities that had enacted a City Sales Tax and generally had a greater level of retail activity (which, they contended, carried with it an increased level of cost to maintain, etc.) with the needs and rights of those cities that had not (which, they contended, were unfairly deprived of sales tax revenues generated by their residents shopping in other cities that had enacted a City Sales Tax), as well as the county which, despite providing services throughout, received no sales tax revenues. Originally, Group A cities continued receiving sales tax revenues as before, while Group B cities (who, as Appellants recognize (App. Br. 74), had not enacted a City Sales Tax and, thus, there was no existing tax to protect) and the county began receiving sales tax revenues for the first time (with the trade-off being that the Group B cities shared some of their revenues with the county). Given the indirect benefits to the Group A cities by the sharing of tax revenues with the county, over time, the Group A cities contributed more to the "pool," thus furthering the balance between Group A and Group B cities and the county.

Relatedly, Appellants also contend that Group A cities are "protected, hereditary royalty" while Group B is a "sea of socialism." (App. Br. 64.) Not so. Group A cities do not "keep their own revenue yet take full advantage of what others pay for in terms of county-wide services." (*Id.*) As Appellants later recognize, Group A cities (post-

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Group A city residents from county services), and Group B cities and St. Louis County receiving sales tax revenues for the first time.

amendment) do contribute to the "pool," which is logical because they benefit from countywide services. More fundamentally, Appellants' suggestion that Group A cities necessarily receive more tax revenues than if they, or all cities, were Group B, is unsupported speculation.[10]

Appellants also chastise the trial court for, in their view, "misapply[ing] the standard" for assessing the existence of substantial justification. (App. Br. 71.) To this end, Appellants contend that "[t]he issue is not whether there is a 'substantial justification' for the Law; rather, the 'substantial justification' must be for there being a special law rather than a general law." (*Id.*) (emphasis omitted). The trial court did not misapply the standard because the distinction proposed by Appellants does not exist. The existence of substantial justification is assessed only when the law might be viewed as a special law. Phrased differently, if the law is a special law, then the court examines whether that special law is supported by substantial justification. The two concepts articulated by Appellants are identical, *i.e.*, whether or not there is substantial justification for passing a special law. As discussed above and as Chesterfield contended in *Berry*, to the extent the tax revenue distribution mechanism contained in Section 66.620 could be considered a special law, it is supported by substantial justification.

In short, the Group A/Group B tax revenue distribution system set forth in the County Sales Tax Law is not itself an unconstitutional "special law," nor does its inclusion

[10] Indeed, certain Group A cities have elected to forsake their "royalty" and become Group B cities. (LF Doc. 106, ¶ 50.)

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render the County Sales Tax Law a "special law." Regardless, substantial justification supports the Group A/Group B classification system, as well as the County Sales Tax Law at large. The Circuit Court's Final Judgment in favor of Intervenor-Defendants / Respondents and Defendants / Respondents on Appellants' Counts III and IV should be affirmed.

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III. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT THE COUNTY SALES TAX LAW DOES NOT VIOLATE MO. CONST. ART. III, SECTION 40(21) BECAUSE SECTIONS 66.600 AND 66.620 ARE NOT SPECIAL LAWS AND BECAUSE SECTIONS 66.600 AND 66.620 DO NOT REGULATE THE AFFAIRS OF ST. LOUIS COUNTY. (RESPONDS TO APPELLANTS' POINT VI)

A. Standard of Review.

This Court reviews the grant of a motion for summary judgment *de novo*. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Summary judgment must be granted for a party when it demonstrates it is entitled to judgment as a matter of law on material facts that are not disputed. *Id.* Once the moving party establishes its right to judgment as a matter of law, the non-moving party must demonstrate by affidavits, depositions, answers to interrogatories or admissions that a material fact is actually in genuine dispute. *Id.* at 381.

B. Neither Section 66.600 Nor Section 66.620 Is a Special Law.

Article III, Section 40(21) of the Missouri Constitution prohibits the General Assembly from enacting a "special law . . . regulating the affairs of counties, cities, townships, election or school districts." Thus, as with Article III, Section 40(30), Article III, Section 40(21) applies only if the challenged statute is a "special law" as an initial matter.

As discussed above, neither Section 66.600 nor Section 66.620 is a special law. Section 66.600, which was enacted (and, for relevant purposes, amended once) before

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2006, contains an open-ended, population-based classification. As such, it is a general law. Similarly, Section 66.620 is not a special law, in that it does not "include[] less than all who are similarly situated[.]" *Fust,* 947 S.W.2d at 432 (quoting *Batek,* 920 S.W.2d at 899). Every municipality and the unincorporated area is accounted for and receives sales tax revenues based on one of two uniformly applied formulas, and all taxpayers in the county pay the same tax. The County Sales Tax Law is not, and cannot be, a special law merely by the inclusion of the A/B system as part of the tax revenue distribution formula. *See Berry*, 908 S.W.2d at 684 ("The legislature thus has authority to designate, ***by general law***, the distribution of a county sales tax for local government purposes." (emphasis added)). As such, neither Section 66.600 nor Section 66.620 implicates Article III, Section 40(21) of the Missouri Constitution, regardless of whether or not either could be construed as regulating the affairs of St. Louis County (they do not). *See, e.g.*, *City of St. Louis v. Dorr,* 41 S.W. 1094, 1095 (Mo. 1897), *on reh'g*, 46 S.W. 976 (1898) ("While it is true that the legislature is . . . in express terms forbidden to pass any local or special law 'regulating the affairs of counties, cities,' . . . yet this prohibition only applies to 'local or special laws,' and has no application or reference whatever to general laws, because in regard to these the constitution is very emphatic).

C. Neither Section 66.600 Nor Section 66.620 Regulates the Affairs of St. Louis County.

In addition, the tax revenue distribution mechanism of Section 66.620, which has been part of the County Sales Tax Law in some form since 1977, does not "regulat[e] the affairs of counties, cities, townships, election or school districts." *See* MO. CONST. ART.

III, § 40(21). The tax revenue distribution method does not "regulate the affairs" of anything; it is a formula by which the voter approved (***not*** General Assembly-mandated) countywide sales tax revenues are distributed to the various municipalities and unincorporated areas within St. Louis County.

In this regard, the County Sales Tax Law and the tax revenue distribution mechanism therein do not "appropriate general county revenues" (App. Br. 96, 101), as Appellants contend, nor does the County Sales Tax Law mandate how tax revenues be spent; the tax revenues belong to the cities and St. Louis County, who can spend these tax revenues however they see fit. These tax revenues are not county monies (except as to the share distributed in accordance with the statutory formula) and there is thus no "state-mandated appropriation." (App. Br. 103.) There is no appropriation at all, much less via state mandate. Although the Director of Revenue operates the County Sales Tax Trust Fund, again, those monies belong to the cities and the county—not the State and not St. Louis County (aside from the share to which St. Louis County is entitled by the formula). No monies are appropriated, by the State or the County, any more than monies are appropriated under other shared county taxes, such as the county cigarette tax, R.S.Mo. Section 66.340, *et seq.*

Simply put, the County Sales Tax Law does not involve or regulate St. Louis County's "business" or "affairs." (App. Br. 97-101.) As such, even if the County Sales Tax Law and/or the distribution mechanism therein were somehow a special law, it would not run afoul of Article III, Section 40(21) of the Missouri Constitution.

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The out-of-state cases cited by Appellants bear no semblance to the case at bar. In *Harrisburg School District v. Hickok*, the Pennsylvania Supreme Court considered whether a state law providing that " 'a school district of the second class with a history of low test performance which is coterminous with the city of the third class which contains the permanent seat of government,' *i.e.*, if the school district is located in Harrisburg," then the mayor of the coterminous city (Harrisburg) would appoint a five-member board to operate the school district. 761 A.2d 1132, 1135 (Pa. 2000). No other school districts were treated this way under Pennsylvania law; other school districts were "subject to state input and ultimately, state control" whereas Harrisburg was "immediately placed under the control of the mayor of Harrisburg." *Id.* Ultimately, the Pennsylvania Supreme Court held that the law was a special law "regulating the affairs of . . . school districts" and that there was "no rational basis for treating the school district of Harrisburg differently from other school districts with failed educational systems." *Id.* at 1136.

Similarly, in *Rodriguez v. Gonzales*, the Texas Supreme Court considered whether a state law authorizing the Commissioners Court of "any county bordering on the International Boundary between the United States and the Republic of Mexico" to initiate suits for collecting delinquent taxes owed on tracts of land, but only if: "(a) The tract must be in a county bordering on the Rio Grande; (b) must be in excess of 1,000 acres; (c) must be owned by ten or more persons in undivided interests; and (d) title to all or a portion thereof must emanate from a grant from the King of Spain." 227 S.W.2d 791, 793-94 (Tex. 1950). The Texas Supreme Court concluded that there were "no reasonable ground[s] upon which the Act could be so narrowly based," and was thus unconstitutional. *Id.*

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Neither *Harrisburg* nor *Rodriguez* bear any semblance to the County Sales Tax Law. As discussed, Section 66.600 is a general law in that it contains an open-ended, population based classification. Section 66.620 is a general law in that it contains a tax revenue distribution formula that provides for the distribution of revenue to every city and the unincorporated county area within the scope of the law, when enacted by the voters. Specifically, as to Article III, Section 40(21) of the Missouri Constitution, the General Assembly's act of granting residents of qualifying counties the ability to pass a countywide law providing for the collection and distribution of sales taxes, as set forth in Section 66.620, is not a regulation of county affairs.

Whereas a state law mandating that the mayor overtake a particular school board, or a state law empowering a particular Commissioner's Court to seek delinquent taxes or a partition on a particular tract of land, unquestionably regulate the affairs of school districts and counties (respectively), a formula for distributing tax revenues to various cities and the county, from where the taxes were collected in the first instance, to be used however the cities and county see fit, does not regulate county affairs. *See, e.g.*, *Inter-City Fire Protection Dist. of Jackson Cty. v. Gambrell*, 231 S.W.2d 193, 197 (Mo. banc 1950) (law relating to taxation of tangible property for fire protection districts within particular counties did not regulate the affairs of counties); *State ex rel. Circuit Attorney v. Finn*, 8 Mo. App. 341, 351-52 (1880) (law providing that the sheriff of the City of St. Louis would serve process of the Probate Court, the Criminal Court, and the Court of Criminal Corrections did not regulate the affairs of the City of St. Louis); *see also Commonwealth v. Anderson*, 35 A. 632 (Pa. 1896) (holding that state law requiring that certain government

officers in counties of over 150,000 inhabitants must remit 50% of any excess funds over $2,000 did not regulate county affairs); *In re Patton*, 77 A. 658, 659-61 (Pa. 1910) (holding that law requiring payment of a bond for an election contest was not a local affair of the county, even for county-elected officials).

D. Section 66.620 Is Supported by Substantial Justification.

Appellants contend that the prohibition in Article III, Section 40(21) on special laws regulating the affairs of a county is an "absolute prohibition" such that it is unconstitutional "even if there is a rational basis [or, presumably, substantial justification] for it being a special law." (App. Br. 93.) Appellants cite no authority in support of this proposition. Notably, however, this Court has held that a challenge brought under Article III, Section 40(21) was defeated by the existence of substantial justification. *See Bd. of Educ. of City of St. Louis v. Mo. State Bd. of Educ.*, 271 S.W.3d 1, 11 (Mo. banc. 2008). As such, and for the reasons discussed above, Section 66.620 is supported by substantial justification such that even if it could be construed as a special law regulating the affairs of a county, it is nonetheless constitutional.

Because neither Section 66.600 nor Section 66.620 is a special law, because neither Section 66.600 nor Section 66.620 "regulates the affairs of . . . counties," and because Section 66.620 is supported by substantial justification, the Circuit Court correctly concluded that the County Sales Tax Law did not violate Article III, Section 40(21) of the Missouri Constitution. As such, the Circuit Court's Final Judgment in favor of Intervenor-Defendants / Respondents and Defendants / Respondents on Appellants' Counts I-IV should be affirmed.

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IV. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT APPELLANTS' CLAIMS WERE BARRED BY *RES JUDICATA* BECAUSE EACH OF THE ELEMENTS OF *RES JUDICATA* IS SATISFIED BY *CHESTERFIELD I*. (RESPONDS TO APPELLANTS' POINT I)

A. Standard of Review.

This Court reviews the grant of a motion for summary judgment *de novo*. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Summary judgment must be granted for a party when it demonstrates it is entitled to judgment as a matter of law on material facts that are not disputed. *Id.* Once the moving party establishes its right to judgment as a matter of law, the non-moving party must demonstrate by affidavits, depositions, answers to interrogatories or admissions that a material fact is actually in genuine dispute. *Id.* at 381.

B. The Elements of *Res Judicata*.

Res judicata bars the same parties from re-litigating the same cause of action that has been previously adjudicated by a final judgment on the merits, or from later raising a claim stemming from the same set of facts that should have been raised in the first suit. *Johnson Controls, Inc. v. Trimmer*, 466 S.W.3d 585, 591 (Mo. App. W.D. 2015) (citing *Kinsky v. 154 Land Co., LLC*, 371 S.W.3d 108, 112 (Mo. App. E.D. 2012)). "The doctrine precludes not only those issues on which the court in the former case was required to pronounce judgment, but to every point properly belonging to the subject matter of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." *Chesterfield Village, Inc. v. City of Chesterfield*, 64 S.W.3d 315, 318

(Mo. banc 2002) (quoting *King General Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints*, 821 S.W.2d 495, 501 (Mo. banc 1991)).

Res judicata applies when four "identities" occur: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the person and parties to the action; and (4) identity of the quality of the person for or against whom the claim is made. *Johnson Controls,* 466 S.W.3d at 590 (citing *King General Contractors,* 821 S.W. 2d at 501); *State ex rel. City of Blue Springs, Missouri v. Schieber*, 343 S.W. 3d 686, 689 (Mo. App. W.D. 2011); *Chadd v. City of Lake Ozark*, 326 S.W. 3d 98, 102 (Mo. App. W.D. 2010). So long as the underlying facts are the same, *res judicata* bars re-litigation of the matter "whether upon the same or different cause of action, claim, demand, ground or theory." *Schieber*, 343 S.W. 3d at 689.

C. *Chesterfield I* Was a Judgment on the Merits for Purposes of Appellants' Current Claims.

Appellants primarily contend that *res judicata* does not bar their current claims because, according to Appellants, *Chesterfield I* was not a judgment on the merits, such that it carries no preclusive effect.[11] (App. Br. 40-42.) This assertion is incorrect.

[11] Appellants do not contest that the claims of Mayor Nation, as well as other residents and taxpayers of Chesterfield, rise and fall (and are barred—or not) in the same manner as Chesterfield's, through the doctrine of virtual representation. *See, e.g.*, *KCAF Investors v. Kansas City Downtown Streetcar Transp. Dev. Dist.*, 414 S.W.3d 470, 486-87 (Mo. App. W.D. 2013).

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As an initial matter, however, Appellants did not raise this argument to the trial court. (*See* LF Doc. 170, 12-16.) As such, Appellants cannot raise it now. *See, e.g.*, *Smith v. Shaw*, 159 S.W.3d 830, 835 (Mo. banc 2005) ("This Court will generally not convict a lower court of error on an issue that was not put before it to decide.").

In any event, Chesterfield's request to be treated as a point of sale (Group A) city was adjudicated to finality *in Chesterfield I*, starting with the Director of Revenue's decision denying Chesterfield's request to be treated as a Group A city and ending with the Supreme Court's decision affirming the decision of the Administrative Hearing Commission ("AHC"). The AHC's decision is a final decision on the merits that is not subject to collateral attack. *See State ex rel. Dir. of Revenue v. White*, 796 S.W.2d 629, 629-30 (Mo. banc 1990). Chesterfield's Petition for Review by the AHC was the exclusive method for challenging the decision denying Chesterfield's request to be treated as a Group A city. *Id.* Chesterfield's Petition for Review only complained that the County Sales Tax Law violates the Due Process and Equal Protection Clauses of the United States Constitution and similar provisions of Missouri's Constitution, but not that the County Sales Tax Law violates the prohibition against special laws. Constitutional questions are deemed waived that are not raised at the first opportunity consistent with good pleading and orderly procedure. *Chesterfield I*, 811 S.W.2d at 378. Therefore, by failing to raise its special law arguments in its Petition for Review, Chesterfield cannot now raise such claims due to the presence of the four identities discussed above. *Id.*

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D. The 2016 Amendment to the Distribution Formula Contained in Section 66.620 Did Not Create Any New Rights For Purposes of Appellants' Current Claim.

Appellants alternatively contend that their current claims should not be barred by *Chesterfield I* because, according to Appellants, the 2016 amendment to the distribution methodology contained in Section 66.620 somehow "create[d] new rights/obligations which were not in existence at the time of the judgment in the earlier action[.]" (App. Br. 42.) Appellants do not articulate what new rights or obligations arose in connection with the 2016 amendment to the distribution methodology—Appellants challenge no aspect of the amendment (which actually results in Chesterfield receiving more tax revenues)[12]—though it appears that Appellants rely on their same failed theory that the *Jefferson County* standard (relating to population-based classifications) is somehow triggered by the 2016 amendment to Section 66.620 (which does not contain a population-based classification). (App. Br. 43-44.)

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[12] HB 1561 of 2016 amended Section 66.620 by adding a subsection to the distribution calculation for years beginning in 2017. The amended formula provides "that municipalities in Group B must receive at least 50% of the amount of taxes generated within the municipalities based on the location where the sales were deemed consummated." (Bill Summary, HB 1561 Truly Agreed and Finally Passed.) In other words, Group B cities with significant retail activity (such as Chesterfield) are now guaranteed at least 50% of the countywide sales tax generated within their boundaries.

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As discussed above, the 2016 amendment to the distribution formula contained in Section 66.620 has no bearing on any of Appellants' claims. This change in the distribution methodology does not create a new cause of action or alter the nature of any cause or right that existed in 1990 or that existed when Chesterfield filed the instant case in 2014. *See, e.g.*, Section 1.120, R.S.Mo. ("The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of a prior law, shall be construed as a continuation of such law and not as a new enactment."). Appellants point to no "new" ultimate facts that did not exist pre-2016 amendment. None exist.

A cause of action has been defined as "a subject matter upon which a case may be brought by one party against another to obtain whatever relief the one is legally entitled to receive as against the other under the facts and circumstances upon which he relies." *Dragna v. Auto Owner's Mut. Ins. Co.*, 687 S.W.2d 277, 279 (Mo. App. W.D. 1985) (quoting *Ford v. Am. Brake Shoe Co.*, 252 S.W.2d 649, 652 (Mo. App. E.D. 1952)). In determining whether the cause of action is the same in both lawsuits, "The court must focus on the factual bases for the claims and not the legal theories." *Kesler v. Curators of the Univ. of Mo.*, 516 S.W.3d 884, 891 (Mo. App. W.D. 2017).

The facts and circumstances upon which Appellants rely in this case have not changed. Appellants' Second Amended Petition contained exactly the same challenges to exactly the same statutory language as in earlier Petitions, which were filed prior to the 2016 amendment to Section 66.620. (*Compare* LF Doc. 100 (Second Amended Petition) *with* LF Doc. 96 (First Amended Petition) *and* LF Doc. 94 (Petition).) Appellants' Second Amended Petition included only two paragraphs relating to the 2016 statute, did not

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challenge any new or previously unknown language, did not assert that any new rights exist under the new law, and recognized that post-amendment, the County Sales Tax Law continues the exact same A/B system. Further, when Chesterfield challenged the County Sales Tax Law in 1990, Section 66.600 only described St. Louis County and no other county and, like today, Section 66.620 precluded newly incorporated cities such as Chesterfield from becoming A cities. The causes of action being asserted today (post-2016 amendment) existed in 1990, and the changes to unchallenged portions of the statute does not prevent the doctrine of *res judicata* from applying.

E. *Chesterfield I* Satisfies All Four Elements of *Res Judicata*.

Though not challenged by Appellants in their Brief (*see* App. Br. 39-44), the trial court was correct in concluding that each of the four elements of *res judicata* is satisfied by *Chesterfield I*, such that Appellants' current claims are barred.

First, as to the identity of the thing sued for, Chesterfield challenged the County Sales Tax Law, including the A/B classification methodology, in *Chesterfield I*. The same issue is being raised in this case. In *Chesterfield I*, Chesterfield made the argument that it was being treated differently than other cities in the same class and that it should have the right to become an A city; same as in this case. The facts relating to Chesterfield's claimed right to choose to become an A city have not changed from 1990 to today. When Chesterfield challenged the statute in 1990, Section 66.600 only described St. Louis County and no other county and, just like today, newly incorporated cities such as Chesterfield were not allowed to become A cities.

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Second, as to the identity of the cause of action, Chesterfield pleaded an equal protection violation in *Chesterfield I*, and knew or should have known that it could have raised a "special law" claim. However, Chesterfield failed to assert one. "A somewhat altered legal theory, or even a new legal theory, does not support a new claim based on the same operative facts as the first claim." *Chesterfield Village*, 64 S.W.3d at 321. There is no question that Chesterfield is currently seeking to litigate a legal theory that could have, with the reasonable exercise of diligence, been included in Chesterfield's Petition for Review in *Chesterfield I*.

Third, as to the identity of the parties, the parties (Chesterfield and Director of Revenue) are the same in both cases. Although Mayor Nation was not a party to *Chesterfield I*, he was a resident of Chesterfield and because of the doctrine of virtual representation, Mayor Nation and all other individuals are bound by the proceedings and judgment in *Chesterfield I*. *See e.g.*, *KCAF Investors*, 414 S.W. 3d at 486.

Fourth, as to the identity of the quality or status of the person for or against whom the claim is made, Chesterfield sued as a city in both *Chesterfield I* and the present case. Likewise, the State Director of Revenue was the named defendant in both cases in his/her official governmental capacity. Consequently, this fourth identity is also satisfied. *Commonwealth Land Title Ins. Co. v. Miceli*, 480 S.W.3d 354, 365 (Mo. App. E.D. 2015).

The trial court correctly concluded that the judgment in *Chesterfield I* barred the present action. As such, the Circuit Court's Final Judgment in favor of Intervenor-Defendants / Respondents and Defendants / Respondents on Appellants' Counts I-IV should be affirmed.

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V. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT APPELLANTS' CLAIMS WERE BARRED BY VARIOUS ESTOPPEL DOCTRINES BECAUSE OF APPELLANTS' CONTRARY POSITION TAKEN IN *BERRY*. (RESPONDS TO APPELLANTS' POINT II)

A. Standard of Review.

This Court reviews the grant of a motion for summary judgment *de novo*. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Summary judgment must be granted for a party when it demonstrates it is entitled to judgment as a matter of law on material facts that are not disputed. *Id.* Once the moving party establishes its right to judgment as a matter of law, the non-moving party must demonstrate by affidavits, depositions, answers to interrogatories or admissions that a material fact is actually in genuine dispute. *Id.* at 381.

B. Judicial Estoppel

The trial court correctly concluded that Appellants are also judicially estopped from taking a legal position contrary to the position that Chesterfield took in *Berry*. "Judicial estoppel applies to prevent litigants from taking a position in one judicial proceeding, thereby obtaining benefits from that position in that instance and later, in a second proceeding, taking a contrary position in order to obtain benefits from such a contrary position at that time." *Imler v. First Bank of Mo.*, 451 S.W.3d 282, 292 (Mo. App. W.D. 2014), (quoting *Banks v. Central Trust & Inv. Co.*, 388 S.W.3d 173, 175 (Mo. App. E.D. 2012)) (citation omitted).

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> While judicial estoppel cannot be reduced to a precise formula, the United States Supreme Court has indicated that whether judicial estoppel applies requires the consideration of three factors: "First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept the party's earlier position.... A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped."

Id. (citing *Vinson v. Vinson*, 243 S.W.3d 418, 422 (Mo. App. E.D. 2007)) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001) (citations omitted)).

Here, Appellants' position that the County Sales Tax Law is unconstitutional, invalid and unenforceable is clearly inconsistent with Chesterfield's position in *Berry,* where Chesterfield argued for, and obtained a ruling that the County Sales Tax Law is valid and constitutional. Chesterfield asserted in so many words in *Berry* that the County Sales Tax law was not a special law, but rather was a general law enacted to address the unique needs of St. Louis County. Chesterfield's position in *Berry* thus flatly contradicts Chesterfield's current position that the statute, as originally enacted and as subsequently amended in 1993, is a special law (*See* LF Doc. 100, Counts I and II.)

Counts III and IV of Appellants' Second Amended Petition are also inconsistent with the position that Chesterfield took in *Berry*. In *Berry*, Chesterfield argued that the County Sales Tax Law, as amended in 1993, was valid and constitutional. Chesterfield's current position—that the 1984 amendments (LF Doc. 100, Count III) and the cumulative

effects of all the amendments (LF Doc. 100, Count IV) make the law an unconstitutional special law—is clearly inconsistent with the position that it took in *Berry*.

Due to Chesterfield's success in *Berry* and the implementation of the redistribution formula in the 1993 amendment, Chesterfield received substantial increases in its share of the 1% countywide sales tax revenue as a Group B city. For the period 1994 through 2015, Chesterfield received more than $16 million in additional sales tax revenue than it would have received under the pre-1993 sharing formula. (LF Doc. 106, ¶ 52.)

As the trial court recognized, in addition to the unfair advantage gained by keeping the benefits from its success in *Berry*, an unfair detriment would result to the B Group if Chesterfield is not estopped from taking inconsistent positions in this case. Voiding the County Sales Tax Law, or parts of it, would cause a major disruption in the fiscal affairs of St. Louis County and the political subdivisions that rely on the sales tax distribution formula when promoting commercial development within their boundaries, issuing revenue bonds, and making other financial commitments and fiscal decisions.

Specifically, in response to the voters of St. Louis County approving the countywide sales tax in 1977, the St. Louis County Council lowered property taxes on residents throughout St. Louis County by almost one-third. (LF Doc. 106, ¶ 89). This reduction has effectively become permanent based on subsequent changes in the property tax laws and the adoption of the Hancock Amendment, Article X, Section 22 of the Missouri Constitution. (*Id.*, ¶ 93); *see Springfield*, 203 S.W.3d at 181, n.6 ("The Hancock Amendment . . . prohibits political subdivisions from imposing new taxes, licenses or fees, without first receiving approval through a vote of the people. This includes increases to

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existing lawful taxes, licenses and fees." (internal quotation marks and citations omitted)). In other words, St. Louis County, for one, could not replace the revenue lost if the County Sales Tax Law were declared unconstitutional. This revenue has become an essential source of revenue for St. Louis County: approximately 25% of the general purposes revenues of St. Louis County's General Fund comes from countywide sales tax revenues, which fund services that benefit all residents of St. Louis County. (LF Doc. 106, ¶ 95). Loss of revenues from the County Sales Tax Law would have a wide-ranging impact on the operations of St. Louis County government, including reductions or eliminations of services, employee lay-offs, and facility closures. (*Id.*, ¶ 96). Similar impact would be felt by the municipalities in St. Louis County. For example, in Wildwood, the countywide sales tax accounts for 53.5% of the General Fund revenues; in Florissant it is 32.7%; and in Webster Groves, the percentage is 20.3%. (*Id.*, ¶¶ 99-101). Loss of this significant revenue would necessarily impact the operations of these cities.

Appellants do not contest much (if any) of this, instead arguing that for judicial estoppel to apply, there must be "a decision by the trial court on the same issue[.]"[13] (App. Br. 50.) Appellants attempt to link this requirement to the second judicial estoppel factor, *i.e.*, whether the party has succeeded in persuading a court to accept the party's earlier position. Appellants identify no authority in support of their attempt to link this factor to

[13] In making this argument, Appellants go on to say "before collateral estoppel will apply." (App. Br. 50.) Though not clear, it appears, however, that Appellants intended to state, "before judicial estoppel will apply."

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a requirement of identical issues, and it is not apparent from where such a requirement would emanate; "identical issue" is not synonymous with "earlier position."

In any event, again, in *Berry*, Chesterfield successfully argued that the County Sales Tax Law is valid and constitutional—essentially that the County Sales Tax law was not a special law, but rather was a general law enacted to address the unique needs of St. Louis County. Chesterfield's position in *Berry* thus flatly contradicts Chesterfield's current position. Judicial estoppel serves to bar such inconsistent positions from which a party derives an unfair benefit. *See Vinson*, 243 S.W.3d at 422 (noting that "judicial estoppel cannot be reduced to a precise formula").

C. Equitable Estoppel[14]

Equitable estoppel requires: (1) an admission, statement, or act inconsistent with a claim afterwards asserted and sued upon; (2) action by the other party on the faith of such admission, statement, or act; and (3) injury to such party, resulting from allowing the first party to contradict or repudiate admission, statement, or act. *Jackson v. City of Blue Springs*, 904 S.W.2d 322, 336 (Mo. App. W.D. 1995) (rehearing and/or transfer denied).

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[14] Though the trial court made a single, passing reference to collateral estoppel, (LF Doc. 176, 9), the trial court held that Appellants' claims are barred by equitable estoppel (among other doctrines)—not collateral estoppel; the trial court made no holding regarding collateral estoppel. (*Id.*, 9 ("For all these reasons, Chesterfield's current challenges to the [County Sales Tax] Law are barred by judicial estoppel and equitable estoppel."). As such, Intervenor-Defendants / Respondents do not discuss collateral estoppel herein.

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The trial court also correctly concluded that Appellants are estopped from challenging the County Sales Tax Law or claiming that it no longer applies to St. Louis County because Chesterfield has enjoyed and accepted the benefits of it since 1988. Chesterfield has received millions of dollars as a result of its participation in the county sales tax pool, including an additional $16 million plus from 1993 to 2016 based on the distribution formula that Chesterfield fought in favor of. Allowing Chesterfield to repudiate its acceptance of the redistribution formula would disrupt settled expectations of all the political subdivisions in St. Louis County as well as their bond holders. (LF Doc. 106, ¶¶ 95-101). *See State ex rel. City of Monett v. Lawrence Cty.*, 407 S.W. 3d 635 (Mo. App. S.D. 2013) (holding that county's claims that city's tax increment financing (TIF) districts were not validly created were barred by estoppel and laches in city's mandamus action to enforce TIF allocation). Voiding the law would also subvert the will of the people expressed in the vote to approve the countywide sales tax "for the benefit of both the incorporated and unincorporated areas of the county." (LF Doc. 106, ¶ 22.)

Again, Appellants attempt to cabin Chesterfield's position in *Berry* to only the precise issues litigated as opposed to the admission, statement, or act made. (App. Br. 51-53.) In this regard, Appellants attempt to argue that "equitable estoppel also requires identity on the issues decided that is absent here." (*Id.*, p. 51 (bold font and capitalizations omitted).) Initially, Appellants did not raise this issue below (*see* LF Doc. 170, 17-18), and thus cannot raise it now. *See, e.g.*, *Smith*, 159 S.W.3d at 835. Otherwise, again, identical issues are not required for purposes of equitable estoppel. *See Mo. Hwy. & Transp. Comm'n v. Myers*, 785 S.W.2d 70, 73 (Mo. banc 1990) (describing estoppel

factors, none of which include identical issues). The point, as noted, is that Chesterfield has received millions of dollars from the county sales tax pool, including an additional $16 million plus from 1993 to 2016 based on the distribution formula that Chesterfield fought in favor of in *Berry*. Appellants are equitably estopped from challenging the law Chesterfield successfully defended, and from which Chesterfield enjoyed millions of dollars in tax revenue.

The trial court correctly concluded that Chesterfield's successful advocacy in *Berry* barred the present, contrary action. As such, the Circuit Court's Final Judgment in favor of Intervenor-Defendants / Respondents and Defendants / Respondents on Appellants' Counts I-IV should be affirmed.

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VI. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT APPELLANTS' CLAIMS WERE BARRED BY LACHES BECAUSE APPELLANTS' COULD HAVE RAISED THEIR CLAIMS AS EARLY AS 1988 BUT DID NOT, INSTEAD CHOOSING TO ACCEPT MILLIONS OF DOLLARS UNDER THE STATUTE APPELLANTS NOW CHALLENGE. (RESPONDS TO APPELLANTS' POINT III)

A. Standard of Review.

This Court reviews the grant of a motion for summary judgment *de novo*. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). Summary judgment must be granted for a party when it demonstrates it is entitled to judgment as a matter of law on material facts that are not disputed. *Id.* Once the moving party establishes its right to judgment as a matter of law, the non-moving party must demonstrate by affidavits, depositions, answers to interrogatories or admissions that a material fact is actually in genuine dispute. *Id.* at 381.

B. Laches

The trial court correctly concluded that Appellants' claims are further barred under the doctrine of laches, in that Appellants waited 26 years to bring this suit, even though all of the legal theories in Counts I through IV could have been asserted as long ago as 1988 when newly incorporated Chesterfield automatically became a Group B city.

> Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. There is no fixed period within which a person must assert his

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> claim or be barred by laches. Mere delay does not of itself constitute laches; the delay involved must work to the disadvantage and prejudice of the defendant.

Hagely v. Bd. of Educ. of Webster Groves Sch. Dist., 841 S.W.2d 663, 669 (Mo. banc 1992).

Here, the 26-year delay, during which Chesterfield accepted millions of dollars under the statute it now challenges, works to the disadvantage and prejudice of St. Louis County and the Group B cities that relied on the County Sales Tax Law when they promoted commercial development within their boundaries, issued revenue bonds, and made other financial commitments and fiscal decisions. (LF Doc. 106, ¶¶ 95-101).

Appellants attempt to distinguish *City of Monett* by arguing that "[t]his is an action at law, seeking a declaratory judgment." (App. Br. 55.) Appellants are mistaken. Declaratory relief is an equitable remedy. *Arbors at Sugar Creek Homeowners Ass'n v. Jefferson Bank & Trust Co.*, 464 S.W.3d 177, 189 (Mo. banc 2015); *Ballard v. City of Creve Coeur*, 419 S.W.3d 109, 117 (Mo. App. E.D. 2013). Moreover, contrary to Appellants' assertion (App. Br. 55), *City of Monett* did involve laches. *See* 407 S.W.3d at 638-41. Aside from these arguments, Appellants repeat their prior arguments regarding supposed "new rights" created in the 2016 amendment to Section 66.620, though again, that amendment is irrelevant to Appellants' current claims. All of Appellants' claims have existed since 1988.

The trial court correctly concluded that Appellants' 26-year delay in commencing this action bars them from advancing it now. As such, the Circuit Court's Final Judgment

in favor of Intervenor-Defendants / Respondents and Defendants / Respondents on Appellants' Counts I-IV should be affirmed.

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CONCLUSION

In the past 40 years, there have been three lawsuits involving the County Sales Tax Law. Chesterfield has been front and center in each of them. First, Chesterfield unsuccessfully challenged the constitutionality of the County Sales Tax Law twenty-eight years ago. Then, five years later, Chesterfield successfully defended the constitutionality of the same law (after it was amended to provide Chesterfield with a greater share of tax revenues). Finally, Appellants now apparently believe it is again in their economic interests—regardless of the consequences—to challenge the constitutionality of the same statute. The law does not permit such conduct. The law does not permit parties to spread out legal challenges to the same law over various litigations decades apart, take contrary positions in subsequent proceedings, or wait decades to assert alleged rights, to the detriment of all others (here, every resident of St. Louis County, about whose well-being Appellants apparently care little). In any event, substantively, Appellants' special law challenges, no matter how cloaked or styled, all fail.

Applying longstanding precedent, this Court should affirm the Circuit Court's Final Judgment in favor of Intervenor-Defendants / Respondents and Defendants / Respondents on each of Appellants' Counts I-IV.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies, pursuant to Missouri Supreme Court Rule 84.06(c), that this Brief complies with Rule 55.03 and the length limitations contained in Rule 84.06(b) in that there are 22,574 words in this Brief (except the cover, signature block, certificate of compliance, and certificate of service) according to the word count of Microsoft Word used to prepare this Brief.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Brief was served on registered counsel via the Missouri Courts e-filing System on July 27, 2018.

/s/ Robert J. Golterman

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