SC96862

IN THE SUPREME COURT OF MISSOURI

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

STATE RESPONDENTS' BRIEF

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INTRODUCTION

The General Assembly passed the County Sales Tax Law in 1977, authorizing counties over a certain population (then and now satisfied only by St. Louis County) to collect a countywide sales tax. § 66.600, RSMo. Adopting the county tax abolished any pre-existing municipal sales taxes in the county. To minimize revenue disruption in those municipalities, the county sales tax was distributed differently in areas that previously had a sales tax (Group A) than in areas of the county that did not (Group B). § 66.620, RSMo.

Forty years later, Plaintiffs City of Chesterfield and Mayor Bob Nations ("Chesterfield") argue that the sales tax law and its distribution scheme were unconstitutional as enacted because they are "special laws" under Mo. Const. art, III, §40. Back then, what is now Chesterfield was an unincorporated area (and thus was an original beneficiary of the tax), so it is part of Group B. While the two statutes may currently operate to Chesterfield's perceived disadvantage, both statutes are, and have always been, general laws.

First, the County Sales Tax Law is a general law that classifies based on population. Classifications based on population are open-ended and so facially not special laws. Although this Court has modified this bright-line rule more recently, those modifications only apply prospectively to new laws, not to much older laws like this one. Authorizing a county sales tax is

rationally related to the legitimate interest of providing needed government services in counties with large unincorporated areas.

Second, the Group A and Group B distribution scheme is not a special law. The statute recognized that not all areas of a county would be similarly situated at the time a county tax is enacted. Group A municipalities would suddenly lose a key source of revenue, so the statute distributes the county sales tax to Group A differently, in order to minimize revenue disruption. Chesterfield does not have this revenue-disruption concern, and so it is not similarly situated to Group A areas. The distribution scheme is also a general law because it is indeterminate. Any historical fact that determines Group A or Group B status is determined *not* by state law, but by the county's decision to adopt the sales tax and the timing of that decision. Even then, both groups are open-ended. Group B is open-ended because new members may join from Group A, and Group A is open-ended because members may leave.

Even if the distribution scheme were a special law, it had a substantial justification. The distribution scheme ensures that sales tax revenue reaches smaller municipalities and large unincorporated areas in order to fund key government services there, while also minimizing revenue disruption in other areas of the county. The statute minimizes movement between Group A and Group B in order to minimize opportunistic and gerrymandering behavior as the formula governing distribution changes.

Third, the distribution scheme is not a special law that improperly regulates county affairs. It is not a special law and has a substantial justification for all the reasons described in the previous paragraph. In addition, it does not regulate county affairs. The sales tax law *broadens* rather than limits the county's discretion. Besides, the collection and distribution of sales tax falls squarely within the General Assembly's constitutional powers. Thus, it is a state matter, not a county matter.

Fourth, res judicata bars Chesterfield from raising these constitutional challenges. Chesterfield already challenged the County Sales Tax Law in 1990. Res judicata bars a party from raising an issue arising out of the same set of facts that it could have raised in earlier litigation. Chesterfield seek the same relief (Group A status); from the same party (the Director of Revenue); for the same reasons (increased sales tax revenue) as it did in 1990. It cannot now litigate claims that it failed to raise and preserve at the time. The equities strongly support this conclusion. After the distribution formula was changed in 1993, Chesterfield defended that formula from a challenge brought by Group A municipalities, and Chesterfield has substantially benefited from its Group B status over the last forty years. It is now barred from raising new claims that it failed to raise in prior litigation.

STATEMENT OF FACTS

I. The General Assembly authorized the county sales tax in 1977 and created Group A and Group B for distribution of tax revenues.

In 1977, the General Assembly authorized counties that met certain population conditions—conditions then and now only met by St. Louis County—to approve a one percent countywide sales tax. § 66.600, RSMo (1978); *Berry v. State*, 908 S.W.2d 682, 683 (Mo. banc 1995). Pursuant to the statute, approval of a countywide sales tax voids the sales tax of all municipalities in the county. § 66.600.1, RSMo (1978); *Berry*, 908 S.W.2d at 683. But the county distributes sales tax revenue differently depending on whether a municipality had a city sales tax at the time the countywide sales tax was adopted, "Group A" cities, § 66.620, RSMo; or a municipality or unincorporated area did not have a local sales tax at the time the countywide sales tax was adopted, "Group B" areas, *id*. *See generally*, *City of Chesterfield v. Director of Revenue*, 811 S.W.2d 375, 376 (Mo. banc 1991) ("*Chesterfield I*") (outlining the distribution scheme).

Group A and Group B serve as something of a "grandfathered" compromise. The distribution scheme minimized revenue disruption for municipalities in Group A while ensuring Group B areas a new revenue stream. Today, Group A receives sales tax revenue using a population and

point-of-sale formula. §66.620, RSMo. Group B receives sales tax revenue using a population-only formula. *Id*. In the abstract, belonging to one group is no better than belonging to the other group. But at any given point in time, a municipality may prefer one group or the other depending on whether it has more sales or more residents than the county average. To avoid opportunistic movement back and forth between the groups, a Group A municipality may elect to move to Group B, but cannot move back. § 66.620.7 RSMo. A Group B area cannot move to Group A, even if, as a 1984 Amendment made clear, a Group B area is annexed by a Group A municipality. § 66.620.7 RSMo.

II. As the distribution formula and county demographics have changed over the decades, members of Group A and Group B have alternately challenged the law, but this Court has upheld it each time.

To ensure a fair distribution between the two groups, the General Assembly has amended the distribution formula on several occasions. *Berry*, 908 S.W.2d at 683 (listing formula changes prior to 1993). These revisions, as well as demographic changes, have led to several legal challenges. St. Louis County municipalities often take sides in this litigation depending on current conditions. The City of Chesterfield, for instance, petitioned the Director of Revenue to move it to Group A back in 1990, and subsequently challenged the constitutionality of the statute's distribution scheme. *Chesterfield I*, 811

S.W.2d at 377. This Court ruled against Chesterfield on various grounds. *Id.* A few years later in 1993, the General Assembly revised the distribution formula, effectively shifting "a larger portion of the sales tax revenue from Group A to Group B." *Berry*, 908 S.W.2d at 683. This time, five municipalities from Group A challenged the law's constitutionality, arguing that the distribution scheme favored Group B. *Id.* This Court again upheld the statute. *Id.*

III. Today, St. Louis County uses sales tax revenue to provide needed government services throughout the county, and particularly in unincorporated areas.

St. Louis County government provides certain services to all county residents, such as the court system, public health, the jail, regional parks, and arterial roads. D 126 (Defendants' Statement of Uncontroverted Facts), p. 2 (¶2). In the 2016 budget for St. Louis County, revenues from the countywide sales tax constitute 24.7 percent of the general purpose revenues of St. Louis County's General Fund. D 126, p. 2 (¶4). Those revenues provide significant portions of the funding for services that benefit all St. Louis County residents, including police and the courts. *Id.* Major cost centers within St. Louis County's General Fund include Police: 40.3%, Public Works: 13.0%; Judicial Administration (Circuit Court and Family Court): 9.9%; and Justice Services (jail): 9.5%. D 106, p. 23 (¶95); D 155, p. 31.

St. Louis County government also provides additional "basic municipal services" to residents of unincorporated areas of St. Louis County, "including police, street maintenance, and zoning." D 126, p. 2 (¶3). Approximately 321,000 people live in unincorporated areas of the county. D 126, p. 2 (¶1).

Revenue from the countywide sales tax is also particularly important for some municipalities within the county. For example, the countywide sales tax provided 53.5% of General Fund Revenue for the City of Wildwood in 2015, and 32.7% of such revenue for Florissant. D 126, pp. 2-3 (¶5).

IV. In this case, the City of Chesterfield again challenged the 1977 County Sales Tax Law and its Group A / Group B distribution scheme, this time as "special laws."

On October 14, 2016, Chesterfield filed its Amended Petition, consisting of four counts. *See* D 100, pp. 13-17. In Count I, Chesterfield alleged that "Section 66.600, as adopted in 1977 and as amended in 1991, is a special law applying only to St. Louis County." D 100, p. 13 (¶47). Chesterfield contended that "[t]here is no substantial justification for the classification in Section 66.600… ." D 100, p. 13 (¶48). In the alternative, in Count II, Chesterfield alleged that § 66.600, RSMo, is a special law because its classification "lacks a reasonable basis." D 100, p. 14 (¶¶53, 54).

In Count III, Chesterfield challenged the 1984 amendment to § 66.620 RSMo. D 100, p. 9 (¶59). That Amendment provided:

> If any area of the unincorporated county elects to incorporate subsequent to the effective date of the county sales tax as set forth in sections 66.000 to 66.635 [now 66.630], the newly incorporated municipality shall remain a part of Group B.

1984 Mo. Laws 367; *see* §66.620.8 RSMo. Chesterfield alleged that § 66.620 is a special law because municipalities "in St. Louis County" that incorporated after that amendment to § 66.620 were unable to join Group A. D 100, p. 9 (¶37), p. 15 (¶58), p. 16, (¶59).

In Count IV, Chesterfield asserted that the Group A and Group B classifications in § 66.620 are closed classifications for which "there is no substantial justification. . . ." D 100, p. 17 (¶64). Under §66.620, all municipalities, annexed areas, and unincorporated areas of a county that has adopted the county sales tax authorized by §66.600 et seq. fit within either a Group A or a Group B classification for purposes of the County Sales Tax Law's distribution scheme. *See* § 66.620.2, RSMo.

V. The circuit court granted summary judgment.

The parties filed cross-motions for summary judgment. On November 29, 2017, the circuit court entered summary judgment in favor of the State, the Director of Revenue, and the Interveners. D 176, p. 10.

On Counts I and II, the circuit court held that the County Sales Tax Law in § 66.600 is not a special law. D 176, p. 1-4. Counties are authorized to

enact a county sales tax based on population, and population is an open-ended characteristic indicating a general law. *Jefferson County Fire Protection District Association v. Blunt*, 205 S.W.3d 866 (Mo. banc 2006), did not apply because § 66.600 was enacted long before that case, and, in the alternative, the statute satisfied its test. The court also found §66.600 satisfied rational-basis review.

On Counts III and IV, the circuit court held that the statute's distribution scheme in § 66.620 RSMo was not a special law either. D 176, p. 4-6. The distribution scheme included all who were similarly situated. Even if the scheme were a special law, the General Assembly had a substantial justification for it and for the 1984 amendment.

As to all four counts, the circuit court found that Chesterfield's challenge was barred by res judicata, judicial estoppel, collateral estoppel, and laches based on Chesterfield's previous litigation positions in *Chesterfield I* and *Berry*. D 176, p. 6-10. Chesterfield filed its notice of appeal on December 26, 2017. D 177.

ARGUMENT

In 1977, the General Assembly passed the County Sales Tax Law, which authorized counties that met certain population requirements to collect a sales tax. § 66.600, RSMo. It also provided for the distribution of that sales tax to Group A municipalities that previously had a sales tax in

place, and to Group B areas that did not. § 66.620, RSMo. In 1984, the General Assembly amended this law to clarify that Group B areas would remain in Group B, even if subsequently annexed or incorporated. § 66.620.7 & .8, RSMo. While these provisions may *currently* operate in St. Louis County to Chesterfield's perceived disadvantage, both the 1977 County Sales Tax Law and its Group A and Group B distribution scheme (as amended in 1984) have always been, and still are, general laws. In addition, Chesterfield's challenge to the distribution scheme is barred because Chesterfield could have raised it in prior litigation, but subsequently chose to defend the law and reap its benefits instead.

I. Section 66.600 RSMo. is an open-ended, general law and satisfies rational-basis review. (Responds to Point V)

Chesterfield first challenges the general provisions of the County Sales Tax Law, § 66.600, RSMo, charging that it is a special law under Mo. Const. art. III, §40. Apt. Br. at 81-91. When reviewing the constitutionality of a statute under Missouri Constitution art. III, §40, this Court begins by categorizing the law as general or special, and then applies the corresponding standard of review.

A. Section 66.600, RSMo, is a general law because it categorizes based on population, and was adopted long before this Court's 2006 *Jefferson County* decision.

The County Sales Tax Law is a general law based on open-ended population characteristics.

To determine whether a statute is a special law or a general law, the Court looks to whether the statute's applicability is based on opened-ended or closed-ended characteristics. *Alderson v. State*, 273 S.W.3d 533, 538 (Mo. banc 2009). A law based on open-ended characteristics is entitled to a presumption of constitutionality, *id.*, and is not a local or special law on its face, *id.*; *Treadway v. State*, 988 S.W.2d 508, 510 (Mo. banc 1999).

Section 66.600, RSMo, is a general law because it is based on open-ended characteristics. Since 1991, § 66.600 has authorized "any county of the first class having a charter form of government and having a population of nine hundred thousand or more" to adopt a countywide sales tax. § 66.600.1, RSMo. Both of the statute's classifications are open-ended. "Classifications based on population are open-ended and, therefore, they are generally presumed to be constitutional." *Jackson Cty. v. State*, 207 S.W.3d 608, 611 (Mo. banc 2006). County classification and charter status are also open-ended because they are subject to change. *Treadway*, 988 S.W.2d at 510-11.

The Court can and should end its analysis here, because § 66.600 has not been amended since 1991. This Court expressly limited the application of the three-factor test announced in *Jefferson County Fire Protection Districts Association v. Blunt*, 205 S.W.3d 866 (Mo. banc 2006), by which the presumption that a population-based classification is constitutional may be overcome, to "statutes passed after the date of" that opinion. *Id.* at 871; *Jackson Cty.*, 207 S.W.3d at 612. This Court should not now apply the *Jefferson County* analysis retrospectively, and at any rate, its factors are not met here. This Court's analysis of population minimums in *City of Normandy v. Greitens*, 518 S.W.3d 183 (Mo. banc 2017), is also limited to statutes passed after the date of that opinion, *id.* at 195-96, so § 66.600 is not facially special. Chesterfield's present challenge to a forty-year-old tax distribution scheme shows exactly why those cases only apply prospectively.

At any rate, Chesterfield's substantial justification argument with respect to § 66.600 is misplaced. The burden to show substantial justification is not triggered unless the challenged statute is facially special. *City of Normandy*, 518 S.W.3d at 196, *citing O'Reilly v. City of Hazelwood*, 850 S.W.2d 96, 99 (Mo. banc 1993) and *Bd. of Educ. of City of St. Louis v. Missouri State Bd. of Educ.*, 271 S.W.3d 1, 10 (Mo. banc 2008). Section 66.600 is not facially special because it is an open-ended law. *Glossip v. Missouri Dept. of Transp. et al.*, 411 S.W.3d 796, 808 (Mo. banc 2013).

B. Section 66.600 satisfies the rational-basis test.

The rational-basis test applies to statutes that are not facially special. *City of St. Louis v. State*, 382 S.W.3d 905, 915 (Mo. banc 2012). Under that test, a statutory "classification is constitutional 'if *any* state of facts can be reasonably conceived that would justify it.'" *Alderson*, 273 S.W.3d at 537 (emphasis added), *quoting Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 103 (Mo. banc 1997).

The circuit court correctly held that § 66.600 "is supported by a rational basis." D 176 at p. 2-4. In finding that Chesterfield had failed to meet its burden, the circuit court noted that St. Louis County, whose large, unincorporated areas are populated by more than 300,000 people, lacks a central city and contains 90 separate municipalities within its borders. *Id*. The parties did not dispute that St. Louis County "is responsible for providing municipal-type services, such as police, street maintenance, and zoning, to the unincorporated areas," as well as "services that benefit all residents of St. Louis County" including the courts, jail, and county-maintained roads. *Id*. Before § 66.600 was enacted in 1977, St. Louis County lacked authority to impose a sales tax. *Id*. Contrary to Chesterfield's assertion (*see* Apt. Br. at 87), St. Louis County would not be free to adopt a sales tax under the subsequently enacted § 67.500, because §67.500 et seq. specifies that it does not apply to any first class county adjoining a city not

within a county. *See* § 67.545, RSMo; *see also* §67.500(1), RSMo (defining "county").

Chesterfield has not met its burden of showing that the classification in §66.600 is arbitrary and "lacks a rational relationship to a legislative purpose." *Jackson Cty. v. State*, 207 S.W.3d 608, 612 (Mo. banc 2006). The statute provided St. Louis County with needed funds not otherwise available to it given its unusual geographic characteristics.

C. Chesterfield's remaining arguments should be rejected.

Chesterfield argues that the 1991 changes to the law, authorizing only charter counties with a population over 900,000 to approve a county sales tax, show that the law "target[s] St. Louis County to the exclusion of smaller counties like St. Charles County. Apt. Br. at 83-86. That argument is just a repackaged version of what this Court said in *Jefferson County*. In fact, it borrows directly from the *Jefferson County* factors. This Court should reaffirm that all pre-2006 classifications based on population are not special laws so long as the classification was "made on a reasonable basis." *Jefferson Cty.*, 205 S.W.3d at 870, *citing Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 831 (Mo. banc 1991). The "General Assembly's possible reliance" on this Court's earlier jurisprudence should not be disturbed. *Jefferson Cty.*, 205 S.W.3d at 871; *City of Normandy*, 518 S.W.3d at 195-196 & nn. 16-17. "'[T]he General Assembly is presumed to rely on this Court's prior decisions

interpreting statutes.'" *City of Normandy*, 518 S.W.3d at 196 n. 17 (*Templemire v. W&M Welding, Inc.*, 433 S.W.3d 371, 387-88 (Mo. banc 2014)).

Chesterfield also argues that *Jefferson County* should apply in this case, even though the relevant statutory provisions were enacted decades before the Court decided that case. *See* Apt. Br at 89-91. The city apparently contends that, because § 66.620 was repealed and reenacted in amended form in 2016, *Jefferson County*'s three-part test should govern. *Id.* This argument conflicts with § 1.120, which provides that "[t]he 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." § 1.120, RSMo. The 2016 amendment affected only subsections 4, 5, and 6 of § 66.620, and Chesterfield does not challenge those amendments in this case. *See* H.B. 1561, 98th General Assembly, Second Regular Session (2016).[1] The 2016 amendment did not alter the portions of § 66.620 to which Chesterfield objects, in particular § 66.620.2, which sets forth the Group A and Group B classifications. *See* § 66.620.2, RSMo. Thus,

[1] The amendment altered the subsection number of subsections 7-10 but did not alter the substance of those provisions. H.B. 1561, 98th General Assembly, Second Regular Session (2016). Chesterfield does not challenge those renumbered provisions in this case, and in any event these organizational revisions do not constitute a new legislative enactment. *See Dep't of Social Servs. v. Carroll Care Ctrs., Inc.*, 11 S.W.3d 844, 853 (Mo. App. W.D. 2000).

the provisions that Chesterfield challenges here were "the same as those of a prior law" and must "be construed as a continuation of such law and not as a new enactment." § 1.120, RSMo. That pre-existing law predates *Jefferson County* and thus must be reviewed under the pre-*Jefferson County* special-law standard. *See Jefferson Cty.*, 205 S.W.3d at 871 (limiting application of three-part test to "statutes passed after the date of this opinion," *i.e.*, November 21, 2006). *Jefferson County* does not apply to this case.

II. Section 66.620, RSMo, is not a special law, and even if it were, it has a substantial justification. (Responds to Point IV)

Chesterfield next argues that the Group A and Group B distribution scheme in § 66.620, RSMo, is a special law. Apt. Br. 62-80. The distribution scheme is also not a special law, and even if it were, it has substantial justification.

A. The Group A and Group B distribution scheme is not facially special.

The statute's Group A and Group B distribution scheme is not facially special for three reasons.

First, the Group A and Group B distribution scheme is a general law because it applies to all similarly situated entities. "'[A] law is not special if it applies to all of a given class alike and the classification is made on a reasonable basis.'" *Glossip*, 411 S.W.3d at 808 (quoting *Savannah R-III Sch.*

Dist. v. Pub. Sch. Retirement Sys. of Mo., 950 S.W.2d 854, 859 (Mo. banc 1997)). That is, a state law may treat differently entities that are *not* similarly situated.

At the time a county adopts a countywide sales tax, municipalities that already have a sales tax are not similarly situated to those municipalities and unincorporated areas that do *not* already have a municipal sales tax. Municipalities having a pre-existing sales tax will have relied on that revenue stream in the management of city finances. Indeed, many municipalities will have made long-term plans based on the expectation that they would continue to receive this important revenue stream. Abruptly halting that anticipated revenue stream would severely harm those municipalities. In contrast, the enactment of a countywide sales tax would not have any adverse effect on municipalities without a pre-existing sales tax. Because these two sets of municipalities are materially different and would experience substantially different effects from the enactment of a countywide sales tax under § 66.600, they are not "alike" and need not be treated identically. *Glossip*, 411 S.W.3d at 808. Chesterfield did not have a pre-existing municipal sales tax when St. Louis County enacted its countywide sales tax, and thus the enactment of that countywide tax—and the accompanying deprivation of revenue—did not affect Chesterfield in the same way as it affected municipalities with pre-existing sales taxes. As a result,

the Missouri Constitution does not require Chesterfield to be treated identically to those municipalities. *See Doe v. Phillips*, 194 S.W.3d 833, 849 (Mo. banc 2006) (holding that a statute covering sex offenders but not other violent criminals was not a special law, because sex offenders are not similarly situated to other violent criminals).

Second, the Group A and Group B classifications in the *state statute* are general because they are open-ended and are not based on immutable historical facts. The memberships of Group A and Group B are not "based on immutable characteristics fixed at the time of [the statute's] passage." *Id.* Instead, those categories depend on whether municipalities have pre-existing sales taxes "on the day prior to the adoption of the county sales tax ordinance." § 66.620.2, RSMo. Given that a county necessarily could not adopt such an ordinance until after the passage of § 66.620, the memberships of the Group A and Group B classifications necessarily depend on characteristics fixed *after* the enactment of the statute. Where classifications under a statute depend on historical facts that are determined *after* the law's enactment, the law is not facially special. *See Doe*, 194 S.W.3d at 849 (holding that a statute was not a special law where it was "not based on immutable characteristics fixed at the time of its passage"). The "historical fact" that populates Group A and Group B is *St. Louis County's* adoption of a countywide sales tax on October 4, 1977. *See* Apt. Br. 69-70. But that

"historical fact" was *not* "fixed at the time of [§ 66.620's] passage" and thus does not render the statute a special law. *Doe*, 194 S.W.3d at 849. Section 66.620 is a general law. *Id.*

Similarly, the distribution scheme is open-ended because counties could take action in the future. Another charter county, such as Jackson County, could adopt the countywide sales tax established by § 66.600 once it achieved the requisite population. That decision—by Jackson County—would create a new set of Group A municipalities. Or St. Louis County may repeal its countywide sales tax, and re-adopt it several years later. Both actions could change the makeup of Group A and Group B, once again showing that membership in those groupings is open-ended and determined by county action, not by state action.

Third, the distribution scheme is a general law because any Group A member, including any Group A member in St. Louis County, may exit Group A and join Group B. § 66.620.7, RSMo. "Classifications are open-ended if it is possible that the status of members of the class could change." *Glossip*, 411 S.W.3d at 808*, citing Harris v. Missouri Gaming Comm'n*, 869 S.W.2d 58, 65 (Mo. banc 1994). Laws based on closed-ended characteristics are "facially special because others cannot come into the group *nor* can its members leave the group." *City of DeSoto v. Nixon*, 476 S.W.3d 282, 287 (Mo. banc 2016) (emphasis added). A law can be open-ended even if a class member is unable

to exit a class, so long as more members may enter the class. Outside the special law context, a class of beneficiaries is open if others may join the class, regardless of their current legal status (e.g., children who may be adopted in the future) or even whether they have been born. *See e.g. Rouner v. Wise*, 446 S.W.3d 242, 245 (Mo. banc 2014); *see e.g. Bank One, Youngstown, N.A. v. Heltzel*, 602 N.E.2d 412, 414-15 (Ohio Ct. App. 1991). That principle applies here. Group B is an open-ended class because others can come into the group. *DeSoto*, 476 S.W.3d at 287. Group A is an open-ended class because its members may leave. *Id.* Section 66.620is not facially special.

Chesterfield also contends that the County Sales Tax Law, Section 66.600, RSMo., et seq., "targets" municipalities within St. Louis County by specifically keeping entities like Chesterfield out of Group A. Apt. Br. 63. Far from targeting Group B areas for unfavorable treatment, the County Sales Tax Law was specifically designed to benefit them, because they could not receive sales tax revenue before the law was adopted. As for the *incorporated city* of Chesterfield, it could not have been "targeted" because it did not exist until 1988. As explained below, the law logically prevents entities from freely switching between groups in order to prevent opportunistic behavior.

Finally, the distribution scheme in Section 66.620 is not arbitrary or wholly irrational. Chesterfield did not meet its burden of showing that the Group A and Group B classifications lack "'a rational relationship to a

legislative purpose.'" *See City of St. Louis*, 382 S.W.3d at 915 (*quoting Jefferson Cty.*, 205 S.W.3d at 870). As explained below, those classifications satisfy the substantial-justification test, and so surely satisfy rational-basis review.

B. If the Court finds that a classification in Section 66.620 is facially special, the statute is constitutional because there is a substantial justification for the Group A and Group B classifications.

Even if § 66.620 were found to be facially special due to the manner in which it describes Group A or Group B, it would still be constitutional unless there "was no substantial justification for creating the class." *City of Sullivan v. Sites*, 329 S.W.3d 691, 694 (Mo. banc 2010).

The budgets of entities that provide municipal services, and the budgetary/revenue impact of not placing limits on a statute governing taxation, can be a substantial justification for a facially special law. *See Union Elec. Co. v. Mexico Plastic Co.*, 973 S.W.2d 170, 174 (Mo. App. E.D. 1998). In *Mexico Plastic Co.*, the classification in the ordinance was a reasonable limitation that balanced economic development incentives with the need for "sound municipal revenue" that would benefit the community at large. *Id.* Here, the Group B classification is justified by the need for predictable and sound revenue streams that benefit the residents of Group B

and provide significant percentages of the funding for services that benefit all county residents, such as police protection and the courts. The limitations upon movement between Group A and Group B are reasonable means of advancing those objectives and maintaining sustainable funding for municipal-type services in Group B areas.

The Group A and Group B distribution scheme also discourages opportunistic behavior such as annexations or gerrymandering that are primarily or solely motivated by the sales tax distribution formulas in effect at a particular time. The distribution scheme, and corresponding sales tax revenue distribution formulas, are also supported by the fact that "[b]efore the advent of the county sales tax, most Group A municipalities had a city sales tax, but most Group B municipalities did not." *Berry*, 908 S.W.2d at 683. When the voters of St. Louis County adopted the countywide sales tax under § 66.600, the existing city sales taxes within St. Louis County were rendered "void" so long as the countywide sales tax was in effect. § 66.600.1. In other words, Group A cities received proceeds from the countywide sales tax as provided by the statutory distribution formulas in place of their prior city sales tax revenue streams, while Group B cities and unincorporated areas gained a new source of revenue and benefited from additional St. Louis County funding becoming available to provide services to residents in Group B areas.

Like the class of new sewer connections at issue in *City of Sullivan v. Sites*, 329 S.W.3d 691, 693 (Mo. banc 2010), the creation of Group B, as well as Group A, contemplated at least one "important governmental function." *Id.* at 694-95. The impact of the Group B class, like the class in *Sites*, extends beyond the geographic limits of the municipalities and unincorporated areas that presently comprise the class. 329 S.W.3d at 695. The countywide sales tax law, § 66.600 *et seq.*, has been an important component of the efforts of St. Louis County to provide quality, necessary services to residents, including the provision of "basic municipal-type" services such as police and public works to unincorporated areas. D 126, p. 2 (¶3). The countywide sales tax also provides the majority of General Fund revenue for Wildwood (a member of Group B), and significant portions of such revenues for various members of Group A and St. Louis County. Contrary to Chesterfield's allegations, Apt. Br. 70-79, there is substantial justification to support the Group B classification.

III. Section 66.620, RSMo, does not violate the prohibition against special laws regulating the affairs of counties. (Responds to Point VI)

Chesterfield's Point VI tries to make a separate "special law" argument that the law's distribution scheme "regulat[es] the affairs of counties." Mo. Const. art. III, § 40(21). Apt. Br. 92-103. This argument is mistaken on several different grounds. No matter what subdivision of § 40 Chesterfield

cites, the distribution scheme is still not a "special law" and is still supported by a substantial justification, as explained in the previous section. In addition, the sales tax law grants *more* county discretion, not less. Further, sales tax and distribution fall squarely within the General Assembly's enumerated powers, and so they relate to state affairs, not county affairs.

The first step of the analysis—under either § 40(30) or under § 40(21)—is whether the law is a special law, and if so, whether it is supported by a substantial interest. *City of St. Louis*, 382 S.W.3d at 914. "Section 40 sets out 29 separate subject matters about which the legislature may not pass local or special laws and then provides a catch-all provision in subdivision (30)." *Id.* at 913. In *City of St. Louis*, this Court found the statute was not a special law because it was based on open-ended characteristics, and on that basis rejected arguments under *both* § 40(30) and § 40(21). *Id.* at 915. Accordingly, the Court should reject Chesterfield's Point VI argument under § 40(21) for all the reasons it should reject Chesterfield's Point IV argument under § 40(30)—either way, the sales tax distribution scheme is not facially special, and even if it were, the General Assembly had substantial justification.

Chesterfield's Point VI argument under § 40(21) is also mistaken because the County Sales Tax Law grants counties *more* discretion, not *less*. Far from interfering in county affairs, that law *authorizes* counties to adopt a county sales tax following a specific collection and distribution scheme.

§ 66.600, RSMo. The law does not *impose* that tax on any county. St. Louis County has a sales tax only because its voters approved it. That authorization has very few strings attached. The County Sales Tax Law does not, for example, require tax revenues to provide any specific service to residents of unincorporated areas or municipalities within the county. Nor does it affect such counties' exercise of functions once provided by municipalities or other political subdivisions. The County Sales Tax Law has no impact upon charter counties' exercise of legislative powers pertaining to local services or functions. *See Chesterfield Fire Prot. Dist. of St. Louis Cty. v. St. Louis Cty.*, 645 S.W.2d 367, 371-72 (Mo. banc 1983).

In addition, Chesterfield's Point VI argument under § 40(21) is mistaken because authorizing the collection and distribution of sales tax is a *state* matter, not a county matter. Taxing power is vested in the state legislature. *State ex rel. Emerson v. City of Mound City*, 73 S.W.2d 1017, 1025 (Mo. banc 1934); *Whipple v. City of Kansas City*, 779 S.W.2d 610, 613 (Mo. App. W.D. 1989). The Missouri Constitution "expressly grants the General Assembly control of local sales taxes." *Berry*, 908 S.W.2d at 684. That control extends to the county sales tax authorized by §66.600. *See id.* at 683, 684. While "counties and other political subdivisions" sometimes exercise the taxation power, they do so only insofar as that power is "granted to them by the general assembly." Mo. Const. art. X, § 1. This is true in charter counties

too. Article VI, § 18(d) provides: "The county shall only impose such taxes as it is authorized to impose by the constitution or by law." Mo. Const. art. VI, § 18(d). After all, charter counties remain "legal subdivision[s] of the state." *Mo. Bankers' Ass'n v. St. Louis Cty.*, 448 S.W.3d 267, 272 (Mo. banc 2014), *citing Casper v. Hetlage*, 359 S.W.2d 781, 784 (Mo. 1962).

The same is true of tax distribution. The General Assembly has "full power to direct what should be done with the taxes" collected in any county, and may provide for the disbursement or distribution of those tax revenues to one or more municipalities. *Billings Special Rd. Dist. v. Christian Cty.*, 5 S.W.2d 378, 382 (Mo. 1928), *quoting City of Hannibal v. Cty. of Marion*, 69 Mo. 571, 577 (Mo. 1879). The legislature delegates taxing power to legal subdivisions of the state, and ultimately retains control over local sales taxes. *Berry*, 908 S.W.2d at 685.

Unless restricted by the Constitution, "'the legislature has full power and control over the disposition of'" tax revenues. *St. Louis Cty. v. University City*, 491 S.W.2d 497, 499 (Mo. banc 1973) (citation omitted). Thus, the County Sales Tax revenues do not belong to St. Louis County, or to any municipality to which the General Assembly has chosen to allocate a portion of the revenues from that tax. Money that a county acquires by taxation "'is not the private property of any county or school district, but is the property of the state, which may be used for any public purpose the Legislature may

deem wise.'" *School Dist. of Kansas City v. State*, 317 S.W.3d 599, 606 (Mo. banc 2010), *quoting State ex rel. Clark v. Gordon*, 170 S.W. 892, 895 (Mo. banc 1914).

Accordingly, the General Assembly has "full power to direct what should be done with the taxes" collected in any county. *Billings Special Rd. Dist.*, 5 S.W.2d at 382, *quoting City of Hannibal v. Cty. of Marion*, 69 Mo. 571, 577 (Mo. 1879). The legislature has authority to enact legislation distributing county taxes to one or more municipalities. *City of Hannibal v. Cty. of Marion*, 69 Mo. 571, 577 (Mo. 1879). And the wisdom of the legislature's judgment regarding the distribution of county tax revenues, or whether that distribution operates "justly or unjustly," is not a matter for this Court's determination. *City of Hannibal*, 69 Mo. at 576-77; *see St. Louis Cty.*, 491 S.W.2d at 499.

Against all this, Chesterfield points to precedent recognizing the authority of county commissions (formerly county courts) to manage county property and finances. *See* Apt. Br. at 97-98; *State ex rel. Bucker v. McElroy*, 274 S.W. 749, 751, 752 (Mo. 1925). County courts' power to transact county business was understood to mean the control of all county property." *State ex rel. Bucker v. McElroy*, 274 S.W. at 752. But the County Sales Tax revenues are not "county property." *School Dist. of Kansas City*, 317 S.W.3d at 606. The County Sales Tax Law does not regulate charter counties' control of

county property. The County Sales Tax Law does not impinge upon charter counties' management of real property or administration of county funds.

The challenged statutes do not violate article III, section 40(21) of the Missouri Constitution.

IV. Chesterfield did not raise and preserve its special-law challenges to § 66.620, RSMo, in *Chesterfield I*, and so should be barred from raising them now. (Responds to Points I-III)

Chesterfield's challenge to § 66.620, RSMo, is also barred by res judicata. Chesterfield cannot use this suit to raise constitutional claims that it failed to preserve before the Administrative Hearing Commission in 1990.

The City of Chesterfield was incorporated in 1988. *Chesterfield I*, 811 S.W.2d at 377. In 1990, Chesterfield asked the Director of Revenue "to begin distribution to it on a point of sale basis as opposed to a population basis"—in effect, that the Director move it from Group B to Group A. *Id.* The Director denied the request, and the Administrative Hearing Commission affirmed the denial. *Id.* Chesterfield only appealed the denial on constitutional grounds. This Court denied two of those constitutional claims on standing and the third claim because it was not preserved before the Commission. *Id.* The Court observed, "[t]he general rule is that constitutional questions are deemed waived that are not raised at the first opportunity consistent with good pleading and orderly procedure." *Id.* at 378.

Chesterfield's new constitutional claims in this suit are barred for the same reason: Chesterfield did not plead them before the Commission in 1990. Res judicata (claim preclusion) bars a party from "later raising a claim stemming from the same set of facts that should have been raised in the first suit" when the first suit was "adjudicated by a final judgment on the merits." *Johnson Controls, Inc. v. Trimmer* 466 S.W.3d 585, 591 (Mo. App. W.D. 2015); *Kesterson v. State Farm Fire & Cas. Co.*, 242 S.W.3d 712, 715 (Mo. banc. 2008) ("Claim preclusion also precludes a litigant from bringing, in a subsequent lawsuit, claims that *should* have been brought in the first suit.").

This suit and *Chesterfield I* both arise out of the same "'group of operative facts.'" *Chesterfield Village, Inc. v. City of Chesterfield*, 64 S.W.3d 315, 318 (Mo. banc 2002) (citation omitted). Chesterfield seeks the same relief (Group A status); from the same party (the Director of Revenue); for the same reasons (increased sales tax revenue). Although the "evidentiary details" may have changed, the same "ultimate facts" form the basis of both suits—namely, Chesterfield's classification as a Group B municipality under § 66.620, RSMo. *See Kesterson*, 242 S.W.3d at 716. Chesterfield specifically argues that its Group B status is an "immutable" and "historical fact" that existed as of "October 3, 1977." Apt. Br. 69-70. Chesterfield cannot have it both ways. Either the ultimate facts are the same, in which case the claim should have been brought in 1990 before the Commission, or the ultimate

facts are different, in which case Chesterfield's special-law challenge must fail because those facts are not immutable.

Chesterfield I also reached final judgment on the merits. An adjudication by an administrative agency may constitute a judgment on the merits that will preclude parties from relitigating a claim or issue. *See Jones v. Dir. of Revenue*, 981 S.W.2d 571, 575 (Mo. banc 1998). The Commission denied Chesterfield's request to move to Group A on the merits. *Chesterfield I*, 811 S.W.2d at 377. The underlying facts of that merits decision were the same as in this case. While it is true that this Court did not litigate *constitutional* claims on the merits in *Chesterfield I*, that distinction is not relevant to res judicata. To determine if res judicata applies, "a court must look to the factual bases for the claims, not the legal theories." *Kesterson*, 242 S.W.3d at 716. The factual bases are the same, so res judicata applies.

Although res judicata most clearly establishes that Chesterfield's suit is barred, the equitable principles behind related doctrines like judicial estoppel and laches also strongly support dismissal of Chesterfield's challenges to §66.620RSMo. Cities like Chesterfield have been aware of their Group B status under § 66.620 for decades. *See* § 66.620.8, RSMo; 1984 Mo. Laws 367. Like the plaintiffs in *Willits v. Peabody Coal Co., LLC*, 400 S.W.3d 442, 449 (Mo. App. E.D. 2013), Chesterfield has had multiple opportunities to raise special-law challenges to § 66.620 in previous litigation, but it did not.

Instead, it has defended and benefited from the law. Chesterfield defended the 1993 distribution formula in *Berry* against constitutional challenges brought by Group A municipalities. *Berry*, 908 S.W.2d at 683 (noting Group A challenge). Since then, Chesterfield has accepted millions of dollars in sales tax revenue under a statutory formula that was favorable to it for years. It cannot reverse course now, according to the exigency of the moment, and raise a constitutional challenge to §66.620 that it has repeatedly waived over the years. *Willits*, 400 S.W.3d at 449, 453.

Res judicata should bar suits like this one. The doctrine is meant to "'prevent a multiplicity of suits and appeals" arising out of the same facts, and to "protect defendants against fragmented litigation, which is vexatious and costly.'" *Kesterson*, 242 S.W.3d at 716. That Chesterfield's litigation is fragmented across several decades should not change this Court's conclusion from *Chesterfield I*. Chesterfield cannot bypass the administrative process in this case by raising claims that it failed to raise and preserve at the first opportunity before the Administrative Hearing Commission in 1990.

CONCLUSION

For these reasons, the State and Director of Revenue respectfully request that this Court affirm the circuit court's grant of summary judgment in their favor.

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