SC97913

IN THE SUPREME COURT OF MISSOURI

MISSOURI COALITION FOR THE ENVIRONMENT, et al.,

Appellants,

v.

STATE OF MISSOURI,

Respondent.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Circuit Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

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ARGUMENT

This Court ordered the parties to submit supplemental briefs analyzing the impact of the Court's recent *City of Aurora v. Spectra Communications Group* (SC96276) and *City of Chesterfield v. State of Missouri* (SC96862) decisions on Appellant's claim that Senate Bill 35 (2017) is an unconstitutional special law. In those cases, the Court held that a challenged classification in a law must survive merely the rational-basis test for the law to be constitutional; a party defending a law no longer needs to demonstrate a "substantial justification" for the law. *City of Aurora*, Slip Op. at p.12. Under this Court's clarified special-law framework, SB 35 clearly survives the lower level of scrutiny applied in rational-basis review.

I. SB 35 is not subject to a special-law analysis because it is a bill that applies only to state agencies and issues of statewide concern.

As the State argued in its Respondent's brief, this Court need not engage in a special-law analysis for two reasons. Those arguments are not affected by the *City of Aurora* or *City of Chesterfield* decisions, because those cases involved laws that on their face included a classification and concerned local issues. First, this Court has held that laws having statewide application do not produce the problems that the Missouri Constitution's ban on special and local laws in Article III, § 40(30) were designed to prevent. *See Murray v. Mo. Highway & Transp. Comm'n*, 37 S.W.3d 228 (Mo. banc 2001); *Treadway v. State*, 988 S.W.2d 508, 511 (Mo. banc 1999); *see also State ex inf. Danforth ex rel. Farmers' Elec. Co-op., Inc. v. State Envtl. Improvement Auth.*, 518 S.W.2d 68, 75 (Mo. banc 1975) (Under Article III, § 40(28), "a law, being statewide in application, is neither local nor special.").

This Court has also held that the ban on special laws does not apply to public corporations, which includes state agencies. *See Casualty Reciprocal Exchange v. Missouri Employers Mutual Insurance Co.*, 956 S.W.2d 249 (Mo. banc 1997) (concluding that Article III, §§ 40(28) and 40(30) do not apply to a "public entity/public corporation"); *see also Cain v. Missouri Highways & Transp. Comm'n*, 239 S.W.3d 590, 595 (Mo. banc 2007) ("A public entity encompasses any state agency" for sovereign immunity purposes).

Second, Appellants contend that SB 35 improperly classifies state agencies based on whether they derive their authority to purchase land from the Missouri Constitution or from the Revised Statutes. But that classification is found nowhere in SB 35. This Court has held that a classification must impose an "inherent limitation [that] arbitrarily separates some persons, places or things from others upon which, but for such limitation, it would operate." *State ex inf. Barrett ex rel. Bradshaw v. Hedrick*, 241 S.W. 402, 407–08 (Mo. banc 1922). SB 35 enacted new public-notice requirements for the Department of Natural Resources *as well as* every agency on behalf of which the Office of Administration purchases land. By the bill's plain text, the power to purchase land is not a cleaver—or inherent limitation—that divides agencies from being included or excluded by SB 35. The bill imposes the same public-notice requirements upon multiple state entities deriving land-purchasing authority from different sources.[1]

[1] This assumes that Appellants are correct and the Department of Natural Resources does derive its land-purchasing authority from the Constitution. That question was not raised on appeal, and it is not necessary for this Court to decide because SB 35 is not a special law in the first instance.

II. Even if SB 35 were subject to the Missouri Constitution's prohibition on special laws, the bill passes the rational-basis test.

If this Court were to conclude that SB 35 is subject to a special-law analysis as a law of statewide application or that SB 35 contains a classification on its face, *City of Aurora* and *City of Chesterfield* provide additional grounds for upholding SB 35. In these decisions, this Court abrogated its previous cases that imposed a heightened burden on a party defending law to prove a substantial justification for the law. This Court clarified that the appropriate test is the rational-basis test: "if the criteria for a class in a statute was supported by a reasonable basis, then the statute is not a local or special law and the analysis should stop there." *City of Aurora*, Slip Op. at p.12. The thrust of these decisions is that "every law is entitled to a presumption of constitutional validity" by ensuring that laws are not subjected to unduly heightened scrutiny. *Id.*, Slip Op. at p.18.

The State argued in its Respondent's brief that SB 35 survives rational-basis review if the Court were to analyze the bill under that test. (Rep. Br. at pp. 40-43). The State cited *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822 (Mo. banc 1991) and other cases from this Court that suggested the rational-basis test is the appropriate inquiry for special-law challenges. This Court affirmed this line of cases in *City of Aurora* and *City of Chesterfield*, holding that "the test for 'special legislation' . . . 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 a suspect class is involved, i.e., where a rational basis test applies." *City of Aurora*, Slip Op. at p.13 (citing *Blaske* at 832). "Under rational basis review, this Court will uphold a statute if it finds a reasonably

conceivable state of facts that provide a rational basis for the classifications." *Id.* at 21-22 (citing *Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 378 (Mo. banc 2012)).

SB 35 survives rational-basis review for two principal reasons. First, requiring the DNR and the Office of Administration to provide public notice before purchasing certain land is a reasonable policy solution to the problem of lack of public awareness of these land purchases. SB 35's overall purpose was to promote governmental transparency in state agency land purchases. The General Assembly recognized an issue statewide concern—lack of public notice in advance of state agency land purchases—and saw fit to solve it by regulating the process by which most agencies purchase land. The General Assembly reasonably believed that an appropriate method of providing the public with notice of state agency land purchases was to effectively include virtually every state agency.[2] By including the DNR, the General Assembly desired that the public have more information about the land purchases that the state agency makes. It would be constitutional for the General Assembly to pass SB 35 if it included only the DNR and no other state agencies. Like this Court held in *City of Aurora* in upholding a statute's classification, SB 35 "was a rational effort by the legislature to impose a new policy." *City of Aurora*, Slip Op. at p.22. SB 35 contains the General Assembly's reasonable solutions to a public policy problem.

Second, if the issue in this case were narrowly construed to be the DNR's inclusion to the exclusion of the Conservation Commission and Highways and Transportation

[2] The Office of Administration purchases land for nearly every Missouri state agency.

Commissions, as Appellants contend, the DNR's inclusion is supported by a rational basis by virtue of its unique mission and responsibilities. This Court has held that the unique missions of Missouri's state agencies is a reasonable basis for including certain agencies in legislation. In *Murray*, this Court held that "there is no other entity similarly situated to the [highways and transportation] commission" because "no other entity that has authority over all state transportation programs and related facilities as provided by law." 37 S.W.3d at 237. The DNR's unique constitutional mission for which it uses land is a reasonable basis for including the agency in SB 35.

The DNR's constitutional mission is to promote "environmental control and the conservation and management of natural resources." Mo. Const. Art. IV, § 47. The Conservation Commission manages lands of different sizes and for different purposes, and has a different constitutional mission, than the DNR. *See* Mo. Const. Art. IV, § 40(a). The mission of the Highways and Transportation Commission is limited to transportation. *See* Mo. Const. Art. IV, § 29; *Murray*, 37 S.W.3d at 237. Thus, the DNR's mission and uses of land are distinct from the Conservation Commission or the Highways and Transportation Commission.

The DNR also has unique statutory obligations. Here, SB 35 requires most Missouri state agencies to provide public notice before purchasing land larger than 60 acres or exceeding $250,000. Between the DNR and the Office of Administration, these agencies purchase most land on behalf of the State of Missouri and its agencies. For its part, the DNR has the sole authority to purchase land for the state park system. *See* § 253.040.

The General Assembly has specifically tasked the DNR, through Chapter 253, with the responsibility of administering the State Parks and Historic Preservation Act and the federal National Historic Preservation Act. § 253.010 –.022. These two acts have distinct missions that the DNR alone is authorized to advance. And the DNR is authorized to purchase land in order to administer these Acts. § 253.040. The Acts do not give other state agencies the authority to purchase land to advance the Acts' purposes.

Thus, the DNR's mission and uses of land are distinct from the Conservation Commission and the Highways and Transportation Commission. Under *Murray*, the mission of an agency is not an arbitrary or irrational classification in deciding which agencies will be tasked to implement the General Assembly's solutions to an issue of statewide concern. The Constitution and General Assembly designated certain powers to the DNR, such as buying state park land, and the General Assembly reasonably decided that the DNR should accomplish its unique mission by informing the public before it purchases certain property. The General Assembly has the common law prerogative to manage the affairs of state government by setting the rights and responsibilities of specific state agencies. In light of the lower level of scrutiny applied to special-law challenges in light of *City of Chesterfield* and *City of Aurora*, SB 35 passes the rational basis test.

III. SB 35 is a general law, and no other law general law could practically be made applicable.

In *City of Aurora*, this Court discarded previous caselaw that improperly "'conflate[d] the question of whether the local or special law at issue was one 'where a general law could be made applicable' under section 40(30) with the question of whether

that local or special law was substantially justified." Slip Op. at p.20. Instead, this Court clarified that there is a two-step inquiry. The party challenging the law must demonstrate "(a) the statute is a local or special law and (b) a general law can be made applicable." Slip Op. at p.11.

As discussed above, SB 35 is not a special law for several reasons. Even if it did contain the purportedly-impermissible classification that Appellants contend, that classification was supported by a rational basis. In *City of Aurora*, this Court noted that "[i]t bears repeating that, if a law excludes one or more persons or places from its effect but the exclusion is supported by a rational basis, the law is not a local or special law and article III, section 40 does not apply. Said another way, a law for which there is a rational basis between those persons or places included and those excluded is a general law." Slip Op. at n.11. Thus, SB 35 is a general law.

But even if this Court were to hold that SB 35 is a special law, SB 35 still passes muster as a general law. In *Hedrick,* this Court held that "the General Assembly has passed laws relative to separate, distinct, special subjects, and creating separate and distinct offices." 241 S.W. at 408. Such laws do not violate the Constitution's ban on special legislation even though theoretically "a general law applicable to all appointive state officers could easily have been passed." *Id.* The same is true here. Theoretically, the General Assembly could have passed a law pertaining to all state agencies. That is a not a workable legislative solution.

As discussed in *Hedrick* and Respondent's brief, the General Assembly frequently passes dozens of bills each year that specifically mention one or more state agencies.

Declaring SB 35 unconstitutional would cast doubt on the constitutionality of other bills that regulate particular state agencies—and other bills, like SB 35, that regulate most state agencies. Thus, the General Assembly would be prohibited from considering the appreciable differences and distinct constitutional and statutory missions of the agency members of the executive branch; all agencies must be treated identically in all respects with land purchasing. Such a holding from this Court would inevitably require the General Assembly to pass all state agency-related legislation that pertains to all state agencies. That would be unprecedented, legislatively unworkable, and unsupported by history and this Court's case law.

Appellant's other suggestion is that the General Assembly could have passed one bill pertaining only to the Office of Administration (and therefore all the state agencies for which that agency purchases land), and a separate bill pertaining only the DNR, the Conservation Commission, and the Highways and Transportation Commission. But passing two separate bills would not make SB 35 more "general"; indeed, by eliminating the DNR from the bill and placing it in a separate bill, each bill would pertain to fewer state agencies. And in other contexts, this Court has often declined to interpret Article III so narrowly as to require passing many bills that address identical subjects. *State ex rel. Attorney Gen. v. Miller*, 13 S.W. 677, 678 (Mo. 1890) (in the single-subject context, "[a] very strict and literal interpretation would lead to many separate acts relating to the same general subject, and thus produce an evil quite as great as the mischief intended to be remedied."); *Am. Eagle Waste Indus., LLC v. St. Louis Cty.*, 379 S.W.3d 813, 826 (Mo. banc 2012) (same). Therefore, SB 35 is already a law that meets this Court's guidance on

what constitutes a permissible general law. No other general law could practically be made applicable.

CONCLUSION

For these reasons, this Court should affirm the judgment of the Circuit Court of Cole County and find that SB 35 is not an unconstitutional special law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above was filed electronically under Rule 103 through Missouri Case Net, on this 13th day of January, 2020.

/s/ Jason K. Lewis

CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that the above brief complies with the limitations in Rule 84.06(b) in that excluding the cover, certificates of service and compliance, and signature blocks, the brief contains 2,682 words.

/s/ Jason K. Lewis