IN THE SUPREME COURT OF MISSOURI

No. SC 98998

CITY OF NORMANDY, et.al.

Appellants

v.

MICHAEL L. PARSON, in his official capacity
as Governor of Missouri, et al.

Appellees

Appeal from the Circuit Court of Cole County
Honorable Jon Beetem, Circuit Judge
Cause No. 15AC-CC00531-01

Brief of Appellants

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JURISDICTIONAL STATEMENT

In *City of Aurora v. Spectrum Communications Group, LLC*, 592 S.W.3d 764, 779-782 (Mo. banc 2019), the Supreme Court adopted a "rational basis" test for special law challenges where "a reasonably conceivable state of facts . . . provide a rational basis for the [statutory] classifications." *Id*. at 781. As a result of the *Aurora* decision, the State moved to dissolve the injunction previously entered enjoining enforcement of Sections 67.287 and 479.359, RSMo against the municipalities in St. Louis County predicated on the Supreme Court's non-rational basis test decision in *City of Normandy v. Greitens*, 518 S.W.3d 183, 195-197 (Mo. banc 2017).[1] [D162-166].[2]

The State's motion was based upon its contention that both statutes satisfied the rational basis test and hence were constitutional. [*Id*.] Plaintiffs opposed the State's motion on the ground that both statutes failed to satisfy the *Aurora* rational basis test. [D168].

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[1] Sections 67.287 and 479.359 are annexed hereto in Appendix A at A1-A15.

[2] The Legal File has been docketed under two Circuit Court docket numbers: 15AC-CC00531 and 15AC-CC00531-01. Even though the filings under 15AC-CC00531-01 occurred after the filings under 15AC-CC00531, the filings under 15AC-CC00531-01 [document nos. 152-161] precede in the Legal File the filings under 15AC-CC00531 [document nos. 162-169]. In any event, all filings in the Legal File cited in this Brief will start with a "D" and be followed by the document filing number.

On December 1, 2020, the Circuit Court entered an Order and Judgment holding that both statutes satisfied the rational basis test and dissolving the previously entered injunction. [D155]. On December 10, 2020, Plaintiffs filed a motion to amend the Order and Judgment to extend the statutory deadlines in Sections 67.287 and 479.359 in accordance with the pendency of the prior injunction. [D156]. The State opposed the motion. [D157]. The Circuit Court did not rule on Plaintiffs' motion within 90 days of its filing, thereby leaving in place its Order and Judgment as initially filed.

Accordingly, this appeal involves: (1) whether Sections 67.287 and 479.359 fail to satisfy the rational basis test and remain unconstitutional special laws; and (2) if they do satisfy the rational basis test, whether their statutory deadlines should be extended to reflect the pendency of the prior injunction. Thus, this Court has jurisdiction of this appeal pursuant to Article V, Section 3 of the Missouri Constitution which provides "[t]he supreme court shall have exclusive appellate jurisdiction in all cases involving the validity . . of a statute or provision of the constitution of this state."

STATEMENT OF FACTS

A. SB 5

On May 7, 2015, the Missouri General Assembly passed and, on July 9, 2015, the Governor of Missouri signed Senate Bill No. 5 ("SB 5"). SB 5 Sections 479.359.1 and 479.359.2 expressly provided that municipalities within "any county with a charter form of government and with more than nine hundred fifty thousand inhabitants" could not retain their "fines, bond forfeitures, and court costs" arising out of "minor traffic violations" if they exceeded **12.5%** of their "annual general operating revenue." [Brief Appendix ("App.")] at A8. At the time that SB 5 was passed and signed, both the General Assembly and the Governor knew that the only county in Missouri with a charter form of government and more than 950,000 inhabitants was St. Louis County. In contrast to the municipalities in St. Louis County, all of the municipalities in Missouri's other 113 counties could retain their "fines, bond forfeitures, and court costs" arising out of "minor traffic violations" up to **20.0%** of their "annual general operating revenue." *Id*.

In addition to this discrimination addressed solely to the municipalities located in St. Louis County, pursuant to SB 5 Section 67.287.2, only the municipalities located in St. Louis County were required to have an accredited or certified police department, an annual audit by a certified public accountant and a comprehensive cash management and accounting system. [App. at A1-A2].

B. The First Appeal

In November 2015, twelve municipalities located in St. Louis County and two taxpayers residing therein filed a Verified Petition for Declaratory Judgment and Preliminary and Permanent Injunction (the "Petition"). The Petition contained nine counts which alleged, on different grounds, that SB 5 violated the Missouri Constitution. The Petition and an accompanying motion sought a declaratory judgment and a preliminary and permanent injunction enjoining the enforcement of SB 5. *Normandy*, 518 S.W.3d at 188, 190.

The Cole County Circuit Court entered a judgment, *inter alia*, declaring Section 67.287's provision of minimum standards only for the St. Louis County municipalities and section 479.359's provision of a lower 12.5% cap only for the St. Louis County municipalities unconstitutional special laws. Pursuant to its declaratory judgment, the Cole County Circuit Court entered a permanent injunction enjoining the State from enforcing Sections 67.287 and 479.359.2. *Id.* at 190.

On appeal, this Court affirmed the trial court predicated on Plaintiffs' satisfaction of this Court's *Jefferson County* three-prong test and the State's failure to offer any evidence of a substantial justification for SB 5. *Id.* at 192-197. As held by this Court in *Normandy*, Sections 67.287 and 479.359.2 "clearly targeted St. Louis County [municipalities] and excluded all other political subdivisions." *Id.* at 195. This Court then held that, as presumed special laws, Sections 67.287 and

479.359.2 could "survive constitutional infirmity [only] if the State offer[ed] evidence of a substantial justification" for them. *Id*. at 196. Since the State had conceded it had not presented any evidence of substantial justification, this Court held that Sections 67.287 and 479.359.2 were unconstitutional special laws and affirmed the trial court's entry of the permanent injunction. *Id*. at 197.

C. This Second Appeal

1. This Court's *Aurora* Decision

Two years later, this Court decided *Aurora* and rejected its *Normandy* decision, holding:

> Particularly, article III, section 40 suggests neither that certain special laws are presumptively constitutionally invalid nor that such a presumption may be overcome if the limitation of the law's application is supported by a "substantial justification." Rather, every law is entitled to a presumption of constitutional validity in this Court, and if the line drawn by the legislature is supported by a rational basis, the law is not local or special and the analysis ends.
>
> * * *
>
> In shifting the burden of proof to the party defending the constitutional validity of the law to offer a "substantial justification," this Court has converted the burden of persuasion that ordinarily applies to a party charged with showing a lack of rational basis in a constitutional context into a mandatory requirement for the production of evidence necessary to defeat summary judgment. . . .This burden-shifting and the substantial justification test have no basis in article III, sections 40 through 42, and should no longer be followed.

592 S.W.3d at 779-781 (citations and footnotes omitted).

In conclusion, this Court held in *City of Aurora*:

> 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. Identifying a rational basis is an objective inquiry that does not require unearthing the legislature's subjective intent in making the classification.

Id. at 781 (citation omitted). Significantly, although this Court adopted the rational basis test in *Aurora*, it did not rule out consideration of a statute's targeting of "certain political subdivisions," declaring:

> Although whether the legislature used closed-ended or open-ended criteria to define classes is immaterial, the criteria used to exclude certain political subdivisions sheds light on whether there was a rational basis for the legislature's decision to exclude certain members.

Id. at 781-782. Accordingly, the criteria the General Assembly used to target the municipalities in St. Louis County are relevant in determining whether Sections 67.287 and 479.359 satisfy the *Aurora* rational basis test.

2. <u>The Proceedings In The Trial Court</u>

As a result of this Court's decision in *Aurora*, the State filed a motion under Rule 74.06(b)(5) to dissolve the injunction previously entered enjoining enforcement of Sections 67.287 and 479.359.2 against the municipalities in St. Louis County. [D162]. The State's motion was premised solely on three exhibits to their motion: (1) a March 2015 United States Department of Justice ("DOJ") report on

the DOJ's Investigation of the Ferguson Police Department; (2) an October 2019 Institute for Justice ("IFJ") report entitled "The Price of Taxation by Citation"; and (3) an October 2014 Better Together Report ("BTR") on "Public Safety-Municipal Courts" in St. Louis City and County. [D164-166]. Based upon these three reports, the State contended that Sections 67.287 and 479.359.2 satisfied the rational basis test. [D162, 169].

Plaintiffs opposed the State's motion on the ground that none of the three reports provided a rational basis for the enactment of Sections 67.287 and 479.359.2. [D168, 152].

On December 1, 2020, the Cole County Circuit Court entered an Order and Judgment holding that both statutes satisfied the rational basis test and dissolving the previously entered permanent injunction. [D155]. On December 10, 2020, Plaintiffs filed a motion to amend the Order and Judgment to extend the statutory deadlines in Sections 67.287 and 479.359 in accordance with the pendency of the prior injunction. [D156]. The State opposed Plaintiffs' motion. [D157]. The Circuit Court did not rule on Plaintiffs' motion within 90 days of its filing, thereby leaving the Order and Judgment in place as originally filed.

POINTS RELIED ON

I. The Trial Court erred in holding that Sections 67.287 and 479.359 satisfy the rational basis test because none of the three reports relied upon by the State provided "a reasonably conceivable state of facts that provide a rational basis for the classification" targeting only all the municipalities in St. Louis County.

Article III, Section 40 of the Missouri Constitution

City of Aurora v. Spectra Communications Group, LLC., 592 S.W.3d 764 (Mo. banc 2019)

City of Chesterfield v. State, 590 S.W.3d 840 (Mo. banc 2019)

City of Crestwood v. Affton Fire Prot. Dist., 2021 Mo. LEXIS 140 (Mo. banc April 20, 2021)

II. **The Trial Court erred in failing to amend its Order and Judgment by extending the statutory deadlines in Sections 67.287 and 479.359, which deadlines had been rendered null and void pursuant to the pendency of the prior permanent injunction.**

Supreme Court Rule 74.06(b)(5)

City of Normandy v. Greitens, 518 S.W.3d 183 (Mo. banc 2017)

State v. Howard, 598 S.W.3d 146 (Mo. App. 2020)

STANDARD OF REVIEW

"This Court reviews challenges to the constitutional validity of a statute *de novo*." *Aurora*, 592 S.W.3d at 774 (citation omitted).

ARGUMENT

I. The Trial Court erred in holding that Sections 67.287 and 479.359 satisfy the rational basis test because none of the three reports relied upon by the State provided "a reasonably conceivable state of facts that provide a rational basis for the classification" targeting only all the municipalities in St. Louis County.

A. Missouri Has Continuously Embraced And Encouraged Taxation By Minor Traffic Citations For All Of Its Municipalities

Although the State now contends that using minor traffic fines as a means of taxation to offset a municipality's annual operating revenue is improper in St. Louis County, the undeniable fact is that Missouri has a history of embracing and encouraging this practice – known as the Macks Creek Law – for all of its municipalities:

> Over the last two decades, the General Assembly has passed various limitations on the amount of revenue municipalities may generate from traffic fines. The first limitation, known as the "Macks Creek Law," was enacted in 1995. It prohibited any city, town, or village from receiving more than 45 percent of its total annual revenue from fines for traffic violations. Excess revenue would be remitted to the state's department of revenue and distributed to the county's schools. The General Assembly reduced this cap from 45 to 35 percent in 2009 and to 30 percent in 2013.

Normandy, 518 S.W.3d at 189 (statute citations omitted).

In 2015, the General Assembly enacted SB 5 which preserved Macks Creek Law. *Id*. However, for the first time, the General Assembly drew a distinction between the municipalities in St. Louis County and the municipalities in the rest of Missouri. For the latter, the percentage was reduced to 20%, but, for only the municipalities in St. Louis County, the percentage was reduced to 12.5%. *See* Section 479.359.2.

Thus, while still embracing taxation by traffic fines for Missouri as a whole, the General Assembly singled out and targeted all of the municipalities in St. Louis County for less taxation without regard to how many of them had improperly used the practice. In their zeal to eradicate Ferguson's excessive and improper use of the practice, the General Assembly used SB 5 to blanket all St. Louis County municipalities with Ferguson-like punishment. As the State's only relevant information demonstrates, there was no plausible reason for treating all of the municipalities in St. Louis County as taxation by minor traffic citations miscreants. Indeed, the very fact that Missouri elected to permit non-St. Louis County municipalities to use 20% of their minor traffic fines to offset their annual operating revenues shows that this practice is not only permissible but encouraged when a municipality – like the vast majority in St. Louis County – do not invoke it improperly.

B. The State's Reliance On Three Reports

In requesting relief from the permanent injunction entered pursuant to this Court's decision in *Normandy*, the State's motion relied solely on three reports to satisfy this Court's rational basis test decision in *Aurora*. [D162-166]. Upon careful scrutiny, none of the three reports provides a reasonably conceivable or plausible state of facts providing a rational basis for singling out and targeting **all** the municipalities in St. Louis County – and only all such municipalities – with the obligations in Sections 67.287 and 479.359. In fact, each report is so deficient, insofar as it purports according to the State to satisfy the rational basis test, that no degree of deference can salvage the State's efforts.

For starters, the IFJ report entitled "The Price of Taxation by Citation" is patently inadequate for two reasons. [D165]. First, it was issued in **October 2019** – more than four years **after** the General Assembly enacted SB 5 with Sections 67.287 and 479.359. [D165 at first two pages (lower left hand corner)]. Given this undeniable fact, it could not have been considered by the General Assembly when it enacted SB 5 and, therefore, cannot provide a rational basis therefor. Whatever compelled the General Assembly to enact SB 5, it could not possibly have included the IFJ report.

Second the IFJ report addressed "Taxation by Citation" in three **Georgia cities**. [D165 at first two pages and 4]. Not one word concerns any Missouri cities,

much less the municipalities in St. Louis County. Simply stated, the IFJ report cannot even conceivably satisfy the *Aurora* rational basis test.

The second report relied upon by the State is the DOJ's March 2015 Investigation of the Ferguson Police Department following the Ferguson unrest. [D164]. As the title and the entire body of the report state, the DOJ investigation concerned **only** the Ferguson Police Department and Ferguson Municipal Court. [D164 at 1-102]. One will search in vain throughout the 102 page comprehensive report for any investigation of or conclusion about any of the other 89 municipalities in St. Louis County. For this reason, the DOJ report provides no rational basis for targeting all 90 municipalities in St. Louis County for the misdeeds of only one.

Turning to the BTR report, its narrative excoriation of the practice by the St. Louis County municipalities is belied and refuted by its own Table 5 which provides a comprehensive statistical analysis of the use of minor traffic fines to offset annual operating revenues by each of the 90 municipalities in St. Louis County. [D166 at 24-26 annexed as App. B]. Instead of demonstrating that all – or even most – 90 St. Louis County municipalities are excessively using minor traffic fines to offset their annual operating revenues, BTR's own Table 5 evidences that, in 2013 (the only year used by BTR to support its conclusions), **69 of the 90** St. Louis County municipalities generated **less than 20%** of their annual operating revenues from minor traffic fines. [App. B]. In fact, **50 of the 69** St. Louis County municipalities

generated **less than 10%** of their annual operating revenues from minor traffic fines. [App. B]. This means that, even before the 30% cap was reduced to 20% for all non-St. Louis County municipalities, 69 of the 90 St. Louis County municipalities were compliant with the 20% cap for all non-St. Louis County municipalities. BTR manages to elide this fundamental fact by focusing only on the 21 St. Louis County municipality minority.

As this Court held in *Aurora*, these facts – the State's encouragement of the statewide practice of using minor traffic fines to offset a municipality's annual operating revenue and the fact that the vast majority of St. Louis County municipalities were compliant with the State-approved 20% cap – "sheds light on whether there was a rational basis for" singling out and targeting all 90 St. Louis County municipalities as a group. *Aurora*, 592 S.W.3d at 781-782. In this case, the illumination shows the sheer irrationality of the singling out and targeting of all of the St. Louis County municipalities by Sections 67.287 and 479.359.

C. The Trial Court's Order And Judgment

As evidenced by the trial court's Order and Judgment, the Order and Judgment is based solely on the three deficient reports relied upon by the State. [D-155 at 2-7]. Thus: paragraphs 3-13 rely on the DOJ's findings with respect to Ferguson; paragraphs 4-7 rely on the IFJ report; and paragraphs 4-7 and 15-26 rely on the BTR report. [*Id.*]

Moreover, the trial court's discussion of the three reports reveals the irrationality of the General Assembly's singling out and targeting of all of the St. Louis County municipalities in Sections 67.287 and 479.359:

> 5. These reports observed that these municipalities were issuing traffic citations and other code violations, not for the purpose of promoting public safety and responsible driving, but as a method of raising municipal revenue. *See id.*
>
> 6. This practice of using municipal fines and fees to raise revenues came into national focus and was subject to widespread criticism in the aftermath of the events in Ferguson. Critics claimed that such revenue-driven municipal enforcement practices led to abusive police practices, including pretextual stops and over-charging citizens for municipal violations. *See id.*

[D155 at 2]. Leaving aside the facts that the untimely IFJ report concerned three Georgia cities, the DOJ report concerned only Ferguson and the BTR report showed that 69 of the 90 municipalities were below the 20% cap for all non-St. Louis County municipalities, Missouri **embraces and encourages** the practice of using municipal fines and fees to raise municipality revenues. Before SB 5 was enacted, **all** Missouri municipalities, including those in St. Louis County, could raise up to 30% of their annual operating revenues from minor traffic violations. *See* Section 479.359.2. All SB 5 did was reduce – not outlaw – the statewide municipality practice of generating revenues from traffic violations.

Moreover, the trial court's discussion of the BTR report was demonstrably refuted by BTR's own Table 5. According to the trial court, Table 5 demonstrated that:

> - five municipalities in St. Louis County received over 40 percent of general revenues from fines and fees for minor infractions;
> - eight municipalities in St. Louis County received over 30 percent of general revenues from such fines and fees (and thus were operating illegally under then-existing state law, see § 479.359.1, RSMo);
> - 21 municipalities in St. Louis County received over 20 percent;
> - 29 municipalities in St. Louis County received over 12.5 percent, and
> - 40 municipalities in St. Louis County received over 10 percent.

[D155 at 5]. But the trial court's statistics are inadvertently misleading. Although 5 of the 90 municipalities in St. Louis County received over 40%, only 3 of the 90 received between 30% and 40%. [App. B]. Likewise, only 13 of the 90 received between 20% and 30%. [App. B]. Instead of Table 5 cumulatively showing that 34 of the 90 St. Louis County municipalities were above 20%, they show that only 21 of them were above 20%. In stark contrast, as evidenced by Table 5, **69 municipalities in St. Louis County were below 20% and 50 of the 69 were below 10%**. [App. B]. Thus, the non-cumulative figures for the 90 St. Louis County municipalities are as follows:

- 50 below 10%
- 19 between 10% and 20%
- 13 between 20% and 30%
- 3 between 30% and 40%
- 5 above 40%

[App. B]. Given that the vast majority of the St. Louis County municipalities – 69 of 90 – were below the 20% cap established by Section 479.359 for all non-St. Louis County municipalities, the BTR report does not provide a "one size fits all" rational basis for targeting the compliant St. Louis County municipalities.

The indisputable Table 5 statistics demonstrate that there was no reasonably conceivable or plausible state of facts for penalizing all of the municipalities in St. Louis County with a 12.5% cap when all of the non-St. Louis County municipalities had a 20% cap.

The trial court proffered eight factual reasons for satisfying the rational basis test:

> *First*, . . . The legislature could rationally have concluded that St. Louis County's fragmented governmental structure created unique structural incentives for revenue-driven municipal enforcement practices, and that it was appropriate to impose stricter standards on St. Louis County to provide more powerful counter-incentives to counteract St. Louis County's unique structural incentives to engage in those abusive practices.
>
> *Second*, . . . The legislature could rationally have concluded that stricter standards were appropriate for St.

> Louis County because the revenue-driven culture that causes police and municipal-court abuses was more deeply entrenched in St. Louis County than anywhere else in the State.
>
> *Third*, there was strong empirical evidence that revenue-driven enforcement was more widespread among St. Louis County municipalities than anywhere else in Missouri. . . .
>
> *Fourth*, the social ills associated with revenue-driven enforcement – especially its impact on poor and minority communities – were better documented and more prevalent in St. Louis County than in any other county in the State. . ..
>
> *Fifth*, there were strong reasons to believe that the individual burdens of revenue-driven enforcement were much higher on the citizens of St. Louis County than on citizens elsewhere in Missouri.
>
> *Sixth*, no other county in Missouri experienced civil unrest and social strife like that experienced in St. Louis County in the aftermath of the shooting of Michael Brown. . . .
>
> *Seventh*, . . . The legislature could rationally have concluded (and evidently did conclude) that this balance [between "curbing the abuses associated with revenue-driven enforcement practices" and "maintaining predictable and sound revenue streams"] should be struck differently in St. Louis County than in other counties in Missouri because of all the unique features of St. Louis County discussed above. . . .
>
> *Eighth*, under rational-basis scrutiny, "the legislature must be allowed leeway to approach a perceived problem incrementally.". . .

[D155 at 12-16 (citations omitted)]. When distilled to their essence, all of the foregoing reasons can be boiled down to two: (1) revenue-driven enforcement was much more abusive in St. Louis County; and (2) the civil unrest in Ferguson.

Neither reason can constitute a reasonably conceivable or plausible state of facts justifying 67.287 or 479.359. Certainly the civil unrest in Ferguson – the only one of 90 municipalities in St. Louis County so afflicted – cannot plausibly support singling out and targeting in blatant guilt by association the other 89 municipalities in St. Louis County. Moreover, BTR's own Table 5 demonstrates that the vast majority – 69 of 90 – of the St. Louis County municipalities were not engaged in abusive revenue-driven enforcement practices – at least not any more so than any of the other municipalities in Missouri.

The rational approach to prevent the abusive revenue-driven enforcement practices of Missouri municipalities was to establish a 20% cap for all of them. Such an approach would have snared the 21 St. Louis County municipalities abusing revenue-driven enforcement practices just as it ineluctably snares the non-St. Louis County municipalities which formerly had a 30% cap prior to SB 5. Assuredly, it was irrational to throw the baby out with the bath water by penalizing and punishing the 69 St. Louis County municipalities that were already below the 20% cap by singling out and targeting them with a **lower** 12.5% cap. This irrationality is underscored by Missouri's recognition that any municipality outside St. Louis County complying with the 20% cap is not engaged in any abuse of Missouri's sanctioned revenue-driven enforcement practices. Simply stated, what is good for the goose in Missouri is good for the gander in St. Louis County.

Having explicated its factual reasons for its Order and Judgment, the trial court relied on this Court's decision in *City of Chesterfield v. State*, 590 S.W.3d 840 (Mo. banc 2019). [D155 at 12]. However, this Court's decision in *Chesterfield* – involving, as it does, St. Louis County – shows why SB 5's line drawing was not even remotely rational. In *Chesterfield*, the legislation at issue did not, as SB 5 does, treat all municipalities within St. Louis County alike. On the contrary, the legislation created two groups of municipalities within St. Louis County: "Group A consist[ed] of cities located at least partially within St. Louis County that passed a city sales tax prior to the county adopting the county sales tax" and "Group B consist[ed] of all cities located at least partially within St. Louis County that had not passed a city sales tax prior to the county adopting the county sales tax." *Id*. at 842. The legislation provided that the county sales tax revenues first go to Group A cities based upon the location of sales and then to Group B cities in proportion to their populations. *Id*. at 842-843.

The City of Chesterfield – a Group B city – challenged the legislation on two grounds: (1) that singling out St. Louis County made it an unconstitutional special law; and (2) that differentiating the Group A and Group B cities made it an unconstitutional special law. *Id*. at 843-845. It is the second part of this Court's *Chesterfield* decision that is relevant here. This Court concluded that differentiating between Group A and Group B "reasonably serve[d] the state's legitimate interest

in providing stable revenue sources for Group B cities and discouraging opportunistic annexations" and, therefore, was "not a special law." *Id*. at 845.

This appeal presents the inverse to *Chesterfield*. Here, the State has failed to differentiate between the 69 municipalities within St. Louis Count complying with the 20% cap and the 21 municipalities exceeding it. It is this undeniable failure pursuant to SB 5's "one size fits all" mandate which renders Sections 67.287 and 479.359 incapable of satisfying the rational basis test.

Plaintiffs recognize that this Court has recently decided *City of Crestwood v. Affton Fire Prot. Dist.*, 2021 Mo. LEXIS 140 (Mo. banc April 20, 2021). There, in addressing legislation applying to fire protection districts within St. Louis County, this Court held that "the economic viability of fire protection districts in St. Louis County [was] a plausible reason for the challenged classification." 2021 Mo. LEXIS at *16-17. But, this was because all fire protection districts within St. Louis County were facing the same issue, *i.e.*, the potential loss of tax revenues upon annexation of their unincorporated areas. *Id*. at *15-16.

Here, by contrast, it is not abusive for a municipality outside St. Louis County to obtain up to 20% of its annual operating revenues from minor traffic fines. The exact same statewide standard should apply to non-abusive municipalities **within** St. Louis County. However, Sections 67.287 and 479.359 instead treat the abuser

municipalities and the non-abuser municipalities within St. Louis County alike. This is not plausible to say the least.

Plaintiffs also recognize that, under the *Aurora* rational basis test, this Court "does not question the wisdom of a statute." *Crestwood*, 2021 Mo. LEXIS at *14 (citation omitted). But, here, it is not the "wisdom" that is at issue. For, SB 5 has decreed that there is nothing wrong with a municipality – at least for a municipality outside St. Louis County – to use minor traffic fines to offset up to 20% of its annual operating revenues. Plainly, if it is not an abuse of revenue-driven enforcement practices for a municipality outside St. Louis County to comply with a 20% cap, it is not an abuse for a municipality within St. Louis County to comply with the same cap – as 69 of the 90 municipalities within St. Louis County do.

II. The Trial Court erred in failing to amend its Order and Judgment by extending the statutory deadlines in Sections 67.287 and 479.359, which deadlines had been rendered null and void pursuant to the pendency of the prior permanent injunction.

A. The Statutory Effect Of The Prior Permanent Injunction

As enacted, Section 67.287.2 required all of the St. Louis County municipalities, *inter alia*, to have, or contract with, an accredited police force within six years and have an annual audit by a certified public accountant and a comprehensive cash management and accounting system within three years. [App. at A1-A2]. As enacted, Section 479.359.2 required all of the St. Louis County municipalities to comply with the 12.5% cap beginning January 1, 2016. [App. at A8]. The entry of the trial court's permanent injunction pursuant to this Court's *Normandy* decision rendered these deadlines null and void and relieved the St. Louis County municipalities from complying with them.

Thus, it was not until December 1, 2020 when the trial court entered its Order and Judgment dissolving its prior permanent injunction that the St. Louis County municipalities were pending this appeal required to comply with the deadlines in Sections 67.287.2 and 479.359.2. This was more than five years after the enactment of Sections 67.287 and 479.359. As a consequence, it is indisputable that Sections

67.287 and 479.359 were "dead letters" and the St. Louis County municipalities did not have to comply with them for more than five years.

Accordingly, Plaintiffs requested that the trial court amend its Order and Judgment by extending the deadlines in Sections 67.287.2 and 479.359.2 by more than five years. [D156]. The meritorious nature of Plaintiffs' request is self-evident. The original deadline for the St. Louis County municipalities to have, or contract with, an accredited police force was six years from 2015 or 2021. Absent an extension, the St. Louis County municipalities no longer have any of the intended six-year time period for complying with this burdensome requirement. Moreover, given that none of the non-St. Louis County municipalities are required to have, or contract with, an accredited police force, it is particularly pernicious to impose this requirement on the St. Louis County municipalities with no meaningful breathing space for compliance.

Likewise, the three year time period for complying with the other requirements in Section 67.287.2 imposed solely on the St. Louis County municipalities, including the obligation to have an annual audit by a certified public accountant and a comprehensive cash management and accounting system, expired in 2018. Without any extension, the St. Louis County municipalities will have completely lost their statutory time period for compliance.

The situation with Section 479.359.2 is not as critical, since, pursuant to the trial court's Order and Judgment, the St. Louis County municipalities did not have to comply with the 12.5% cap until the 2021 year, i.e., the year beginning January 1, 2021. However, left unsaid was whether the St. Louis County municipalities had to satisfy the 12.5% cap during the month of December following the trial court's December 1, 2020 Order and Judgment.

B. Rule 74.06(b)(5)'s Principles Require The Extension Of The Statutory Deadlines

The touchstone for this Court's decision on this issue is Rule 74.06(b)(5) – the Rule which the State invoked to dissolve the prior permanent injunction. [D162 at 3, 5-6, 10-12]. Under Rule 74.06(b)(5), the court may relieve a party from a prior permanent injunction when "it is no longer equitable that the judgment remain in force." Accordingly, equity governs the disposition of the State's motion.

Addressing Rule 74.06(b)(5) in *Howard v. State*, 598 S.W.3d 146 (Mo. App. 2020), the Missouri Court of Appeals stated:

> This rule does not render a judgment void *ab initio* because its sole purpose is to relieve parties of a judgment's *prospective* effects where a circumstance arising *subsequent to the issuance* of the judgment makes it inequitable for such judgment to remain in force.

Id. at 150 (citations omitted and italics in original). Given that the proper equitable application of Rule 74.06(b)(5) "does not render a judgment void *ab initio* because its sole purpose is to relieve parties of a judgment's *prospective* effects," equity

compels **restarting** the clock so far as the statutory deadlines in Sections 67.287.2 and 479.359.2 are concerned. Any other result would, in effect, inequitably render the prior permanent injunction void *ab initio*. In sum, the only way to limit the State's relief to the "judgment's *prospective* effects" is to restore to the St. Louis County municipalities the time they were originally given to comply with the burdens imposed on them by Sections 67.287.2 and 479.359.2.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reverse the trial court's Order and Judgment and reinstate the prior permanent injunction. In the event this Court affirms the trial court's Order and Judgment, Plaintiffs respectfully request that this Court extend the statutory deadlines in Sections 67.287.2 and 479.359.2 to account for the pendency of the prior permanent injunction.

Respectfully submitted,

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Dated: June 10, 2021

CERTIFICATE OF COMPLIANCE

The undersigned certifies under Rule 84.06(C) of the Missouri Rules of Civil Procedure that:

1. The Appellants' Brief includes the information required by Rule 55.03.
2. The Appellants' Brief complies with the limitations contained in Rule 84.06.
3. The Appellants' Brief, excluding cover page, signature blocks, certificate of compliance, and certificate of service, contains 5,567 words, as determined by the word-count tool contained in Microsoft Word 2016 software with which this Appellants' Brief was prepared.

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CERTIFICATE OF SERVICE

I hereby certify that, on June 10, 2021, the foregoing Brief of Appellants was electronically filed with the Clerk of the Court using the Missouri Courts Electronic Filing System and served by email which sent notification to the following:

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