SC98998

IN THE SUPREME COURT OF MISSOURI

CITY OF NORMANDY, *et al.*,

Appellants,

v.

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

Respondents.

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

BRIEF OF RESPONDENTS

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INTRODUCTION

In the aftermath of rioting and racial unrest in Ferguson in 2014, the Missouri General Assembly enacted Senate Bill 5 (2015), which imposed critical reforms on local governments and municipal courts to curb the abuses of "taxation by citation." There was overwhelming public evidence that these abuses were uniquely entrenched, uniquely pervasive, and uniquely harmful in St. Louis County, which contains a uniquely fractured patchwork of 90 municipalities. Accordingly, the General Assembly enacted two provisions in Senate Bill 5 that imposed stricter standards on municipalities in St. Louis County—a set of "minimum standards" for local governments, and a more stringent cap on the proportion of general revenues that a municipality may draw from fines and fees. Notwithstanding the overwhelming evidence of urgent problems in St. Louis County, Plaintiffs-Appellants—twelve St. Louis County municipalities—contend that the Missouri General Assembly had no rational basis to treat St. Louis County's municipalities more stringently than those located elsewhere in the State. This argument is meritless, and it flies in the face of St. Louis County's recent and troubled history with taxation by citation. Local governments and bureaucrats in St. Louis County had become notorious for using their citizens as ATMs and extracting revenues through citations for traffic violations and minor infractions. Senate Bill 5 rationally addressed these problems by curbing St. Louis County's unique abuses.

STATEMENT OF FACTS

Appellant's Statement of Facts is neither accurate nor complete, as it excludes many relevant points that are necessary for a complete review of the issues in this case. Respondent accordingly provides its own Statement of Facts. Mo. Sup. Ct. R. 84.04(f).

A. The Urgent Calls for Police and Municipal-Court Reform in St. Louis County After the Events in Ferguson in 2014.

As this Court has observed, "St. Louis County, unlike other counties in the state, has a large population, lacks a central city, has 90 separate municipalities within its borders, and has a large, unincorporated area." *City of Chesterfield v. State*, 590 S.W.3d 840, 844 (Mo. banc 2019). These and other "unique … circumstances" of St. Louis County make it difficult for many municipalities to generate "predictable revenue streams." *Id.* at 845. St. Louis County's 90 different local governments are far more than in any other county in Missouri. *See* 2012 Census of Governments, U.S. Census Bureau (Sept. 2013).[1] This means traditional sources of revenue—like residential property, large retail centers, citizen tax bases, and corporate employers—are uniquely fractured, increasing the pressure to use law enforcement and municipal courts as tools to generate revenue.

[1]http://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG13.ST05P?slice=GEO~0400000US29.

In 2014, racial unrest and rioting broke out in Ferguson, Missouri, a municipality of St. Louis County, following the shooting death of Michael Brown by a Ferguson police officer. The racial unrest spread to many areas of St. Louis County, and it attracted national attention to the revenue-raising and municipal-court practices in Ferguson and elsewhere in St. Louis County. In the wake of Ferguson, concerned organizations issued a series of public reports on the need for local-government and municipal-court reform in St. Louis County. These reports shone a spotlight on the abuses associated with "taxation by citation," *i.e.*, the practice of local governments in generating significant portions of municipal revenue by issuing traffic citations and citations for other minor municipal code violations—not for the purpose of enforcement, but for the express purpose of raising municipal revenue. *See, e.g.,* D165, p.9 ("Simply put, taxation by citation is when municipalities use their code enforcement powers to raise revenue from fines and fees in excess of what they would collect were they issuing citations solely to protect and advance public safety."). Such taxation by citation, or revenue-driven enforcement of traffic ordinances and municipal code violations, was identified as a critical root cause of regressive collection and court practices and of community distrust of local governments and courts in many municipalities in St. Louis County.

The DOJ Report. First, the Ferguson unrest resulted in a comprehensive investigation of practices in Ferguson by the Civil Rights Division of the U.S. Department of Justice ("DOJ"), then headed by Attorney General Eric Holder. DOJ issued a lengthy report on the root causes of the racial unrest in Ferguson, which focused heavily on the practice of taxation by citation in Ferguson.

DOJ concluded that this practice of taxation by citation was deeply entrenched in Ferguson's local government, and DOJ was sharply critical of this practice. D164, (U.S. Dep't of Justice, *Investigation of the Ferguson Police Department* (Mar. 4, 2015) ("DOJ Report")). The U.S. Department of Justice's investigation of Ferguson observed that the city's emphasis on revenue generation had a profound effect, shifting the focus of law enforcement efforts away from public safety in order to generate more revenue. D164, p.5. According to DOJ, local governments in St. Louis County, like Ferguson's, placed significant pressure on law enforcement to prioritize generating revenue rather than traditional public safety concerns. D164, p.5. This "emphasis on revenue" from city officials and bureaucrats had "compromised" the institutional character of Ferguson's police department and the municipal court. *Id.* "Over time," this revenue-driven policy had "sown deep mistrust between parts of the community and the police department." *Id.*

DOJ concluded that, due to pressure from elected officials and government bureaucrats, "Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs." *Id.* According to DOJ, this "emphasis on revenue" from leaders in city government had "compromised the institutional character of Ferguson's police department" and "shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community." *Id.* Ferguson, with a population of 21,000, had issued "approximately 90,000 citations and summonses for municipal violations" in four years—more than four times as many citations as residents. *Id.* at 10.

According to DOJ, these revenue-driven enforcement practices were pervasive in the municipality's local government and court system. The DOJ Report noted that "Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership." *Id.* at 5. As a result, the DOJ Report concluded, "Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs." *Id.* The practice of taxation by citation had "sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular." *Id.* "The City's emphasis on revenue generation has a profound effect on FPD's approach to law enforcement," such

that "[p]atrol assignments and schedules are geared toward aggressive enforcement of Ferguson's municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation." *Id.*

The DOJ Report emphasized that the impact of this taxation by citation was particularly harmful among poor and minority communities. See D164, pp.6-9. The burdens of Ferguson's revenue-driven practices were "borne disproportionately by African Americans" and other minorities. *Id.* at 7. The DOJ Report stated that municipal court practices associated with taxation by citation "impose unnecessary harm, overwhelmingly on African-American individuals," *id.* at 6; that such practices "impose a particular hardship on Ferguson's most vulnerable residents, especially upon those living in or near poverty," *id.* at 7; that "municipal court practices … cause disproportionate harm to African Americans," *id.* at 8; and that "policing to raise revenue … has resulted in practices that … undermine community trust, especially among many African Americans," *id.* at 9. The DOJ Report concluded that "[t]he City must replace revenue-driven policing with a system grounded in the principles of community policing and police legitimacy, in which people are equally protected and treated with compassion, regardless of race." *Id.*

The Better Together Report. While DOJ was conducting its investigation in Ferguson, the unrest in Ferguson triggered similar reviews of such local-government practices elsewhere in St. Louis County as well. For example, a comprehensive report by the nonprofit Better Together reviewed the structural incentives and common practices that led to taxation by citation throughout St. Louis County, and it painted a grim picture of those incentives and practices. D166 (Better Together, *Public Safety – Municipal Courts* (Oct. 2014) ("Better Together Report")). This report concluded that "[m]any of the municipal courts in St. Louis County have lost the trust of their communities, particularly those in which residents are predominantly African-American and poor. In these municipalities, because of a lack of oversight and an overreliance on court fines and fees, the courts are viewed as punitive revenue centers rather than centers of justice." D166 (Better Together Report), p.2.

The Better Together Report noted that taxation by citation was not isolated to Ferguson, but appeared prevalent throughout St. Louis County. It noted that, in 2014, St. Louis County had 81 municipal courts, and 21 municipalities in St. Louis County earned over 20 percent of their revenue from citations—including 14 municipalities for whom fines and fees were the *principal* source of revenue. D166, pp. 2-3.

St. Louis County's 81 municipal court divisions as of 2014 were far more the average for Missouri counties. See D166, p. 2. "To put this in perspective: A judicial circuit in Missouri contains 8.6 municipal court divisions on average." *Id.* And those 81 municipal courts tended to be extremely profitable for their local governments. On average, they cost "$223,149 to operate" and brought in "$711,506 in revenue from fines and fees." *Id.* at 3. According to the Report, this resulted in an average per capita financial burden from municipal fines and fees that was three times as great for residents of St. Louis County than elsewhere in Missouri: "the combined populations of the 90 municipalities in St. Louis County accounts for only 11% of Missouri's population." *Id.* at 3. Yet those municipalities brought in "34% of all municipal fines and fees statewide ($45,136,416 in 2013)." *Id.*

Because of its proliferation, this widespread system of municipal courts operated with minimal oversight from the St. Louis County Circuit Court, and municipal courts instead became responsive to the municipal officials and governments who depended on municipal fines and fees for revenue. *Id.* at 2. "St. Louis County's circuit courts must oversee nearly ten times the number of courts and judges as an average presiding judge in Missouri." *Id.* "For virtually every circuit in the state, [the circuit court] provides a sufficient method of oversight. However, the exception to this seemingly sufficient model lies in St. Louis County. … The problem in the oversight of the municipal

courts in St. Louis County cannot be attributed to anything other than the fragmentation of the municipal court system." D166, p. 7. According to the Better Together Report, this lack of oversight led to a "culture" of municipal-court abuses in St. Louis County. *Id.* at 8. The report concluded that increasing oversight alone would be insufficient to "provide a remedy for the abuses that have steadily become part of the municipal court system and the culture that has been established over the decades such oversight was absent." *Id.*, at 7-8.

Table 5 of the Better Together Report, which both parties cited in the circuit court, provided an overview of revenue-driven enforcement across St. Louis County in 2014. D166, pp.25-27 tbl. 5. As the circuit court noted, D161, p.5, in the year before SB 5 was enacted, 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. D161, p.5; D166, pp. 25-27 tbl.5. (As Plaintiffs note, these figures are cumulative, not additive. *See id.*)

The Better Together Report revealed that Ferguson—whose extensive police and municipal-court abuses were detailed in the DOJ report, and which had issued 90,000 citations in four years—ranked *28th* in St. Louis County in its proportion of general revenues obtained from fines and fees. D166, pp. 25-27, tbl. 5. Though DOJ had identified Ferguson as particularly problematic, there were twenty-seven St. Louis County municipalities that collected a greater proportion of revenues from fines and fees than Ferguson did. *Id.*

Even municipalities with large alternative sources of revenue in St. Louis County—including wealthy municipalities with large property-tax and commercial-tax bases—were accumulating very large amounts of revenue from municipal fines and fees. For example, Creve Coeur obtained over $1.96 million in fines in fees in 2014—more than Ferguson—and Chesterfield obtained $1.34 million in fines and fees in 2014. D166, at 25 tbl. 5. And the comparatively affluent but tiny municipality of Rock Hill (population 4,635), whose revenue-driven traffic enforcement was notorious among St. Louis County residents,[2] derived $3,370,845 from fines and fees in 2014, comprising 18.65 percent of its revenues—a larger proportion than Ferguson.

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[2] *See, e.g.,* Ellis E. Conklin, *Rock Hill's Legendary (Infamous) Ticket-Writing Traffic Cop Set to Retire Radar Gun*, RIVERFRONT TIMES (Oct. 7, 2009). As was widely known in St. Louis County, a single Rock Hill police officer, largely policing a single stretch of Manchester Road, wrote 150,000 traffic tickets in his 26-year career in Rock Hill, whose population is less than 5,000. *Id.* "On a good day," that officer would "write up 60 tickets and barely break a sweat.

The Better Together Report also noted that St. Louis County residents were subject to a dizzying patchwork of enforcement practices. It noted that "[a] motorist driving to the airport from Clayton or from downtown St. Louis may encounter three or four patrol cars with radar from three or more separate municipalities," and that segments of I-70, I-170, and I-270 in St. Louis County were likely "the most over-policed roadways in the state." D166, p. 10. At the same time, St. Louis County had 63 separate police departments, of which about 45 were unaccredited. D168, p.51 (Feb. 5, 2016 Transcript, at 21). Thus, the wide range of enforcement practices were applied by a plethora of often tiny police departments, the large majority of which were unaccredited, and many of which were under Ferguson-like pressure from municipal governments to generate revenues by citation.

The ArchCity Report. The Better Together Report also cited and relied on an observational study and report of policing and municipal-court practices and abuses published in a white paper by the ArchCity Defenders, a St. Louis public interest group that promotes criminal defendants' rights. See Thomas

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He's got a lifetime average of nailing some 420 motorists a month," and the Rock Hill mayor boasted that the officer had generated "above seven figures" in revenue for Rock Hill per year. *Id.*

Harvey et al., *ArchCity Defenders: Municipal Courts White Paper* (2014)[3], ("ArchCity Report") (cited in D166, pp. 4, 12, 13, 14, 15, 16).

The ArchCity Report described aggressive, highly revenue-driven collection practices for fines for minor infractions in many municipal courts in St. Louis County, which included practices such as issuing arrest warrants for non-appearance for minor infractions, and incarcerating citizens for unpaid fines and fees for traffic citations and other minor infractions. *See id.*; *see also* Mildred Wigfall Robinson, *Fines: The Folly of Conflating the Power to Fine with the Power to Tax*, 62 VILL. L. REV. 925, 948 (2017) ("The DOJ Ferguson report noted that of 21,000 people living in Ferguson, 16,000 have outstanding arrest warrants."). According to the ArchCity Report, "[c]lients reported being jailed because they were unable to pay fines. Some who have been incarcerated for delinquent fine payments have lost jobs and housing as a result. Indigent mothers "failed to appear" in court and had warrants issued for their arrest after arriving early or on-time to court and being turned away because that particular municipality prohibits children in court." ArchCity Report, at 1-2. "Indiscriminately ticketing and fining the poorest in any community exacerbates the plight of low-income families by imposing heavy financial

[3] *Available at* https://www.archcitydefenders.org/wp-content/uploads/2019/03/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf.

burdens on those least equipped to bear it." *Id.* at 2. "The result: the poorest St. Louisans watch an unnecessarily expensive and incredibly inefficient network of municipal courts siphon away vast amounts of their money to support a system seemingly designed to maintain the status quo, no matter how much it hurts the communities the system is supposed to serve." *Id.*

The ArchCity Report relied on reports from court observers in 60 municipal courts in St. Louis County, and it reported that at least half of those courts engaged in collection practices that it viewed as revenue-driven and abusive. *Id.* at 2. After observing sixty municipal courts, it reported that "approximately ***thirty*** of those courts did engage in at least one of these [abusive collection] practices. Three courts, Bel-Ridge, Florissant, and Ferguson, were chronic offenders and serve as prime examples of how these practices violate fundamental rights of the poor, undermine public confidence in the judicial system, and perpetuate inefficiencies." *Id.* at 3 (emphasis added).

The Better Together Report cited this survey to conclude that the worst problems associated with Ferguson in the DOJ Report—such as municipal "judges ordering individuals to be locked up until they gather the money from friends and family"—were not unique to Ferguson; this kind of practice was "far from an isolated incident" in St. Louis County. D166, p.14.

Other National Authorities Condemn Taxation by Citation. The racial unrest in Ferguson also inspired examinations of the practice of taxation by citation outside Missouri by national authorities from across the political spectrum. These authorities described in other places the same dynamic observed in St. Louis County in the DOJ Report, the Better Together Report, and the ArchCity Report, and they uniformly came to the same conclusion that taxation by citation is regressive and should be curbed. For example, a 2019 case study by the Institute for Justice, focusing on taxation by citation in three Georgia communities, concluded that "excessive use of fines and fees can foment distrust, damage residents' relationships with law enforcement and harm judicial credibility. Police and courts lose legitimacy when they are perceived to treat people unjustly or to impose costs that are capricious or unfair." D165 (Carpenter, et al., *The Price of Taxation by Citation, Institute for Justice* (Oct. 2019) ("IJ Report"), p.10. The same report concluded that "cities that use code enforcement for revenue or other non-public safety reasons may undermine trust and cooperation in their communities." D165, p.7. It also noted that such practices can become deeply entrenched as municipalities become dependent on the revenue generated thereby: "[O]nce in effect, the mechanisms necessary for taxation by citation—such as supremely efficient court procedures—may stick, becoming business as usual and ensuring fines and fees remain a reliable source of revenue." D165, p.6. The IJ Report noted

that, "[t]oday, the phenomenon is frequently decried by scholars, commentators and, increasingly, policymakers. It has even acquired its own trope: Taxation by citation." D165, p.8.

According to the IJ Report, such pressure from government bureaucrats on law enforcement agencies "distorts law enforcement priorities away from protecting and advancing public safety," and undermines trust in government. D165, at 9. As a result of this pressure from government officials, "community trust and cooperation suffer when revenue generation seems to be the primary goal of law enforcement." *Id*. at 10.

Notably, the IJ Report concluded, based on mulitple authorities, that any time a municipality draws more than 10 percent of its revenues from fines and fees, that proportion is symptomatic of taxation by citation and potentially problematic. D165, p.9 (citing two different authorities for the proposition that "when such revenue surpasses 10% of a city's revenue, this is 'a reasonable indicator that you should look further' at how the city is using citations") (citation omitted); *see also* A. Simmons, *Atlanta's Ticket Raps: Slow Down or Pay Up*, THE ATLANTA JOURNAL-CONSTITUTION (Oct. 18, 2014); M. Maciag, *Addicted to Fines*, GOVERNING MAGAZINE (Aug. 21, 2019) (both using the 10 percent threshold as a benchmark for municipal over-reliance on fines and fees).

As another commentator noted, "even in the absence of racial overtones and dire outcomes of the type occurring in Ferguson, reliance on this kind of non-tax revenue to balance local budgets in many other American cities and towns is equally if not more problematic. The practice is one that should be either constrained or avoided." Mildred Wigfall Robinson, *Fines: The Folly of Conflating the Power to Fine with the Power to Tax*, 62 VILL. L. REV. 925, 927 (2017). "Ferguson provides textbook examples of all that can go wrong when governments rely upon traffic fines as budgetary supplements. The practice had global negative effects touching government, alleged offenders, the civic spirit, and the police force itself." *Id.* at 947. "When revenue generation becomes the focus and policing practices are geared to that objective, public safety becomes a secondary concern (if that) and community trust and cooperation are undermined." *Id.* at 948.

It was against this backdrop that the General Assembly enacted Senate Bill 5.

B. The Enactment of Senate Bill 5 and the First Appeal.

On May 7, 2015, the Missouri General Assembly passed Senate Bill 5, a two-part plan to address the taxation-by-citation problems that rose to the fore in the wake of unrest the Ferguson unrest. D162, p.8. Senate Bill 5 ("SB 5") requires each local government in Missouri to "annually calculate the percentage of its general operating revenue received from fines, bond

forfeitures, and court costs for minor traffic violations, including amended charges." § 479.359.1, RSMo. The law also lowers the statewide cap on revenue generated from fines from thirty percent to twenty percent of total municipal revenues. § 479.359.2, RSMo. SB5 also requires local governments to file a signed and notarized addendum with their annual financial report to the state auditor listing annual general operating revenue; total revenue derived from fines, forfeitures, and court costs for minor traffic violations; and the percentage that such revenue represents. § 479.359.3, RSMo.

In addition to these statewide changes, SB5 included two provisions designed to remedy the unique problems in St. Louis County arising from its distinctive size and governmental structure. D162, p.9. First, the law further lowered the percentage cap of revenue generated from fines to 12.5 percent for "any county with a charter form of government and with more than nine hundred fifty thousand inhabitants and any city, town, or village with boundaries found within such county," which currently describes only St. Louis County. § 479.359.2, RSMo. Second, municipalities in such counties must meet certain "minimum standards," such as having an "accredited or certified" police department, or "a contract for police service" with an accredited or certified police department, within six years. § 67.287, RSMo. These minimum standards include good-government accounting standards, such as a balanced annual budget, an annual audit, a cash management and accounting system,

and adequate levels of insurance. § 67.287.2(1)-(4), RSMo. They also include minimum standards for quality policing, including written policies on police practices and, as noted above, a requirement that the municipality either have an accredited police department or a contract with an accredited police department. § 67.287.2(6)-(10), RSMo.

Plaintiffs-Appellants, twelve municipalities in St. Louis County (hereinafter "Plaintiffs"), filed this lawsuit challenging these two provisions that impose more stringent standards on municipalities in St. Louis County as unconstitutional special laws. *City of Normandy v. Greitens*, 518 S.W.3d 183, 190 (Mo. banc. 2017). The State, represented by a prior administration, did not put on any evidence at trial to show a substantial justification for the special treatment of St. Louis County, as was then required by this Court's special-laws jurisprudence. *Id.* The circuit court entered a judgment holding that section 67.287 and section 479.359.2 are unconstitutional special laws. *Id.* The circuit court entered a permanent injunction enjoining the State from enforcing the St. Louis County-specific provisions of section 67.287 and section 479.359.2. *Id.*

This Court affirmed in part and reversed in part. This Court reversed the circuit court's separate holding that SB5 violated the Hancock Amendment and affirmed the dismissal of Plaintiffs' other constitutional claims. *Id.* at 198-203. This Court affirmed the holding that section 67.287 and section 479.359.2

are unconstitutional special laws. *Id.* at 190-197. First, this Court held that these two provisions of SB 5 were presumptively unconstitutional under the three-part test outlined in *Jefferson County Fire Protection District Association v. Blunt*, 205 S.W.3d 866 (Mo. banc 2006), because the provisions appeared to target St. Louis County. *Id.* at 192-196. This shifted the evidentiary burden to the State to "show substantial justification for the special treatment." *Id.* at 196. Second, the Court held that the State had offered no evidence and thus had not carried its burden to demonstrate "substantial justification." *Id.* at 196-97.

C. The State's Motion for Partial Relief From Judgment After *City of Aurora v. Spectra Communications Group*.

On December 29, 2019, in *City of Aurora, Mo., et al. v. Spectra Communications Group*, 592 S.W.3d 764 (Mo. banc 2019), this Court overruled its previous opinion in this case and restored the previous rational-basis test for special laws challenges. *See id.* at 779 (describing *City of Normandy* as the "final misdirection" in the now-overruled special-laws jurisprudence). Consistent with that opinion, in January 2020, the State promptly filed a motion for partial relief from the circuit court's permanent injunction ("Motion") under Rule 74.06(b)(5), because it was "no longer equitable that the judgment remain in force." D162.

In its Motion, the State noted that rational basis review requires only a "reasonably conceivable state of facts," and that "courts are not confined to the record" in applying rational-basis scrutiny. D162, p. 6, n. 2 (quoting *Haves v. City of Miami*, 52 F.3d 918, 922 (11th Cir. 1995)). The State pointed to the series of reports showing that local governments in St. Louis County were improperly using municipal fines and fees as a major revenue-generating tool, and doing so on a uniquely problematic scale. D162 pp. 3-6; D164; D165; D166. In its Motion, the State relied on such authorities as the DOJ Report, the Better Together Report, and the IJ Report to argue that the General Assembly has a rational basis to impose stricter standards on St. Louis County than on municipalities elsewhere in Missouri in its attempt to curb the abuses associated with taxation by citation. D162, pp.3-9.

The circuit court heard argument on the Motion on April 3, 2020. Tr. p.1. The parties agreed on many issues: that the *City of Aurora* opinion reinstated a rational basis test for the special law challenges; that this new test applies to the validity of the two statutory provisions that were previously ruled unconstitutional in this case; that Missouri Rule 74.06(b)(5) provides the State with a procedure to seek relief from an on-going injunction; and that the State's motion was timely filed. Tr. pp. 3-4. The parties disagreed on two issues: whether there was, in fact, a rational basis for the two statutory provisions in this case, and if it would be unequitable to allow the statute to go

in effect even if it is a valid statute. Tr. p. 4. At the hearing, the State discussed the publicly available information establishing the rational basis for the law's classifications. Tr. pp. 6-8. The State also emphasized that the nature of the unrest in Ferguson in 2014 and 2015 indicated that this problem was particularly urgent in St. Louis County. Tr. p. 9. The Plaintiffs attacked the reports by arguing that the DOJ report only focused on Ferguson, *id.* at 14, and the IJ Report was about taxation-by-citation practices in Georgia. *Id.* The Plaintiffs relied on Table 5 from the Better Together Report to argue that 70 of the 91 municipalities brought in less than 20% of their income from traffic fines and fees. Tr. pp. 15-16.

The circuit court granted the State's Motion on December 1, 2020, lifting the permanent injunction that prohibited enforcement of sections 67.287 and 479.359.2. In its Order, the circuit court relied on the public reports cited by the State, as well as case law. D155 pp. 1-9. The Court noted that Plaintiffs did "not dispute that the policies adopted in Sections 67.287 and 479.359.2 are rationally related to legitimate State goals, such as promoting good municipal government, curbing the abuses associated with revenue-driven enforcement of minor traffic violations and municipal coeds, and protecting citizens from those abuses." D155 p. 12. The Court found that there were "many 'reasonably conceivable' and 'plausible' reasons why the Missouri General Assembly in 2015 might have wished to impose stricter standards for police and municipal-

court reform on St. Louis County and its municipalities than on the rest of the State. All of these 'plausible' reasons would apply equally to justify both the minimum standards in § 67.287 and the stricter revenue cap in § 479.359.2." D155 p. 12.

Plaintiffs filed a motion to amend the judgment, requesting for the first time that the circuit court toll the statutory compliance periods set forth in Sections 67.287.2 and 479.359.2. D156. The State opposed the motion. D157. The motion to amend was overruled when the circuit court did not rule on it within ninety days after it was filed. Mo. S. Ct. Rule 78.06.

ARGUMENT

I. The circuit court did not err in holding that Sections 67.287 and 479.359.2 satisfy *City of Aurora*'s rational-basis test because Plaintiffs have not shown that the statutory classification for St. Louis County municipalities is arbitrary and without a rational relationship to a legislative purpose, and the State put forth not just rational, but exceedingly persuasive justifications for stricter treatment of St. Louis County (responds to Appellants' first Point Relied On).

Plaintiffs' first Point Relied On contends that the General Assembly had no rational basis to treat municipalities in St. Louis County more stringently than other municipalities in Missouri when it enacted Senate Bill 5. This

argument is meritless. The General Assembly had many compelling justifications to impose stricter standards on St. Louis County, because there was overwhelming evidence that the regressive practice of taxation by citation was uniquely prevalent, uniquely entrenched, and uniquely harmful among St. Louis County's municipalities.

Standard of Review. Ordinarily, "a circuit court's ruling on a Rule 74.06(b) motion to set aside a judgment is reviewed for abuse of discretion." *Desai v. Seneca Spec. Ins. Co.*, 581 S.W.3d 596 (Mo. banc 2019) (citing *Bate v. Greenwich Ins. Co.*, 464 S.W.3d 515, 517 (Mo. banc 2015))). Here, however, the central underlying question raised by Appellants' first Point Relied On is whether SB 5's differential treatment of St. Louis County and other counties in Missouri satisfies rational-basis review. That underlying question presents a question of law that is subject to de novo review. *City of Crestwood v. Affton Fire Protection District*, 620 S.W.3d 618, 622 (Mo. banc 2021).

A. Standards for Rule 74.06(b) Motions.

The State sought prospective relief from a previously entered permanent injunction against the enforcement of the St. Louis County-specific provisions of SB 5 under Rule 74.06(b)(5). Under that Rule, the Court may relieve a party from a final judgment or order if "it is no longer equitable that the judgment remain in force." Mo. S. Ct. Rule 74.06(b)(5). A party may seek relief from any judgment with "'prospective effect'" when "'a subsequent circumstance makes

enforcement of such a judgment inequitable.'" *Hollins v. Capital Sols. Investments I, Inc.*, 477 S.W.3d 19, 26 (Mo. App. E.D. 2015) (citation omitted). A subsequent change in decisional law is just such a circumstance.

In *City of Aurora*, this Court overruled its prior decision in this case affirming the permanent injunction against the enforcement of SB's provisions, and held that the decision in *City of Normandy* had been "the final misdirection" in the incorrect method of special-laws analysis. *City of Aurora*, 592 S.W.3d at 779. This subsequent change in governing decisional law made it inequitable to leave the permanent injunction in place. *See Agostini v. Felton*, 521 U.S. 203, 215 (1997) ("[I]t is appropriate to grant a Rule 60(b)(5) motion when the party seeking relief from an injunction . . . can show a significant change . . . [in] decisional law."); *Juenger v. Brookdale Farms*, 871 S.W.2d 629, 631 n.3 (Mo. App. E.D. 1994) (explaining that "[t]he federal counterpart of Missouri's Rule 74.06(b)(5) is Federal Rule 60(b)(5)").

When the U.S. Supreme Court has applied the parallel federal rule, Fed. R. Civ. P. 60(b)(5),[4] in similar situations, it has explained that "a party can ask

[4] Fed. R. Civ. P. 60(b)(5) allows a court to relieve a party from a final judgment, order, or proceeding is "the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable[.]" This language is virtually identical to Rule 74.06(b)(5) (allowing relief from judgment when "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment remain in force.").

a court to modify or vacate the judgment or order if 'a significant change either in factual condition or in law' renders continued enforcement detrimental to the public interest." *Horne v. Flores*, 557 U.S. 433, 447 (2009). Once the moving party establishes that changed circumstances warrant relief, a court abuses its discretion by refusing to modify an injunction in light of the change. *Id*; *see also Agostini v. Felton*, 521 U.S. 203, 238 (1997) ("It is the true the trial court has discretion, but the exercise of discretion cannot be permitted to stand if we find it rests upon a legal principle that can no longer be sustained.").

Here, Plaintiffs do not dispute (and did not dispute below) that the State's claim is timely and properly asserted under Rule 74.06(b)(5), and they do not dispute that the change in decisional law warrants relief from the permanent injunction. And Plaintiffs concede that under *City of Aurora*, a rational basis test now governs their constitutional challenge to Sections 67.287 and 479.359.2. App. Br. 5-6. Instead, Plaintiffs contend only that the challenged provisions of SB 5 are also unconstitutional under the more deferential rational-basis standard provided in *City of Aurora*. Thus, the sole question before the Court on Point One is whether the circuit court erred in concluding that Sections 67.287 and 439.359.3 satisfy rational-basis review.

B. *City of Aurora* Restored Rational-Basis Review for Special-Laws Challenges.

In *City of Aurora*, this Court fundamentally changed the decisional law governing special-law challenges, rejecting the "open vs. closed-ended" and "substantial justification" tests, and restoring a simple rational-basis test.

In *City of Normandy*, this Court held that sections 67.287 and 479.359.2 are special laws, and upheld a judgment "permanently enjoining the State from enforcing" either provision. *City of Normandy*, 518 S.W.3d at 188. That holding had two parts. First, the Court held that these two provisions of SB 5 were presumptively unconstitutional under the three-part test outlined in Jefferson County because the provisions appeared to target St. Louis County. *Id.* at 192-196. This shifted the evidentiary burden to the State to "show substantial justification for the special treatment." *Id.* at 196. Second, the Court held that the State had offered no evidence and so had not carried its burden to demonstrate substantial justification. *Id.* at 196-97.

City of Aurora explicitly overruled *City of Normandy* and rejected its method of analysis. *See* 592 S.W.3d at 779. Nothing in the Missouri Constitution, the Court held, suggests that certain special laws are presumptively invalid. *Id.* Instead, from now on, "every law is entitled to a presumption of constitutional validity." *Id.* at 780. This Court held that the "burden-shifting and the substantial justification test"—which had resulted in

the invalidation of the provisions of SB 5 in *City of Normandy*—"have no basis in article III, sections 40 through 42, and should no longer be followed." *Id.* at 781. And the Court noted that *City of Normandy* had provided the "final misdirection" in the mistaken analysis, explicitly overruling it. *Id.* at 779.

City of Aurora replaced the previous rule by restoring the simple rational basis test. "[I]f the line drawn by the legislature is supported by a rational basis, the law is not local or special and the analysis ends." *Id.* at 780. "If the classification is not supported by a rational basis, the threshold requirement for a special law in section 40 is met and the party challenging the statute must then proceed to show the second element: either that the law offends one of the specific subject matter prohibitions in subdivisions (1) through (29) of section 30, or that the law is one 'where a general law can be made applicable' under subdivision (30)." *Id.* "Hereafter, this Court shall return to the rational basis test outlined above." *Id.* at 781.

C. Rational-Basis Review Is Highly Deferential and Does Not Require the State to Present Evidence.

Rational basis review is "highly deferential." *Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 378 (Mo. banc 2012). "Under rational basis review, this Court will uphold a statute if its finds a reasonably conceivable state of facts that provide a rational basis for the classifications." *City of Aurora*, 592 S.W.3d at 781 (quoting *Estate of Overbey*,

361 S.W.3d at 378). In so holding, this Court has relied on one of the U.S. Supreme Court's leading decisions on rational-basis review, *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993). *See Kansas City Premier Apts., Inc. v. Mo. Real Estate Comm'n*, 344 S.W.3d 160, 171 (Mo. banc 2011) (quoting *Beach*, 508 U.S. at 313). When applying this standard, "courts are not confined to the record." *Haves v. City of Miami*, 52 F.3d 918, 922 (11th Cir. 1995). Rather, "'those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it.'" *Id.* (citation omitted). "'The burden is on the party challenging the constitutionality of the statute to show that the statutory classification is arbitrary and without a rational relationship to a legislative purpose.'" *Estate of Overbey*, 361 S.W.3d at 380-81 (citation omitted). "[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach*, 508 U.S. at 315. Under rational-basis review, courts do not question the "wisdom, fairness, or logic of legislative choices." *Kansas City Premier Apartments*, 344 S.W.3d at 170 (quoting *Beach*, 508 U.S. at 313). "Instead, all that is required is that this Court find a plausible reason for the classification in question." *Kansas City Premier Apartments*, 344 S.W.3d at 170.

Thus, where rational basis-review applies, a statutory classification must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Beach*, 508 U.S. at 313. Where there are "plausible reasons" for the legislative policy, the Court's "inquiry is at an end." *Id.* at 313-14. "This standard of review is a paradigm of judicial restraint." *Id.* at 314. Furthermore, under rational-basis review, the State has no burden to justify the legislative classification. Instead, the statute has "a strong presumption of validity," and "those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it." *Id.* at 314-15 (citation omitted).

D. Sections 67.287 and 479.359.2 Easily Satisfy Rational-Basis Review.

Sections 67.287 and 479.359.2, RSMo, easily satisfy the highly deferential rational-basis review provided for in *City of Aurora*. Both provisions impose specific standards on municipalities in St. Louis County that are intended to counteract the problems associated with taxation by citation that uniquely afflicted the municipalities, police, and municipal courts in St. Louis County, as these came to light in the wake of Ferguson. Section 67.287 imposes minimum standards for budgeting, finances, transparency, police work, and police accountability on the municipalities of St. Louis County. § 67.287.2(1)-(12). Section 479.359.2 lowers the cap on "the percentage of its

annual general operating revenue received from fines, bond forfeitures, and court costs for municipal ordinance violations and minor traffic violations," to 20 percent for municipalities outside St. Louis County, and to 12.5 percent for municipalities within St. Louis County. § 479.359.2, RSMo. These provisions easily pass muster under rational-basis review.

As an initial matter, Plaintiffs do not present any argument to contend that the minimum standards set forth in section 67.287.2(1)-(12) lack a rational basis under the standard of *City of Aurora*. Instead, their argument focuses exclusively on the 12.5 percent revenue cap in section 479.359.2, and the fact that this revenue cap is stricter than the 20 percent cap that applies to municipalities outside St. Louis County. *Id.* Accordingly, Plaintiffs have waived any contention that Section 67.287 fails rational-basis review.

In addition, as the circuit court noted, "Plaintiffs do not dispute that the policies adopted in Sections 67.287 and 479.359.2 are rationally related to legitimate State goals, such as promoting good municipal government, curbing the abuses associated with revenue-driven enforcement of minor traffic violations and municipal codes, and protecting citizens from those abuses." D161 (Judgment), p.11. In other words, Plaintiffs do not dispute that the policies implemented in those two Sections are supported by rational bases. Instead, Plaintiffs challenge only the *differential treatment* among municipalities as supposedly lacking a rational basis—*i.e.*, the fact that the

standards are stricter for municipalities in St. Louis County than for those in other Missouri counties. *Id.* Thus, Plaintiffs argue solely that, when it came to curbing the abuses of taxation by citation, the Legislature lacked any conceivable, rational basis to treat the municipalities of St. Louis County more stringently than those in other Missouri counties.

This contention is meritless. Both provisions easily satisfy rational-basis review, for the same reasons held by the circuit court. At the time Senate Bill 5 was enacted, there was overwhelming public evidence demonstrating that the problem of taxation by citation was uniquely *entrenched* and uniquely *harmful* in St. Louis County, due to the unique *incentives* for such behavior built into St. Louis County's unique governmental structure, and the unique *culture* of taxation by citation that had taken hold in many St. Louis County municipalities. *See supra*, Statement of Facts, Part A. In light of this widely publicized background, it was eminently reasonable for the General Assembly to conclude that stricter standards should apply in St. Louis County, to counter the more powerful incentives and deeply rooted culture of taxation by citation that existed, and to attempt to eradicate abusive practices more quickly.

For these reasons, the circuit court held that imposing stricter standards on St. Louis County than other municipalities of the State was rational for at least eight closely related reasons. D161, pp.12-16. As the circuit court noted, "[u]nder rational-basis review, any one of these [eight] reasons would be

sufficient to uphold the challenged provisions of Senate Bill 5." D161, p.16. In fact, all eight were sufficient, both individually and collectively.

First, given the highly fractured nature of St. Louis County's municipal governments, the circuit court correctly noted that "[t]he legislature could rationally have concluded that St. Louis County's fragmented governmental structure created unique structural incentives for revenue-driven municipal enforcement practices," that did not exist to such an extreme degree elsewhere in Missouri. D161, p.12. In 2015, "[a]mong Missouri counties, only St. Louis County had 90 municipal governments, 81 municipal courts, 63 separate police departments, and at least 45 unaccredited police departments. No other Missouri county came anywhere close to these numbers." *Id.* "As a result, many smaller municipalities that lack strong commercial or property-based sources of revenue had strong incentives to obtain revenue from fines and fees." *Id.* These unique structural incentives provide a rational basis to treat St. Louis County differently from other Missouri counties, as the legislature did in enacting Senate Bill 5. *See* D165, p.6 (noting that curbing the practice of taxation by citation may be "a matter of systemic incentives").

Second, as the circuit court noted, many observers "concluded that St. Louis County's municipal courts had a deeply entrenched 'culture' of revenue-driven enforcement that had developed over decades of minimal oversight, and that this culture was unique to St. Louis County." D161, p.13. As discussed

above, both the Better Together Report and the ArchCity Report came to this conclusion. D166; ArchCity Report. For example, the Better Together Report expressed concerns about "the culture that has been established over the decades" in many St. Louis County municipal governments and municipal courts. D166, p. 8. The concern that many of St. Louis County's municipalities and municipal courts had developed deeply entrenched cultures of revenue-driven enforcement, after decades of abuses, provides a rational basis for the legislature to impose stricter standards on St. Louis County.

Third, as the circuit court noted, there was empirical evidence that the practice of revenue-driven enforcement was much more widespread in St. Louis County than in the municipalities of other Missouri counties. D161, p.13. "Only St. Louis County had 21 municipalities obtaining over 20 percent of their revenues from fines and fees." *Id.* "Only St. Louis County had 14 municipalities for which fines and fees were the principal source of revenue." *Id.* "Only St. Louis County had 63 separate police departments, including at least 45 unaccredited police departments." *Id.* "Only St. Louis County had 27 municipalities that were obtaining proportionally more revenue from fines and fees than Ferguson." *Id.* "Only St. Louis County was the subject of a court-observer study indicating that 30 of 60 municipal courts were engaging in abusive practices such as using arrest and detention to compel payment of municipal fines and fees." *Id.* This powerful empirical evidence that abuses

associated with revenue-driven enforcement were more widespread in St. Louis County than anywhere else provides another rational reason for the legislature to impose stricter standards on St. Louis County. *Id.*

Fourth, as the circuit court observed, there was particularly powerful evidence of the *regressive impact* of taxation by citation on the poor and minority communities in St. Louis County, which was unmatched for other Missouri counties. D161, pp.13-14. As discussed above, the DOJ Report, the Better Together Report, the IJ Report, and the ArchCity Report all emphasized the unduly burdensome and corrosive effects that taxation by citation imposes on the poor, especially in minority communities in St. Louis County. *See* Statement of Facts, *supra*. "There was no similar evidence of such profound and corrosive impact in other counties from the problems that Senate Bill 5 was designed to address." D161, p.14.

Fifth, as the circuit court held, there was evidence that the "individual burdens" of taxation-by-citation on St. Louis County residents were much greater on a county-wide basis than elsewhere in Missouri. D161, p.14. As noted above, the average financial burdens from municipal fines and fees was almost three times higher in St. Louis County than in other Missouri counties. *See* D166, p.3 (noting that "the combined populations of the 90 municipalities in St. Louis County accounts for only 11% of Missouri's population," but those municipalities brought in "34% of all municipal fines and fees statewide"). This

individual burden was even worse for people who live or commute among the more municipally fractured regions of St. Louis County. These citizens might face enforcement in many separate municipalities with different enforcement standards in the course of a few minutes' commute. As the ArchCity Report recounted, "[t]he safety of our roads depends on drivers obeying speed limits, but this can be practically difficult for drivers who regularly drive through St. Louis' 90 unique municipalities. The frontage road speed limit may have been 45 mph in the last city, but that is cold comfort to the driver being ticketed for driving 45 mph in a 30 mph zone one mile down the road." Arch City Report, at 8. The Better Together Report noted that "[a] motorist driving to the airport from Clayton or from downtown St. Louis may encounter three or four patrol cars with radar from three or more separate municipalities," and that the stretches of I-70, I-170, and I-270 within St. Louis County "may be the most over-policed roadways in the state." D166, p.10. These unique burdens imposed on individuals within the County provide another rational basis for the stricter standards to apply.

Sixth, the circuit court correctly noted that solving the problems of taxation by citation in St. Louis County was uniquely urgent in 2015, because "no other county in Missouri experienced civil unrest and racial strife like that experienced in St. Louis County in the aftermath of the shooting of Michael Brown." D161, p.14. In light of "the unprecedented civil unrest and racial

tension in St. Louis County," there was every reason to believe that "it was more urgent to eradicate revenue-driven enforcement practices, and the police and municipal-court abuses they generate, from St. Louis County than from other counties in Missouri." D161, p.15.

The circuit court also persuasively reasoned that there were countervailing reasons that made it rational for the Legislature not to impose such strict standards on municipalities outside St. Louis County. D161, pp.15-16. The circuit court quoted this Court's statement sin *City of Aurora* in holding that "'[p]rotecting previously established revenue sources for political subdivisions' to avoid 'disrupting the … reliance of those who acted lawfully before the change in policy' is also a legitimate state interest." D161, p.15 (quoting *City of Aurora*, 592 S.W.3d at 782). The circuit court also quoted *City of Chesterfield*'s statement that "the need for predictable and sound revenue streams" for municipalities is a legitimate interest. D161, p.15 (quoting *City of Chesterfield v. State*, 590 S.W.3d 840, 845 (Mo. banc 2019)). Because the revenue cap for all municipalities prior to SB 5 was 30 percent, reducing the revenue cap to 20 percent for municipalities in counties outside St. Louis County struck a balance between competing considerations—the need to provide predictable revenue streams on one hand, and the need to curb the abuses of taxation by citation on the other. D161, p.15. As the circuit court noted: "The legislature could rationally have concluded (and evidently did

conclude) that this balance should be struck differently in St. Louis County than in other counties in Missouri because of all the unique features of St. Louis County." D161, p.15. "Such line-drawing is an 'unavoidable component of most economic or social legislation,' and it 'virtually unreviewable' under rational-basis scrutiny. D161, p.15 (quoting *Beach*, 508 U.S. at 316) (square brackets omitted). "[U]nder rational-basis scrutiny, "the legislature must be allowed leeway to approach a perceived problem incrementally." D161, p.16 (quoting *Beach*, 508 U.S. at 316). "This 'incremental' approach to police and municipal-court reform in Senate Bill 5 also reflects a rational approach to a legislative problem." D161, p.16.

E. Plaintiffs, Not the State, Bear the Burden of Persuasion.

Moreover, Plaintiffs miss the mark because their argument improperly imposes the burden of proof and persuasion on the State, not the Plaintiffs. That is not correct under rational-basis review.

In its original judgment, the State was improperly required to show a "substantial justification" for the law's classifications pertaining to only St. Louis County. *See City of Aurora*, 592 S.W.3d at 781 ("[T]his 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."). By contrast, under a rational basis test, the State is *not*

required to submit evidence to justify the legal provision under scrutiny. *Id.* ("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." (quoting *Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 378 (Mo. banc 2012))). Even though it is not required to submit evidence, the State presented several publicly available reports that easily establish reasonably conceivable state of facts that provide a rational basis for the classifications in Sections 67.287.2 and 479.359.2. D164; D165; D166.

Under rational basis review, the burden is on the party challenging the statute—here, the Plaintiffs—to *negate* every conceivable basis for the law. *Estate of Overbey*, 361 S.W.3d at 380-81 ("The burden is on the party challenging the constitutionality of the statute to show that the statutory classification is arbitrary and without a rational relationship to a legislative purpose.") (citation omitted); *Haves*, 52 F.3d at 922 (holding that "those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it").

Plaintiffs failed to negate all of the conceivable bases that support the statute's classifications. In their brief, and at the hearing, Plaintiffs acknowledged there is a basis to treat *some* municipalities within St. Louis County differently than the rest of the state, but they quibble about how the

"reports" presented by the State do not show why *all* municipalities within St. Louis County deserve a lower threshold than the rest of the State. *See* App. Br. pp. 13 ("[N]one 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[.]" (bold in original)). In effect, Plaintiffs argue that the law is not *narrowly tailored* to achieve it stated purposes, because (they contend) it is overbroad as to the St. Louis County municipalities that did not have problems with taxation by citation. But that is an argument invoking strict scrutiny (the most stringent form of review), not rational-basis review (the most deferential form of review). Some overbreadth in legislative classifications is both inevitable and routine under rational-basis review. Rational-basis scrutiny does *not* require a perfect fit between the law's purpose and its applications. *See U.S. Dep't of Agriculture v. Moreno*, 413 U.S. 528, 538 (1973) ("Rational basis analysis 'does not require that every classification be drawn with precise 'mathematical nicety.'"). The reports referenced by the State establish that the legislature had a legitimate reason to combat the problem of taxation-by-citation, and that the legislative choice to hold St. Louis County to a different standard than the rest of the State was rational. Nothing more is required under rational-basis review.

F. Plaintiffs' Other Arguments Lack Merit.

Plaintiffs make other retail-level challenges to the reports submitted by the State, but all of them lack merit. First, Plaintiffs take issue with the DOJ Report because it applies to Ferguson and not the rest of St. Louis County. App. Br. p. 14. But this misses the point. The DOJ Report illustrates how using traffic fines and fees to generate revenue can have corrosive effects within a community. *See* D164 pp. 5-9. The DOJ Report noted that "Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership." *Id.* at 5. As a result, the DOJ Report concluded, "Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs." *Id.* The practice of taxation-by-citation had "sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular." *Id.* Plaintiffs do not dispute the underlying premise of the DOJ report—that the abuse of taxation-by-citation can negatively impact communities and it is within the State's interest to eradicate such abusive practices. D155 ¶49. Moreover, the Better Together Report and the ArchCity Report provide extensive evidence that the very same problems were not isolated to Ferguson but were endemic within St. Louis County. Notably, when it came to the proportion of revenues from municipal fines and fees, Ferguson

was not the worst, or the second worst, or even the third worst in St. Louis County—it was the *twenty-eighth* worst. D166, pp. 25-27, tbl. 5. As the Better Together Report stated, the abuses of Ferguson were "far from an isolated incident" in St. Louis County. D166, p.15.

Second, Plaintiffs attack the IJ Report because it was published *after* SB 5 was passed and focuses on "three **Georgia** cities." App. Br. pp. 13-14 (bold in original). Again, this argument misses the point. Under rational basis review, "[i]dentifying a rational basis is an objective inquiry that does not require unearthing the legislature's subjective intent in making the classification." *City of Aurora*, 592 S.W.3d at 781. The effects of taxation-by-citation in Georgia noted by the IJ Report are directly similar to those noted in Ferguson by the DOJ Report. *See* D165 p.6 (noting that taxation by citation led to "lower levels of trust in government officials and institutions," and that taxation by citation leads to "lower community trust and cooperation"). The IJ Report thus supports the commonsense inference that the ills of taxation by citation abound wherever the practice is pursued. The fact that the IJ Report came to similar conclusions based on similar facts as did the General Assembly that enacted SB 5, provides strong support for the rationality of the legislation.

Finally, Plaintiffs argue that the "one size fits all" 12.5 percent cap applicable to St. Louis County municipalities is not rational because the BT Report shows that the majority of the municipalities in 2013 were already

below that threshold. App. Br. p. 18. This also misses the point. There is abundant information demonstrating that St. Louis County's municipalities are particularly susceptible to the abuses of taxation-by-citation. The structural incentives for taxation by citation arising from St. Louis County's fractured government entail that St. Louis County's municipalities present an enhanced risk for the problems of taxation by citation. The Better Together Report demonstrates that many St. Louis County municipalities have succumbed to the structural temptations to rely on municipal court revenue at alarming rates. *See* D166 p. 22, tbl.2. The Better Together Report used three sources of public data to demonstrate that other parts of St. Louis County followed the same revenue-driven formula as Ferguson. *See supra* Statement of Facts, Part A. In short, in 2014, there was overwhelming public evidence that the problem of taxation-by-citation was uniquely entrenched and heavily concentrated within St. Louis County, and that its municipalities had repeatedly succumbed to its temptations. Moreover, as noted above, the 12.5 percent revenue cap is *higher* than the 10 percent figure identified as problematic by multiple authorities, including the IJ Report—and 29 municipalities in St. Louis County were above 12.5 percent, and 40 municipalities were above 10 percent. These figures indicate extremely prevalent taxation-by-citation practices throughout St. Louis County.

SB 5 did not end the structural fractionalization within St. Louis County. As *City of Chesterfield* noted, this unique fractionalization makes it difficult for smaller, cash-strapped municipalities to find "predictable revenue streams." Just because some St. Louis County municipalities may not have resorted to "taxation-by-citation" in 2013, does not mean they will not be tempted to do so in the future. *See Estate of Overbey*, 361 S.W.3d at 380 ("The legislature rationally could conclude that extra steps are necessary to eradicate such discrimination and to deter future misconduct[.]"). Thus, there is a plausible reason for the legislature to apply a lower revenue cap on all St. Louis County municipalities, not just Ferguson.

Plaintiffs also argue that there is no reason to allow other jurisdictions to obtain up to 20 percent of revenue from minor traffic fines, while holding St. Louis County to a lower threshold. But, as previously noted, St. Louis County is uniquely fractured into 90 different municipalities which account for 11% of the state's population but bring in 34% of all municipal fines and fees statewide. D166 p.3. The Better Together Report concluded that "[t]he reason for the high levels of revenues from municipal fines and fees is simple—survival of the municipality." *Id.* at 8. With so many municipalities located in a small area, the more traditional sources of revenue—like residential property, large retail centers, and corporate employers—are not equally divided, increasing the pressure to use law enforcement and municipal courts

as tools to generate revenue. This unique structure is the reason why St. Louis County municipalities should have a lower threshold than those in the rest of the state.

As noted above, under rational basis review, a statute must be upheld if there is any "reasonably conceivable state of facts that … provide[s] a rational basis for the classification." *Kan. City Premier Apartments, Inc. v Mo. Real Estate Comm'n*, 344 S.W.3d 160, 170 (Mo banc 2011) (alternations in original) (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)). "Rational basis is highly deferential and does not question the wisdom, social desirability or economic policy underlying a statute." *Estate of Overby*, 361 S.W.3d at 378. "Instead, all that is required is that this Court find a plausible reason for the classifications in question." *Id.* (alterations omitted). Plaintiffs failed to negate every conceivable basis for the legislature's decision to treat St. Louis County differently than the rest of the State. Thus, the circuit court did not abuse its discretion in granting the State's Motion under Rule 74.06(b)(5).

G. Missouri Does Not "Encourage" Taxation by Citation.

Finally, Plaintiffs argue that there was no rational basis for SB 5 to "single out" St. Louis County, because Missouri supposedly "has a history of embracing and encouraging th[e] practice" of using minor traffic fines to offset a municipality's annual operating revenue. App. Br. p. 11. There is no foundation for Appellants' unsupported conclusion that the law prior to SB5,

known as the "Macks Creek Law," supposedly "embraced" or "encouraged" the practice of taxation-by-citation. On the contrary, the history of the law is a history of the General Assembly imposing increasingly stringent *restrictions* on that practice. Macks Creek Law did not *create* the ability of municipalities to use income from traffic fines and fees to offset annual operating revenue—this was already happening. To the contrary, the law "*prohibited* any city, town, or village from receiving more than 45 percent of its total annual revenue from fines or traffic violations." *Normandy*, 518 S.W.3d at 189 (emphasis added). "The General Assembly reduced this cap from 45 percent to 35 percent in 2009, and to 30 percent in 2013." *Id.* SB 5 reduced it again in 2015. There is no evidence that the General Assembly has ever "embraced and encouraged" this practice in the State of Missouri. Describing the law as "embracing and encouraging" taxation by citation is like describing the Surgeon General's increasingly strong warnings against the dangers of smoking over the years as "embracing and encouraging" the practice of smoking.

Even if Appellants were correct that the previous versions of Macks Creek Law somehow *encouraged* the practice of taxation-by-citation by imposing increasingly strict limitations on it over time, there is nothing wrong with the General Assembly amending the statutory caps to discourage the practice. If anything, Appellants' argument that the previous thresholds

encouraged taxation-by-citation, further justifies the General Assembly's 2015 decision to limit the practice even more.

In sum, section 67.287 and section 479.359.2 easily pass rational basis review after *City of Aurora* because they target a perverse practice of taxation-by-citation that was uniquely entrenched and uniquely harmful among the municipalities of St. Louis County. The circuit court's judgment granting relief from the injunction against enforcing those provisions should be affirmed.

II. The circuit court did not abuse its discretion by leaving the original statutory deadlines in Sections 67.287 and 479.359 unaltered, because the circuit court lacks authority to re-write statutory deadlines, and it would be unequitable to further delay enforcement of a duly enacted statute (responds to Appellants' second Point Relied On).

Standard of Review. In their second point on appeal, Plaintiffs challenge the circuit court's denial of their motion to amend the judgment. Plaintiffs' primary argument on this point is that principles of equity in Rule 74.06(b)(5) "compel" the extension of statutory compliance deadlines. Although this point purports to challenge the circuit court's denial of the motion to modify, it challenges the circuit court's discretion to modify the permanent injunction under Rule 74.06(b)(5). Regardless of which decision of the circuit

court is challenged, the standard of review is the same. "The trial court's denial of a motion to amend the judgment is reviewed for abuse of discretion." *Palmer v. Union Pacific R. Co.*, 311 S.W.3d 843, 851 (Mo. App. E.D. 2010) (citing *LaRose v. Washington Univ.*, 154 S.W.3d 365, 370 (Mo. App. E.D. 2004). And "a circuit court's ruling on a Rule 74.06(b) motion to set aside a judgment is reviewed for abuse of discretion." *Desai v. Seneca Spec. Ins. Co.*, 581 S.W.3d 596 (Mo. banc 2019) (citing *Bate v. Greenwich Ins. Co.*, 464 S.W.3d 515, 517 (Mo. banc 2015))).

As an initial matter, Plaintiffs did not raise this issue of equitably amending the statutory deadlines at any time prior to the entry of final judgment against them. They raised it for the first time in a post-judgment motion to amend. They could have, but did not, raise this issue in opposing the State's motion for partial relief from judgment. The fact that Plaintiffs did not raise this issue in timely fashion was reason enough for the circuit court to reject their motion.

In any event, the circuit court did not abuse its discretion in denying Plaintiffs' request to "restart the clock" on the statutory deadlines in sections 67.287.2 and 479.359.2. First, Plaintiffs cite no authority to support the idea that Courts can, or should, rewrite statutory deadlines.[5] Missouri courts

[5] Plaintiffs' request to extend the deadlines in both Section 67.287.2 and 479.359.2 by more than five years is misleading. App. Br. p.25. The deadline

"cannot usurp the function of the General Assembly, or by construction, rewrite its acts." *Marshall v. Marshall Farms, Inc.*, 332 S.W.3d 121, 128 (Mo. App. S.D. 2010). If Plaintiffs believe that the statutory deadlines imposed by the Legislature are not reasonable or workable, they must address those concerns to the Legislature, not to the Court. *See, e.g.*, *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 668 (Mo. banc 2010) ("[T]he Court cannot supply what the legislature has omitted from controlling statutes."); *Bd. of Educ. of City of St. Louis v. State*, 47 S.W.3d 366, 371 (Mo. banc 2001) ("The courts cannot transcend the limits of their constitutional powers and engage in judicial legislation supplying omissions and remedying defects in matters delegated to a coordinate branch of our triparate government."); *State ex rel. Koster v. Cowin*, 390 S.W.3d 239, 244 (Mo. App. W.D. 2013) ("We cannot engraft language onto a statute that was not provided by the legislature.").

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to comply with Section 479.359.2 (January 1, 2016) was less than 6 months after the statute was enacted, and was not impacted by the previous permanent injunction. Section 479.359.2 required all counties, cities, towns, and villages to comply with the 20 percent cap beginning January 1, 2016. *Id.* The only portion of the statute that was enjoined was the reduction to twelve and one-half percent for St. Louis County. The municipalities' request to extend the deadline in § 479.359.2 by more than *five years* would do much more than merely "toll" the original statutory compliance period. If SB 5 had never been enjoined, they would have had less than *six months* to comply with the new revenue cap.

Ultimately, the Plaintiffs request to rewrite statutory deadlines is founded on a misunderstanding of the nature of judicial pronouncements of unconstitutionality. A permanent injunction against a statute's enforcement blocks the State from enforcing the statute, but it does not strike the statute from the books. *See* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 VA. L. REV. 933, 937 (2018) (rejecting the "assumption that a judicial pronouncement of unconstitutionality has cancelled or blotted out a duly enacted statute, erasing that law from the books, vetoing or suspending it and leaving nothing for the executive to enforce now or in the future"). "[T]he judicial has no power to alter, erase, or delay the effective date of a statute, and it has no power to bind future courts to its current interpretations." *Id.* at 973.

Nor did the circuit court abuse its discretion in granting the State's Motion under Rule 74.06(b)(5). In *Agostini v. Felton*, 521 U.S. 203 (1997), the Supreme Court addressed the parallel federal rule, Fed. R. Civ. P. 60(b)(5). *Id.* at 238. The Supreme Court noted that the trial court has discretion to deny a motion for relief from judgment, "but the exercise of discretion cannot be permitted to stand if we find it rests upon a legal principle that can no longer be sustained." *Id.* The same principle applies here.

Plaintiffs emphasize that Rule 74.06(b)(5) applies to judgments with prospective effect, which means the judgment is not void *ab initio*. App. Br. 26. But this limitation in Rule 74.06(b)(5) is necessary to prevent re-litigation of final judgments whenever the law changes. *See Agostini*, 521 U.S. at 239 (noting that relief under Fed. R. Civ. P. 60(b)(5) was limited to judgments with prospective effect and the decision would not transform the Rule into "allowing an 'anytime' rehearing"). This is different from Rule 74.046(b)(4), which permits vacating any judgment that is *void*. But a judgment is not void just because it is erroneous; "[a] judgment is void 'only if the court that rendered it lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process of law.'" *Hollins v. Capital Solutions Invest. I, Inc.* 477 S.W.3d 19, 24 (Mo. App. E.D. 2015) (quoting *Forsyth Fin. Grp., LLC v. Hayes,* 351 S.W.3d 738, 740 (Mo.App.W.D.2011). The distinction between a *void* judgment and prospective relief from a previously erroneous judgment says nothing about the equity of amending statutory compliance deadlines. To the contrary, SB5 is a duly enacted statute, and equity strongly favors the enforcement of a duly enacted state law. A statute like SB 5 "is in itself a declaration of public interest and policy." *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937). When balancing equitable factors, consideration of the public interest "merge[s]" with consideration of harm to the government. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The true inequity in this case is that Sections 67.287.2

and 479.359.2 are constitutional and validly enacted, but have been unenforced for almost 6 years based on decisional law that is no longer valid. The trial court did not abuse its discretion by declining to prolong this inequity.

Indeed, Plaintiffs entirely overlook the powerful evidence of inequity that would result if St. Louis County's practices of taxation by citation were permitted to continue uncurbed for another five years. As discussed in detail above, *see* Statement of Facts, Part A, there is compelling evidence that taxation by citation in St. Louis County imposed inequitable and disproportionate burdens on poor and minority communities in that county. The practices of issuing multiple citations per incident, aggressive collection practices, threats of incarceration and loss of driving privileges to enforce payment, the routine issuance of arrest warrants for failure to appear to answer minor infractions, and similar practices—these can be minor inconveniences for the affluent, but immensely disruptive and burdensome experiences for the poor. Even if the courts had authority to alter mandatory statutory deadlines for equitable reasons, in this case equity would overwhelmingly favor the prompt enforcement of SB 5's timeframes.

Plaintifffs cite no authority to directly support their argument that principles of equity in Rule 74.06(b)(5) somehow "compel" the extension of statutory compliance deadlines. Even if they had cited authority on this point, they submitted no evidence to show that they are actually *unable* to comply

with the deadlines in the law as it was written. Accordingly, the circuit court did not abuse its discretion by either denying the Municipalities' motion to amend or granting the State's motion to modify.

CONCLUSION

For the reasons stated in this brief, this Court should affirm the circuit court's Order and Judgment lifting the prior permanent injunction.

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that a copy of the above was filed electronically and served by operation of the electronic filing system through Missouri CaseNet on August 9, 2021, on all counsel of record.

The undersigned also certifies that the foregoing brief complies with the limitations in Missouri Supreme Court Rule 84.06(b) and 84.06(c)(1)-(4), and that the brief contains 12,727 words, excluding the portions exempted from the word count under Supreme Court Rule 84.06(b).

/s/ D. John Sauer