SC100554

IN THE SUPREME COURT OF MISSOURI

JESSICA GOODMAN,

Plaintiff /Appellant,

vs.

SALINE COUNTY COMMISSION, et al.,

Defendants / Respondents.

On Appeal from the Circuit Court of Saline County
Honorable Kelly Rose, Circuit Judge
Case No. 22SA-CV00865

SUBSTITUTE BRIEF OF THE RESPONDENTS

Respectfully submitted,

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RESPONDENTS' STATEMENT OF FACTS

Appellant Jessica Goodman (the "Assessor") is the elected assessor of Saline County. On October 31, 2022, the Assessor brought suit against the Saline County Commission, individual Commissioners Kile Guthrey Jr. (the presiding Commissioner), Charles Monte Fenner, (Southern District Commissioner), and Stephanie Gooden (Northern District Commissioner), as well as the Saline County Collector, Cindi Sims (collectively, the "Respondents"). [L.F. Doc. #2, p. 3]. Following a subsequent election, Becky Plattner is the now presiding Commissioner in place of Commissioner Guthrey, consequentially substituting herself as party. *Id.*

In her lawsuit, the Assessor brough five counts against the Respondents seeking: 1) a writ of mandamus and/or prohibition ordering the Commission to do certain things, namely to reimburse the Assessor's Fund related to certain pay increases and to correct alleged payroll errors by making additional payments to, as well as adjusting certain comp/vacation time for, the Assessor's employees; 2) a writ of mandamus ordering the Respondents to deposit one percent (1%) of ad valorem taxes into the assessor's fund; 3) a declaratory judgment in the alternative that Saline County is a third class county; 4) a temporary restraining order asking the trial court to affirmatively order the County Collector to deposit an additional one half percent (1/2%) of ad valorem taxes into a special fund; and 5) an order seeking her attorneys' fees and costs from the Respondents, with the exception of the Collector, Cindi Sims. [L.F. Doc #2].

On March 6, 2023, the trial court heard oral arguments on the Respondents' Motions to Dismiss ("Motion"). [L.F. Doc #20]. In their Motions, the Respondents highlighted the facial deficiencies in the Assessor's petition. These deficiencies included the Assessor's failure to include the proper parties in her petition, failure to make allegations as to fundamental operating components of invoked statutes, ripeness issues, the Missouri Constitution's limitation on employee bonuses, Missouri's clear and explicit law classifying Saline County, and finally the absence of any statute or contract permitting the Assessor to her attorneys' fees and costs. [L.F. Doc #6]. The trial court subsequently took the matter under advisement.

On March 9, 2023, the trial court granted the Respondents' Motion in full. [L.F. Doc #20, p. 2]. The trial court explicitly stated in its decision that the Assessor's petition on its face revealed that the Assessor paid an unconstitutional bonus to her employees. *Id.* The trial court stated the petition:

> ". . .demonstrates this accepted benefit was 'in addition' to employee's usual compensation, and of utmost importance, as a result of work already done. However, the Missouri Constitution does not allow a county official to arbitrarily close her office and pay her employees not to work on the taxpayers' dime. This 'benefit' is unequivocally a 'bonus' because it is 'money or equivalent given in addition to usual compensation.'"

Id.

Regarding the remaining portions of the Assessor's petition, the trial court stated that it failed to plead necessary elements tied to explicit wording in Missouri statutes, including the assessed valuation of the County on a particular date, to demonstrate a controversy related to Saline County's current classification. *Id.* The petition did not deny

the current classification but tacitly accepted it. [L.F. Doc #2, p. 10, ¶ 56]. The trial court subsequently found that Missouri statutes specify that for a county such as Saline, operating as a second class county, ad valorem tax withholding at its current levels was accurate. [L.F. Doc #20, p. 2]. As a result, the trial court found cause to dismiss the Assessor's petition in full. *Id.* at pp. 2-3.

The Assessor subsequently filed this appeal. On April 2, 2024, the Court of Appeals for the Western District of Missouri issued its opinion, finding that exclusive jurisdiction lies with this Court. The Court of Appeals for the Western District concurrently ordered the transfer of this case to this Court.

RESPONDENTS' ARGUMENT

Standard of Review Applicable to All Points

The standard of review when considering a trial court's grant of a motion to dismiss is *de novo. Copeland v. City of Union*, 534 S.W.3d 298, 301 (Mo. App. E.D. 2017) (*citing Moynihan v. Gunn*, 204 S.W.3d 230, 232-33 (Mo. App. E.D. 2006)). When the trial court fails to state a basis for its dismissal, the Court presumes the dismissal was based on at least one of the grounds stated in the motion to dismiss. *Id.* at 233. Further, this Court can affirm the trial court's dismissal on any ground before the trial court in the motion to dismiss, even if that ground was not relied upon by the trial court in dismissing the claim. *Id.*

I. The Assessor ignores the plain language of Missouri law in denying the fact that she submitted an insufficient petition lacking any allegations as to dispositive issues related to Saline County's classification and its ad valorem tax allocation.

(Combined Response to Assessor's Points I & II)

This Court should reject the portions of the Assessor's appeal concerning both the requested reclassification of Saline County and the withholding of one percent (1%) of ad valorem taxes to the credit assessment fund due to the clear and explicit statutes controlling both issues coupled with the Assessor's plain failure to adequately address them in her petition. When construing statutes, this Court ascertains the intent of the General Assembly from the language used and gives effect to that intent. *State, Missouri Dept. of Social Services, Div. of Aging v. Brookside Nursing Center, Inc.*, 50 S.W.3d 273,

276 (Mo. banc 2001). The Court must also give the statute's language its plain and ordinary meaning and read the provisions not in isolation but construed together and read in harmony with the entire act. *Id.* "In construing a statute, courts cannot 'add statutory language where it does not exist'; rather, courts must interpret 'the statutory language as written by the General Assembly.'" *Li Lin v. Ellis*, 594 S.W.3d 238, 244 (Mo. 2020) (*citing Peters v. Wady Indus., Inc.*, 489 S.W.3d 784, 792 (Mo. banc 2016)).

A. Chapter 48 operates as the key to utilize class-based statutes, including § 137.720 RSMo.

The Assessor's first point concerns the operation of § 137.720 RSMo as it pertains to Saline County. In a series of alternative arguments, the Assessor contends that § 137.720 RSMo can and should, in conjunction with other statutes, be read in such a way that one percent (1%) of ad valorum taxes are required to be deposited to the credit of the Saline County assessment fund. [*See* App. Sub. Brief, pp. 17-18]. There are only two applicable, operative subsections of § 137.720 RSMo that direct the withholding of certain percentages of ad valorem tax revenue to be deposited to the credit of the assessment fund. These two subsections read, in full, as follows:

> "A percentage of all ad valorem property tax collections allocable to each taxing authority within the county and the county shall be deducted from the collections of taxes each year and shall be deposited into the assessment fund of the county as required pursuant to section 137.750. **The percentage shall be one-half of one percent for all counties of the first and second classification and cities not within a county and one percent for counties of the third and fourth classification.**"

§ 137.720(1) RSMo. (emphasis added)

> Effective July 1, 2009, for counties of the first classification, counties with a charter form of government, and any city not within a county, an additional one-eighth of one percent of all ad valorem property tax collections shall be deducted from the collections of taxes each year and shall be deposited into the assessment fund of the county as required pursuant to section 137.750, and **for counties of the second, third, and fourth classification, an additional one-half of one percent of all ad valorem property tax collections shall be deducted** from the collections of taxes each year and shall be deposited into the assessment fund of the county as required pursuant to section 137.750, **provided that such additional amounts shall not exceed** one hundred twenty-five thousand dollars in any year for any county of the first classification and any county with a charter form of government and **seventy-five thousand dollars in any year for any county of the second, third, or fourth classification**.

§ 137.720(3) RSMo. (emphasis added)

As a preliminary point, without any additional information as to how a given county is classified, § 137.720 RSMo generally lacks sufficient content to be of practical use on its own. However, on its own bare terms, § 137.720 RSMo rules out the Assessor's requested relief on its face, namely that an unqualified one percent (1%) of ad valorem taxes be withheld and credited to the Saline County assessment fund. Pursuant to § 137.720 RSMo, first class counties are to withhold one half percent (1/2%) of ad valorem taxes per the first subsection and an additional one eighth percent (1/8%), capped at one hundred twenty-five thousand dollars ($125,000), per the third subsection. Second class counties are to withhold one half percent (1/2%) per the first subsection and an additional one half percent (1/2%), capped at seventy-five thousand dollars ($75,000.00), per the third subsection. § 137.720 RSMo further indicates that third and fourth class counties are directed to withhold one percent (1%) per the first subsection and an additional one half percent (1/2%), capped at seventy-five thousand dollars ($75,000.00), per the third subsection. Simply put, no county in Missouri is directed by §

137.720 RSMo to withhold an unqualified one percent (1%) of ad valorum taxes to be credited to its assessment fund.

To actually utilize § 137.720 RSMo, one has to read it in conjunction with Chapter 48, which educates the reader about county classification in Missouri. § 48.020(1) RSMo establishes the classes necessary for § 137.720 RSMo, as well as other class-based statutes, to operate. First, § 48.020(1) RSMo establishes two demarcated thresholds of assessed valuation to create three value-based classes. It then contains the following language:

> Classification 4. All counties which have attained the second classification prior to August 13, 1988, and which would otherwise return to the third classification after August 13, 1988, because of changes in assessed valuation shall remain a county in the second classification and shall operate under the laws of this state applying to the second classification.

§ 48.020(1) RSMo.

This language concerning the definition of "Classification 4" does not actually create a separate and distinct fourth class of counties for purposes of statutory interpretation because it does not place any counties into a "fourth class." Instead, it creates a subclass composed of second class counties that cannot revert to the third classification because of changes in assessed valuation. That this language does not create a distinct statutory class is apparent in that the language concerning each of Classification 1, Classification 2, and Classification 3 in § 48.020(1) RSMo includes the phrase "shall automatically be in the 'x' classification," where "x" is "first," "second," and 'third" respectively. By contrast, the above quoted language concerning

Classification 4 says nothing of a separate fourth class in its definition, instead stating that certain counties "shall **remain** a county in the **second** classification."

After the classes are created by § 48.020(1) RSMo, § 48.030 RSMo further addresses potential changes to a county's classification due to increases or decreases in assessed valuation. Notably, § 48.030 RSMo only deals with potential changes to the classification of counties of the first, second, and third class. It completely omits any mention of fourth class counties, let alone a basis to change the classification of a fourth class county. This makes sense because the "Classification 4" language in § 48.020(1) RSMo does not actually create a fourth statutory class. It creates a "grandfathered" second class floor for certain counties that had achieved second class status prior to August 13, 1988, a date when sweeping changes to the valuation-based classification scheme took effect. *See* 1988 Mo. Legis. Serv. H.B. 943; § 48.020 RSMo (1986); § 48.020 RSMo (1988).

B. The trial court's judgment is correct in its analysis of the both the interaction between Chapter 48 and § 137.720 RSMo, as well as the Assessor's failure to adequately plead as to essential elements necessary to make that interaction operate.

The trial court reviewed the whole of Chapter 48 and applied its plain meaning to the facts alleged in Plaintiff's petition and § 137.720 RSMo. Subsequent to its review and application, the trial court determined that the assessed valuation of Saline County on August 13, 1988 was dispositive to the Assessor's arguments. [L.F. Doc #20, p. 2]. The Assessor failed to state the County's assessed value on that date, thus causing the trial

court to dismiss this portion of the petition. *Id*. Further, the trial court determined that the Assessor's petition conceded that Saline County was, and had been, operating as a second class county, and that second class counties should not withhold the amount of ad valorem taxes requested by the Assessor. *Id*.

The trial court's reading and application of Chapter 48 as the key to interpret § 137.720 RSMo relative to the Assessor's petition is correct. If a county attained second class status prior to August 13, 1988, it would remain a second class county despite any changes to its assessed valuation on account of the specific and clear language stating so in § 48.020(1) RSMo. Per the provisions of § 137.720 RSMo, a second class county is directed to withhold one half percent (1/2%) under the first subsection and an additional one half percent (1/2%), capped at seventy-five thousand dollars ($75,000.00), as directed by the third subsection. However, if a county had not achieved second class status by August 13, 1988, its assessed valuation could lead to its classification as a third class county, which should withhold a full one percent (1%) under § 137.720(1) RSMo. Because the Assessor flatly failed to address this fundamental distinction imbedded in the operation of § 48.020(1) RSMo in her pleading, and instead conceded that Saline County has been operating as a second class county, the Assessor did not plead ultimate facts entitling her to the relief she sought.

C. The Assessor's arguments arising from language included in other statutes neither changes the effect of the clear language in § 48.020(1) RSMo creating the grandfathered second class nor mitigates her failure to sufficiently plead.

In an apparent attempt to circumvent her failure to plead sufficient facts as to Saline County's classification and valuation on August 13, 1988, the Assessor argues that the date is irrelevant to her claims because the grandfathering language contained in § 48.020(1) RSMo does not, or could not, actually mean what it plainly says. In support of this proposition, the Assessor first alludes to the existence of "fourth class" language in other, unidentified, class-based statutes, suggesting that the plain language of § 48.020(1) RSMo renders these statutes absurd. However, it does not logically follow that a present lack of fourth class counties makes the statutes containing fourth class language, many of which are older, superfluous to the extent that the unambiguous language of § 48.020(1) RSMo should be disregarded. There is and will continue to be, absent a constitutional amendment to Mo. Const. Art. VI § 8, a persistent and real possibility that a fourth statutory class will be created in the future. Such a class previously existed prior to August 13, 1988, does not presently exist, but could be created again. This is especially true in light of the fact that the General Assembly has historically altered the operation of § 48.020 RSMo with some frequency. The General Assembly is not required to strike every mention of "fourth class counties" from the entirety of the Missouri Revised Statutes and completely refrain from using the term to give effect to § 48.020(1) RSMo, only to then potentially have to rewrite, replace, and re-legislate entire chapters of statutes in the event that the General Assembly decides that the grandfathered floor

contained in § 48.020(1) RSMo should come to an end and that a fourth revenue-based class should be recreated. An expectation to the contrary is actually absurd.

The Assessor then makes an additional tangential argument that the provisions of § 137.721 RSMo and § 137.722 RSMo somehow support her claim that Saline County should withhold one percent (1%) of ad valorem taxes to the credit of the assessment fund regardless of the grandfathering language in § 48.020(1) RSMo. [*See* App. Sub. Brief, p. 19]. Particularly, she points to § 137.722 RSMo, which reads as follows:

> Notwithstanding the provisions of section 137.721, or any other provision of law in conflict with the provisions of this section, **in all counties which become counties of the second class after September 28, 1987, one percent of all ad valorem property taxes** allocable to each taxing authority within the county and the county **shall continue to be deducted** from the collections of taxes each year and shall be deposited into the assessment fund of county as required by section 137.750 **as if the county had retained its classification as a county of the third class**.

§ 137.722 RSMo (emphasis added)

§ 137.722 RSMo was enacted in 1987 and has never been amended. It was therefore crafted to synergize with the then in effect versions of § 137.720 RSMo, which was essentially composed of the present first subsection, and § 48.020(1) RSMo, which contained significantly lower valuation thresholds. *See* § 137.720 RSMo (1986); § 48.020 RSMo (1986). In short, § 137.722 RSMo is only applicable to the first subsection of § 137.720 RSMo, and only has any effect if a county moved from third class to second class after September 28, 1987. It should be noted that Saline County appears to have first become a second class county in 1978. *See Russell v. Callaway County*, 575 S.W.2d 193, n.2 (Mo. banc. 1978).

The Assessor's reliance on § 137.722 RSMo to bolster her position is misguided. The Assessor failed to plead any historical valuation or classification of Saline County in and around the applicable dates relevant to § 137.722 RSMo, or § 48.020(1) RSMo, such that it is unclear how invoking the operation of § 137.722 RSMo absent essential allegations addressing its fundamental operating components could entitle the Assessor to one percent (1%) of ad valorem tax revenue under § 137.720(1) RSMo. It is the same defect plaguing the Assessor's original petition as to § 48.020(1) RSMo that prohibits effective § 137.722 RSMo analysis; the requisite value that corresponds to the effective date is absent. However, it is important to note that if Saline County maintained second class status prior to September 28, 1987 under the then existing provisions of § 48.020 RSMo (1986), any analysis under § 137.722 RSMo would be pointless. § 48.020(1) RSMo (1988) caused all then existing second class counties under the § 48.020 RSMo (1986) criteria to remain second class counties. By remaining a second class county on August 13, 1988, these counties did not become second class counties for purposes of § 137.722 RSMo after September 28, 1987.

Despite her argument to the contrary, the unambiguous functions of § 137.721 RSMo and § 137.722 RSMo actually support a plain reading of § 48.020(1) RSMo. What § 137.721 RSMo and § 137.722 RSMo accomplish is to create grandfathered tax withholding floors for certain counties based on their classification status at particular points in time. These grandfathered floors are operationally indistinguishable from the grandfathered floor created for certain counties by § 48.020(1) RSMo that the Assessor now attacks. If anything, the existence of § 137.721 RSMo and § 137.722 RSMo

indicates that the General Assembly can and has created other historically based grandfather provisions that mitigate the general valuation-based reclassification scheme included in Chapter 48.

D. Chapter 48 cannot be read in the manner suggested by the Assessor.

Towards the end of the Assessor's first point, and throughout her second point, the Assessor proposes a reading of § 48.020(1) RSMo such that Saline County should presently be classified as a third class county regardless of Saline County's class status on or around August 13, 1988. Essentially, the Assessor contends that the class changing language of § 48.030 RSMo mandates a downward shift because Saline County's assessed valuation has been below the second class threshold for five (5) consecutive years, and the grandfathering language in § 48.020(1) RSMo should only constitute a one-time reprieve from such reclassification, occurring on August 13, 1988.

This proposed reading completely disregards the plain operative language contained in § 48.020(1) RSMo. It is literally impossible to utilize the provisions of § 48.020(1) RSMo and § 48.030 RSMo to effectuate a third class shift concerning a county that was second class on August 13, 1988 without activating the triggering condition and running afoul of the associated prohibition of such a shift contained in § 48.020(1) RSMo. § 48.020(1) RSMo prohibits shifting these counties down to the third classification because of changes in assessed valuation "after" August 13, 1988, not merely on August 13, 1988 as is argued by the Assessor. Had the General Assembly desired to accomplish a five-year limited reprieve from reclassification, it could have

used such language. Furthermore, the General Assembly chose to reenact the exact same language contained in § 48.020(1) RSMo concerning the time sensitive grandfathered class in both 2004 and 2010. *See* 2004 Mo. Legis. Serv. H.B. 950 & 948; 2010 Mo. Legis. Serv. H.B. 1806. This was done by the General Assembly in subject matter targeted bills. *Id.* The General Assembly reaffirmed this language in 2004 and 2010 despite the fact that the grandfathered class of counties had been operating as second class counties since 1988. Had the General Assembly not meant what it plainly said, it has had ample opportunity to clarify its intent or remedy its error by changing the language at issue.

In support of her proposed reading of Chapter 48, the Assessor cities to the 1971 case *State ex rel. Hall v. Bauman*, 466 S.W.2d 177, 182 (Mo. App. 1971). *State ex rel. Hall v. Bauman* is not controlling and is wholly unpersuasive as to the legislative intent behind the current provisions of Chapter 48 because the Missouri General Assembly has amended the Chapter on multiple occasions since 1971. Such amendments include the entirety of the grandfathering provision now at issue in § 48.020(1) RSMo. These amendments show the clear intent of the General Assembly to create a grandfathered floor for certain second class counties. What the Assessor's cited case has to say about a prior statutory scheme almost two decades before the language at issue was ever enacted is irrelevant.

It should be noted that in addition to relying on the outdated *State ex rel. Hall v. Bauman*, the Assessor also intermittently references *Chaffin v. Christian Cnty* and *Russell v. Calloway Cnty* to support her proposed reading of § 48.020(1) RSMo. [*See* App. Sub.

Brief, pp. 21-22; p. 24]. In referencing these cases, she argues that they are indicative of the legislative intent behind the county classification system. [App. Sub. Brief, p.22; p. 24]. *Chaffin* and *Russell* are discussed more extensively in Section III *infra*; however, these cases do not change what the language of the present incarnation of § 48.020(1) RSMo flatly says or its obvious legislative intent. Neither *Chaffin* nor *Russell* analyzes the Chapter 48 statutes now at issue. *See Chaffin v. Christian Cnty*, 359 S.W.2d 730 (Mo. banc 1962); *Russell*, 575 S.W.2d at 193. Instead, they concern the operation and legislative intent of a since amended constitutional provision as it related to repealed Chapter 48 statutes. *See Id.*; *Berry v. State*, 908 S.W.2d 682 (Mo. banc 1995). As such, *Chaffin* and *Russell* are not controlling and unpersuasive as to what the statutes now at issue actually say or their underpinning legislative intent. This Court should only consider *Chaffin* and *Russell* to the extent that the Assessor raises a constitutional challenge to § 48.020(1) RSMo and not to determine the legislative intent of § 48.020(1) RSMo.

E. The Assessor's public policy arguments are insufficient to support her proposed reading of Chapter 48.

To otherwise advance her position that Saline County should be reclassified, which is contravened by the text of § 48.020(1) RSMo, the Assessor largely relies on her hindsight perspective as to certain outcomes resulting from the changes made by the General Assembly to § 48.020 RSMo almost thirty-six years ago. Chief amongst the Assessor's concerns is the perceived insufficient funding of her office. Though she states

that "the continued misclassification of Saline County is detrimental to the county's residents and its ability to provide essential services," and that "the county's current classification as second (2nd) class denies it resources and funding that are commensurate with its actual valuation and needs," the only statutes relating to the funding of county services raised in her entire brief concern her assessment fund. [App. Sub. Brief, p. 25]. This perspective, which amounts to a public policy argument, even if true, is insufficient to outweigh the clearly articulated intent of the General Assembly. The General Assembly determines if policy adjustments should be made and if laws are outdated, not a single county elected official with a desire for a bigger budget.

What is more, the Missouri General Assembly needs only a rational basis to create a closed ended grandfathered class such the grandfathered second class counties presently existing under § 48.020(1) RSMo. *See City of Aurora v. Spectra Commc'ns Grp., LLC*, 592 S.W.3d 764, 781 (Mo. 2019). The General Assembly is not required to select a perfectly equitable scheme when it comes to delegating powers to a limited class of political subdivisions. *See Id.* In *City of Aurora,* which concerned a constitutional challenge to a closed-ended class as a special law[1], the Missouri Supreme Court rejected a claim that closed-ended classes of political subdivisions were not permitted where it could ascertain "a rational effort by the General Assembly to impose a new policy without disrupting the reasonable reliance of those that acted lawfully before the change in policy." *Id.* at 782. "Under rational basis review, this Court will uphold a statute if it

[1] Noting that the Assessor has not raised a challenge that RSMo §48.020, or any other statute, is a special law.

finds a reasonably conceivable state of facts that provide a rational basis for the classifications." *Id.* (*citing Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 378 (Mo. banc 2012)). Identifying a rational basis is an objective inquiry that does not require unearthing the General Assembly's subjective intent in making the classification. *Id.*

Under the *City of Aurora* standard, the Assessor fails to establish the General Assembly had no rational basis for the manner in which it has classified Missouri counties for over thirty-five years. Instead, it is clear that the General Assembly did not want the classification of certain counties to shift downward to third class due to changes in assessed valuation thresholds and specifically carved out an exception for those counties. The Missouri General Assembly wanted these counties that had been able to operate with the laws of a second class county for decades to continue to do so, especially given that the 1988 reclassification was not the product of changes to these counties' valuations. The grandfathering language in § 48.020(1) RSMo allows counties like Saline County to avoid disruption after reasonably relying on the prior laws relating to classification, independent of changes in assessed valuation.

It was plainly rational for the Missouri General Assembly to allow certain counties that had already lawfully developed and maintained certain government institutions and practices to keep them when General Assembly drastically moved the assessed valuation goalposts for county classification. *See* § 48.020 RSMo (1986); § 48.020 RSMo (1988). If the General Assembly not taken such action when it contemporaneously increased the

threshold to maintain second class county status by one hundred forty percent (140%), actions of the affected counties taken in reliance of their second class status when creating their institutions of local government would have been mooted. For instance, counties that had historically maintained an auditor's office for many years pursuant to Chapter 55 RSMo would be prohibited from doing so. The same would be true for county building commissions, which are authorized under Chapter 64 RSMo for second class counties, but not for third class counties. Further, the manner in which an affected county had historically run essential affairs could be undermined. The powers and obligations of second and third class counties pertaining to indebtedness under Chapter 50 RSMo are notably not the same. Another demonstrable example is the dramatic shift in powers between second and third class counties conferred in Chapter 64 RSMo regarding their ability to obtain, develop, and manage parks and recreation land. These are illustrative examples, not a dispositive list. Of course, because tax allocation is a zero-sum exercise, the General Assembly may also have taken into account the relative needs and reliance of the other taxing jurisdictions, such as the local school district, when enacting changes to § 48.020(1) RSMo. Irrespective of which of these or any other reasons relied upon in creating this closed class, the General Assembly clearly had more than a rational basis to allow Saline County and other similarly situated counties to keep their second class status despite any changes to assessed valuation.

As an aside, it is worth noting that the Assessor's policy arguments fail to take into account the state of affairs in and around 1988 when the language at issue in § 48.020(1) RSMo was enacted. Significantly, in and around 1988, the counties that had already

achieved second class status under the provisions of § 48.020 RSMo (1986) would necessarily have been among the largest/highest valuation counties falling below the newly established three hundred million dollar ($300,000,000) second class threshold. These counties had already met the prior one hundred twenty-five million dollar ($125,000,000) threshold for second class status under § 48.020 RSMo (1986) for five consecutive years, while the other counties below the new three hundred million dollar ($300,000,000) threshold had not. The counties that were second class on August 17, 1988 had also been operating assessments funds on a total of one half percent (1/2%) of ad valorem tax revenue pursuant to § 137.720 RSMo (1986) when the changes to § 48.020 RSMo at issue were made.

While it may be the case that certain third class counties have increased in assessed valuation at a faster rate than certain grandfathered second class counties since 1988 such that these third class counties now have a greater assessed valuation than certain grandfathered second class counties, this is an exception and not the rule. Generally, the grandfathered second class counties have greater valuations than third class counties. To the extent that the Assessor asserts a deprivation in her allocated resources as compared to the large valuation third class counties that have now exceeded earlier in time second class valuation thresholds, it is equally fair to question from a policy perspective whether or not these counties are withholding too much in terms of tax revenue for their assessment funds. However, this is not a debate that should be parsed out between a limited number of county elected officials and this Court; the proper forum for this debate is the legislature of this state.

F. Even if the Court agrees with the Assessor's arguments regarding the reclassification of Saline County, the state auditor is the party statutorily required to raise this issue, or else is the proper party.

The Missouri General Assembly has contemplated not only Saline County's current classification, but also the state official who is tasked with determining changes to that classification in the event Respondents are incorrect in their argument. § 48.040 RSMo requires that the state auditor be the official to notify counties of a change in classification rather than empowering a county officeholder. The statue states:

> It shall be the duty of the state auditor, as the supervisor of county audits, to examine annually the assessed valuation figures of the various counties immediately upon the certification of same by the state equalizing agency and to ascertain if any county shall have changed classifications as determined in this chapter. In case it shall be found that any county has met the requirements of reclassification as set forth in this chapter, it shall be the duty of the state auditor within thirty days after said certification to notify officially all county elected officers and the county officials charged with the supervision of elections of the change in status of the county.

§ 48.040 RSMo.

Here, the Assessor has no statutory authority giving her explicit standing to challenge her own county's classification. The General Assembly made it clear that the state auditor is the party that must force the hand of a county operating under an inappropriate classification. The Assessor's litigation in this matter makes it clear the state auditor has not found Saline County to be operating under an inappropriate classification. Even if this Court were to agree with the Assessor's statutory analysis, it should be the state auditor to ultimately initiate the process to notify Saline County of the need for a change.

In the alternative, the Assessor should have sued the state auditor, demanding the issuance of a notice of change of classification to Saline County, and not the Respondents. By failing to do so, the Assessor has, in effect, circumvented the state level office tasked with making determinations concerning county reclassification absent any allegation indicating that the Respondents, her fellow county level elected officials, failed to do anything but comply the determinations of the state auditor's office. In light of the clear intent underpinning the provisions of § 48.040 RSMo, as well as the lack of any allegation that the Respondents have failed to comply with the determinations of the state auditor, it is the state auditor, and thereby the attorney general, that should be defending its determination as to Saline County's classification, not the Respondents.

II. The Trial Court did not err in that the authority to make the expenditures requested by the Assessor to her employees from the assessment fund is vested in the County, which acts through the County Commission, and the County Commission has authority to refuse to make unconstitutional or prohibited expenditures, such as the bonus promised by the Assessor.

(Response to Assessor's Point III)

A. The expenditures requested by the Assessor to be made by the Commission constitute unconstitutional bonuses.

The Assessor relies on her "significant autonomy and authority over budgetary decisions… including the determination of employee compensation" to justify her decision to close her office and request regular payment for her employees as though they had worked a regular day. [App. Sub. Brief, p. 28]. However, "significant" is not synonymous with "absolute," and the Assessor's decision falls outside the scope of her autonomy and authority because she does not have authority to make the requested payment and the payment confers a bonus in violation of Mo. Const. Art. III § 39(3) (hereinafter "Sec. 39"). Sec. 39 reads:

> The general assembly shall not have power:
>
> (3) To grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part.

Mo. Const. Art. III § 39(3).

The application of Sec. 39 to the requested payments is best understood through the lens of the holding and analysis in *Pippin v. City of Springfield*, 596 S.W.2d 770 (Mo. App. 1980); however, the Assessor misreads *Pippin*. *Pippin* concerned an interpretation challenge by plaintiff public employees to a change in the City of Springfield's vacation policy. *Id*. at 771-772. The policy change at issue was that, under recently passed ordinances, City of Springfield ("City") employees would require fewer years of continual service in order to receive certain amounts of paid vacation in the future. *Id*. at 772-773. The plaintiff employees, a small subgroup of City employees, contended that the provisions of the new ordinance resulted in immediate vestiture of additional vacation leave for the plaintiffs due to their particular service history lengths. *Id*. at 773. The City disagreed and raised Sec. 39 concerns to argue against the plaintiff employees' interpretation of the new vacation ordinances. *Id*. at 773-774. The trial court ruled in favor of the plaintiffs, looking at the effect of the ordinances on the whole of the City's employees. *Id*. at 773.

In analyzing the body of Missouri law[2] concerning Sec. 39, the *Pippin* Court drew a sharp distinction between two different types of compensation increases for public employees in consideration of service already rendered. See *Id*. at 774. The first type was compensation that had previously been held unconstitutional under Sec. 39 because "no additional services" were required to be performed as consideration by the employee(s) in

[2] Of note, as a preliminary matter, the *Pippin* Court determined that Sec. 39 applied to political subdivisions and that vacation time is compensation for purposes of Sec. 39. *Id*. at 774.

order to receive the increased compensation. *Id*. at 774. When the increased compensation was given based on work already performed, the increased compensation was unconstitutional. *Id*. In contrasting the facts of the case before them with prior unconstitutional cases, particularly the intended effect of the ordinance as a whole, the *Pippin* court found a second type of compensation increase based on prior service that it deemed constitutional, namely extra benefits contingent on continuing to do work for the City. *Id*. at 775. Importantly, the *Pippin* court excused the fact that a small subset of employees would receive immediate investiture of the vacation benefits solely because the overall intent and function of the ordinance, as applied to City employees generally, typically required some amount of additional service. *Id*. at 774 ("We think that ruling the ordinances invalid because some may receive a week of vacation leave immediately is too narrow a view and that we should treat the ordinances as they apply to the employees as a whole.").

Despite the Assessor's attempt to revise the facts alleged on the face of her verified petition, the verified petition actually states that the Assessor made the decision to close her office on or about June 10, the "day off" for which the additional compensation was requested, because there was no work for her staff to accomplish. [L.F. Doc #2, p. 5, ¶ 30; L.F., Doc #4, p. 1]. Further, the verified petition states that the Assessor made this decision to compensate the day off "as a benefit to the work done by her employees." [L.F. Doc #2, p. 5, ¶ 3].

This additional compensation that the Assessor attempted to give to each of her employees is unconstitutional under Sec. 39. The Assessor's employees, as alleged in her

petition, are situated such that they mirror the excused employee subset in *Pippin*; however, there is no legal justification for an exception to Sec. 39 because they are all identically situated. Put plainly, for no additional service, each assessor's office employee would, by leaving the office, immediately receive entitlement to eight hours' worth of regular compensation based solely on consideration of work already performed and absent any requirement of continued service. Immediate investiture of this benefit for work already performed is the hallmark of an unconstitutional bonus.

B. The additional facts not included in her petition, on which the Assessor now relies, are of no effect.

Additionally, to the extent that the Court considers any alleged agreement between the Assessor and her employees to constitute a promise of continued service, which she later argued occurred on June 4, 2022, though this is omitted from and contravened on the face of her petition, such an agreement is void pursuant to § 432.070 RSMo. [L.F. Doc #13, p. 7]. Of note, no allegation was made by the Assessor that this agreement was reduced to writing, and no agreement was attached to or recited in the Assessor's petition as would be required by Mo Sup. Ct. R. 55.22(a).

Assuming *arguendo* that the Assessor, as she now contends, made an agreement with her employees on June 4, and that the terms of the agreement were that her employees would receive a paid day off on June 10 if the tax valuations for the year were completed, this agreement was an oral contract requiring the payment of county funds. An offer, an acceptance, and bargained for consideration, the essential elements of a contract, are all present. *See Johnson v. McDonnell Douglas Corp.*, 745 S.W.2d 661, 662

(Mo. banc 1988). Though the Assessor's employees are not alleged to be contract employees, it is most certainly an oral contract on which the Assessor now relies in an attempt to demonstrate a promise of continued service and to avoid the limitations imposed by Sec. 39.

Per § 432.070 RSMo, such a contract must be, among other things, reduced to writing, dated, and signed by the parties thereto or their agents. These requirements are mandatory and strict compliance is required in order to bind a public entity. *See State ex rel. State Highway Comm'n v. City of Washington*, 533 S.W.2d 555, 558 (Mo. 1976). Any contract made in violation of this statute is *void ab initio*, not merely voidable. *Rail Switching Services, Inc. v. Marquis-Missouri Terminal, LLC*, 533 S.W.3d 245, 263 (Mo. App. 2017). Concerning this particular statute:

> "A court should unhesitatingly enforce compliance with all mandatory legal provisions designed to protect a municipal corporation and its inhabitants. Inasmuch as municipal corporations represent the public, they, themselves, are to be protected against the unauthorized acts of their officers and agents."

Bride v. City of Slater, 263 S.W.2d 22, 27 (Mo. 1953).

By operation of § 432.070 RSMo, any agreement with her employees now relied upon by the Assessor is a nullity. The Commission cannot be forced to make expenditures to satisfy a null contract. Additionally, the net effect of the void agreement is that the Assessor's choice to close her office on June 10 is reduced to a simple decision to give her employees additional compensation in consideration of work already performed, not any binding promise of additional future service.

C. The final authority and responsibility to determine when expenditures are made rests with the Commission, not the Assessor.

Notwithstanding the Assessor's contention that she has "the final say on matters of employment and compensation within the approved budget," the final authority to make payments from the assessment fund rests with the Commission. Per the provisions of § 137.725 RSMo, "the salary of the assessor, the clerks, deputies, employees and all costs and expenses of the assessor shall be paid monthly or semimonthly by the county from the assessment fund established under section 137.750." The authority, and the accompanying responsibility, to make these expenditures is bestowed upon a county, which acts through its commission, not the county's assessor. *Estes v. Cole County*, 437 S.W.3d 307, 313 (Mo. App. W.D. 2014). That authority includes the ability to determine which costs and expenses can be paid from the assessment fund. *Id.*

Considering that the Commission has the authority to determine which costs and expenses can be paid from the assessment fund, it follows that the Commission must have the power to reject or modify requests for payment that are contrary to the applicable law. As an example, if the Assessor requested payment of employee compensation that violated minimum wage laws in that it would cause an employee of the Assessor to be paid less than the applicable minimum wage, the Commission would certainly have the authority to pay that employee minimum wage. What the Commission did in this case, based on the facts alleged by the Assessor, is essentially no different. The Assessor made a request for expenditures that violated the applicable law.

The Commission then modified the Assessor's request to the extent that it could in order to comply with the Missouri Constitution and § 432.070 RSMo.

D. Other statutes, not presently on appeal, may be dispositive.

In the event that the Court determines that the promised paid day off does not constitute an unconstitutional bonus and is not prohibited by operation of § 432.070 RSMo, this point and the issues concerning these requested expenditures should be remanded back to the trial court because additional statutory provisions may have prohibited the Assessor's actions and/or payment by the Commission. Particularly, depending on how the operative facts of the case may develop, the provisions of § 49.265 RSMo may have completely barred the Assessor from closing her office as she alleges that she did. § 49.265 RSMo bestows up a county commission authority to require certain hours of open operation for most county offices, including a county assessor's office. If it is determined that the Assessor closed her office contrary to the authority of the Commission to require the office to be open, it would justify the Commission's decision to refuse to make the requested expenditures.

III. The Assessor's constitutional challenge to the plain reading of § 48.020 RSMo is errant because the challenged reading does not violate Art. VI § 8 of the Missouri Constitution.

(Response to Assessor's Point IV)

Additional Standard of Review

To the extent this point is a challenge to the constitutionality of §48.020 RSMo, all statutes are presumed constitutional. *State v. Barnett,* 598 S.W.3D 127, 129 (Mo. banc 2020). Challenges to the constitutional validity of a state statute are subject to de novo review. *Id.* A Court will not declare a statute unconstitutional unless it clearly and unambiguously contravenes a constitutional provision. *Id.* Otherwise, the Respondents incorporate the standard of review preceding Point I.

A. The Trial Court's plain reading of § 48.020 RSMo is permitted by *Chaffin* and *Russell*.

The Assessor's Mo. Const. Art. VI § Sec. 8 (hereinafter, "Sec.8") challenge to the plain text reading of § 48.020 RSMo arises solely from dicta contained in the two outdated cases she cites as authority. *Chaffin* and *Russell* respectively concerned direct challenges to prior incarnations of § 48.030 RSMo and § 48.020 RSMo, which, in addition to the general criteria of assessed valuation, allowed certain counties to refuse reclassification by means of a vote of the qualified electorate. *See generally Chaffin v. Christian Cnty,* 359 S.W.2d 730 (Mo. banc 1962); *Russell v. Callaway Cnty,* 575 S.W.2d 193 (Mo. banc 1978). By way of context, Sec. 8 presently reads:

> Provision shall be made by general laws for the organization and classification of counties except as provided in section 18(a) or section 18(m) of this article or otherwise in this constitution. **The number of classes shall not exceed four**, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. **The revisions to this article submitted by the first regular session of the eighty-eighth general assembly are intended to be applied retroactively** and no law adopted by the general assembly or ordinance or order adopted by the governing body of a county shall be declared unconstitutional if such law, ordinance or order would have been constitutional had this section, as amended, been in effect at the time the law was passed, unless the law is declared unconstitutional pursuant to a different provision of this constitution.

Mo. Const. Art. VI § 8. (emphasis added).

However, when *Chaffin* and *Russell* were decided, Sec. 8 provided in its entirety:

> Provision shall be made by general laws for the organization and classification of counties except as provided in this constitution. **The number of classes shall not exceed four**, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. **A law applicable to any county shall apply to all counties in the class to which such county belongs.**

Chaffin, 359 S.W.2d at 733. (emphasis added).

It is also noteworthy that when *Chaffin* and *Russell* were decided, the language of § 48.020 RSMo provided for four separate statutory classes of county, each of which was based on demarcated thresholds of assessed valuation. *See Russell*, 575 S.W.2d at 197. Though the threshold values were different, these four classes were situationally related in a manner that is functionally the same as how the Classification 1-3 language presently works in § 48.020(1) RSMo.

The reasons that the *Chaffin* court held that the version of § 48.030 RSMo then before it was unconstitutional were two-fold. The first was that because the statute required an affirmative vote of the electorate, county reclassification did not depend solely upon general laws as required by Sec. 8. *See Chaffin*, 359 S.W.2d at 735. Instead, reclassification could be determined by a favorable vote at an election, or put plainly, public preference. *See Id.*

The second reason underpinning the holding in *Chaffin* was that the additional criterion of a vote compromised the scheme of classification in a way that, coupled with the existing parallel criterion of valuation, created what was, in essence, a pseudo fifth class of county. *Id.* This fifth class exceeded the maximum number of classes allowed by Sec. 8, which was, and still is, four. *Id.* Though the *Chaffin* court did tangentially digress into a discussion concerning the common theme of assessed valuation in the reclassification of counties, the purpose of the discussion was to demonstrate that the net effect of the additional election criterion intersecting with the valuation criterion caused an additional pseudo class to exist. *Id.* This holding from *Chaffin* was later cited and explicitly adopted by the *Russell* court because the added unconstitutional voting criterion in that case was determined to create a fifth and sixth class of county under the *Chaffin* court's analysis. *Russell*, 575 S.W.2d at 197-199.

In sharp contrast to the versions of § 48.030 RSMo and § 48.020 RSMo respectively at issue in *Chaffin* and *Russell*, concerning the present incarnation of § 48.020 RSMo, no voting criterion is included that causes the statute to operate upon the preference of the electorate rather than general laws. Of equal importance is that, as

presently structured, § 48.020 RSMo only allows for four countable classes of counties, which is explicitly permitted by Sec. 8. Unlike during the periods of time when *Chaffin* and *Russell* were decided, there are presently only three classifications of counties strictly tied to assessed valuation instead of four. These three valuation-based classes, added to another pseudo class created by an additional, non-election-based criterion, yields a total of four classes based on general laws.

The intent of the General Assembly to create exactly four countable classes for purposes of *Chaffin*/*Russell* analysis is clear on the face of § 48.020 RSMo. § 48.020(1) RSMo begins with the following language:

> 1. All counties of this state are hereby classified, for the purpose of establishing organization and powers in accordance with the provisions of Section 8, Article VI, Constitution of Missouri, into four classifications determined as follows:

§ 48.020(1) RSMo.

The remainder of 48.020(1) RSMo then includes definitions for Classification 1, Classification 2, Classification 3, and Classification 4. However, as previously discussed, even though 48.020(1) RSMo specifically states that it is creating four classifications for the purposes of establishing organization and powers in accordance with Sec. 8, the included definitions only place counties into the first, second, and third classes. The obvious explanation is that the Generally Assembly recognized that the grandfathered second class counties created by the "Classification 4" language in § 48.020(1) RSMo constituted a fourth countable class for purposes of *Chaffin/Russell* analysis. The General Assembly openly acknowledges that fact.

Simply put, by reducing the number of classes based solely on valuation, the General Assembly has made room for the addition of a new criterion and a fourth pseudo class that the new criterion creates. To demonstrate, the tables included below show the number of classes counted by the courts in both *Chaffin* and *Russell*, as well as the number of countable classes, using the same reasoning, under the current structure of § 48.020(1) RSMo:

***Chaffin* – Old § 48.030 RSMo**

Class 1 by Valuation (**#1**)	
Class 2 by Valuation (**#2**)	
Class 3 by Valuation (**#3**)	
Class 4 by Valuation (**#4**)	Class 3 by Valuation but stays Class 4 by Vote (**#5**)

***Russell* – Old § 48.020 RSMo**

Class 1 by Valuation (**#1**)	
Class 2 by Valuation (**#2**)	Class 1 by Valuation but stays Class 2 by Vote (**#5**)
Class 3 by Valuation (**#3**)	Class 2 by Valuation but stays Class 3 by Vote (**#6**)
Class 4 by Valuation (**#4**)	

Present Case – Current § 48.020 RSMo

Class 1 by Valuation (**#1**)	
Class 2 by Valuation (**#2**)	Class 2 by Operation of Grandfathering Statute (**#4**)
Class 3 by Valuation (**#3**)	

Though county classification by valuation is a reasonable criterion, it is not intrinsically included in Sec. 8 and does not constitutionally bar the existence of additional criteria, so long as the number of county classes does not exceed four. As

noted by the *Chaffin* court, the determination to initially base four classes of counties on assessed valuation was a legislative choice by the General Assembly. *See Chaffin*, 359 S.W.2d at 734. The General Assembly could have chosen completely different criteria for classification had they desired. When the appellants in *Chaffin* argued that the contested election provision of the statute then at issue "'merely establishes one additional requirement,'" the *Chaffin* court was not concerned about the addition of criteria to determine classification but was concerned about "the character and legal effect of **this** additional requirement." *Id.* (emphasis added). The *Chaffin* court then proceeded into its discussions of how an election is not the same as a general law and that the statute then at issue created a fifth class of counties, fleshing out the "character and legal effect" of concern. *Id.* at 735-736. These concerns are in inapplicable to current version of § 48.020 RSMo.

The Assessor's entire position is predicated on a misstatement of the holdings in *Chaffin* and *Russell* to §48.020 RSMo. The below tables are demonstrative:

***Chaffin* – Holding**

Class 1 by Valuation (**#1**)	
Class 2 by Valuation (**#2**)	
Class 3 by Valuation (**#3**)	
Class 4 by Valuation (**#4**)	Class 3 by Valuation but stays Class 4 by Vote (**#5**) (splits attributes of #3 and #4)

***Chaffin* – Appellants' Rejected Position**

Class 1 by Valuation (**#1**)
Class 2 by Valuation (**#2**)
Class 3 by Valuation (**#3**)
Class 4 by Valuation, or Class 3 by Valuation but stays Class 4 by Vote (**#4**)

Despite the Assessor's suggestions to the contrary, there is no holding in *Chaffin* or *Russell* that classification can only be constitutionally accomplished through a single and uniformly applied benchmark. "In Chaffin this court held that a statutory provision … was unconstitutional because it would create a fifth class of county." *Russell*, 575 S.W.2d at 198. The proposition for which these two cases actually stand is that members of a class, for purposes of Sec. 8, must share common attributes under the criteria set forth for classification, otherwise they do not constitute a single "class." *See Chaffin*, 359 S.W.2d at 734-735. To the extent that counties in a purported class differ in terms of attributes relative to the chosen classification criteria, additional classes are created for purposes of Sec. 8 analysis. *See Id.* at 735. *Chaffin* is a lesson in how to identify and count county classes. *See Id.* at 734 ("A 'class' as used in this constitutional provision denotes 'group, set, or kind marked by common attributes or a common attribute'."). What the *Chaffin* court rejected was the position that counties could be counted in the same class for purposes of Sec. 8 by meeting different conditions under different classification criteria, despite having dissimilar criteria-based attributes. *See Id*. This lesson is reflected in the above tables, particularly by the encircled line, which separates into different classes, for purposes of Sec. 8, those counties that share different common attributes under the legislated classification criteria.

In compliance with the *Chaffin*/*Russell* holdings, the counties comprising the grandfathered second class created by § 48.020 (1) RSMo share the same attributes relative to the legislated criteria for classification. Each of these counties had achieved second class status prior to August 13, 1988, but has not achieved sufficient valuation to

move to the first class. This set of common attributes is different from those attributes shared by counties in other classes relative to the classification criteria included in § 48.020 (1) RSMo. Upon creating this grandfathered class, the General Assembly saw it fit to uniformly afford to this class the organizational structure and powers of the second statutory class. Because the grandfathered second class counties are identical under the classification criteria, possess the same powers and restrictions, and have different attributes than the members of other classes relative to the legislated classification criteria, they constitute an appropriate fourth class under *Chaffin*/*Russell.*

B. The Assessor fails to account for the 1995 Amendment of Art. VI § 8 of the Missouri Constitution by misinterpreting its effect.

To the extent that the prior incarnation of Sec. 8 did require a single controlling criterion to be strictly and uniformly applied across all county classifications without the allowance for additional classification criteria, which is not indicated in *Chaffin* or *Russell*, this requirement was nullified by the 1995 amendment to Sec. 8. This amendment is explicitly retroactive in application. In addition to specifically allowing for the classifications of charter and constitutional counties outside of the four-class maximum framework, the 1995 amendment deleted the following constitutional requirement: "A law applicable to any county shall apply to all counties in the class to which such county belongs." *Berry v. State,* 908 S.W.2d 682, 683 (Mo. banc 1995). This deletion is in line with what § 48.020(1) RSMo presently does with its grandfathering language. It is a law that applies to certain counties that had attained second class status by August 13, 1988, in and around a time that the General Assembly significantly

increased the valuation threshold for the second class. *See* § 48.020 RSMo (1986); § 48.020 RSMo (1988).

It should be noted that Respondents do not concede that the retroactive 1995 amendment to Sec. 8 was necessary for the General Assembly to create the grandfathered second class as presently included in § 48.020(1) RSMo. The statute applies to all counties for the express purpose of classification on the basis of criteria chosen by the General Assembly. As such, it is not directed at a particular county, class of counties, or group of counties in a manner that would trigger the Sec. 8 language removed by the 1995 amendment.

Additionally, the Assessor's preemptive critique of the 1995 amendment to Sec. 8 and its relation to § 48.020 RSMo is perplexing. She states that the "1995 amendment did not alter the four-class scheme put forth in Section 48.020., RSMo., other than to allow charter counties and constitutional counties, and the amendment was certainly not intended to breakdown the four-class framework." [App. Sub. Brief, p. 39]. Respondents do not contend that the amendment "broke down" the four class framework. Respondents have neither asserted that the 1995 amendment to Sec. 8 somehow changed the county classes created by the General Assembly when it enacted § 48.020 RSMo (1988), nor argued that that it authorized an additional class of counties. Instead, Respondents only raise the 1995 Amendment to Sec. 8 to the extent that the text removed from Sec. 8 via the 1995 amendment previously prohibited the General Assembly from enacting laws that only effect some counties in a class rather than all counties in a class.

C. The Assessor's one subject challenge is unsupported.

Finally, in what amounts to a throw away paragraph, the Assessor almost casually requests that this Court disregard and nullify the 1995 amendment to Sec. 8 in the event Respondents are correct in their interpretation of the same because the 1995 amendment purportedly violates the one subject requirement of Mo. Const. Art. XII, § 2(b). Other than a flat statement that the one subject rule has been violated if the 1995 amendment authorized an additional class of counties, the Assessor makes no supporting argument. [App. Sub. Brief, pp. 39-40]. Instead, the Assessor cites generally to *Calzone v. Interim Commissioner of Department of Elementary and Secondary Education*, 584 S.W.3d 310 (Mo. banc 2019) and invites the Respondents and this Court to speculate as to how the passage of the 1995 amendment to Sec. 8 violates the one subject rule. [App. Sub. Brief, pp. 39-40]. Because the Assessor has made no substantive argument on this issue, the Respondents cannot fairly address the merits of the Assessor's position. It should be noted that the Assessor bears the burden of her challenge, which is explicitly disfavored. *Calzone*, 584 S.W.3d at 315.

As a practical matter, to the extent the Court considers the Assessor's position that the passage of the 1995 amendment to Sec. 8 violated the one subject rule, this unsupported request by the Assessor, as well as her entire position that the 1995 amendment to Sec. 8 only accomplishes the limited purpose of providing for special charter and constitutional counties, such a position is flatly ill-considered. The net effect of this request, if granted, would be the nullification of statutes previously enacted that

fail in the absence of the 1995 amendment to Sec. 8. This is especially true considering the language removed from Sec. 8 by the 1995 amendment.

By way of a single example, § 137.722 RSMo, on which the Assessor relies in making her arguments in her first point on appeal, plainly violates Sec. 8 if the 1995 amendment is null or is as limited as the Assessor contends. § 137.722 RSMo facially applies to only a limited number of second class counties and requires this limited group of second class counties to direct certain tax revenue "as if the county had retained its classification as a county of the third class." If the Assessor is correct, § 137.722 RSMo appears to be in opposite to the "a law applicable to any county shall apply to all counties in the class to which such county belongs" language included in the prior version of Sec. 8, which was removed by the 1995 amendment.

CONCLUSION STATEMENT

The plain and unambiguous language of the Missouri statutes controlling the classification of counties and the withholding of tax revenue for the assessment fund is clear in that the Assessor is not entitled to the relief she requests. However, in an attempt to circumvent the obvious operation of the statutory mechanisms she attacks, the Assessor attempts to selectively obscure the operating components of these statutes that are dispositive as to the issues she raises. Furthermore, despite the Assessor's futile attempt to alter the facts alleged in her petition as to the payments and payroll changes that she requests to be made by the Respondents, these payments and payroll changes are plainly unconstitutional bonuses based on the allegations contained her in her own verified pleading. Finally, concerning the Assessor's constitutional challenge to the plain text reading of § 48.020 RSMo, which is rooted solely in contorted dicta from outdated cases addressing a prior version of Mo. Const. Art. VI § 8, since rendered obsolete for over twenty-eight (28) years, it fails on its own terms. The classes and underlying criterion currently contemplated by § 48.020 RSMo are permitted under Missouri law, and the number of countable classes does not exceed four (4).

For the foregoing reasons, the judgment of the trial court should be affirmed.

Respectfully submitted,

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Certificate of Compliance

I certify that I prepared this brief using Microsoft Word for Office 365 in 13-point, Times New Roman font. I further certify that this brief complies with the word limitations of Supreme Court Rule 84.06(b), as this brief contains 11,116 countable words.

/s/ Peter F. Rottgers
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Certificate of Service

I certify that I signed the original of this brief of the Respondents, which is being maintained by Peter F. Rottgers of the law firm Shaffer Lombardo Shurin per Rule 55.03(a), and that on July 8, 2024, I filed a true and accurate Adobe PDF copy of this brief of the Respondents and its appendix via the Court's electronic filing system, which notified the following of that filing:

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