

IN THE
Supreme Court of Missouri

Supreme Court No. SC87405

**JACKSON COUNTY, MISSOURI,
Respondent/Cross-Appellant,**

v.

**STATE OF MISSOURI, *et al.*,
Appellants/Cross-Respondents.**

Appeal from the Cole County Circuit Court
The Honorable Richard G. Callahan

RESPONDENT/CROSS-APPELLANT'S BRIEF

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ORAL ARUGMENT REQUESTED

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JURISDICTIONAL STATEMENT

Appellants appeal the November 17, 2005 Judgment of the Circuit Court of Cole County, the Honorable Richard G. Callahan, declaring § 67.2555, RSMo Cum. Supp. 2005, unconstitutional pursuant to Article III, § 40(30) of the Missouri Constitution. § 67.2555 states in its entirety as follows: “Any expenditure of more than five thousand dollars (\$5,000.00) made by the county executive of a county with a charter form of government and with more than six hundred thousand (600,000) but fewer than seven hundred thousand (700,000) inhabitants must be competitively bid.” Judge Callahan’s Judgment found the statute unconstitutional as a special law, which is prohibited by Article III, § 40(30) of the Missouri Constitution.

Appellants challenge Judge Callahan’s Judgment stating it is erroneous claiming the County failed to establish *prima facie* evidence showing that the statute’s classifications were irrational. (Appellants’ Brief, 2). Further, Appellants challenge the Judgment claiming that Judge Callahan’s other rationales for striking down the law, including interference with the day-to-day activities of Jackson County and the law’s failure to guard against potential corruption by other county executives, are unsound. (Appellants’ Brief, 3).

Thus, the appeal and cross-appeal herein involve the validity of a state statute and provisions of the Constitution of this state. According to Article V, Section 3 of the Missouri Constitution, the Missouri Supreme Court has exclusive appellate jurisdiction in cases of this nature.

STATEMENT OF FACTS

Respondent/Cross-Appellant does not dispute the Statement of Facts set forth in Appellants' Brief. However, Respondent/Cross-Appellant would add the following additional factual matters drawn from the record and necessary to determination of the issues on appeal.

Jackson County, Missouri is the only county with a charter form of government and a population of more than six hundred thousand (600,000) and less than seven hundred thousand (700,000) inhabitants. Thus, Jackson County is the only county to which provisions of § 67.2555 of the Missouri Revised Statutes applied when it was enacted by the 93rd General Assembly. Prior to the date for the law to become effective, Judge Callahan entered a temporary restraining order preventing enforcement of the statute at the behest of Jackson County, Missouri. A trial was held, after which Judge Callahan issued a Judgment on November 17, 2005 finding the statute unconstitutional as a prohibited special law.

§ 67.2555 RSMo states in its entirety as follows: "Any expenditure of more than five thousand dollars (\$5,000.00) made by the county executive of a county with a charter form of government and with more than six hundred thousand (600,000) but fewer than seven hundred thousand (700,000) inhabitants must be competitively bid."

Judge Callahan's November 17, 2005 Order and Judgment accepted arguments put forth by Jackson County, Missouri and found § 67.2555 RSMo to be a prohibited special law in violation of Article III, § 40(30) of the Missouri Constitution. Specifically, Judge Callahan's Order and Judgment held that § 67.2555 RSMo is a special law since its subject is corruption, which could have been addressed by a general law rather than by one applying to only one county in the state, such as was done here. Further, Judge Callahan found § 67.2555 RSMo to be a special law in that it established a classification based upon population, and even though that is normally considered an open-ended classification, here the population classification was arbitrary and without a rational relationship to the legislative purpose, making it unconstitutional.

The Court found no rational argument to explain the conspicuous absence of other charter counties from the requirements of competitive bidding on all expenditures more than five thousand dollars (\$5,000) contained in § 67.2555 RSMo. As a further example of the lack of a rational basis for the legislation, the Court identified problems Jackson County would have on a day-to-day basis paying for necessities including utilities and emergency services, which routinely exceed five thousand dollars (\$5,000). Under the terms of § 67.2555 RSMo, Jackson County would have to competitively bid projects involving architects despite provisions to the contrary in Chapter VIII of the Revised Statutes in

Missouri which state that architects and engineers are to be retained on the basis of the quality of their services. Also, under the provisions of § 67.2555 RSMo, the Jackson County Executive would be impaired in her ability to retain outside legal counsel for litigation or advice to the county.

The Trial Court rejected the State of Missouri's position that the law was a general one by holding that "any perceived corruption on the part of the county executive is not exclusive to Jackson County. If the legislature was [sic] truly interested in avoiding corruption in regard to the awarding of personal services contracts, it should have made the law applicable to all county executives. The issue of corruption and the effort to fight it legislatively should apply statewide, not just to Jackson County. Corruption is not exclusive to counties with populations between six hundred thousand (600,000) and seven hundred thousand (700,000)." (L.F. 242).

Judge Callahan's Order states that because he found § 67.2555 RSMo unconstitutional as a special law, he did not consider the other and various arguments put forth by Respondent/Cross Appellant Jackson County in regard to this section of legislation. (L.F. 243-4). Additionally, Respondent/Cross-Appellant challenged the provisions contained in § 115.348, which stated in its entirety reads as follows: "No person shall qualify as a candidate for elective office in the State of Missouri who has been found guilty of or pled guilty to a

felony or misdemeanor under the federal laws of the United States of America.” (L.F. 236). Jackson County claimed that § 115.348 is unconstitutional in that it was part of House Bill 58 which was passed in violation of Article III, § 21, which provides that “no bill shall be so amended in its passage through either house as to change its original purpose.” (L.F. 244). Additionally, Jackson County raised constitutional challenges to HB 58 on the basis that its title contains more than one purpose and violates the so-called “single subject” clause and violated the provisions of Article III, § 23 that the title be clear. Jackson County also contended that § 115.348 is unconstitutional because it infringes upon the ability of the people of Jackson County, a charter county, to decide who shall hold office. The Trial Court overruled these challenges. (L.F. 245).

The State of Missouri filed a Notice of Appeal on January 10, 2006. (L.F. 256.) Jackson County filed its cross appeal on January 18, 2006. (L.F. 271.)

RESPONDENT'S BRIEF

POINTS RELIED ON

- I. THE TRIAL COURT DID NOT ERR IN HOLDING §67.2555 UNCONSTITUTIONAL AS A PROHIBITED SPECIAL LAW UNDER ARTICLE III, § 40(30) OF THE MISSOURI CONSTITUTION BECAUSE THE STATUTE IS ARBITRARY AND NOT RATIONALLY RELATED TO A LEGITIMATE LEGISLATIVE PURPOSE IN THAT THE GOAL OF PREVENTING CORRUPTION SHOULD BE ACCOMPLISHED THROUGH GENERAL LEGISLATION NOT THROUGH A CLASSIFICATION THAT INCLUDES ONLY JACKSON COUNTY, MISSOURI.**

SOURCES:

MO. CONST. art. III, § 40(30).

Walters v. City of St. Louis, 259 S.W. 2d 377 (1953), *aff'd* 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1954).

School Dist. of Riverview Gardens, et al. v. St. Louis County, 816 S.W. 2d 219 (Mo. banc 1991).

Collector of Revenue of the City of St. Louis v. Parcels of Land Encumbered with Delinquent Tax Liens, 517 S.W. 2d 49 (Mo. 1974).

II. THE TRIAL COURT DID NOT ERR IN ENTERING ITS JUDGMENT RULING § 67.2555 IS UNCONSTITUTIONAL BECAUSE THE JUDGMENT CAN BE SUSTAINED BY EXAMINING THE OTHER VIABLE CONSITUTIONAL CHALLENGES AND LEGAL THEORIES RAISED BY RESPONDENT JACKSON COUNTY, MISSOURI IN ITS PLEADINGS IN THAT THE LEGISLATION IS UNCONSTITUTIONAL AS A MATTER OF LAW IN THE FOLLOWING RESPECTS: (1) §67.2555 INFRINGED ON JACKSON COUNTY’S RIGHT TO OPERATE UNDER A CHARTER FORM OF GOVERNMENT AS ALLOWED BY ARTICLE VI, §18 OF THE MISSOURI CONSTITUTION; (2) ADDITION OF §115.348 CHANGED THE ORIGINAL PURPOSE OF THE BILL; (3) INCLUSION OF §115.348 VIOLATED PROVISIONS OF ARTICLE III, §23 OF THE MISSOURI CONSTITUTION; (4) §67.2555 IS DEFECTIVE DUE TO ITS VAGUENESS AND OVERBREADTH; (5) THE GENERAL ASSEMBLY VIOLATED NOTICE PROVISIONS OF ARTICLE III, § 42 OF THE MISSOURI CONSTITUTION RELATING TO THE PASSAGE OF A SPECIAL LAW.

SOURCES:

MO. CONST. art. III, § 21.

MO. CONST. art. III, § 23.

MO. CONST. art. III, § 42.

MO. CONST. art. VI, § 18.

STANDARD OF REVIEW

The appellate review of lawsuits which are equitable in nature is governed by the standard established in *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976). On review of a case tried by the court without a jury, the appellate court only overturns the judgment of the trial court if there is no substantial evidence to support the judgment, the judgment is against the weight of the evidence or the trial court's judgment erroneously declared or applied the law. *Id.* at 32.

This Court's standard of review of constitutional challenges to a statute is *de novo*. *Barker v. Barker*, 98 S.W. 3d 532, 534 (Mo. banc 2003). Thus, this Court may review not only the finding by the Trial Court that § 67.2555 is an unconstitutional special law in violation of Article III, § 40(30) of the Missouri Constitution, but should consider also Respondent's arguments that the statute is unconstitutional on all of the other grounds urged by Respondent Jackson County below.¹

¹ Respondent/Cross-Appellant has cross-appealed from those parts of the Trial Court's Order and Judgment either rejected or not considered by the Trial Court. In the "Respondent's Brief" portion of this Brief, Respondent's will address the arguments asserted by Appellants in their Brief. Respondent will raise its affirmative points in the "Cross-Appeal" portion of this Brief.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN HOLDING §67.2555 UNCONSTITUTIONAL AS A PROHIBITED SPECIAL LAW UNDER ARTICLE III, § 40(30) OF THE MISSOURI CONSTITUTION BECAUSE THE STATUTE IS ARBITRARY AND NOT RATIONALLY RELATED TO A LEGITIMATE LEGISLATIVE PURPOSE IN THAT THE GOAL OF PREVENTING CORRUPTION SHOULD BE ACCOMPLISHED THROUGH GENERAL LEGISLATION NOT THROUGH A CLASSIFICATION THAT INCLUDES ONLY JACKSON COUNTY, MISSOURI.

The Trial Court was correct to hold § 67.2555 unconstitutional because it is an impermissible special law prohibited by Article III, § 40(30) of the Missouri Constitution since the legislation failed to include the rest of the class in its attempt to prevent corruption in the home rule charter form of government. Section 40(30) of the Missouri Constitution provides as follows:

The General Assembly shall not pass any local or special law:

(30) Where a general law can be made applicable, and whether a general law could have been made applicable is a judicial

question to be judicially determined without regard to any legislative assertion on that subject.

MO.CONST. art. III, § 40(30).

When the constitutional challenge is that a law is a prohibited special law, two inquiries are appropriate. First, it must be determined whether the legislation is a special law or local law. Second, it must be ascertained whether the vice to be corrected by the legislation is so unique to the persons, places or things classified by the law that the same result could not be achieved by a law of general applicability. *Treadway v. State of Missouri*, 998 S.W. 2d 508, 511 (Mo. banc 1999) (quoting *School Dist. of Riverview Gardens, et al. v. St. Louis County*, 816 S.W. 2d 219, 221 (Mo. banc 1991)).

For a law to be considered a “special law”, the legislation must be written so that it does not include the entire class of persons who are similarly situated. *Savannah R-III School Dist. v. Pub. School Retirement Sys. of Mo.*, 950 S.W. 2d 854, 858 (Mo. banc 1997). A law is not a prohibited special law if it applies to all of a given class alike and the classification is made on a reasonable basis. “The test of a special law is the appropriateness of its provisions to the objects that it excludes. It is not, therefore, what a law includes, that makes it special, but what it excludes.” *Batek v. Curators of the Univ. of Missouri*, 920 S.W. 2d 895, 899 (Mo.

banc 1996)(quoting *ABC Liquidators, Inc. v. Kansas City*, 322 S.W. 2d 876, 885 (Mo. banc 1959)).

“A statute is invalid as a ‘special law’ if members of a stated class are omitted from the statute’s coverage whose relationship to the subject matter cannot by reason be distinguished from that of those included.” *Id.* at 385 (quoting *State ex rel. Pub. Defender Comm’n v. County Ct. of Greene County*, 667 S.W.2d 409, 412 (Mo. banc 1984). Worded differently, “[a] law may not include less than all who are similarly situated.” *Id.* at 385 (quoting *Wilson v. City of Waynesville*, 615 S.W.2d 640, 644 (Mo. Ct. App. 1981).

The Trial Court correctly noted the conspicuous absence of the other charter counties in § 67.2555. The Trial Court observed that Jackson County is not the only charter county that would be subject to concerns about public corruption and need the protection of legislation designed as an attempt to curtail it. (L.F. 242). § 67.2555 is a special law because it includes only one of the three charter counties in the State: Jackson County.² It is a special law because it does not include all of those in the category that are similarly situated.

² Currently, there are only three Missouri Counties that have adopted a charter form of government, which are: Jackson County, St. Charles County, and St. Louis County.

The issue of whether a statute is, on its face, a special law depends upon whether the classification is open-ended. *Treadway*, 988 S.W.2d at 510 (citing *Tillis v. City of Branson*, 945 S.W. 2d 447, 449 (Mo. banc 1997)). Generally speaking, classifications are considered open-ended if it is possible that the status of members of the class could change. *Harris v. Missouri Gaming Commission*, 869 S.W. 2d 58, 65 (Mo. banc 1994). Classifications based upon population are normally viewed as open-ended. *State ex rel. City of Blue Springs v. Rice*, 853 S.W. 2d 918 (Mo. banc 1993). This rule is true even if the population limitation only fits one place, such as in the instant case. *State ex rel. Lionberger v. Polle*, 7 Mo. 645, 650 (1880); *Fire District of Lemai v. Schmidt*, 184 S.W. 2d 593 (Mo. banc 1945); *Walters v. City of St. Louis*, 259 S.W. 2d 377, 382-3 (1953), *aff'd* 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1954). Also, this Court has ruled that classifications based upon charter status are essentially open-ended as well. *Zimmerman v. State Tax Comm'r*, 916 S.W. 2d 208, 209 (Mo. banc 1996).

However, even if a law purports to be general, if the classification is unreasonable, unnatural or arbitrary so that it does not apply to all persons or things similarly situated, it is then, in fact, a special law despite its apparent purpose. *Collector of Revenue of the City of St. Louis v. Parcels of Land Encumbered with Delinquent Tax Liens*, 517 S.W. 2d 49, 53 (Mo. 1974). “If in fact the act by its terms or ‘in its practical operation, it can only apply to particular

persons or things of a class, then it will be a special or local law, however carefully its character may be concealed by form of words.” *Id.* (quoting *Dunne v. Kansas City Cable Ry. Co.*, 32 S.W. 641, 642, 131 Mo. 1, 5 (1895)). Thus, where the open-ended statutory classification is arbitrary and without a rational relationship to a legislative purpose, the Missouri Supreme Court has found it to be unconstitutional. *Walters*, 259 S.W. 2d at 382.

The Trial Court specially found that § 67.2555 falls into that category of an arbitrary open-ended classification in his Order. “It is this exception that Jackson County correctly asserts is at play in this case; that is, § 67.2555 is arbitrary and without a rational relationship to a legislative purpose.” (L.F. 240). “The court does not think that § 67.2555 was rationally related to a legitimate legislative purpose.” (L.F. 242). Appellants complain on appeal that Respondent Jackson County did not provide sufficient evidence to make a *prima facie* case to support the Trial Court’s legal conclusion.

In deciding that the statute was arbitrary and without a rational relationship to a legitimate legislative purpose, the Trial Court considered evidence adduced at trial that the Jackson County Executive was under federal investigation for allegedly awarding personal service contracts as political paybacks, among other things. (L.F. 242). The Trial Court also considered evidence about the form of government and powers of all three of the charter counties in Missouri.

While the Trial Court believed it was proper for the legislature to enact laws to control corruption, he felt that it should have been done in the form of a general law. “If the legislature was [sic] truly interested in avoiding corruption in regard to the awarding of personal service contracts, it should have made the law applicable to all county executives. The issue of corruption and the effort to fight it legislatively should apply statewide, and not just to Jackson County. Corruption is not exclusive to counties with populations between six hundred thousand (600,000) and seven hundred thousand (700,000).” (L.F. 242).

The Trial Court had before it evidence introduced by Respondent/Cross-Appellant Jackson County, Missouri, pertaining to the form of government utilized by all three charter counties in Missouri. From this evidence, the Trial Court correctly determined that the legislation designed to control the threat of corruption among the leaders of charter counties should be a general law, and the conspicuous absence of the other two charter counties in § 67.2555 made it a prohibited special law. Judge Callahan made a legal and factual determination, based upon the evidence before him, that the subject of preventing corruption is a proper one for legislative action, but the failure of the Legislature to include the other charter counties, which were similarly situated, was arbitrary and not relationally related to a legitimate legislative purpose, making the law a prohibited and unconstitutional special law. There was direct and inferential evidence that all three of the charter

counties were similarly situated and each should have been included within the classification of the legislation rather than just Jackson County.

In a court tried case, the scope of review is established by Rule 73.01 as interpreted by *Murphy v. Carron*, 536 S.W. 2d 30 (Mo. banc 1976). *Murphy* states that that appellate review of a judgment entered by a court sitting without a jury, such as here, would not be reversed unless there was no evidence to support it, unless it was against the weight of the evidence, unless it erroneously declared the law, or unless it erroneously applied the law. *Murphy*, 536 S.W. 2d at 32. Furthermore, *Murphy* teaches that appellate courts should exercise caution in ruling that a judgment is against the weight of the evidence. *Id.*

Under this standard, the appellate court must give considerable deference to a judgment containing evidentiary and factual evaluations by the trial court. The appellate court accepts all evidence and inferences favourable to the judgment and disregards all contrary inferences. *Superior Outdoor Advertising Co. v. Snadon*, 965 S.W. 2d 421 (Mo. App. S.D. 1998); V.A.M.R. 73.01. Where, as here, findings of fact and conclusions of law are neither requested nor entered, all factual issues are considered as having been found in accordance with the result reached. *McClain v. Johnson*, 885 S.W. 2d 345, 347 (Mo. App. W.D. 1994).

Appellants cannot establish that there is no evidence supporting the Trial Court's Judgment since the three county charters introduced support the Judgment. Further, because Appellants failed to move for directed verdict or request findings of fact and conclusions of law from the Trial Court, Appellants are not in a procedural posture to complain that the evidence that was considered by the Trial Court is against the weight of the evidence. Even assuming these procedural deficiencies did not exist, the weight of the evidence supports the Judgment of the Trial Court because the exhibits unequivocally established that there are two other counties that have a charter form of government which were not included into the classification established by the legislation, supporting the conclusion that the law is irrational and arbitrary.

Appellants suggest that its evidence of a federal investigation into the putative improper conduct of the Jackson County Executive creates a rational basis for legislation to prevent corruption. (Appellant's Brief, 28-29). The Trial Court accepted the state's inference that the legislation was designed to prevent corruption. (L.F. 243). The Trial Court specifically considered the newspaper article evidence and ruled against it, stating that while corruption is a permissible subject for legislation, it should be in the form of a general law. (L.F. 242-3). Having specifically considered the potential for corruption in Jackson County, Missouri, the Trial Court ruled that corruption must be dealt with in a general way

applicable to all charter counties. (L.F. 243). Thus, although Appellants did not request findings of facts or conclusions of law from the Trial Court, the Trial Court wrote a detailed explanation of the evidence he considered in making the factual and legal conclusion that § 67.2555 is an unconstitutional and prohibited special law.

The Trial Court relied upon the case of *School Dist. of Riverview Gardens, et al. v. St. Louis County*, 816 S.W. 3d 219 (Mo. banc 1991) in making his ruling in this matter. (L.F. 243). In that case, the court struck down an open-ended law, based upon a population classification, because it was arbitrary and without a rational relationship to a legislative purpose. In *Riverview Gardens*, the school district and others brought an action challenging the provisions of an ad valorem tax rate adjustment that treated political subdivisions in the City of St. Louis and St. Louis County differently than political subdivisions in other counties of the State for the purposes of tax rate adjustments following the assessment. This case is obviously on point in the instant appeal.

In *Riverview Gardens*, the court found that “there is no rational argument which explains the conspicuous absence of the Kansas City metropolitan area from the statute’s exclusions.” *Id.* at 222. Upon finding that there existed no rational basis for the disparate treatment accorded to St. Louis County and the City of St. Louis, the subject legislation was declared unconstitutional because it violated

Article III § 40(30) of the Missouri Constitution in that it was a special law where a general law could be made applicable.

Judge Callahan used this case and its rationale in support of his Judgment. Appellants offer no authority to the contrary or discussion that this case is inapposite in some way. The case is good law and controlling in this instance. Thus, both Judge Callahan's declaration of the law and his application of the law to the facts in this case were appropriate and correct, giving no basis for appeal under *Murphy v. Carron*.

Appellants are incorrect that the Trial Court gave two rationales for its ruling. Rather, it gave one reason with an explanation of the impact the arbitrary law would have on Jackson County. The Trial Court's reason for the ruling is that the subject legislation is a prohibited special law in that it is arbitrary and not rationally related to a legitimate legislative purpose because it does not include all those similarly situated into the classification (i.e. the other charter counties who are equally subject to the threat of corruption are not listed) to which a general law could have been made applicable. The Trial Court cited *Walters v. City of St. Louis* for this proposition. In *Walters*, the Missouri Supreme Court re-affirmed the soundness of this principle. *Walters*, 259 S.W. 2d 382.

Appellants essentially argue that they do not like the inferences the Trial Court drew from the evidence presented by the County at trial concerning the

impact § 67.2555 would have on the administration of the County. (Appellants' Brief, 29-31). The Trial Court described certain day-to-day activities and contractual obligations that would be affected if § 67.2555 were not struck down. (L.F. 240-2). The Trial Court heard the evidence and used these evidentiary inferences as examples of the arbitrary nature of the statute and to help demonstrate its lack of rational relationship to a legislative purpose.

Under the Trial Court's analysis, subjecting only the Jackson County Executive to the additional requirement of competitive bidding does not promote the result of preventing the threat of corruption among charter county executives since it handicaps the administration of Jackson County only without removing, or even addressing, the threat of corruption by the executives of the other charter counties. The amount of disruption caused to Jackson County's day-to-day purchasing activities simply illustrates that the requirements of § 67.2555 are not rationally related to the stated legislative purpose of preventing corruption. The fact that the other charter counties are not included in the legislation underscores its arbitrary and irrational nature.

II. THE TRIAL COURT DID NOT ERR IN ENTERING ITS JUDGMENT RULING § 67.2555 IS UNCONSTITUTIONAL BECAUSE THE JUDGMENT CAN BE SUSTAINED BY EXAMINING THE OTHER VIABLE CONSITUTIONAL CHALLENGES AND LEGAL THEORIES RAISED BY RESPONDENT JACKSON COUNTY, MISSOURI IN ITS PLEADINGS IN THAT THE LEGISLATION IS UNCONSTITUTIONAL AS A MATTER OF LAW IN THE FOLLOWING RESPECTS: (1) §67.2555 INFRINGED ON JACKSON COUNTY’S RIGHT TO OPERATE UNDER A CHARTER FORM OF GOVERNMENT AS ALLOWED BY ARTICLE VI, §18 OF THE MISSOURI CONSTITUTION; (2) ADDITION OF §115.348 CHANGED THE ORIGINAL PURPOSE OF THE BILL; (3) INCLUSION OF §115.348 VIOLATED PROVISIONS OF ARTICLE III, §23 OF THE MISSOURI CONSTITUTION; (4) §67.2555 IS DEFECTIVE DUE TO ITS VAGUENESS AND OVERBREADTH; (5) THE GENERAL ASSEMBLY VIOLATED NOTICE PROVISIONS OF ARTICLE III, § 42 OF THE MISSOURI CONSTITUTION RELATING TO THE PASSAGE OF A SPECIAL LAW.

Since this Court's review for constitutional challenges to a statute is *de novo*, *Barker v. Barker*, 98 S.W. 3d 532, 534 (Mo. banc 2003), this Court may consider other constitutional arguments made by the parties and may affirm on any such ground. *Lough by Lough v. Rolla Women's Clinic, Inc.*, 866 S.W. 2d 851, 852 (Mo. banc 1993). In the unlikely event that this Court determines the analysis utilized by Judge Callahan to be flawed in striking down § 67.2555 as an unconstitutional special law, it becomes this Court's duty to examine and evaluate the other constitutional challenges advanced by Respondent/Cross-Appellant Jackson County, Missouri that provide support for the judgement and result reached by the Trial Court.

In this case, Judge Callahan did not consider the other theories advanced by Respondent/Cross-Appellant Jackson County invalidating § 67.2555 besides the argument describing the subject legislation as a prohibited special law. (L.F.243-4). In the event that this Court feels the evidentiary record is not sufficiently developed to enter a ruling as a matter of law on the other theories, it may consider remanding the case to the Trial Court for further amplification of the record. For the reasons described below, in addition to the fact that Judge Callahan's reasoning stated in his Judgment is valid, this Court must confirm the result reached by the Trial Court in holding § 67.2555 unconstitutional.

A. **§ 67.2555 Infringed on Jackson County’s Right to Operate under
a Charter Form of Government as Allowed by Article VI, §18 of
the Missouri Constitution.**

The citizens of Jackson County have adopted a Charter under the provisions of Art. VI, § 18 of the Missouri Constitution. Article III of the Constitutional Home Rule Charter of Jackson County specifies the powers and duties of the Jackson County Executive in whom all executive powers of the County are vested.

Article VI, § 18 of the Missouri Constitution pertaining to the powers and duties of the county executive, supersedes the general law enacted by the State §67.2555. It is the law of this State that the counties eligible may adopt a charter form of government. In *Grant v. City of Kansas City, Missouri*, 432 S.W.2d 89, 92 (Mo. banc1968), the Missouri Supreme Court stated:

[T]hat as to its form of organizations, and to its private, local corporate functions, and the manner of exercising them, the constitutional provision grants to the people.....part of the legislative power of the state for the purpose of determining such matters and incorporating them in their charter as they see fit, free from the control of the General Assembly. When matters of this nature are adopted in a charter, as prescribed by a Constitution, such charter provisions have the force and effect of the Legislature and can only be

declared invalid for the same reason, namely if they violate the constitutional limitations or prohibitions.

The citizens of Jackson County, having properly exercised the constitutional power granted them to adopt a charter government, are free to form such a government as they see fit, and to set out and delegate the terms of office, including the powers and duties of their officers, free from control by the General Assembly. See *State ex rel. Shepley v. Gamble*, 280 S.W. 2d 656,662 (Mo. banc 1955)(people of a charter county have the right to determine the number, kinds, manner of selection, terms of office and salaries of its county officers.) A constitutional charter is a legislative act and stands on par with an Act of the Legislature. *Tremayne v. City of St. Louis*, 6 S.W. 2d 935, 939 (Mo. banc 1928). The powers which the county can exercise by it own special charter, if unrestrained by constitutional limitations, are all the powers which the people delegate to it under the charter. *State ex rel. Kansas City v. North Kansas City*, 228 S.W. 2d 762, 771 (Mo. banc 1950).

In *State of Missouri ex. rel. Shepley v. Gamble*, respondents were duly authorized members of the board of police commissioners and superintendent of police of St. Louis County, Missouri pursuant to the home rule charter. As such, this newly created police department of St. Louis County took over the law enforcement functions previously held by the sheriff and constables of St. Louis

County. The Supreme Court of Missouri held that the creation of the new department vested with the police authority previously held by the sheriff was permissible pursuant to Art. VI § 18 of the Missouri Constitution. *Id.* at 662. This Court stated that a county under the special charter provisions of our constitution is possessed to a limited extent of a dual nature and functions in a dual capacity in that it must perform state functions over the entire county and may perform functions of a local or municipal nature at least in the unincorporated parts of the county. *Id.* These are constitutional grants which are not subject to, but take precedence over, the legislative power. *Id.* The people of St. Louis County have the right to determine the number, kinds, manner of selection, terms of office and salaries of its county officers. *Id.* “The people have the inherent, sole, and exclusive right to regulate the internal government and police thereof.” *Id.*

The Jackson County Charter is the source of the powers and duties of all of its county officers as expressed by the people of Jackson County. The Constitutional Home Rule Charter of Jackson County is a legislative act of, and stands on a par with, an Act of the Legislature. *Tremayne v. City of St. Louis*, 6 S.W.2d 935, 939 (1928). Also, the making of a constitutional charter is itself legislative. *Id.*

The intent of the constitutional provision of Art. VI, § 18, authorizing the creation of a county government (distinct from that provided by the legislature)

under special charter was to give the voters of the county the power to do whatever the legislature could do with respect to the creation, organization, and authority of such county and its officers, including its police or other administrative department under such charter. *Shepley*, at 658. The citizens of Jackson County have exercised that authority by creating a Charter that expressly and clearly gives the County Executive powers and duties, and the provisions of § 67.2555 infringe upon those powers improperly. Specifically, § 67.2555 conflicts with the powers granted to the Jackson County Executive under Article III of the Constitutional Home Rule Charter of Jackson County, granting the Jackson County Executive authority to employ experts and consultants in connection with any of the functions of the County. Art. III, § 6, ¶ 2 of the Constitutional Home Rule Charter of Jackson County.

The Supreme Court of Missouri decided that the Constitution provides for any city having the requisite population to frame a charter for its own government; the Supreme Court also declared that such charter shall be consistent with, and subject to, the Constitution and laws of the State. *Tremayne v. City of St. Louis*, 6 S.W.2d 935, 939 (1928). However, permission to frame a charter carries with it the privilege of establishing a system different from that adopted for the state at large, provided:

[I]t shall not override or collide with the constitutional guarantees and restrictions, and shall **not be out of harmony with the general laws of the State**. It must be borne in mind that the grant of the right to frame a charter of its own would have been utterly meaningless, if the convention which framed the Constitutional and the people who adopted it meant that such a charter should be in all respects exactly like the general charters framed by the general statutes for the class to which it would have belonged, but for that privilege.

Tremayne v. City of St. Louis, 6 S.W. 935, 945 (1928), *quoting*, *Kansas City v. Marsh Oil Co.*, 41 S.W. 943 (1897)(emphasis added). Thus, it is within the contemplation of the Missouri Constitution that charters may more or less be at variance, and will be unlike in many respects. *Tremayne* at 945.

The Charter of Jackson County was approved by the voters in an election in 1970. This charter has named the officers of the county, determined their salaries, and determined the scope of their authority. Article III of the Constitutional Home Rule Charter of Jackson County grants its County Executive the authority to employ experts and consultants in connection with any of the functions of the county. Art. III, § 6, ¶ 2 of the Constitutional Charter of Jackson County. This grant of authority is in harmony with the general laws and the constitutional provisions of the State of Missouri. § 67.2555 conflicts with Art. III, § 6, ¶ 2 of the

Constitutional Home Rule Charter of Jackson County, which is a grant to the people pursuant to Art. VI, § 18 of the Missouri Constitution. Art. III, § 6, ¶ 2 of the Constitutional Home Rule Charter of Jackson County is a provision as to the form of organization the people desired to create, a county with a strong executive in charge. Likewise, the people were free to set the scope of authority for all of its officers delegated in the charter. Art. III, § 6, ¶ 2 of the Constitutional Home Rule Charter of Jackson County is not out of harmony with the Constitution of the State of Missouri; this charter provision has the force and effect of the Legislature and does not violate any constitutional limitations or prohibitions. Thus, § 67.2555 is unconstitutional in that it violates the provisions found at Art. VI, § 18 of the Missouri Constitution because it prevents the people of charter counties from determining their form of government and limits their ability to decide the scope of authority for the officers named in the charter.

B. Addition of § 115.348 Changed the Original Purpose of the Bill.

This Court entered a Judgment on April 25, 2006 regarding the issues relating to § 115.348 in a related case entitled *Henry Rizzo, et al v. State of Missouri, et al*, Supreme Court Number 87550. In that opinion, this Court ruled that a violation of Article III, § 23, which prohibits bills from containing more than a single subject, occurred in § 115.348. The opinion upheld the actions of the Trial Court, the Honorable Richard Callahan, who had previously ruled § 115.348

unconstitutional, although on other grounds. Because this Court's ruling finding the provision unconstitutional is dispositive, it did not discuss other constitutional claims of error. This recent ruling of this Court controls here.

C. Inclusion of § 115.348 Violated Provisions of Article III, § 23 of the Missouri Constitution.

The recent court ruling in *Henry Rizzo, et al v. State of Missouri, et al*, Supreme Court Number 87550 contains the most recent pronouncement on this issue. This Court found that H.B. 58 contained a violation of the single subject clause of the Missouri Constitution.

Article II, § 23 requires that bills contain no more than one subject, and its corollary provision contained in Article III, § 21 prohibits the amendment of a bill so as to change its original purpose. Both provisions set forth procedures the General Assembly must follow to ensure that the bills it creates can be easily understood and intelligently discussed, both by members of the legislature and the general public. *Hammerschmidt v. Boone County*, 877 S.W. 2d 98, 101 (Mo. banc 1994). These sections are also designed to prevent “logrolling”, which is a practice of combining several unrelated issues into a single bill when the individual provisions themselves may not garner enough votes to pass but collectively they do. *Id.* Respondent/Cross-Appellant Jackson County claims the provisions of

H.B. 58 violated the single subject and the clear title clauses of the Missouri Constitution. (L.F. 8).

At the outset, it is important to note that this Court very recently declared that H.B. 58 improperly contained multiple subjects and entered a ruling to that effect in the *Rizzo* case. In *Rizzo*, this Court confirmed *Hammerschmidt* is the standard for determining violations of the single subject clause; *Hammerschmidt* requires that all of the bill's provisions must "fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose." *Rizzo v. State of Missouri, et al*, __S.W. 3d __, SC87550 (April 25, 2006), page 3.³

A single "subject" can include "all matters that fall within or reasonably relate to the general core purpose of the proposed legislation." Generally speaking, the subject is discerned from the title of the bill. *Hammerschmidt*, at 101. In the instance of H.B. 58, the *Rizzo* Court determined the core subject of the bill to be legislation relating to political subdivisions, tracking its title. *Rizzo*, at 4.

Thus, the issue for determination for this Court becomes whether the provision contained in §67.2555 fails the test just the way § 115.348 did under the

³ Page numbers referenced here refer to the online opinion of this case.

rationale in *Rizzo*. In this instance, §67.2555 imposes stringent purchasing limitations upon the Jackson County Executive where none have existed before in a manner that arguably conflicts with those Jackson County Charter provisions which establish the powers and duties of county officers and the state statute conferring upon the charter counties the right to set the powers and duties of their officers. Prior to H.B. 58, the Jackson County Executive was free to make purchasing decisions and contracts to benefit Jackson County limited only by the powers conferred to her in her County's Charter.

Thus, the “*raison d’etre*” of §67.2555 is the creation of limitations on the purchasing power of the Jackson County Executive that have never existed before. In that sense, it is more akin to the cases of *Rizzo* and *Hammerschmidt*, which were recently analyzed in the *Rizzo* opinion. *Rizzo* at 4. In *Hammerschmidt*, this Court struck down a provision that had as its “*raison d’etre*” the creation of a new form of county governance that had previously never existed before which was embedded within a bill entitled “relating to elections.” *Hammerschmidt* at 103. In *Rizzo*, this Court invalidated a provision that had as its “*raison d’etre*” the creation of a statewide election limitation for persons convicted of federal crimes that had never previously existed before buried within a bill entitled “about political subdivisions.” *Rizzo* at 4.

In its decision in the *Rizzo* case, this Court devoted substantial discussion to the fact that the provision invalidated was a large departure from the way things had been done in the past and was too different from the status quo to be hidden inside a bill not clearly announcing its presence through the subject matter of the title. Obviously, creating statutory purchasing limitations on the Jackson County Executive where none existed previously is a departure of the same magnitude as that which was prohibited under the *Rizzo* analysis. Neither is §67.2555 a means or manner in which to carry out the purpose of the legislation relating to political subdivisions. Hence, it is unfair to consider it within the “umbrella” subject of the bill. Therefore, this Court should follow its analysis in *Rizzo* to strike down §67.2555 as having violated the single subject clause of Article III, § 23 of the Missouri Constitution.

D. §67.2555 is Defective Due to its Vagueness and Overbreadth.

§67.2555 is impermissible vague and overly broad. Specifically, the term “expenditures” contained within § 67.2555 vague and overly broad. The test for enforcing the void for vagueness doctrine is whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W. 2d 955, 957 (Mo. banc 1999). The disputed provision creates a limitation on the Jackson County

Executive whereby she must get competitive bids to make all “expenditures” more than five thousand dollars (\$5,000.00).

§67.25555 of HB 58 on its face includes all expenditures over \$5,000.00 and fails to take into consideration expenditures made in emergency situations, expenditures for the County’s participation in an intergovernmental purchase agreement such as Jackson County’s participation in the Kansas City Regional Purchasing Cooperative for vehicles and other supplies for use in county government, expenditures where only one source is available to purchase the supply, and expenditures for utility payments in the County, which should not be competitively bid. The term “expenditure” as used in §67.25555 of HB 58 is overly broad in that it encompasses many forms of payments made by the County Executive on behalf of the County, many of which are authorized by the Charter or essential to the day-to-day operation of the County.

“Expenditure” is vague and overly broad in that it conflicts with and undermines the Constitutional Home Rule Charter of Jackson County provisions and state statutory provisions allowing the Jackson County Executive to exercise those powers and duties given to her by the Charter as authorized by state statute. For example, the Jackson County Charter specifically provides that it is the power and duty of the County Executive to “employ experts and consultants in connection with any of the functions of the county.” Constitutional Home Rule

Charter of Jackson County, Article III, § 6, ¶2. Additionally, the Jackson County Executive is authorized by her Charter to “see that all contracts with the county are faithfully performed and cause to be instituted in the name of the county appropriate actions thereon.” Constitutional Home Rule Charter of Jackson County, Article III, § 6, ¶5. By hiring such experts and consultants and performing such specified duties, the Jackson County Executive may make “expenditures” greater than five thousand dollars (\$5,000.00). It is impermissibly vague and overly broad in that it is subject to multiple interpretations.

E. The General Assembly Violated Article III, § 42’s Notice Provisions.

Article III, § 42 of the Missouri Constitution provides:

No local or special law shall be passed unless a notice, setting forth the intention to apply therefore and the substance of the contemplated law, shall have been published in the locality where the matter or thing to be affected is situated at least thirty days prior to the introduction of the bill into the general assembly and in the manner provided by law. Proof of publications shall be filed with the general assembly before the act shall be passed and the notice shall be recited in the act.

The Trial Court ruled that §67.2555 is a special law. The notice provisions of Article III, § 42 of the Missouri Constitution apply to §67.2555 because it is a

special law. These notice provisions have not been followed as prescribed by the Missouri Constitution relating to the enactment of §67.2555. Therefore, this Court must invalidate the special law, §67.2555, for its Article III, § 42 notice provision violation.

In *Treadway v. State of Missouri*, 988 S.W. 2d 508 (Mo. banc 1999), this Court examined the subject legislation to determine whether it was a special or local law and to verify if it complied with the notice provisions of Article III, § 42. The legislation at issue in *Treadway* was a vehicle emission regulatory scheme applicable only to the St. Louis metropolitan area. This Court evaluated the legislation under its special law analysis. Part of its decision-making rested upon this Court's determination that the legislation had not been promulgated as a special or local law and the requisite notice provisions had not been complied with. This Court ruled the notice provisions had not been met by the fact that publication was not in the record and no notice was recited in the act. *Treadway* at 512.

As in *Treadway*, the notice provisions were not followed herein because neither publication nor notice is contained within the legislation. (L.F. 11-208). This Court must invalidate §67.2555, which has been determined to be a special

law, and therefore, must comply with the notice procedures, for failure to follow the notice dictates established in Article III, § 42 of the Missouri Constitution.⁴

CONCLUSION

For the reasons set forth above, Respondent Jackson County, Missouri requests this Court to affirm the Judgment of the Trial Court finding that §67.2555 is an impermissible special law in violation of Article III, § 40(30) of the Missouri Constitution. §67.2555 is a prohibited special law that is arbitrary and has no rational relationship to the legislative purpose by virtue of the fact that it excludes the other constitutional charter counties in the state.

⁴ See the argument *supra* above under Point I for the discussion regarding whether § 67.2555 is a special law.

CROSS-APPELLANT'S BRIEF

POINTS RELIED ON

- I. THE TRIAL COURT ERRED IN NOT FINDING THAT §67.2555 VIOLATED THE PROVISIONS OF ARTICLE VI, §18 BECAUSE ARTICLE VI, § 18 VESTS IN QUALIFYING COUNTIES THE POWER TO ESTABLISH A CHARTER FORM OF GOVERNMENT IN THAT §67.2555 VIOLATES THE AUTHORITY GRANTED TO HOME RULE CHARTER COUNTIES UNDER THE MISSOURI CONSTITUTION AND UNCONSTITUTIONALLY INFRINGES UPON JACKSON COUNTY'S RIGHT TO OPERATE A CHARTER FORM OF GOVERNMENT UNDER THAT SECTION OF THE MISSOURI CONSTITUTION.**

SOURCES:

MO. CONST. art. VI, § 18.

Constitutional Home Rule Charter of Jackson County, Art. III., § 6, ¶¶ 2, 5

State ex rel. Shepley v. Gamble, 280 S.W. 2d 656 (Mo. banc 1955).

Tremayne v. City of St. Louis, 6 S.W. 2d 935 (Mo. banc 1928).

II. THE TRIAL COURT ERRED IN FINDING THAT § 115.348 DID NOT VIOLATE ARTICLE III, § 21 OF THE MISSOURI CONSTITUTION BECAUSE ARTICLE III, §21 REQUIRES THE ORIGINAL PURPOSE OF THE BILL NOT TO BE CHANGED IN THAT AMENDMENTS TO HB 58, CHANGED ITS ORIGINAL PURPOSE.

SOURCES:

MO. CONST. art. III, § 21.

Rizzo, et al. v. State of Missouri, et al.,

___S.W. 3d___, SC87550 (April 25, 2006).

III. THE TRIAL COURT ERRED IN FINDING THAT §§ 115.348 AND 67.2555 IN HB 58 DID NOT VIOLATE ARTICLE III, § 23 OF THE MISSOURI CONSTITUTION BECAUSE ARTICLE III, § 23 REQUIRES THAT BILLS CONTAIN A SINGLE SUBJECT IN THAT INCLUDING §§ 115.348 AND 67.2555 CREATED A BILL WITH NUMEROUS SUBJECTS IN VIOLATION OF THE SINGLE SUBJECT CLAUSE.

SOURCES:

MO. CONST. art. III, § 23.

Hammerschmidt v. Boone County, 877 S.W. 2d 98 (Mo. banc 1994).

Rizzo, et al. v. State of Missouri, et al.,

___S.W. 3d___, SC87550 (April 25, 2006).

IV. THE TRIAL COURT ERRED IN NOT FINDING THAT § 67.2555 WAS UNCONSTITUTIONAL BECAUSE THE TERM “EXPENDITURE “ IS UNCONSTITUTIONALLY VAGUE AND IMPERMISSIBLY OVERLY BROAD IN THAT IT IS SUBJECT TO MULTIPLE INTERPRETATIONS INCLUDING SITUATIONS THAT SHOULD NOT BE COMPETATIVELY BID SUCH AS DAY-TO-DAY PURCHASES FOR UTILITIES, EMERGENCIES AND THE LIKE.

SOURCES:

Cocktail Fortune, Inc. v. Supervisor of Liquor Control, 994 S.W. 2d 955
(Mo. banc 1999).

Constitutional Home Rule Charter of Jackson County, Art. III, § 6, ¶¶2, 5.

V. THE TRIAL COURT ERRED IN NOT FINDING THAT THE GENERAL ASSEMBLY VIOLATED ARTICLE III, § 42 BECAUSE NOTICE MUST BE PROVIDED PRIOR TO THE ENACTMENT OF A SPECIAL LAW IN THAT § 67.2555 IS A

**SPECIAL LAW AND THE LEGISLATURE FAILED TO
COMPLY WITH THE REQUIRED NOTICE PROCEDURE.**

SOURCES:

MO. CONST. art. III, § 42.

Treadway v. State of Missouri, 988 S.W. 2d 508 (Mo. banc 1999).

ARGUMENT

- I. THE TRIAL COURT ERRED IN NOT FINDING THAT §67.2555 VIOLATED THE PROVISIONS OF ARTICLE VI, §18 BECAUSE ARTICLE VI, § 18 VESTS IN QUALIFYING COUNTIES THE POWER TO ESTABLISH A CHARTER FORM OF GOVERNMENT IN THAT §67.2555 VIOLATES THE AUTHORITY GRANTED TO HOME RULE CHARTER COUNTIES UNDER THE MISSOURI CONSTITUTION AND UNCONSTITUTIONALLY INFRINGES UPON JACKSON COUNTY’S RIGHT TO OPERATE A CHARTER FORM OF GOVERNMENT UNDER THAT SECTION OF THE MISSOURI CONSTITUTION.**

This argument has been set forth in its entirety previously in the Respondent portion of this brief and can be located at pages 33-38 of this Brief. This Court is referred to that section for the contents of this argument.

- II. THE TRIAL COURT ERRED IN FINDING THAT § 115.348 DID NOT VIOLATE ARTICLE III, § 21 OF THE MISSOURI CONSTITUTION BECAUSE ARTICLE III, §21 REQUIRES THE ORIGINAL PURPOSE OF THE BILL NOT TO BE**

**CHANGED IN THAT AMENDMENTS TO HB 58, CHANGED
ITS ORIGINAL PURPOSE.**

This argument has been set forth in its entirety previously in the Respondent portion of this brief and can be located at pages 38-39 of this Brief. This Court is referred to that section for the contents of this argument.

**III. THE TRIAL COURT ERRED IN FINDING THAT §§ 115.348
AND 67.2555 IN HB 58 DID NOT VIOLATE ARTICLE III, § 23
OF THE MISSOURI CONSTITUTION BECAUSE ARTICLE
III, § 23 REQUIRES THAT BILLS CONTAIN A SINGLE
SUBJECT IN THAT INCLUDING §§ 115.348 AND 67.2555
CREATED A BILL WITH NUMEROUS SUBJECTS IN
VIOLATION OF THE SINGLE SUBJECT CLAUSE.**

This argument has been set forth in its entirety previously in the Respondent portion of this brief and can be located at pages 39-42 of this Brief. This Court is referred to that section for the contents of this argument.

**IV. THE TRIAL COURT ERRED IN NOT FINDING THAT §
67.2555 WAS UNCONSTITUTIONAL BECAUSE THE TERM**

“EXPENDITURE “ IS UNCONSTITUTIONALLY VAGUE AND IMPERMISSIBLY OVERLY BROAD IN THAT IT IS SUBJECT TO MULTIPLE INTERPRETATIONS INCLUDING SITUATIONS THAT SHOULD NOT BE COMPETATIVELY BID SUCH AS DAY-TO-DAY PURCHASES FOR UTILITIES, EMERGENCIES AND THE LIKE.

This argument has been set forth in its entirety previously in the Respondent portion of this brief and can be located at pages 42-44 of this Brief. This Court is referred to that section for the contents of this argument.

V. THE TRIAL COURT ERRED IN NOT FINDING THAT THE GENERAL ASSEMBLY VIOLATED ARTICLE III, § 42 BECAUSE NOTICE MUST BE PROVIDED PRIOR TO THE ENACTMENT OF A SPECIAL LAW IN THAT § 67.2555 IS A SPECIAL LAW AND THE LEGISLATURE FAILED TO COMPLY WITH THE REQUIRED NOTICE PROCEDURE.

This argument has been set forth in its entirety previously in the Respondent portion of this brief and can be located at pages 44-46 of this Brief. This Court is referred to that section for the contents of this argument.

CONCLUSION

As a result of the arguments set forth above, this Court must rule that §67.2555 is unconstitutional. This Court should utilize the analysis contained in the *Rizzo* case to find a violation of the single subject provision and find the original purpose of the bill is changed. Since this Court will find §67.2555 to be a special law, it follows that there exists a violation of the required notice provisions set forth in Article III, § 42. §67.2555 infringes upon the rights of Cross-Appellant to make its decisions as a charter county; therefore, the legislation must be struck down by this Court.

CERTIFICATION

COMES NOW, Lisa Noel Gentleman, Deputy County Counselor, attorney of record for Respondent/Cross-Appellant, Jackson County, Missouri, and pursuant to Missouri Supreme Court Rule 84.06, states the following required information:

1. The Respondent/Cross-Appellant's Brief complies with the provisions of Missouri Supreme Court Rule 55.03;
2. The Respondent/Cross-Appellant's Brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b);
3. The name of the word processing software used to prepare Respondent/Cross Appellant's Brief is Microsoft Word 2000;
4. The diskette accompanying Respondent/Cross Appellant's Brief has been scanned and is virus free;
5. The number of words in Respondent/Cross Appellant's Brief is 9,952.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the original and ten copies of Respondent/Cross-Appellant's Brief and a diskette of same were hand delivered to the Clerk of the Missouri Supreme Court for filing, and two copies of Respondent/Cross-Appellant's Brief with the diskette were hand delivered on this 3rd day of May, 2006, to:

Heidi C. Doerhoff, Assistant Attorney General
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Respectfully submitted,

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