IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

City of Normandy, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 15AC-CC00531
	)	
Michael L. Parson in his official capacity as Governor of Missouri, et al.,	)	
	)	
	)	
Defendants.	)	

Defendants' Motion for Partial Relief from Judgment and Suggestions in Support

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INTRODUCTION

The Missouri Supreme Court recently overruled its opinion in this case and fundamentally changed the way Missouri courts review special-law challenges. *See City of Aurora, Mo., et al. v. Spectra Comms. Grp.*, No. SC96276, 2019 WL 7161271 (Mo. banc Dec. 24, 2019) (Slip Opinion attached as Exhibit A). Consistent with that opinion, Defendants respectfully move the Court for relief from the Court's permanent injunction because "it is no longer equitable that the judgment remain in force." Mo. S. Ct. Rule 74.06(b)(5).

Governments should not treat their citizens as ATMs. But in 2015, in the wake of unrest in Ferguson, Missouri, a series of reports showed that local governments in St. Louis County were improperly using municipal fines and fees as a major revenue-generating tool—a policy known as "taxation by citation." This *de facto* regressive tax undermined public confidence in government legitimacy, pressured law enforcement to move away from traditional public-safety responsibilities, and disproportionately burdened poor and minority members of the community. Observers on all sides of the political spectrum decried this practice. The U.S. Department of Justice's investigation of Ferguson observed that the city's "emphasis on revenue generation had a profound effect," shifting the focus of law enforcement efforts away from public safety in order to generate more revenue. U.S. Dep't of Justice, *Investigation of the Ferguson Police Department* (Mar. 4, 2015) at 2 (attached as Exhibit B) ("DOJ Report"). Similarly, a report by the Institute for Justice concluded that "excessive use of fines and fees can foment distrust, damage residents' relationships with law enforcement and harm judicial credibility. Police and courts lose legitimacy when they are perceived to treat people unjustly or to impose costs that are capricious or unfair."

Carpenter, et al., *The Price of Taxation by Citation*, INSTITUTE FOR JUSTICE (Oct. 2019), at 9 (attached as Exhibit C) ("IJ Report").[1]

When taxation-by-citation is employed to raise revenue, government bureaucrats pressure police departments and officers to focus on revenue generation instead of protecting public safety. The DOJ reported that, in Ferguson, City officials "exhort[ed] police and court staff to deliver … revenue increases" every year by increasing citations, and "routinely urge[d]" the chief of police "to generate more revenue through enforcement." DOJ Report, at 5. "Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that *the message comes from City leadership*." *Id.* (emphasis added). Such pressure from government bureaucrats on law-enforcement agencies "distorts law enforcement priorities away from protecting and advancing public safety," and undermines trust in government. IJ Report, at 8. As a result of this pressure from government officials, "community trust and cooperation suffer when revenue generation seems to be the primary goal of law enforcement." *Id.* at 9.

Moreover, there is overwhelming public evidence that the problem of taxation-by-citation was and is uniquely pervasive and entrenched in St. Louis County, Missouri. The unique governmental structure of St. Louis County—encompassing 90 municipalities, including numerous small municipalities with splintered tax bases—creates particularly perverse incentives for municipal governments to engage in taxation-by-citation. Empirical evidence demonstrates that municipal governments in St. Louis County frequently succumb to these incentives. St. Louis County had 81 municipal courts in 2014, and 21 municipalities in St. Louis County earned over 20 percent of their revenue from citations during that time period—including 14 municipalities for

[1] The Attorney General's Office does not necessarily endorse every aspect of these public reports, but emphasizes their points of universal agreement to demonstrate the rational basis for the challenged statutory provisions.

whom fines and fees were the *principal* source of revenue. Better Together, *Public Safety – Municipal Courts* (Oct. 2014) at 1-2 (attached as Exhibit D). *See also* IJ Report, at 8 (noting that earning 10 percent or more revenue from such sources is an indicator of taxation-by-citation).

In Senate Bill 5, the General Assembly passed a two-part plan to address these problems. First, SB5 required counties "with a charter form of government" and "more than nine hundred fifty thousand inhabitants" (and local governments within such counties) to reform police departments and municipal courts to meet certain "minimum standards." § 67.287, RSMo. Second, SB5 required those same governments to reduce the percentage of revenue generated from traffic fines, bond forfeitures, and court costs to 12.5 percent of total operating revenue. § 479.359.2, RSMo.

This Court permanently enjoined the State from enforcing both provisions, holding that they were unconstitutional special laws under Article III, §§ 40-42 of the Constitution. *See* Judgment and Permanent Injunction, at 3, ¶¶ 10-11 (March 28, 2016). The Missouri Supreme Court affirmed this portion of the judgment. *City of Normandy v. Greitens*, 518 S.W.3d 183, 188 (Mo. banc. 2017). The Supreme Court held that, under then-existing law, these two provisions were "special laws" and thus presumptively unconstitutional. *Id.* This shifted the burden to Defendants to present evidence establishing a "substantial justification" to overcome this presumption, and the Court held that Defendants had not done so. *Id.*

Last month, however, the Missouri Supreme Court explicitly overruled *City of Normandy v. Greitens*, directing courts to apply a presumption of constitutionality and rational-basis review in special-law challenges. *See City of Aurora*, Slip Op. at 19-21. This sweeping change in decisional law entitles Defendants to relief under Rule 74.06(b)(5). A party may seek relief from any judgment with '"prospective effect'" when '"a subsequent circumstance makes enforcement

of such a judgment inequitable.'" *Hollins v. Capital Sols. Investments I, Inc.*, 477 S.W.3d 19, 26 (Mo. App. E.D. 2015) (citation omitted). An injunction—like the one imposed by this Court in this case—is a quintessential "judgment with prospective effect." 16 MO. PRAC., CIVIL RULES PRACTICE § 74.06(b)(5):1 (2019 ed.). The Missouri Supreme Court's subsequent change in decisional law makes it inequitable to leave that injunction in place. *See Agostini v. Felton*, 521 U.S. 203, 215 (1997) ("[I]t is appropriate to grant a Rule 60(b)(5) motion when the party seeking relief from an injunction . . . can show a significant change . . . [in] decisional law."); *Juenger v. Brookdale Farms*, 871 S.W.2d 629, 631 n.3 (Mo. App. E.D. 1994) (explaining that "[t]he federal counterpart of Missouri's Rule 74.06(b)(5) is Federal Rule 60(b)(5)"). Section 67.287 and section 479.359.2 easily pass rational basis review after *City of Aurora* because they target a perverse practice of taxation-by-citation that is uniquely pervasive and entrenched in St. Louis County.

FACTUAL BACKGROUND[2]

Citizens are not ATMs for local government. Fines should be a law enforcement tool, not a means of taxation to raise revenue and close budget shortfalls. Such "taxation by citation" is subject to frequent and bipartisan criticism. *See* Mildred W. Robinson, *Fines: The Folly of Conflating the Power to Fine with the Power to Tax*, 62 VILL. L. REV. 925 (2017). Well-established research shows that using fees and fines to raise revenue creates the perception of

[2] The Court can take judicial notice of the fact that the reports and statistics cited in this motion existed and were part of the well-publicized context leading to Senate Bill 5. *See Carr v. Grimes*, 852 S.W.2d 345, 351 (Mo. App. S.D. 1993) (noting Missouri courts have broad discretion in taking judicial notice of matters of common knowledge); *see also State v. Baldwin*, 484 S.W.3d 894, 900 n.8 (Mo. App. W.D. 2016) (noting Missouri courts may take judicial notice of the status and population of Missouri's subdivisions). In any event, rational basis review requires only a "reasonably conceivable state of facts," *City of Aurora*, Slip Op. at 21-22, and so "courts are not confined to the record" in applying rational-basis scrutiny. *Haves v. City of Miami*, 52 F.3d 918, 922 (11th Cir. 1995). As noted above, the Attorney General's Office does not necessarily endorse every aspect of these public reports and journal articles, but emphasizes their universal agreement on the ills of taxation-by-citation, as a rational basis for the provisions of SB 5.

selective enforcement and undermines public confidence in law enforcement, government institutions, and the judicial system. *See* IJ Report, at 8-9 (Ex. C). Moreover, using fines to raise revenue may operate as a regressive tax, placing a disproportionate burden on poor and minority citizens compared to traditional forms of taxation. *See* Robinson, 62 VILL. L. REV. at 947; *see also* Better Together, *Public Safety – Municipal Courts* (Oct. 2014) at 8 & Table 2 (attached as Exhibit D). Yet local governments often fall back on "taxation by citation" as an easy but short-sighted means to raise revenue.

St. Louis County, in particular, became a national example of this problem following the Michael Brown shooting in 2014 in Ferguson, Missouri. The subsequent DOJ investigation into the Ferguson Police Department concluded that, due to pressure from elected officials and government bureaucrats, "Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs." DOJ Report at 2. According to DOJ, this "emphasis on revenue" from leaders in city government had "compromised the institutional character of Ferguson's police department" and "shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community." *Id.* at 2. These revenue-driven practices were "born disproportionately by African Americans" and other minorities. *Id.* at 4. Ferguson, with a population of 21,000, had issued "approximately 90,000 citations and summonses for municipal violations" in four years. *Id.* at 6-7.

A closer look showed that taxation-by-citation was not just a problem in Ferguson, but was deeply entrenched in many municipalities of St. Louis County. St. Louis County is uniquely susceptible to the perverse incentives for taxation-by-citation because of its unusual governmental structure. St. Louis County has 90 different local governments—far more than any other county in Missouri. *See* 2012 Census of Governments, U.S. Census Bureau (Sept. 2013), *available at*

http://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG13.ST05P?slice=GEO~0400000US29. This means traditional sources of revenue—like residential property, large retail centers, and corporate employers—are uniquely fractured, increasing the pressure to use law enforcement and municipal courts as tools to generate revenue. Three sources of public data demonstrated that other parts of St. Louis County followed the same revenue-driven formula as Ferguson. First, St. Louis County had 81 municipal court divisions as of 2014. *See Public Safety – Municipal Courts* (Oct. 2014), at 1 ("To put this in perspective: A judicial circuit in Missouri contains 8.6. municipal court divisions on average."). Those 81 municipal courts were immensely profitable. On average, they cost "$223,139 to operate" and brought in "$711,506 in revenue from fines and fees." *Id.* at 2. Second, "the combined populations of the 90 municipalities in St. Louis County accounts for only 11% of Missouri's population." *Id.* at 2. Yet those municipalities brought in "34% of all municipal fines and fees statewide ($45,136,416 in 2013)." *Id.* at 2. Third, 21 municipalities in St. Louis County derived at least 20 percent of their general budget from fines and fees, and municipal fines and fees were the "largest individual source of revenue" for fourteen municipalities in St. Louis County. *Id*. In short, in 2014, there was overwhelming public evidence that the problem of taxation-by-citation was uniquely entrenched and pervasive within St. Louis County.

The General Assembly responded to this troubling situation in 2015 when it enacted SB 5. The new law required each local government in Missouri to "annually calculate the percentage of its general operating revenue received from fines, bond forfeitures, and court costs for minor traffic violations, including amended charges." § 479.359.1, RSMo. The new law also lowered the statewide cap on revenue generated from fines from thirty percent to twenty percent of total municipal revenues. § 479.359.2, RSMo. SB5 also required local governments to file a signed and notarized addendum with their annual financial report to the state auditor listing annual general

operating revenue; total revenue derived from fines, forfeitures, and court costs for minor traffic violations; and the percentage that such revenue represents. § 479.359.3, RSMo.

In addition, SB5 included two provisions designed to remedy the unique problems in St. Louis County arising from its distinctive size, governmental structure, and history of problematic practices. First, the law further lowered the percentage cap of revenue generated from fines to 12.5 percent for "any county with a charter form of government and with more than nine hundred fifty thousand inhabitants and any city, town, or village with boundaries found within such county." § 479.359.2, RSMo. Second, municipalities in such counties must meet certain "minimum standards" such as having an "accredited or certified" police department, or "a contract for police service" with an accredited or certified police department, within six years. § 67.287, RSMo.

Twelve municipalities in St. Louis County filed this lawsuit challenging these two provisions, including a special-laws challenge. *City of Normandy*, 518 S.W.3d at 190. The State, represented by the Koster administration, did not put on any evidence at trial to support a "substantial justification" for the separate treatment of St. Louis County. *Id.* This Court entered a judgment holding (1) that section 67.287 and section 479.359.2 are unconstitutional special laws; (2) that certain reporting requirements in section 67.287 and 479.359.3 violate the Hancock Amendment; and (3) that the municipalities' other constitutional arguments lack merit. *Id.*; Judgment and Permanent Injunction, at 3-4, ¶¶ 10-12 (March 28, 2016). This Court entered a permanent injunction enjoining the State from enforcing section 67.287 and section 479.359.2. *Id.*

The Missouri Supreme Court affirmed in part and reversed in part. The Supreme Court reversed this Court's holding that SB5 violated the Hancock Amendment. *Id.* at 198-99. And it affirmed this Court's dismissal of Plaintiffs' other constitutional claims. *Id.* at 199-203. Relevant

here, the Supreme Court also affirmed this Court's holding that section 67.287 and section 479.359.2 are unconstitutional special laws. *Id*. at 190-197. First, the Court held that these two provisions of SB 5 were presumptively unconstitutional under the three-part test outlined in *Jefferson County Fire Protection Districts Association v. Blunt*, 205 S.W.3d 866 (Mo. banc 2006), because the provisions appeared to target St. Louis County. *Id.* at 192-196. This shifted the evidentiary burden to the State to "show substantial justification for the special treatment." *Id.* at 196. Second, the Court held that the State had offered no evidence and so had not carried its burden to demonstrate "substantial justification." *Id.* at 196-97.

On December 24, 2019, the Missouri Supreme Court overruled its decision in *City of Normandy* and explicitly repudiated both parts of its holding. *City of Aurora*, Slip Op. at 13-15, 19-21; *id.* at 17 (describing *City of Normandy*'s decision to place the burden on the State to justify SB 5 as the "final misdirection" in the Supreme Court's now-repudiated special-laws jurisprudence). This motion followed.

ARGUMENT

A. A subsequent change in decisional law warrants relief from a judgment granting prospective injunctive relief under Rule 74.06(b)(5).

This Court may relieve a party from a final judgment or order if "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, *or it is no longer equitable that the judgment remain in force*." Mo. S. Ct. Rule 74.06(b)(5) (emphasis added). While other parts of Rule 74.06(b) apply to judgments providing '"a present remedy for a past wrong,'" this last clause applies to all judgments "that have a prospective effect."' *Hollins*, 477 S.W.3d at 26 (quoting *Juenger*, 871 S.W.2d at 631); *see also Anderson v. Central Mo. State Univ.*, 789 S.W.2d 41, 44 (Mo. App. W.D. 1990) (holding that "that component of our rule . . . appl[ies] only to judgments that have prospective effect"). Specifically,

the last clause applies when "a subsequent circumstance makes enforcement of" a prospective judgment "inequitable."' *Id.* (citation omitted). Unlike other parts of Rule 74.06, this provision is not limited to within one year of the judgment—it can be made at any "reasonable time." Mo. S. Ct. Rule 74.06(c). The Court should grant a Rule 74.06(b)(5) motion where (1) a prior judgment has prospective effect; (2) a subsequent circumstances make continued enforcement inequitable; and (3) the motion is filed in a reasonable time. That test is met here.

First, injunctions—such as the relief granted in this case—are judgments with "prospective effect." *Hollins*, 477 S.W.3d at 26; *see also* 16 MO. PRAC., CIVIL RULES PRACTICE § 74.06(b)(5):1 (2019 ed.) ("An example of a judgment with prospective effect would be a continuing decree by injunction or other redress in equity."). "The *prospective application* language of the rule distinguishes between a judgment that remains executory [as in the case of a continuing decree by injunction or other redress in equity] and a judgment rendered in an action at law that becomes final [as for money damages]." *Anderson*, 789 S.W.2d at 44 (brackets and emphasis original). A permanent injunction against a statute's enforcement does not strike the statute from the books and end the case. *See* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 VA. L. REV. 933, 937 (2018) (rejecting the "assumption that a judicial pronouncement of unconstitutionality has cancelled or blotted out a duly enacted statute, erasing that law from the books, vetoing or suspending it and leaving nothing for the executive to enforce now or in the future"). Rather, a permanent injunction imposes an *ongoing* obligation upon the enjoined party not to enforce the still-existing statute. *Anderson*, 789 S.W.2d at 44. This is why Rule 74.06(b)(5) exists. Because the enjoined party has an ongoing obligation, the Court retains "executory" authority over the case and can grant equitable relief from the judgment at any time.

Federal courts have read the parallel federal rule the same way. "The federal counterpart of Missouri's Rule 74.06(b)(5) is Federal Rule 60(b)(5) which states, 'it is no longer equitable that the judgment should have prospective application.'" *Juenger*, 871 S.W.2d at 631. "The Supreme Court has made it clear that Rule 60(b)(5) applies in ordinary civil litigation where there is a judgment granting continuing prospective relief, such as an injunction." *Griffin v. Sec'y, Fla. Dep't of Corr.*, 787 F.3d 1086, 1089 (11th Cir. 2015); *see Agostini*, 521 U.S. at 215 (granting relief from a permanent injunction under Rule 60(b)(5) based on a change in decisional law).

Second, a significant change in decisional law qualifies as a "subsequent circumstance" that "makes enforcement . . . inequitable." *Hollins*, 477 S.W.3d at 26. In *Agostini*, the U.S. Supreme Court explained that "subsequent changes in either statutory or decisional law" support granting a Rule 60(b)(5) motion. *Agostini*, 521 U.S. at 215. In *Agostini* itself, the Court recognized (and made official) that it had overruled two prior decisions interpreting the Establishment Clause. *Id*. Because the Court's "Establishment Clause law ha[d] significantly changed," the enjoined parties were entitled to relief under Rule 60(b)(5). *Id.* at 237. As explained in more detail below, the Missouri Supreme Court has significantly changed the way Missouri courts review special-law challenges, and that change in law directly changes the outcome of this case. Under the new test, SB5's classifications are plainly constitutional because they satisfy rational-basis review. That makes ongoing enforcement inequitable.

Third, such a motion is timely if it is filed within a "reasonable time" of the subsequent change in circumstances. Mo. S. Ct. Rule 75.06(c). Other forms of Rule 75.06(b) motions must be filed within one year of the judgment. *Id.* But that rule would make little sense for judgments with prospective effect because those judgments impose continuing obligations. A Rule 74.06(b)(5) motion must instead be filed within a "reasonable time." *Id.* Here, Missouri filed this

motion within a few weeks of the change in law brought about by *City of Aurora*, which is far less than a year and plainly a "reasonable time."

Once a motion establishes these three elements, federal courts grant relief as a matter of course. *See Agostini*, 521 U.S. at 215 ("A court errs when it refuses to modify an injunction or consent decree in light of such [subsequent] changes"); *see also Horne v. Flores*, 557 U.S. 433, 447 (2009) ("The party seeking relief bears the burden of establishing that changed circumstances warrant relief, but once a party carries this burden, a court abuses its discretion 'when it refuses to modify an injunction or consent decree in light of such changes.'") (citations omitted). That is, the Court should grant relief from a past judgment because the subsequent change in decisional law means the injunction would not be granted today.

B. The Missouri Supreme Court has significantly changed its decisional law governing special-law challenges and overruled *City of Normandy v. Greitens*.

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

In 2017, the Missouri Supreme Court affirmed this Court's judgment holding that sections 67.287 and 479.359.2 are special laws, and "permanently enjoining the State from enforcing" either provision. *City of Normandy*, 518 S.W.3d at 188. That holding had two parts. First, the Court held that these two provisions of SB 5 were presumptively unconstitutional under the three-part test outlined in *Jefferson County* because the provisions appeared to target St. Louis County. *Id.* at 192-196. This shifted the evidentiary burden to the State to "show substantial justification for the special treatment." *Id.* at 196. Second, the Court held that the State had offered no evidence and so had not carried its burden to demonstrate substantial justification. *Id.* at 196-97.

City of Aurora explicitly overruled *City of Normandy* and rejected each step of its analysis. *See* Slip Op. at 20. Nothing in the Missouri Constitution, the Court held, "suggests . . . that certain special laws are presumptively invalid." *Id.* at 18. Instead, from now on, "every law is entitled to a presumption of constitutional validity." *Id.* This consistent presumption of validity replaces the old "burden shifting" framework, which had "no basis" in the Missouri Constitution and "should no longer be followed." *Id.* at 20. For the same reason, analyzing whether "a statute's application is based on open-ended or closed-ended criteria . . . does not comport with the plain language of article III, section 40." *Id.* at 18. The Supreme Court rejected the "substantial justification" test as well. *Id.* at 19-20. Requiring a "substantial justification," the Court held, had improperly "converted the burden of persuasion that ordinarily applies to a party charged with showing a lack of rational basis in a constitutional context, into a mandatory requirement for the production of evidence necessary to defeat summary judgment." *Id.* at 19-20 (citing *City of Normandy*, 518 S.W.3d at 197 as an example).

City of Aurora replaced the old rule with a simple, rational basis test. "[E]very law is entitled to a presumption of constitutional validity." *Id.* at 18. "[I]f the line drawn by the legislature is supported by a *rational basis*, the law is not local or special and the analysis ends." *Id.* (emphasis added). "If the classification is not supported by a rational basis, the threshold requirement for a special law in section 40 is met and the party challenging the statute must then proceed to show the second element: either that the law offends one of the specific subject matter prohibitions in subdivisions (1) through (29) of section 30, or that the law is one 'where a general law can be made applicable' under subdivision (30)." *Id.* "Hereafter, this Court shall return to the rational basis test outlined above." *Id.* at 21.

C. Under *City of Aurora*, the relevant provisions of SB5 are not unconstitutional special laws because they have an obvious rational basis.

Under *City of Aurora*, section 67.287 and section 479.359.2 are not special laws because they easily satisfy rational-basis review.

Rational basis review is 'highly deferential.'" *Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 378 (Mo. banc 2012). "Under rational basis review, this Court will uphold a statute if its finds a reasonably conceivable state of facts that provide a rational basis for the classifications." *City of Aurora*, Slip Op. at 21-22 (quoting *Estate of Overbey*, 361 S.W.3d at 378). The Missouri Supreme Court adopted this language from the U.S. Supreme Court's decision in *F.C.C. v. Beach Comms., Inc.*, 508 U.S. 307, 315 (1993). *See Kansas City Premier Apts., Inc. v. Mo. Real Estate Comm'n*, 344 S.W.3d 160, 171 (Mo. banc 2011) (quoting *Beach Comms.*, 508 U.S. at 313). When applying this standard, "courts are not confined to the record." *Haves v. City of Miami*, 52 F.3d 918, 922 (11th Cir. 1995). Rather, "'those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it."' *Id.* (citation omitted). '"The burden is on the party challenging the constitutionality of the statute to show that the statutory classification is arbitrary and without a rational relationship to a legislative purpose.'" *Estate of Overbey*, 361 S.W.3d at 380-81 (citation omitted). "[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach Comms., Inc.*, 508 U.S. at 315.

SB5's classifications in sections 67.287 and 479.359.2 are plainly supported by "reasonably conceivable" grounds. As discussed above, the distinctive governmental structure of St. Louis County makes it particularly susceptible to the worst abuses of taxation-by-citation through municipal fines and court fees, and St. Louis County municipalities have a well-

documented history of succumbing to these temptations. "St. Louis County, unlike other counties in the state, has a large population, lacks a central city, has 90 separate municipalities within its borders, and has a large unincorporated area." *City of Chesterfield v. State*, No. SC96862, 2019 WL 7161282, at *3 (Mo. banc. Dec. 24, 2019). As *City of Chesterfield* noted, this makes it difficult for smaller, cash-strapped municipalities to find "predictable revenue streams." *Id.* at *4. This structure creates the perverse incentive for municipalities to make the short-sighted decision to raise revenue through municipal citations, effectively treating citizens as ATMs for government.

In fact, if the revenue-sharing law in *City of Chesterfield* satisfies rational-basis scrutiny, then SB5's classifications plainly do as well. The statutes at issue in both cases address the same revenue problem, which follows from St. Louis County's splintered structure. In *City of Chesterfield*, the Missouri Supreme Court upheld a law discouraging annexation of commercial districts by wealthier municipalities in St. Louis County and providing for some countywide revenue sharing. Here, SB5 fights similar self-interested municipal behavior, namely, generating revenue through exorbitant municipal fines and fees while undermining public safety throughout the region. One may disagree with either law as a policy matter, but in both instances St. Louis County's distinctive governmental structure provides a "reasonably conceivable" basis for treating St. Louis County differently—and, in this case, more stringently. *Estate of Overbey*, 361 S.W.3d at 380-81 ("courts do not question 'the wisdom, social desirability or economic policy underlying a statute'") (citation omitted).

Here, moreover, those rational bases are not just "reasonably conceivable"—they are backed by hard data showing that municipalities in St. Louis County were in fact abusing municipal fines and fees. Again, municipal courts proliferated in St. Louis County precisely because they were used as cash cows—bringing in three to four times as much as they cost to

operate. *See Public Safety – Municipal Courts* (Oct. 2014), at 2 (Ex. D). This problem was uniquely egregious and uniquely entrenched in St. Louis County. *Id.* at 1 ("St. Louis County's circuit courts must oversee nearly *ten time*s the number of courts and judges as an average presiding judge in Missouri"). St. Louis County residents were paying far more than in municipal fines and fees than Missourians in other counties. *Id.* at 2 (reporting that "the combined populations of the 90 municipalities in St. Louis County accounts for only 11% of Missouri's population" but brought in "34% of all municipal fines and fees statewide").

SB5's classifications also targeted a real-world public perception of abuse that undermined public safety within St. Louis County and crippled the ability of law enforcement to do their jobs effectively. According to DOJ's investigative report on Ferguson, local governments in St. Louis County placed significant pressure on law enforcement to prioritize generating revenue rather than traditional public safety concerns. DOJ Report at 2. This "emphasis on revenue" from city officials and bureaucrats had "compromised" the institutional character of both the police department and the municipal court. *Id.* "Over time," this had "sown deep mistrust between parts of the community and the police department." *Id.* Thus, there was overwhelming public evidence that the problem targeted by SB5—taxation-by-citation and treating citizens as ATMs—was particularly entrenched and corrosive in St. Louis County. SB5 thus had not only a rational basis, but a compelling justification, for the classification drawn in the two challenged provisions.

CONCLUSION

Government should not treat citizens as ATMs. The practice of taxation-by-citation undermines public safety and corrodes public trust in government. In the wake of the unrest in Ferguson, overwhelming evidence emerged that the perverse practice of taxation-by-citation is uniquely entrenched and pervasive in St. Louis County. Defendants respectfully ask the Court to

grant the motion for partial relief and vacate the portion of its judgment declaring unconstitutional and granting an injunction against the enforcement of §§ 67.287 and 479.359.2, RSMo.

Dated: January 30, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above was served via the Court's electronic filing system, on this 30th day of January, 2020, and also served by email on counsel for the plaintiffs.

/s/ D. John Sauer