SC97653

IN THE SUPREME COURT OF MISSOURI

CITY OF CRESTWOOD, et al.,

Appellants,

v.

AFFTON FIRE PROTECTION DISTRICT, et al.,

Respondents.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Circuit Judge

Supplemental Brief of Respondents pursuant to Court Order of January 14, 2020

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ARGUMENT[1]

A. The classifications made in sections 72.418 and 321.322.3 cannot be unconstitutional "special laws" unless they lack any reasonably conceivable rational basis—and plaintiffs bear the burdens of pleading and proof.

In *City of Aurora v. Spectra Communications Group, LLC*, SC96276, slip op. at 12 (Mo. banc Dec. 24, 2019), this Court recognized that the rational basis test is "the proper test for identifying a local or special law… ." *City of Chesterfield v. State*, SC96862, slip op. at 6 (Mo. banc Dec. 24, 2019). " 'If the criteria for a class in a statute was supported by a reasonable basis, then the statute is not a local or special law and the analysis should stop there.' " *Id.*, *quoting City of Aurora*, SC96276, slip op. at 12 (internal bracket omitted).

A classification is constitutional under the rational basis standard "if any state of facts can be reasonably conceived that would justify it." *Alderson v. State*, 273 S.W.3d 533, 537 (Mo. banc 2009).

Under the rational basis test, parties defending the constitutionality of statutes do not bear the burden of proof. *City of Aurora*, SC96276, slip op. at 21. Rather, plaintiffs have the burden of showing " 'that the law is wholly irrational.' " *Cosby v. Treasurer of State*, 579 S.W.3d 202, 209 (Mo. banc 2019), *quoting Treadway v. State,* 988 S.W.2d 508, 511 (Mo. banc 1999).

Prior to *City of Aurora*, open-ended laws were presumed constitutional, *Alderson v. State,* 273 S.W.3d 533, 538 (Mo. banc 2009); *Glossip v. Mo. Dept. of Transp. & Hwy. Patrol Employees' Retirement Sys.*, 411 S.W.3d 796, 808 (Mo. banc 2013), but subject to the rational basis test, *Alderson* at 537-38.

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[1] Respondents adopt and incorporate herein by reference the jurisdictional statement, statement of facts and arguments contained in their brief filed on June 14, 2019.

B. Plaintiffs did not sufficiently plead a claim that the classifications made in sections 72.418 and 321.322.3 are not supported by any conceivable rational basis.

Plaintiffs' amended petition (D2) did not allege any facts that would show that the challenged statutes were irrational. Well-pleaded facts are treated as admitted for purposes of motions for judgment on the pleadings. *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599 (Mo. banc 2007). Had Plaintiffs alleged facts that would have shown a lack of a rational basis, this case could not have been resolved through judgment on the pleadings at the trial court level. Well-pleaded facts demonstrating the absence of a rational basis could have supported a claim that an open-ended statute was an unconstitutional special law. *See State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 329 (Mo. banc 2009); *see Treadway*, 988 S.W.2d at 511.

If the amended petition had alleged facts showing that the challenged statutes were wholly irrational, it would have stated a special law claim under the clarified standard in *City of Aurora*. The amended petition is devoid of facts that would show that no rational basis existed for §§72.418.2 or 321.322.3. With respect to each statute, Plaintiffs merely made the conclusory allegation that "[t]here is no substantial justification or rational basis for the General Assembly's failure to adopt a general law instead of this special law." D2, p. 13 (¶7), p. 15 (¶82).

Because Plaintiffs did not make factual allegations sufficient to support the conclusion that the statutory distinctions at issue lack any reasonably conceivable rational basis, the circuit court's grant of judgment on the pleadings should be affirmed.

C. Even in support of their motion for summary judgment, Plaintiffs did not show that the classifications made in sections 72.418 and 321.322.3 are not supported by any conceivable rational basis.

We do not see how Plaintiffs could assert that they adequately pled a "special law" challenge under the current standard. But Plaintiffs might assert that they could do so, and ask that the Court remand to permit that change. But such a remand would be pointless, as shown by the record the parties made when Plaintiffs sought summary judgment (*see* D8 through D25). Rather than show that there is a possibility that Plaintiffs could succeed in showing that there is no reasonably conceivable rational basis for §§72.418.2 and 321.322.3, the summary judgment record demonstrates that Plaintiffs cannot meet their burden. That is true regardless of whether the question is posed as to the Boundary Commission Act generally or the fire protection district statutes (§§72.418 and 321.322.3) specifically.

And it is true, despite Plaintiffs' claim, in their supplemental brief, that *City of Chesterfield* is distinguishable because, as to the distribution of sales tax revenue, "there is no general law from which cities in St. Louis County are carved out." Appellant's Supplemental brief at 12. That is wrong. There is a general law—the City Sales Tax Act, §§94.500 to 95.550—that pre-existed §§66.600 and 66.620, the sales tax statutes at issue in *City of Chesterfield*. *See also* 12 CSR 10-117.100.

It may not be express in any particular statutory section. But it is evident in the scheme and in practice: local sales tax goes to the city which the sale is made. *See* § 94.550.1 ("Not later than the tenth day of each month the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month, to the city treasurer, or such other officer as may be designated by the city ordinance, of each city imposing the tax authorized by

sections 94.500 to 94.550, the sum due the city as certified by the director of revenue.") It is that general law that prompts opportunistic annexations—*i.e.*, that explains why the approach upheld in *City of Chesterfield* is not just rational, but essential.

1. The Boundary Commission Act

The line that Plaintiffs have attacked throughout this litigation as to §72.418 is one found not in that section, but in §72.401.1 of the Boundary Commission Act. Thus, Plaintiffs have argued consistently that §72.418 was nothing more than "a component of the Boundary Commission Act," and that the entire Boundary Commission Act, §§72.400 through 72.418, can apply only to St. Louis County. D9, p. 5. But the Boundary Commission Act demonstrates that the legislature recognized that the problems associated with annexation affect St. Louis County to a unique degree, requiring unique solutions.

It is true that as initially enacted by 1989 H.B. 487 (without the challenged language in § 72.418), the Boundary Commission Act could only apply to St. Louis County. *See O'Reilly v. City of Hazelwood*, 850 S.W.2d 96, 98, 99 (Mo. banc 1993). But this Court found that the 1991 version of §72.400, which could only apply to St. Louis County, was supported by a rational basis.

> The respondents introduced evidence that St. Louis County reasonably needed a boundary commission to administer municipal annexations. The respondents also elicited testimony that St. Louis County differs greatly from other counties, in terms of annexation issues.

O'Reilly, 850 S.W.2d at 99. The Court then held that the Act was unconstitutional—but pursuant to the "special law" standard that this Court has now rejected. *See id.*[2]

[2] "Because the St. Louis County Boundary Commission Act is not open-ended, ***the respondents*** must do more: ***they*** must demonstrate a ***substantial justification*** to exclude other counties. …In addition, ***respondents*** did not

Provisions of the Boundary Commission Act subchapter, including §72.418, have been amended various times. *See* Resp'ts' Dec. 11, 2019, Rule 84.20 letter. No current provision of the Act expressly limits any charter county from adopting a boundary commission. *See* Resp'ts' Br., pp. 16-17. The legislature could reasonably conceive that charter counties face more conflict, or more complicated issues, surrounding annexation than do other counties, and that charter counties would benefit from the option to adopt boundary commissions to support the interests of all county citizens impacted by proposed annexations. A boundary commission is required to consider the impact of proposed annexations upon the entire county and its residents §72.403.3(d), and areas of the county adjacent to proposed new boundaries §72.403.3, .3(c), not just the annexing municipality and the residents of an area it seeks to annex. § 72.403.3, RSMo.

But even if the Boundary Commission Act is construed to make such commissions available only to St. Louis County, there are reasonably conceivable rational bases for that limitation. St. Louis County is the most populous county. More important, it has far more municipalities than other counties, thus demonstrating an annexation pattern that is unique in Missouri—and very, very different from the patterns in Jackson, St. Charles, and other charter counties with large populations. And St. Louis County has an extraordinarily large unincorporated urbanized area. The legislature could reasonably conceive that counties with a very large number of municipalities face different and greater annexation challenges than do counties with just a

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demonstrate a ***substantial justification*** for excluding other counties from choosing to have a boundary commission. Thus, there was no substantial justification for §72.400 RSMo Supp.1991 not being open-ended." 850 S.W.2d at 99 (emphasis added).

handful of municipalities—even greater than other counties that have unincorporated urbanized areas.

This Court has acknowledged that St. Louis County faces unique circumstances and challenges related to annexation and the impacts of annexation upon the continued viability of government services. *City of Chesterfield*, SC96862, slip op., pp. 9-10. The legislature determined that providing for the adoption of boundary commissions, with statutory factors that a commission must consider in approving or disapproving a proposed annexation, was one step toward addressing the problems with annexation in St. Louis County.

Plaintiffs have not attempted to show—and cannot show, given the facts that are undisputed with regard to St. Louis County—that there is no rational basis for the Boundary Commission Act being restricted (if it is) to St. Louis County.

2. The fire protection district statutes.

Throughout this case, Plaintiffs have taken the curious position that §72.418.2, despite its language and independent enactment,[3] can be held unconstitutional on "special law" grounds while leaving the allegedly problematic restrictive language of §72.401.1 in place. In other words, Plaintiffs maintain that the Court can import the pertinent language from §72.401.1 into §72.418.2, and declare the provision so construed to be an impermissible "special law" without addressing the imported language from §72.401.1.

Taking that approach now would require that Plaintiffs show that there is no reasonably conceivable rational basis for treating annexations involving

[3]In S.B. 256 (1993), the General Assembly initially responded to this Court's decision in *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96 (Mo. 1993) not by re-enacting a modified version of the entire Boundary Commission Act subchapter, but by independently enacting a revised version of just §72.418.

fire protection districts differently in St. Louis County—*i.e.*, in a county with scores of municipalities, a unique annexation history, and large unincorporated urbanized areas—than elsewhere in the state. That proposition cannot be reconciled with this Court's decision in *City of Chesterfield*. And it lacks support in the record that the parties made when Plaintiffs sought summary judgment. Indeed, the summary judgment record defeats it.

City of Chesterfield identifies as a legitimate state interest served by the sales tax law the need to discourage opportunistic annexations. *City of Chesterfield*, SC96862, slip op. at 9. Like the sales tax law, the Boundary Commission Act ***and*** §§72.418.2 and 321.322.3 discourage opportunistic annexations. The Boundary Commission Act does so directly, by regulating annexations. Sections 72.418.2 and 321.322.3 do so indirectly—just as the sales tax law at issue in *City of Chesterfield* does. The fire protection district statutes limit the authority of cities when they choose to annex into fire protection district territory. The very facts that the Plaintiffs allege as to their claimed injury from §§72.418.2 and 321.322.3 demonstrate, unequivocally, that the sections have a meaningful role in discouraging annexation. *See*, *e.g.*, D2 pp. 6, 9-10, 17.

But even if it were possible for Plaintiffs to show that §72.418.2 and 321.322.3 do not discourage opportunistic annexations, or that doing so by preserving fire protection district boundaries were not rational, their challenge would fail unless they could also show that there was no other reasonably conceivable basis for making the distinction between annexations into fire protection districts in St. Louis County and annexations into fire protection districts elsewhere. And nothing in the record here suggests that such a showing is possible.

Indeed, it is at the very least reasonably conceivable that fire protection districts in a county with scores of cities, *i.e.*, St. Louis County, face different challenges to their continued financial ability to provide fire protection services to their communities than do fire protection districts in counties with only a handful of cities. In the circuit court, Plaintiffs neither presented evidence to the contrary, nor suggested that such evidence exists. Fire protection districts have no choice in whether any portion of their territories is annexed. *See South Metro. Fire Prot. Dist. v. City of Lee's Summit*, 278 S.W.3d 659, 644-655 (Mo. banc 2009). Their ability to ensure their own viability is thus limited. The State's interest in having viable fire protections districts that cover wide swaths of St. Louis County without the threat that their boundaries will become increasing irrational—perhaps eventually consisting of small noncontiguous areas—is served by having the challenged sections largely preserve existing boundaries. *Cf. City of Chesterfield*, SC96862, slip op. at 8-9; *City of St. Louis v. State*, 382 S.W.3d 905, 913 (Mo. banc 2012). That the interest in preserving fire protection district boundaries is legitimate, and served by §§72.418.2 and 321.322.3, is evident from public records of which the Court can take judicial notice, such as city and district boundary maps. But more specifically, it is demonstrated by the record that Plaintiffs prompted be created below, most notably from the affidavit and report of Dr. Carr (D28). Plaintiffs argued that Dr. Carr's report was not sufficient to meet Defendants' burden under the prior "special law" approach. But it seems unassailable that Dr. Carr's recitation of the facts (not disputed below) shows that it is not possible for Plaintiffs to meet their renewed burden under the "rational basis" test.

CONCLUSION

For these reasons, Respondents respectfully request that the Court affirm the judgment in their favor.

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that Respondents' Supplemental Brief was electronically filed and served via Missouri Case.Net this 24th day of January, 2020, upon:

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I hereby certify that this brief contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b), and contains 2,653 words exclusive of cover, signature block, and certificates.

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