IN THE
SUPREME COURT OF MISSOURI

No. SC99876

CITY OF ST. LOUIS, et al., Plaintiffs/Appellants,

v.

STATE OF MISSOURI, et al., Defendants/Respondents.

CITY OF ST. LOUIS, et al., Plaintiffs/Appellants,

v.

CENTURY CASINOS, INC., Intervenor/Respondent.

Appeal from the Circuit Court, 19th Circuit
The Honorable Jon E. Beetem, Circuit Judge

APPELLANTS' BRIEF

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JURISDICTIONAL STATEMENT

This action involves the constitutionality of Missouri Session Laws, 2021, Conference Committee Substitute No. 2 for House Committee Substitute for Senate Substitute No. 2 for Senate Bill No. 26 (hereinafter referred to as "SB 26").

Plaintiffs/Appellants City of St. Louis and Heather Taylor (hereinafter "Plaintiffs") appeal from the judgment of the Circuit Court of Cole County (19th Circuit), granting judgment in favor of the State and denying Plaintiffs' request for declaratory and injunctive relief. Plaintiffs seek a declaration that SB 26 is unconstitutional as violative of the requirement that no bill shall be amended in its passage through either house as to change its original purpose (Mo. Const. art. III, § 21) and of the requirement of a single subject for legislation (Mo. Const. art. III, § 23). Additionally, Plaintiffs seek a declaration that § 590.502 is unconstitutional as violative of Mo. Const. art. X, § 21; Mo. Const. art. VI, § 22; Mo. Const. art. III, § 38(a); and Mo. Const. art. I, § 2.

Jurisdiction of this appeal is in this Court by reason of Mo. Const. art. V, § 3 because this action involves the constitutionality of a legislative action of the General Assembly. *See Rebman v. Parson,* 576 S.W.3d 605, 608 (Mo. banc 2019); *City of Normandy v. Greitens,* 518 S.W.3d 183, 189, n. 2 (Mo. banc 2017); *Mo. Mun. League v. Brunner*, 740 S.W.2d 957, 957 (Mo. banc 1987).

STATEMENT OF FACTS

This lawsuit involves SB 26. As introduced in December 2020, SB 26 was an act "relating to public safety" (D40, ¶ 11; D41, ¶ 11), amending the Missouri Revised Statutes and adding two new sections.

SB 26, at least as originally introduced, amended chapter 574 to add the offense of "unlawful traffic interference" and chapter 590 to add procedures for imposing discipline on law enforcement officers, a section colloquially known as the "police officers' bill of rights." D40, ¶ 11.

By the time SB 26 was perfected[1], however, it had grown to include seven sections. In addition to the unlawful traffic interference offense and the police officers' bill of rights sections, the bill now included provisions concerning: the creation of a public safety fund; the right for taxpayers to seek injunctive relief against political subdivisions for decreasing the funding of law enforcement agencies; payments to law enforcement officials for service on state or federal boards or task forces; ineligibility for probation for dangerous felonies where victim is a public safety officer while in the performance of his or her duties; and vandalism of public property.

SB 26 was then sent to the House Committee on Crime Prevention, and when it emerged from the House floor, it had morphed far beyond its original purpose of "relating to public safety." Provisions relating to myriad subjects had been added, including, but not limited to: battery-charged fences; gambling boats; pesticide certification and training; the creation of a police use-of-force database; the expungement of criminal records; the identification of addresses by special victims in court; and the offense of interference with a healthcare facility. While in the Conference Committee, even more additional provisions were added, including provisions relating to: the display of emergency lights on medical

[1] *Brown v. Morris*, 365 Mo. 946, 957 (Mo. 1956) citing *State ex rel. Karbe v. Bader*, 336 Mo. 259, 266 (Mo. 1934) (stating that courts "may judicially notice the history of legislation as reflected by the record thereof in the legislative journals.")

examiner vehicles; the sale of alcohol by felony offenders; and a prohibition on government employees placing surveillance cameras on private land.

SB 26, as finally enacted, retained the same title and original statutory provisions but amended 14 separate titles. By the time SB 26 was truly agreed to and finally passed, the bill contained a whopping 88 new sections. D40, ¶ 11; D41, ¶ 11. Despite bearing the title "relating to public safety," the bill, as passed, enacted various sections concerning topics not at all germane to the Department of Public Safety or the topic of public safety in general. The enactments amended provisions relating to: non-salary payments to circuit attorneys for indictments or convictions (§ 56.380), penalties for tax fraud (§ 149.071 and § 149.076), salaries of state department heads (§ 105.950), State-run lotteries (§ 313.220), fraudulent evidence of cigarette tax payments (§ 149.071), cemeteries (§ 214.392), battery-charged fences (§ 67.301), pesticide certification and training (§ 281.015, *et seq.*), physical security regulations regarding private property (§ 67.494), and excursion gambling boats (§ 313.800, *et seq*.).

Of particular relevance to this lawsuit, SB 26 enacted § 590.502. Section 590.502 contains numerous provisions imposing additional duties on governmental employers with regard to the investigation and disciplining of law enforcement officers, including specific requirements for disciplinary investigations to which employers must abide. *See* § 590.502.2(1)-(13). Section 590.502 also includes: the right to a full due process hearing for a law enforcement officer who is transferred (§ 590.502.3); the right to compensation from any economic loss incurred by a law enforcement officer during a disciplinary investigation, including for lost secondary income (§ 590.502(6)); strict deadlines for completion of internal affairs investigations (§ 590.502.2(11)); the right to obtain a copy of the entire enforcement" of any alleged violation of § 590.502 rights (§ 590.502.9).

Section 590.502 also includes a mandate that governmental employers defend and indemnify law enforcement officers from and against civil claims made record after completion of disciplinary investigation and upon request (§ 590.502.2(13)); and the right to "judicial enforcement" of any alleged violation of § 590.502 rights (§ 590.502.9).

Section 590.502 also includes a mandate that governmental employers defend and indemnify law enforcement officers from and against civil claims made against them in their individual capacities if the alleged conduct arose in the course and scope of their obligations and duties as law enforcement officers, which was never before required by law. § 590.502.7. The indemnification requirement even extends to "actions taken off duty if such actions were taken under color of law." *Id*. The Governor signed SB 26 on July 14, 2021. It became effective August 28, 2021.

Plaintiff Heather Taylor ("Plaintiff Taylor") is a taxpayer and employee of Plaintiff City. D40, ¶ 2. Her position is a civil service position. *Id*. at ¶ 44. As such, she is entitled to certain protections as a civil servant under article XVIII of the Charter of the City of St. Louis[2] ("City Charter"). However, because Taylor is not a commissioned police officer, she does not enjoy the rights conferred on law enforcement officers by § 590.502.

In 1980, when the Hancock Amendment (Mo. Const. art. X, § 21) was adopted, neither Plaintiff City—nor its predecessor in interest, the Board of Police Commissioners of the City of St. Louis ("Police Board")—had any duty to defend or indemnify police officer employees for liabilities claimed as a result of the employees' performance of their duties as police officers, and certainly there was no funding to indemnify officers against liabilities incurred in secondary employment or to compensate officers for economic loss incurred during disciplinary investigations. In addition, to the extent that Plaintiff City or the former Police Board in fact budgeted funds to pay judgments against individual police officer employees, § 590.502.7 will result in a substantial increase in such budgeted funds over and above the level of funding as of the date of adoption of the Hancock Amendment on November 4, 1980. D40, ¶ 20.

Section 590.502 also encompasses numerous provisions which impose additional duties on City in the matter of disciplining law enforcement officers, including deadlines for completion of internal affairs investigations; requiring that City provide a copy of the

[2] This Court may take judicial notice of the City Charter. *See State ex rel. Strait v. Brooks*, 220 Mo. App. 708, 719 (Mo. App. St. Louis 1927).

entire investigatory record, including transcripts, to officers after completion of investigation upon request; and requiring that City make certain evidence and information available to officers prior to disciplinary hearings.

As a result of § 590.502 of SB 26, Plaintiff City will incur the following additional costs: (a) hiring additional attorneys and support staff in the City Counselor's Office for the City of St. Louis ("City's Law Department") to handle police discipline matters and to defend claims against police officer employees, in addition to the number of attorneys employed by City on November 4, 1980; (b) retaining special counsel to represent individual police officers in pending actions where Plaintiff City is attempting to discharge or discipline such officers during the pendency of those actions; (c) hiring or assigning additional personnel to the City's Police Division's Internal Affairs Unit in order to comply with the time limits for disciplinary investigations mandated by SB 26; and (d) costs in procuring depositions mandated by SB 26 that were not required by City civil service procedures as of November 4, 1980. D40, ¶ 21.

Further, § 590.502(9) provides that "any aggrieved law enforcement officer or authorized representative may seek judicial enforcement of the requirements" of the provision in circuit court. Consequently, City will be required to expend funds to represent and defend its decisions pertaining to the additional investigation requirements that must be followed if it is alleged either its Police Division Internal Affairs unit or the Civil Service Commission failed to comply therewith. This additional cost in defending and representing Plaintiff City against an aggrieved law enforcement officer who alleges City failed to comply with the requirements of § 590.502, is not defrayed by appropriations provided by the General Assembly and was not required to be paid by City when the Hancock Amendment was enacted.

Procedural History

The City filed this suit on December 6, 2021. D40. On March 17, 2022, the State filed its Answer and its Motion for Judgment on the Pleadings and Suggestions in Support (referred to herein as "State's Motion"). D41; D43. On March 25, 2022, Intervenor Century Casinos, Inc. ("Casino") filed its Motion for Partial Judgment on the Pleadings and

Suggestions in Support (referred to herein as "Casino's Motion"). D46. On April 25, 2022 Plaintiffs filed their Cross Motion for Judgment on the Pleadings[3], seeking a declaratory judgment that SB 26 is invalid and seeking judgment in its favor on Counts I-VI. D47.

On November 14, 2022 the Honorable Jon E. Beetem issued his Order and Judgment, granting the State's Motion; granting Casino's Motion; and denying the City's Cross Motion for Judgment on the Pleadings. D52. Plaintiffs filed their notice of appeal on November 21, 2022. D54.

[3] Plaintiffs also filed their Memorandum in Support of their Cross Motion for Judgment on the Pleadings and in Opposition to the State's Motion for Judgment on the Pleadings and in Opposition to Intervenor's Century Casinos, Inc.'s Motion for Partial Judgment on the Pleadings and Suggestions in Support. D48.

POINTS RELIED ON

I. The trial court erred in granting the State's Motion for Judgment on the Pleadings and Intervenor Casino's Motion for Partial Judgment on the Pleadings and denying judgment in favor of Plaintiff on Count I because SB 26 is unconstitutional on its face as violative of the requirements that no bill shall be amended in its passage through either house as to change its original purpose (Mo. Const. art. III, § 21) and that each bill be limited to a single subject (Mo. Const. art. III, § 23), such that the threatened enforcement of such unconstitutional legislation constitutes and causes irreparable harm as a matter of law.

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

Carmack v. Director, Missouri Dept. of Agriculture, 945 S.W.2d 956 (Mo. banc 1997)

Calzone v. Interim Comm'r of Dep't of Elementary & Secondary Educ., 584 S.W.3d 310 (Mo banc. 2019)

Mo. Ass'n of Club Execs., Inc. v. State, 208 S.W.3d 885 (Mo. banc 2006)

Mo. Const. art. III, § 21

Mo. Const. art. III, § 23

II. The trial court erred in granting the State's Motion for Judgment on the Pleadings and denying judgment in favor of Plaintiff on Count II because Plaintiff sufficiently alleged that Mo. Rev. Stat. § 590.502 creates an unfunded mandate in violation of art. X, § 21 of the Missouri Constitution by increasing City's costs by requiring it to perform new activities, not previously required by law, without a corresponding appropriation to fund said activities, such as: defending and indemnifying police officers sued civilly; reimbursing officers for income lost from private employment during disciplinary investigations; adhering to new investigation deadlines; transcribing oral statements and furnishing copies of the entire record of administrative investigations to officers; requiring City provide access to documents as basis for disciplinary actions in advance of hearings; and by creating a new right to judicial review of alleged allegations of rights under § 590.502.

State ex rel. Sayad v. Zych, 642 S.W.2d 907 (Mo. banc 1982)

Brooks v. State, 128 S.W.3d 844, 849 (Mo. banc 2004)

Rolla 31 Sch. Dist. v. State of Missouri, 837 S.W. 2d 1 (Mo. banc 1992)

Mo. Const. art. X, § 21

III. The trial court erred in granting the State's Motion for Judgment on the Pleadings and denying judgment in favor of Plaintiffs on Count III because Plaintiffs sufficiently alleged that Mo. Rev. Stat. § 590.502, on its face, violates Mo. Const. art. VI, § 22 in that § 590.502 creates and fixes myriad additional duties for the City Counselor, the Police Commissioner, Internal Affairs Investigators, the Civil Service Commission and their staff.

State ex rel. Burke v. Cervantes, 423 S.W.2d 791 (Mo. banc 1968)

Sprague v. St. Joseph, 549 S.W.2d 873 (Mo. 1977)

Mo. Const. art. VI, § 22

IV. The trial court erred in granting the State's Motion for Judgment on the Pleadings and denying judgment in favor of Plaintiffs on Count IV because Plaintiffs sufficiently alleged that Mo. Rev. Stat. § 590.502.7, as a matter of law, violates art. III, § 38(a) of the Missouri Constitution in that it improperly grants public funds to private persons for a primarily private purpose.

Menorah Medical Center v. Health & Edu. Facilities Auth., 584 S.W.2d 73 (Mo. banc 1979)

Curchin v. Missouri Industrial Dev. Bd., 722 S.W.2d 930 (Mo. banc 1987).

Mo. Const. art. III, § 38(a)

V. The trial court erred in granting the State's Motion for Judgment on the Pleadings and denying judgment in favor of Plaintiffs on Count V because Plaintiffs sufficiently alleged that Mo. Rev. Stat. § 590.502, as a matter of law, violates art. I, § 2 of the Missouri Constitution, in that it impermissibly and arbitrarily creates two classes of similarly situated employees that are subject to different due process rights.

Mo. Nat'l Educ. Ass'n v. Mo. DOL & Indus. Rels., 623 S.W.3d 585 (Mo. banc 2021)

Mo. Const. art. I, § 2

VI. The trial court erred in granting the State's Motion for Judgment on the Pleadings on Count VI and denying judgment in favor of Plaintiffs because Plaintiffs sufficiently alleged, in the alternative, that City is in substantial compliance with Mo. Rev. Stat. § 590.502, as a matter of law, in that the City Charter provides for substantially similar disciplinary procedures.

Mo. Rev. Stat. § 590.502.12

City of St. Louis Charter Art. XVIII

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND INTERVENOR CASINO'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND DENYING JUDGMENT IN FAVOR OF PLAINTIFF ON COUNT I BECAUSE SB 26 IS UNCONSTITUTIONAL ON ITS FACE AS VIOLATIVE OF THE REQUIREMENTS THAT NO BILL SHALL BE AMENDED IN ITS PASSAGE THROUGH EITHER HOUSE AS TO CHANGE ITS ORIGINAL PURPOSE (MO. CONST. ART. III, § 21) AND THAT EACH BILL BE LIMITED TO A SINGLE SUBJECT (MO. CONST. ART. III, § 23), SUCH THAT THE THREATENED ENFORCEMENT OF SUCH UNCONSTITUTIONAL LEGISLATION CONSTITUTES AND CAUSES IRREPARABLE HARM AS A MATTER OF LAW.

Standard of Review

The Supreme Court reviews a circuit court's ruling on a motion for judgment on the pleadings *de novo*. *City of Crestwood v. Affton Fire Protection District*, 620 S.W.3d 618, 622 (Mo. banc 2021). In reviewing a grant of judgment on the pleadings, the Court must decide "whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Emerson Elec. Co. v. Marsh & McLennan Cos*., 362 S.W.3d 7, 12 (Mo. banc 2012) (internal quotation omitted). "A grant of judgment on the pleadings will be affirmed only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory." *Id*. (citation omitted).

Facial Unconstitutionality of SB 26

"Article III, sections 21 and 23 of the Missouri Constitution are procedural limitations on the legislative process." *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325 (Mo. banc 1997). Article III, § 21 of the Missouri Constitution provides, as relevant, "no bill shall be amended in its passage through either house as to change its original purpose." *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101 (Mo. 1994) (emphasis added). Article III, § 23 provides that "[n]o bill shall contain more than one subject which shall be clearly expressed in its title . . ." Together, art. III, §§ 21 and 23 "serve to facilitate orderly legislative procedure." *Hammerschmidt*, 877 S.W.2d at 101. "By limiting each bill to a

single subject [and requiring that amendments not change a bill's original purpose], the issues presented by each bill can be better grasped and more intelligently discussed.'" *Id.* (citation omitted).

As will be shown, SB 26 is a textbook example of unconstitutional log-rolling, contravening both art. III, §§ 21 and 23. The trial court erred in granting judgment in favor of the State and Casino on Count I and denying judgment in Plaintiffs' favor.

1. SB 26 violates the original purpose requirement set forth in art. III, § 21.

Article III, § 21 protects "against the introduction of matters not germane to the object of the legislation or unrelated to its original subject." *Calzone v. Interim Comm'r of the Dep't of Elem. & Secondary Educ.*, 584 S.W.3d 310, 317 (Mo. banc 2019) (quotation and citation omitted); *see also St. Louis County v. Prestige Travel, Inc.*, 344 S.W.3d 708, 715 (Mo. 2011) citing *Stroh*, 954 S.W.2d at 326.

"The original purpose requirement seeks to protect against hasty litigation, ensure bills are fairly considered, require greater particularity in passed bills, prevent the passage of amended statutes that deceive legislators as to their effects, and allow the public to become informed regarding changes in the law." *Fox v. State*, 640 S.W.3d 744, 754 (Mo. banc 2022) citing *Calzone*, 584 S.W.3d at 316-17.

Section 21 is designed "to keep individual members of the legislature and the public fairly apprised of the subject matter of pending laws and to insulate the governor from 'take-it-or-leave-it' choices when contemplating the use of the veto power." *Stroh*, 954 S.W.2d at 325–26. Additionally, § 21 serves "to defeat surprise within the legislative process" and prevents "a clever legislator from taking advantage of his or her unsuspecting colleagues by surreptitiously inserting unrelated amendments into the body of a pending bill." *Legends Bank v. State*, 361 S.W.3d 383, 389 (Mo. 2012) citing *Hammerschmidt*, 877 S.W.2d at 101. Although alterations that extend or limit the scope of the bill are not prohibited, the changes must be "germane." *Calzone*, 584 S.W.3d at 317 citing *Stroh*, 954 S.W.2d at 326.

"The first step in the original purpose analysis is to identify the original purpose," which is established by the bill's earliest title and contents at the time the bill is introduced.

Legends, 361 S.W.3d at 386. "The second analytical step is to compare the original purpose with the final version of [the bill]." *Id*. This Court has defined the word "purpose," as used in § 21, to mean "the general purpose of the bill, not the mere details through which and by which that purpose is manifested and effectuated." *Calzone*, 584 S.W.3d at 317 (quotation and citations omitted). "The general purpose is often interpreted as an overarching purpose." *Id.* (quotation and citation omitted). "A bill's original purpose is measured at the time of the bill's introduction." *Id.* at 318. An original purpose analysis requires the Court to "compare the purpose of the original bill as introduced with the bill as passed." *Id*.

Here, "public safety" was SB 26's original title, and as introduced, SB 26 had only two provisions: a new offense of unlawful traffic interference and a new law enforcement disciplinary and benefits scheme. The original version of the bill amended chapter 574 to add the offense of "unlawful traffic interference" and chapter 590 to add procedural protections for imposing discipline on law enforcement officers. That section codified at § 590.502 is colloquially known as the "police officers' bill of rights." D40, ¶ 11.

By the time SB 26 was perfected, however, it had grown to include seven sections. As truly agreed to and finally passed, SB 26 contained a whopping 88 new sections and amended 14 separate titles while retaining the same original statutory provisions. D40, ¶ 11; D41, ¶ 11. Despite bearing the title "relating to public safety," the bill, as enacted, amended various sections concerning multifarious topics, including: penalties for tax fraud (§ 149.071 and § 149.076); non-salary payments to circuit attorneys for indictments or convictions (§ 56.380); salaries of state department heads (§ 105.950); State-run lotteries (§ 313.220); cigarette tax payments (§ 149.071); cemeteries (§ 214.392); battery-charged fences (§ 67.301); pesticide regulations (§ 281.015, *et seq*.); physical security regulations regarding private property (§ 67.494); and excursion gambling boats (§ 313.800, *et seq*.).

The trial court erred by concluding SB 26 was constitutional under art. III, § 21, because, contrary to the trial court's holding, these amendments are not germane to public safety. *See Calzone.*, 584 S.W.3d at 317-19. Specifically, judgment in the State's and Casino's favor was not supported by the legal theory that a bill's amendments be germane

to its original purpose. *See Olofson v. Olofson*, 625 S.W.3d 419, 428-29 (Mo. banc 2021) (judgment on the pleadings affirmed only if facts pled by petitioner, together with benefit of all reasonable inferences drawn therefrom, demonstrate petitioner could not prevail under any legal theory; Court only considers whether grounds raised in motion for judgment on pleadings supported dismissal).

In its Order, the trial court purported to analyze more than a dozen miscellaneous amendments to SB 26. It found not a single original purpose violation. *See* D52, ¶¶ 14-33.

The trial court analyzed provisions relating to lotteries contained in §§ 313.220 and 610.140.9(3). D52, ¶ 26. Section 313.220 provides that people who have been found guilty of a crime are ineligible to be lottery game retailers, and § 610.140 provides that any person with an expunged offense must disclose that offense when necessary to complete an application for employment by a State-owned lottery. The trial court found no original purpose violation, finding these provisions germane to "public safety," "because they protect the property owned by the State lottery system." D52, ¶ 26.

The trial court found that amendments to sections relating to gambling boats (§ 313.800, *et seq*.), relate to public safety on the basis that "[g]ambling boats are regulated by the gaming commission," which the trial court found is "expressly assigned to the Department of Public Safety, § 313.004.6." D52, ¶ 32. Thus, the trial court concluded, gambling boats "are related to public safety" because they are "regulated by the Department of Public Safety." *Id*.

The trial court analyzed two provisions relating to tax fraud and also found them germane to public safety. D52, ¶ 27. Section 149.071 criminalizes tax fraud and sets a criminal penalty, and § 149.076 prohibits filing fraudulent tax returns and sets a criminal penalty. The trial court found the tax fraud provisions relate to public safety "because they set criminal penalties for certain acts and protect property rightfully belonging to the State." D52, ¶ 26.

The trial court also considered various amendments to seventeen sections between § 281.020(2)(b) and § 281.101.2(10). D52, ¶ 24. These amendments made changes to regulations concerning the use and application of pesticides. The court found no original

purpose violation, finding that pesticide regulations relate to public safety "because pesticides are dangerous chemicals if used improperly." *Id*.

The trial court also analyzed amendments relating to electric fences contained in § 67.301 and an enactment concerning "physical security measures" in § 67.494. D52, ¶ 25. Among other things, § 67.301 prohibits a local government or political subdivision from prohibiting the installation or use of a battery-charged fence. Section 67.494.1, as enacted by SB 26, provides that, with certain enumerated exceptions, the general assembly "occupies and preempts the entire field of legislation regarding in any way the regulation of physical security measures around private property." The court found no original purpose violation with regard to §§ 67.301 and 67.494, rationalizing that these regulations "regulate the size, location, and warning signage for electric fences" and "electric fences are dangerous, high-voltage tools." D52, ¶ 25.

The court considered a technical amendment to a statute prohibiting a circuit attorney from receiving a non-salary payment for an indictment or conviction (§ 56.380). Because circuit attorneys have "jurisdiction over criminals," the court reasoned, the provision will prevent "corruption" and "relates to public safety." D52, ¶ 23.

The trial court found that amendments to § 214.392, a section relating to the regulation of cemeteries, and § 105.950, a section relating to executive-branch salaries, related to public safety because the amendments merely altered the style of references to the "board of probation and parole." D52, ¶ 30. In particular, the trial court found that amendments to § 214.392 related to public safety because the amendment changed the phrase "board of probation and parole" to "division of probation and parole." *Id*. The court further found that § 105.950 changed "the name of the board of probation and parole to the 'parole board.'" *Id*. The trial court reasoned that these changes "relate to public safety because the Board of Probation and Parole is a part of the criminal-justice system." *Id*.

The trial court found, for similar reasons, that a technical amendment to § 149.071, relating to criminal penalties for fraudulently stamping cigarettes to show they have been taxed, relates to public safety. D52, ¶ 31. The trial court reasoned that the change merely

"adjust[s] the name of the Department of Corrections" and because the amendment "relates to the criminal-justice system," it "relate[s] to public safety." *Id*.

The trial court also considered amendments to SB 26 pertaining to the budgetary authority of local governments[4] regarding law-enforcement expenditures and the parole eligibility of juvenile convicts and found that the amendments "relate to public safety because they relate to law enforcement." D52, ¶ 22.

As will be shown, the trial court's unreasonably broad construction of "public safety" strays too far from the bill's original purpose. The varied topics contained in SB 26 are not logically connected to "public safety," such that legislators and the public could not be "fairly apprised" of the changes to the law made by SB 26. *See Stroh*, 954 S.W.2d at, 325-26.

The trial court's unreasonably broad construction of "public safety" to permit provisions relating to casinos, pesticide usage, lotteries, tax fraud, and cemeteries would result in the entire panoply of statutes falling under the purpose of "public safety." The wide array of subjects contained in SB 26's amendments are far too attenuated from its original purpose—its *raison d'etre*—of public safety. *Hammerschmidt*, 877 S.W.2d at 103. Indeed, such a construction of "public safety" would include "nearly every activity the state undertakes." *See Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956, 960 (Mo. banc 1997) (rejecting State's definition of "economic development" as inclusive "of any activity that indirectly promotes or protects portions of the Missouri economy" and noting myriad topics of legislation that could in some attenuated and far-flung sense serve "economic development" under State's broad definition).

As will be shown, the trial court misapplied the "original purpose" analysis because it could not demonstrate that each of the SB 26's subjects are germane to the object of public safety. *Legends*, 361 S.W.3d at 386. This Court should find the final version of SB

[4] Although the trial court did not identify the statutory provisions it referenced in ¶ 22, it appears it intended to reference amendments to § 67.030 in addition to one other unidentified section.

26 contained numerous provisions not in any sense germane to its original purpose of public safety.

First, the trial court erred in finding all of § 590.502's provisions germane to the original purpose of the bill, public safety. With regard to § 590.502, the court found that § 590.502 does not change SB 26's original purpose of public safety because it "was part of the original bill . . ." and "addresses the rights police have when they undergo an administrative investigation, suffer an adverse employment action, and become defendants in a civil lawsuit." D52, ¶ 21. In support of that finding, the trial court reasoned simply that because § 590.502 "relates to law enforcement," it relates to public safety. *Id*. The trial court, however, fails to explain how heightened procedural protections for officers charged with misconduct or how obligating City to represent and indemnify law enforcement officers in civil matters fulfills the purpose of achieving "public safety." The State rationalizes that such protections may eventually entice some individuals to join law enforcement organizations—but that connection is, at best, a tenuous, contorted, and speculative relationship to public safety and does not demonstrate the type of close alliance the Supreme Court has concluded is needed to satisfy art. III § 21. *See Calzone*, 584 S.W.3d at 317 citing *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327 (Mo. banc 2000) *quoting* 687 Black's Law Dictionary (6th ed. 1990).

In reality, § 590.502 is a public employee labor relations measure that creates new employee benefits for police officers. In briefing in the trial court, the State admitted that § 590.502's purpose is to incentivize law enforcement employment by insulating officers from certain forms of personal liability and by affording them certain enhanced procedural employment protections. *See* State's Response to Plaintiffs' Cross-Motion for Judgment on the Pleadings and Reply in Support of the State's Motion for Judgment on the Pleadings, D50, pp. 4-5, 18-19, 23. The trial court failed to identify any *direct* connection between enhanced procedural protections for officers and public safety. Nor did it identify any *direct* connection between the defense of civil claims by officers' public employers and public safety, and in particular, has not shown how § 590.502.7 will keep citizens safe.

Next, the trial court erred in finding that Plaintiffs "waived any argument that other provisions in SB 26 as finally passed violated article III, section 21." D52, ¶ 21. To reach that conclusion, the trial court found § 590.502 to be "the only provision at issue for the original-purpose analysis." D52, ¶ 21. As will be shown, that conclusion is incorrect.

To the contrary, Plaintiffs' Petition is replete with allegations that SB 26 contains provisions that do not relate to public safety. *See* D40, ¶ 12 ("[t]he provisions *of SB 26* are not germane to the general subject of 'public safety.'" (emphasis added); *Id*. ("SB 26 includes a miscellany of provisions that have little or nothing to do with the State's Department of Public Safety or public safety in general."); *Id*. at ¶ 16 (SB 26 "violates Mo. Const. art. III, § 21 because it contains multifarious subjects that have little or nothing to do with the Department of Public Safety or public safety in general."). Plaintiffs are entitled to the "benefit of all reasonable inferences drawn" from these allegations. *See Emerson*, 362 S.W.3d at 12. Therefore, even though these paragraphs do not include specific citations to the non-germane provisions, SB 26's infirmities are apparent on the face of the bill, which of course this Court may judicially notice. *See Schweich v. Nixon*, 408 S.W.3d 769, 778 (Mo. banc 2013)(stating that this Court may take judicial notice of a bill). Thus, drawing all reasonable inferences in favor of Plaintiffs, the Petition's allegations are sufficient to allege that SB 26 contains numerous provisions having nothing to do with "public safety" in contravention of art. III, § 21. They are sufficient to put the *entire* bill at issue.

The trial court erred in finding the allegations in the Petition did not sufficiently allege that SB 26, in its entirety, violates the original purpose rule. Despite its finding that Plaintiffs brought an original purpose challenge only as to § 590.502, the trial court—cognizant that another court might indeed find the abovementioned allegations sufficient to state an original-purpose claim—nevertheless undertook an original purpose analysis of the provisions identified by Plaintiffs as violative. Ultimately, the trial court analyzed provisions relating to electric fences, lotteries, cemeteries, gambling boats, executive-branch salaries, circuit attorney payments, pesticides, tax fraud and cigarette-tax

payments, before erroneously concluding that SB 26 would survive an original-purpose challenge in its entirety. D52, ¶¶ 17-33.

The trial court's holding that, despite these multifarious amendments, SB 26 maintained fidelity to its original purpose of "public safety" throughout the amendment process was in error. In reaching, that holding the trial court relied exclusively on *Calzone*, 584 S.W.3d at 317, as well as an unpublished judgment in case number 21AC-CC00442. *See Cnty. Comm'rs Ass'n of Mo. v. State of Mo.*, Case No. 21AC-CC00442 (Feb. 23, 2022)[5]; *see also* D52, ¶¶ 15, 23.

In *Calzone* this Court defined "germane" to mean "in close relationship, appropriate, relative, pertinent. Relevant or closely allied." *Calzone*, 584 S.W.3d at 317 citing *C.C. Dillon*, 12 S.W.3d at 327 *quoting* 687 Black's Law Dictionary (6th ed. 1990). To the extent the trial court applied *Calzone* to conclude that SB 26's amendments were germanely related to its original purpose of "public safety"—because they, *inter alia*, regulated dangerous items such as pesticides and electric fences, protected state-owned property and touched upon the criminal justice system—the court failed to adequately or correctly consider the well-established principles articulated in *Calzone* and ran afoul of traditional statutory interpretation principles.

When faced with an art. III, § 21 challenge, this Court has not hesitated to strike provisions that have strayed too far from the original purpose of the bill. In *Mo. Ass'n of Club Execs.*, 208 S.W.3d 885 (Mo. banc 2006), this Court considered an art. III, § 21

[5] The trial court's reliance on the unpublished judgment in No. 21AC-CC00442 to conclude Plaintiffs' claims were foreclosed as a matter of law was misplaced, as the issue was, at best, unsettled, and it was not *clear* as a matter of law, that Appellants could not prevail under any legal theory. *See Emerson*, 362 S.W.3d at 12. Additionally, "[u]npublished opinions, let alone unpublished circuit court opinions, are neither binding nor persuasive precedent" in appellate courts. *Zygler v. Hawkins Construction*, 609 S.W.3d 61, 68 (Mo. App. E.D. 2020) *citing Exec. Bd. of Mo. Baptist Convention v. Windermere Baptist Conference Ctr.*, 280 S.W.3d 678, 691 (Mo. App. W.D. 2009).

challenge to a bill with an original purpose of regulating intoxication-related offenses. There, this Court found that amendments to the bill that enacted four new sections "relating to intoxication-related traffic offenses" to include "certain non-traffic related alcohol offenses, such as the sale of alcohol to minors . . . could be viewed as logically connected and germane to the original purpose of the bill." *Id*. at 888. However, other additions regulating adult entertainment, this Court found, "were not remotely within the original purpose of the bill," and therefore violated art. III, § 21. *Id*. at 888–89.

Similarly, in *Legends Bank*, this Court found a bill with the original purpose of procuring goods and services violated art. III, § 21 because provisions concerning campaign finance and ethics were added after its introduction. 361 S.W.3d 383. In *Legends*, the Court found that ethics and campaign finance restrictions are not "germane to the original purpose of [the bill], which was to change the method by which statewide elected officials bid for printing services, paper and similar items." *Id*. at 386. Thus, the Court invalidated the bill, finding its final version contained numerous provisions that were not germane to its original purpose at the time it was introduced. *Id*.

With those principles in mind, this Court should first find that the trial court erred in finding amendments relating to the non-salary payments to a circuit attorney germane to public safety. In finding, § 56.380 germane to public safety, the trial court's rationale was limited to the single, conclusory statement that the section relates to public safety because it will prevent "corruption." D52, ⁋ 23. However, a review of the amendments reveals the changes to be non-substantive—SB 26 merely inserted the words "or her" into the phrase "his office" and edited a reference to "state department of corrections and human resources." *See* SB 26.

Next, the court erred in finding provisions relating to pesticide regulations and electronic fences germane to public safety. The court found those provisions related to public safety on the basis that pesticides can be "dangerous chemicals if used improperly." D52, ⁋ 24. The court reasoned, in a similar vein, that the provisions relating to electric fences relate to public safety "because electric fences are dangerous, high-voltage tools." *Id*. at ⁋ 25. However, to the extent that electric fences or pesticides are capable of causing

harm, such a connection is far too remote and attenuated to be viewed as "logically connected" and "germane" to the purpose of public safety. A definition of public safety inclusive of any product potentially *capable of harm* would encompass regulations of virtually all modern devices and amenities—regulations of automobiles, motorcycles, construction equipment, guns, household chemicals, swimming pools, fireworks, lawn mowers, barbecue pits and even kitchen appliances. The list is endless.

Even more tenuous is the trial court's rationale for finding provisions relating to state lotteries, taxation, cemeteries, executive-branch salaries, cigarette-tax payments, and gambling boats germane to public safety. The trial court found provisions relating to eligibility for lottery game retailers, applications for employment by a State-owned lottery, and provisions relating to tax fraud related to public safety on the basis that the provisions "protect" the "property" owned by the State lottery system or belonging to the State. D52, ¶ 26. However, it is difficult to imagine how a law protecting *property* owned by the State (much less property owned by its lottery system) is logically connected to the purpose of keeping the public, i.e. people, safe. It is also difficult to imagine a direct, logical connection between criminal penalties for tax fraud and public safety. The trial court's finding that these subjects are germane to the original purpose of "public safety" is so attenuated that it renders the term completely meaningless.

Next, the trial court erred in finding non-substantive, stylistic amendments to references to the "'board of probation and parole" within statutes regulating cemeteries (§ 214.392) and executive-branch salaries (§ 105.950) germane to the purpose of "public safety" on the basis board of probation and parole is "is a part of the criminal-justice system." D52, ¶ 30. The trial court failed to explain how technical amendments to references to the "board of probation and parole" and "Department of Corrections" in statutes relating to cemeteries and executive-branch salaries are relative or logically connected to the purpose of achieving public safety. For that same reason, the trial court erred in finding an amendment to a statute relating to fraudulent cigarette tax payments related to public safety because it "adjust[s] the name of the Department of Corrections." D52, ¶ 31.

Next, the trial court erred in finding amendments to statutes pertaining to excursion gambling boats (§§ 313.800, 313.805, and 313.815) germane to public safety. D52, ¶ 32. Contrary to the trial court's finding, gambling boats are not in fact regulated by the Department of Public Safety. The court premised its finding that amendments relating to gambling boats (§ 313.800, *et seq*.) were related to public safety on the basis that "[g]ambling boats are regulated by the gaming commission," which it found "is expressly assigned to the Department of Public Safety, § 313.004.6." The court concluded that "[b]ecause gambling boats are regulated by the Department of Public Safety," these sections "are related to public safety." D52, ¶ 32. But the trial court failed to acknowledge that the gaming commission's assignment to the Department of Public Safety is merely *administrative*. Although the commission is "assigned to the department of public safety as a type III division," the statute expressly states that "the director of the department of public safety has *no supervision, authority or control over the actions or decisions of the commission*." § 313.004 (emphasis added). The statute itself confirms the opposite of what the trial court found—the gaming commission is not in fact regulated by the Department of Public Safety, and the trial court's finding that gaming boats are "regulated by the Department of Public Safety" was in error. In reality, the director of public safety has no authority over the gaming commission, a fact that destroys the trial court's rationale for finding the amendments relating to gambling boats germane to the purpose of public safety[6].

The Casino's briefing in the trial court only proves Plaintiffs' point regarding the bill's "original purpose." Specifically, Casino argues that the amendments to SB 26 are logically connected and related to the bill's original purpose of "public safety." *See*

[6] The Missouri Constitution creates a "department of public safety" that "shall administer the programs provided by law to protect and safeguard the lives and property of the people of the state." Mo. Const. art. IV, § 48. Certainly, regulations pertaining to excursion gaming boats have nothing to do with protecting or safeguarding lives and property of the people of Missouri.

Casino's Motion for Partial Judgment on the Pleadings and Suggestions in Support, D46, p. 7. However, Casino fails to acknowledge in their Motion the reason they intervened in the first place, which was to protect their financial investment in gambling boats. Tellingly, nothing in Casino's Motion attempts to establish how their interest in building a new gambling boat facility has anything to do with public safety. *See* D46 *generally*. Indeed, it is difficult to make a credible argument that gambling boats are germane to the object of public safety. Apart from the erroneous assertion that the gaming commission is "regulated" by the Department of Public Safety, neither the State, the trial court, nor Casino succeeded in crafting an argument that logically connected gambling boats to public safety. *See* D52, ¶ 32; D49, p. 8. This Court should find that the connection does not exist.

The trial court further failed to consider that constitutional provisions are subject to the rule that construction of laws should avoid unreasonable or absurd results[7]. *See Am. Fed'n of Teachers v. Ledbetter*, 387 S.W.3d 360, 363 (Mo. banc 2012); *Reichert v. Bd. of Educ. of City of St. Louis*, 217 S.W.3d 301, 305 (Mo. banc 2007). The trial court's unlimited, far-reaching construction of the term "public safety"—to include any matter capable of causing harm or touching upon the criminal justice system in some attenuated, remote way— frustrates the plain language of art. III, § 21 and yields absurd results.

In conclusion, the trial court was far too indiscriminate in finding discrete topics like gambling boats, police officer indemnification and lotteries embraced by the term "public safety", such that "public safety" could be construed to relate to virtually any legislative provision. As this Court found in *Legends Bank*, here, "[n]o reasonable person would be 'fairly apprised' by the title of [SB 26] that, in its final form, it would contain provisions" that relate to lotteries, tax fraud, cemeteries, executive branch salaries, battery-charged fences, pesticide certification, and police officer indemnification in civil suits and

[7] Additionally, the trial court failed to consider that, as a constitutional amendment, art. III, § 21 is to be "given a broader construction due to [its] more permanent character." *Ledbetter*, 387 S.W.3d at 363.

gambling boats. 361 S.W.3d at 390. If the object of "public safety" can be achieved via enactments relating to gambling boats, lottery-game retailers, tax fraud or by style modifications to references to "the probation and parole board," then the universe of laws that serve the purpose of "public safety" is limitless.

Because SB 26 contains a multitude of topics wholly unrelated to its original purpose of public safety in violation of art. III, § 21, the trial court erred in upholding SB 26 as valid.

2. SB 26 violates the single-subject requirement set forth in art. III, § 23.

"The constitutional prohibition against bills containing more than one subject is a corollary to the constitutional requirement that 'no bill shall be amended in its passage through either house as to change its original purpose.'" *Hammerschmidt*, 877 S.W.2d at 101 citing art. III, § 21. "By limiting each bill to a single subject [and requiring that amendments not change a bill's original purpose], the issues presented by each bill can be better grasped and more intelligently discussed." *Id*. (citation omitted).

"A second purpose of article III, section 23, is to prevent 'logrolling'—the practice of combining a number of unrelated amendments in a bill, none of which alone could command a majority, but which, taken together, combine the votes of a sufficient number of legislators having a vital interest in one portion of the amended bill to muster a majority for its entirety." *Id*. at 101. One of the purposes of art. III, § 23 is to defeat surprise within the legislative process and ensure the public is properly aware of legislation. *Id*. at 101–102.

"Third, the constitutional provision serves to defeat surprise within the legislative process. It prohibits a clever legislator from taking advantage of his or her unsuspecting colleagues by surreptitiously inserting unrelated amendments into the body of a pending bill." *Id*. *citing Normandy School Dist. of St. Louis County v. Small*, 356 S.W.2d 864, 868 (Mo. banc 1962).

"Fourth, article III, section 23, is designed to assure that the people are fairly apprised, 'through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered in order that they have [an] opportunity of

being heard thereon....'" *Id*. at 102 *citing Small*, 356 S.W.2d at 868. "[T]he effect of the Constitution's single subject rule is to prevent the legislature from forcing the governor into a take-it-or-leave-it choice when a bill addresses one subject in an odious manner and another subject in a way the governor finds meritorious." *Id*. at 102.

To determine a § 23 violation, the Court will "examine[] the bill as it is finally passed to determine whether it violates the single subject requirement" as follows:

> First, this Court looks to the bill's title to determine its subject. If the bill's title is not too broad or amorphous to identify the single subject of the bill, then the bill's title serves as the touchstone for the constitutional analysis. This Court will examine whether the individual provisions relate to the subject expressed in the title, not whether the individual provisions relate to each other.

Calzone, 584, S.W.3d at 321 (citations and quotations omitted). Article III, § 23 specifically mandates the single subject of a bill shall be clearly expressed in its title. *Id*. "[T]he words 'one subject' must be broadly read, but not so broadly that the phrase becomes meaningless." *Hammerschmidt*, 877 S.W.2d at 102. A "subject…includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation." *Id.* In determining whether a bill violates the single subject requirement, this Court will examine "whether all provisions of the bill fairly relate to the same subject, have natural connection therewith or are incidents or means to accomplish its purpose." *Calzone,* 584, S.W.3d at 321 citing *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. banc 1984). "[M]atters which are incongruous, disconnected, and without any mutual relation to each other must not be joined in one bill...." *Id*. citing *State v. Miller*, 13 S.W. 677, 678 (Mo. 1890). Article III, § 23, is mandatory. *Id*.

As will be shown, SB 26 violates the single-subject requirement because neither § 590.502.7's defense and indemnification requirements, 590.502.6's compensation provisions, nor the multifarious subjects discussed above, in Section I(1), "reasonably relate to the general core purpose" of public safety. *See Hammerschmidt*, 877 S.W.2d at 102.

In *Carmack v. Mo. Dept. of Agric*., this Court found the general assembly violated art. III, § 23 when it passed a bill with the title "relating to economic development" that included a provision changing the indemnification paid by the State to owners upon destruction of their livestock. 945 S.W.2d 956, 960 (Mo. 1997). There, the State took the position that economic development "includes any activity that indirectly promotes or protects portions of the Missouri economy." *Id.* Rejecting that argument, the Court found the State's proposed definition of economic development "includes any activity that indirectly promotes or protects portions of the Missouri economy," and would include "nearly every activity the state undertakes." *Id*.

Similarly, here, the trial court adopted a definition of "public safety" that is far too broad and amorphous to provide the public adequate notice of the subjects contained in the bill. D52, pp. 3–8. Indeed, this Court has cautioned that the words "one subject" in art. III, § 23 must not be read "so broadly that the phrase becomes meaningless." *Hammerschmidt*, 877 S.W.2d at 102 (finding amendment authorizing county to adopt county constitution does not fairly relate to elections, nor does it have "a natural connection to that subject").

In *City of DeSoto v. Parson*, 625 S.W.3d 412 (Mo. banc 2021) this Court invalidated, in its entirety, a bill that violated the single-subject provision. There, the house bill was "related to elections" and originated with relevant provisions concerning a change in procedures for unopposed elections. *Id.* at 414. The senate, however, added provisions, one of which concerned changes to municipal annexation of land. *Id.* This Court found the new provision concerning annexation unconstitutional. *Id.* at 417–18. Even though the annexation provision involved a vote, the Court cited *Hammerschmidt*, which also dealt with elections, in "reject[ing] outright the notion that everything that might require a plebiscite to become effective is, by that virtue alone, germane to a bill with the subject 'elections.'" *Id.* at 417 citing *Hammerschmidt*, 877 S.W.2d. at 103.

In this case, the trial court's conclusory and erroneous finding that each of SB 26's provisions "relate to public safety" runs afoul of every single purpose of art. III, § 23. D52, ¶ 38. One of the purposes of art. III, § 23 is to defeat surprise within the legislative process and ensure the public is properly aware of legislation. *Hammerschmidt*, 877 S.W.2d at

101–102. Here, this Court should find that the term "public safety"—does not and could not—apprise the public that SB 26 requires taxpayers to bear the cost to defend and indemnify police officers in civil lawsuits, including in lawsuits stemming from the officers' work for private companies. § 590.502.7. The term "public safety" also does not and could not apprise the public that SB 26 requires City to indemnify and defend police officers in lawsuits premised upon alleged conduct for which the officer was charged criminally. *Id*.

Additionally, the term does not and could not apprise the public that SB 26 requires taxpayers to bear the cost of compensating officers who experience an economic loss during a disciplinary investigation so long as the officer is later found to have committed no misconduct. § 590.502.6. These provisions pertain to employment benefits; they are not public safety related. Accordingly, § 590.502 violates art. III, § 23 because indemnification and compensation for economic loss are subjects pertaining to labor relations and do not "fall within" or "reasonably relate to the general core purpose of" public safety. *Hammerschmidt*, 877 S.W.2d at 102.

As set forth above, SB 26 contains other varied subjects wholly unrelated to the subject of public safety. Provisions concerning gambling boats, state lotteries, cemeteries, tax fraud, battery-charged fences, pesticide certification and training, and physical security ordinances regarding private property exemplify the logrolling art. III, § 23 prohibits and are not matters that "fall within" or "reasonably relate" to the purpose of public safety. *See Hammerschmidt*, 877 S.W.2d at 102. The trial court failed to demonstrate that these subjects have a "natural connection" to public safety or show how the bill's provisions accomplish that purpose. *Id.*; *see* D52, 20–39. If these subjects concern public safety, then any subject could, rendering art. III, § 23 meaningless. *See Rizzo v. State*, 189 S.W.3d 576, 579 (Mo. banc 2006) (holding that State's argument provided too broad of a definition of bill's subject).

Consistent with its prior holdings in *City of DeSoto*, *Hammerschmidt*, and *Carmack*, and *Rizzo*, here, this Court should reasonably limit the phrase "relating to public safety" and find that provisions relating to police officer indemnification and compensation for

economic loss and amendments to provisions pertaining to circuit attorney payments, pesticides, electric fences, State lotteries, tax fraud, cemeteries, executive-branch salaries, cigarette tax payments, gambling boats are not germane to that topic.

This Court should find the trial court erred in granting judgment in favor of the State and denying judgment in favor of the City. This Court should further find proceedings in the trial court are unnecessary because under Missouri Rules of Civil Procedure Rule 84.14, this Court may enter judgment for Plaintiffs on their cross-motion for judgment on the pleadings. *Woods v. Missouri Department of Corrections*, 595 S.W.3d 504, 505 (Mo. banc 2020) citing *City of DeSoto v. Nixon*, 476 S.W.3d 282, 291 (Mo. banc 2016) ("Under Rule 84.14, this Court may enter the judgment the trial court should have entered.").

Pursuant to Rule 84.14, this Court should "dispose finally of the case" by reversing the trial court, declaring that § 590.502 violates the original purpose and single subject rules, and entering judgment in favor of Plaintiffs on Count I.

3. SB 26 should be struck in its entirety because the General Assembly would not have passed the bill without the unconstitutional provisions.

SB 26 violates *both* art. III, §§ 21 and 23, and this Court should strike down the whole bill, as opposed to severing unconstitutional provisions.

Severance is only appropriate when "the Court is convinced beyond a reasonable doubt that the legislature would have passed the bill without the additional provisions and that the provisions in question are not essential to the efficacy of the bill." *Parson*, 625 S.W.3d at 418 *quoting Mo. Roundtable for Life v. State*, 396 S.W.3d 348, 353 (Mo. banc 2013). "Both of these inquiries seek to assure the Court that, beyond a reasonable doubt, the bill would have become law—and would remain law—even absent the procedural violation." *Id*. citing *Mo. Roundtable,* 396 S.W.3d at 353–54.

Here, while the provisions of § 590.502 were in the original bill as introduced, there is reasonable doubt whether the legislature would have passed the bill but for all the multifarious provisions relating to topics like casinos, cemeteries, lotteries, electric fences, and pesticide regulations. *See Parson*, 625 S.W.3d at 419 (rejecting severance and striking bill in its entirety where this Court found that while it was certainly *possible* the legislature

would have passed the bill but for the unconstitutional provisions, the State did not show that this *would* have happened).

Moreover, the intervention of the beneficiary of the bill's gambling boat provisions is a telltale sign of the essential character of SB 26 as a legislative Christmas tree—full of ornaments that the decorators of the legislative conference committee deliberately hung to ensure passage.

To be sure, real reason exists to doubt that the legislature would have passed SB 26 but for the addition of the unconstitutional provisions. In 2020, SB 7, the "Law Enforcement Officers' Bill of Rights," was introduced in the Senate. It was titled an act to enact "one new section relating to law enforcement officer disciplinary actions." Like SB 26, SB 7 provided for heightened procedural protections for law enforcement officers facing disciplinary investigations, including, among other things, a right to be informed in writing of the alleged violation, a requirement that the agency conducting the investigation complete the investigation within 90 days, and a requirement that questioning be conducted by a single investigator. SB was read once and then referred to the Transportation, Infrastructure and Public Safety Committee, where it died.

At least two other bills similar or identical to SB 7 failed to pass the General Assembly in 2020. The identical SB 1053—also an act billed as the "Law Enforcement Officers' Bill of Rights" —was introduced in the Senate in 2020. Its title provided that it was an act to enact "one new section relating to law enforcement officer disciplinary actions." SB 1053 was read twice but did not pass out of committee.

HB 1889 was introduced in the House in 2020. It too was known as the "Law Enforcement Officers' Bill of Rights." HB 1889 is nearly identical to § 590.502 as enacted; however, HB 1889 did not contain a defense and indemnification requirement, nor did it provide for a right to compensation for economic loss incurred during disciplinary investigations. Despite HB 1889's substantial similarity to SB 26, HB 1889 bore a more specific title, stating it was a bill to enact "one new section relating to law enforcement officer disciplinary actions." It was read twice and then referred to a committee, where it died.

In 2021, HB 499 was introduced in the House. As introduced, HB 499 was an act "relating to law enforcement officer disciplinary actions, with penalty provisions" and stated that its provisions "shall be known and may be cited as the "Law Enforcement Officers' Bill of Rights." Like SB 26, HB 499 contained provisions creating heightened procedural protections for officers during disciplinary investigations and a requirement that employers shall defend and indemnify law enforcement officers from and against civil claims made against them if the alleged conduct arose in the course and scope of their obligations and duties as law enforcement officers. As amended, HB 499 also contained a second section called the "Police Use of Force Transparency Act of 2021" and created the right to compensation for any economic loss incurred by a police officer during an investigation if the alleged misconduct is not sustained by the agency conducting the investigation. HB 499 was read twice and then referred to committee. It too did not become law.

In light of the failure of multiple bills containing similar and *identical* provisions, the State cannot show beyond a reasonable doubt that the unconstitutional provisions were not essential to SB 26's passage overall. The failure of substantially similar or identical bills (bearing more accurate titles) demonstrates that the legislature would not have passed the provisions contained in § 590.502 without the addition of the abovementioned legislative ornaments placed to ensure passage.

Alternatively, however, if the Court finds severance to be appropriate, Plaintiffs request the Court sever § 590.502 in its entirety. *See* Mo. Rev. Stat. § 1.140. As stated above, the provisions contained in § 590.502 pertain to employee benefits and indemnification and do not bear a logical, direct relationship to public safety. The legislators and the public could not be reasonably apprised that a bill titled "public safety"—with its 88 new sections—would include provisions that require taxpayers to foot the bill defending and indemnifying officers for lawsuits for conduct occurring while they are on the clock with secondary employers.

Finally, if this Court declines to strike down SB 26 or sever § 590.502 in its entirety, Plaintiffs, alternatively request, for the same reasons, that this Court sever § 590.502.7

(defense and indemnification requirements) and § 590.502.6 (compensation for any economic loss incurred during an investigation if found to have committed no misconduct) as the offending provisions.

Because SB 26 violates art. III, §§ 21 and 23, this Court should strike SB 26 in its entirety, or, in the alternative, sever § 590.502 (or alternatively, §§ 590.502.7 and 590.502.6) as the offending provisions.

II. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING JUDGMENT IN FAVOR OF PLAINTIFF ON COUNT II BECAUSE PLAINTIFF SUFFICIENTLY ALLEGED THAT MO. REV. STAT. § 590.502 CREATES AN UNFUNDED MANDATE IN VIOLATION OF ART. X, § 21 OF THE MISSOURI CONSTITUTION BY INCREASING CITY'S COSTS BY REQUIRING IT TO PERFORM NEW ACTIVITIES, NOT PREVIOUSLY REQUIRED BY LAW, WITHOUT A CORRESPONDING APPROPRIATION TO FUND SAID ACTIVITIES, SUCH AS: DEFENDING AND INDEMNIFYING POLICE OFFICERS SUED CIVILLY; REIMBURSING OFFICERS FOR INCOME LOST FROM PRIVATE EMPLOYMENT DURING DISCIPLINARY INVESTIGATIONS; ADHERING TO NEW INVESTIGATION DEADLINES; TRANSCRIBING ORAL STATEMENTS AND FURNISHING COPIES OF THE ENTIRE RECORD OF ADMINISTRATIVE INVESTIGATIONS TO OFFICERS; REQUIRING CITY PROVIDE ACCESS TO DOCUMENTS AS BASIS FOR DISCIPLINARY ACTIONS IN ADVANCE OF HEARINGS; AND BY CREATING A NEW RIGHT TO JUDICIAL REVIEW OF ALLEGED ALLEGATIONS OF RIGHTS UNDER § 590.502.

Standard of Review

The Supreme Court reviews a circuit court's ruling on a motion for judgment on the pleadings *de novo*. *Crestwood*, 620 S.W.3d at 622. In reviewing a grant of judgment on the pleadings, this Court must decide "whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Emerson*, 362 S.W.3d at 12(internal quotation omitted). "A grant of judgment on the pleadings will be affirmed only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory." *Id*. (citation omitted).

Unconstitutionality of § 590.502

Voters enacted the Hancock Amendment on November 4, 1980. *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 824 (Mo. banc 2013). "The Hancock Amendment is intended as a tax and spending lid for state government, as its purpose is to limit taxes by establishing tax and revenue limits and expenditure limits for the state and other political subdivisions which may not be exceeded without voter approval." *Id*. at 826. (internal quotations omitted). A Hancock Amendment violation exists if a state mandate (1) constitutes a new or increased activity, and (2) the political subdivision experiences an increased cost in performing said activity. *See* art. X, § 21; *Rolla 31 Sch. Dist. v. State of Missouri*, 837 S.W. 2d 1, 5–7 (Mo. banc 1992); *Miller v. Director of Revenue*, 719 S.W.2d 787, 788–89 (Mo. banc 1986).

Here, Plaintiff Taylor sought a declaratory judgment that several provisions contained in § 590.502 violate the Hancock Amendment, including: § 590.502(7) (requiring City defend and indemnify law enforcement officers against civil claims made against them in their individual capacities); § 590.502(6) (requiring City compensate officers for any economic loss incurred during disciplinary investigation, including for lost secondary income); § 590.502.2(11) (imposing new deadlines to complete disciplinary investigations), § 590.502.2(13) (requiring City provide copy of entire record, including transcripts, to officers after completion of investigation upon request); §590.502.3 (requiring City provide access to documents as basis for disciplinary action seven days in advance of hearing); and § 590.502.9 (creating right to judicial review of alleged violation of § 590.502 rights).

As will be shown, Plaintiff sufficiently alleged that § 590.502, on its face, mandates new activities that constitute a new quantum of work[8], not previously required by State law

[8] Plaintiff's allegations that SB 26 will cause an increase in the level of municipal activities or services without a state appropriation are facts that stand admitted by the State. *See* State's Motion, D42, pp. 15-22.

when the Hancock Amendment was passed, and that the performance of said activities will impose additional costs upon City in violation of art. X, § 21. The trial court erred in finding Plaintiff's allegations of increased costs factually insufficient to survive the State's Motion and further erred in finding Plaintiff's claim regarding § 590.502 "unripe." D52, ⁋⁋ 67–70. Assuming the facts in the petition to be true, as this Court must, and drawing all reasonable inferences in favor of Plaintiff, the State did not clearly demonstrate Plaintiff's Hancock Amendment claim is non-justiciable as a matter of law. *See Emerson*, 362 S.W.3d at 12. The State was not entitled to judgment in its favor on Count II because Plaintiff sufficiently alleges that § 590.502 constitutes unfunded mandate in violation of art. X, § 21.

1. **Section 590.502 imposes new activities and services, or alternatively, mandates an increase in the level of activities and services beyond that previously required by law on November 4, 1980.**

    a. **The requirements of § 590.502(7) are new activities not previously required by law.**

First, § 590.502.7 requires City perform new activities by requiring, for the first time ever, that it represent, defend and indemnify law enforcement officers from civil claims against them in their individual capacities (including for actions taken off duty while working secondary employment) unless and until the officer is convicted of, or pleads guilty to, criminal charges arising out of the same conduct.

Prior to the enactment of § 590.502.7, City **had no legal obligation** to defend and indemnify a police officer sued civilly. It has long been recognized that the City Charter creates no obligation for the City Counselor to defend civil suits against city police officers. *See Roberts v. St. Louis*, 242 S.W.2d 293, 295, 297–298 (Mo. App. 1951). Although City may exercise its discretion to defend and indemnify an officer in a civil action, City is not obligated to defend officers as "a matter of right." *Id*. Indeed, neither the trial court nor the

State identified any statutory requirement that City indemnify and defend officers in civil actions that existed prior to the enactment of § 590.502.7[9].

Because City was not *legally required* to defend and indemnify officers in civil suits prior to the enactment of § 590.502.7, it is irrelevant whether City previously exercised *discretion* to defend and indemnify some police officers. Certainly, the City's discretionary decisions to defend certain police officers prior to the enactment of § 590.502.7 never created a statutory obligation to defend and indemnify all police officers, and that is dispositive. *See Safeco Insurance Company of America v. Schmitt*, 2021 WL 3077669, at *5 (E.D. Mo. July 21, 2021) citing *Roberts*, 242 S.W.2d at 298 (noting "the City's decision to defend some of its police officers in tort actions does not create an ongoing obligation to defend all officers.").

It is beyond dispute that § 590.502.7 imposes a new quantum of work not previously required by law before passage of the Hancock Amendment in 1980. The statutory scheme in effect at the time of the Hancock Amendment's passage did not include a requirement for the City, or the State for that matter, to indemnify and defend police officers, much less to do so for alleged conduct occurring off duty. *See* § 84.210 (1939). Because § 590.502.7's requirement that City defend and indemnify its law enforcement officers sued civilly is a

[9] The State's argument that City's assumption of the St. Louis Metropolitan Police Department in 2013 changes the Hancock analysis is without merit. The State fails to identify any law requiring City perform the disputed activities or services "required by existing law" on the date of Hancock's passage. art. X, § 21. Further, the State failed to identify any particular "existing duties that the City owes its law enforcement officers under its own municipal code" in effect on Nov. 4, 1980 (the date of Hancock's passage) equivalent to § 590.502's requirements. *See* State's Motion, D42, p. 18. Thus, the City did not assume from the State any legal obligation to defend and indemnify officers in the manner contemplated by § 590.502.7, much less a legal obligation that existed on Nov. 4, 1980. *See generally*, § 84.210, *et seq*.

new quantum of work not previously required by law, the trial court erred in finding that provision does not mandate a new activity.

The trial court, however, rejected Plaintiff's Hancock challenge to § 590.502.7 because it thought that the City failed to allege that is "do[es] not currently indemnify and defend law enforcement officers who are civilly sued." D52, ¶ 67. As will be shown, the trial court missed the point. Whether or not City previously elected to represent and indemnify some officers in civil claims, even though not required to do so by law, is immaterial to the Hancock analysis.

The plain language of art. X, § 21 establishes that the relevant inquiry is whether § 590.502.7 requires an increase in the level of an activity beyond that required *by existing law*:

> A new activity or service or an increase in the level of any activity or service *beyond that required by existing law* shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

art. X, § 21 (Emphasis added).

Indeed, it has long been established that City may, but cannot be compelled to, pay more than the 1980-81 fiscal year budget towards its police force, because such payment would force City to fund an increased level of activity or service beyond that which was required at the time of the Hancock Amendment's passage[10]. *See State ex rel. Sayad v. Zych*, 642 S.W.2d 907, 911 (Mo. banc 1982). In *Sayad*, this Court held that art. X, § 21 prohibited the Police Board from compelling City to fund the operations of the St. Louis Metropolitan Police Department above and beyond that required by existing law "as of the

[10] Because the City's police division is a division of its Department of Public Safety, *see* City Charter, art. XIII, § 15(a), the analysis remains unaffected by an Nov. 8, 2022 constitutional amendment to art. X, § 21, which provides that "before December 31, 2026, the general assembly may by law increase minimum funding for a police force established by a state board of police commissioners . . ."

effective date of the Hancock Amendment." *Id*. at 911. The Court found that the "level of the City's activity in relation to the Police Board *required by existing law* upon the adoption of article X, section 21, was the amount certified by the Police Board for the fiscal year 1980-81." *Id*. (Emphasis added). Accordingly, the Hancock Amendment barred the Police Board from requiring City appropriate any more than $66,634,713, "the budget certified as of the effective date of the Hancock Amendment." *Id*. at 911. Any requirement that City pay more than the 1980-1981 fiscal year budget ran afoul of the Missouri Constitution, said the Court, because it would force City to fund an increased level of activity or service beyond that required by existing law. *Id*. Thus, the State could not compel the City to fund the police department beyond the budget certified on Nov. 4, 1980. *Id*.

Sayad controls here. The State cannot compel City to fund the expense of indemnifying and defending police officers as contemplated by § 590.502.7 because such an obligation did not exist prior to the enactment of the Hancock Amendment. Even assuming *arguendo* that City were obligated to defend and indemnify police officers on that date for *on-duty* conduct at that time, which is not the case, § 590.502.7 would still constitute an "increase in the level of any activity or service" beyond that level and would nevertheless run afoul of art. X, § 21.

Plaintiff sufficiently alleged a new or increased level of activity because no legal requirement existed prior to enactment of the Hancock Amendment requiring City defend and indemnify police officers sued civilly. And, even if it had not, this Court knows judicially that no law existing on November 4, 1980 required the City to indemnify and defend police officer is civil suits. Therefore, § 590.502.7 violates art. X, § 21 by mandating a new activity or service or an increase in the level of any activity or service *beyond that required by existing law. See Rolla 31 Sch. Dist*., 837 S.W.2d at 5–7.

b. The requirements of § 590.502.6 are new activities not required by existing law.

The trial court further erred in granting the State's motion for judgment on the pleadings because City sufficiently pled that § 590.502.6 requires a new activity, not previously required by law, where it requires City to "reimburse police officer employees

for lost earnings from secondary employment in addition to other losses" incurred during an investigation if the officer is found to have committed no misconduct. D40, ⁋ 18. The trial court erred because it failed to identify a law existing prior to November 4, 1980, which obligated City to compensate police officers for economic loss stemming from secondary employment, as is now required by § 590.502.6. Because the reimbursement requirement did not exist prior to November 4, 1980, § 590.502.6 requires, as a matter of law, that City perform a new activity. As such, § 590.502.6 is unconstitutional.

c. The requirements of § 590.502.2(11) are new activities not required by previously existing law.

The trial court also erred in entering judgment in the State's favor on City's claim that § 590.502.2(11) violates the Hancock Amendment on the basis that "[t]he City already investigates officer conduct." D52, ⁋⁋ 54, 55. Section 590.502.2(11) requires the City to comply with new strict deadlines for completing investigations into allegations of officer misconduct. These requirements are new as a matter of law; neither the trial court nor the State identified such deadlines under law as it existed on November 4, 1980. As discussed above, the relevant inquiry is whether the City bore such obligations imposed by law at the time of Hancock Amendment's enactment on November 4, 1980. The City sufficiently alleged an increase in the quantum of work to be performed, namely that the deadlines impose additional duties upon City. D40, ⁋ 21. The trial court was required to accept the allegations of increased work as true and draw all reasonable inferences in Plaintiff's favor. *See Emerson*, 362 S.W.3d at 12. The trial court therefore erred in finding Plaintiff did not sufficiently allege that § 590.502.2(11) requires City to perform new activities or increase its level of service.

d. The requirements of § 590.502.3(3) are new activities not required by existing law.

Trial court also erred in finding that § 590.502.3(3) does not violate Hancock on the basis that Plaintiff "has not alleged that the City was not required to give law enforcement officers access to documents in the City's possession prior to the Hancock Amendment's passage in 1980, in at least some circumstances." D52, ⁋ 59. Contrary to the trial court's

findings, Plaintiff sufficiently alleged facts in paragraph 21 to show that § 590.502.3(3) creates "additional" duties required only after passage of § 590.502. Specifically, Plaintiff alleges that § 590.502 contains "numerous provisions which impose additional duties," such as the duty "to make certain evidence and information available to law enforcement officers prior to disciplinary hearings." D40, ¶ 21. For the purposes of motion for judgment on the pleadings, "[t]he well-pleaded facts of the non-moving party's pleading are treated as admitted for purposes of the motion." *Woods*, 595 S.W.3d at 505. The trial court erred by failing to deem the factual allegation that § 590.502.3(3) creates "additional duties" admitted. In any event, neither the trial court nor State identified any law requiring City to make such records available to officers prior to Nov. 4, 1980. The trial court erred in failing to take judicial notice of what the law required at the time of the Hancock Amendment's passage and further erred by requiring Plaintiff to plead a legal conclusion, rather than facts. Plaintiff's allegations were sufficient to state a claim that § 590.502.3(3) requires City perform new activities not required by existing law.

e. The requirements of § 590.502.9 are new activities not required by existing law.

The trial court erred in finding that § 590.502.9's requirement that officers may enforce § 590.502 in court does not constitute a mandated "new or increased activity or service" on the basis that "the mere fact that the City can be sued for failure to comply does not *require* the City to do anything additional." D52, ¶¶ 62. Plaintiff sufficiently alleged that the enforcement mechanism contained in § 590.502.9 will, in fact, require City to do *something additional*. It will require City attorneys to defend such claims (D40, ¶ 22), or alternatively, if the City did fail to defend such claims, it would incur default judgments ordering compliance, which would require City officials to take actions compliant with the judgment. In either scenario, the City will be required to perform an increased quantum of work because it must either defend such suits or deal with the ramifications of a default judgment.

f. The requirements of § 590.502.2(13) are new activities not required by existing law.

Next, the trial court erred in finding that § 590.502.2(13) would not require City to perform a new activity. D52, ⁋ 50. Section 590.502.2(13) states that City "shall" keep "[a] complete record of the administrative investigation" and provide to the officer a copy of the "entire record," upon conclusion of the investigation within 5 business days of officer's written request. That provision provides that "a copy of the entire record," inclusive of "audio, video, and transcribed statements" "shall be" provided to the officer or officer's representative. Because § 590.502.2(13) provides that transcribed statements "shall be" provided, the mandatory "shall" language does in fact require City to hire court reporters to transcribe interviews and oral statements, i.e. create deposition transcripts. The trial court erred because Plaintiff sufficiently alleges that § 590.502.2(13) requires City create transcriptions of oral statements, whether "depositions" or transcriptions of recordings, when no such requirement existed prior to Nov. 4, 1980. This is a new activity as a matter of law.

2. Petition sufficiently alleges that City will experience an increase in costs.

Next, the trial court erred in finding Plaintiff's allegations of increased costs factually insufficient to survive the State's motion for judgment on the pleadings and further erred in finding her claims of increased costs "unripe." D52, ⁋⁋ 67–70. The Petition is replete with factual allegations that SB26 will require City to increase expenditures. *See* D40, ⁋ 7 (plaintiff City will be required to increase its level of expenditures in order to comply with the requirements of SB 26); *Id*. at ⁋⁋ 19-20 (City "has expended or will expend funds derived from plaintiff Taylor and other taxpayers to defend, represent, and indemnify law enforcement officers as required by Section 590.502.7" and this "will result in a substantial increase in such budgeted funds"); *Id*. at 21 (alleging "additional costs" as a result of hiring additional attorneys and support staff, retaining special counsel, hiring or assigning additional personnel to Internal Affairs Division, and procuring depositions); *Id*. at ⁋ 22 (alleging "additional costs" as a result of § 590.502(9)).

Plaintiff's allegations of increased costs must be accepted as true and all reasonable inferences drawn therefrom must be construed in her favor. *See Emerson*, 362 S.W.3d at 12. Indeed, this Court has previously found that an *allegation* of increased costs sufficient

to state a claim for a Hancock Amendment violation. In *Mo. Mun. League*, 740 S.W.2d at 958 this Court found an allegation that changes enacted by senate bill would increase plaintiffs' costs and the "quantum of work" required sufficient to state a claim for an art. X, § 21 violation. There, as here, plaintiffs filed a petition for declaratory judgment and injunction, alleging that a statute imposed an increase in the level of activity or service required without a corresponding appropriation. *Id*. at 957. The petition alleged that the bill mandated an increase in the level of activity of service required of local governments to develop, operate and close solid waste landfills without appropriating state funds for the increased costs. *Id*. at 957-58. The trial court granted the defendants' motion to dismiss for failure to state a claim. *Id*. at 958. The court reversed, reasoning that "[b]ecause this appeal is from the trial court's granting of defendants' motion to dismiss for failure to state a claim, all well-pled facts will be taken as true, and the Court will construe the allegations favorably to the pleader in determining whether the allegations invoke principals of substantive law." *Id.* This Court found that the allegation that "changes enacted by [the bill] will significantly increase the plaintiffs costs and the 'quantum of work' required to develop and operate landfills" was sufficient to state a claim. *Id*. at 958 citing *Miller*, 719 S.W.2d at 789.

Here, Plaintiff similarly alleges that § 590.502 will enact changes resulting in an increase in funds expended over and above the level of funding as of the date of adoption of the Hancock Amendment. In fact, Plaintiff's Petition contains allegations of increased costs *even more specific* than those found sufficient to state a claim in *Mo*. *Mun. League.* First, Plaintiff alleges that as a result of changes enacted by § 590.502.7 City "has expended or will expend" taxpayer-generated funds by requiring City defend and indemnify law enforcement employees. D40, ¶¶ 18, 19. Paragraph 18 further alleges § 590.502 obligates City "to reimburse police officer employees for lost earnings from secondary employment in addition to other losses." Plaintiff further plead that "590.502.7 will result in a substantial increase" in costs to pay judgments against individual police officer employees "over and above the level of funding as of the date of adoption of the Hancock Amendment . . ." *Id*. at ¶ 20.

Going further, City pled with specificity other items for which it would incur new, additional costs:

> "As a result of §590.502 of SB 26, plaintiff City will incur the following additional costs: (a) hiring additional attorneys and support staff in the City Counselor's Office for the City of St. Louis ("City's Civil Law Department") to handle police discipline matters and to defend claims against police officer employees, in addition to the number of attorneys employed by the City on November 4, 1980; (b) retaining special counsel to represent individual police officers in pending actions where plaintiff City is attempting to discharge or discipline such officers during the pendency of those actions; (c) hiring or assigning additional personnel to the Police Division's Internal Affairs Division in order to comply with the time limits for disciplinary investigations mandated by SB 26; (d) costs in procuring depositions mandated by SB 26 that were not required by City civil service procedures as of November 4, 1980.

D40, ⁋ 21.

The Petition further alleges that because "§ 590.502(9), provides that "any aggrieved law enforcement officer or authorized representative may seek judicial enforcement of the requirements" of the statute in circuit court, City "will be required to expend funds to represent and defend its decisions pertaining to the additional investigation requirements that must be followed if it is alleged either its Police Division internal affairs unit or the Civil Service Commission failed to comply therewith." ⁋ 22.

The trial court also erred in finding Plaintiff "has not alleged facts suggesting that these deadlines will result in increased costs" on the basis that "[t]he City already investigates officer conduct." D52, ⁋ 55. To reach that finding, the trial court disregarded Plaintiff's well-pled allegation that "plaintiff City will incur [] additional costs," including "hiring or assigning additional personnel to the Police Division's Internal Affairs Division in order to comply with the time limits for disciplinary investigations mandated by SB 26." D40, ⁋ 21. The trial court was bound to take Plaintiff's well-pled facts as true. *Crestwood*, 620 S.W.3d at 622; *Mo. Mun. League,* 740 S.W.2d at 958. For these same reasons, the trial court erred in finding, with regard to § 590.502.3(3), that Plaintiff had not alleged any facts suggesting that "giving officers the opportunity to access and review documents will

cost the City anything additional, much less that it will cost more than a *de minimis* amount." D52, ¶ 58.

Plaintiff sufficiently alleged that § 590.502 requires new and/or increased activities and City will experience an increased cost in performing said activities. Assuming the facts in the petition to be true, and drawing *all reasonable inferences in favor of the nonmoving party*, the State did not demonstrate Plaintiff could not prevail on her Hancock Amendment claim as a matter of law and erred in granting judgment in the State's favor.

3. Plaintiff's Petition sufficiently alleges a claim ripe for declaratory judgment.

Next, the trial court erred in finding Plaintiff's claim for declaratory judgment unripe on the basis that "Plaintiffs have not alleged that any City employee has submitted a claim or request" for defense and indemnification "while performing secondary employment." D52, ¶ 69.

Ripeness "means, in general, that 'the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing and to grant specific relief of a conclusive character.'" *Brooks v. State*, 128 S.W.3d 844, 849 (Mo. banc 2004) citing *Mo. Health Care Ass'n v. Attorney General of the State of Mo*., 953 S.W.2d 617, 621 (Mo. banc 1997). While it is true that under Hancock, a case is not ripe without proof of new or increased duties and increased expenses, rather than mere speculation and conjecture. *Id*. at 849 citing *Miller*, 719 S.W.2d at 789, it is equally true that Plaintiff need not wait until City is held liable for failure to indemnify a police officer before seeking a declaration of its rights and obligations under the la

The trial court erred in finding Plaintiff's claim unripe because, prior to the enactment of § 590.502.7, City had no legal obligation whatsoever to defend and indemnify a police officer sued civilly, even for on-duty conduct, and Plaintiff sufficiently alleged increased costs will result if City performs that activity. It therefore matters not whether Plaintiff alleged that a City officer has submitted a claim or request for defense and indemnification for a claim premised upon conduct *while performing secondary*

employment. The legal requirement that City defend and indemnify officers for *any conduct—on duty or not—* is a new activity or level of service not previously required by law, and Plaintiff sufficiently alleged City will experience an increased cost in performing said activity. *See* D40, ⁋ 8 (alleging that City "is currently the target of demands by current and former police officer employees to defend and indemnify them against liabilities claimed against them, which they assert arose out of their performance of duties as employees of the City.")

In *Brooks v. State*, plaintiffs brought a Hancock challenge to an act requiring county sheriffs to fingerprint and conduct criminal background checks on applicants for concealed firearms permits. 128 S.W.3d at 846. The trial court was presented with evidence from four counties that implementation of act would require county sheriffs to increase their activities and incur additional costs. *Id*. at 847. For example, Jackson County provided a cost projection and provided evidence that it would incur increased costs of at least $38 to conduct a "fingerprint analysis" for each applicant. *Id*. at 849. The Court found the claim ripe in the four counties that presented evidence of increased costs and ruled the act to be an unfunded mandate in violation of the Hancock Amendment. *Id*. In so finding, the court reasoned, "that even if there are only a few [applications], for each one the increased cost to each county will be at least $38, and as a result, the case is ripe in each county." *Id*. With regard to the remaining counties that did not submit "specific proof" of new or increased duties or increased expenses, this Court found disposition of the case premature and dissolved the lower court's injunction prohibiting enforcement of the act in those counties. *Id*. at 849-50, 851.

While decided at a different procedural posture, *Brooks* is nevertheless instructive here. Here, as set forth in detail above, Plaintiff sufficiently alleged City will incur various additional costs in order to implement the new requirements of § 590.502. In *Brooks*, this Court found an art. X, § 21 claim ripe for adjudication based merely on evidence of "*anticipated* activities and costs" in implementing the act. *Id*. at 849 (Emphasis added). That is, despite a lack of evidence that increased costs had actually been *incurred* by the counties, this Court found the counties' claims ripe because evidence established costs

would be incurred in the future. *Id*. At minimum, Plaintiff's allegations establish the same here. *See* D40, ¶¶ 7, 19-22.

Additionally, Plaintiff further presents a concrete dispute ripe for adjudication because City currently is defending two lawsuits pending in the Twenty-Second Judicial Circuit seeking defense and indemnification in civil lawsuits against officers in their individual capacities. *See Korte v. City of St. Louis*, no. 2222-CC09357 (Mo. Cir. Ct. Aug. 28, 2022) and *Olsten v. City, et al*., no. 2322-CC00113 (Mo. Cir. Ct. Jan. 16, 2023). The Court may take judicial notice of these pending lawsuits, which provide further basis for finding the existence of a ripe controversy. *See City of St. Louis v. State*, 643 S.W.3d 295, 301 (Mo. banc 2022) (taking judicial notice of suits pending in circuit courts).

Because the trial court must assume as true Plaintiff's well-pled allegations of anticipated increase in activities and costs in implementing § 590.502, these allegations are sufficient to state a claim pursuant to *Brooks*. The filing of the two above-mentioned lawsuits only further develops the dispute, demonstrating it is sufficiently developed to "to resolve a conflict that is presently existing and to grant specific relief of a conclusive character." *Brooks*, 128 S.W.3d at 849. Moreover, the fact that Plaintiff's Hancock challenge presents a predominantly legal question—whether or not the requirements of § 590.502 are "new" duties under the law— is yet another reason this Court should find this dispute sufficiently developed for adjudication. *See Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 739 (Mo. banc 2007) (finding constitutional claims sufficiently developed for adjudication as they presented "largely legal question" requiring less factual development).

Contrary to the State's argument, "[t]here can be a ripe controversy before a statute is enforced." *Foster v. State*, 352 S.W.3d 357, 360 (Mo. banc 2011) *quoting Planned Parenthood*, 220 S.W.3d at 738. A pre-enforcement challenge to a law is sufficiently ripe to raise a justiciable controversy when: "(1) the facts necessary to adjudicate the underlying claims [are] fully developed and (2) the laws at issue [are] affecting the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute." *Tupper v. City of St. Louis*, 468 S.W.3d 360, 370 (Mo. 2015) *quoting Foster*, 352 S.W.3d at 360. "Cases presenting

predominantly legal questions are particularly amenable to a conclusive determination in a pre-enforcement context, and generally require less factual development." *Tupper*, 468 S.W.3d at 370, quoting *Planned Parenthood*, 220 S.W.3d at 739. Such is the case here.

In the alternative, if this Court were to incorrectly find that there is no ripe, justiciable controversy, then it must find that the trial court erred by entering final judgment in favor of the State on City's Hancock claim. It is completely backwards that the trial court purported to finally adjudicate a claim which it thought did not present a ripe, justiciable controversy by entering a final judgment on the merits. At the least, this Court must reverse and do what the trial court should have done if there was no ripe controversy: dismiss the Hancock claim without prejudice to re-filing. S*ee, e.g. Mo. State Conf. of Nat'l Ass'n for the Advancement of Colored People v. State*, 633 S.W.3d 843, 848–49 (Mo. App. 2021) (holding that if a controversy is not ripe for review, the judgment of dismissal should be "without prejudice.") (citing *Schweich*, 408 S.W.3d at 778 (stating that relief was precluded because the requirements for ripeness were not met, and the appellate court would issue the ruling that the trial court should have entered and dismiss the claims without prejudice)); *Mo. Soybean Ass'n v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 29 (Mo. banc 2003) ("[B]ecause the controversy is not ripe for review, the judgment of dismissal is modified to one without prejudice."); *Schultz v. Warren Cnty*., 249 S.W.3d 898, 902 (Mo. App. E.D. 2008) (modifying circuit court's judgment of dismissal to explicitly state that dismissal is due to lack of ripeness and is one without prejudice).

For these reasons, Plaintiff's claim for declaratory relief challenging the constitutional validity of § 590.502 is ripe. *See Foster*, 352 S.W.3d at 360 (ripe controversy can exist before statute is enforced); *see also Clifford Hindman Real Estate, Inc. v. City of Jennings*, 283 S.W.3d 804, 807 (Mo. App. E.D. 2009)(injury need not have occurred prior to bringing declaratory action because one main purpose of declaratory relief is to resolve conflicts in legal rights before loss); *City v. State*, 643 S.W.3d at 300 (noting legal interest in being "free from the constraints" of unconstitutional law).

Conclusion

Plaintiff sufficiently pled that § 590.502 violates art. X, § 21 because it constitutes an unfunded mandate for new activities (or alternatively, an increase in the level of an existing activity or service) not previously required by the State when the Hancock Amendment was passed and, further, that City will experience an increased cost in performing said activities. *See Mo. Mun. League*, 740 S.W.2d at 958.

For all the foregoing reasons, the trial court erred in finding it could not grant specific relief and entering judgment in the State's favor on Count II.

III. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING JUDGMENT IN FAVOR OF PLAINTIFFS ON COUNT III BECAUSE PLAINTIFFS SUFFICIENTLY ALLEGED THAT MO. REV. STAT. § 590.502, ON ITS FACE, VIOLATES MO. CONST. ART. VI, § 22 IN THAT § 590.502 CREATES AND FIXES MYRIAD ADDITIONAL DUTIES FOR THE CITY COUNSELOR, THE POLICE COMMISSIONER, INTERNAL AFFAIRS INVESTIGATORS, THE CIVIL SERVICE COMMISSION AND THEIR STAFF.

Standard of Review

The Supreme Court reviews a circuit court's ruling on a motion for judgment on the pleadings *de novo*. *Crestwood*, 620 S.W.3d at 622. In reviewing a grant of judgment on the pleadings, this Court must decide "whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Emerson*, 362 S.W.3d at 12(internal quotation omitted). "A grant of judgment on the pleadings will be affirmed only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory." *Id*. (citation omitted).

Facial Unconstitutionality of § 590.502

The trial court erred in upholding § 590.502 as valid because the statute, on its face, violates Mo. Const. art. VI, § 22 by foisting myriad additional duties upon officials of a constitutional charter city. The trial court erred because its holding failed to acknowledge that § 590.502 irrefutably fixes the powers and duties of a "municipal office."

As this Court has repeatedly found, Art. VI, § 22 is a limitation on the power of the Missouri legislature to direct the powers and duties of officials of constitutional "home rule" charter cities. *See Preisler v. Hayden*, 309 S.W.2d 645 (Mo. 1958); *State ex rel. Burke v. Cervantes*, 423 S.W.2d 791 (Mo. 1968); *Sprague v. St. Joseph*, 549 S.W.2d 873, 879 (Mo. 1977). The purpose of art. VI, § 22 is unambiguous: "[t]he home rule law is quite straightforward. It gives charter cities authority to set the powers, duties and compensation of their employees." *City of St. Louis v. State*, 382 S.W.3d 905, 910 (Mo. 2012). Simply put, under art. VI, § 22, "the General Assembly may not tell the officers of a charter city what they must do." *City of Springfield v. Goff*, 918 S.W.2d 786, 789 (Mo. 1996).[11]

Multiple provisions of § 590.502, however, do just that. The trial court's holding that § 590.502 does not conflict with art. VI, § 22 on the basis that it does not specify "any particular" City official to complete "any particular task" simply ignores the plain language of art. VI, § 22 and cannot be squared with this Court's art. VI, § 22 jurisprudence. D52, ¶ 77.

In reaching its erroneous conclusion that § 590.502 does not violate art. VI, § 22, the trial court limited its rationale to a single sentence, finding § 590.502 "does not require any *particular* City employee or elected representative to complete any *particular* task." *Id*. at ¶ 77 (Emphasis added).[12] In holding that an art. VI, § 22 violation requires a showing that a "particular" employee be mandated to perform a particular task, the trial court strayed

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[11] The Missouri Constitution contains multiple provisions granting home rule authority to Missouri's charter cities and counties. art. VI, §§ 19-22. These constitutional provisions grant "broad authority to tailor a form of government that its citizens believe will best serve their interests." *State ex rel. St. Louis Fire Fighters Ass'n Local No. 73, AFL-CIO v. Stemmler*, 479 S.W.2d 456, 458–59 (Mo. banc 1972).

[12] Although the trial court noted that "Article VI, section 22 allows the State to prescribe a policy of general state-wide application that applies to special charter cities," *See* D52, ¶ 73, the trial court at no point found § 590.502 to be a law of general-state wide application and that was not the court's basis for granting judgment in the State's favor.

from the plain language of the constitutional provision. The trial court's interpretation of art. VI, § 22 would not require invalidation unless a statute burdens a "particular" employee or official with a new task. A review of the plain language of art. VI, § 22 reveals no such requirement, and the trial court's holding is therefore clearly erroneous:

> No law shall be enacted creating or fixing the powers, duties or compensation of any **municipal office** or employment, for any city framing or adopting its own charter under this or any previous constitution, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents.

art. VI, § 22 (Emphasis added).

The language of art. VI, § 22 makes plain that it requires invalidation of any statute that imposes additional duties upon a City "office." *Id*. The trial court erred in failing to recognize that art. VI, § 22's prohibition on laws fixing powers and duties for a "municipal office" extends beyond "particular" individuals or employees. Rather, as this Court recognized in *Sprague*, invalidation is warranted if the law "fix[es] the power, duties, or compensation thereof *for a constitutional charter city*." 549 S.W.2d at 879 (Emphasis added).

It is beyond dispute that § 590.502 fixes and creates additional duties for City. The State itself readily conceded this point throughout its briefing before the trial court. *See* State's Motion, D42, p. 25 (acknowledging that time limits set forth in § 590.502.2(11) are imposed on City's law enforcement agency); *Id*. at pp. 33-34 (acknowledging that § 590.502.7 requires City to defend officers in certain circumstances); *Id*. at p. 30 (recognizing that § 590.502.2 sets new conditions that must be "be satisfied" by someone in City government); *Id*. at p. 30 (acknowledging that City is required pursuant to § 590.502.3(4)-(6) to keep a complete record of the hearing and provide the record to officer or his attorney upon written request); *See also* State's Response to Plaintiffs' Cross-motion for Judgment on the Pleadings, D50, p. 13 (acknowledging that § 590.502.2(13) requires City turn over copy of record of investigation, including audio, video and transcribed

statements); *Id*. at p. 14 (recognizing that § 590.502.3(3) requires that City make evidence and information available to officers under investigation prior to hearing).

Invalidation under art. VI, § 22 is warranted where a statute creates and fixes the powers and duties of a *constitutional charter city*. *Sprague*, 549 S.W.2d at 875–79. But *even if* Plaintiffs were required to show that § 590.502 creates and fixes the duties of "particular" City officers, the law would still be subject to invalidation. When read in connection with the City Charter[13]—it is abundantly clear that § 590.502 does, in reality, create and fix the duties of "particular" City officers and offices. In fact, § 590.502 creates and fixes duties for employees in at least three City offices.

First, the statute creates additional duties for the St. Louis City Counselor who is tasked, pursuant to art. X of the City Charter, with the management of all litigation. Section 590.502 creates additional duties for the City Counselor by requiring her—via her attorneys and support staff— to defend additional civil lawsuits against police officer employees.[14] *See* § 590.502.7; City Charter, art. X. The statute further requires the City Counselor to defend City's employment decisions at due process hearings for law enforcement officers who are transferred. *See* § 590.502.3. With regard to the requirement that City defend and indemnify law enforcement officers against civil claims made against them in their individual capacities, that provision creates new duties for the City Counselor by requiring representation and indemnification where the right would otherwise not exist. The representation and indemnification provision even goes so far as to require the City

[13] The Charter is "the city's organic law—its constitution." *Stemmler*, 479 S.W.2d at 457. Subject to the Missouri and U.S. constitutions and state laws of general interest and statewide concern, "the people of Missouri, by art. VI, §§ 31, 32(a) and 32(b), have granted to the people of St. Louis the power to write and to amend their own charter and to provide therein the kind of city government which they want." *Id.* at 458–59.

[14] In the alternative, §§ 590.502.3 and 590.502.7 require City employees to take steps to engage outside counsel to defend employment decisions and civil claims against officers.

Counselor to represent officers for claims involving "actions taken *off duty* if such actions were taken under color of law." § 590.502.7 (Emphasis added). As a result, the City Counselor, who is tasked with managing all litigation, is purportedly required to defend officers sued for conduct outside the scope of their employment with City. The practical consequence of § 590.502.7 is that City attorneys will be required to take and defend depositions, prepare discovery, draft motions, and conduct trials for claims arising from events that have occurred while officers are *being paid to perform work for secondary employers*. This duty is new. No similar duty exists under the City Charter.

Next, § 590.502 violates art. VI, § 22 by imposing additional duties upon the Civil Service Commission, its members and support staff. As this Court has found, the Civil Service Commission "has jurisdiction over the wages and working conditions of all employees . . . of the City." *Cervantes*, 423 S.W.2d at 794. City Charter art. XVIII sets forth the powers and duties of the Civil Service Commission. Section 590.502.3 creates extra duties for the Civil Service Commission by creating, where one did not previously exist, the right for probationary officers to appeal to the Civil Service Commission in the event discipline is recommended. Additionally, it creates the right for probationary officers and officers who are transferred to appeal to the Civil Service Commission. *See* § 590.502.3. Next, § 590.502.3(3) requires City attorneys and/or the Civil Service Commission make certain evidence and information available to officers prior to disciplinary hearings.

Next, the statute purports to fix the investigative and disciplinary procedures of City's Police Division, which is a division of the City Department of Public Safety and is overseen by the police commissioner. *See* City Charter, art. XIII, § 15(a). Section 590.502 imposes numerous duties upon police division internal affairs investigators conducting administrative investigations of police officers or subjecting an officer to administrative questioning. First, it requires that internal affairs investigators provide written notice to the subject of the investigation within a prescribed time frame. § 590.502.2(1). Second, it requires that members of the police division who file a complaint against a fellow officer support the complaint by a written statement. § 590.502.2(2). Third, it sets a 90-day

deadline for the investigators to complete investigations. § 590.502.2(11). The statute also directly fixes the duties of the police commissioner by impacting his power to make transfers and authority to deny officers secondary employment. § 590.502.2-3.

It cannot be credibly disputed that § 590.502 fixes specific duties of particular City "office[s] [and] employment[s]" by mandating duties for the City Counselor, internal affairs investigators, the Civil Service Commission, and the Police Commissioner. The trial court, however, completely failed to consider the interplay between § 590.502 and the abovementioned Charter provisions, which determine the City officers, divisions and departments in which § 590.502's new requirements are vested.

In *Sprague*, this Court invalidated legislation purporting to, in violation of art. VI, § 22, prescribe powers and duties of officials of St. Joseph, a fellow constitutional home rule charter city. 549 S.W.2d at 879. In that case, this Court considered the validity of legislation purporting to create a plumbing licensing scheme and regulating persons engaged in that business in cities of a certain size. *Id*. at 875. The statutes, among other things, established a three-member board of plumbing examiners, imposed the duty of chairman upon one official, required the mayor to name one member, required the board convene and administer an examination, and required the city establish rules and regulations governing plumbing work. *Id*. at 875-79. In examining the constitutionality of the statute, this Court found that, by prescribing the duties of officials, the statute ran afoul of art. VI, Sec. 22's prohibition on the legislature "creating any municipal office or board or fixing the power, duties or compensation thereof for a constitutional charter city." *Id*. at 879. Accordingly, this Court invalidated the statutes as applied to St. Joseph, a constitutional charter city. *Id*.

In *Cervantes*, this Court considered the constitutionality of state statutes purporting to require the City' mayor to appoint members to a firemen's arbitration board. 423 S.W.2d 791. There, the firemen argued, just as the State and Intervenor argue here, that the statute was outside the scope of art. VI, § 22 because the purpose of the statute was to create statewide policy regarding uniform labor practices. *Id*. at 793. Noting that art. VI, § 22 gives City, a constitutional charter city, broad measure of complete freedom from state

legislative control, the Court found the statute improperly imposed duties upon City officials. *Id*. at 793. In so finding, the Court noted that the mayor's duties are defined by City Charter and the statute in question required the City mayor, as the chief executive officer, to assume the additional duty of appointing an arbitration board. *Id*. at 794. The Court further found that City Charter provides for a Director of Personnel and a Civil Service Commission, "which has jurisdiction over the wages and working conditions of all employees, including firemen, of the City." *Id*. at 793-94. The Court found that consistent with City Charter, the Civil Service Commission has rules and regulations in place governing employee classifications and providing for employee appeals therefrom. *Id*. at 794. Given that, "[i]n determining grievances of employees, appellant is not required to go beyond the comprehensive provisions of the city's charter relating to all employees of the city." *Id*. at 794. Accordingly, under the City's charter and art. VI, Sec. 22, "the Mayor as the chief executive officer of the city cannot be required to assume the additional duty of appointing a Firemen's Arbitration Board." *Id*. at 794. The Court found the statutes unconstitutional on the basis they imposed additional duties upon a municipal officer. *Id*.

The trial court turned a blind eye to the factual similarities between the instant case and *Cervantes* and *Sprague*[15], making no effort whatsoever to distinguish the two cases. Instead, the trial court blindly accepted the argument advanced by the State—that *Cervantes* and *Sprague* are distinguishable on the basis the legislation at issue in those cases "specifically identified local officers and employees and imposed duties upon them." State's Response in Opposition to Plaintiffs' Cross-Motion for Judgment on the Pleadings, D50, p. 17.

Additionally, the trial court did not adhere to this Court's holding in *Cervantes* providing that "[City] is not required to go beyond the comprehensive provisions of the

[15] *See* D52, ¶ 73 (mischaracterizing *Sprague* as holding that "the Sunshine Law does not fix the duties of a municipal office" when, in reality, *Sprague* conducted no Art. VI, § 22 analysis with regard to the Sunshine Law).

city's charter relating to all employees of the city" in "determining grievances of [its] employees." 423 S.W.2d at 794. This Court's prior holding clearly controls here.

The trial court further purported to rely upon *Goff*, 918 S.W.2d 786 and *City of St. Louis v. Grimes*, 630 S.W.2d 82 (Mo. banc 1982) to support its assertion that duties must be assigned to a "particular" employee of a charter city in order to implicate art. VI, § 22. However, neither *Grimes* nor *Goff* support the proposition that a statute must impose a duty on a "particular" municipal employee or officer in order for it to violate art. VI, § 22. *See Goff*, 918 S.W.2d at 788-79 (upholding on art. VI, § 22 challenge state statute that established two-thirds majority by which members of legislative body of a municipality must vote to approve zoning changes on basis law did not fix powers and duties of a municipal office or employment but merely "place[ed] limitations upon the exercise of powers by the governing bodies of municipalities" by requiring them to follow certain procedures). *See Grimes*, 30 S.W.2d at 85 (finding Worker's Compensation Law did not contravene art. VI, § 22 because it did not *directly specify* powers or duties of Charter city employees and accomplished its objective "with minimal disruption or interference with function of the city [. . .]") The holding in both *Goff* and *Grimes* turned on the fact that the laws at issue merely placed limitations upon the authority of City officials, as opposed to saddling them with particular *new* tasks and duties, as was the case in *Cervantes* and *Sprague*, and as is the case with § 590.502.

Consistent with *Cervantes* and *Sprague*, this Court should strike § 590.502 because it does precisely what art. VI, § 22 explicitly prohibits—it tells the City Counselor, her support staff and attorneys, the Police Commissioner, internal affairs investigators, and the Civil Service Commission what mandatory duties they must now perform. This Court has made clear—the General Assembly may not micromanage employees of constitutional charter cities by telling its City Counselor what cases she is required to defend; by setting deadlines for internal affairs investigators to complete tasks; by telling the Police Commissioner he cannot make transfers or deny officers secondary employment, and by telling the Civil Service Commission what appeals it must hear and dictating its administrative procedures. The imposition of these specific additional duties violates

City's right "to be free from outside interference in [its] internal affairs," *Grimes*, 630 S.W.2d at 85, and is a clear art. VI, § 22 violation.

Article VI, § 22 prohibits the General Assembly from telling the officers of a home rule charter city what they must do. *Goff*, 918 S.W.2d at 789. The trial court erred in finding § 590.502 compliant with art. VI, § 22 and in granting judgment in favor of the State.

Pursuant to Rule 84.14, this Court should "dispose finally of the case" by reversing the trial court, declaring that § 590.502 violates art. VI, § 22, and entering judgment in favor of the Plaintiff on Count II of Plaintiffs' Cross-motion for Judgment on the Pleadings. *See Woods*, 595 S.W.3d at 505 citing *Nixon*, 476 S.W.3d at 291.

IV. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING JUDGMENT IN FAVOR OF PLAINTIFFS ON COUNT IV BECAUSE PLAINTIFFS SUFFICIENTLY ALLEGED THAT MO. REV. STAT. § 590.502.7, AS A MATTER OF LAW, VIOLATES ART. III, § 38(A) OF THE MISSOURI CONSTITUTION IN THAT IT IMPROPERLY GRANTS PUBLIC FUNDS TO PRIVATE PERSONS FOR A PRIMARILY PRIVATE PURPOSE.

Standard of Review

The Supreme Court reviews a circuit court's ruling on a motion for judgment on the pleadings *de novo*. *Crestwood*, 620 S.W.3d at 622. In reviewing a grant of judgment on the pleadings, this Court must decide "whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Emerson*, 362 S.W.3d at 12(internal quotation omitted). "A grant of judgment on the pleadings will be affirmed only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory." *Id*. (citation omitted).

Facial Unconstitutionality of § 590.502

The trial court erred in finding § 590.502.7 constitutional because the statute, on its face, violates Mo. Const. Art. III, § 38(a)'s prohibition on the grant of public money for private purposes by mandating City defend law enforcement officers and reimburse them for lost income from private sources and reimburse them for liabilities stemming from

conduct occurring outside the scope of their employment with City. D40, ¶ 38. Specifically, § 590.502.7, unconstitutionally mandates City defend and indemnify police officers for alleged conduct taken "under color of law," including conduct that occurs while officers are working secondary employment for private entities—outside the scope of their City employment:

> Employers shall defend and indemnify law enforcement officers from and against civil claims made against them in their official and individual capacities if the alleged conduct arose in the course and scope of their obligations and duties as law enforcement officers. This ***includes any actions taken off duty if such actions were taken under color of law***. In the event the law enforcement officer is convicted of, or pleads guilty to, criminal charges arising out of the same conduct, the employer shall no longer be obligated to defend and indemnify the officer in connection with related civil claims.

Section 590.502.7 (Emphasis added).

With a few exceptions, art. III, § 38(a) forbids the provision of public funds for private persons. It states, in relevant part, as follows: "[t]he general assembly shall have no power to grant public money…to any private person, association or corporation." Since the adoption of art. III, § 38(a), Missouri Courts have held the grant of public funds with a primarily private effect to be unconstitutional, despite the possible beneficial impact upon the economy of the locality and of the state. *Curchin v. Missouri Industrial Dev. Bd*., 722 S.W.2d 930, 934 (Mo. banc 1987).

Where there has been an art. III, § 38(a) challenge, this Court first determines whether there is a grant of public money or property. *Curchin*, 722 S.W.2d at 933-34. If there has been a grant of public money or property, the Court will examine whether the grant of public money made to private entities serves a public purpose. *Id*. *citing Menorah Medical Center v. Health & Edu. Facilities Auth*., 584 S.W.2d 73, 78 (Mo. banc 1979). This Court has used the "primary effect" test in determining whether there is a sufficient public purpose behind a grant of public money:

> Under this test, the true distinction drawn in the authorities is this: If the primary object of a public expenditure is to subserve a public municipal purpose, the expenditure is legal, notwithstanding it also

> involves as an incident an expense, which, standing alone, would not be lawful. *But if the primary object is not to subserve the public municipal purpose, but to promote some private end, the expense is illegal, even though it may incidentally serve some public purpose.*

Id. citing *State ex rel. City of Jefferson v. Smith*, 154 S.W.2d 101, 102 (Mo. banc 1941) (Emphasis added). In determining the primary effect of a grant of public funds, the determination is based upon the history and purpose of art. III, § 38(a). *Id*.

Section 590.502.7 mandates the expenditure of public funds to represent, defend, reimburse, and indemnify police officers for off-duty conduct that occurred while on the clock with private employers. Assuming the facts in the Petition to be true, and drawing all reasonable inferences in favor of Plaintiffs, the State did not clearly demonstrate Plaintiffs' art. III, § 38(a) claim is non-justiciable as a matter of law. *See Emerson*, 362 S.W.3d at 12. The State was not entitled to judgment in its favor on Count IV because Plaintiffs sufficiently allege that § 590.502 constitutes an improper grant of public funds to a private person for a primarily private purpose in violation of art. III, § 38(a).

1. § 590.502.7 constitutes a grant of public funds for a primarily private purpose.

It is undisputed in this case that § 590.502.7 constitutes a grant of public funds. *See* State's Motion, D42, pp. 30-36. A grant of public funds triggers the primary effect test. *See Menorah*, 584 S.W.2d at 78. The "primary effect" test, which the trial court failed to address in its Order and Judgment, states that "if the primary object [of the public expenditure] is not to subserve a public municipal purpose, but to promote some private end, the expense is illegal, even though it may incidentally serve some public purpose." *Id*. at 78 (citation omitted); *see also State ex rel. Wagner v. St. Louis County Port Authority*, 604 S.W.2d 592, 597 (Mo. 1980) (citation omitted) (explaining that in order for a grant of public funds to be permissible, the benefit or convenience "must be direct and immediate from the purpose, and not collateral, remote or consequential.")

First, as a threshold matter, the trial court erred in finding the grant of public money would be to a "public" rather than "private person." D52, ¶ 87. In support, the trial court

essentially found, without reliance on any authority whatsoever, police officers to be "public" persons. *Id*. While it is true that Missouri courts have found police officers engaged in private employment as a private security guards acted in the performance of duties imposed on him by law,[16] that determination is fact specific, and it is not without limitation. *See State v. Devlin*, 745 S.W.2d 850, 852 (Mo. App. E.D. 1988) (noting that when law enforcement officer leaves territorial jurisdiction, his status is transformed into that of private citizen).

The trial court failed to consider that § 590.502.7 mandates defense and indemnification even in circumstances where the officer did not act in the performance of duties or under color of law. City is mandated by § 590.502.7 to represent and defend, in their individual capacities, law enforcement officers accused of misconduct, including criminal misconduct, up to and until they are either convicted of or plead guilty to criminal charges for conduct arising out of the same conduct underlying the civil case. D40, ¶ 39. As a result, when a civil case precedes or runs concurrently with a criminal case against an officer for conduct that occurred during the officer's secondary employment with a private business, the effect of this provision is to require the expenditure of public funds to defend police officers—even in situations where the officer is ultimately convicted of or pleads guilty to a crime. D40, ¶¶ 39-40, *See* § 590.502.7 ("In the event the law enforcement officer is convicted of, or pleads guilty to, criminal charges arising out of the same conduct, the employer shall no longer be obligated to defend and indemnify the officer in connection with related civil claims.") Thus, § 590.502.7 mandates City defend and indemnify officers in situations in which they are accused of, disciplined, or fired for conduct that was not taken in furtherance of the public's interest *at least up until the point their criminal charges are finally adjudicated*. D40, ¶ 40. The trial court cites no basis for its conclusion that an

[16] *State v. Brown*, 989 S.W.2d 652, 654 (Mo. App. 1999) (finding defendant properly convicted of assault of law enforcement officer where victim was police officer wearing police uniform employed as a private security guard).

off-duty police officer is a "public person" in any and all circumstances, including situations in which they have committed a crime.

Second, the trial court erroneously found that even if § 590.502.7 constitutes a grant of public money to a private person, the grant "is for a public purpose." D52, ¶ 89. As previously discussed, the defense and indemnification requirements are not limited to circumstances in which officers are on the clock working for their public, governmental employers. Rather, § 590.502.7 requires City to defend and indemnify individual officers for actions taken while off-duty and while earning income working for private employers. D40, ¶ 37. The representation by a government attorney of a private individual in tort claims involving alleged conduct that occurred during secondary employment for private business does not have a "primary object" of serving a public, municipal purpose. Rather, the direct and immediate effect of § 590.502.7's representation and indemnification requirements are to provide a financial benefit to officers in their individual capacity. Section 590.502.6 also provides a primarily private financial benefit by mandating that Plaintiff reimburse officers for lost wages from private employers that hire off-duty police officers for secondary employment—financial benefits that do not directly promote public safety.

The trial court reasoned that the mandated indemnification and defense provision promotes a public purpose because it "ensur[es] that police officers know that they will be protected from civil liability when they do their job," which "incentivizes police officers to *act* to protect the public rather than turn a blind eye." D52, ¶ 90 (Emphasis in original). The trial court, in adopting the State's argument that the indemnification provisions will "incentivize" officers to perform their duties and protect public safety, is implicitly acknowledging that public safety is only a collateral benefit. The reality is that the defense and indemnification requirements provide a direct, financial benefit to the officer, which,

in turn, might "incentivize" them to perform public safety functions. The public purpose is, at best, secondary[17].

Thus, because any benefit to public safety is merely collateral or incidental, § 590.502.7 is clearly violative of art. III, § 38(a). *See Wagner*, 604 S.W.2d at 597 (citation omitted) (explaining that in order for a grant of public funds to be permissible, the benefit or convenience "must be direct and immediate from the purpose, and not collateral, remote or consequential.").

Second, the trial court erroneously found § 590.502 promotes public safety on the basis the officers' actions in secondary employment must be taken "under color of law," which it defined to mean "that their actions were taken with the intent to achieve legal and public-safety-promoting ends." D. 52, ¶ 90. "Color of law," is a defined term in § 590.502.1(2)[18]. Section 590.502.1(2) defines "color of law," as "any act by a law enforcement officer, whether on duty or off duty, that is performed in furtherance of his or her sworn duty to enforce laws and to protect and serve the public." Since this "definition," is nebulous and susceptible to interpretation by the officer, on one hand, and by Plaintiff City, on the other, Plaintiff City will be required to defend and indemnify police officers in situations where officers claim they were enforcing the laws and promoting public

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[17] The officers' private employers are also primary beneficiaries of the indemnification and defense provisions found in § 590.502.7 because these private entities will not be required to expend any funds to defend and indemnify officers who are sued for conduct while in their employ.

[18] Rather than considering the relevant definition of "color of law" set forth in § 590.502.1(2), the trial court unnecessarily looked to *State v. Trimble*, 638 S.W.2d 726, 733 (Mo. banc 1982), for the definition of "under color of law." D52, ¶ 90. Importantly, however, *Trimble* does not define "under color of law" in a general sense, but rather, considered the meaning of "lawful custody," as used in a statute, and held that the phrase means "'custody under color of law,' that is, in the custody of a lawful authority." *Id*.

safety, but in reality, violated police division policies and procedures, or even state or federal laws. But, under § 590.502.7, unless and until the officer pleads guilty to or is convicted of a crime, City will be forced to provide representation and defense. Representation and indemnification in such circumstances does not promote public safety—it enables and protects officers who acted unreasonably or violated constitutional rights. The trial court takes for granted that, at times, the employer and officer will be in sharp disagreement as to whether the officer's actions were taken with the intent to achieve legal and public-safety-promoting ends. In such circumstances, § 590.502.7 mandates defense and indemnification by the public employer, until the point that the officer pleads guilty to or is convicted of a crime.

Lastly, the trial court erroneously held § 590.502.7 promotes a *primarily* public purpose of "public safety" based upon its finding that municipalities will internalize the costs of indemnification and defense, and as a result, be incentivized to train their police officers well to avoid civil liability and to terminate police officers who act recklessly or in ways that open up the municipality to unwarranted civil liability. D52, ¶ 91. That rationale is undercut by the fact that § 590.502, indisputably made it harder for departments to fire police officers who act recklessly or criminally while in the performance of their duties. To assert the legislative intent was to promote public safety by making sure municipalities would hold police officers accountable is directly contradicted by the fact that § 590.502 actually expands the rights of officers in the disciplinary process and essentially mandates that municipalities defend and indemnify officers who engaged in reckless, negligent and even criminal acts up until the time the officer pleads guilty or is convicted of a crime. § 590.502.7.

The overarching purpose of § 590.502 is, quite indisputably, to provide enhanced protections for police officers by conferring them with additional rights in disciplinary proceedings and defense and indemnification benefits. The State's argument that the "primary" purpose of the indemnification and defense provisions is to protect public safety is subterfuge, or after-the-fact justification, at best.

Accordingly, this Court should reverse the trial court's erroneous order and hold § 590.502 to be in violation of art. III, § 38(a) because § 590.502.7 constitutes a grant of public money for a primarily private purpose.

2. Plaintiff's Petition sufficiently alleges a claim ripe for declaratory judgment.

Next, the trial court erred in finding Plaintiffs' claim for declaratory judgment unripe on the basis that no conflict exists because Plaintiffs "ha[ve] not alleged that any of its police officers have secondary employment," or that "any of them has been civilly sued for actions taken off duty or that any police officer has demanded defense and indemnity in such circumstances." D52, ¶ 88. As will be shown, the trial court erred by failing to deem admitted the allegation that § 590.502 will require City to expend public funds to discharge obligations of police officer employees in their private, individual capacities and to reimburse police officers for lost income from sources unrelated to City. D40, ¶ 36. Accordingly, the trial court erred in finding that Plaintiffs failed to present a justiciable controversy. D52, ¶ 87.

A case is ripe if "the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character." *Schweich*, 408 S.W.3d at 773-74 (internal quotes and citation omitted). Even where "accomplished injury is not alleged," if "a dispute as to legal rights is otherwise shown, a violation of those rights is not a precondition to the availability of declaratory adjudication." *Mo. All. for Retired Ams. v. Dep't of Lab & Indus. Rels.*, 277 S.W.3d 670, 677 (Mo. banc 2009). Moreover, "a plaintiff has standing to obtain declaratory relief, and to assert a legally protected interest, unless 'it appears that it may be said with certainty that no possible basis exists for [their] contention that they are entitled to a declaration of rights and duties under the facts alleged[.]'" *See Id*. at 677 *citing Higday v. Nickolaus*, 469 S.W. 2d 859, 864 (Mo. App. 1971); *cf. City v. State,* 643 S.W.3d at 300 (stating that "pre-enforcement actions to assert constitutional claims present a justiciable controversy ripe for adjudication.").

Under the Declaratory Judgment Act, § 527.020, under which Plaintiffs bring this action, any person whose rights, status or other legal relations are affected by a statute may

have determined any question of construction or validity arising under the statute and obtain a declaration of rights, status or other legal relations thereunder. Here, Plaintiffs seek a declaration that § 590.502.7 is invalid on its face, in that it violates art. III, § 38(a), by mandating the expenditure of public funds to represent, defend, reimburse, and indemnify police officers in their private, individual capacities for alleged conduct that occurs off-duty while working secondary employment for private employers. D40, ¶ 41. *See* § 526.050.1, RSMo. ("The power of the courts of this state to render declaratory judgments shall extend to declaratory judgments respecting the validity of rules, or of threatened applications thereof"); *See also* Rule 87.02(a).

The trial court erred in finding Plaintiffs' claim unripe as an as-applied challenge (D52, ¶ 88) because Plaintiffs' Petition sufficiently alleged the facial invalidity of § 590.502.7 as violative of art. III, § 38(a). Moreover, Plaintiffs further present a concrete dispute ripe for adjudication because Plaintiff City is currently defending two lawsuits pending in the Twenty-Second Judicial Circuit seeking defense and indemnification in civil lawsuits against officers in their individual capacities. *See Korte v. City*, Case No. 2222-CC09357 and *Olsten v. City, et al*., Case No. 2322-CC00113. The Court may take judicial notice of these pending lawsuits, which provide further basis for finding the existence of a ripe controversy. *See City v. State*, 643 S.W.3d at 301 (taking judicial notice of suits pending in circuit courts).

For these reasons, Plaintiffs' claim for declaratory relief challenging the validity of § 590.502 is ripe. *See Foster*, 352 S.W.3d at 360 (ripe controversy can exist before statute is enforced); *see also Clifford*, 283 S.W.3d at 807 (injury need not have occurred prior to bringing declaratory action because one main purpose of declaratory relief is to resolve conflicts in legal rights before loss); *City v. State*, 643 S.W.3d at 300 (noting legal interest in being "free from the constraints" of unconstitutional law).

The trial court erred in granting judgment in favor of the State and against the City Count IV.

V. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING JUDGMENT IN FAVOR OF PLAINTIFFS ON COUNT V BECAUSE PLAINTIFFS SUFFICIENTLY ALLEGED THAT MO. REV. STAT. § 590.502, AS A MATTER OF LAW, VIOLATES ART. I, § 2 OF THE MISSOURI CONSTITUTION, IN THAT IT IMPERMISSIBLY AND ARBITRARILY CREATES TWO CLASSES OF SIMILARLY SITUATED EMPLOYEES THAT ARE SUBJECT TO DIFFERENT DUE PROCESS RIGHTS.

Standard of Review

The Supreme Court reviews a circuit court's ruling on a motion for judgment on the pleadings *de novo*. *Crestwood*, 620 S.W.3d at 622. In reviewing a grant of judgment on the pleadings, this Court must decide "whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Emerson*, 362 S.W.3d at 12(internal quotation omitted). "A grant of judgment on the pleadings will be affirmed only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory." *Id*. (citation omitted).

Unconstitutionality of § 590.502

The trial court erred in upholding § 590.502 as valid because the statute, on its face, violates art. I, § 2 by impermissibly and arbitrarily creating two classes of employees that are subject to wildly different due process rights. Specifically, the new preferred classification of "law enforcement officers" is given more due process rights during disciplinary investigations than other employees of local municipalities and governments, including Plaintiff Taylor. In addition, the favored class is guaranteed defense and indemnification against liabilities relating both to conduct as a City employee and conduct while off-duty and working secondary employment, perquisites not accorded to Plaintiff Taylor, other similarly situated public safety employees, or any other civil service employees of Plaintiff City.

The Missouri Constitution guarantees its citizens the equal protection of the laws. Mo. Const. art. I, § 2. That section provides:

> That all constitutional government is intended to promote the general welfare of the people…that all persons are created equal and are

> entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

This Court applies a two-step analysis for equal protection violation claims. *Mo. Nat'l Educ. Ass'n v. Mo. DOL & Indus. Rels*., 623 S.W.3d 585, 592 (Mo. banc 2021) *citing Amick v. Dir. of Revenue*, 428 S.W.3d 638, 640 (Mo. banc 2014). First, a court must determine whether a fundamental right is at issue. *Id*. If there is no fundamental right at issue, "a court will apply a rational-basis review to determine whether the challenged law is rationally related to some legitimate end." *Id*. Under the rational basis test, the party challenging the constitutional validity of the statute must overcome the presumption the statute has a rational basis "by a clear showing of arbitrariness and irrationality." *Cosby v. Treasurer of State*, 579 S.W.3d 202, 209 (Mo. banc 2019). As will be shown, § 590.502 arbitrarily and irrationally creates two classes of similarly situated employees that are subject to different due process rights and unequal indemnification and defense benefits.

For purposes of a motion for judgment on the pleadings, "[t]he well-pleaded facts of the non-moving party's pleading are treated as admitted or purposes of the motion." *Woods*, 595 S.W.3d at 505. In the case at bar, the trial court erred when it did not find that Plaintiff sufficiently alleged that § 590.502 singles out a narrow category of public employees for preferential treatment, not just in the matter of indemnification for liability, but also in the matter of employee discipline generally. Plaintiff sufficiently alleged that § 590.502 impermissibly and arbitrarily creates two classes of employees that are subject to vastly different due process rights. Assuming the allegations in the Petition to be true, and drawing all reasonable inferences in favor of the nonmoving party, the State did not demonstrate Plaintiff could not prevail on her Equal Protection claim as a matter of law and erred in granting judgment in the State's favor.

The trial court erred because no rational basis exists to give public safety employees, i.e. correctional officers, less employee benefits than police officers. As alleged in Plaintiff's Petition, § 590.502 provides the favored new classification of "law

enforcement officers" with more due process rights during disciplinary investigations than other employees of local municipalities and governments, including Plaintiff Taylor. D40, ¶ 44. It further alleges that § 590.502 provides this favored class with guaranteed defense and indemnification against civil lawsuits, including liabilities relating to conduct while working for secondary employers. *Id*.

In support of its finding that a rational basis exists to treat commissioned police officers differently than other public safety employees, the trial court reasoned only that a rational basis exists "to treat police officers differently than other municipal employees because other municipal employees do not frequently protect the public from persons who are violently breaking the law as police do." D52, ¶ 100. The trial court further found that the State "has a legitimate purpose in making sure that police officers are incentivized to do their jobs without fear of personal civil liability, as they encounter and protect the public from persons who are violently breaking the law." D52, ¶ 98.

However, the trial court's rationale ignores that other public safety employees, such as correctional officers, also encounter violence and employ force in the performance of their duties and that correctional officers too are frequently subjected to civil liability in their individual capacities. For example, corrections officers are public safety employees, who like police officers, are authorized to use force in the course and scope of their job duties and are expected to make split-second decisions concerning uses of force while working in correctional facilities. Corrections officers in St. Louis are employees of the Division of Corrections, which is part of the Public Safety Department, which also oversees the police division. *See* City Charter, art. XVIII; City of St. Louis Dep't of Pers. Civil Serv. R. XIII; art. XIII, § 15 (City's police division and Fire Department are divisions of the City Department of Public Safety).[19] Moreover, corrections officers, unlike police officers, are

[19] This Court should take judicial notice of the City Charter and related rules, which include conditions and terms of employment, as well as administrative processes by which aggrieved City employees may challenge employment decisions. *Wiget v. City of St. Louis*,

required to work in a confined space with violent offenders over long periods of time, and in many situations, are greatly outnumbered by the inmate population.

The job functions of corrections officers and police officers are similar in that both professions are required to employ force and make split-second decisions that can expose them to civil liability in their individual capacities; yet, § 590.502 provides commissioned police officers extraordinary preferential treatment based solely on their status as commissioned peace officers. Given that corrections officers, like police officers, face civil rights lawsuits and tort claims as the result of uses of force (as well as lawsuits alleging denial of medical care), the General Assembly seems to have forgotten about the need to improve "public safety" by lessening the deterrent effects these realities would have on people considering careers as corrections officers.

In *Mo. Nat'l Educ. Ass'n*, this Court rejected almost identical rational basis justifications advanced by the State here, to justify differential treatment of some public employees. 623 S.W.3d 585. As will be shown, this favoritism violates art. 1, § 2, because the basis for preferential treatment turns solely on the job title an employee has, rather than the *nature of the work* they perform.

In *Mo Nat'l Educ. Ass'n*, this Court ruled that a statute that exempted public safety labor organizations from its provisions violated the equal protection provision of art. 1, § 2, because no rational basis existed for giving a special category of public safety labor organizations preferential status over other labor organizations and certain employees over others. *Id*. at 593. There, this Court considered an equal protection challenge to a statutory exemption for labor organizations that "wholly or primarily represent[s] persons trained or authorized by law or rule to render emergency medical assistance or treatment ... and persons who are vested with the power of arrest for criminal code violations." *Id*. at 589.

This Court observed, "[l]eaving aside that the exemption for public safety labor organizations supplies preferential status for certain labor organizations over others and

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337 Mo. 799, 802 (Mo. 1935); *see also City of St. Louis v. Lang*, 131 Mo. 412, 420 (Mo. 1895).

not certain employees over others, there is no rational basis for protecting public safety employees from most—if not all—of the new provisions of HB 1413 [the statute at issue]." *Id*. at 592. This Court concluded that the statutory exemption for public safety labor organizations "does not apply to only or all public safety employees involved in the collective bargaining." *Id*. Rather, the statutory scheme differentiated groups of employees based on their affiliation with other employees, regardless of job functions of those employees. *Id*. at 593. As a result, the type of labor organization, not the type of employee, created the basis for the exemption. *Id*. at 592. Public safety employees would benefit from the exemption only if the labor organization that represented them "primarily" represented public safety employees. *Id*. This Court noted that "public-sector labor laws may treat dissimilar types of public-sector employees differently if there is a rational basis for such a differentiation," but the differential treatment must be based on "job function." *Id*. at 592–93.

While this Court's Equal Protection analysis in *Mo. Nat'l Educ. Ass'n* focused on the disparate treatment of employees on the basis of their association with labor organizations, this Court rejected a rational basis justification that is nearly identical to that advanced by the State in this case to justify the disparate treatment of public employees. Here, § 590.502 singles out a narrow category of public employees for preferential treatment, not just in the matter of indemnification for liability, but also in the matter of employee discipline generally, with no regard to the "job function" of the employees. That is irrational and violates equal protection. *Mo. Nat'l Educ. Ass'n*, 623 S.W.3d at 592–93.

Plaintiffs' Petition includes several examples of the heightened disciplinary protections enjoyed by law enforcement officers but not afforded other public safety employees: new deadlines for completion of disciplinary investigations (D40, ¶ 30), access to evidence and information in advance of disciplinary hearings (D40, ¶ 21), right to full due process hearings for probationary officers (D40, ¶ 30), and the right to full due process hearings before the Civil Service Commission for transfers (D40, ¶ 30). These special, additional disciplinary rights are afforded solely to commissioned law enforcement officers but not other public safety employees, such as Plaintiff Taylor. Indeed, Plaintiff Taylor,

City correctional officers, and firefighters are afforded no special protection in the matter of discipline or indemnification, solely because they are not commissioned law enforcement officers.

In granting the State's Motion, the trial court ignored the principles set forth in *Mo. Nat'l Educ Ass'n* and erroneously found that a rational basis exists to favor commissioned police officers over other public safety employees who perform similar job functions and play a vital role in protecting the public from criminals. *See id*. at 593. However, public employees who perform critical public safety functions and routinely put themselves into harm's way—like firefighters and corrections officers—cannot avail themselves of the due process protections and indemnification benefits contained in § 590.502. D40, ¶ 45.

Until the enactment of § 590.502, police officers, corrections officers, firefighters, and paramedics all were subject to the same civil service rules as employees of Plaintiff City. *See* St. Louis City Charter, art. XVIII; City of St. Louis Dep't of Pers. Civil Serv. R. XIII; *See also* Charter, art. XIII, § 15. The trial court failed to identify a rational basis for creating a special system to govern employee discipline for commissioned police officers, while denying correctional officers and other public safety employees the same heightened due process rights police officers enjoy under § 590.502. This differential treatment is not based on the type of work they perform. As set out in *Mo. Nat'l Educ Ass'n*, there is no rational basis to grant preferential treatment to some public safety employees—in this case commissioned peace officers—and not other public safety employees who ensure public safety by protecting the public from violent criminals. *See* 623 S.W.3d at 593.

Perhaps most flagrantly, the trial court erred in failing to identify a rational basis for conferring enhanced due process protections to police officers over other public employees for disciplinary proceedings *premised upon identical misconduct*. Subsequent to the enactment of § 590.502, a commissioned law enforcement officer disciplined for the *exact same conduct* as another public safety employee enjoys additional due process rights in the disciplinary process based solely on their status as a commissioned police officer. For example, a commissioned police officer facing discipline for drinking on duty, for abusing medical leave, or for failure to pay their property taxes are entitled to due process

protections that other public safety employees do not enjoy. There is absolutely no legitimate government purpose for affording a commissioned law enforcement officer more due process rights than Plaintiff Taylor in disciplinary proceedings premised upon *the same alleged misconduct*. Plaintiff overcomes the presumption that § 590.502 has a rational basis because the General Assembly's disparate treatment of public safety employees in disciplinary proceedings for the same misconduct is arbitrary and irrational.

Drawing all reasonable inferences in Plaintiffs' favor, Plaintiffs sufficiently alleged that § 590.502 violates art. I, § 2. First, the statute impermissibly and arbitrarily creates two classes of similarly situated employees who are subject to disparate due process rights during disciplinary investigations, even for identical misconduct. Second, under § 590.502 a police officer who is sued civilly is guaranteed defense and indemnification benefits, while a correctional officer sued civilly is not. The trial court therefore erred in granting State's Motion and denying Plaintiffs' Motion for Judgment on the Pleadings.

VI. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS ON COUNT VI AND DENYING JUDGMENT IN FAVOR OF PLAINTIFFS BECAUSE PLAINTIFFS SUFFICIENTLY ALLEGED, IN THE ALTERNATIVE, THAT CITY IS IN SUBSTANTIAL COMPLIANCE WITH MO. REV. STAT. § 590.502, AS A MATTER OF LAW, IN THAT THE CITY CHARTER PROVIDES FOR SUBSTANTIALLY SIMILAR DISCIPLINARY PROCEDURES.

Standard of Review

The Supreme Court reviews a circuit court's ruling on a motion for judgment on the pleadings *de novo*. *Crestwood*, 620 S.W.3d at 622. In reviewing a grant of judgment on the pleadings, this Court must decide "whether the moving party is entitled to judgment as a matter of law on the face of the pleadings." *Emerson*, 362 S.W.3d at 12(internal quotation omitted). "A grant of judgment on the pleadings will be affirmed only if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory." *Id.* (citation omitted).

City is in substantial compliance with § 590.502

The trial court erred in granting judgment in the State's favor on Plaintiffs' Count VI for justiciability reasons. D52, ⁋⁋102-107. Plaintiffs' alternative request for declaratory judgment in Count VI neither seeks an advisory opinion, nor is it unripe. *See County Court of Washington County v. Murphy,* 658 S.W.2d 14, 16 (Mo. banc 1983) (claim is justiciable where judgment will declare fixed right; plaintiff must present state of facts from which he has a present legal right against those he names as defendants); *see also Alpert v. State*, 543 S.W.3d 589, 592–93, 595 (Mo. banc 2018)(ripe controversy exists if dispute is sufficiently developed to allow court to make accurate determination of facts, to resolve conflict, and to grant specific relief of conclusive character).

Section 590.502.12 provides that "[a] law enforcement agency that has substantially similar or greater procedures shall be deemed in compliance with this section." This Court has already found the City Charter sets the groundwork for a "comprehensive" system of personnel administration. *See Cervantes*, 423 S.W.2d 791 at 794 (in determining grievances of employees, City not required to go beyond the "comprehensive provisions" of City Charter relating to all employees of the City); *See also* City Charter, art. XVIII.

Plaintiffs' Petition sufficiently alleges that City is in substantial compliance with § 590.502 on the basis that its Charter provides for substantially similar disciplinary procedures. D40, ⁋⁋ 49-51. For example, Plaintiffs allege that the City Charter provides for civil service rules relating to the discipline and discharge of employees. *See* D40, ⁋ 50; *see also* City Charter, art. XVIII. It provides for a Civil Service Commission and a Department of Personnel to prescribe rules for the administration and enforcement of the civil service and to hear investigations. D40, ⁋ 50; Charter, art. XVIII, § 5, 6. Plaintiffs alleged that additional regulations of the Civil Service Commission and City's Department of Personnel are applicable to discipline of police officer employees. D40, ¶ 50. Further, police officer employees are accorded a pre-disciplinary review under the practices of City's Division of Police. *Id*. Under the City's Charter and the rules and regulations, police officer employees subject to discipline are entitled to notice, a pre-termination hearing (if discharge is contemplated), a statement of charges, discovery in the discretion of the Civil

Service Commission, representation by counsel if desired, and a plenary hearing with the right to cross-examine witnesses and present witnesses on behalf of the employee. *Id*.

Plaintiffs sufficiently alleged substantial compliance, and the trial court erred in finding Plaintiffs' pre-enforcement declaratory judgment action unripe. In finding the claim unripe, the trial court found "no controversy at this time between the City and any officer" D52, ¶ 106. However, declaratory relief is an appropriate remedy because determining whether City's existing civil service scheme is in substantial compliance with § 590.502 is based on non-hypothetical concrete facts—i.e., the existence of policies entitling officers to notice, a statement of charges, discovery, representation of counsel, a pre-termination hearing, and an opportunity to cross examine and present witnesses—as well as a genuine dispute that City is entitled, under § 590.502.12, to a pre-enforcement declaration that its existing procedures are substantially similar to those required by §590.502. *See Alpert*, 543 S.W.3d at 594 (cases presenting predominantly legal questions are particularly amenable to conclusive determination in pre-enforcement context and require less factual development).

Whether City's various procedural protections to employees under its Charter is substantially similar to § 590.502 is a matter of first impression, to which this Court should apply traditional principles of statutory interpretation. *See Brooks v. Pool-Leffler*, 636 S.W.2d 113, 118 (Mo. App. E.D. 1982)(explaining that, to resolve matter of first impression, court relies primarily upon principles of statutory interpretation); *see also Yount v. Keller Motors, Inc.,* 639 S.W.3d 458, 464–65(Mo. App. E.D. 2021) (explaining, in matter of first impression, that primary rule of statutory interpretation is to give effect to legislative intent as reflected in plain language of statute at issue; court is bound to plain and ordinary meaning of language used in statute, and, if clear and unambiguous, cannot resort to statutory construction in interpreting statute).

Applying the abovementioned principles, the plain language of § 590.502.12 states that a law enforcement agency's procedures shall be deemed in compliance with § 590.502 where they are at least *substantially similar* to those contained in the statute. Giving a plain, reasonable, and logical meaning to § 590.502.12, law enforcement agencies need not

provide *identical* protections enumerated in § 590.502 to be considered in compliance. *See Beard v. Mo. State Employees' Retirement Sys.*, 379 S.W.3d 167, 169 (Mo. banc 2012) (primary purpose of statutory construction is to ascertain legislature's intent from language used and to give effect to that intent if possible); *City of Shelbina v. Shelby County*, 245 S.W.3d 249, 252 (Mo. App. E.D. 2008) (court presumes legislature intended every word, clause, sentence, and provision of statute to have effect and did not insert superfluous language into statute); *Lewis v. Gibbons*, 80 S.W.3d 461, 465 (Mo. banc 2002) (construction of statutes is to be reasonable and logical, and to give meaning to statutes) Indeed, City must only provide procedural protections that are largely, but not wholly, identical to those enumerated therein. *See substantial*, Merriam-Webster, https://www.merriam-webster.com/dictionary/substantial (last visited June 14, 2023) (defining "substantial" as being "largely but not wholly that which is specified"); *similar*, Merriam-Webster, https://www.merriam-webster.com/dictionary/similar (last visited June 14, 2023) (defining "similar" as "alike in substance or essentials").

Plaintiffs alleged facts sufficient to support the inference that the current rights afforded to law enforcement officers by City are substantially similar to the enumerated rights in § 590.502; specifically, because they provide notice, a statement of charges, representation by counsel (if desired), and a pre-disciplinary opportunity to be heard. Accordingly, Plaintiffs have demonstrated a dispute sufficiently developed to permit the court to make an accurate determination of facts and grant specific relief of conclusive character, i.e. a declaration that City is in substantial compliance with § 590.502.

For these reasons, Plaintiffs' claim for declaratory relief that it has policies substantially similar to § 590.502 is ripe. *See Alpert*, 543 S.W.3d at 592-93; *see also Foster*, 352 S.W.3d at 360 *quoting Planned Parenthood*, 220 S.W.3d at 738 (a ripe controversy can exist before a statute is enforced); *see also Clifford*, 283 S.W.3d at 807(injury need not have occurred prior to bringing declaratory action because one main purpose of declaratory relief is to resolve conflicts in legal rights before loss); *City v. State*, 643 S.W.3d at 300 (noting City's legal interest in being "free from the constraints" of unconstitutional law);

Tupper, 468 S.W.3d at 370 (cases presenting predominantly legal questions are amenable to a conclusive determination in a pre-enforcement context).

Alternatively, if this Court were to incorrectly find that there is no ripe, justiciable controversy, then it must find that the trial court erred by entering final judgment in favor of the State on Count VI. The trial court clearly erred by entering a final judgment on the merits on a claim that it thought did not present a ripe, justiciable controversy. *See Mo. Soybean Ass'n*, 102 S.W.3d at 29 ("[B]ecause the controversy is not ripe for review, the judgment of dismissal is modified to one without prejudice."); s*ee also, e.g. Mo. State Conf. of Nat'l Ass'n*, 633 S.W.3d at 848–49; *Schweich*, 408 S.W.3d at 779; *Schultz*, 249 S.W.3d at 902. Thus, at minimum, this Court must reverse and do what the trial court should have done if in fact there was no ripe controversy: dismiss Count VI without prejudice to re-filing.

Thus, for the foregoing reasons, the trial court erred in denying Plaintiffs declaratory relief and granting judgment in the State's favor on Count VI.

CONCLUSION

SB 26 is unconstitutional in its entirety under art. III, §§ 21 and 23 of the Missouri Constitution. Section 590.502 is further unconstitutional under art. X, § 21; art. VI, § 22; art. III, § 38(a); and art. I, § 2 of the Missouri Constitution. Plaintiffs respectfully submit that the judgment below must be reversed and respectfully request this Court to exercise its authority under Missouri Rules of Civil Procedure Rule 84.14 and under Mo. Const. art. V, § 4.1, and enter judgment declaring SB 26 unconstitutional and unenforceable, or in the alternative, § 590.502 unconstitutional and unenforceable.

Alternatively, Plaintiffs are entitled to judgment in their favor that City is, as a matter of law, in substantial compliance with § 590.502.

Respectfully submitted,

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Certificate of Service and Certification under Rule 84.06(c)

The undersigned counsel certifies that the foregoing brief was served on counsel for all parties through the Court's electronic notice system on this 21st day of June 2023, and counsel further certifies that the brief includes the information required by Rule 55.03, that the brief complies with the limitations contained in Rule 84.06(b), and that the total number of words is 27,634.

/s/ Erin K. McGowan