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 of Cole County
Cause No. 21AC-CC00466
The Honorable Jon E. Beetem

AMICUS BRIEF
LUTHER HALL

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STATEMENT OF FACTS

Amicus, Luther Hall ("Hall"), is a Black police officer who was employed by the St. Louis Police Department (hereinafter "Department") when he was injured while on duty. Hall suffered career ending injuries when he was arrested and beaten by White police officers from his own Department while working undercover during the "Stockley protests," after White police officer Jason Stockley was acquitted of the murder of a Black man. Five officers were indicted: Randy Hays pleaded guilty to depriving Hall of his civil rights for his arrest and beating in violation of 18 U.S.C. §§ 242 and 2; Dustin Boone was convicted of depriving Hall of his civil rights under color of law while aiding and abetting others in the arrest and beating in violation of 18 U.S.C. § 242; Christopher Myers pleaded guilty to deprivation of rights under color of law for breaking Hall's cell phone in violation of 18 U.S.C. § 242 (a misdemeanor); Bailey Colletta pleaded guilty to making false declarations to the grand jury in violation of 18 U.S.C. § 1623 (a misdemeanor); and Steven Korte was acquitted of depriving Hall of his civil rights for Hall's arrest and beating and of lying to the FBI. *United States v. Boone, et al.,* Case No. 4:18-CR-975. The City of St. Louis (hereinafter "City") refused to defend or indemnify these officers both before and after their criminal trial(s), even though it defended and indemnified the mayor and other city employees liable for the attack on Hall, as well as over 370 other police officers who were sued for their conduct during the Stockley protests.[1]

[1] The City of St. Louis has defended and indemnified police officers in the following cases: *Street, et al. v. Lt. Col. Lawrence O'Toole, et al.,* Case No. 4:19-cv-02590; *Alridge v. City of St. Louis, et al.,* Case No. 4:18-cv-01677; *Jones v. City of St. Louis, et al.,* Case No. 4:19-cv-02583; *Alston v. City of St. Louis, et al.,* Case No. 4:18-cv-01569;

On appeal the City challenges § 590.502 of Senate Bill 26 (2021) ("SB26"), which is also known as the "Law Enforcement Officers' Bill of Rights." This legislation applies to all law enforcement officers employed by any unit of the state, any county, municipality, or any other political subdivision. Rev. Stat. Mo. § 590.502.1(5). Only the City and Heather Taylor, an employee of the City, have challenged SB 26 on various constitutional grounds. Hall primarily addresses those issues related to § 590.502.7, which states:

> 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 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

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Baude v. City of St. Louis, et al., Case No. 4:18-cv-01564; *Davis. v. City of St. Louis, et al.,* Case No. 4:18-cv-1574; *Gullet v. City of St. Louis, et al.,* Case No. 4:18-cv-01571; *Laird, et al. v. City of St. Louis, et al.,* Case No. 4:18-cv-01567; *Nelson, et al. v. City of St. Louis, et al.,* Case No. 4:18-cv-01561; *Newbold v. City of St. Louis, et al.,* Case No. 4:18-cv-01572; *Ortega v. City of St. Louis, et al.,* Case No. 4:18-cv-01576; *Robertson v. City of St. Louis, et al.,* Case No. 4:18-cv-01570; *Rose v. City of St. Louis, et al.,* Case No. 4:18-cv-01568; *Thomas v. City of St. Louis, et al.,* Case No. 4:18-cv-01566; *Ziegler v. City of St. Louis, et al.,* Case No. 4:18-cv-01577; *Burbridge v. City of St. Louis, et al.,* Case No. 4:17-cv-02482, and *Gray v. City of St. Louis, et al.,* Case No. 4:18-cv-01678. The City of St. Louis defended and indemnified Officer Christopher Myers in the *Street* and *Alston* cases, while refusing to do so in *Hall v. City of St. Louis, et al,* Case No. 4:19-cv-02579. It also defended and indemnified Officers Steven Korte in Dustin Boone in the *Street* case, while refusing to do so in the *Hall* case.

and indemnify the officer in connection with related civil claims.

While the City has paid over ten million dollars for the actions of other police officers (to include some involved in Hall's arrest and beating) during the Stockley protests,[2] it refuses to defend or indemnify even those officers acquitted of assaulting Hall, showing why this legislation was necessary: to prevent cities from arbitrarily and capriciously refusing to take financial responsibility for the actions of their police officers taken in the course and scope of their obligations as law enforcement officers.

The City and Taylor filed their declaratory judgment action challenging the constitutionality of SB 26 on December 6, 2021. D40. The State and intervenor filed motions for judgment on the pleadings, with the City filing a cross motion for judgment on the pleadings; all with supporting suggestions. D41, D43, D46, D47, and D48. The circuit court granted the State and intervenor's motions and denied the City's motion on November 14, 2022. D52. This appeal followed. D54.

[2] In *Alicia Street, et al. v. Lt. Col. Lawrence O'Toole at al.*, Case No. 4:19-cv-02590, the City agreed to pay 5.2 million dollars to 84 plaintiffs who alleged civil rights violations by some 350 officers of the Department during the Stockley protests. https://www.kmov.com/2023/01/31/city-st-louis-pay-52-million-settle-lawsuit-following-2017-protests/. It also agreed to pay $115,000.00 to a couple pepper-sprayed and beaten during the same protests. https://www.stltoday.com/news/local/crime-and-courts/st-louis-to-pay-115k-to-photographer-caught-in-police-kettle/article_37209285-a015-5d6a-a8bf-a10e9537cf34.html. The City also paid Hall five million dollars for the misconduct of the mayor, police chief, and other known and unknown officers related to his arrest and beating. https://www.ksdk.com/article/news/local/st-louis-settlement-agreement-black-officer-beaten-during-protest/635eaefead-98c9-42c7-9bbf-b5af783c9cad

POINTS RELIED ON

I. The trial court properly granted the State's Motion for Judgment on the Pleadings and Intervenor's Motion for Partial Judgment on the Pleadings while denying judgment in favor of Plaintiffs on Count I because SB 26 does not violate either art. III, § 21 (prohibiting change to a bill's original purpose) or § 23 (requiring bills to be limited to a single subject) of the Missouri Constitution because SB 26 was always related to public safety and each provision of the bill relates to public safety.

Am. Eagle Waste Indus. LLC v. St. Louis County, 379 S.W.3d 813 (Mo. banc 2012)

St. Louis County v. Prestige Travel, Inc., 344 S.W.3d 708 (Mo. banc 2012)

Giudicy v. Mercy Hosps. E. Cmtys., 645 S.W.3d 492 (Mo. banc 2022)

II. The trial court properly granted the State's Motion for Judgment on the Pleadings and denied judgment in favor of Plaintiffs on Count II because Mo. Rev. Stat. § 590.502 does not create an unfunded mandate in violation of art. X, § 21 of the Missouri Constitution because the City of St. Louis already obligated itself to defend and indemnify police officers when it assumed local control of the Department by reason of Mo. Rev. Stat. § 84.344.4 and City Ordinance No. 69849.

City of Crestwood v. Affton Fire Prot. Dist., 620 S.W.3d 618 (Mo. banc 2021)

City of Jefferson v. Missouri Dept. of Natural Resources, 863 S.W.2d 844 (Mo. banc 1993)

Mo. Rev. Stat. § 84.344.4

City Ordinance No. 69489

III. The trial court properly granted the State's Motion for Judgment on the Pleadings and denied judgment in favor of Plaintiffs on Count III because Mo. Rev. Stat. § 590.502 does not violate art. VI, § 22 of the Missouri Constitution because the City already represents its employees, and only refuses to represent certain police officers.

City of St. Louis v. State, 382 S.W.3d 905 (Mo. banc 2012)

City of Springfield v. Goff, 918 S.W.2d 786 (Mo. banc 1996)

Mo. Const. art. VI, § 19(a)

IV. The trial court properly granted the State's Motion for Judgment on the Pleadings and denied judgment in favor of Plaintiffs on Count IV because Mo. Rev. Stat. § 590.502.7 does not violate art. III, § 38(a) of the Missouri Constitution because the use of funds is for a public purpose because limited to actions taken under color of law.

Spieler v. Village of Bel-Nor, 62 S.W.3d 457 (Mo. App. E.D. 2001)

Menorah Medical Center v. Heath and Educational Facilities Authority, 584 S.W.2d 78 (Mo. banc 1979)

Americans United v. Rogers, 538 S.W.2d 711 (Mo. banc 1976)

Fust v. Attorney General, 947 S.W.2d 424 (Mo. banc 1997)

V. The trial court properly granted the State's Motion for Judgment on the Pleadings and denied judgment in favor of Plaintiffs on Count V because Mo. Rev. Stat. § 590.502 does not violate art. I, § 2 of the Missouri Constitution because Plaintiffs have failed to meet their burden of showing that the classification is wholly

irrational.

City of St. Louis v. State, 382 S.W.3d 905 (Mo. banc 2012)

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

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND INTERVENOR'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS WHILE DENYING JUDGMENT IN FAVOR OF PLAINTIFFS ON COUNT I BECAUSE SB 26 DOES NOT VIOLATE EITHER ART. III, § 21 (PROHIBITING CHANGE TO A BILL'S ORIGINAL PURPOSE) OR § 23 (REQUIRING BILLS TO BE LIMITED TO A SINGLE SUBJECT) OF THE MISSOURI CONSTITUTION BECAUSE SB 26 WAS ALWAYS RELATED TO PUBLIC SAFETY AND EACH PROVISION OF THE BILL RELATES TO PUBLIC SAFETY.

Standard of Review

A circuit court's grant of judgment on the pleadings is reviewed *de novo. City of St. Louis v. State*, 643 S.W.3d 295, 299 (Mo. banc 2022). In a declaratory judgment action, this Court determines "whether the state is entitled to judgment as a matter of law on the face of the pleadings." *Id.* The well-pleaded facts are treated as admitted for purposes of the state's motion. *Id.* This Court will "affirm the judgment if it is supported by any theory, 'regardless of whether the reasons advanced by the [circuit] court are wrong or insufficient.'" *Id.*, citing *Gross v. Parson*, 624 S.W.3d 877, 883 (Mo. banc 2021) (quoting *Rouner v. Wise*, 446 S.W.3d 242, 249 (Mo. banc 2014)).

1. The Trial Court Properly Found That Plaintiff Did Not Adequately Preserve This Issue, Except As To § 590.502.

As Plaintiffs concede, their Petition requires the court to guess the specific provisions of SB 26 they claim do not relate to public safety, except § 590.502. Appellants' Brief (hereinafter "AB"), p. 26. See also D40, ¶¶ 12-13 & 15-16. To preserve a constitutional challenge, a party must state the facts showing the violation. *Mayes v. St. Luke's Hosp. of Kan. City,* 430 S.W.3d 260, 266 (Mo. banc 2104). "The purpose of this rule is to prevent surprise to the opposing party and permit the trial court an opportunity to fairly identify and rule on the issue." *Id. (*internal quotations omitted). In *Mayes*, this Court held that the petition was insufficient to raise a constitutional challenge when it contained "only conclusory statements that various statutes were unconstitutional without any application of the facts of this case." *Id.* This Court also noted that the petition failed to demonstrate how the statute was unconstitutional.

The same is true here. The State was not given the opportunity to respond to portions of SB 26 that Plaintiffs now claim do not relate to public safety. E.g., §§ 105.950, 214.392 and 313.800. See D42, pp. 7-11 & D50, p. 2-3. At best, Plaintiffs claim that certain provisions are not germane to public safety but provide no facts or explanation as to why. D40, ¶¶ 11-13, & 15 and D48, pp. 4-5, 11 & 13. Except for § 590.502, Plaintiffs failed to show how the challenged provisions are unconstitutional, other than making a broad claim of not germane to public safety, and therefore, they have preserved nothing for review. *Mayes*, 430 S.W.3d at 266.

2. SB 26 Does Not Violate Art. III, § 21 of the Missouri Constitution.

Plaintiffs argue that SB 26 violates the original purpose requirement of Article III, § 21 of the Missouri Constitution because it has multiple sections that have nothing to do

with public safety, and therefore, its original purpose was changed. AB, pp. 20-32. They concede that "public safety" was the original purpose of the bill. AB, p. 21. As to the only preserved challenge relating to SB 26, Plaintiffs concede that the provision codified at § 590.502 was contained in this original public safety bill. AB, p. 36. Nonetheless, Plaintiffs argue that this provision does not relate to public safety but is instead a "public employee labor relations measure." AB, p. 25. The trial court disagreed holding § 590.502 did not violate the original purpose of the bill because: (1) contained in the original bill and (2) related to public safety because relating to law enforcement. D52, ¶ 20. It cannot be said § 590.502 is unrelated to the original subject of SB 26 when it was the original subject of the bill. Cf. AB, p. 20.

Mo. Const. art. IV, § 48 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." Missouri defines the role of its Department of Public Safety as coordinating "statewide law enforcement, criminal justice and public safety efforts to ensure a safe environment for Missourians." https://www.mo.gov/government/guide-to-missouris government/department-of-public-safety/. Similarly, the City's Department of Public Safety describes its mission as to "safeguard the City's state of well-being, protect lives and property, and ensure the complete safety of the 319,294 people who live in the City, and the one million people who work, traverse, and visit the City of St. Louis daily." https://www.stlouismo.gov/government/departments/ public-safety/about-department-public-safety.cfm. Both the city and state squarely place law enforcement officers within their Departments of Public Safety. The City also includes

its building, corrections, excise, fire and neighborhood stabilization divisions as related to public safety, showing the broad scope of this subject. https://www.stlouis-mo.gov/government/departments/public-safety/index.cfm#CP_JUMP_918849.

Plaintiffs attempt to shift the burden of proving the constitutionality of SB 26 onto the circuit court and State, when this Court has held that "constitutionally imposed procedural limitations are not favored," and therefore, a bill will be upheld by this Court "unless the act clearly and undoubtedly violates the constitutional limitation." *Am. Eagle Waste Indus. LLC v. St. Louis County*, 379 S.W.3d 813, 825 (Mo. banc 2012). Plaintiffs fail to show how the challenged provisions of SB 26 "clearly and undoubtedly" are unrelated to public safety. They have presented no facts (only their opinions even though police departments are inherently related to public safety) to support their claim that § 590.502 is unrelated to public safety. Therefore, they have failed to show that this provision violates art. III, § 21. *Mayes,* 430 S.W.3d at 266.

In the wake of police officer shortages not only in the State of Missouri but throughout the country, it cannot be said with a straight face that § 590.502 does not promote public safety by incentivizing police officers to join and stay with police departments, knowing that they will not be financially ruined if they make a mistake, particularly in an emergency situation. Section 590.502.7's prohibition against defense and indemnification for criminal misconduct resulting in a conviction or plea of guilty protects employers from liability for conduct that is not within the course and scope of a police officer's law enforcement obligations, since a police officer is supposed to enforce the law, not break it. Unlike the City, the Mayor of Tulsa, Oklahoma recognized:

> Having 800 officers do the work of nearly 1,000 makes public safety Tulsa's most critical problem. https://www.themarshallproject.org/2023/01/21/police-hiring-government-jobs-decline.

Closer to home, St. Louis County and Jefferson County recognize what the City refuses to admit, as St. Louis County Lt. Col. Troy Doyle explained:

> The overall state of public safety is threatened by the ongoing trend of reduced staffing levels. Outside of officer safety issues, what this means to you the community is longer response times, fewer crimes being solved, and overworked stressed-out police officers. https://www.kmov.com/2022/10/07/police-officer-shortage-raises-questions-about-public-safety/.

Jefferson County Undersheriff Lt. Col. Tim Whitney further explained:

> That [the police officer shortage] is a public safety issue for our community and so we're constantly re-evaluating what that looks like. And we're constantly competing with other organizations to recruit and retain those people. We're committed to doing that for the safety of our community. *Id.*

Because § 590.502 was in the original bill and clearly relates to public safety, Plaintiffs' art. 3, § 21 challenge fails.

Additionally, law enforcement officers wield tremendous power in the name of the state and its political subdivisions. Police officers can cause great harm. The Hall case shows this. He was doing his job, protecting the public, when he was arrested and beaten

by fellow officers. Making the City pay for police officers who use the power entrusted to them to harm others also encourages the City to fire those officers, making the City and all those who live, work, and visit there safer.[3]

The original purpose of a bill is the "general purpose." *St. Louis County v. Prestige Travel, Inc.*, 344 S.W.3d 708, 715 (Mo. banc 2012). The restriction prohibits the legislature for introducing matter "that is not germane to the object of the legislation or that is unrelated to its original subject." *Id.* Extensions to the scope of the bill and new matters are not prohibited, "if germane." *Id.* As Plaintiffs concede, the original purpose of SB 26 was public safety. The state argued and the trial court found that the provisions Plaintiffs challenged were germane to public safety, and therefore, to the original purpose of the bill. D52, ¶¶ 19-27 & 30-32 and D42, pp. 4-11.

Specifically, the following public safety purpose(s) is/are served by each of the challenged provisions:

- Sections 149.071 and 149.076 (tax stamp fraud and false reporting/ applications regarding cigarettes) are related to public safety as evidenced by the Division of Alcohol and Tobacco Control being a division within the Department of Public Safety, with duties for "licensing, brand registration, collecting taxes and fees, and enforcing Missouri's alcohol and tobacco laws and regulations, with an

[3] To the extent that Plaintiffs argue that § 590.502 does not further this public safety purpose by giving police officers certain procedural protections when facing discipline, this claim does not make sense unless the City believes that it can only discharge police officers who engage in misconduct if those police officers are not given a full and fair opportunity to be heard.

emphasis on education and compliance while ensuring a safe environment for citizens of Missouri…" https://atc.dps.mo.gov/about/mission.php. The State furthers the public safety of its citizens through the regulation of cigarettes by ensuring that counterfeit products are not sold to the consuming public. Additionally, as the state argued and the circuit court found, these provisions relate to public safety by imposing criminal penalties as part of a broader law enforcement scheme. D42, p. 11 and D52, ¶ 27. The circuit court also held that public safety was furthered by protecting the property of the state. D52, ¶ 27.

- Section 56.380 (no additional payment to circuit attorney for indictment or conviction) relates to public safety by preventing corruption of the officials with the power to bring criminal charges and seek convictions. D42, p. 9 and D52, ¶ 23. Section 56.380 does nothing new because art. III, § 39 of the Missouri Constitution already prohibits a county or municipal authority from granting extra compensation for a service already rendered.

- Sections 214.392 (cemeteries) changed "board of probation and parole" to "division of probation and parole," and 105.950 (department head salaries) changed "board of probation and parole" to "parole board." The circuit court recognized that probation and parole relate to public safety as part of the criminal justice system. D52, ¶ 30. It should be beyond dispute that when and under what circumstances those who have committed crimes are released back into the community is an issue of public safety.

- Section 313.220 (state lottery) and § 313.800 *et seq.* (excursion gaming

boats) are codified at Title XXI, public safety and morals, showing they are germane to public safety, despite Plaintiffs' claims to the contrary. As the state recognized, § 313.220 makes it less likely that the State Lottery is involved in criminal activity, particularly organized crime given the amount of money involved. D42, p. 10. The circuit court held these provisions were related to public safety by protecting the state's property. D52, ¶ 26.[4]

- Sections 67.301 (electric fences) and 67.494 (physical security measures around private property) relate to public safety because they prevent crime and the regulation of security measures protects the public from harm, particularly when using something dangerous like a high-voltage electric fence, as both the State and circuit court recognized. D42, p. 9 & D52, ¶ 25.

- Section 281.015 *et seq.* (pesticides regulation) relates to public safety because they can be dangerous to the public when used improperly, as the circuit court held. D52, ¶ 24. Allowing those who are not properly trained or certified to use pesticides creates a safety risk not only to the public but to the user. There should be no doubt that pesticide regulation is necessary to "ensure a safe environment for Missourians," as the state itself defines public safety. https://www.mo.gov/ government/guide-to-missourisgovernment/department-of-

[4] Plaintiffs' argument that the gaming commission is not regulated by the Department of Public Safety does not negate the public safety purpose of gaming legislation. AB, p. 30. The Gaming Division is part of the Missouri State Highway Patrol, which is under the Department of Public Safety because gaming relates to public safety. https://www.mshp.dps.missouri.gov/MSHPWeb/PatrolDivisions/GD/index.html.

public-safety/.

Because the challenged provisions are germane to public safety, their inclusion in SB 26 does not violate art. III, § 21 of the Missouri Constitution. *St. Louis County*, 344 S.W.3d at 715.

3. SB 26 Does Not Violate Art. III, § 23 of the Missouri Constitution.

Article III, § 23 of the Missouri Constitution requires a bill to have a single subject. "A bill will not violate the single subject requirement so long as the matter is germane, connected, and congruous." *Am. Eagle Waste Indus. LLC*, 379 S.W.3d at 826 (internal quotations omitted). A "subject" includes those matters "that fall within or reasonably relate to the general core purpose of the legislation." *Id.* "The subject of a bill may be 'clearly expressed by … stating some broad umbrella category' when a bill has 'multiple and diverse topics' within a single, overarching subject." *Id.*, quoting *Jackson City Sports Complex Auth. v. State*, 226 S.W.3d 156, 161 (Mo. banc 2007). "[W]hether a bill addresses a single subject is not how the provisions relate to each other, but whether the provisions are germane to the general subject of the bill." *Giudicy v. Mercy Hosps. E. Cmtys.*, 645 S.W.3d 492, 499 (Mo. banc 2022).

In *Am. Eagle Waste Indus. LLC*, St. Louis County argued that SB 54, with the subject of environmental regulation, violated the single subject rule because it regulated business interests. This Court disagreed, holding that the regulation of business interests "fairly relates to and is a means of accomplishing environmental control." *Id.* at 827. Similarly, in *Giudicy*, 645 S.W.3d at 499, the plaintiff argued that a bill relating to claims for damages and the payment thereof violated the single subject rule because it also

addressed service, venue, interest on damages, admissible evidence, discovery, joint and several liability privilege, and immunity for certain public healthcare providers. This Court ruled that while the provisions were not necessarily related to each other, each was relevant to the subject of the bill: claims for damages and the payment of such claims. *Id.* Therefore, the bill related to a single subject and did not violate art. III, § 23. The same would be true here because each provision of SB 26 relates to public safety for the reasons discussed in subsection 2 above.

4. Should This Court Find Any Provision of SB 26 Violates Art. III, §§ 21 and/or 23 of the Missouri Constitution, It Should be Severed.

Even if Plaintiffs were correct that SB 26 violates art. III, §§ 21 and/or 23, which Hall does not concede, the bill should not be invalidated in its entirety, leaving § 590.502 in effect. When the procedure by which legislation is enacted is unconstitutional, "severance is appropriate when the Court is convinced beyond a reasonable doubt that the specific provisions in question are not essential to the efficacy of the bill." *St. Louis County*, 344 S.W.3d at 716, citing *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 103 (Mo. banc 1994). This Court presumes severability. *Id.* Unconstitutional provisions will be severed from a bill unless the problematic sections are so "so essential to the efficacy" of the bill "that the legislature would not have passed the bill without them" or the remaining provisions, "standing alone, are incomplete or incapable of being executed in accordance with legislative intent." *Id.*

Here the original, controlling purpose of the bill was public safety, and § 590.502 was included in it. While Plaintiffs argue that there is "reasonable doubt" SB 26 would

have passed without those provisions they claim are unrelated to public safety, this is not the case. AB, pp. 36-37. As set forth above, Appellants have identified §§ 149.071, 149.076, 56.380, 105.950, 313.220, 214.392, 67.301, 281.015 *et seq.*, 67.494, and 313.800 *et seg.,* as unrelated to public safety. The most changes made by the legislature in SB 26 were to § 281.015 *et seq.* regarding pesticide regulation. It was first enacted in 1974 and amended in the 1990s before the 2021 amendments regarding the certification and training for applicators and the certifications under which certain applicators must operate. Because Plaintiffs have failed to meet their burden of showing that pesticide regulation is not germane to public safety, the Court does not need to consider whether § 281.015 *et seq.* should be severed from SB 26. If the Court should disagree, it can be said beyond a reasonable doubt that these provisions are not essential to the efficacy of the bill, like the provisions at issue in *Rizzo v. State,* 189 S.W.3d 576, 581 (Mo. banc 2006) (severing provision prohibiting federal criminals from running for office from bill relating to political subdivisions); *Missouri Ass'n of Club Execs., Inc. v. State,* 208 S.W.3d 885, 888-89 (Mo. banc 2006) (severing a provision about adult entertainment from a bill relating to intoxication-related traffic offenses); and *National Solid Waste Mgmt. Ass'n v. Dir. of Dept. of Natural Resources,* 964 S.W.2d 818, (Mo. banc 1998) (severing a provision governing hazardous waste from a bill related to solid waste management). See also *St. Louis County,* 344 S.W.3d at 716, in which this Court found that even if independent tax-related provisions could not withstand constitutional challenge, they should be severed. The same would be true as to § 281.015 *et seq.*

Section 313.800 *et seq.* relating to excursion gambling boats was first enacted in

1992 after the passage of Proposition A in 1991. It was modified several times before 2021, when it was again modified to include "nonfloating facilities" in the definition of excursion gambling boat. As set forth above, this provision relates to public safety as evidenced by its codification in Title XXI, public safety and morals, and the Gaming Division being a unit of the Missouri State Highway Patrol. Plaintiffs argue that Intervenors involvement in this case to protect its financial interest in gambling boats shows that the legislation is not related to public safety. AB, pp. 30-31. That Intervenors may have a financial interest in this legislation does not negate the fact that it is codified in the title relating to public safety and relates to public safety. Section 313.220 was first enacted in 1985 and amended in 2003 before the 2021 amendment. It was amended to include the following: "The commission shall not prohibit a person from participating in the sale of lottery tickets solely on the basis of being found guilty of any criminal offense; except that, the person shall not be eligible to be a licensed lottery game retailer under subsection 2 of section 313.260." If this court believes that provisions of SB 26 codified in the Title dealing with public safety do not relate to public safety, severance would be presumed because these provisions are not essential to the efficacy of the bill because the Law Enforcement Officers' Bill of Rights (the original bill) still can be put into effect.

Sections 67.301 and 67.494 regarding electric fences and physical security measures on private property were enacted for the first time in 2021. They also relate to public safety for the reasons set forth above. If this Court should disagree, these provisions are not essential to the efficacy of the bill, just like certain taxes were severed in *St. Louis County*, 344 S.W.3d at 716.

Sections 149.071 and 149.076 (cigarette tax stamp fraud and false reports/ applications related to cigarettes) were first enacted in 1974. The 2021 amendments only removed "and human resources" after "department of corrections" as responsible for imprisonment. Section 149.076 also included "her" after his designee. Section 56.380 (no additional compensation to circuit attorneys) was first enacted in 1986. The changes to it are similar to §§ 149.071 and 149.076, removing "department of corrections" and adding "her" where appropriate. Section 105.950 (compensation for certain department heads) was first enacted in 1999. The 2021 amendment only changed "board of probation and parole" to "parole board." Section 214.392 (cemeteries) was first enacted in 2001 and amended in 2010 before the 2021 amendment. The only change was that the board of probation and parole was changed to "division of probation and parole." Plaintiffs cannot argue with a straight face that SB 26 would not have passed without these language changes. *St. Louis County*, 344 S.W.3d at 716.

Contrary to Plaintiffs claim, SB 26 is not an example of "logrolling" because all the challenged provisions are related to public safety, and there is nothing in SB 26 that would combine with other provisions to command a majority that otherwise would not exist. *Hammerschmidt*, 877 S.W.2d at 101. Similarly, nothing in SB 26 would force the governor to sign this bill because one subject is addressed in an odious manner and others the governor finds meritorious. *Id.* at 102. As set forth above, many of the provisions make no substantive change to the law at all. Even if this Court should find that a provision in the bill is unrelated to public safety, there is no reason to strike SB 26 in its entirety. None of the provisions challenged by Plaintiffs are "so essential to the efficacy of the bill" that

it would not have passed without them. *St. Louis County*, 344 S.W.3d at 716. Clearly, § 590.502, as well as the other provisions in SB 26, can stand alone and is/are not incomplete or incapable of being executed consistent with the legislature's intent without any successfully challenged provision. *Id.* While Plaintiffs argue that § 590.502 would not have passed without the additional provisions contained in SB 26, this is not the case. AB, pp. 37-38. That similar legislation did not pass in 2020 but passed in 2021 is not unusual in the legislative process.[5] This is particularly true when understaffed police departments continue to be as a serious problem in Missouri and throughout the country. Section 590.502 should not be invalidated simply because the City alone among cities in the State of Missouri does not want to comply with it.

II. THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENIED JUDGMENT IN FAVOR OF PLAINTIFFS ON COUNT II BECAUSE MO. REV. STAT. § 590.502 DOES NOT CREATE AN UNFUNDED MANDATE IN VIOLATION OF ART. X, § 21 OF THE MISSOURI CONSTITUTION BECAUSE THE CITY OF ST. LOUIS ALREADY OBLIGATED ITSELF TO DEFEND AND INDEMNIFY POLICE OFFICERS WHEN IT ASSUMED LOCAL CONTROL OF THE DEPARTMENT BY REASON OF MO. REV. STAT. § 84.344.4 AND CITY ORDINANCE NO. 69849.

[5] It took the Missouri legislature over a decade to adopt a prescription drug monitoring database through Senate Bill 63 (2021), now codified at Rev. Stat. Mo. § 338.710. See https://apnews.com/article/health-bills-prescription-drugs-ecf6c3c5b268454ba1deaa0d20213f58.

Standard of Review

A circuit court's grant of judgment on the pleadings is reviewed *de novo*. *City of St. Louis*, 643 S.W.3d at 299. In a declaratory judgment action, this Court determines "whether the state is entitled to judgment as a matter of law on the face of the pleadings." *Id.* The well-pleaded facts are treated as admitted for purposes of the state's motion. *Id.* This Court will "affirm the judgment if it is supported by any theory, 'regardless of whether the reasons advanced by the [circuit] court are wrong or insufficient.'" *Id.*, citing *Gross*, 624 S.W.3d at 883 (quoting *Rouner*, 446 S.W.3d at 249).

Plaintiffs argue that § 590.502.7 violates art. X, § 21 of the Missouri Constitution (the Hancock Amendment) as an unfunded mandate. They argue that because in 1951, the Court of Appeals held that art. X, § 2 of the City Charter did not impose a duty on the City Counselor's Office to defend a police officer accused of false arrest, it was not legally required to defend and indemnify officers when § 590.502.7 was enacted. AB, p. 42. Once again, this is not the case because it does not take into account the consequences of the City's efforts to regain local control of the Department.

In 2005, this Court held that St. Louis police officers are both officers of the City and state. *Smith v. State*, 152 S.W.3d 275, 279 (Mo. banc 2005). As a result, this Court held that City police officers were covered by Mo. Rev. Stat. § 105.711 (SLEF). In 2005, the Missouri legislature limited the State's obligation to pay claims and final judgments against City police officers, requiring the State to reimburse claims "paid by such board on an equal share basis up to a maximum of one million dollars per fiscal year." § 105.726.3. This equal share basis of payment was eliminated with the adoption of local control when

the City accepted liability for the board of police commissioner's legal obligations.

When the City sought local control of its Department in 2013, the State enacted enabling legislation that provided that before the City could establish a locally controlled department:

> the city shall adopt an ordinance accepting responsibility, ownership, and liability as a successor-in-interest for contractual obligations, indebtedness, and other lawful obligations of the board of police commissioners subject to the provisions of subsection 2 of section 84.345.
>
> Mo. Rev. Stat. § 84.344.4.

Mo. Rev. Stat. §84.345.2 R.S.Mo. provides that for "any claim, lawsuit or other action arising out of actions occurring before the date of the completion of the transfer … the state shall continue to provide legal representation as set forth in section 105.726, and the state legal expense fund shall continue to provide reimbursement for such claims under section 105.726." Theses statutes apply to police officers acting on the board's behalf. See § 105.726.3 & .4.

On April 26, 2013, the City's Board of Aldermen enacted City Ordinance No. 69849 pursuant to § 84.344.4 R.S.Mo. It states:

> the City hereby accepts responsibility, ownership, and liability as successor-in-interest for contractual obligations, indebtedness, and other lawful obligations of the board of police commissioners of the Police Department, effective September 1, 2013 …

Because the City accepted liability for all lawful obligations of the board of police commissioners when it accepted local control of the Department, it was already obligated to pay judgments/settlements when people were injured by the City's police officers before the passage of SB26.

The City's unfunded mandate claim has already been rejected by this Court in *City of Crestwood v. Affton Fire Prot. Dist.*, 620 S.W.3d 618, 631 (Mo. banc 2021) and *City of Jefferson v. Missouri Dept. of Natural Resources,* 863 S.W.2d 844, 848 (Mo. banc 1993). In *City of Crestwood*, the city annexed a portion of unincorporated St. Louis County that was within the Affton Fire Protection District. Crestwood and two of its taxpayers argued that the annexation required the city to undertake a new and increased level of activity in violation of the Hancock Amendment. In *City of Jefferson*, various cities argued that Rev. Stat. Mo. § 260.310.2, which permitted cities and counties to enter into contracts with solid waste management districts to provide services, violated the Hancock Amendment because it required them to join in financing the district if the county in which they were located chose to form or join such a district. In both cases, the Court rejected the Hancock violation claim because the cities had a choice, and choices do not create an unfunded mandate.

The same is true here. The City wanted and voluntarily accepted responsibility for the Department's legal obligations to obtain local control through City Ordinance No. 69849. It cannot now claim that the State imposed an unfunded mandate in 2021 that it accepted in 2013 because it wanted local control of the Department. This is even more clear given the history of who pays for lawsuits involving City police officers. From 1983 when the State Legal Expense Fund was created until 2005, the City represented and paid

settlement or judgments of the board. *State ex. Rel. Hawley v. City of St. Louis,* 531 S.W.3d 602, 605 (Mo. banc 2017). In 2005, the Missouri Supreme Court held in *Smith,* 152 S.W.3d at 275, that the Board and City police officers were entitled to SLEF coverage because officers of the state. In response to this ruling, the Missouri legislature enacted § 105.736.3 & .4, which limited state reimbursement from SLEF to 1 million dollars per fiscal year and required the Attorney General's Officer to represent the board and officers of the Department for fair compensation to be paid by the City. *Id.* Section 84.345.2 R.S.Mo. continued this scheme for claims arising out of actions occurring before the completion of local control, but not after, because the City accepted liability for the acts and/or omissions of its officers.

Hall was injured and made his claims against officers of the Department after local control, making the City liable for the acts of its officers not only pursuant to § 590.502.7, but § 84.344.4 and City Ordinance No. 69849. This is evidenced by the City paying over ten million dollars for the acts/omissions of other police officers acting on behalf of the City during the Stockley protests. See FN 2. Section 590.502.7 actually protects the City from liability it would have otherwise incurred after local control by providing that an employer does not have to defend or indemnify an officer who pleads guilty to or is convicted of a crime arising out of the same conduct. SB 26 does not impose an unfunded mandate on the City. It prevents the City from arbitrarily and capriciously refusing to defend and indemnify police officers acting in the course and scope of their obligations as law enforcement officers. Because the City already accepted this legal responsibility with local control, this Court should reject its Hancock Amendment challenge. If the City does

not want to be liable for the conduct of its police officers, like other cities in the State, it can return control of the Department to the State, as the legislature considered in 2023 and the City opposed. https://fox2now.com/news/missouri/st-louis-mayor-stands-firm-against-state-control-over-police/.

III. THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENIED JUDGMENT IN FAVOR OF PLAINTIFFS ON COUNT III BECAUSE MO. REV. STAT. § 590.502.7 DOES NOT VIOLATE ART. VI, § 22 OF THE MISSOURI CONSTITUTION BECAUSE THE CITY ALREADY REPRESENTS ITS EMPLOYEES, AND ONLY REFUSES TO REPRSENT CERTAIN POLICE OFFICERS.

Standard of Review

A circuit court's grant of judgment on the pleadings is reviewed *de novo. City of St. Louis,* 643 S.W.3d at 299. In a declaratory judgment action, this Court determines "whether the state is entitled to judgment as a matter of law on the face of the pleadings." *Id.* The well-pleaded facts are treated as admitted for purposes of the state's motion. *Id.* This Court will "affirm the judgment if it is supported by any theory, 'regardless of whether the reasons advanced by the [circuit] court are wrong or insufficient.'" *Id.* citing *Gross,* 624 S.W.3d at 883 (quoting *Rouner,* 446 S.W.3d at 249).

The City next argues that § 590.502.7 violates art. VI, § 22 of the Missouri Constitution because it fixes the powers and duties of the City Counselor's Office. As set forth in Argument II, the City fixed these obligations with local control, and therefore, it

has been the duty of the City Counselor to defend and indemnify police officers since 2013. Essentially, Plaintiffs argue that § 590.502.7 violates the Missouri Constitution by requiring the City Counselor's Office to do what the City obligated it to do.

Article VI, § 22 prohibits the state from enacting a law that fixes the powers or duties of any municipal office of a charter city. The City argues that because § 590.502.7 requires the City Counselor's Office to defend police officers, to include those working secondary employment, it fixes the powers and duties of the office in violation of the Constitution. AB, pp. 56-57.

According to *Safeco Ins. Co. of Am. v. Schmitt*, 2021 WL 3077669 (E.D. Mo. July 21, 2021), relied upon by Plaintiffs (AB, p. 42), the City has refused to defend and indemnify City police officers three times since local control in 2013: (1) when Hall was arrested and beaten by fellow officers during the Stockley protests; (2) when Officers Hendren and Riordan left their assigned patrol area and Officer Hendren shot off duty Officer Katlyn Alix during a game of Russian Roulette[6]; and (3) when off duty Officers Schmitt and Olsten arrested and shot a suspect after a night of drinking. According to *Olsten v. City of St. Louis, et al.*, Cause No. 23220CC-00113 (AB, p. 70) the City refused to defend and indemnify Officer Olsten (after initially agreeing to do so) for his on duty

[6] In *Wahlers v. Hendren, et al*, Cause No. 1922-CC-11675-01, the City Counselor's Office represented Sgt. Gary Foster but not Officers Hendren and Riordan. The Court ultimately held that the acts of the officers (leaving their patrol area, ignoring a call for service, consuming alcohol and other substances, and shooting a fellow officer) were outside the scope of their employment, and therefore, dismissed claims against the City and Sgt. Foster. (8/17/21 Order, pp. 5-7). Hendren pleaded guilty to involuntary manslaughter and armed criminal action for this shooting in *State v. Hendren*, Cause No. 1922-CR00289-01.

conduct during a Stockley protest the evening of September 29, 2017. The City Counselor's Office regularly defends and indemnifies police officers as part of its duties, as it is required to do since local control, except when it arbitrarily and capriciously refuses to do so.

The City concedes that the City Counselor manages all litigation pursuant to art. X of the City Charter. AB, p. 57. Article VI, § 22 of the Missouri Constitution does not prohibit the legislature from enacting any law affecting employees of a charter city. *City of St. Louis v. State,* 382 S.W.3d 905, 912 (Mo. banc 2012). "'Interference' in the performance of the duties of civil officers, for the purpose of securing compliance with state policy, is not 'fixing the powers [or] duties' of a municipal officer, which is what the constitution prohibits. *St. Louis v. Missouri Com. on Human Rights,* 517 S.W.2d 65, 70 (Mo. banc 1974). Article VI, § 22 "is limited to prohibiting the General Assembly from enacting state laws prescribing the individual offices of a charter city and the duties and compensation of the officers holding those offices." *City of Springfield v. Goff,* 918 S.W.2d 786, 789 (Mo. banc 1996). Section 590.502.7 does none of these things because the City Counselor's Office already manages all litigation, to include representing city employees like police officers, and by reason of local control is required to defend and indemnify officers of the Department. Section 590.502.7, like § 89.060 in *City of Springfield,* only places limits upon the exercise of the City's powers by prohibiting it from arbitrarily and capriciously refusing to defend and indemnify officers acting in the course and scope of their obligations as law enforcement officers, except when their actions are also criminal.

Such limitations are permitted by art. VI, § 22.[7] *Id.*

The City's argument that art. X, § 2 of the City Charter gives it the discretion to refuse to defend and indemnify officers acting in the course and scope of their obligations as law enforcement officers violates art. VI, § 19(a) of the Missouri Constitution, which limits the powers of a Charter City to those not limited by statute. "A charter provision that conflicts with a state statute is void." *Id.* As set forth above, §§ 84.344.4 and 84.345.2 required the City to accept financial responsibility for the Department to gain local control. To the extent that art. X, § 2 of the Charter gave the City the discretion to refuse to defend and indemnify City police officers as interpreted in *Roberts*, such discretion no longer exists because in conflict with state law.

IV. THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENIED JUDGMENT IN FAVOR OF PLAINTIFFS ON COUNT IV BECAUSE MO. REV. STAT. § 590.502.7 DOES NOT VIOLATE ART. III, § 38(A) OF THE MISSOURI CONSTITUTION BECAUSE THE USE OF FUNDS IS FOR A PUBLIC

[7] The same is true for the remainder of § 590.502. The City Charter already gives city employees, to include employees of the Department, the right to a contested case due process hearing, to include notice of the charges, an explanation of the evidence, a reasonable opportunity to be heard and the heightened procedural requirements of the Missouri Administrative Procedure Act. See *Schwartz v. City of St. Louis*, 274 S.W.3d 509 (Mo. App. E.D. 2008) and *Sapp v. City of St. Louis*, 320 S.W.3d 159, 164 (Mo. App. E.D. 2010). See also Civil Service Rule XIII and Mo. Dept of Personnel, Admin. Reg. No. 117. The City Counselor's Office already represents the City in disciplinary cases. That the legislature has required additional procedures for disciplining police officers, thereby limiting how the City exercises its power, does not violate art. VI, § 22. *City of Springfield*, 918 S.W.2d at 789.

PURPOSE BECAUSE LIMITED TO ACTIONS TAKEN UNDER COLOR OF LAW.

Standard of Review

A circuit court's grant of judgment on the pleadings is reviewed *de novo. City of St. Louis*, 643 S.W.3d at 299. In a declaratory judgment action, this Court determines "whether the state is entitled to judgment as a matter of law on the face of the pleadings." *Id.* The well-pleaded facts are treated as admitted for purposes of the state's motion. *Id.* This Court will "affirm the judgment if it is supported by any theory, 'regardless of whether the reasons advanced by the [circuit] court are wrong or insufficient.'" *Id.* citing *Gross*, 624 S.W.3d at 883 (quoting *Rouner*, 446 S.W.3d at 249).

The City next argues that § 590.502.7 violates art. III, § 38(a) of the Missouri Constitution because it provides public funds for a private purpose when a police officer is acting "under color of law" in Department approved secondary employment.[8] It appears that Plaintiffs concede that such expenditures are for a public purpose when the City is required to defend and indemnify police officers acting in course and scope of their employment with the City. Article III, § 38(a) of the Missouri Constitution permits the grant of "public money to private entities if the grant is for a public purpose." *Menorah Medical Center v. Heath and Educational Facilities Authority*, 584 S.W.2d 73, 78 (Mo. banc 1979). "[D]etermination of what constitutes a public purpose is primarily for the

[8] To the extent that the City argues that § 590.502.7 requires it to defend and indemnify police officers who are not acting "under color of law," this argument flies in the face of the plain language of the statute. AB, p. 65.

legislative department and it will not be overturned unless found to be arbitrary and unreasonable." *Id.* at 79. It the public purpose is apparent, "it is unimportant that incidental benefits may accrue to private interests." *State ex rel. Danforth v. State Environmental Improvement Auth.*, 518 S.W.2d 68, 74 (Mo. banc 1975).

This Court has held that legislation authorizing the Health and Education Facilities Act (providing a mechanism for educational and health institutions to obtain funds to finance capital improvements or refinance existing indebtedness) was not unconstitutional because for a public purpose. *Id.* Similarly, in *Americans United v. Rogers*, 538 S.W.2d 711 (Mo. banc 1976), this Court held that the Missouri Financial Assistance Program (providing financial assistance to public and private college students) did not violate art. III, § 38(a) because "recognizing the public purpose and priority of higher education did not even require citation to authority." *Id.* at 719. This Court also held that Mo. Rev. Stat. § 537.675 (Tort Victims' Compensation Fund giving 50% of a punitive damage award to the state to create a fund to compensate other tort victims) served a public purpose. *Fust v. Attorney General*, 947 S.W.2d 424, 430 (Mo. banc 1997). If the legislature can constitutionally provide public funds to tort victims in general, it can clearly provide public funds to individuals who are injured when a law enforcement officer is acting "in furtherance of his or her sworn duty to enforce the laws and to protect and serve the public," which is how the Missouri legislature defined "under color of law."[9] § 590.502.1(2).

[9] To the extent that Plaintiffs argue that the legislative definition of "under color of law" is nebulous and susceptible to interpretation by the officer and City (AB, p. 67), this argument is absurd. The legislature clearly requires the officer to be doing two things before a duty to defend and indemnify attaches: enforcing the law and protecting and

A police officer is never off duty. *Spieler v. Village of Bel-Nor,* 62 S.W.3d 457, 459 (Mo. App. E.D. 2001). S/he performs "some portion of the sovereign functions of the government, to be exercised by [them] for the benefit of the public." *Laramore v. Jacobsen,* 613 S.W.3d 466, 470 (Mo. App. E.D. 2020) (internal quotations omitted). The public purpose and priority of defense and indemnification of police officers sued for actions taken under color of law does not even require citation to authority, like education did not in *Americans United*. If such a requirement did not serve a public purpose Mo. Rev. Stat. § 105.711 (SLEF) would also be unconstitutional. In § 590.502, the legislature made it clear that the duty of defense and indemnification would not attach unless the off-duty officer was exercising the sovereign powers of "enforcing the law and protecting and serving the public," which despite Plaintiffs' claim to the contrary is unquestionably a public purpose.

Police officers are not going to risk their lives, on or off duty, if they are also required to risk financial ruin through personal liability for their actions taken to protect and serve. As set for the above, police departments in this state and throughout the country are understaffed. In a City where "defund the police" has become a rallying cry for some, to include the current mayor, this crisis is so acute that the State considered retaking control of the Department. Requiring cities to pay for the acts of police officers taken under color of law incentivizes officers to stay with their departments, also an important public

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serving the public (both clearly police duties). Federal courts have been interpreting actions taken under color of law for purposes of § 1983 liability without problem for years.

purpose. The legislature enacted § 590.502.7 to promote public safety by ensuring that police officers would join and stay with police departments, which is necessary to protect the public. Because the legislative grant "serves a public purpose," it does not violate art. III, Section 38(a) of the Missouri Constitution. *Fust*, 947 S.W.2d at 430.

V. THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENIED JUDGMENT IN FAVOR OF PLAINTIFFS ON COUNT V BECAUSE MO. REV. STAT. § 590.502 DOES NOT VIOLATE ART. I, § 2 OF THE MISSOURI CONSTITUTION BECAUSE PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN OF SHOWING THAT THE CLASSIFICATION IS WHOLLY IRRATIONAL.

Standard of Review

A circuit court's grant of judgment on the pleadings is reviewed *de novo*. *City of St. Louis*, 643 S.W.3d at 299. In a declaratory judgment action, this Court determines "whether the state is entitled to judgment as a matter of law on the face of the pleadings." *Id.* The well-pleaded facts are treated as admitted for purposes of the state's motion. *Id.* This Court will "affirm the judgment if it is supported by any theory, 'regardless of whether the reasons advanced by the [circuit] court are wrong or insufficient.'" *Id.* citing *Gross*, 624 S.W.3d at 883 (quoting *Rouner*, 446 S.W.3d at 249).

Because this legislation does not involve a suspect class or is otherwise subject to strict scrutiny, this challenge is conducted under the rational basis test. *City of St. Louis*, 382 S.W.3d at 912. Therefore, the classification is constitutional "if any state of facts can

be reasonably conceived to justify it." *Id.* This standard of scrutiny prevents a court from substituting its judgment for the legislature regarding the "wisdom, social desirability or economic policy underlying a statute." *Id.* at 913. Plaintiffs bear the burden of showing that the law they challenge is "wholly irrational." *Id.* In *City of St. Louis,* the Court held that a statute exempting veteran firefighters who lived in unaccredited or provisionally accredited school districts from the city's residency requirement did not violate the equal protection clause because rationally related to the state's legitimate purposes of improving children's education and retaining experienced firefighters. The Court upheld the residency exemption even though the City claimed it would not have its intended effect in the particular case because this was a legislative determination. *Id.*

The same would be true here. The circuit court 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. It found a rational relationship to this legitimate state interest and a rational basis to treat police officers differently from other municipal employees who do not "frequently protect the public from persons who are violently breaking the law as police do." *Id.* ¶¶ 99-100. As the State recognized, law enforcement officers are often called upon to make split-second decisions that often expose them to civil liability and public (as well as some elected officials) loathing not found in other public employment. D50, p. 38. It argued that another rational basis for the different treatment was "to improve public safety by lessening the deterrent effects these realities would have on people considering careers as law enforcement

officers." *Id.* Additionally, police officers are in a unique position to harm the public. This legislation further serves public safety by incentivizing cities to discharge police officers who do not properly use the powers given to them by holding the city who hired them liable for their conduct. While Plaintiffs may have a different opinion regarding this legislation, they have failed to meet their burden of showing that the classification is "wholly irrational," and therefore, their equal protection challenge fails. *City of St. Louis,* 382 S.W.3d at 913.

Plaintiffs argue that this case is indistinguishable from *Mo. Nat'l Educ. Ass'n v. Mo. DOL & Indus. Rels.*, 623 S.W.3d 585 (Mo. banc 2021). AB, pp. 74-76. However, in that case, this Court recognized that the difference in treatment was based on the type of labor organization, not the type of employee (nature of the work). *Id.* at 592. Because the legislation exempted those labor organizations "primarily" representing public safety employees, this Court recognized that employees who were not working in public safety would be given the exemptions of the act if in the right labor organization. Similarly, public safety employees would not receive the exemptions of the act if they were members of a labor organization not primarily representing public safety employees. The court recognized that a labor organization composed of 51% public safety employees would be treated differently from one composed of 49% public safety employees, even though they were similarly situated, which was irrational. *Id.* at 593.

Here the legislative classification is limited to law enforcement officers and based upon the work they perform. This case is nothing like *Mo. Nat'l Educ. Ass'n* because the different treatment is based on job function. Plaintiffs challenge this classification because

it does not include other public safety employees, such as firefighters and corrections officers, but this was a decision for the legislature to make. AB p. 76. They argue that all of these public safety officers perform "similar job functions," but this is not the case. While other public safety officers like firefighters and corrections officers also put themselves at risk to serve the public, it cannot be said they perform similar job functions, are exposed to the same dangers, or are exposed to the same public scrutiny and hostility. If the jobs were as similar as Plaintiffs argue, the training for one would qualify an employee to perform all of these jobs. A police officer may be the first to respond to a fire scene, but is not trained to fight a fire, which has different risks and duties from police work. A firefighter may worry about being trapped in a fire, but s/he does not have to worry about being shot every time s/he makes a traffic stop because not charged with enforcing the laws. Neither firefighters, nor corrections officers, regularly deal with violent criminals on the streets, who have access to weapons and drugs. The City's corrections officers may also encounter violence and have to use force, but they deal with criminals after they have been disarmed in the controlled environment of the City Justice Center, which is very different from the streets of St. Louis.[10]

Additionally, corrections officers and firefighters are not subject to the same political pressure and interference as police officers, who are sometimes pressured by elected officials to ignore the crimes of well-connected citizens and/or to enforce certain

[10] The City's overcrowding of its Justice Center through the closure of the Workhouse and its mismanagement of the Justice Center (to include locks that did not work) does not change this result, as prisoners are in a controlled, locked environment, not on City streets that can be as dangerous as a war zone.

laws for the well-connected, despite limited resources and other priorities, under the risk of retaliation (job loss) if they refuse. This would justify the difference in disciplinary procedures for police officers. The Missouri legislature first recognized the need to protect certain law enforcement officers from this political interference when it protected police chiefs from political firings through Rev. Stat. Mo. § 106.273. Protecting all law enforcement officers from politically based retaliation through additional procedural protections also furthers the state's legitimate public safety interest in ensuring that all residents and visitors are treated the same under the law, without favoritism. Neither a firefighter, nor a corrections officer, is going to be pressured by an elected or appointed official to do a favor for a friend by ignoring the law (or enforcing it despite other priorities) and fired if s/he refuses.

That law enforcement officers and other public employees may have some overlap in the basis for disciplinary action (such as drinking on duty or abusing medical leave) does not mean they are the same and should be treated the same as Plaintiffs argue. AB, p. 76. Other City employees generally are not disciplined for false arrest or an unconstitutional search because they do not have these powers. Any City employee who improperly performs his/her job can potentially be sued if s/he causes harm to a member of the public, not just public safety officers. This does not mean that the legislature acted wholly irrationally when it provided special protections to law enforcement officers and not other public safety officers (or other City employees) in light of the number of unfilled police positions, the unique nature of their work and powers, and the greater likelihood of public scrutiny and/or political interference.

It is ironic that the City argues that the Missouri legislature acted wholly irrationally when it gave police officers different protections from other City employees. It did the same when it first gained local control through Civil Service Rule XIX, which was eliminated in 2021. This Rule gave police officers facing a 15-day suspension or less the right to appeal their discipline to a summary hearing board, while all other City employees were required to appeal to the Civil Service Commission. https://www.stltodaycom/news/local/metro/st-louis-commission-moves-to-alter-disciplinary-processforpoliceofficers/article_b591564a-a525-5eff-9045-81d80993c018.html. Police officers also were given the right to take three depositions that other City employees did not have. *Id.* The Missouri legislature recognized that the Civil Service Commission was likely to develop different rules for the discipline of police officers by providing that the Civil Service Commission "may adopt rules and regulations appropriate for the unique operation of a police department" in Rev. Stat. Mo. § 84.344.8. Because both the City and State legislature have recognized that police officers can and should be treated differently from other municipal employees, Plaintiffs cannot show that the difference in treatment is "wholly irrational." Therefore, Plaintiffs equal protection challenge fails. *City of St. Louis*, 382 S.W.3d at 913.

CONCLUSION

For the reasons set forth above, SB 26 does not violate the Missouri Constitution, and the judgment of the Circuit Court should be affirmed.

Respectfully submitted,

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CERTIFICATE PURSUANT TO RULE 84.06(c)

The undersigned hereby certifies that this brief complies with the requirements of Missouri Supreme Court Rule 55.03 and the limitations of Rule 84.06(b). This brief contains 11,575 words, as determined by Microsoft Word software.

/s/ Lynette M. Petruska

CERTIFICATE OF SERVICE

The undersigned certifies that on the 18th day of July, 2023, a true and accurate copy of the foregoing document was served via the court's electronic filing system upon counsel for all parties.

/s/ Lynette M. Petruska